

Hearing of the National Security Subcommittee of the House Oversight and Government Reform Committee Subject: "Border Security Oversight: Identifying and Responding to Current Threats" Chaired by: Representative Jason Chaffetz (R-UT) Witnesses: Michael Fisher, Chief, U.S. Border Patrol, Customs and Border Protection; David Murphy, Assisting Acting Commissioner, Customs and Border Protection; Thomas Homan, Executive Associate Director, Enforcement and Removal Operations, Immigration and Custom Enforcement; Joseph Langlois, Associate Director, Refugee, Asylum and International Operations, U.S. Citizenship and Immigration Services; Rebecca Gambler, Director, Homeland Security and Justice, Government Accountability Office Location: 2247 Rayburn House Office Building, Washington, D.C. Time: 9:06 a.m. EDT Date: Thursday, June 27, 2013

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REPRESENTATIVE JASON CHAFFETZ (R-UT): (Sounds gavel.) The committee will come to order. Good morning.

I'd like to begin this hearing by stating the Oversight Committee mission statement: We exist to secure two fundamental principles. First, Americans have the right to know that the money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights.

Our solemn responsibility is to hold government accountable to the taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the federal bureaucracy.

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Good morning, and I thank everybody for coming to attend this hearing, which is entitled "Border Security Oversight: Identifying and Responding to the Current Threats." I'd also like to thank my colleagues who are here and the people in the audience for joining us today.

Much of the current immigration reform debate has centered on the importance of border security, but the conversation has not focused enough on how to secure the border in the most effective manner. As a result, today's hearing will examine a variety of threats to the U.S. border security, from illegal entrance to drug trafficking organizations to potential national security breaches.

This hearing will also examine how to measure each of these risk and the most effective responses to the -- to the threats we confront.

The Department of Homeland Security is responsible for controlling and guarding the borders of the United States. The department's operational responsibility includes, quote, "preventing and investigating illegal movement across our borders, including the smuggling of people, drugs, cash and weapons," end quote.

The Secure Fence Act of 2006, which intended to, quote, "to establish operational control over the international land and maritime borders in the United States," end quote, authorizes the secretary of the Department of Homeland Security to take necessary and appropriate actions to secure the U.S. borders.

From 2006 to 2012, the security measures implemented to help achieve operational control of U.S. borders have cost the U.S. taxpayers approximately \$75 billion. Despite spending tens of billions of taxpayer dollars to secure the border, the Government Accountability Office reported in 2011 that there were only 129 miles of the 1,954 mile-long Southwest border -- or roughly 6 percent of the border -- where Border Patrol can actually, quote, "deter or detect and apprehend illegal entries," end quote, at the border itself. Six percent operational control.

The lack of operational control documented by GAO directly contradicts statements made by the administration that border is the most secure that it has ever been. After GAO reported low levels of operational control, DHS changed its policy to make the number of quote-unquote "apprehensions" the measure of effectiveness. However, the number of apprehensions which DHS uses as its metric now does not indicate whether federal government efforts to secure the border are actually achieving operational control or not.

One of the fundamental questions I have is, if the rise in apprehensions -- if apprehensions is increasing, does that mean the border is more secure or does that mean the border is less secure? If the number of apprehensions is declining, does that mean the border is less secure or does that mean the border is more secure?

I asked the attorney general this question. Attorney General Holder said you cannot draw a conclusion based solely on apprehensions. I've asked the secretary of Homeland Security, who didn't really give a thorough answer to that question. It's something we need to explore, not to play gotcha, but to try to come up with a metric that we can all live with, and when those metrics change, you can't compare them to past performance. And that's something we need to explore.

Since the creation of the Department of Homeland Security, the committee's oversight efforts have examined the effective use of taxpayer dollars at the border. While the department is working hard to secure the border, there are examples of wasteful spending. For instance, SBINet, which was intended to improve video surveillance of the border, has cost the taxpayers roughly \$1.2 billion. But SBINet has deemed a failure.

On April 2nd to the 4th of this year, members and staff of the House Oversight and Government Reform Committee, including myself, traveled to Yuma, Naco, Nogales, Arizona to assess the federal government's most recent effort to secure the border.

I appreciate the men and women that we interacted with there. We had a very productive trip.

The committee also visited the Eloy detention facility in Arizona and was briefed by prison and ICE officials. The committee learned that the individuals classified as OTMs, how the department classifies people, OTM stands for

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other than Mexicans, accounted for roughly 900 inmates from 60 different countries, out of approximately 1,500 in the Eloy detention facility. In other words, more than half of the people at the detention facility were not Mexicans, they were from 60 different countries.

For those that assume that the border problem is simply a problem with Mexico, that's just not true. There's nothing statistical that would support that. And certainly, if you look at the detentions, it is a much bigger and broader problem than just people coming north from Mexico. It is a bigger, broader problem.

Based on our conversations with CBP officers in Yuma and Nogales and other cities, there appears to be an increasing trend of OTMs moving across the Southwest border. A significant portion of OTMs are coming from Latin America, including Guatemala and Honduras, in addition to India and China and other parts in Europe and Asia and other countries.

Border Patrol officers on the ground also told the committee about potential problems to our immigration system. For instance, it appears the judicial process for asylum requests and the government's issuance and administration of B1 and B2 visas may contain some very serious flaws.

During our trip to the border, we also found that the government continues to identify new and emerging threats to secure the border, including the drug cartels' use of semi-submersible vessels and ultralight aircraft and the construction of underground tunnels. Even right in the heart of Nogales, they still recently found another tunnel going right into the heart of the city.

Today we hope not only to discuss these threats, but also responses to some of these risks, including the use of effective drones, strategic placement of troops and other technology which can successfully be implemented along the border. Whether through technology or Border Patrol agents, we must allocate the necessary resources to secure the border, but in a way that is smart, strategic and ensures that we do not waste taxpayer dollars.

I want to emphasize, and I commend the support -- commend the work and support of our law enforcement officers from the various different agencies. They do amazing work in exceptionally difficult conditions. We cannot thank them enough for their good, hard, diligent work. It is tough, tough work.

Today's discussion should focus on understanding the threats to our borders and how we should respond to each of the challenges. I look forward to hearing from our witnesses for a productive conversation about securing the borders of the United States.

However, I am disappointed that Joseph Langlois, the associate director for refugee asylum and international operations with the U.S. Citizenship and Immigration Services, has refused to testify before this subcommittee today. The committee requested his attendance and participation in the hearing 13 days ago on June 4th, 2013 -- sorry, June 14th of this year. Despite providing essentially a two-week notice to testify before the subcommittee, the U.S. Citizenship and Immigration Services has declined to appear, asserting, quote, "Due to the lack of sufficient notice to prepare and clear testimony as well as prepare a suitable witness, USCIS will be unable to appear at the upcoming June 27th hearing on border security."

I want to thank the four other people from the other agencies who were able to prepare, who did come and were briefed and who are joining us today. I find it totally unacceptable that with 13 days' notice that is not sufficient time to prepare to testify in Congress about what you do every day and the job and responsibility that you have for your own department and agency.

So I thank those that are here. We duly note the person who is not here and find that unacceptable. The American taxpayers deserve answers to these important questions before the subcommittee today. We have left a seat open hoping that the witness would appear today, but it appears as if he's not.

Again, thank you for the agencies that are here today.

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I also want to thank and commend my colleague Trey Gowdy for his work. He is the chairman on Judiciary of the subcommittee that's dealing with immigration.

As we move forward in dealing with the problem that is immigration, from a legislative standpoint, it is critical that we get the border security portion right. Every bit of legislation, whether it's in the Senate or the House, has always focused on, how are we going to secure the border? How do we assure the American people that the border is secure?

There has been legislation that was passed in 2006 that dealt with supposedly securing the border and the fence; yet only 6 percent operational control. Earlier, we passed legislation that would ensure a viable entry/exit system; we have none. That's a problem and we need to discuss that today.

So I look forward to the Congress tackling immigration reform. It is much needed. We need to understand what's happening at the border, and we appreciate those that are here today.

(Off mic conversation.)

Does anybody have an opening statement that they would like to make, members on the dais?

Members may have seven days to submit opening statements for the record.

But we'll now recognize our first panel: Mr. Michael Fisher is the chief of the U.S. Border Patrol; Mr. David Murphy is the assistant commissioner for Customs and Border Patrol Office of Field Operations; Mr. Thomas Homan -- did I say that properly -- is the executive associate director of ICE Enforcement and Removal Operations; and Rebecca Gambler is the director for Homeland Security and Justice at the Government Accountability Office.

Again, we thank you all for being here today.

Pursuant to committee rules, all witnesses will be sworn before they testify.

(Oath is administered.)

Let the record reflect the witnesses answered in the affirmative. You may be seated.

In order to allow time for discussion, please limit your testimony, if you would, to five minutes. Your entire written statement will be part of the record. We'll give you some latitude.

But again, I want to thank you for being here. And we'll recognize Mr. Fisher first.

MICHAEL FISHER: Chairman Chaffetz, Ranking Member Tierney and other distinguished members of the subcommittee, it is indeed an honor and a privilege to be before you today to discuss the identification and the response to current threats.

As CBP prepares for our 2014 operations, the U.S. Border Patrol continues to be guided by the three pillars of our strategy: information, integration and rapid response.

Current intelligence estimates suggest that transnational criminal organizations and the networks that support them continue to exploit the border in Arizona and south Texas. For the first time in over a decade, illegal cross-border activity is more prevalent in south Texas than any other corridor along the Southwest border.

Today, activity in south Texas accounts for approximately 34 percent of all arrests along the Southwest border. It is also noteworthy to recognize, as the chairman pointed out, that 60 percent of these arrests are from nationals from some other country than Mexico; in particular, the top three sending countries are Guatemala, Honduras and El Salvador.

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However, the current activity in south Texas needs to be put in proper context. Even with elevated activity in Rio Grande Valley, the daily apprehension rate is approximately 40 percent less than what it was in 1997.

We continue to mature our integrated operations in each corridor with our federal, state, local and tribal partners. Protecting the citizens against those that would do us harm does not begin nor end at the border, and we cannot achieve border security alone.

As the incremental transition of activities shifted to south Texas, we took the following actions. We directed most Border Patrol academy classes and those agents to south Texas, increasing the overall agent boots on the ground in high-risk areas, such as Rio Grande Valley.

We redeployed approximately 100 pieces of technology to south Texas from other Southwest border sectors. These were equipment such as unattended ground sensors, global surveillance systems and thermal imaging systems.

And as you may recall, we entered into a memorandum of understanding with the Department of Defense to allow the transfer of detection and monitoring equipment from the military to CBP.

With the drawdown of forces in theater, we sought to capitalize on the opportunity to reuse equipment that the taxpayers already paid for, to assist front-line agents. Accordingly, we recently delivered the first installment of this equipment to the field. Our 224 detection and monitoring systems that have been inventoried and sent to the Southwest border, 75 percent of which went to south Texas.

In March of this year, we initiated vulnerability assessment flights along the southwest border utilizing CBP's Predator Bs equipped with synthetic aperture radar for broader situational awareness. To date, we have developed more than 80 target folders, covering approximately 320 noncontiguous miles.

In support of this effort, we continue to leverage geospatial intelligence collection to augment our own organic capabilities.

In conclusion, my team has designed and implemented a formidable strategy, and we continue to learn and adjust our tactics, techniques and procedures as conditions on the ground dictate.

I stand by my convictions that, given the operational flexibility to match capability to threat, we will reduce the likelihood of attack against the nation and continue to provide the requisite safety and security to the citizens who deserve no less.

Mr. Chairman, again, thank you for the opportunity to testify today. And I look forward to answering your questions.

REP. CHAFFETZ: Thank you, Mr. Fisher.

We'll now recognize Mr. Murphy for five minutes.

DAVID MURPHY: Good morning, Chairman Chaffetz, Vice Chairman Lummis and distinguished members of the subcommittee. Thank you for the opportunity to appear before you today. I appreciate the committee's leadership and commitment to ensuring the security of the American people and look forward to discussing the progress that we've made in securing the border.

We define a secure border at our nation's ports of entry as a well-managed border where mission risks are effectively identified and addressed and legitimate trade and travel are expedited.

Every day, we carry out our mission to protect the people and the economy of the United States by preventing dangerous people and goods from entering the country while expediting legitimate trade and travel that is the lifeblood of our economy at 329 ports of entry.

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Traffic at our ports of entry differs by environment which encompasses air, land and sea, type, traveler or cargo and mode of transportation, commercial or general aviation, personally owned vehicles, pedestrians, trucks, containerized, packaged or bulk. And each of these environments and each activity presents a different set of challenges with respect to threats, volume and timing of processing.

Last year, CBP welcomed more than 350 million passengers and processed 2.3 trillion (dollars) in total trade value. We are seeing volume increases in all environments and anticipate volume to continue as the economy recovers, one of the most substantial grosses in the air environment where we've seen a volume increase of 12 percent since 2009.

It is important to note that the vast majority of this traffic complies with all rules and regulations enforced by CBP. Our goal is to identify and interdict those few travelers and shipments that may present a risk while facilitating the vast majority of legitimate traffic.

We are working to find and stop the proverbial needles in the haystack while the haystack is moving.

We continue to improve our ability to do this and to focus our finite resources on those people and goods that present the highest potential risk. In addition to refining our risk-based and layered approach to security, we have worked to extend our borders outward and to interdict threats before they reach the United States.

DHS, in cooperation with our interagency and foreign partners, now screens people and goods earlier in the process, before boarding passengers or loading cargo onto planes or vessels destined to the United States.

Since 2009, CBP has expanded its predeparture screening efforts and now checks all air travelers against government databases on all flights arriving to and departing from the United States prior to boarding.

CBP has also extended our nation's borders outwards in the cargo environment. All inbound cargo manifests are screened before they are laden on the vessels with almost 85 percent of high-risk shipments examined or addressed before arrival at U.S. seaports.

In addition to improving our ability to identify and mitigate potentially high-risk travel and trade, CBP remains focused on identifying ways to facilitate the growing volume of people and goods entering into the United States.

We have seen a marked facilitation improvement through the development of a series of transformation initiatives that increase the speed of our processing, including the expansion of the Trusted Traveler and Trusted Trader programs, the elimination of paper forms and the increased use of technology.

We will continue to aggressively pursue these strategies which both increase security and streamline the border process for people and goods.

These types of programs and enhanced management tools have not only increased our ability to facilitate lawful travelers but have also provided significant security benefits. For example, we have limited the number of acceptable travel documents and increased our ability to identify at our land ports resulting in a decreased use of fraudulent documents and attempts by inadmissible persons to enter through our ports.

As we refine our targeting and interdiction efforts along the southwest border, transnational criminal organizations have begun to use unique and nontraditional deep concealment smuggling methods using smaller loads to avoid detection.

Ever-improving interdiction efforts by CBP continue to force these organizations to attempt a myriad of more costly and often less successful smuggling techniques.

In 2009 and 2010, we focused our agricultural protection efforts on increasing interception of our highest agricultural risk pests: Asian gypsy moths and Khapra beetles. These pests that if left undetected, could result in millions of dollars in economic damage.

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In the year following this nationwide training, we saw record levels of interceptions and continue to maintain those levels of interceptions today.

The state of border security continues to improve at our ports of entry. We have made tremendous progress and are well postured against terrorist threats, having pushed our security measures beyond our immediate borders. And we are pushing a robust strategy to optimize our current business practices.

In short, we have maintained and increased our mission effectiveness while facing increasing demands for growing passenger and trade volume, and we continue to seek ways to improve.

Chairman Chaffetz, Ranking Member Tierney, Vice Chairman Lummis and members of the subcommittee, thank you for the opportunity to testify. I look forward to your questions. Thank you.

REP. CHAFFETZ: Thank you, Mr. Murphy. I now recognize Mr. Homan for five minutes.

THOMAS HOMAN: Good morning, Chairman Chaffetz, Ranking Member Tierney and distinguished members of the subcommittee.

On behalf of Secretary Napolitano and Director Morton, thank you for the opportunity to appear today to discuss the significant progress ICE and DHS have made to secure our border.

As you may know, ICE is the principal investigative agency within DHS and the second largest in the federal government. The men and women at ICE play a critical role in securing the border and carrying out smart and effective immigration enforcement policies.

ICE consists of three operational programs: enforcement and removal operations, ERO; homeland security investigations, HSI; and the office of the principal legal adviser, OPLA.

HSI investigates a wide range of crimes that arise from illegal movement of people and goods into, within and out of the United States. I am the head of ERO. In this role, I lead a program that identifies, apprehends, detains and removes aliens subject to removal from the United States pursuant to ICE's prioritized enforcement principles.

I have been a federal law enforcement officer for 29 years, 27 of which have been spent in immigration enforcement. Over the years, I have seen and worked the entire lifecycle of immigration enforcement. I have served on the front line as a Border Patrol agent. I tackled smuggling organizations as a special agent with the former INS and now focus on smart enforcement at the back end of the process, that being removal of aliens from the United States.

Over the past four years, ICE has focused its resources on removals of individuals who fit within our enforcement priorities. Those priorities include people who are threats to national security and public safety, such as convicted criminals, recent illegal border crossers and those who obstruct immigration controls.

This focus has led to unprecedented successes. Last year, ICE removed almost 410,000 aliens. Some 55 percent of them had criminal convictions. This is almost double the number of criminal alien removals in 2008. And 96 percent of those aliens fit within the priority categories I mentioned above.

Simply put, our reforms and priorities have made our communities safer.

ICE carefully manages its detention population in our field offices on the border and nationwide. Operational needs on the southwest border can change quickly, and ICE has a policy and infrastructure in place to meet those needs.

The successes I mentioned today could not have been achieved without the implementation of the smart, effective and efficient policies issued by Secretary Napolitano and Director Morton.

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Of course, we must work closely with our DHS partners in order to meet our goals. For instance, 44 percent of ICE's detainees in ICE custody came from the CBP. Our joint efforts are critical to the nation's border enforcement efforts, and I am proud of the working relationship I have with my colleagues I'm testifying with today.

Another part of our commitment to smart, effective immigration enforcement are the major reforms we have made to the detention system. All of our reforms help ensure the individuals in ICE's detained population are held appropriately and classified according to their risk. We have put in place strong safeguards against abuse and ensure our detainees have access to health care and legal resources.

All of the successes I have outlined today have been the result of reasonable immigration policies and priorities. Even in this time of budget uncertainty, we are using our resources in a smart, effective and responsible manner.

We are making the public safer by targeting our resources where they are needed most.

Thank you again for inviting me to testify. I look -- I'm pleased to answer any questions you may have. Thank you.

(Audio break.)

REBECCA GAMBLER: -- efforts to secure the border. Since 2004, DHS has increased resources allocated to securing borders. For example, in fiscal year 2004, the Border Patrol had over 10,000 agents; in fiscal year 2011, there were over 21,000 agents. Similarly, the number of Customs and Border Protection officers stationed at ports of entry has increased from over 17,000 in fiscal year 2004 to more than 20,000 in fiscal year 2011. Further, DHS has deployed technology and infrastructure to border areas.

Today, I will focus my remarks on three key areas in which GAO has assessed DHS's efforts to secure our nation's borders. First, I will highlight our work reviewing GAO's efforts to assess its border security activities; second, I will discuss GAO's work reviewing interagency coordination efforts; and third, I will highlight GAO's work on DHS management of technology assets for securing the border.

With regard to my first point, Border Patrol data show that from fiscal year 2006 to 2011, apprehensions within each Southwest Border sector declines. Border Patrol contributed this decrease to various factors, such as changes in the U.S. economy and increases in resources. Fiscal year 2012 data reported by the Border Patrol indicate that apprehensions across the Southwest Border increased from fiscal year 2011, but it is too early to assess whether this increase indicates a change in trend. Further, from fiscal year 2006 through 2011, estimated known illegal entries in each Southwest Border sector also declined.

In addition to data on apprehensions, other data collected by the Border Patrol are used by sector management to inform assessment of its efforts. These data include, among other things, the percentage of estimated known illegal entrants who were apprehended more than once, which is referred to as the recidivism rate, and contraband seizures.

With regard to the recidivism rate, our analysis of Border Patrol data show that the rate decreased across Southwest Border sectors between fiscal years 2008 and 2011. With regard to drug and other contraband seizures, the number of seizures increased by 83 percent from fiscal year 2006 to 2011.

Since fiscal year 2011, DHS has used the number of apprehensions on the Southwest Border between ports of entry as an interim performance goal and measure for border security. This measure provides some useful information, but does not position the department to be able to report on how effective its efforts are at securing the border, resulting in reduced oversight and DHS accountability.

The Border Patrol is in the process of developing goals and measures; however, it has not set target timeframes for completing its efforts. We recommended that the Border Patrol establish such timeframes to help ensure that development of goals and measures are completed in a timely manner. The department agreed with our recommendations and stated that it plans to establish such timeframes by November 2013.

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With regard to my second point, DHS and other agencies have reported improvements in interagency coordination of border enforcement operations. For example, federal partners responsible for securing federal lands along the borders have cited increased information sharing and communication. However, our work has also identified opportunities for improvements and more consistent implementation of existing interagency agreements and stronger oversight of interagency forums for border security.

Finally, DHS has deployed technology infrastructure and other assets to U.S. borders. However, DHS has faced a number of challenges in effective planning for and managing its technology programs and other assets. For example, our work has shown that DHS could better document the analysis it has used the types, quantities and locations of technology it plans to deploy to the Southwest Border under its new technology plan. Further, CBP has not yet defined performance metrics for assessing implementation of its new technology plan, hindering CBP's efforts to assess the effectiveness of the plan going forward.

In closing, our work has identified opportunities for DHS to strengthen its border security programs and efforts. We have made a number of recommendations to the department to address various challenges and to enhance management of border security-related programs. DHS has generally concurred with our recommendations and is taking action to address them. We will continue to monitor DHS's efforts in these areas.

This concludes my prepared statement and I would be pleased to answer any questions that members may have.

REP. CHAFFETZ: Thank you. And I'll recognize myself for five minutes.

Ms. Gambler, is it fair to say that there are no metric to determine how secure or insecure the border is currently?

MS. GAMBLER: Currently, the department is using the number of apprehensions on the Southwest Border between ports of entry as its goal and measure for border security.

REP. CHAFFETZ: But that's an incomplete metric. Would you agree with that?

MS. GAMBLER: That measure does not allow -- position the Border Patrol and DHS to be able to assess the effectiveness of its efforts, because it doesn't compare apprehensions to estimated entrance.

REP. CHAFFETZ: Thank you very much.

Mr. Murphy, my understanding is we have no entry/exit system, particularly at the land-based ports, to gauge whether -- who's coming and who's going out. Correct?

MR. MURPHY: Well, no sir. I wouldn't say that's completely correct. I think we've made some significant improvements in sophistication and entrance. Obviously, that's been the focus. As far as the exit, we are working on that. That's a significant issue; we are well aware of it and we're right now dedicating --

REP. CHAFFETZ: Do you have any statistics to show how many people actually leave the country?

MR. MURPHY: No, sir. Right now our outbound is --

REP. CHAFFETZ: My understanding is the majority of visas that this country offers are what are called B1/B2 entry-exists. I sat and watched this; thousands of people in Nogales and Yuma streamed into the country. In fiscal year 2011, my understanding is we approved, through the State Department, 4.3 million of these cards where people are supposed to be in the country temporarily, right?

MR. MURPHY: Yes, sir.

REP. CHAFFETZ: How many people came into the country using a B1/B2 exit-entry card?

MR. MURPHY: I don't have that number, sir, but I can definitely get it.

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REP. CHAFFETZ: Is it something the agency has?

MR. MURPHY: Oh, yes. We track what comes in. It's what's going out that right now we need to get a better handle on.

REP. CHAFFETZ: When you say "better handle," do you track any of them going out?

MR. MURPHY: Well, right now, our outbound operations are basically geared towards intelligence, pulse and surge operations and --

REP. CHAFFETZ: That's not what I asked you. I asked --

MR. MURPHY: No, sir. No, we don't.

REP. CHAFFETZ: So there -- we're letting millions of people -- roughly almost a million a day -- into the country. We have no idea how many are going out. Is that fair to say?

MR. MURPHY: Yes, sir.

REP. CHAFFETZ: This is current law, right? It is current law that we're supposed to have an exit-entry program. Why don't we have an exit program?

MR. MURPHY: We're working on it, sir.

REP. CHAFFETZ: But look, you've been there for -- how long have you worked in the agency?

MR. MURPHY: Twenty-nine years, sir.

REP. CHAFFETZ: Why don't we have an exit program? It's not good enough to just smile at me.

MR. MURPHY: No, sir. I don't have a good answer for you. We know it's an issue.

REP. CHAFFETZ: Is it a funding issue; is it a lack of commitment; is there not available software? I mean, if you're telling me, we're gauging when they come into the country, why aren't we gauging when they go out of the country?

MR. MURPHY: Well, sir, I think it's a huge issue. And unfortunately, it's a costly issue too. I mean, we would have to replicate what we have coming into the country at points of entry almost at port of entry going out of the country in order to probably get our arms around exactly that issue.

REP. CHAFFETZ: You know, we're told that 40 percent of the people that are here illegally came here legally. When we don't have a viable exit system and there are no metrics -- there's no information, there's no -- there's not even an attempt to try to gather some names. I'm really concerned about this entry/exit program. I'm really concerned about the B1/B2 visas. I think it's the untold story of the immigration problem and mess that we have.

When the majority of the visas given out to this country are given via the B1/B2 entry/exit, the majority -- 4.3 million we gave out in fiscal year 2011 -- they're only supposed to, wait, what's the rules, right? You're supposed to go into the country a certain 10 miles or something with an entry/exit card, correct?

MR. MURPHY: I think it's 25 and then we've just increased that recently.

REP. CHAFFETZ: Why? Why did we increase it? Increased it to what?

MR. MURPHY: I believe in New Mexico its 55 miles.

REP. CHAFFETZ: OK. So you're only supposed -- in certain parts of the country you're only supposed to go 10 miles, right? Some to 25 and now you're saying -- but in parts of New Mexico, you can go 55 miles. Do we do any monitoring of that?

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MR. MURPHY: No, sir.

REP. CHAFFETZ: So we gauge -- there's no monitoring. We just do it on your word; we give millions of these out there. Do you know how many -- we issued 4.3 million entry/exit cards in 2011.

How many cards are out there? Like, when you get a card how long is that good for? Is it valid for just a year or is it valid forever? Do you know?

MR. MURPHY: I don't know offhand. I do know that there's a -- they put a date on how long it's valid for. Yes, sir.

REP. CHAFFETZ: OK. So there are millions of these cards out there. They're supposed -- it's just the honor system right now, right? You're just supposed to come back. But you aren't gauging even a single person as to whether or not they're returning?

MR. MURPHY: We're not capturing that right now.

REP. CHAFFETZ: All right. My time has expired. I now recognize the gentlewoman from Wyoming, Ms. Lummis, for five minutes.

REPRESENTATIVE CYNTHIA LUMMIS (R-WY): Thank you, Mr. Chairman. I want to also thank the gentlemen and the lady for being here today. My questions are going to concentrate on fence as a mechanism to stop trans land crossings. Have we -- this is to any of you -- has the fence between California and Mexico improved the crossing of nondocumented workers and illegals? Mr. Fisher, you're nodding your head.

MR. FISHER: Yes, Congresswoman. The fence and, in particular, you mentioned San Diego, has had an impact in reducing the flow of people into the United States in those areas where we do have fence.

REP. LUMMIS: OK. How much of the fence is completed on the Arizona-Mexico border?

MR. FISHER: In total, there's about 652 miles across the Southwest border that has been complete. Some of that is pedestrian fence and some of that is vehicle barriers. I'm not specific -- I'm not really sure specifically in Arizona how much of that -- Arizona, as you know, has about 260 miles of border. Within those urban areas in Douglas and Naco and Nogales out to both the east and west flanks of the ports of entry, that has been extended a significant number of miles.

REP. LUMMIS: Do you believe that completing a fence on the border between Mexico and Arizona would be beneficial to preventing the flow of people and narcotics across the border?

MR. FISHER: I do, in some locations.

REP. LUMMIS: And what locations would those be, specifically, along the Arizona-Mexico border?

MR. FISHER: It would be in those areas where the networks and the criminal organizations like to exploit the legitimate infrastructure that exists. So those --

REP. LUMMIS: And what kind of legitimate -- such as, what is legitimate infrastructure?

MR. FISHER: Certainly. If you think of the smuggling organizations much like a business that are trying to move the commodity whether that's people, whether that's narcotics, through the borders and out of the border areas so the infrastructure that that requires them to do that is road systems, it's airports, it's bus stations and all that legitimate infrastructure that supports the communities within those border areas.

REP. LUMMIS: What about wilderness areas where we don't have fences, where you've been restricted by other U.S. agencies from using motorized vehicles on wilderness areas and the offending parties are using vehicles, making it difficult for you to apprehend them? Is that problematic?

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MR. FISHER: In some areas, I wouldn't qualify it as problematic. There are areas, as you mentioned, public lands in Arizona, which prohibit in most situations on a steady state deployment motorized vehicles. But we do have and entered into an agreement with the Department of the Interior and Fish and Wildlife to be able to go into those areas based on intelligence if we know that there is activity. So we are allowed onto those areas to basically track individuals that come across.

REP. LUMMIS: So you have to get agreements with another federal agency to gain access to federal land on our side of the border?

MR. FISHER: No. The agreement has already been set. In other words, the memorandum of understanding allows us to go onto those lands. And remember, some of that private -- that public land is protected under the environmental laws.

REP. LUMMIS: So you can --

MR. FISHER: It doesn't preclude us from going on there. It's just we have the agreement that we're allowed to go in when we are actually working the border.

REP. LUMMIS: OK. So you can pursue somewhat?

MR. FISHER: Yes, we can.

REP. LUMMIS: But can you protect the border? Can you patrol the border?

MR. FISHER: In some areas -- most areas, we can. That's correct.

REP. LUMMIS: With vehicles?

MR. FISHER: Yes. We do it with vehicles. We do it with horseback. A lot of the detection is made from the air also.

REP. LUMMIS: The Tucson border has been an area where we've seen significant crossings.

MR. FISHER: That's correct.

REP. LUMMIS: Is that now the second most prevalent area to cross?

MR. FISHER: It is. Well, in terms of apprehensions, right now it is second only to Rio Grande Valley in the south Texas area.

REP. LUMMIS: So it continues to be a major source of crossings?

MR. FISHER: It does. Yes.

REP. LUMMIS: What would be your recommended best deterrent to illegal crossings in that area in Mexico? Excuse me -- Mexico and Arizona.

MR. FISHER: Certainly. Well, I think there's a couple of things. I wouldn't invest on one thing in particular. One is the investment in additional technology -- detecting and monitoring the border.

REP. LUMMIS: You know, we've seen some technology reports that some of the technology has failed and was expensive, and its failure has not necessarily been corrected. How is that going?

MR. FISHER: Are you referring --

REP. LUMMIS: The SBInet -- what is the department's plan to improve that technology, the border radar system?

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MR. FISHER: About three years when the SBI was being assessed, Secretary Napolitano asked CBP and, in particular, the Border Patrol to make an assessment on whether we should continue exploring that type of technology and the integrated technology that SBI had planned to (unveil ?).

REP. LUMMIS: One point two billion dollars, as I understand, has been spent on that?

MR. FISHER: That sounds about right. Yes, ma'am.

REP. LUMMIS: And you're assessing now whether that is going forward in a productive way?

MR. FISHER: We made that assessment and our recommendation to the secretary, which she agreed to, was to invest more in the mobile technology and not to invest in things like SBInet, which were more static.

REP. LUMMIS: My time has expired. Thanks, Mr. Chairman.

REP. CHAFFETZ: Thank you. Mr. Fisher, will you please provide to this committee the interagency working agreements on your ability to patrol and pursue, potentially, people that are here illegally on public lands that are designated wilderness or similar -- the wilderness study areas, those types of things. Organ Pipe, for instance, would be an area. Is that something you can provide to this committee?

MR. FISHER: Yes, Mr. Chairman.

REP. CHAFFETZ: How long would it take to get that to us?

MR. FISHER: I'll take that back as an action item right after the hearing, sir.

REP. CHAFFETZ: When is a reasonable time where I should get upset that you haven't provided them to me?

MR. FISHER: Far be it from me, sir, to --

REP. CHAFFETZ: Yes, you're in charge here so you make a decision. What's the date? All right. July 3rd -- is that fair?

MR. FISHER: You read my mind, sir.

REP. CHAFFETZ: Thank you. (Laughter.) Look forward -- July of this year. Thank you. We'll now recognize the gentleman from Tennessee, Mr. Duncan, for five minutes.

REP. DUNCAN: Thank you very much, Mr. Chairman. Chief Fisher, just out of curiosity, can you give me a rough number of how large or how many Border Patrol agents there were when you started with the agency 26 years ago?

MR. FISHER: There was less than 3,000, sir.

REP. DUNCAN: Less than 3,000?

MR. FISHER: Yes, sir.

REP. DUNCAN: The reason I ask that I remember we gave -- we gave big increases in funding for border control in the 90s and then now, of course, we've heard Ms. Gambler say that since 2004 we've gone from 10,000 agents to 21,000, I think it was, and of course, now the Senate has passed an amendment to -- saying that we're supposed to double that again.

And frankly, I know you can never satisfy any government agency's appetite for money or land but I'm really skeptical as to whether we can efficiently effectively spend all the money that we're throwing at this effort and

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increase the number of agents that much that quickly. What do you say about that, Commissioner Murphy? How big was Customs when you started 29 years ago?

MR. MURPHY: Sir, to be honest with you --

REP. DUNCAN: You don't know.

MR. MURPHY: -- I don't even know what that number is.

REP. DUNCAN: Yes.

MR. MURPHY: But obviously, as you indicate there's, you know, significant work to be done and -- but as the determination of the right number, I mean, that's obviously something I think is going to have to be decided.

REP. DUNCAN: Well, isn't this -- in the number coming across in large part determined by the economy and so the economy in Mexico and the economy here? Because I read that during our downturn that the numbers coming across greatly decreased and there were more people or a lot of people who had come here illegally were going back to Mexico or other countries. Is that true?

MR. MURPHY: Well, sir, as you may be aware, one thing that we've done to try to transform the way we look at the border and the way we look at the numbers that we need we created a workload staffing model.

This takes a hundred different data elements and over a million calculations that takes into account the currently volume of activity, apprehensions, seizures, hours of operation, how many folks that are on board now and it basically takes that number and it's a very dynamic process.

And it'll tell you based upon that workload this is -- and the time it takes to do those different functions in the workload how many bodies that you need. The nice thing about this one is it's not a static process. It's a very dynamic process. So in the case where you're indicating, say, you see an uptick in activity at a port of entry or an area for a year or two, that workload staffing model will dictate what that number should be based upon that volume, that activity, that workload. If it moves to a different area, the workload staffing model will also adjust.

REP. DUNCAN: Let me stop you. A lot of what you said is very bureaucratic and I've got a little bit -- just a little bit of time left. Mr. Homan, what do you -- what do you say about the statement by Ms. Gambler that the transition from operation -- using operational control and so forth, that she said therefore until new goals and measures are developed, DHS and Congress could experience reduced oversight and DHS accountability. What do you say about that? That's a pretty serious charge really.

MR. HOMAN: Yes. I can say our operational tempo now, we're shoulder- to-shoulder with the Border Patrol. Our level of collaboration's never been higher. My staff meets with Border Patrol staff at least once a week talking about enforcement strategies on the border. As a matter of business, we detain all recent border entrants.

So I think we're doing the right thing. I think with the resources that we have, I think we're executing the mission at an all- time high. I mean, my removals are at a record high. My arrests are at a record high. My detentions are at a record high. And I think the mission that us and the Border Patrol working hand in hand along with CBP, I think it makes sense. I think --

REP. DUNCAN: Chairman Chaffetz mentioned 4.3 million coming across just on one program. Can anybody on the panel tell me how many people are entering this country legally each year? Does anybody have a -- Ms. Gambler, do you know anything about that? Somebody should know that surely.

MS. GAMBLER: We could provide that number to you for the record, sir. I don't know it off the top of my head.

REP. DUNCAN: All right. What are the latest estimates as to how many are coming across illegally? Surely this panel should know something like that. Your latest guesses or estimates?

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MR. FISHER: Our estimates right now, sir, we're averaging approximately this fiscal year in FY '13 approximately 1,100 apprehensions. If you take a look at what we're trying to design as it relates to the effectiveness rate and getting what the chairman mentioned as the denominator, trying to get that known flow, we don't have those estimates right now, but we are working towards getting that as well.

REP. DUNCAN: Well, I think that's something you should provide to us as soon as you get it.

MR. FISHER: Agreed.

REP. DUNCAN: All right. Thank you very much.

REP. CHAFFETZ: Following up on that, Mr. Fisher, how many turn back south's per day?

MR. FISHER: I'd have to go back. I don't know specifically what that number is. But we do track that and I can get that for the committee.

REP. CHAFFETZ: How many got-aways?

MR. FISHER: I can do that as well. I don't have that number on the top of my head. The effectiveness rate along the Southwest border right now is approximately 75 percent.

REP. CHAFFETZ: Again, I really challenge that number, as I think the GAO does. Those are just the known -- those are the known got-aways, right? Does not include turn back south's, or TBSs?

MR. FISHER: It includes all of those variables, sir. It includes all of the apprehensions, the got-aways and the turn-backs. That is the effectiveness formula. And so, when you take a look at the apprehensions, you add those to your turn-backs and then you divide that by the total entries, that is the effectiveness rate and we're working --

REP. CHAFFETZ: That assumes that we -- what about the ones we're not aware of?

MR. FISHER: Right. And so there's two different methodologies that we use. When I mentioned earlier in my testimony about the geospatial intelligence piece and the use of the Predator Bs is really to do just that, is to shrink the border, increase our situational awareness so that we have a better sense of what that number is to cover a lot more of that border.

REP. CHAFFETZ: We'll now recognize the gentleman from South Carolina, the always dapper Mr. Gowdy.

REPRESENTATIVE TREY GOWDY (R-SC): Thank you, Chairman Chaffetz. I want to welcome all of our witnesses. Chairman Chaffetz shared a bit of philosophy with me a couple of nights ago at dinner and I wrote it down to make sure I got it right.

He said, if you don't know where you're going, you probably won't know when you get there. Yeah, that's what he said. Ms. Gambler, I am asked constantly about border security. So tell me what is an ambitious but reasonable goal with respect to border security to the extent that it is a conditioned precedent to any other part of immigration reform. What are we looking for?

MS. GAMBLER: Congressman, setting a goal for border security would be the responsibility of DHS or would be a policy call on the part of Congress.

REP. GOWDY: I know but I'm asking you, if you were empress for the day, what would you do? What's a realistic but ambitious goal?

MS. GAMBLER: Again, that's a responsibility for the department to set that goal and it's a policy goal --

REP. GOWDY: And I appreciate --

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MS. GAMBLER: -- policy call for Congress. As would be the case for any bill, GAO's role would be to review the implementation of any provisions or programs that the executive branch might implement resulting from a bill if we were asked to do so and we --

REP. GOWDY: How long have you worked for GAO?

MS. GAMBLER: I've been with GAO for -- since 2002.

REP. GOWDY: All right, so that's 11 years.

MS. GAMBLER: Yes.

REP. GOWDY: Surely you have an opinion on what is likely to work. I mean, because you probably are following the debate just like the rest of us are. Before you get to any other aspect of immigration reform, they want to make sure the border is secure. That's an easy phrase to use but it's a hard phrase to implement. So what is a realistic definition of a secure border?

MS. GAMBLER: What we've recommended is that the Department of Homeland Security set a goal for its border security effort and then set metrics for assessing progress made against those -- against that goal. DHS is in the process of developing those goals and measures and we've suggested that they set timeframes for completing those goals and metrics so that there are mechanisms in place for assessing what the goal is for border security and how that can be measured.

REP. GOWDY: Why is there not currently a goal? Or am I just naive?

MS. GAMBLER: Up until fiscal year 2011, DHS was using operational control as its performance goal and measure for border security. They discontinued using that measure --

REP. GOWDY: Why?

MS. GAMBLER: -- in fiscal year 2011. What they told us was that they wanted to move toward more quantifiable metrics for border security and using the number of apprehensions on the Southwest border was designed to be an interim measure. Now, DHS said they were going to put those metrics in place by fiscal year 2012 but have been using the number of apprehensions as the interim measure. And we recommended again, that they set timeframes and milestones for completing development of those goals and measures.

REP. GOWDY: Well, let me ask it another way. If you had to go back to your hometown and you had to stand in front of people who were asking you whether or not the border was secure, what metrics would you use in answering their question?

MS. GAMBLER: If I was asked that question, I would say that the department has not yet set goals and measures for assessing how secure the border is and so that makes it difficult to assess against criteria or a yardstick on that level of security.

REP. GOWDY: Difficult may be an understatement. Makes it kind of hard for those of us who are interested in getting on to the next steps of immigration reform, if you don't get over the condition precedent and can prove to your constituents that you have a reasonable but ambitious border security goal, it makes the rest of it pretty tough. All right, visa overstays, do you know how they are currently investigated?

MS. GAMBLER: We issued a report on overstays in April 2011 and have ongoing work looking at overstay enforcement efforts as well. That ongoing work will issue in July, next month.

REP. GOWDY: And I promise I'm going to read the report. But you already know something about the issue.

MS. GAMBLER: Yes.

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REP. GOWDY: So currently if Mr. Chaffetz were here on a visa and he overstayed, how would we know, how would we investigate it, how would we decide what we're going to do about it. What's currently being done?

MS. GAMBLER: If someone -- if a foreign national enters the U.S. and there is no corresponding departure record for that person, that record would be checked against numerous DHS databases and would be prioritized against ICE's law enforcement and public safety priorities. If the person met those priorities, their information, their record would be sent forward for investigation to ICE field offices.

REP. GOWDY: You wouldn't have to wait for that person to commit some other offense or have some other interaction with government, would you, surely?

MS. GAMBLER: The overstays that ICE is prioritizing for investigation are those who meet their public safety and national security priorities. If the person would not meet those priorities and they were likely an overstay, they would not be investigated by ICE.

REP. GOWDY: Mr. Chairman, I was going to ask my friends -- I was going to thank them for their service and I was going to also ask them about what role, if any, state and local law enforcement should play in assisting them. But I'm out of time, so I yield back.

REP. CHAFFETZ: I thank the gentleman. The gentleman from South Carolina, I think, would be most interested to know that based on the formula that Ms. Gambler just shared, the majority of visas that we give out in this country are B1-B2 entry-exits. Mr. Murphy testified that they don't track any of the exits -- none of them. So we have absolutely zero information about who may be overstaying, who may have gone beyond the bounds, because they're variable.

They're only supposed to go into certain parts of the country. It's probably the biggest gaping hole we have on our border. There's no tracking. There's no information. There's no statistics. There's no field reports. There's nothing, unless that person commits a crime.

And I would hope that we could provide -- that the agency would be able to provide through maybe the Department of Justice and others a report of how many people committed crimes that came here on a B1-B2 entry-exit visa. And somehow some way we're going to unearth that number.

But now I'll recognize the gentleman from -- Mr. Bentivolio for five minutes -- the gentleman from Michigan, and he's now recognized for five minutes.

REPRESENTATIVE KERRY BENTIVOLIO (R-MI): Thank you very much, Mr. Chairman. Thank you very much for appearing here today. I really appreciate it. Maybe you can help me clear up some questions I have. I keep hearing in the media that we have 11 million people here that shouldn't be here. How did we arrive at that number? Is that something -- I mean, if you have no way of knowing who you didn't catch, how do you come up with a figure of 11 million? Anybody?

MR. FISHER: Congressman, I don't know where that number comes from.

REP. BENTIVOLIO: I keep hearing it in the media.

MR. FISHER: Oh, I've heard it as well but I don't know the attribution of where that came from.

REP. BENTIVOLIO: So it's really not 11 million. It could be more, right?

MR. FISHER: I don't know that either.

REP. BENTIVOLIO: We don't. We really don't know, do we? Because we don't know -- well, it's the old saying, I guess -- well, if a crime is committed and nobody is there how do you know the crime was committed except by

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evidence, right? But we don't have any evidence -- something like that. Anyway, I have a few other questions. What percentage of border does technology cover?

MR. FISHER: I don't know the percentage. That's a really good question. I can find out and get back to you, sir. Specifically, we have approximately 15,000 pieces of equipment covering about 17,000 miles. It doesn't cover all 17,000. That's just based on the military specs in terms of what the equipment can do. You have to then take into consideration the geography and the topography in which it's located. But I don't know the percentage but we can factor that as well.

REP. BENTIVOLIO: And you also -- I also heard you have cameras that do thermal imaging, other cameras. So when you detect somebody that's crossing illegally what's the response time?

MR. FISHER: It really depends on where the entry is detected, again, depending upon where we have patrol agents, depending upon whether we do it within the first hundred meters or whether we do it within the first mile. Terrain is going to dictate that. The tactics and techniques of the agents on the ground will determine where is the best way to make the approach in a safe and secure manner.

REP. BENTIVOLIO: OK. And a Border Patrolman told me that he went out to -- there was a alert. He had to go out there and there were 26 people and they just scattered, and my question is how does -- how do you send one or two Border Patrol agents to pick up 26 people. I mean, that's -- especially in the terrain that I was in when I toured the border.

MR. FISHER: Right.

REP. BENTIVOLIO: I mean, is there another way? I mean, so he said well, they had -- they caught three but 23 got away. Is that how we determine the number 11 million?

MR. FISHER: I don't believe so but to your earlier point, sir, whether there's one Border Patrol agent that responds or whether there's two or three Border Patrol agents responds really determines how they're applying the strategy on the ground. In some cases, the Border Patrol agent may not know how many people. It may just be a sensor indication so we may not have specific quantities of individuals that may have made the incursion. And many times Border Patrol agents are assisted with air-ground support. Our Office of Air Marine Operations provides overwatch for us in that regard and our strategy is built on being able to deploy and redeploy resources for those Border Patrol agents if in fact they come across a group of 23 and they run.

Generally, what would then happen is we would continue tracking operations and more resources will be brought to bear to be able to continue to track to the extent possible to make sure that we apprehend everybody that comes across in between the ports of entry.

REP. BENTIVOLIO: I also heard, when I was there, stories of hang gliders flying out of Mexico -- you know, the personal gliders --

MR. FISHER: Yes.

REP. BENTIVOLIO: -- dropping off drugs in the United States and then flying back. Are you doing anything to stop that?

MR. FISHER: Yes, sir. Matter of fact, we saw the -- I believe you're referring to the ultralights over the last few years.

REP. BENTIVOLIO: Ultralights. Thank you.

MR. FISHER: Yes, and one of the things that I think I alluded to earlier in my testimony, when you look at the transnational criminal organizations and those networks that own and operate within the border areas,

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they're always going to adapt their operations to be able to increase their profit margin and one of the things that we've seen is the ultralights.

We are working with the Air Marine Operations Center in Riverside, California, which gets radar feeds from throughout the United States to be able to adjust those radar to be able to detect low-flying aircraft like the ultralights. It's not perfect yet. We also have Border Patrol agents that use mobile surveillance systems on the ground and be able to look up to be able to identify those ultralights as well.

REP. BENTIVOLIO: OK. And I have -- you ever heard of the term and maybe you could explain to me what the term means, "catch and release."

MR. FISHER: "Catch and release," I believe, was a phrase a few years ago and I believe it was -- it was coined perhaps maybe not the first time but used quite a bit by Secretary Chertoff when he was the secretary of homeland security. It was meant -- when we were seeing increases in activity in locations that part of the policy at the time is people that we were going to apprehend in between the ports of entry we were not going to just release what we could call on their own recognizance.

So the whole policy and where it is today, certainly in high-risk areas, is we want to maintain the policy of catching individuals that have come illegally between the ports of entry and make sure that they are detained.

REP. BENTIVOLIO: OK. So a person that came here illegally you catch them and then you release them on their own --

MR. FISHER: No, sir. The current policy was -- really was to end catch and release.

REP. BENTIVOLIO: OK.

MR. FISHER: In other words, what -- and some locations over the years, depending upon fluctuations and funding availability for the enforcement and removal operations individuals that would otherwise or that would request a hearing from an immigration judge, if they did not pose any risk to the public and there was no detention space allowed there was a provision within the administrative piece to release them on their own recognizance pending their administrative hearing with the judge.

So what we looked at over the course of the years -- and that policy is adjusted depending upon what resources are available and it fluctuates to be able to minimize risk.

REP. BENTIVOLIO: Thank you. Mr. Chairman, I have one more question.

REP. CHAFFETZ: (Off mic.)

REP. BENTIVOLIO: Oh, OK. Great.

REP. CHAFFETZ: Go ahead. Go ahead.

REP. BENTIVOLIO: Great. Thank you. Let's see -- they would go to -- go to trial or go in front of a judge and the judge would release them, correct?

MR. FISHER: Well --

REP. BENTIVOLIO: Is that --

MR. FISHER: -- generally, not to get because I'm not the expert anymore, the real Border Patrol agents do the work in the field but generally what would happen is once we made the determination we issued a warrant of arrest and a notice to appear. That notice to appear was for an immigration hearing.

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REP. BENTIVOLIO: OK. How many would come back and actually reappear before the judge or do you have a percentage that come back or do they all come back or just 50 percent, 75 percent, 25 (percent) --

MR. FISHER: I don't have that number right off the top of my head, sir. But it would -- it would depend on which year you're talking about or recently.

REP. BENTIVOLIO: It's probably closer to about 10 percent. Would that be right?

MR. FISHER: I would not want to guess at that, sir.

REP. BENTIVOLIO: OK. Thank you. Mr. Chairman, I yield back my time. Thank you.

REP. CHAFFETZ: Thank you. Now I recognize the ranking member, the gentleman from Massachusetts, Mr. Tierney, for five minutes.

REPRESENTATIVE JOHN TIERNEY (D-MA): Thank you, Mr. Chairman, and thank the witnesses for their testimony here today. Sounds like you have a relatively easy job, gentlemen, so -- challenging, to say the least, on that.

So over the last decade, the U.S. taxpayers funded tens of billions of dollars in additional personnel, technology and infrastructure along that Southwest border. I think we've installed radiation detection portals, nonintrusive imaging equipment, license plate readers, camera systems, fencing and the list goes on.

Despite the staggering sums of that money, we know that cartels are still able to bring illicit drugs into the country. Persons looking for work still cross over. Organized crime networks still manage to smuggle various forms of contraband through these ports of entry. So nobody disputes the fact that this guns, guards and gate spending has been effective to a degree but not all spending is equal, I guess.

So what I'm going to try to do as we go forward take a look and see which areas of investment are more effective and produce better results on that. So let me begin, if I can, with you, Chief Fisher, on the gates.

As I understand it, building the border fence or improving the existing fence makes sense in some locations but may not make sense in others. For instance, just west of San Ysidro, California, people say it helped control illegal crossing problem there. Others say that it provided significant benefits in other locations, particularly in urbanized crossing corridors. Does that sound accurate to you?

MR. FISHER: It does, sir.

REP. TIERNEY: OK. Ms. Gambler, I also understand the GAO has questioned the effectiveness of the fence and often looks at the high cost of building the fence, and that question has been raised for a number of years.

Is that also true?

MS. GAMBLER: In our work, Congressman, we did find that DHS had not taken steps to assess or quantify the contributions that fencing is making to border security. And we recommended that they conduct a cost-effective analysis to do that.

REP. TIERNEY: OK. So if Congress were to decide to double the size of the existing fence or at least add hundreds of additional miles to it, how would the department determine where to build that extra fence?

MS. GAMBLER: I don't know how they would determine where to build the fence, but they do have analysis underway to -- in response to our recommendation to determine what contribution fencing is making to border security efforts. And that would be an important question going forward.

REP. TIERNEY: I'm guessing that it makes sense to add fencing in some areas and maybe a total waste of money in others. Is that generally true?

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MS. GAMBLER: That would be for the Department of Homeland Security to determine.

REP. TIERNEY: Mr. Fisher or Mr. Murphy, does that sound true to you that in some areas it would be a good investment, other areas it may not be a good investment at all?

MR. FISHER: That's accurate, sir. Yes.

REP. TIERNEY: OK. And are you comfortable that the department is putting criteria in place to help identify which areas are which?

MR. FISHER: I am, sir. Yes.

REP. TIERNEY: Ms. Gambler, you know, there are also proposals to add new sensors. Technologies, camera systems, all along the border to detect illegal crossings. I know that GAO previously reviewed some major technology problems with the SBInet and found hundreds of millions of dollars had been squandered in that effort; there were challenges that obviously had to be overcome.

So before we invest in that type of technology -- billions of dollars or whatever -- can you tell us what lessons were learned from the whole SBInet situation?

MS. GAMBLER: Our body of work, looking at DHS's management of border security -- border surveillance technologies -- has identified challenges in the management of that technology, including the technology being delivered on schedule and within cost parameters that were set for the technology.

Back in 2012, we issued a report on DHS's new plan for deploying border surveillance technologies to Arizona. And one of the key findings from that report was that DHS had not fully documented the underlying analysis and justification used to support the type of quantities and locations of technologies plans to deploy under that new plan.

REP. TIERNEY: And you're comfortable that the department is responding to your reports and your recommendations?

MS. GAMBLER: The department did agree with those recommendations and is taking steps to address them. We do have ongoing working reviewing that new plan and are monitoring DHS's actions to respond to our recommendations.

REP. TIERNEY: So now we're talking about possibly increasing the number of agents exponentially on that basis. So what steps should the Border Patrol take to make sure that the increase of personnel is effectively utilized; that they're placed in the right places in the right numbers?

MS. GAMBLER: The Border Patrol issued its new strategic plan last year in May 2012. And as part of implementation of that plan, we understand that the Border Patrol is developing a process for assessing what resources are needed and how to deploy them. We understand that that process is moving forward and they're looking to implement it in fiscal year 2013 and '14.

REP. TIERNEY: And Mr. Fisher, can you tell us a little bit more about that?

MR. FISHER: Certainly. Within the -- within the framework of the strategy, we really focused our efforts on being risk-based, as opposed to just asking for more and more resources and deploying them in a lateral fashion across the Southwest Border. That was a significant strategic shift in our thinking and certainly within our deployments over the last couple of years.

As we move forward, we also recognize that technology has come a long way. I can still remember as a young agent getting the first pair of AN PVS7-Bravos, which were the old night-vision goggles from the military, after the first Gulf War. And I thought at that point, you know, we were really going to make a difference in border security,

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because now for the very first time as an agent, at night I was able to see five feet in front of me. I thought that was going to change the operation by which the Border Patrol, you know, started back in 1924.

We continue to learn and adjust with the technology. And I will tell you, as good as technology is getting, and as more technology as we get, it is still no replacement for a well-trained Border Patrol agent, because at the end of the day, it doesn't matter what you have flying in the air; it doesn't matter how many unattended ground sensors you have buried on the ground.

The Border Patrol agent still -- a lot of times alone, as we have heard earlier today -- has to close that 50 meters by himself and herself. And the thinking and the training and those Border Patrol agents, who as we speak right now are out there on patrol, there is no substitute for that. I'm very proud of the work that they do and it's a combination of taking a look at the best technology that's available; taking a look at the infrastructure and then continue to train and support the Border Patrol agents is the best way. And that's the way that we're approaching the implementation against this new strategy.

REP. TIERNEY: Well, thank you. Thank you again for your work and for your testimony here today.

REP. CHAFFETZ: The chair now recognizes the gentleman from Arizona, Mr. Gosar.

REPRESENTATIVE PAUL GOSAR (R-AZ): Thank you, Mr. Chairman.

Chief Fisher and Mr. Murphy, in your shared testimony, you said the following: We do not use this term, operation control, as a measure of border security, because the complex nature of the magnitude of different border conditions cannot be described by a single objective measure. Although an indicator of success, we cannot measure border security solely based on crime rates, because even the safest communities in America have some crime.

If you are claiming that one objective measure is not enough to measure border security, then why is only one measure -- apprehension rates -- used or cited when top DHS officials try to pass off our southern border as secure?

MR. FISHER: Well, apprehension still is a metric that we capture and report to the department. However, we've learned quite a bit over the last couple of years. And I think Ms. Gambler talked on some of that.

The apprehension number really doesn't tell you much, because if you compare it and contrast it from previous fiscal years, as the chairman mentioned, if it goes up, I can say that that is success; and if it goes down, I can say that it's success. We recognized a few years ago that that in and of itself was not a good metric. And we have -- but you need the apprehension to then peel back the layers to understand how many people within that total population of arrests were there, because recidivism doesn't matter. It's important to me and it's important to the organization to distinguish those individuals who are only apprehended two times from those individuals that were apprehended perhaps six or eight times.

REP. GOSAR: Would you agree, Mr. Murphy?

MR. MURPHY: Well, sir, from our standpoint -- as I indicated in my testimony earlier -- we look at it as a well-managed border. I don't there is one single metric. There's a variety of things that we do look at. But I think what we have tried to do is to look at transforming the way we do business, our processes, bringing in new technology, trying to basically do a better job much more efficiently. And in that way, we feel that we're going to have much more success, not only from a standpoint of apprehensions or seizures, but also from the standpoint of facilitating the legitimate flow of traffic and trade.

REP. GOSAR: Are you aware of an experiment in which a drone actually looked at a corridor over time and looked at apprehension rates. And made a comparison of actually who crossed that border versus apprehension rates. Are you aware of that study?

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MR. MURPHY: No, sir.

REP. GOSAR: Actually, it's very staggering, because it showed that there were 422 apprehensions, but in actuality, there were over 7,000 people that crossed the border.

Are you aware of that, Ms. Gambler?

MS. GAMBLER: We have not seen that study.

REP. GOSAR: Really? And we're going to trust our border security with Homeland Security and we still don't understand that?

How familiar are you with the numbers that you're citing to the American public and to Congress in regards to the number of illegal immigrants in this country?

MS. GAMBLER: In terms of the data we reported in our December 2011 report, we reported the data that Border Patrol had available on number of apprehensions.

REP. GOSAR: Based on apprehensions. So this is showing you, in this technology aspect, that we're showing less than 6 percent actually being apprehended versus what is actually a known fact. Is that true?

MS. GAMBLER: Again, we looked at the data that the Border Patrol was collecting at the time that we did the work. And we looked at number of apprehensions -- as well as estimated known illegal entries -- and presented that data. We did also identify some limitations with that data.

REP. GOSAR: It is very antiquated. I'm just pointing out that when you're citing these studies, they're antiquated measures and we need to have more opportunities for a diverse opportunity not just from federal government -- state and locals -- to look at the metrics in regards to border security. Would you not agree?

MS. GAMBLER: And we recommended and the department is in the process of setting goals and metrics for border security. And we recommended that they come up with timeframes for completing that effort, so that the measures can be completed in a timely manner.

REP. GOSAR: And does that include state and local officials so that we have a uniform policy enforcement all the way through this country -- not just on border?

MS. GAMBLER: It would be for the department to set what their goals and metrics are --

REP. GOSAR: I'm going to be honest with you, ma'am. I'm not real comfortable. I'm from Arizona and we've got some problems here. And border security should be a uniform policy that's all the way through.

And I can tell you, coming from a number of people within my conference, it's not going to be left up to Homeland Security; it'll be a joint venture in regards to having border security, so that we see the metrics from Border Patrol all the way encompassing all avenues of law enforcement, because I think that's what the American public wants is we have limited resources. Homeland Security has really -- not really restored a lot of trust. Trust is a series of promises kept and we don't find much with that -- with Homeland Security.

Let me ask you another question: How do you feel about border security around Yuma, Arizona?

MS. GAMBLER: Around Yuma, Arizona?

REP. GOSAR: Mm-hmm. (Affirmative.)

MS. GAMBLER: In our work, when DHS was using operational control as its performance measure for border security, Yuma reported that its miles were under operational control. Now, that was up until fiscal year 2011.

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REP. GOSAR: Well, let's look -- you know, I've got to take a little leniency here because it actually is one of the shining stars in regards to border security, and that's the proper answer. In fact, in that segment there has not been a border crossing -- illegal border crossing in that 40 or 50-some miles in Yuma -- in the Yuma sector for over six years. Is that not true?

MS. GAMBLER: I'm not aware of that specifically. But in fiscal year 2010 --

REP. GOSAR: When you're coming here to -- when you're coming here to represent what -- DHS' proposal, what we need to do is we need to have success models. And Yuma is a success model. It has border fence. It has a unified application of the law from border security to law enforcement. And what's even more important is actually prosecution. Is it not true that those folks from the Tucson sector do not want to be pushed to the Yuma sector because they're going to be prosecuted. Is that not true?

MS. GAMBLER: We haven't specifically looked at that issue.

REP. GOSAR: I'm having problems once again here. I'm having somebody from Homeland Security that I see on a Senate bill that we're going to entertain that you're going to have border security all the way through and you have no metrics. You don't know what works. You don't cite that working. And yet, you're still coming up that we're going to entrust you with border security. Once again, Ms. Gambler, I want to say trust is a series of promises kept. Tell me why I should have the trust in the DHS. I will yield back for the second round of questions.

REP. TIERNEY: Mr. Chairman, might I just interject for a question here? Ms. Gambler, you're with the Government Accountability Office, not Homeland Security, right?

MS. GAMBLER: I'm with the Government Accountability Office.

REP. TIERNEY: Thank you. So I hope that would absolve you from some of the information that was being sought from you or a position sought of you and everything like that. I think you're doing an excellent job. And I just want to clarify that she's not Homeland Security. The other thing I was going to ask the gentleman, if he would produce that study that you mentioned at the beginning of your questions --

REP. GOSAR: We will certainly get you that.

REP. TIERNEY: -- could you tell us who the author was and make that available for the committee?

REP. GOSAR: You bet.

REP. TIERNEY: Thank you. Thank you, Mr. Chairman.

REP. BENTIVOLIO: The chair now recognizes the gentlewoman from New York, Ms. Maloney.

REPRESENTATIVE CAROLYN MALONEY (D-NY): Good evening and thank you for your hard work and for testimony today before the committee. I'm concerned about commerce. Not only do we need to keep bad products out and homeland security and all of that focus, but Mexico is a very important trading partner with America. And it's our largest -- it's really our third largest trading partner and our relationship has grown tremendously since NAFTA and significantly in the past years.

And Mexico has grown to be roughly 500 billion (dollars) in bilateral trade. That's important to the economy of America. And it's also sustained through the trade by some estimates 6 million jobs in the United States. So it has economic value that's important to our people. And they say that U.S. sales to Mexico are larger than all U.S. exports to the BRIC countries, which are Brazil, Russia, India and China.

So in short, trade with Mexico is important for our jobs. And I guess I should ask Mr. Murphy, isn't it true that part of your profession is not only to protect the border but also to help facilitate trade between our two countries and at

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our ports of entry, both land and sea. And is that true? Is that part of your goal and not only security, which is number one priority, but also to allow legitimate fair trade?

MR. MURPHY: Congresswoman, thank you for the question. You're absolutely right. And that's one of the -- we believe that border security and economic prosperity go hand in hand. And we also believe -- and recently there was a study done by USC, the Create (sp) study, that showed that by adding additional CBP personnel onto the ports of entry to help facilitate not only the border security aspect but the trade facilitation aspect, it helps build -- it takes down -- it adds to the GDP. It also takes -- for lost opportunity costs. It reduces those.

But absolutely and we've partnered both with Canada and Mexico. We have our 21st century border and beyond the border initiatives in Medicare right now. We're working on Otay Mesa and Loretto on pre-inspection pilots. So we're partnering very closely with Mexico. We recognize the importance of trade and it's the lifeblood of our economy. And I just think that CBP and OFO have particularly matured in recent years in recognizing that dynamic and the importance of that trade.

REP. MALONEY: Well, you mentioned the Loretto site and port and that's a very important site. I understand that 700 of the Fortune 1,000 companies do international business through that port. Can you -- can you just give an example on the ground of how you protect against terrorists and illegal guns and really bad things coming into our country and also allowing the trade that's necessary. How do you make that happen in a way that allows the trade but also has the significant strength to stop terrorists or illegal guns or other activities.

MR. MURPHY: Well, there's a number of ways. We look at -- one, we brought technology. We have RPMs there obviously for the detection of nuclear, radiological elements. We also have our license plate readers. And on the Southwest border right now, our RFID technology -- right now, 60 percent of the documents being used on the border are RFID compliant. We're trying to enable both trusted trader programs and our trusted traveler programs.

But from a standpoint of the trade, we're trying to again focus our resources there. We're working with, again, on this trusted trigger program and with our C-TPAT. We have a number of programs. We have a number of partners with the industry. Loreto's a huge industry for trade and for the United States. And again, we've recognized that fact. We've directed our resources. Again, I mentioned earlier about the workload staffing model. This is a way that we can direct resources, allocate resources where they're truly needed both from a trade standpoint and also from an enforcement standpoint.

REP. MALONEY: There was a report that I read a synopsis of. I believe it came out of Princeton University, but one of the think tanks. And I'm going to find that report and get it to the chairman. And it said that a side effect of the increased border security was that more immigrants were staying in the country, that usually a lot of Mexican workers would come in, do seasonal work and then leave and go back to Mexico.

But now because the border is becoming much tougher to get in and out of, that they're just staying in America. Now, I just ask anyone if they'd like to comment on it, if you've seen that. Is there any substance to the idea that this report put forward?

MR. MURPHY: I have not seen that.

REP. MALONEY: You have not seen that. Anyone else want to comment on it? My time has -- would you like to comment on GAO?

MS. GAMBLER: We haven't seen that study. We haven't reviewed that.

REP. MALONEY: Or the idea, have you seen that that's happening or --

MS. GAMBLER: We haven't evaluated that issue.

REP. MALONEY: Well, thank you. My time has expired. Thank you.

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REP. BENTIVOLIO: Thank you. I now would like to recognize myself for five minutes. In February, I think it was, I told my staff after several long weeks of working hard if I could find two days where I could go someplace warm with some sand and they sent me to Arizona to tour the border fence. It was a big eye opener. And earlier, Mr. Fisher, we discussed the ultra-lights and, Mr. Murphy, did you comment on that as well or you didn't?

MR. MURPHY: No, sir.

REP. BENTIVOLIO: If I'm not mistaken, Border Patrol received \$100 million for the ultra-light problem. I mean, that's an awful lot of money and yet we're really not seeing any significant change. Can you tell me what seems to be the problem? I mean, \$100 million, you could probably post quite a few border patrolmen just to sit there and look up in the sky. But nothing seems to be getting done because I keep hearing it's a problem from the boots on the ground.

MR. FISHER: It is. It has been defined as an emerging threat over the last couple of years and continues to be so today. One of the things to take into consideration is ultra-lights can really take off and land pretty much anywhere. So the whole area of operation for the smuggling operations opens up that aperture -- then other areas that we've seen across the Southwest border.

We have and have continued to experiment with ground-based radar to be able to tweak the radar to make sure that we are able to identify low flying ultra-lights and others that may be flying in that particular area. The truth of the matter is we still look to find out and adjust our policies. First and foremost, as a law enforcement organization, you know, we enforce laws in the United States and we do so with a matter of consistency, compassion within the Constitution.

One of the challenges that we face right now is even if we detect an ultra-light and identifying it and beginning to track it, say, with the U-860 or Blackhawk helicopter. The end game, if you will, has not been established in terms of what we can do to that particular ultra- light because in many cases the ultra-light, when it makes entry into the United States does not land.

It'll simply just kick out its cargo which, up and to this point, has been narcotics, predominantly marijuana, and then there's a ground crew that later, you know, picks up their marijuana and moves on.

And so it doesn't land in the United States. It just turns around and goes back into Mexico. So we're working with the department in science and technology to increase the effectiveness by which we detect the entry in the first instance by the ultralights and then continuing to work within the law enforcement framework on how we can mitigate this evolving threat.

REP. BENTIVOLIO: According to Border Patrol agents, the \$100 million detection program has not worked and has been a waste of taxpayer money. Another quote, Border Patrol on ultralight aircrafts -- "impossible to stop. We don't have the technology." This was also reaffirmed on my official tour of Nogales with the Border Patrol. Another Border Patrol agent -- "Difficult mission to find drop locations to intercept narcotics and arrest smugglers. Success rates are low."

Those are the comments from the boots on the ground, those guys in the trenches. And I have another question, and regarding this it would seem to me that -- well, we have a -- this very expensive fence. It's 18-foot tall, and I'm asking questions and, you know, I just want answers.

You can't put razor wire on top because people are hopping over the fence. People are driving up and actually with a torch cutting through the steel and sending people in that way and then they're welding it back up so the Border Patrol doesn't see it, and then in other cases -- what else? A number of tunnels. There's no real detection, and I asked about dogs. Now, is there some problem with employing more dogs with our Border Patrol agents?

MR. FISHER: Not that I'm aware of, sir, no.

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REP. BENTIVOLIO: OK. So instead of this \$100 million on a system that doesn't work, we know dogs can detect - I know this for a fact -- can detect things in the sky as well as on the ground and it's very low tech. Maybe not as sexy, but what's your comments on that? Should we employ more dogs versus \$100 million worth of high tech?

MR. FISHER: I wouldn't suggest substituting, you know, canine and their handlers for technology or infrastructure. We employ approximately 300 canines and handlers throughout the border. They, along with the horses and other types of technology that we have, is a complement. And the other thing to take into consideration or I would, perhaps, foot stomp this as well is that each section of the border is different.

What may work in a place like Yuma, Arizona, may not work in a place like Nogales. Some of the ultralight technology may not work in the sections of El Paso, Texas, but it works really well in a place like El Centro, California. And so it's identifying the geography, the tactics, techniques and procedures of the criminal organizations, understanding how they operate, understanding the extent to which they're vulnerable so that we then can exploit that, and there is no cookie cutter approach to be able to do that, in my opinion, sir.

REP. BENTIVOLIO: OK. Thank you. We'll come back to this. Chair recognizes the gentlewoman from Illinois, Ms. Kelly.

REP. KELLY: Thank you, Mr. Chair. I'd like to talk about the data issue. One thing that seems clear from today's hearing and from the Government Accountability Office comprehensive review of the department's border security statistics is that the number of immigrants apprehended by the department or apprehensions has declined markedly along the Southwest border between 2006 and 2011.

This amounted to about a 68 percent drop in apprehensions, which seems to suggest the border enforcement is currently working. Ms. Gambler, do you infer this from the data that the number of illegal border crossings have fallen and, if so, isn't this a good thing?

MS. GAMBLER: The data that we reported in that report and that you cited was on apprehensions. So that's the number of illegal entrants who the Border Patrol arrested and that data shows that apprehensions declined from fiscal year 2006 to 2011. The 2012 data reported by Border Patrol indicate that apprehensions increased from fiscal year 2011 levels. In that report, we also provide data on estimated known illegal entrants by sector, and those numbers as estimated by the Border Patrol did decrease in Southwest border sectors over that time.

REP. KELLY: While the meaning of apprehensions data by itself seems to be the subject of some debate, it remains clear that the department continues to use this figure on an interim basis until it's able to develop an alternate approach and that poses some concern. Ms. Gambler, how long has Border Patrol used the numbers of apprehensions as its interim performance goal?

MS. GAMBLER: They've been using that since fiscal year 2011.

REP. KELLY: OK. And Chief, welcome -- Chief Fisher. When will Border Patrol begin using a more comprehensive data point for measuring flows across the border?

MR. FISHER: We started developing those this year and will baseline this year and really start with the new metrics in fiscal year '14, which will start 1 October.

REP. KELLY: OK. And can you please explain how the Border Patrol currently uses apprehensions data such as where to allocate resources?

MR. FISHER: Right. Well, the apprehension data in and of itself does not dictate where we deploy or redeploy resources. That decision is based on risk and it's done both in terms of the -- my staff at headquarters looking at the strategic lay down of all forces within the northern, southern and coastal environments and, really, it's left in the hands of the field commanders in the field to be able to deploy and deploy -- and redeploy those resources within the areas that they have operational control over.

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REP. KELLY: And if you were to get additional Border Patrol agents, where would you place them? Where do see the biggest need?

MR. FISHER: Certainly, we would look into areas, for instance, of where we're unable, perhaps, to put fence or unable to put certain pieces of technology because it's a combination. It's not just, you know, putting more Border Patrol agents. We have to do that in consultation with, certainly, the field commanders and the Border Patrol agents to tell us what works, what doesn't work, and we would make sure that we put the resources in the areas of highest risk along our borders and then we would work our way back from there.

REP. KELLY: And when you say they tell you what works and doesn't work, how often do you check? Do you have -- every three months or every month? What's the evaluation process?

MR. FISHER: Well, quite frankly, with 21,370 Border Patrol agents they are not shy to call me and let me know through email what works and what doesn't work and I appreciate their willingness to tell us and headquarters what is the best approach.

REP. KELLY: OK. Ms. Gambler, do you have any current concerns about the apprehensive data and how it's used?

MS. GAMBLER: The -- in terms of the apprehensions data, those -- that is data on the number of illegal entrants that the Border Patrol apprehends. In our December 2011 report, we did identify some limitations with the data that Border Patrol collects and estimates for what are called turn backs and got aways, and the limitations with that data preclude Border Patrol from using that data to make comparisons in performance across sectors.

Now, Border Patrol issued updated guidance to the field in September 2012 to provide for a more common approach to estimating turn backs and got aways across the Southwest border sectors and we understand that the Border Patrol sectors are implementing that guidance.

REP. KELLY: And, Chief, do you feel like this will give a more complete data picture -- including got aways and turn backs?

MR. FISHER: We're getting better at that but let me be clear. We are trying in some cases -- I say we broadly -- have to be very careful of applying a very specific scientific method in accuracy and certitude to a function and operation that does not allow that. We're going to do the best we can to determine how many people came in and of that number how many people did we apprehend.

But no technology or no system that I'm aware of is going to, with 100 percent accuracy, make that determination going forward and it doesn't exist in other law enforcement organizations, that I'm aware of.

REP. KELLY: Well, my time is up. Thank you.

REP. BENTIVOLIO: Thank you. The chair now recognizes the gentleman from Arizona, Dr. Gosar.

REP. GOSAR: Thank you again, Mr. Chairman. Before I start my other second line of questioning, I want to make a point that we made sure that Mr. Langlois has had an opportunity to come before this committee -- either he comes here or we go there -- because I think we need to have this discussion in front of the American people.

Ms. Gambler, one of the things that I'm critical about and I -- to be honest with you I'm a big fan of GAO but in this (grace ?) what I want to see is -- you cited a number of studies in regards to the gentlewoman from Illinois. I need to see that same type of application from where we're coming from in Arizona and so I want to see some equal latitude.

Mr. Fisher, you just made a comment that what works in Yuma doesn't work anywhere else. But the principles are the same, are they not? Deterrent, enforcement and apprehension and then also going before justice -- isn't that true?

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MR. FISHER: The principles and the strategy apply but the application on the different geographic areas do not.

REP. GOSAR: Oh, I'm happy with that. I'm happy with that. Let me ask you a question, both the gentlemen, Mr. Fisher and Mr. Murphy. In your testimony, you also went to say a secure border means living free from fear in the towns and their cities. Do you feel that the folks in southern Arizona can actually say that today?

MR. FISHER: In some locations, that would be accurate. In others, probably not.

REP. GOSAR: Some. Some. How about you?

MR. MURPHY: Yes, sir.

REP. GOSAR: Yeah. So I would say if we really want to start making this deterrent or dictation, probably about the 50 miles coming from the California border is secure. Beyond, going into the Tucson sector from that 50 miles not secure.

We've got some type of problem with the Tucson sector. And then going further east, we've got bigger problems, do we not?

MR. FISHER: In somewhat of a west-east, you know, quick look at the border, which -- and by the way, sir, as you mentioned, that always is going to fluctuate with the criminal organizations adjusting their operations.

REP. GOSAR: Oh, I know. And from what I understand, you know, we've got a problem in the Tucson sector. It has shifted more to the Texas side, but you're right. But there are still some generalities that we can hold true, can we not?

MR. FISHER: Certainly.

REP. GOSAR: OK. Can we put the slide up here up on the screen?

These signs were found posted not at the border, not within 20 miles of the border, but were posted 80 miles from the border. Our local law enforcement officers, in addition to Custom and Border Patrol officers, have told us that our police -- our policies are failing, that the enforcement measures are so shoddy that it's an equivalent to ceding parts of our great country to cartels. I am saddened by the terrible amount of illegal activity on our southern border, but I'm downright angry that the federal government isn't doing its part to protect its citizens.

I do think the thousands of agents and officers that put their lives on the line day in and day out, but it seems that there is such a disconnect between those on the frontlines and the bureaucrats that have marched up here on the Hill to tell us what they think and what we want to hear.

Thankfully, from time to time, we bypass the so-called proper channels and go directly to the source -- which is what I do; I am a science guy -- to get the raw intelligence before it's scrubbed and framed here in Washington. I have talked to numerous CBP agents during my time in Congress. The story they paint is far different than the one painted by DHS representatives here today and in the news media at large.

One agent told me that the methods for counting border crossings is completely inadequate, as the officers are told to count tracks going north. The problem is that the drug runners cover their tracks very carefully going north, because they don't want to be tracked. The numbers found going north is often actually less than those found going south, because the cartel members don't care if they're being apprehended going south. They've already dropped off their drugs and since they're already going south, they might as well get a free ride home.

Another agent told me that when he first -- when he first started, one of his supervisors started a meeting one day by saying, apprehensions are down; we're not catching as many people. This particular officer lowered his head, feeling that he and his colleagues were about to be scolded for not doing their job. You can imagine his surprise when he was congratulated and told, good job, by that same supervisor.

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One agent, a man who puts his life on the line each day, referred to the apprehension metrics by measuring border control as asinine. Whereas Napolitano, our secretary, claims that the border is safe and secure better than any time before, the people that actually do this for a living estimate that they might apprehend 20 percent of the border crossings on a good day.

When it's possibly the most discouraging and shameful thing that I have been told by the CBP agents on the ground is that they feel that they signed up for one job, when they actually have two jobs. They say their job is to fight the drug cartels and the so-called coyotes, but they also say their job is a constant fight with the federal government. In their words, they have to fight their own employer to do the job that they were hired. This is a situation that could only be created by this town.

Mr. Chairman, I would ask that you consider having another hearing at a later date in which we can invite CBP officers and other state and local officers from the frontlines, that they're actually able to offer us some real perspectives, highlight the real problems and help guide us towards a real solution.

You know, when we start looking at the border, it's a fascinating issue. You know, we have Forest Service; we have primitive areas and we have to have a commonsense policy in which to have apprehensions to make this country secure. So I'd like to hear from the Border Patrol agents directly.

Thank you.

REP. BENTIVOLIO: Thank you.

The chair now recognizes the gentleman from Florida, Mr. Mica.

REPRESENTATIVE JOHN MICA (R-FL): Well, first of all -- (off mic) -- absolutely had it with officials who refuse to appear before our committee. This is the chief investigative panel of the House of the Representatives. What's this guy's name -- Langlois? Langlois? OK.

I want a meeting -- you're acting chair right now, but I want a meeting staffed with Mr. Chaffetz and Mr. Issa. And I want these people held responsible. We will subpoena his butt in here or they will appear before us one way or the other. This is the last time this is going to happen that I'll -- that I'll be involved in any of the subcommittees or the full committee and have particularly a DHS staffer -- and this is an important position; this isn't just any staff -- not appear before this committee. And it's important that he appear with these other witnesses.

I'm absolutely frosted and this is the last time, I guarantee you. They will regret not appearing before our committee. I don't care who it is.

So again, I know you're acting chair right now, sir. And staff, I want a meeting within the next 24 hours with Chairman Chaffetz and also, Mr. Issa. And if we have to bring the other side of the aisle in, whatever it's going to take. But again, I'm not very pleased that we would have, again, the associate director for refugee asylum and international operations thumb his nose at a legitimate request, timely given to appear before this committee -- subcommittee of Congress.

I have some information, I guess, both Mr. Fisher and Murphy -- Customs and Border Protection. Who oversees procurement of some of the equipment? Who would have the most knowledge? Both of you have equal knowledge?

I understand -- I wasn't here earlier, but you're looking at mobile rather than a fixed surveillance system. Is that correct?

MR. FISHER: That's correct, sir.

REP. MICA: Mr. Murphy, correct?

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MR. MURPHY: Yes, sir.

REP. MICA: OK. And I have information from a whistleblower that there are several types of these surveillance equipments that are available. And one is available at \$54 million and the second's available at over \$100 million. Are you aware of that -- the two principal types of surveillance -- mobile surveillance equipment that you're using?

MR. FISHER: I'm not aware of that, sir.

MR. MURPHY: No, sir.

REP. MICA: OK. Well, I want you to be aware of it. This is information I have that, again, on the procurement that you're picking or dividing the contract. I'm not interested in a 50 percent premium that the taxpayers pay on this mobile equipment.

I want a report back from one or both of you on what's going on, what kind of equipment's being purchased, why you're paying twice as much for some equipment that has the same capability, I'm told, as the other equipment. OK? Do you get it?

MR. FISHER: Yes.

REP. MICA: Back to the committee, through myself or the chair, I want a report on why you're paying twice as much for some equipment that has the same capability as others. We have very limited amount of money. Isn't that correct, gentlemen?

MR. FISHER: Yes.

MR. MURPHY: Yes, sir.

REP. MICA: Constraints. So this is something that's been brought to my attention by a whistleblower. I want it verified and documented exactly what you're doing here.

OK. Let's go to border crossings and protections. There's about three different types of entry documents. There's -- well, four actually: the passport, right; Global Entry -- you can get in with a Global Entry card, do you have to have a passport too? Murphy, Fisher?

MR. MURPHY: Yes, sir. Based on the Western Hemisphere travel initiative, obviously, we took about 8,000 different documents out there and there's just a few. But with the passport --

REP. MICA: Can you get in with a Global Entry by itself? Yes or no?

MR. MURPHY: I'll have to get back to you. I know that that --

REP. MICA: You -- wait! What is your position?

MR. MURPHY: I'm the acting assistant commissioner for field operations.

REP. MICA: And you can't tell me whether I can get in or out with a Global Entry card -- a document --

MR. MURPHY: Well, in order to get the Global Entry card, you have to have that document. And your document -- and your face will appear on the screen when you're coming through. But --

REP. MICA: But can a -- someone entering the United States from Canada or Mexico or somewhere come in with just the Global Entry card?

MR. MURPHY: I'll have to get back with you, sir.

REP. MICA: Oh, dear god. Please don't tell me that they're sending people -- you're acting. It's pretty scary.

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OK. There's two other documents. One is what, NEXUS and FAST?

MR. MURPHY: Well, those are all --

REP. MICA: NEXUS is Canadian for Canada. Is FAST?

MR. MURPHY: Yes. It's the cargo -- through trucks.

REP. MICA: OK. And there's another one then. What's the one for Mexico? Is there is a card for Mexico?

MR. MURPHY: Well, there's SENTRI.

REP. MICA: SENTRI?

MR. MURPHY: SENTRI, FAST, NEXUS, Global Entry.

REP. MICA: OK. We've got all these cards. Well, I had a hearing a couple of weeks ago on the ID cards, which is again that so- and-so from DHS isn't here so we can't go after him, because they're responsible for overseeing some of the standards. But we have all of these cards. None of them have dual-biometric capability. Is that right?

MR. MURPHY: Dual metric in terms of?

REP. MICA: Fingerprints and iris would be biometric.

MR. MURPHY: No. Yes. We -- they have -- it's fingerprint.

REP. MICA: But they do not have dual.

MR. MURPHY: Right. So they'd only have fingerprint or iris.

REP. MICA: Now, we had also someone at a hearing. Get the transcript of it from last week -- testify from the FBI that fingerprints can be altered. They're not secure, OK? And the only secure means of identification that's guaranteed would be dual biometric; that's iris and fingerprint. But we do not have anything with iris, NEXUS, FAST, Global Entry, passport -- what was the other one you told me -- SENTRI, right?

MR. MURPHY: I believe we're looking at the iris but I don't believe we have it.

REP. MICA: For 11, 12 years I asked that that be done in law after 2001, I think in 2002; repeated it in law several times. And here, again we do not have a DHS person to testify. So we have a document that's being used that can be undependable and you don't know if Global Entry can be used to get in. What about the others? Can they get in with just a -- from Canada with the NEXUS card?

MR. MURPHY: I apologize, sir. I know you have to have that card.

REP. MICA: Oh dear God. Where do they send these people from?

REP. BENTIVOLIO: Mr. Mica, we're going to have to wrap it up.

REP. MICA: Now, wait a second. Did you have two rounds?

REP. BENTIVOLIO: Yeah, we did.

REP. MICA: I haven't had my first -- that's my first round so I'll go into my second round. Did you have a waiting Democrat that wants to go first?

REP. BENTIVOLIO: Yes, we do. Yes.

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REP. MICA: All right. Well, we'll let her go and then I'll come back. I'll try to recover in the meantime. (Laughter.)

REP. BENTIVOLIO: The gentleman from New Mexico --

REP. : Gentelady.

REP. BENTIVOLIO: -- the gentelady, excuse me, from New Mexico, Ms. Grisham. Thank you.

REPRESENTATIVE MICHELLE LUJAN GRISHAM (D-NM): Thank you very much, Mr. Chairman. And thank you to the panel. So I'm in an interesting position from New Mexico in that we have a small unique border from New Mexico to Mexico that are affected primarily by the border at El Paso but not then we don't get the same border post investments. We don't get the same federal investments for border protection issues that are beyond the border itself but invest in the state.

And so, we are affected by trade issues which I know have been a topic this morning in terms of some of the questions. We're affected by the efficacy of what you do on the border. We have public safety issues. And we also have one of the highest drug trafficking and substance abuse problems per capita in the country. Now, as a proponent of comprehensive immigration reform, which I think helps us with border activity because now we've got a legal pathway for folks to go back and forth, I am absolutely concerned about security issues.

And I think that this question, given the topics of the questions today, is really for Ms. Gambler. Of all the investments --and of course, we've had significant investments and watching what's occurring in the Senate, there is momentum for even more investments at the border -- tell me which of those investments -- personnel, equipment, sensing, high tech investments -- which of those are the most effective? And I need to know that both in terms of whether it's a cost effective aspect or whether it's giving you those protections that we're interested in having occur at the border.

MS. GAMBLER: Congressman, your question gets at a key takeaway from a number of GAO reports that we've issued looking at CBP's efforts to deploy technology, infrastructure and personnel along the border. And that takeaway is that the department has been challenged to be able to identify the contribution that its investments have been making to border security.

For example, we've recommended that the department conduct a cost effective assessment to be able to assess the contributions that tactical infrastructure and fencing have made to border security. With regard to technology and our review of DHS' new technology plan for placing surveillance technologies along the Southwest border, we recommended that DHS identify the benefits and metrics for assessing implementation of the plan and the technologies going forward. So your question gets at a key takeaway from a number of reports we've issued on border security efforts.

REP. GRISHAM: So the -- my issue is -- and I'm hearing that from my colleagues on both sides -- is that while we know we need to do that, we've got to perform those evaluations. We don't have that concrete information. In your opinion, given that, again, unprecedented investments, I'm concerned about whether they're making the difference that we need.

Should our next set of funds, assuming they move forward, be contingent upon those assessments and you can only draw down if you can demonstrate that in fact it's going to be a cost effective investment that also brings about real results at the border?

MS. GAMBLER: That would, you know, certainly be a policy call for Congress. But our recommendations have gone to the need for DHS to be able to assess the benefits from its investments and the contributions that those investments are making to its border security effort.

REP. GRISHAM: OK, because if we don't do that, then the reality is you -- and I hope -- have immigration reform, continue to make sure that we do have secure borders, invest in technology that will be using in other places and efforts. And if we don't do it in a contingent, effective manner, then we will not, regardless of the policy decisions

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that we make here, have an effective environment for protecting and securing the border while making sure that effective trade takes place and legal travel back and forth across the border is not minimized but it accepted in a productive and safe manner.

And I'm -- based on the testimony today, I am very concerned that we don't have that information readily available to us. And so that minimizes any of the efforts that we make here in Congress. Is that a fair statement? And now, anybody can answer -- 23 whole seconds. No takers? Come on! Mr. Murphy?

MR. MURPHY: Ma'am, I think we're working very hard to identify our risk. I think we're working very hard, and again, not to beat a dead horse, but our worker staffing model I think is helping us identify areas that need additional resources and basically trying to take more of a business transformational type of look at our processes and how we do business.

REP. GRISHAM: All right. It sounds to me like we may not be as ready as we should. Thank you, Mr. Chairman.

REP. BENTIVOLIO: The chair now recognizes the gentlelady from Wyoming, Ms. Lummis.

REP. LUMMIS: Thank you, Mr. Chairman. To the previous comment by the gentlelady from New Mexico, therein lies the problem. Trying to get us to do comprehensive immigration reform at a time when we cannot assure our constituents -- the people we work for -- that the border is secure is a nonstarter.

When I go home, all I hear about is secure the border first, then we'll talk about comprehensive immigration reform. I hear that from all aspects from all of my constituents. And I cannot tell them that we have accomplished step one -- secure the border -- which is their green light to move forward on comprehensive immigration reform.

This is not a new condition that the American people, especially those from nonborder states, have put on us. They've been telling us for years, secure the border first, then we'll talk about comprehensive immigration reform. There's a bill, probably passed the Senate today, that will comprehensively reform immigration.

It is not going to pass the House because we have not addressed the one condition the American people have put on us before they'll allow us to have a robust conversation about comprehensive immigration reform. We haven't secured the border. Now, my constituents have asked me this repeatedly. Is a fence the least expensive, most effective way to secure the border in land-to-land border crossings? Mr. Fisher, is that true?

MR. FISHER: In some locations, that would be true, yes.

REP. LUMMIS: Do we have a fence in every location where that is true?

MR. FISHER: That I don't know. But also, I should add it's not just the fence because anywhere that you would have a fence, which predominately you would put in place is because you have identified it as right risk, which is attributed by a lot of illegal crossings in between the port of entry. Just having the fence in and of itself does not necessarily guarantee the border security.

REP. LUMMIS: The Corker amendment that's being discussed in the Senate -- and I don't know whether it's passed or failed -- would add 700 miles of fence and 20,000 troops on our border to defend our border.

Now, if you were me and you go home every weekend and your constituents are telling you: secure the border, secure the border, would you vote for the Corker amendment?

MR. FISHER: Representative, I'm not in a position to one, put myself in your position. Although, there are similar circumstance. When I do go home, you know, my wife and son ask me the same question and we have a very interesting discussion about that. So I can understand the challenges that you, and certainly other members of this committee, are looking at right now as it relates to the current legislation.

REP. LUMMIS: What would you -- what do you tell your wife and your child?

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MR. FISHER: I try to change the subject, ma'am.

REP. LUMMIS: I'll bet you do.

Mr. Murphy?

MR. MURPHY: Sir, it's -- I mean, ma'am, it's a very important issue.

REP. LUMMIS: OK. Let me ask you: The Corker amendment -- 20,000 troops, 700 miles of fence on our southern border. Would you vote for that amendment?

MR. MURPHY: I don't think I can put myself in your position to answer that.

REP. LUMMIS: Do you have the same conversation with your family that Mr. Fisher does?

MR. MURPHY: Yes, I do.

REP. LUMMIS: And what do you tell them?

MR. MURPHY: I tell them that we have men and women out there doing the best they can with what we have.

REP. LUMMIS: Mr. Homan, would you vote for the Corker amendment? If you were me and your constituents, every weekend when you went home, said secure the border first, then we'll let you talk about comprehensive immigration reform. Would you vote for the Corker amendment?

MR. HOMAN: I don't think I'm in a position to, you know, give my opinion on that.

REP. LUMMIS: Do you have family that you discuss these things with?

MR. HOMAN: No. My wife wants me to retire.

REP. LUMMIS: (Chuckles.)

MR. HOMAN: But you know, as far as my position at ICE, about border security, I think we are doing more with our partners in the Border Patrol than we've ever done before. There's a couple operations we're currently doing with the Border Patrol. For instance, we can talk about Alien Transfer Exit Programs called ATEP, where if a Mexican national crosses the border illegally in Texas, rather than just turn him back around in Texas and they make multiple re-entries, we take custody of them; we detain them; we transport them to another state for removal. That separates them from the alien smuggling organization, so you hurt the criminal smuggling organization and that cuts down the recidivism, because now the alien's out of his area. He doesn't know the area so chances are he's not going to cross again.

REP. LUMMIS: I'm glad to hear we're making progress. But let me ask you: Is our border secure; is our southern border secure?

MR. HOMAN: Ma'am, I don't have resources on the border. We do not control the border.

REP. LUMMIS: Mr. Murphy, is our southern border secure?

MR. MURPHY: I think we're working toward that end.

REP. LUMMIS: Is it now? If I go home this weekend, can I tell my constituents -- and they're going to ask, is our border secure? What should I say? What would you say if you were me?

MR. MURPHY: We're doing our best.

REP. LUMMIS: Mr. Fisher, what would you say?

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MR. FISHER: I would say in certain sections along the border that is, in fact, true. The border is secure. But not all --

REP. LUMMIS: Can you give us the sections where it's not secure? Can you show us a map and show us where it's not secure?

MR. FISHER: In some locations we would --

REP. LUMMIS: Can you advise us, in those locations -- those "some locations" where you can tell us, can you tell us how to make it secure?

MR. FISHER: We're in the process of building that right now.

REP. LUMMIS: And when will that be -- that process be completed?

MR. FISHER: Probably in the next few months.

REP. LUMMIS: Would you -- when you get it, are you going to share it with us?

MR. FISHER: It would be my intent to do so, but that would not be my call.

REP. LUMMIS: Thank you, Mr. Chairman. I yield back.

REP. BENTIVOLIO: The chair now recognizes the gentlelady from Illinois, Ms. Kelly.

REP. KELLY: Hi. I just had another question about the data.

Clearly, the Border Patrol also collects data other than apprehensions, and the Government Accountability Office has also reviewed this data. For instance, GAO analyzed the percentage of repeat border crossers and found that figure had declined also between 2006 and 2011.

Ms. Gambler, do these indicators paint roughly the same picture as apprehensions? That the number of illegal border crossings over the last six years and what else do you think they tell us?

MS. GAMBLER: The recidivism-rate data that we looked at covered the period from fiscal year 2008 to 2011 and it found that the recidivism rate across the Southwest Border decreased by 6 percent during that time.

The recidivism rate looks at estimate known illegal entrants who are apprehended more than once. So it's not exactly the same -- it's not exactly the same as looking at data on just apprehensions. It's looking at the number who've been apprehended more than once.

REP. KELLY: OK, thank you.

I also just wanted to make a comment that I totally understand -- on both sides of the aisle on this committee -- that when we call someone we expect the person to be here and expect the person to answer our questions. But I also -- it is my understanding that the gentleman has offered to sit down with staff. So I just want to make sure we give him a little credit for that. But I too agree that when we call people, they should come to the session. But from my understanding, he has offered to sit down with staff.

So thank you.

REP. BENTIVOLIO: The chair now recognizes the gentleman from Florida, Mr. Mica.

REP. MICA: Thank you, Mr. Chairman.

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Let's go back to the identifications that are used for entry at the border. Either of you gentlemen -- Mr. Fisher or Mr. Murphy -- are you familiar with any of the technical boards that approved the credentials that are used for crossing the border?

Mr. Fisher?

MR. FISHER: I am not, no.

REP. MICA: Mr. Murphy?

MR. MURPHY: No, sir.

REP. MICA: See, this is why it's so difficult to conduct this hearing without someone responsible from DHS who can answer these questions. But we have at least five documents I cited; none of them had dual biometric capability. The acting commissioner and the chief do not -- did you know, Mr. Fisher, if, again, those documents can be used by themselves -- either Global Entry, Nexus or FAST or SENTRI?

MR. FISHER: I don't know that, sir. That's not my area of expertise.

REP. MICA: Well, again, I think as chief of U.S. Border Customs and Protection, you should know which documents can be used.

I am not able to question, again, whether or not there's any coordination in the development of those documents and what they contain -- the capability that they contain.

How many -- how many individuals who were apprehended last year -- Mr. Homan, maybe you've already told the subcommittee -- crossing the borders illegally?

MR. HOMAN: I don't have the number of aliens -- illegal aliens crossing the border. What I can tell you is that we arrested, processed and removed 410,000.

REP. MICA: You removed 410,000 back to their original point of entry or whatever country they came from?

MR. HOMAN: Yes, sir.

REP. MICA: How many, them, are incarcerated in the United States, say last year, at any time? Would that be all of them or -- and are there -- is there a population of illegals in our prisons?

MR. HOMAN: Yeah. Of the 410,000 removed last year, 225 of those were convicted criminals. And we got --

REP. MICA: Two-hundred-and-twenty-five period were convicted --

MR. HOMAN: Two-hundred-and-twenty-five thousand.

REP. MICA: Two-hundred-and-twenty-five thousand?

MR. HOMAN: Yeah. Fifty-five percent of the 410,000 were convicted criminals.

REP. MICA: OK. And do you detain those convicted criminals?

MR. HOMAN: Yes. Our strategic approach we have four priorities: those who are a threat to national security and community safety, which are convicted criminals; recent border entrants; and those that are fugitives --

REP. MICA: So the taxpayers foot the cost while they're in prison. Do we also pay for their legal costs? Do you have any idea if they're all granted the -- are they read any rights?

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MR. HOMAN: No. We're administrative process. After they do their -- if they get convicted of a crime, they do their time in whatever state or federal facility. We get them after the fact and we do try to process them for removal while they're still in the custody of a law enforcement agency so we don't incur unnecessary costs.

REP. MICA: But are they entitled to any kind of legal counsel that we provide or they can get their own counsel?

MR. HOMAN: They can get their own counsel under administrative remove procedures, not entitled to a paid attorney.

REP. MICA: They are not. OK. Any idea as to the cost of incarcerating these individuals?

MR. HOMAN: In our custody or in the custody of law enforcement?

REP. MICA: Both -- both. What's your cost and is there an estimate on the cost of incarceration by others?

MR. HOMAN: ERO is funded at 34,000 beds a year and those beds turn over quickly. Our funding for detention operations is about 1.7 billion (dollars).

REP. MICA: I saw a numbers of Customs and Border Patrol people were killed historically, maybe the last decade. Have most of the culprits been apprehended? Mr. Murphy, Mr. Fisher, do you know?

MR. FISHER: Over the last few years, there have been arrests of individuals who have -- there was enough evidence to warrant their arrest that were attributed to violence against Border Patrol agents and in some cases the killing of Border Patrol agents and CBP officers.

REP. MICA: I remember working with Reagan administration when they killed Kiki Camarena. And I think the way Reagan handled it was he closed the borders for a while. But we still have people who haven't been apprehended who have killed our agents. Is that correct?

MR. FISHER: That is true.

REP. MICA: OK. That's kind of a sad commentary. I think we need to do everything possible to target those individuals. Might be a good use of drones, but -- to take them out when you kill an enforcement officer or Border Patrol personnel. And I yield back the balance of my time.

REP. BENTIVOLIO: Did you have any more questions?

REP. MICA: No, and -- though I would like if the staff could send a letter and I've asked a response on this paying twice as much. I guess they divided up the contract between a couple of vendors and one of the pieces of equipment I understand costs twice as much as the other. It's nice to divide the contract. But I don't really care about that. I'm looking at the taxpayers. It has the same capabilities.

But I want to find out about that mobile surveillance equipment, the acquisition, the cost of the equipment, difference in any capability and what would justify paying twice as much for the same thing. And we will have a meeting with -- we will have a meeting with the chair of the subcommittee and the full committee chair on calling in the DHS witness. Other than that, again, appreciate the courtesy.

REP. BENTIVOLIO: Thank you. I have a few more questions. Mr. Fisher, you testified earlier that part of the border's secure and other parts are not. What are the -- what parts of the border are unsecure?

MR. FISHER: These would be areas where generally we don't have access to the immediate border. We don't have full-time deployments of Border Patrol agents and we have very little or in many cases nonexistent technology. And it's only in those areas where intelligence leads us to believe that criminal organizations may be exploiting those areas. We adjust our resources accordingly. That's what I meant by in some cases the border is more secure than in others.

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REP. BENTIVOLIO: OK. So what percentage is unsecure?

MR. FISHER: I don't have a percentage, sir. It's very difficult to identify a percentage.

REP. BENTIVOLIO: Miles?

MR. FISHER: It's even harder to distinguish miles because it fluctuates.

REP. BENTIVOLIO: Pardon me? Yeah, what particular areas? Texas, New Mexico or Arizona?

MR. FISHER: All across the Southwest border there are sections that are considered secure and other sections that are less secure. As a good example, if you look at -- there's a five mile stretch in San Diego, my recent post as the chief in San Diego.

That five miles is between San Isidro point of entry and the Otay Mesa port of entry. You may have visited it on one of your recent border tours. That section of the border has been pointed out to me over the last couple of years as that's exactly what we need to whole Southwest border to look like because there within that five mile stretch CBP has put in over the years single fence. We've had all weather roads.

There's a secondary fence that's about between 15 and 18 feet high. On top of that secondary fence, we have razor wire -- triple strand, by the way -- across that. There are hundreds of unattended ground sensors that are in and around that secondary fence area. We have integrated fixed towers that provide 7 by 24 surveillance and Border Patrol agents routinely deploy that. Very little people cross that section of the border. However, if you also look over the last 10 years, of the predominance in tunneling activity along the Southwest border --

REP. BENTIVOLIO: Mr. Fisher --

MR. FISHER: -- that area is the most exploited.

REP. BENTIVOLIO: -- thank you. But I'm looking for what part of the border is unsecure. You had mentioned that it's -- part of the border is secure, the other part is unsecure. Or now you're saying -- backpedaling, saying, well, it's not as secure. It's either secure or not secure.

MR. FISHER: Well, that's a really interesting point, sir, because really when you're looking at security, it's not an either/or proposition. It's really the state of the border at any particular time. Any section of the border that we say is secure is potentially continuing to be exploited.

REP. BENTIVOLIO: Yeah. You said part of the border is less secure.

MR. FISHER: That's correct.

REP. BENTIVOLIO: OK. So you're saying at certain times all of the border's unsecure and sometimes it is secure? I'm really confused because --

MR. FISHER: Well --

REP. BENTIVOLIO: -- you know, I'd like to help you fix the border and make sure it's secure a hundred percent of the time, 24/7.

MR. FISHER: Sure.

REP. BENTIVOLIO: But you're telling me part of the border is not secure. What geographical area, whatever, is unsecure?

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MR. FISHER: There are certain segments in the area -- we're talking Arizona, early on the west desert, in and around the Tohono O'odham Nation. That's one particular area what I would qualify right now as we have less security in that particular area than we do in other parts of Arizona.

REP. BENTIVOLIO: Do you have a map? Can you get a map?

MR. FISHER: I can get a map. I don't have one with me, sir.

REP. BENTIVOLIO: OK, I'd like to see a map. You know, I'm an old soldier, you know, and my perimeter's going to be secure. When I go to sleep at night, I want to know that I've got people out there to protect my perimeter.

MR. FISHER: Understood, sir.

REP. BENTIVOLIO: You know how it works, right?

MR. FISHER: I do.

REP. BENTIVOLIO: OK, Americans want to go to sleep at night knowing their perimeter is secure. And I want to know, like a soldier, what part is the weakest, what is the strongest and what can we do to fix it.

MR. FISHER: Certainly. Understandable.

REP. BENTIVOLIO: OK, great. Thanks. Now, I have just a few more questions. I was just reading a blog from -- what did I do with that -- excuse me, here -- Debbie Schlusel. She's a blogger. What does she mean by the term reverse escort? Can any of you answer that question? Mr. Homan?

MR. HOMAN: I can answer that question. The activity in Rio Grande Valley has spiked a couple of months ago, has since we down. But we see an increase in other than Mexican arrests, citizens from El Salvador, Guatemala and Honduras. That's three major populations. We have a congressionally mandated cap on overtime. My officers can only make so much in overtime. And a lot of the arrests the Border Patrol has been making is unaccompanied juveniles. These are people -- nationals under the age of 18. We are only allowed to detain them up to 72 hours before we turn them over to Health and Human Services office of refugee resettlement.

So with the surge in the unaccompanied alien juvenile arrests that we've got into custody, we are by law and statute are supposed to turn them over to HHS. They have facilities all across the country. When we contact them saying we have a juvenile in custody, where do we take them, we have to deliver that unaccompanied juvenile to them so they can place them in a facility comparable for a juvenile. My officers were doing so many escorts of these juveniles, they're bumping up against the overtime cap.

So the cost is the same for an officer to go from San Antonio to Detroit, to drop off a juvenile with Health and Human Services and then fly back to San Antonio is a fixed cost. Since we're bouncing up against the cap, what we're asking the other officers to do, rather than have this guy exceed the cap, we're having a Detroit officer fly down to San Antonio, pick up the juvenile and take them back to Detroit -- same cost across the board. What it is, it's a way to deal with our budget and a way to deal with the mandate of the limits of overtime we can pay our officers.

REP. BENTIVOLIO: So according to the blog, they're saying that immigration agents are dropping them off in sanctuaries, awaiting for -- awaiting amnesty.

MR. HOMAN: That's not accurate. My officers turn them over to Health and Human Services office of refugee resettlement. Now, they have contracts with certain people that detain the juvenile and make sure he gets medical and gets his food until he gets a hearing from an immigration judge and gets ordered removed. You would have to talk to Health and Human Services how they build that contract out and who they contract with to house the juveniles. But that's totally taken out of context.

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REP. BENTIVOLIO: OK. So the other question is why would you fly a juvenile or anybody from Texas or Arizona or New Mexico to Detroit to await trial or some kind of disposition?

MR. HOMAN: Because Health and Human Services ran out of beds in Texas. They have contracts all over the country. Juvenile aliens are arrested all over the 50 states. Because of the surge in the Rio Grande Valley, Health and Human Services ran out of contract beds in Texas. So here's Health and Human Services tells us, OK, here's where availability to take care of this child. Here's where you bring them. So again, that's a Health and Human Services call on where their contracts are for bedding.

REP. BENTIVOLIO: OK. Now I want to get back to -- thank you, by the way, appreciate it --

MR. HOMAN: You're welcome, sir.

REP. BENTIVOLIO: -- clarifying that. What is this catch and release thing? You have -- like, I toured Eloy. That's a holding facility prison. What do you call it?

MR. HOMAN: It's a detention facility.

REP. BENTIVOLIO: Detention facility, thank you. Now, I understand you only have so much bed space.

MR. HOMAN: We are funded for 34,000 beds.

REP. BENTIVOLIO: Thirty-four -- at Eloy?

MR. HOMAN: No.

REP. BENTIVOLIO: Or fifteen hundred and something --

MR. HOMAN: Yes.

REP. BENTIVOLIO: -- 1,560- or 34, or something like -- well, 1,500, right?

MR. HOMAN: Approximately.

REP. BENTIVOLIO: And if all those beds are filled -- and are the beds are filled, and you have 30 you just caught, where do they go?

MR. HOMAN: Well, in the beginning of the year we actually had over 37,000 in custody. We were -- we were actually overburdening the budget because of our strong -- we -- you know, we got an enforcement strategy that makes sense.

What we do is as the -- if we are completely full and we're beyond budget, as aliens come into custody we need to make a determination. Is there somebody sitting in a bed that is a non- criminal, a non-mandatory case -- maybe he has U.S. citizen kids, maybe he's got a child serving in the armed forces. Can we take him, put him in an alternative form of detention -- maybe an ankle bracelet or GPS monitoring -- release him, and make that bed available for the priority case.

We save the beds for priority cases, which are criminal aliens, those who are a threat to national security and recent border crossers. We actually increased the beds in Texas to make sure that we can detain recent border crossers, because I think it's an important border control strategy.

REP. BENTIVOLIO: So I heard -- the Border Patrol agents tell me that they get like a message saying where beds are filled, and they don't respond to -- or they, you know, don't make a real big effort capturing all the 26; they maybe only catch three or four. Is that accurate or --

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MR. HOMAN: No. What I can tell you is, as a matter of practice, we detain all recent border entrants. We have brought on a couple thousand more beds in Texas to deal with the influx. There are situations where somebody is released from our custody -- we release people every day, like every jail does -- maybe we can't get a travel document; he's from a country -- for instance, Somalia, maybe we can't get a travel to Somalia.

We have a Supreme Court decision in Zadvydas that says we can only detain someone up to six months. If there's no significant likelihood of removal, we must release them, as long as they're not a danger to the community.

So as the Border Patrol gives us the aliens, we make it a priority to detain those aliens. But there are times, if they're an unaccompanied juvenile, we'll turn them over to HSS, so they're released from our custody. If they claim fear, and they get interviewed by CIS and CIS finds a fear claim positive, then that alien becomes eligible for bond. So we release aliens all the time on bond, if they -- if they meet bonds set by the judge. If there's a humanitarian concern -- maybe an alien comes to our detention, we find out he's a sole caregiver for a child and that person's not a danger to the community, he might be served better on an alternative form of detention.

REP. BENTIVOLIO: OK, thank you. We've heard reports of significant increases in other than Mexicans, OTMs, crossing our southwest border. In fact, Chairman Chaffetz tweeted about nine Romanians apprehended crossing the southwest border during his recent trip. And some Arizona news outlets are reporting an increase in Indian nationals -- more than 1,000 since January of this year -- crossing into that state. What other countries are they coming from?

MR. HOMAN: The big majority right now, in order, is Guatemala is the biggest, Honduras and El Salvador. And let me explain what we did with that. We were bringing so many OTMs into custody, we got way over 37,000. So what I did, I instructed my staff to meet with the governments of Guatemala, El Salvador and Honduras, and start a pilot program.

Usually, these nationals are in detention for 10 to 20 days before a government official of Guatemala would interview them, because they have to interview them and make sure they're a national of their country; then they issue a travel document. They took 20 days, so the beds are backing up.

What I did is issue an instruction to start a pilot program with the agreement from the governments. We've made equipment available for Guatemala and Honduras. They're doing interviews now through a pilot program within 24 hours. They're issuing a travel document within 24 hours. I reassigned some flight hours to Central American flights. So we surged Central American flights. We -- in the last two weeks, we removed over 5,000 OTMs to their country through this pilot program. So that got my bed level down.

As far as the East Indians in Arizona -- CBP can speak to that -- but it's my understanding, because we're getting them in custody, they're actually surrendering themselves at a port of entry and claiming fear. And at that point, the process is we'll contact CIS, CIS arranges an interview and tries to make the determination is that fear credible. And if they make that determination, yes, he has a substantiated criminal fear of returning to his homeland, then that alien becomes eligible for release either under bond or other supervised released.

REP. BENTIVOLIO: Yeah. They're claiming fear, these nine Romanians. It was my understanding they went to trial, or they went before a judge, released on a bond of some sort and never showed back up.

MR. HOMAN: I'm unfamiliar with the Romanians. I know the East Indian issue because it's well over a thousand that we've got in our detention that we're dealing with, with CIS. I'm unfamiliar with the Romanian case. We get -- we get -- we -- last year, we removed aliens from over 150 countries, so we see aliens from every country in the -- on the planet.

REP. BENTIVOLIO: And walk me through this. You have an -- somebody comes to Eloy, they go before a judge and --

MR. HOMAN: Yeah. On Mexican nationals, we can turn them around pretty quickly.

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REP. BENTIVOLIO: OTMs.

MR. HOMAN: On OTMs, before we can remove them to their homeland they have to be interviewed by officials of their country to ascertain that, yeah, they are in fact a citizen of Guatemala. After that interview, they have to -- the Guatemalan government will issue a travel document that identifies the person as a national of that country, and that allows us to repatriate them to that country. That's the process.

So we arrest somebody, and they're an OTM. We set them up for an immigration hearing. They'll see -- they'll see an immigration judge, if that's what they request at hearing.

REP. BENTIVOLIO: How many show up for the hearing after you release them?

MR. HOMAN: It depends. If they release them on some sort of ordered supervision, maybe an ankle bracelet -- the ATV shows about 80 percent show rate at the hearing; those released NOR (ph), of course the appearance rate is lower.

But what the Border Patrol is doing, in a smarter way, is those arrested crossing the border, Border Patrol will process them as an expedited removal. And an expedited removal is a -- is a -- is a removal order in itself. So they don't have to see a judge. When the Border Patrol processes them as an expedited removal, they come to my custody. We get a quick interview from the government, the hosting government; they issue a travel document and remove them. The only time a hearing comes into effect is that they claim the fear; they get to go through CIS, and later an immigration judge -- or if they're not an expedited removal case. If we arrest them in the interior, we can't process an expedited removal. We'll have to give them a notice to appear in front of an immigration judge.

REP. BENTIVOLIO: Do -- what percentage of OTMs do you have in -- do you have like an average number in a holding -- or in detention facility?

MR. HOMAN: At the time we started the pilot, we had approximately 34,000 in custody, and we had approximate -- around 7,000 to 8,000 OTMs.

REP. BENTIVOLIO: OTMs. So the rest are --

MR. HOMAN: Citizens of Mexico.

REP. BENTIVOLIO: Citizens of Mexico, OK. And 80 percent show up for this --

MR. HOMAN: The ATV metric -- when we release somebody on an ankle bracelet, the appearance on that and other forms of reporting which -- it could be telephonic reporting, it could be an officer doing a bed check at the residence -- we had about 80 percent appearance rate for those released on alternatives to detention.

REP. BENTIVOLIO: OK. So that leaves 20 percent did not appear.

MR. HOMAN: Yes, sir.

REP. BENTIVOLIO: And how many people is that?

MR. HOMAN: Well, it's approximately --

REP. BENTIVOLIO: Give me a number.

MR. HOMAN: Well, it's hard to do. I can tell you that's what we --

REP. BENTIVOLIO: Ten thousand? I mean, you're talking 400,000 people you've processed.

MR. HOMAN: Yeah, we actually -- we had intake of 475,000 last year. We removed 410,000. Some are still fighting their cases. We have some cases that go through an immigration court, they'll get a final order of removal

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and they'll appeal that to the BIA -- Board of Immigration Appeals. They may even go further and appeal once more to the circuit court. We have a lot of aliens with final orders, sitting in our beds that we can't remove because they have appeals pending.

REP. BENTIVOLIO: Yeah, so you had 400,000-plus. Twenty percent of that -- it's about simple math -- it's 80,000 people never show back up.

MR. HOMAN: Our current fugitive operation backlog -- that's people that have been ordered removed and have fled -- we can't -- they have not been removed -- is 462,000, the latest count.

REP. BENTIVOLIO: Four hundred and sixty-two thousand. And the news reports or media reports, 11 million illegal in this country. And somebody told me it's closer to 20 million; somebody else told me 30 million.

MR. HOMAN: Well, I've heard the 11 million -- 11 million figure. That's why I think what ICE is doing is smart and effective in enforcement, that normally we can remove 400,000 aliens -- that's what -- you know, that's what we're staffed for and budgeted for, 400,000. I think a smart way to do that -- is it going to be the first 400,000 that we encounter, the first 400,000 in the door? I think our policy, that focusing on the criminal aliens, those that are a threat to national security -- I like to think that we can decide who those 400,000 are going to be. The more criminals there are, the safer our communities are. We make a bigger impact.

So our policy's clear. Let us decide who that 400,000's going to be, if that's all we can do. Let's make as many of them community safety factors as possible. That makes our communities safer.

Like I mentioned earlier, 225,000 criminal aliens were removed last year. That is a significant impact on community safety not only to mention the recidivism rate around 50 percent, how many crimes did we prevent by removing that many criminal aliens?

REP. BENTIVOLIO: OK, 225 (thousand). That's half of the 400 (thousand).

MR. HOMAN: It's 55 percent. And if you look at the 410,000, 96 percent fell into our priorities. Either they're -- 55 percent were criminal aliens. And the rest of the 96 percent were either fugitives, those who were ordered removed and re-entered, which makes them a re-entry, or they're recent border entrants. And the recent border entrants remain a main priority for us, because we need to secure the border.

REP. BENTIVOLIO: And this -- and a second illegal entry is a felony?

MR. HOMAN: If they've been ordered removed formally by an immigration judge and they re-enter and we catch them, they can be prosecuted for 8 U.S.C. 1326, which is a felony, re-entrance after deportation.

REP. BENTIVOLIO: OK. Do you agree with other law enforcement professionals who are concerned that the rise in OTM correlates to the rise in smuggling operations coming out of Mexico?

MR. HOMAN: I think the rise in the OTM apprehensions are -- a vast majority of them are being smuggled by smuggling organizations operating out of Mexico.

REP. BENTIVOLIO: Thank you. And I have -- let's see -- one last question. Do you have one? (Off mic exchange.) Ah, yes, thanks.

When I was at Eloy, they gave me a daily report. And I think it had a -- it was a sheet of paper with all the countries, I guess, in the world, right? And there was a little space next to it, and every day somebody would fill out that report and write the number that were being held at that facility, in that little space on that sheet of paper. Is that like a daily report?

MR. HOMAN: I'm unfamiliar with that. That might be something that facility does, but we track every alien in custody, where they're from, who they are, how long they've been in custody, through an electronic database.

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REP. BENTIVOLIO: Well, the concern -- what concerns me, I saw all the people, you know, that they were -- or, which -- all the countries that were represented in that facility. And knowing that, from what I've seen, that we don't capture 100 percent -- I mean, we don't.

But the one thing that bothered me the most was there was the number one next to the country Afghanistan. And that -- I don't know why, but that just -- I mean, it really played on me. And I'm just wondering if -- how many -- if we don't capture everybody, how many that we didn't capture from that particular country -- because that's of concern to me -- I'm sure a lot of other people. But anyway, that just -- I guess that why I stay awake at night sometimes when I think about this border and what we -- the problems we have there.

Operational controls often described as a strategy that is used by DHS and CBP to describe their operations in securing the U.S. borders. What do you view as the biggest threat to the security of our borders, Mr. Fisher? And we'll go right down the line.

MR. FISHER: Certainly the biggest threat as I would describe it would be those individuals that seek -- that wake up each and every day thinking about nothing else but to do harm to this country. That is our number-one threat, and that's what our strategy looks to target.

REP. BENTIVOLIO: What does that mean?

MR. FISHER: I'm sorry, sir. Could you --

REP. BENTIVOLIO: Yeah. Well --

MR. FISHER: Your question had to do with how we evaluate threat along the border and what threat is?

REP. BENTIVOLIO: Yeah. What do you -- what do you think the biggest risk is, and how are we responding to that risk? Give me an example. I just gave you -- there was one person there from Afghanistan, and right now we're fighting a war in Afghanistan. Common sense, you know? Why is somebody from Afghanistan sneaking into our country, or trying to? They were being held in Eloy prison at the time.

And then I hear we have 11 million illegals, and they're -- we're not 100 percent secure. You yourself said the border is not secure. And somebody who wants to do us harm is going to exploit our weaknesses and our weak points in our border.

It's my job as the congressman to protect this country, the number-one priority in the Constitution. And you're telling me our border's not secure, and I would like to know what you think the biggest threat to the security of our borders is, and what risk -- what, you know -- can you give me a percentage?

MR. FISHER: Well, first, Congressman, I do share the same responsibilities as you, as the chief of the United States Border Patrol, and I, along with the other agents, took the same oath to support and defend the Constitution against all enemies, foreign and domestic. Within that framework and the strategy in which we've implemented over the last couple of years, specifically the threat that still -- as you mentioned, keeps me up as well -- is those individuals, potential terrorists that are seeking entry into this country and may do so between the ports of entry.

We build a strategy and try to identify what the requirements are to minimize the likelihood that those individuals, if they're inclined to get into this country in that manner, we're able to detect them and we're able to apprehend them when they do so. If you're looking at threats as their -- or vulnerabilities as established geographically, I can't give you certain segments of miles and I can't give you percentages.

I can give another example -- outside of the west desert in Arizona, a place like South Texas, where the border is separated by the Rio Grande Valley in areas where we generally don't have a lot of detection capability. We don't have impediments like we do in other places, like the 12- or 15-foot fences in areas right now where we see the vast majority of individuals seeking entry are within those areas in the Rio Grande Valley. So from a regional standpoint, a vulnerability is in the Rio Grande Valley.

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REP. BENTIVOLIO: Mr. Murphy?

MR. MURPHY: Yes, sir. I believe it's terrorists and implements of terror. And I think one of the things that we've done is, again, we've pushed our borders back, both from air traffic, the passengers. We get -- we know who's coming; we know it well in advance of them even boarding planes. We know what's coming from a cargo. We get that information in advance. At our land border port of entries and at our seaports we have our RPMs, so our radiation detection devices.

But I believe that that's where we've really done the most work as far as identifying that threat ahead of time. We denied boarding to 4,200 people in 2012. These were potentially high-risk individuals that could have come to this country to do harm.

REP. BENTIVOLIO: I want 100 percent border security, and we don't have it. And one from Afghanistan comes in. And that's all it takes, is one.

Mr. Homan?

MR. HOMAN: Like you, sir, I've carried a badge and gun for 29 years. I think it's -- I care about the security of this country, and I think it's my job to protect the security of this country and the security of our communities. So I think the biggest threat is those that want to come to this country and do harm, one of two different fashions -- both terrorism, which -- the other side of the house in HSI, HSI Division, that's a priority project they're working on is investigations of a national security nature.

But I think also important is the safety of the communities. For those that come here and want to commit crimes, not only enter the country illegally, but then committed crimes against a citizen of this country.

I've been doing this for a long time, and there was a time when I was street agent and we'd just go out and arrest aliens because they're here in violation of the law, and I'm enforcing immigration law. But at the end of the day, what impact did I make? At the same time I'm arresting this person that's here illegally but maybe hasn't committed another crime, there's a child predator walking out of state prison because we don't have a presence in all the jails across the country.

This administration, and I truly believe this, has done a lot for community safety by deploying secure communities across the country, we have a virtual presence at every jail. When an alien gets arrested and fingerprinted, we're going to find out about that alien, and we can take action on him and remove him from the country.

The strategy ICE has built on prioritizing what we do on national security threat, aliens that are a threat to public safety, it makes sense to me. It's the right thing to do. If we only -- as I said before, if we're built to remove 400,000 people, let's make that 400,000 count. So I think what we're doing now makes sense. I've been doing this 29 years. I think we're in a better spot now than we've been in years.

REP. BENTIVOLIO: Thank you very much.

Ms. Gambler?

MS. GAMBLER: The Border Patrol has identified threats to border security from terrorism, from drug smuggling and from illegal migration. The Border Patrol is working on developing some risk assessment tools to help assess what those risks are and help inform its identification of resources, and that's in process right now.

REP. BENTIVOLIO: Thank you very much.

I'd like to thank all our witnesses for taking time from their busy schedules to appear before us today. The committee stands adjourned. (Sounds gavel.)

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