

UPDATE

OFFENSE, DEFENSE, OR JUST A BIG FENCE? WHY BORDER SECURITY IS A VALID NATIONAL SECURITY ISSUE

ST. MARY'S UNIVERSITY SCHOOL OF LAW
CENTER FOR TERRORISM LAW*

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I. Introduction.....	742
II. Drug Cartels Bump Border Security to New Heights.....	744
A. Cartels Take the World by Storm	744
B. Declaring War on the Cartels	745
C. Analyzing Possible Solutions	748
III. Cross-Border Violence Moves from Our Backyard into Our House	751

* The Center for Terrorism Law, housed at St. Mary's University School of Law, is a fully operational legal research center dedicated to the study of legal issues associated with both antiterrorism and counterterrorism. Under the direction of Jeffrey Addicott, Distinguished Professor of Law, The Center's goal is to examine current and potential legal issues related to terrorism in light of the challenge of achieving and maintaining a proper balance between global security and civil justice. The authors wish to acknowledge, with special thanks the superb efforts of Research Fellows Susannah Cooper, Fidel Esparza III, Ben Marshall, and Julie Staffel who supported this Border Security Update with outstanding research, revisions, and editing.

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A. The Violence Spreads	751
B. New Leaders Implement Change	755
C. State-Led Solutions	756
IV. Trafficking in Various Industries—The New Organized Crime	758
A. Illegal Northbound “Traffic”	758
B. Illegal Drug Trafficking	759
C. Human Trafficking	761
D. Potential Terrorist Activity	762
V. Conclusion	764

[L]ast year there were 540,000 people, roughly, detained coming across the border illegally. Forty-five thousand of them came from countries other than Mexico So this remains a very serious national security problem.

Sen. John Cornyn¹

Import, transport, exportation
 Rights of nations, exploited salvation
 Damnation under one God’s fixation
 Without deportations, prejudice with limitations.

Chickenfoot, *Avenida Revolution*²

I. INTRODUCTION

Listening to the political rhetoric of another presidential election in the United States, informed voters could believe that border security is merely a recent issue, something that plagued national leaders only in the

1. *Tea Partiers Rally on Arizona Border with Mexico*, FOX NEWS (Aug. 15, 2010), <http://www.foxnews.com/politics/2010/08/15/tea-partiers-rally-arizona-border-mexico> (arguing the federal government must do more to secure the border).

2. CHICKENFOOT, *Avenida Revolution*, on CHICKENFOOT (Redline Entertainment 2009). The lyrics of this song, written by Sammy Hagar, differ from other Hagar tracks like “Cabo Wabo,” “Mas Tequila,” and “Mexico” that celebrate the relaxed tourist and party atmosphere of the Mexican resort towns. *Compare Avenida Revolution Lyrics—Chickenfoot*, SONGCOLETA, [http://www.songcoleta.com/lyrics/avenida_revolution_\(chickenfoot\)](http://www.songcoleta.com/lyrics/avenida_revolution_(chickenfoot)) (last visited Feb. 4, 2012), with *Lyrics of Cabo Wabo*, SONGCOLETA, [http://songcoleta.com/lyrics/cabo_wabo_\(van_halen\)](http://songcoleta.com/lyrics/cabo_wabo_(van_halen)) (last visited Feb. 4, 2012); *Lyrics of Mas Tequila*, SONGCOLETA, [http://songcoleta.com/lyrics/mas_tequila_\(sammy_hagar\)](http://songcoleta.com/lyrics/mas_tequila_(sammy_hagar)) (last visited Feb. 4, 2012); *Lyrics of Mexico*, SONGCOLETA, [http://songcoleta.com/lyrics/mexico_\(sammy_hagar\)](http://songcoleta.com/lyrics/mexico_(sammy_hagar)) (last visited Feb. 4, 2012). “Avenida Revolution” highlights the daily struggles of border town residents including those who die attempting to cross the border illegally. *Chickenfoot 12 Days of the Foot Avenida Revolution*, YOUTUBE (June 28, 2011), <http://www.youtube.com/watch?v=yDkSBPoaR7I> (discussing the inspiration for the lyrics and the evolution of the song).

last few decades. On the contrary, border security has been a vital concern of organized civilizations for at least 3,000 years because an impenetrable border was often the first line of defense in safeguarding a community's independence and prosperity.

Even casual readers of the Bible are familiar with the story of the battle of Jericho and how the Israelites captured the city after its wall fell.³ Ancient cities such as Jericho depended on the fortified city walls for protection against sieges, armies, and any other sort of vagabonds the community wished to exclude from the city.⁴ Such cities were typically built on a hill and this setup, combined with a double wall encircling the city, was designed to frustrate opposing armies, forcing them to literally fight an “uphill battle” and find a way over or through the walls.⁵ The city wall's importance is further illustrated by Nehemiah, who led the effort to rebuild the wall around Jerusalem following the Jews' release from Babylonian captivity.⁶ He was so distraught that the city and its walls remained as piles of rubble—even though the temple had been rebuilt—that Artaxerxes, King of Persia, not only granted Nehemiah permission to leave his service, but also procured supplies and safe passage to Jerusalem.⁷

With the invention of catapults, siege cannons, and gunpowder—and even more modern developments like armored tanks and aircraft—the effectiveness of fortified walls eventually declined, although some cities like Taroudant, Morocco, and Dubrovnik, Croatia, were still building and utilizing walls for protection as late as the 16th century.⁸ The United States, since its emergence as a nation, did not build fortified cities nor

3. See *Joshua* 6:1–6:27 (describing how the men of Israel marched around the city walls for a week, and on the seventh day, the “wall fell down flat”).

4. See *12 Impressive Walled Cities in the World*, TOUROPIA (Dec. 2, 2010), <http://www.touropia.com/walled-cities-in-the-world> (indicating the importance of city walls as “a near necessity for almost every city”).

5. *Id.* (listing such cities as York, England; Avila, Spain; Itchan Kala, Uzbekistan; Xi'an, China; and Jerusalem as “impressive” cities, many of which still boast functional walls matching this description).

6. *Nehemiah* 2:17. “You see the trouble that we are in, how Jerusalem lies ruins with its gates burned. Come, let us build the wall of Jerusalem, that we may no longer suffer derision.” *Id.* Furthermore, even when under threat of attack, the people continued to work: “[t]hose who built on the wall, and those who carried burdens, loaded themselves so that with one hand they worked at construction, and with the other held a weapon. Every one of the builders had his sword girded at his side as he built.” *Id.* at 4:17–18.

7. *Id.* 2:3–2:8 (relaying how the King issued letters authorizing timber from the King's forest to be donated for the construction of the walls and sent military personnel with Nehemiah).

8. *12 Impressive Walled Cities in the World*, *supra* note 4.

erect a complete fence across its borders as a protective measure, although some continue to advocate for it.⁹

In the broader context of border security, a fence or wall could become part of a comprehensive solution, but its value may be limited. A fence along the southern border does nothing to secure the U.S. border with Canada. It fails to address how individuals are smuggled across the border in vehicles, sometimes against their own will. A fence is also inadequate to prevent possible members of al-Qaeda and other terrorist organizations from obtaining work visas to enter Mexico, where they can then find an easier entry point into the United States as compared to airports.¹⁰

This Update examines why a comprehensive approach to solve the myriad of border issues is necessary to fortify our national security efforts. First, the key to understanding border security challenges faced by the United States in 2012 requires an analysis of the current Mexican drug cartels' operations. The cartels' activities not only impact Mexico, but they also directly lead to the second area of analysis: an increase in violence near the border that may be crossing over onto U.S. soil. Second, the Update addresses competition to import drugs into the United States as further mixed with cartel operations and violence. Trafficking of drugs, human trafficking, and the influx of thousands of people illegally crossing the border every year is the third issue discussed herein. While the main purpose of this Update is to highlight why the federal government must address overall border security issues and their implicit national security overtones, it concludes with a brief discussion of proposals that could make a difference on the border.

II. DRUG CARTELS BUMP BORDER SECURITY TO NEW HEIGHTS

A. *Cartels Take the World by Storm*

Organized crime in Mexico has a long history, dating as far back as the nineteenth century with the formation of small outlaw gangs with limited power. Throughout the 1960s, the main organized criminal element along

9. Sarah Huisenga, *Herman Cain Acknowledges His Electric Border Fence Idea Isn't a Joke After All*, CBS NEWS (Oct. 17, 2011), http://www.cbsnews.com/8301-503544_162-20121695-503544.html. Republican presidential candidate Herman Cain even advocated for an electrified fence that could electrocute individuals who may try to climb over and enter the United States illegally. *Id.*

10. *The Threat of Terrorists Crossing the Border from Mexico*, HOMELAND SEC. NETWORK (Dec. 7, 2011), <https://www.homelandsecuritynet.com/HSN/2011/12/the-threat-of-terrorists-crossing-the-border-from-mexico/>. “[L]ast year Federal law enforcement agents detained 663 ‘special interest aliens’ from 35 countries including at least 13 Iranians along the U.S.’s southwestern border.” *Id.*

the U.S.–Mexico border involved small smuggling operations; these groups had limited reach and resources. It was not until the 1970s, with the booming demand for cocaine in the United States that these organized crime units began to thrive and gather power and influence throughout a wider geographical area of the country.¹¹ As the United States worked to combat the Colombian drug cartels, the Mexican drug cartels' power became more centralized, transforming Mexico into the transshipment point for Colombian cocaine.¹² These early Mexican drug cartels continued to evolve and take shape into the lucrative multi-billion dollar business that exists today.¹³

Today's Mexican drug cartels are centered on the transit of illegal drugs into the United States and thus, compete for control of the highly profitable trade routes located throughout Mexico, sparking turf wars between the cartels. Not surprisingly, the most powerful drug cartels are located in northern Mexico, most likely due to its proximity to the U.S. border.¹⁴ Historically, drug cartels located in southern Mexico have not achieved the same amount of power and prestige as their northern counterparts.¹⁵

B. *Declaring War on the Cartels*

Shortly after his 2006 election, Mexico's President, Felipe Calderón, declared war against the drug cartels and, together with his cabinet, attempted to eradicate cartel-related violence.¹⁶ President Calderón's election marked only the second time a National Action Party (PAN)

11. Rob Wagner, *The History of Gangs in Mexico*, eHow, http://www.ehow.com/about_5208713_history-gangs-mexico.html (last visited Feb. 24, 2012).

12. CAROL WISE, *THE POST-NAFTA POLITICAL ECONOMY: MEXICO AND THE WESTERN HEMISPHERE* 208 (1998).

13. See *Joaquin Guzman Loera*, FORBES, <http://www.forbes.com/profile/joaquin-guzman-loera/> (last visited Feb. 24, 2012) (profiling the Mexican drug lord's wealth, whom *Forbes* recently listed as one of the world's billionaires). A senior U.S. DEA official referred to Guzman as the "leading drug trafficker of all time." Nathan Vardi, *Joaquin Guzman Has Become the Biggest Drug Lord Ever*, FORBES (Aug. 15, 2011), <http://www.forbes.com/sites/nathanvardi/2011/06/15/joaquin-guzman-has-become-the-biggest-drug-lord-ever/>.

14. See Geoff Burt, *Country Profile: Mexico*, SEC. SECTOR REFORM RESOURCE CNTR. (Apr. 16, 2011), <http://www.ssresourcecentre.org/countries/mexico/> (discussing how the more powerful drug cartels are located in the northern regions of Mexico because they are the main suppliers of marijuana, heroin, and cocaine to the United States).

15. *Id.*

16. See Tomas Kellner & Francesco Pipitone, *Inside Mexico's Drug War*, 27 *WORLD POL'Y J.* 29 (2010), available at <http://www.worldpolicy.org/blog/2010/09/09/inside-mexicos-drug-war> (dispatching 6,500 troops to counteract the drug cartels). Currently, 45,000 Mexican troops are engaged in the domestic war against drug cartels, about one-fourth of standing army. *Id.* Federal police grew from 25,000 to 32,000 in one year, but, despite sweeping police reforms, rampant corruption proved tough to combat. *Id.*

candidate was elected, and ended the Institutional Revolutionary Party's (PRI) seventy-one year rule in Mexico.¹⁷ During the PRI's rule, drug cartels had control over their respective territories, and operated with minimal violence aimed only at those directly involved in the drug trade business.¹⁸ Many theories exist as to why relative peace existed among the cartels until President Calderón's election, but the most widespread presumption is that drug cartels made secret deals with the government that implicitly allowed each cartel to operate peacefully in their respective claimed territories in order to prevent bloody turf wars.¹⁹ President Calderón's election, and subsequent declaration of war on the drug cartels, along with his administration's capture of many high-ranking drug lords, may have caused drug cartels to suddenly lose the government support and protection they previously enjoyed for decades.²⁰ While the Calderón administration managed to successfully kill many high-ranking leaders of various cartels, replacements quickly emerged from the power vacuums that developed in these well-established structures, making the eradication of the organizations difficult, especially when coupled with government corruption on both sides of the border.²¹

As a result of Calderón's crackdown, drug cartels found it difficult to earn money and resorted to more physically aggressive ways to supplement drug profits. Cartels now partner with local gangs, hiring them to assist in a range of duties from drug distribution and intimidation to kidnapping and assassinations of government and rival cartel leaders.²² Along with local gangs, the major cartels employ enforcers also referred to as *sicarios*, who serve as heavily armed men that carry out the most brutal crimes and are in charge of security for top officials within the cartels.²³ Enforcers are usually fighters with military or law enforcement

17. Mark Lacey, *Mexican Democracy, Even Under Siege*, N.Y. TIMES, July 5, 2010, <http://www.nytimes.com/2010/07/06/world/americas/06mexico.html>.

18. *Id.*; see Sam Quinones, *State of War*, FOREIGN POL'Y (Feb. 16, 2009), http://www.foreignpolicy.com/articles/2009/02/16/state_of_war (illustrating an increase in violence as drug cartels target people who are unaffiliated with the drug trade business).

19. Dave Graham, *Mexico Opposition May Work with Criminals: Calderon*, REUTERS, Oct. 16, 2011, <http://www.reuters.com/article/2011/10/17/us-mexico-drugs-idUSTRE79G0B420111017>.

20. *Id.*

21. See Marc Lacey, *Cartel Papers Show Bribes to Mexican Authorities*, N.Y. TIMES, May 11, 2010, <http://www.nytimes.com/2010/05/12/world/americas/12mexico.html> (claiming that drug cartel members infiltrated the police and the military, posing as members).

22. Jana Schroeder, *Mexico's Youngest Assassins*, HOMELAND SEC. TODAY, Mar. 2011, at 28.

23. COLLEEN W. COOK, CRS REPORT TO CONGRESS – MEXICO'S DRUG CARTELS 3 (Feb. 2008), available at <http://www.statealliancepartnership.org/Resources/CRS%20Report%20to%20Congress%20-%20Mexico%27s%20Drug%20Cartels.pdf>. Los Zetas, comprised of Mexican Special Forces deserters, originally served as the enforcers for the Gulf

backgrounds and hired specifically to conduct high priority assignments.²⁴ Assignments can typically include protecting high-ranking members, escorting major drug and contraband shipments, carrying out assassinations of rivals, and ambushing prisons to help release incarcerated cartel members.²⁵ The estimated cost of outfitting a single enforcer with the grenades, assault rifles, handguns, and anti-tank rockets needed to carry out their missions range anywhere from \$500 to \$1,000 annually, which further demonstrates the vast amount of money the cartels have for operating their business.²⁶

The unforeseen consequences of declaring war against the cartels caused violence to steadily increase over the past five years, resulting in the possibility of a spillover across the U.S. border as a real threat.²⁷ In 2009, the Justice Department identified more than 200 cities within the United States in which Mexican drug cartels “maintain drug distribution networks or supply drugs to distributors,” which is “up from 100 three years earlier.”²⁸ Also, for the first time in twenty-five years, cartels are targeting American law enforcement—the killing of ICE Special Agent Jaime Zapata became a game-changer in the landscape regarding America’s involvement in Mexico’s cartel problem.²⁹ Closely tied to the

Cartel and over the years, grew from the original 31-member enforcement unit to a stand-alone organized drug cartel with the classical hierarchical structure. Schroeder, *supra* note 22. In 2003, the Mexican Defense Ministry named Los Zetas the most formidable death squad that worked for organized crime in Mexican history. *Id.*

24. Sylvia M. Longmire & John P. Longmire IV, *Redefining Terrorism: Why Mexican Drug Trafficking is More than Just Organized Crime*, 1 J. STRATEGIC SEC. 35, 41 (2008).

25. *Id.*

26. STRATFOR GLOBAL INTELLIGENCE, ORGANIZED CRIME IN MEXICO 7 (2008), available at <http://www.scribd.com/doc/34049069/Organized-Crime-Series?olddoc=1>.

27. Phoenix, Arizona, witnessed an increase in the number of home invasions and kidnappings, which police attribute primarily to Mexican drug gangs. The 370 annual kidnappings place Phoenix right after Mexico City as having the highest rate of kidnappings in the world. *ABC Nightline: Kidnapping Capital of the U.S.A.* (ABC television broadcast Feb. 11, 2009), available at <http://abcnews.go.com/Blotter/story?id=6848672&page=1>.

28. Ben Conery & Jerry Seper, *Border Violence Threatens Americans*, WASH. TIMES, Apr. 1, 2010, <http://www.washingtontimes.com/news/2010/apr/1/violent-mexican-drug-gangs-pose-rising-risk-to-ame/?page=all>.

29. Press Release, U.S. Immigration and Customs Enforcement, ICE Special Agents Brutally Attacked; Suspects Sought by Authorities (Feb. 16, 2011) (available at <http://www.ice.gov/news/releases/1102/110216washingtondc.htm>). On February 15, 2011, U.S. Immigration and Customs Enforcement special agents, Jaime Zapata and Victor Avila, were forced off a highway between Monterrey and Mexico City while driving their vehicle, which displayed diplomatic license plates. *6 Zetas Arrested in Death of Agent*, SAN ANTONIO EXPRESS-NEWS, Feb. 24 2011, <http://www.mysanantonio.com/news/mexico/article/6-Zetas-arrested-in-death-of-agent-1028116.php>. Both of the agents identified themselves as U.S. federal agents. *Id.* Despite this, the shooters fired their automatic weapons,

drug cartel problem is the United States' problem with undocumented immigration, and it is the inevitable coexistence of these two issues that make combating the drug cartels in Mexico an integral part of a national security strategy.

C. *Analyzing Possible Solutions*

The death toll from the drug war since President Calderón took office keeps rising, and Calderón insists the billions of dollars and assault weapons that are smuggled into Mexico from the United States are largely responsible for the violence.³⁰ Following the arson of a casino that killed fifty-two people in the Mexican city of Monterrey, President Calderón blamed the United States stating that: “The economic power and firepower of the criminal organizations operating in Mexico and Latin America come from this endless demand for drugs in the United States.”³¹ Despite blaming the United States for the drug war, Mexico repeatedly displays resistance and discomfort with U.S. military interference, claiming Mexico–U.S. cooperation should work within the parameters of the law while fully respecting the Mexican Constitution.³² Since the Mexican Revolution and losing half of its territory to the United States in the 1850s, Mexico may be very sensitive to the idea of American involvement that might threaten its sovereignty.³³

It is necessary to examine both the steps the United States has taken to aid Mexico with its fight against the drug cartels as well as proposed legislation aimed at tackling the problem. It would be unrealistic and foolish to propose a one-sided solution to the problem; both countries should cooperate and work together in reaching a mutually satisfactory outcome.

Recently, the United States sent drones deep into Mexican territory to gather intelligence about drug trafficking, and the Obama administration

killing Zapata and leaving Avila critically wounded. *Id.* Members of the infamous Los Zetas cartel were charged for this crime. *Id.*

30. Andrew Baskin, *Mexican Casino Massacre Latest Sign of Cartel Violence*, 27 INT'L ENFORCEMENT L. REP. 976 (2011); William Booth, *Calderon Faults U.S. in Arson*, WASH. POST, Aug. 27, 2011, http://articles.boston.com/2011-08-27/news/29936064_1_drug-trafficking-drug-demand-rodrigo-medina.

31. Booth, *supra* note 30.

32. See Ricardo Alday, Letter to the Editor, *Abiding by Mexican Laws*, N.Y. TIMES, Aug. 18, 2011, <http://www.nytimes.com/2011/08/19/opinion/abiding-by-mexican-laws.html> (correcting the *New York Times*' statement that “the new efforts have been devised to get around Mexican laws that prohibit foreign military and police from operating on its soil” by declaring cooperation between both nations while observing the law is possible).

33. See Mark Mazzetti & Ginger Thompson, *U.S. Widens Role in Mexican Fight*, N.Y. TIMES, Aug. 25, 2011, <http://www.nytimes.com/2011/08/26/world/americas/26drugs.html?pagewanted=all> (mentioning the political tensions that still exist as a result of the Mexican–American War from 1846).

allowed Mexican authorities to cross the border when in pursuit of drug traffickers.³⁴ President Calderón, however, kept these operations secret to prevent protests from his legal and political opponents—indicative of the barrier posed by Mexico’s own disagreements over what role the United States should play in fighting the war against drug cartels.³⁵ The United States also supplied assistance to Mexico through the Merida Initiative, a \$1.5 billion aid package intended to strengthen Mexico’s security institutions.³⁶ Critics of the initiative, however, claim that it places too much emphasis on strengthening the military, which is replete with corruption and routinely commits serious human rights abuses, while not allocating enough resources to the police, courts, and prisons.³⁷ Concerns about the human rights problem prompted Congress to conditionally grant fifteen percent of the aid to the Mexican military and police.³⁸

The United States made another attempt to aid Mexico through Operation Fast and Furious, a sting run from 2009 through 2010 by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) aimed at permitting straw purchasers to buy weapons and transport them into Mexico.³⁹ The purpose of this sting was to trace gun routes and identify drug cartel kingpins who are the ultimate buyers.⁴⁰ However, as soon as the firearms crossed the border, ATF lost track of most of the 2,000 guns, and the agency’s worst fear was realized on December, 14, 2010, when U.S. Border Patrol agent Brian Terry was shot and killed by two of the suspect firearms in Arizona.⁴¹ A joint investigation by the Senate Judiciary Com-

34. *Id.* The United States also established both CIA and DEA outposts in Mexico, which are closely coordinated with the Mexican government. *Id.*

35. E. Eduardo Castillo, *Mexico’s Top Diplomat Defends US Drone Flights*, WASH. POST, Mar. 18, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/18/AR2011031800471.html>. As lawmakers criticized the practice of flying drones over Mexico, Foreign Relations Secretary Patricia Espinosa quickly assured the Mexican critics that “the drone flights do not violate Mexico’s sovereignty because they are ‘controlled’ by Mexico and are unarmed.” *Id.*

36. U.S. DEP’T OF STATE, MERIDA INITIATIVE: EXPANDING THE U.S./MEXICO PARTNERSHIP (Mar. 2011), available at <http://www.state.gov/documents/organization/158009.pdf>. The four pillars of the Merida Initiative are to: “(1) Disrupt Organized Criminal Groups, (2) Strengthen Institutions, (3) Build a 21st Century Border, and (4) Build Strong and Resilient Communities.” *Id.*

37. See *Mexico: Calderon Denies Military Impunity*, HUM. RTS. WATCH (Aug. 10, 2009), <http://www.hrw.org/news/2009/08/10/mexico-calderon-denies-military-impunity> (stating that in 2008 alone, Mexico received 1,230 complaints of human rights abuses by the military, six times more than the previous three years).

38. U.S. GOV’T ACCOUNTABILITY OFFICE, REPORT ON MERIDA INITIATIVE 19–20 (2010), available at <http://www.gao.gov/new.items/d10837.pdf>.

39. Sean Collins Walsh, *House Panel Members Joust over Border Gun Program*, N.Y. TIMES, July 1, 2011, <http://www.nytimes.com/2011/07/01/us/politics/01guns.html>.

40. *Id.*

41. *Id.*

mittee and the House Oversight and Government Reform Committee showed the sting was known and authorized at the highest level of the Department of Justice.⁴²

Despite Operation Fast and Furious, the United States continues to search for new measures to combat the effect on border security from the drug cartels' war. On March 3, 2011, Rep. Henry Cuellar (D-TX28) introduced H.R. 915, titled the Jaime Zapata Border Enforcement Security Task Force Act.⁴³ This Act seeks to establish a Border Enforcement Task Force program within Immigration and Customs Enforcement by "addressing and reducing border security threats and violence" through collaboration and enhanced information sharing among state, local, federal, and foreign law enforcement.⁴⁴ Its goal is to reduce drug trafficking and other illegal acts along and across U.S. borders.⁴⁵ The Act was passed by the Homeland Security Committee on September 21, 2011, and recommended for consideration by the House as a whole.⁴⁶ This legislative effort is evidence of a congressional attempt to secure the U.S. border by working in conjunction with Mexico's government, a crucial element to a lasting solution.

Not only is it a concern that cartel activities spill across the border, but there are also heavy implications for the United States if the drug cartel violence continues to escalate within Mexico. Protecting refugees who flee the violence imposes primary responsibility on the United States.⁴⁷ The United States is seeing a huge rise in cases of American citizens who have family living in Mexico, asking for help to bring these individuals legally into the United States.⁴⁸ The reality is that many Mexicans al-

42. STAFF OF S. COMM. ON THE JUDICIARY AND STAFF OF H. COMM. ON OVERSIGHT AND GOV'T REFORM, 112TH CONG., REP. ON THE DEPARTMENT OF JUSTICE'S OPERATION FAST AND FURIOUS: FUELING CARTEL VIOLENCE 6 (2011).

43. H.R. 915, 112th Cong. (2011).

44. *Id.*

45. *Id.*

46. H.R. 915: Jaime Zapata Border Enforcement Security Task Force Act, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h112-915> (last visited Feb. 4, 2012).

47. See David Luhnnow & Jose De Cordoba, *The Perilous State of Mexico*, WALL ST. J., Feb. 21, 2011, <http://online.wsj.com/article/SB123518102536038463.html> (recognizing that the United States is already "providing Mexico with some \$400 million a year for equipment and training to combat drug traffickers"). Gerardo Priego, a deputy from President Calderón's party, was quoted as saying, "[Mexico is] not yet a failed state, but if we don't take action soon, we will become one very soon." *Id.*

48. See Mary Beth Sheridan, *Drug War Sparks Exodus of Affluent Mexicans*, WASH. POST, Aug. 6, 2011, http://www.washingtonpost.com/world/national-security/drug-war-sparks-exodus-of-affluent-mexicans/2011/08/19/gIQA6OR1gJ_story.html (indicating that according to Henry Cisneros, a former mayor of San Antonio, the recent influx of immigrants is "the largest since the 1920s, the last great period of upheaval in Mexico").

ready crossed into the United States illegally and will continue to do so as long as the brutal violence is threatening their existence.⁴⁹ Mexican citizens with temporary border crossing cards may enter the United States and permanently move in with family members and friends. For those who do not have legal documentation, visas, or other paperwork, their hopes lie in filing for asylum.⁵⁰

Although the approval rate for Mexicans seeking asylum currently lies at two percent despite rampant violence at the borders, immigration courts are worried that an increase in the number of applications might completely overwhelm a system that is already overloaded.⁵¹ There are only two asylum offices that serve the border states, one in Houston and the second in Los Angeles.⁵² The United States currently admits roughly 75,000–80,000 refugees per year from countries all over the world,⁵³ but given that Mexico is our neighbor with potentially sensitive diplomatic relationships at stake, the future is uncertain if the status quo takes a turn for the worse.⁵⁴ Without a workable solution to curb drug cartel activity and the violence it breeds, the United States cannot execute an effective solution for immigration and border security.

III. CROSS-BORDER VIOLENCE MOVES FROM OUR BACKYARD INTO OUR HOUSE

A. *The Violence Spreads*

According to the United States Geological Survey (USGS), the U.S.–Mexico border extends approximately 1,933 miles,⁵⁵ not including an estimated thirty additional maritime miles.⁵⁶ Interestingly, this border

49. *Id.*

50. See Holly Buchanan, *Fleeing the Drug War Next Door: Drug-Related Violence as a Basis for Refugee Protection for Mexican-Asylum Seekers*, 27 *UTRECHT J. INT'L & EUR. L.* 28, 29 (2010) (featuring a discussion on the extent to which drug-related violence may constitute a basis for refugee status under various laws).

51. David North, *A Cloud No Larger Than a Man's Hand at the Southern Border*, CENTER FOR IMMIGR. STUD. (Mar. 23, 2011), <http://www.cis.org/north/mexican-asylum-seekers>. Currently, “the approval rate for Mexican applying for asylum . . . is only a little over [two] percent.” *Id.*

52. *Id.*

53. IMMIGRATION POLICY CNTR., REFUGEES: A FACT SHEET 2 (Oct. 2010), available at http://www.immigrationpolicy.org/sites/default/files/docs/Refugees_Fact_Sheet_102110.pdf.

54. See North, *supra* note 51.

55. JANICE CHERYL BEAVER, CONG. RESEARCH SERV., U.S. INTERNATIONAL BORDERS: BRIEF FACTS 1 (2006).

56. See *The International Boundary and Water Commission, Its Mission, Organization and Procedures for Solution of Boundary and Water Problems*, INT'L BOUNDARY & WATER COMM'N, http://www.ibwc.gov/About_Us/About_Us.html (last visited Feb. 5, 2012).

is the most crossed border in the world with approximately 350 million crossings each year.⁵⁷ Along with the massive border length, the increased possibility for the escalating violence occurring in Mexico to spill over into the United States is a concern.

While some assert that cities along the U.S.–Mexico border are safe,⁵⁸ others state: “Living and conducting business in a [United States] border county is tantamount to living in a war zone in which civil authorities, law enforcement agencies as well as citizens are under attack around the clock.”⁵⁹ What is not arguable, however, is the escalation of violence occurring in Mexico where an estimated 42,000 people died “since President Felipe Calderón declared war on drug mafias” in 2006.⁶⁰ When President Calderón implemented this hardline stance against drug cartels,⁶¹ the “[v]iolence exploded across the nation and the number of murders soared.”⁶² For example, during 2008 there were approximately twenty murders in El Paso, Texas, but just across the border, in Ciudad Juarez, the murder rate differed significantly: a reported 1,607 murders the same year.⁶³ Similarly, in Monterrey, Mexico, which had an estimated 1,000

(listing eighteen maritime miles in the Pacific Ocean and an additional twelve miles along the Gulf of Mexico).

57. Bernd Debusmann, *The U.S. Border and Immigration Reform*, REUTERS (Oct. 21, 2011), <http://www.reuters.com/article/2011/10/21/idUS234388556220111021>.

58. *Compare id.* (arguing that in a state containing 23 million people, such as Texas, sixty-six incidents over a seventeen-month period translates into approximately 3.9 violent incidents each month, and hence does not constitute “much of a war”), with *On the Border and in the Line of Fire: U.S. Law Enforcement, Homeland Security and Drug Cartel Violence: Hearing Before the Subcomm. on Oversight, Investigations, and Mgmt.*, 112th Cong. (2011) [hereinafter *On the Border and in the Line of Fire*] (statement of Rep. Michael McCaul, Chairman) (stating border security is not “better now than it ever has been” in direct contradiction to statements made by U.S. Secretary of Homeland Security, Janet Napolitano).

59. Debusmann, *supra* note 57.

60. *See id.* (providing that President Felipe Calderón declared war on the drug cartels in 2006). The death toll associated with the war against drug cartels seems to be a moving target that adds up to over 2,000 fatalities per month. *See id.* (estimating the number of violent cartel-related deaths at 42,000 in October 2011); Schroeder, *supra* note 22, at 27 (raising the body count to more than 30,000 in March 2011); Jana Schroeder, *Cash Wars II: Mexico's Drug Money Addiction*, HOMELAND SEC. TODAY, Feb. 2011, at 38 (tallying over 28,000 killed as of February 2011).

61. *See Mexican Drug Wars Spread North into U.S.*, MSNBC, Apr. 18, 2009, available at http://www.msnbc.msn.com/id/30282193/ns/us_news-crime_and_courts/t/mexican-drug-wars-spread-north-us/ (denoting some “small victories” occurring under President Calderón where leaders of drug cartels were toppled after arrests, extraditions from Mexico, and resulting convictions).

62. *See* Charles Bowden, *The Crazy Place*, VA. Q. REV., Fall 2009, at 4, available at 2009 WL 20845650 (describing the escalating violence in the border city Juarez, since the inception of the war on drug cartels).

63. *Id.*

drug-related murders in 2004, the murder rate increased fivefold in just four years, recording 5,300 murders during 2008.⁶⁴ Monterrey began counting murders by the week due to the increased numbers and reported, at one time, 167 drug-related murders in one week.⁶⁵ The statistics provide a glimpse into the escalation of violence across Mexico, particularly in cities and border regions close to the U.S. border.⁶⁶

Many assert the violence in Mexico is in fact moving north into the United States, and the brutal assaults, murders, and kidnappings directly affect Texas, Arizona, New Mexico, and California—the four U.S. border states.⁶⁷ In several of these states, drug cartel-related violence reportedly increased, with Arizona mentioned as one state “bearing the brunt of smuggling-related violence.”⁶⁸ Cities throughout Texas and California are also mentioned as locations where Americans are killed as a result of Mexico’s drug war.⁶⁹ In 2011, the head of the Texas Department of Public Safety stated that his agency identified six incidents of violence “directly related to the Mexican cartels,” including murders, assaults, shootings, and kidnappings.⁷⁰ It is argued that “violence and criminality are moving north at a rapid pace.”⁷¹

One commentator used Phoenix, Arizona, as an example where the violence and upheaval in Mexico impacts states north of the border.⁷² “One warning sign is Phoenix . . . replac[ing] Miami as the prime gateway for illegal drugs entering the United States. Cartel chaos in Mexico is

64. Quinones, *supra* note 18.

65. *Id.*

66. See Michael Webster, *American Death Toll in Mexico’s Drug War Surges*, AMER. CHRON., Dec. 15, 2008, available at <http://www.americanchronicle.com/articles/view/84945> (warning of the alarming violence experienced by American citizens including harassment and killings “particularly in border areas including Nuevo Laredo, Matamoros, Reynosa, Juarez, Mexicali, Tijuana and most all border towns”).

67. See Randal C. Archibold, *Mexican Drug Cartel Violence Spills Over, Alarming U.S.*, N.Y. TIMES, Mar. 22, 2009, available at <http://www.nytimes.com/2009/03/23/us/23border.html?pagewanted=all> (“[C]artels and other drug trafficking organizations have extended their reach across the United States and into Canada.”); Quinones, *supra* note 18 (presenting reports of increased kidnappings in a United States city as a result of the surge in Mexican cartels’ drug related violence); Webster, *supra* note 66 (revealing several cases of violence, kidnapping, and murders of Americans believed to be associated with the “alarming number of people . . . killed in drug related violence in Mexico”).

68. Archibold, *supra* note 67.

69. Webster, *supra* note 66.

70. *On the Border and in the Line of Fire*, *supra* note 58 (statement of Steven C. McCraw, Dir. Tex. Dep’t of Public Safety).

71. Quinones, *supra* note 18.

72. See *id.* (observing the increased cartel-related violence in cities on both sides of the border).

pushing bad elements north along with the [drugs]⁷³ Phoenix experienced a rise in kidnappings over the last decade, with the majority of crimes reportedly stemming from the Mexican city of Sinaloa.⁷⁴ One report calculated approximately 1,000 kidnappings from 2005 to 2008 tied to “spillover violence” from Mexico.⁷⁵ In one incident, Mexican nationals reportedly dressed up as Phoenix police officers, burst into a drug dealer’s home with high-powered weapons and killed him in order to steal his drugs.⁷⁶ In 2009, federal officials blamed the drug war for the increased “wave of drug crime the police suspect is tied to the . . . [Mexican] drug cartels.”⁷⁷

Another Arizona city situated just one hour’s drive north of Mexico experienced a rise in violence that is suspected to be directly tied to the bloody battles of Mexican drug cartels.⁷⁸ In Tucson, Arizona, approximately 200 home invasions occurred in 2008, of which over seventy-five percent were tied to drug cartels.⁷⁹ In one instance, drug cartel members invaded the wrong house and shot and injured a woman watching television in her home.⁸⁰

There is also evidence that cities as far away from the border as Birmingham, Alabama, feel the effects of Mexico’s violence. In 2008 the bodies of five men were found with their throats slashed.⁸¹ Police believe they were killed as the result of a drug debt owed to a cartel faction in Atlanta.⁸² The Justice Department further identified cities such as Boston, Massachusetts, and Billings, Montana, as cities where Mexican drug cartels maintain distribution and supply networks.⁸³ Given the networks long established connections among different factions of Mexican drug cartels that reach American cities in virtually every contiguous U.S. state, the cartel violence may continue into the heartland of America unless these networks are disrupted.⁸⁴

73. *Id.*

74. *See id.* (reporting 366 kidnappings in 2008 when kidnapping reports ten years earlier totaled 96).

75. *Mexican Drug Wars Spread North into U.S.*, *supra* note 61.

76. Quinones, *supra* note 18.

77. Archibold, *supra* note 67.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Mexican Drug Wars Spread North into U.S.*, *supra* note 61.

82. *Id.*

83. Archibold, *supra* note 67.

84. *See* BARRY R. McCAFFREY & ROBERT H. SCALES, COLGEN, TEXAS BORDER SECURITY: A STRATEGIC MILITARY ASSESSMENT 2 (Sept. 2011), available at <http://mccaughouse.gov/uploads/Final%20Report-Texas%20Border%20Security.pdf> (showing that the

B. *New Leaders Implement Change*

Following Mexico's independence from Spain in 1821, the United States recognized Mexico as a nation and quickly forged diplomatic relations.⁸⁵ Cooperation between the United States and Mexico is evident through agreements, joint work with other countries, and treaties.⁸⁶ As such, it is no surprise that the United States and Mexico work together to fight the drug violence issues facing both countries.⁸⁷

Although both nations' capital cities, Washington, D.C. and Mexico City, are far removed from the border region, presidents of both countries pursue active roles in combating drug cartel-related violence. Border control and border violence has again become an important topic, especially during an election year and among the candidates campaigning.⁸⁸ President Bush began some initiatives to combat the violence, which were continued by President Obama upon his election.⁸⁹ One such initiative was the Secure Fence Act, signed into law by President Bush in 2006.⁹⁰ The law attempted to combat drugs by creating operational control over U.S. borders in prevention of "all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, *narcotics, and other contraband.*"⁹¹ To ensure the objectives in the Secure Fence Act, U.S. Border Patrol was increased to approximately 20,000 agents during President Bush's administration.⁹² This build-up of forces continued under President Obama's administration.⁹³

"Flow of Transnational Crime & Violence" infiltrates every state in the contiguous forty-eight states).

85. GEORGE LOCKHART RIVES, *THE UNITED STATES AND MEXICO, 1821-1848*, Vol. I, 45 (1913).

86. See *North American Free Trade Agreement*, OFF. OF THE U.S. TRADE REP., <http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta> (describing the trade agreement signed in 1994 that promoted trade between countries in North America).

87. Cf. *Mexican Drug Wars Spread North into U.S.*, *supra* note 61 (naming a cooperation method—routine handovers—from Mexico to the United States via extradition to try to convict drug cartel leaders).

88. Cf. Debusmann, *supra* note 57 ("The stark contrast between the two [differing political] versions speaks volumes about the war of words generated by the issues of immigration and border security during an election campaign.").

89. See *Mexican Drug Wars Spread North into U.S.*, *supra* note 61 (naming a \$1.3 billion "Bush-era initiative" that provides drug-fighting equipment to Mexico as being continued by President Barack Obama).

90. Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638.

91. *Id.* at § 2(b) (emphasis added).

92. Debusmann, *supra* note 57.

93. *Id.*

Another proposal continued under the Obama administration is the Merida Initiative approved by Congress in 2008.⁹⁴ The Bureau of International Narcotics and Law Enforcement stated that the Merida Initiative demonstrated the United States' partnership with countries such as Mexico necessary to confront criminal organizations and to increase "domestic efforts to reduce drug demand . . . and [to] confront gangs and criminal organizations."⁹⁵ It proposed to "provide equipment and training to support law enforcement operations and technical assistance for long-term reform and oversight of security agencies."⁹⁶ Under the initiative, Congress approved monetary sums to be provided to Mexico in the amounts of \$400 million in 2008, \$300 million in 2009, and an estimated \$450 million in 2010.⁹⁷ These funds would help supply Mexican forces "with high-end equipment from helicopters to surveillance technology" for use in fighting drug cartels.⁹⁸ Presently, there are both proponents and critics of the initiative based on its perceived positive effects or lack thereof.

While at the Summit of the Americas in 2009, President Obama acknowledged partial responsibility for the violence sweeping across Mexico and vowed to confront the drug cartels.⁹⁹ He also announced plans to increase federal agents located along the U.S. border.¹⁰⁰ During the same year, U.S. Attorney General Eric Holder announced the arrest of more than 750 people, resulting from "Operation Xcellerator" that targeted one cartel identified as the Sinaloa cartel, which was reported as one of "Mexico's most powerful drug organization[s]."¹⁰¹

C. *State-Led Solutions*

Several solutions have been proposed to combat violence experienced in the United States that may stem from Mexico. Some assert that tougher immigration reform may help battle the violence while other states passed laws to protect their own citizens, drawing ire from the federal government;¹⁰² additional commentary addresses individual police

94. U.S. DEP'T OF STATE, *supra* note 36.

95. *Id.*

96. *Id.*

97. *Id.*

98. Quinones, *supra* note 18.

99. Leonard Doyle, *Barack Obama Vows to Confront Mexican Drug Cartels*, THE TELEGRAPH (London), Apr. 17, 2009, <http://www.telegraph.co.uk/news/worldnews/central-americaandthecaribbean/mexico/5168436/Barack-Obama-vows-to-confront-Mexican-drug-cartels.html>.

100. Archibold, *supra* note 67.

101. *Mexican Drug Wars Spread North into U.S.*, *supra* note 61.

102. Jerry Markon, *Obama Administration Widens Challenges to State Immigration Laws*, WASH. POST, Sept. 29, 2011, http://www.washingtonpost.com/politics/obama-administration-widens-challenges-to-state-immigration-laws/2011/09/28/gIQA8HgR7K_story.

departments (like in Phoenix, Arizona) that may be capable of managing the violence despite an increase in kidnappings.¹⁰³ At the same time, commentators warn that “Americans would be foolhardy to imagine capable police departments like Phoenix’s going for long without cracking under the pressure.”¹⁰⁴ Thus, introducing and passing laws focused on protecting American citizens from violence may be a viable option.

In addition to battling violence that may cross into the United States, many Mexicans themselves come into the United States and will continue to do so to escape the brutal violence that threatens their daily lives. For example, El Paso received an influx of 30,000 Mexican citizens in just two years who sought to leave their hometown of Ciudad Juarez,¹⁰⁵ christened the “murder capital of the world.”¹⁰⁶

Arizona is mentioned as the state most affected by the increased drug cartel violence in Mexico.¹⁰⁷ Some reports assert that drug cartels like to hide in Hispanic Communities.¹⁰⁸ Growing communities that include Hispanics are noted as one factor that may provide cover for drug traffickers expanding into American cities.¹⁰⁹ Cartel-related violence and the influx of immigrants combined with the federal government’s inability to effectively manage the situation caused states like Arizona to pass laws that address border and immigration issues. In 2010, Arizona passed what was then the strictest anti-illegal immigration legislation in the country.¹¹⁰ The Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070) required all non-U.S. citizens to carry their registration documents at all times and gave state law enforcement officers the authority to ask for such documentation if they had reasonable suspicion that a suspect was an undocumented immigrant.¹¹¹ Although the federal

html (discussing federal litigation that has been or could be filed against state immigration statutes in Arizona, Alabama, Utah, Georgia, Indiana, and South Carolina).

103. Quinones, *supra* note 18.

104. *Id.*

105. James C. McKinley, *Fleeing Drug Violence, Mexicans Pour into U.S.*, N.Y. TIMES, Apr. 18, 2010, <http://www.nytimes.com/2010/04/18/us/18border.html?pagewanted=all>.

106. Patrick Manning, *Ciudad Juarez Murder Rate, Tipping Over 1,000 in 2011, Shows Signs of Abating*, FOX NEWS LATINO, June 24, 2011, <http://latino.foxnews.com/latino/news/2011/06/24/cuidad-juarez-murder-rate-tipping-over-1000-in-2011-shows-signs-improvement/> (noting Juarez is often called the “murder capital of the world” because it has the highest per capita rate of murder in the world).

107. See Archibold, *supra* note 67.

108. *Mexican Drug Wars Spread North into U.S.*, *supra* note 61.

109. *Id.*

110. S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010); Alia Beard Rau, *Supreme Court to Look at Arizona Immigration Law*, THE ARIZ. REPUBLIC, Dec. 12, 2011, <http://www.azcentral.com/arizonarepublic/news/articles/2011/12/12/20111212Supreme-Court-Arizona-immigration-law.html>.

111. S.B. 1070.

government filed suit against Arizona,¹¹² and the Ninth Circuit blocked several portions of the new law, other states such as Alabama used SB 1070 as a model to enact similar measures.¹¹³ The U.S. Supreme Court will hear Arizona's appeal in 2012, and the Court's decision is expected to clarify whether states can enforce immigration laws.¹¹⁴

IV. TRAFFICKING IN VARIOUS INDUSTRIES—THE NEW ORGANIZED CRIME

The previously described competition among drug cartels does not stop with their violence against each other within Mexico and beyond. It directly caused the death of innocent bystanders on both sides of the border and resulted in the kidnapping and murdering of others being used as pawns in this high stakes game of drug-fueled *Risk*.¹¹⁵ Drug organizations are not content to produce and sell narcotics in Mexico alone; instead, they move their product across Mexico's northern border to appease American consumers who are more than willing to purchase their goods at any cost. This section analyzes the traditional illegal "traffic" in addition to the ramifications of trafficking illegal drugs and humans across the border.

A. *Illegal Northbound "Traffic"*

Whether transported across the border by a "coyote"¹¹⁶ or arriving on their own accord, many people relocate within American borders illegally, which presents issues for federal and state governments.

The fact remains that the current conditions in Mexico, including a low standard of living, limited economic opportunity, and rampant drug violence, give citizens even more incentive to move across the border and escape the poverty and violence. Here, immigrants have the potential to enjoy more political freedoms, educational opportunities, and unmatched

112. See generally *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2010), *cert. granted*, 565 U.S. __ (2011).

113. Beard Rau, *supra* note 110.

114. *Id.* For further analysis of the Arizona law, see L. Darnell Weeden, *The Supremacy Clause Preemption Rationale Reasonably Restrains an Individual State Pursuing Its Own Separate but Unequal Immigration Policy*, 14 SCHOLAR __ (2012) (Part V).

115. The board game produced by Hasbro, featuring the tagline "The Game of Strategic Conquest." Deploying and using their armies, players attempt to capture territories from their competitors with the ultimate goal of global domination. For more information, see <http://www.hasbro.com/risk/>.

116. See Devin Dwyer, *Smuggled by 'Coyotes': An Immigrant's Journey to Arizona*, ABC NEWS (July 29, 2010), <http://abcnews.go.com/Politics/arizona-immigration-smuggled-coyotes-search-life/story?id=10759682#.Ty7WQEOVwXg> (detailing the role of a "coyote" in smuggling individuals across the border).

economic prosperity.¹¹⁷ These factors, combined with a nearly 2,000-mile border that is far from “controlled,” practically invite people to cross the border either legally or illegally.¹¹⁸ Even with 8,000 Border Patrol agents supported by state agencies such as the Texas Department of Public Safety, those on the front lines admit the border is porous, and the current methods employed simply do not do enough.¹¹⁹

B. *Illegal Drug Trafficking*

The simple allegation that the United States has a drug problem is a drastic understatement. Data from 2008 provided by the National Drug Intelligence Center estimates the illegal drug industry to be a \$215 billion business with 14.2% of Americans age twelve and older having used within the last year.¹²⁰ The same report lists Mexican drug trafficking organizations (DTOs) as operating more effectively than those from other countries, distributing the most product across the most territories in the United States.¹²¹ They have even taken control of territories previously run by Colombian cartels, and many Dominican cartels switched their supply lines from Colombian to Mexican sources.¹²² While it is difficult to accurately estimate the volume of drugs moving across the border in any given year, federal law enforcement agents estimate they seize between ten and twenty percent of such drugs.¹²³ To illustrate, agents successfully seized roughly 1,626 metric tons in the first eleven months of 2009; conservative figures indicate that another 6,000 to 14,000 metric

117. Bill Piatt, *Immigration Reform from the Outside In*, 10 SCHOLAR 269, 282 (2008).

118. John Burnett, *Texas Governor Wages Own Battle Along Border*, NPR (July 5, 2011), <http://www.npr.org/2011/07/05/137445254/texas-governor-wages-own-battle-along-border>. “Earlier this year, the Government Accountability Office issued a report that the Border Patrol has achieved operational control of [forty-four] percent of the southern border. Of that, only [fifteen] percent is under full control.” *Id.*

119. *Id.* Stacy Holland, a captain in the Texas Department of Public Safety’s aircraft section commented, “[T]o suggest that the Southwestern border is secure is absolutely ridiculous. . . . There’s nothing to deter a smuggler from getting a load across, getting on the highway and going into the U.S.” *Id.*

120. U.S. DEPT. OF JUSTICE–NAT’L DRUG INTELLIGENCE CENTER, NATIONAL DRUG THREAT ASSESSMENT 3 (2010), available at <http://www.justice.gov/ndic/pubs38/38661/38661p.pdf>.

121. *Id.* at 9. “[Mexican DTOs] are active in more cities throughout the country than any other DTOs . . . [and] control most of the wholesale cocaine, heroin, and methamphetamine distribution in the United States as well as much of the marijuana distribution.” *Id.*

122. *Id.*

123. MAJORITY STAFF, H. COMM. ON HOMELAND SEC., SUBCOMM. ON INVESTIGATIONS, A LINE IN THE SAND: CONFRONTING THE THREAT AT THE SOUTHWEST BORDER 3 (2010), http://www.house.gov/sites/members/tx10_mccaul/pdf/Investigaions-Border-Report.pdf.

tons of illegal drugs safely crossed the border into the hands of dealers and consumers around the United States.¹²⁴

The bottom line is that drugs are big business for individuals operating the cartels, and the United States is a major customer.¹²⁵ Even though law enforcement agencies in both the United States and Mexico are waging a “war on drugs,” the potential benefits continue to outweigh the risks, and the cartels are realizing massive profits. This illicit drug trade pumps an estimated \$17.2 billion into Mexico’s economy, ranking it the third largest source of foreign revenue.¹²⁶ Just as some drugs are referred to as “gateway drugs” because they open the door to heavier drug use for many users,¹²⁷ the flow of illegal drugs across the U.S.–Mexico border now results in a host of crimes and violence that furthers the overall operation.¹²⁸ Such atrocities include kidnapping and murder as well as documented incidents of recruiting young American children to work as drug runners.¹²⁹

124. U.S. DEPT. OF JUSTICE–NAT’L DRUG INTELLIGENCE CENTER, *supra* note 120. More than ninety-seven percent of the illegal drugs seized by U.S. authorities were smuggled via some sort of overland border crossing, as opposed to sea or air smuggling attempts. *Id.*

125. American drug use affects people from all walks of life from the homeless to corporate CEOs and celebrities. For example, Nikki Sixx, bass player for Motley Crue, and Slash, former guitarist for Guns n’ Roses, both wrote books in 2007 that chronicled their addictions to heroin. Sixx even explained how the band arranged for drug dealers to follow them across Texas during their 1987 U.S. tour. NIKKI SIXX WITH IAN GIHNS, *THE HEROIN DIARIES: A YEAR IN THE LIFE OF A SHATTERED ROCKSTAR* 186 (2007); *see also* SLASH WITH ANTHONY BOZZA, *SLASH* (2007) (detailing the drug use of famed guitarist Slash).

126. Palash R. Ghosh, *In Defiance of Ceaseless Violence, Mexico’s Economy Flourishing: Lord Abbett*, INT’L BUS. TIMES, Oct. 19, 2010, <http://www.ibtimes.com/articles/73560/20101019/mexico-crime-drugs-gdp-rates-jobs.htm>. Drug revenue ranks only behind oil and income sent “home” from migrant workers currently in the U.S. *Id.*

127. *Alcohol and Tobacco: Two Dangerous Gateway Drugs*, DRUG WATCH INT’L, http://www.drugwatch.org/Alcohol%20&%20Tobacco_Gateway%20Drugs.htm (last updated May 15, 2001).

128. McCAFFREY & SCALES, *supra* note 84, at 2. This report, displayed prominently on Rep. Michael McCaul’s Congressional website, includes the following crimes as flowing across the border: “Murder, Assassination, Deadly Assaults, Kidnapping, Torture, Extortion, Corruption, Robbery, Human Smuggling, Sex Trade, ‘Special Interest Aliens’ (SIA), Cartels/Criminal Ganges, Cash Smuggling, [and] Drug Smuggling (Marijuana, Cocaine, Methamphetamine, Heroin, MDMA, Prescription Drugs).” *Id.*

129. Jim Forsyth, *Mexican Drug Cartels Recruiting Texas Children*, MSNBC (Oct. 17, 2011), http://www.msnbc.msn.com/id/44933451/ns/us_news-crime_and_courts/t/mexican-drug-cartels-recruiting-texas-children/#.Ty8TJ0oVwXg. An example of children being used by a Mexican drug cartel includes a twelve-year-old boy who was arrested in a stolen truck that was carrying 800 pounds of marijuana. *Id.*

C. Human Trafficking

Not only have the drug cartels kidnapped children to work as drug runners, but they also turned kidnapping into a regular stream of profit within their “portfolio” of organized crime.¹³⁰ Sadly, stories like the one behind *United States v. Carreto*¹³¹ (where women were smuggled from Mexico into the United States and forced to work as prostitutes) are becoming more commonplace.¹³² The Department of Justice released a report in 2008 that estimated 14,500 to 17,500 people are trafficked into the United States annually; an earlier report alleged that twenty-five percent of all victims trafficked into this country wind up in Texas.¹³³ In Houston alone (one of the busiest cities of sex trafficking in the country), it is estimated that thousands of women were taken there to work as prostitutes until they paid a debt to the individuals who helped them come to America.¹³⁴

Those who deal in sex trafficking typically do their biggest business on the weekend of the Super Bowl, with thousands of people converging on a large city looking to spend money.¹³⁵ Although fictional stories, Hollywood movies, such as *Taken*¹³⁶ and *Hostel*,¹³⁷ highlight the gruesome atrocities that accompany kidnappings and the sex trafficking business. Former Secretary of State Condoleezza Rice, among others, called human trafficking “a modern-day form of slavery” that entraps millions of people.¹³⁸ This heinous practice is yet another example of why a meaningful border security solution must be discovered.

130. Jane Schroeder, *supra* note 60, at 39–40. Edgardo Buscaglia, an expert on organized crime, observed that the drug cartels now generate income from at least twenty-two different kinds of crimes, including kidnapping, smuggling, extortion, and trafficking of humans and weapons. *Id.*

131. 583 F.3d 152 (2d Cir. 2009).

132. *U.S. v. Carreto*, 583 F.3d 152, 154–55 (2d Cir. 2009). “Defendants used violence, manipulation, and threats of physical restriction to control their victims. Defendants purposefully seduced women, including some who were under eighteen years of age . . .” *Id.*

133. Mimi Swartz, *The Lost Girls*, TEXAS MONTHLY, April 2010, <http://www.texasmonthly.com/2010-04-01/feature3.php>.

134. *Id.*

135. Michelle Goldberg, *The Super Bowl of Sex Trafficking*, THE DAILY BEAST (Jan. 31, 2011), <http://www.thedailybeast.com/articles/2011/01/31/super-bowl-and-sex-trafficking-what-texas-is-doing-to-combat-surge.html>. Florida’s Department of Children and Families rescued twenty-four children taken to Tampa for trafficking purposes in conjunction with Super Bowl XLIII. *Id.* Super Bowl XLV in Dallas was expected to have an even greater volume of such activity coinciding with the event because of the city’s proximity to the border. *Id.*

136. *TAKEN* (20th Century Fox 2008).

137. *HOSTEL* (Lions Gate Films 2005).

138. Rocio Garza, *Addressing Human Trafficking Along the United States–Mexico Border: The Need for a Bilateral Partnership*, 19 CARDOZO J. INT’L & COMP. L. 413, 415

D. *Potential Terrorist Activity*

Since 9/11, the United States views foreign policy and international relations through a national security lens, and a similar approach is relevant when considering the issues the United States faces with its southern neighbor. Although neither the Mexican government, nor the drug cartels were involved in the historic attacks on our country a decade ago, evidence may show collusion between the cartels and known terrorist groups in recent years.¹³⁹ One report links the terrorist group Hezbollah to cartels in Tijuana and other border towns where they are training the cartels in explosives, firearms, money laundering, and tunnel building in exchange for sizable cash payments.¹⁴⁰ These concerns were echoed by a memo produced by the Tucson Police Department leaked to the public in 2010—this memo discussed the implications of an operative’s arrest in Tijuana and Hezbollah’s overall presence in Mexico with operations along the U.S.–Mexico border.¹⁴¹

(2011). “As of June 2010, the United Nations estimated that ‘there are at least 12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time.’” *Id.*

139. Mickey McCarter, *Saudi Ambassador Plot Spotlights Growing Drug Cartel-Terrorism Nexus*, HOMELAND SEC. TODAY, Oct. 17, 2011, <http://www.hstoday.us/briefings/today-s-news-analysis/single-article/saudi-ambassador-plot-spotlights-growing-drug-cartel-terrorism-nexus/2fe2d6348b95d7107cbe0d13c4258dc4.html>. This recent incident involved Iranians seeking to assassinate the ambassador to the United States from Saudi Arabia who contacted a clandestine Drug Enforcement Administration (DEA) agent planted within a Mexican drug cartel. *Id.*

140. *Terrorist Group Setting Up Shop Near Border*, 10NEWS (May 4, 2011), <http://www.10news.com/news/27780427/detail.html>; Grace Wyler, *Hezbollah Hooks Up with Mexican Drug Cartels*, BUS. INSIDER (July 14, 2011), http://articles.businessinsider.com/2011-07-14/politics/30060540_1_islamic-militants-hezbollah-cartels.

141. TUCSON POLICE DEP’T, INTERNATIONAL TERRORISM SITUATIONAL AWARENESS: HEZBOLLAH 2–3 (Sept. 2010), available at <http://info.publicintellgence.net/AZ-Hezbollah.pdf>. Hezbollah is an international paramilitary group with a primary goal of overthrowing any rule or occupation by Israel. “Due to the U.S.’s political and financial support of Israel, Hezbollah regards our nation as a viable target.” *Id.* at 1. Authorities believed the operative, Nasr was working to better establish Hezbollah in Latin America and Mexico. *Id.*

While there is no internationally agreed-upon definition of terrorism,¹⁴² Congress defined “international terrorism” in the Patriot Act in 2001:¹⁴³

- [T]he term “international terrorism” means activities that—
- (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
 - (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum¹⁴⁴

Applying this definition to the actions of Mexican drug cartels, some might classify their activity as terrorism—their actions certainly involve violence and criminal activity (meeting part A of the definition) that takes place primarily in Mexico (part C), and such activity arguably intimidates the general public and compels governments to act in response to kidnappings and murders (satisfying part B).¹⁴⁵ Texas Congressman Michael McCaul even introduced legislation that would explicitly label Mexican drug cartels as terrorist organizations.¹⁴⁶

From a policy perspective, labeling the Mexican drug cartels as terrorist organizations may not be the best message sent by our federal government. Doing so would indicate that the law of war is the best applicable

142. JEFFREY F. ADDICOTT, *TERRORISM LAW: MATERIALS, CASES, COMMENTS* 1–2 (6th ed. 2011). “[T]he latest attempt by the United Nations Sub-Commission on Human Rights to come up with a definition of terrorism has met similar troubles. . . . [I]n order to reach consensus amongst the committee members on its first progress report, the special rapporteur had to delete the entire definition relating to terrorism.” *Id.* at 2.

143. *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001*, Pub. L. No. 107-56, 115 Stat. 272, Sec. 802 (codified as amended at 18 U.S.C. § 2331 (2006)).

144. 18 U.S.C. § 2331(1) (2006).

145. *See generally id.* (reading the statutory definition of “terrorism” and analyzing its use with the actions of the drug cartels).

146. H.R. 1270, 112th Cong. (2011).

rule of law instead of international or domestic criminal law.¹⁴⁷ The Center for Terrorism Law issued a report in 2011 addressing this question and reached the following conclusion:

The United States should continue with descriptive labels that concentrate on the criminal activity of the Mexican drug cartels. The term *terrorism* should not be used. If the label of *terrorism* is applied, it should originate from the Mexican government and be set out in clear definitional terms from their perspective.¹⁴⁸

V. CONCLUSION

Various solutions are suggested by politicians, policy experts, and special interest groups to combat the flow of illegal immigration and trafficking of humans and drugs across the border. These proposals range from legalizing drugs¹⁴⁹ and providing “amnesty”¹⁵⁰ to the opposite end of the spectrum that includes deporting all illegals,¹⁵¹ building a fence across

147. JEFFREY F. ADDICOTT, SHOULD MEXICAN DRUG CARTELS BE LABELED AS TERRORISTS?, CENTER FOR TERRORISM L. REP. 63 at 3 (June 1, 2011) (on file with the Center for Terrorism Law).

148. *Id.*

149. *See, e.g., Why Legalize Drugs*, LAW ENFORCEMENT AGAINST PROHIBITION, <http://www.leap.cc/about/why-legalize-drugs/> (last visited Feb. 5, 2012) (arguing the capture and punishment of drug dealers and users does not decrease the number of drug offenses still being committed, but legalizing drugs would allow law enforcement more time and resources to focus on violent crimes); Elizabeth Dickinson, *Legalizing Drugs Won't Stop Mexico's Brutal Cartels*, FOREIGN POL'Y (Jun. 22, 2011), http://www.foreignpolicy.com/articles/2011/06/22/legalizing_drugs_wont_stop_mexicos_brutal_cartels (citing figures indicating that while the drug trade slowed, violence increased exponentially); *Ron Paul Calls for End to Drug War*, YOUTUBE (Sept. 27, 2007), <http://www.youtube.com/watch?v=o8S8N2OG7sU> (claiming the “War on Drugs” is racist, wasteful of tax dollars, and unwinnable); Ravi Somaiya, *Legalize Drugs, Says Mexican Ex-President*, THE DAILY BEAST (Aug. 10, 2010), <http://www.thedailybeast.com/newsweek/2010/08/10/ex-mexican-president-adds-his-voice-to-calls-to-legalize-drugs.html> (discussing former President of Mexico Vicente Fox's recommendation to legalize drugs because “radical prohibition strategies have never worked”).

150. U.S. IMMIGRATION AMNESTY, <http://www.usamnesty.org/> (last visited Feb. 5, 2012). This group includes the following quote from President Obama on its homepage, highlighting the current administration's preference for amnesty:

We are not going to ship back 12 million people . . . as a practical matter. We would have to take all our law enforcement that we have available . . . [to] put people on buses, and rip families apart, and that's not who we are, that's not what America is about. So what I've proposed . . . is you say we're going to bring these folks out of the shadows. We're going to make them pay a fine . . . learn English . . . go to the back of the line . . . but they will have a pathway to citizenship over the course of 10 years.

Id.

151. Piatt, *supra* note 117 (listing deportation along with a host of other proposed solutions advocated by individuals favoring a closed border).

our entire southern border,¹⁵² redefining birthright citizenship to exclude children born in the United States to undocumented immigrants,¹⁵³ and enacting stiffer regulations and penalties on U.S. employers.¹⁵⁴ While such proposals tend to dominate the mainstream media's coverage of border security issues, they may not yield tangible results.

Perhaps, another solution could be a national ID card.¹⁵⁵ Most undocumented immigrants fit into one of two categories: either they avoided the border checkpoints, or they overstayed an expired visa.¹⁵⁶ Because the current "paper blue and white social security card . . . is probably the simplest document to forge in the history of documents,"¹⁵⁷ some U.S. Senators suggested revamping the social security card into a higher-tech version that could double as a national ID card.¹⁵⁸ Senator

152. Julia Preston, *Some Cheer Border Fence as Others Ponder the Cost*, N.Y. TIMES, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/us/politics/border-fence-raises-cost-questions.html> (describing the border fence proposals supported by Presidential candidates Michelle Bachmann and Herman Cain).

153. Adam Klawonn, *Arizona's Next Immigration Target: Children of Illegals*, TIME, Jun. 11, 2011, <http://www.time.com/time/nation/article/0,8599,1996064,00.html> (detailing the legislative effort to redefine birthright citizenship in Arizona). Birthright Citizenship Act of 2009, H.R. 1868, 111th Cong. (2009). Birthright Citizenship Act of 2007, H.R. 1940, 110th Cong. (2007); Former Representative (and current Governor of Georgia) Nathan Deal also introduced similar legislation in Congress. See, e.g., Citizenship Reform Act of 2005, H.R. 698, 109th Cong. (2005).

154. H.R. 1587, 109th Cong. (2005). This bill, sponsored by Rep. Tom Tancredo (R-Colo.), proposed to prohibit employers from hiring non-U.S. citizens unless they first actively recruited American citizens for any job openings and also required companies to participate in an "employment eligibility verification" program. *Id.*

155. Jeffrey F. Addicott, *Calls for National Identity Card to Halt Illegal Immigration*, MANAGING SEC. TODAY, Sept. 2010, at 19.

156. PEW HISPANIC CTR., MODES OF ENTRY FOR THE UNAUTHORIZED MIGRANT POPULATION 1 (May 2006), available at <http://pewhispanic.org/files/factsheets/19.pdf>. Using population figures from 2005, the Pew Hispanic Center estimated 12 million total immigrants here illegally; those who overstayed their visas account for 33–46% (4 to 5.5 million people) while those who originally crossed illegally account for 52–58% (6 to 7 million people). *Id.*

157. Addicott, *supra* note 155.

158. See Congressional Documents, *A View from the Senate*, available at 2010 WLNR 9658997 (elaborating upon the draft proposal to reform immigration laws entitled Real Enforcement with Practical Answers for Immigration Reform, REPAIR); *A Path to Citizenship*, 202 Newsroom 17, 5/24/10 America 5 at ¶3, available at 2010 WLNR 11330100 (discussing the framework for a possible immigration reform proposal that would include a biometric Social Security card for all workers in the United States); *But see* Jeff Salamon, *Everything You Ever Wanted to Know About Illegal Immigration (But Didn't Know Who to Ask)*, TEXAS MONTHLY ¶11 (Nov. 1, 2010), available at 2010 WL 22497770 (listing the REPAIR bill as an informal proposal that would crack down on illegal alien employment but commenting that it will likely go nowhere as a result of the fiercely divided Senate); Alexander Bolton, *Dems Spark Alarm with Call for National ID Card*, THE HILL ¶1–2 (Apr. 30, 2010), <http://thehill.com/homenews/senate/95235-democrats-spark-alarm-with>

Dick Durbin, a strong advocate of such a change is quoted as saying: “[W]e live in a world where we take off our shoes at the airport and pull out our identification . . . People understand that in this vulnerable world, we have to be able to present identification.”¹⁵⁹

Another possibility endorsed by experts in the field is for the government to set its sights higher than the drug cartels and focus on financial networks that tolerate the laundered funds from illegal activity.¹⁶⁰ This measure could be more effective if the United States and Mexico worked together to execute this major undertaking. Doing so could expose the corruption that permeates not only the Mexican financial industry but also multiple government agencies.

Regardless of what actions may yield the best solutions, this much is clear—a porous border is a national security threat. Especially when known terrorists may be colluding with Mexican drug cartel personnel just across the border; and the cartels are smuggling and trafficking drugs, weapons, and humans into the United States daily. If securing the border is restored as a high priority, the United States of America will strengthen its national security.

call-for-national-id-card (acknowledging strong opposition against a proposal to implement a biometric national identification card); Alfonso Gonzales, *Beyond the Consensus: Oppositional Migrante Politics in the Obama Era*, NACLA REP. ON AMERICAS (Nov. 1 2010), available at 2010 WLNR 25806115 (noting several oppositional groups’ powerful critique of REPAIR that “blasted the Democratic Party for embracing [the] legislation”).

159. Bolton, *supra* note 158.

160. Schroeder, *supra* note 60, at 38, 41. Jose Luis Pineyro, a professor at Mexico City’s Autonomous Metropolitan University where he analyzes security issues and organized crime, and Edgardo Buscaglia, former United Nations expert, both spoke to *Homeland Security Today* in favor of such measures. *Id.*