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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

January 8, 2014

VIA U.S. MAIL & EMAIL (Edward.Lovett@HQ.DHS.GOV)

The Honorable Jeh Johnson  
Secretary of Homeland Security  
U. S. Department of Homeland Security  
Nebraska Avenue Complex  
3801 Nebraska Avenue, N.W.  
Washington, DC 20528

Dear Secretary Johnson:

In April 2013, your predecessor, Janet Napolitano, testified to Congress that our borders “have never been stronger.” She made the same statement to reporters on the basis that “[i]llegal apprehensions are at 40-year lows.” Other Administration officials have, on numerous occasions, similarly cited lower overall apprehensions in support of the claim that border security has improved. But, also in congressional testimony, Border Patrol (BP) Chief Michael Fisher asserted that overall apprehensions along the border have actually gone up. Given then-Secretary Napolitano’s suggestion that apprehensions are an accurate way to measure overall border security, it seems that the border has become *less* secure over the past year.

Recent media reports reflect the dangerous reality that citizens near the border frequently face. A few weeks ago, for example, the U.S. consulate in Nogales reportedly urged U.S. citizens in Rocky Point, Sonora – an area many Tucson residents visit regularly – to seek immediate shelter from a deadly shootout between Mexican federal police and drug traffickers. Also, U.S. ranchers along the border continue to report sightings and evidence of drug smugglers from Mexico on their property. And, cities in Arizona continue to be relentlessly exploited by drug smugglers and human traffickers. Just last month, another tunnel, likely used for smuggling contraband, was discovered near the Arizona-Sonora border in Nogales.

Against this backdrop, how effectively and efficiently our borders are being secured remain of paramount importance to me. In March 2013, I met with Border Patrol union officials regarding their border security concerns; last month, my staff followed up with those officials. From those visits, I have concluded that not only is the border unsafe, but it is patrolled ineffectively. Whether it be a lack of necessary equipment like night vision goggles, or a requirement to sit idle for hours at forward operating bases (FOBs) due to unnecessarily restrictive overtime rules, bureaucratic red tape and flawed administrative procedures prevent agents from maintaining border security.

I have additional concerns about certain aspects of Customs and Border Protection (CBP) policies and practices that are impeding our ability to secure our southern border. My first concern relates to policies regarding FOBs. As you may know, those bases are meant to provide BP a tactical advantage by allowing for enforcement of our laws closer to the border. But, it has

come to my attention that the agents working at these bases often work restricted hours due to a reduction in available overtime hours. So, they are often forced to sit idle for much of their time at the FOBs, which wastes both their time and precious BP resources. Many of the FOBs are also reportedly in a dilapidated state, with agents raising issues ranging from roach infestations to the safety of their drinking water.

Another area that I am concerned about is the actual number of agents actively patrolling the border. I was recently informed that as much as forty percent of BP agents officially assigned to the Nogales Station are not performing active patrol work. Instead, they are serving as liaisons with other CBP components, doing office work, or performing other functions unrelated to directly securing the border. This has been an ongoing concern for residents of Arizona. A December 10, 2012, report by the General Accountability Office (GAO-13-25) examined BP agent deployments but was unable to determine the effectiveness of resource deployments due to the lack of BP goals and performance measures.

Finally, it appears that organizational initiatives conceived in Washington may be hampering effective border operations. For example, the Joint Field Command (JFC), originally established in 2011 to coordinate CBP operations in the Tucson Sector, seems to have morphed into an unnecessary added layer of bureaucracy. BP agents on the border report that it now takes them longer to get requested air support because of the need to obtain additional approvals. JFC officials also reportedly inappropriately micromanage operations in the field. Agents wonder why, at a time of severe budget problems, an apparently superfluous command has been set up. While everyone involved understands the need for information sharing, creating an entirely new layer of approval and control has weakened the ability of agents to apply their experience and local expertise to securing the border.

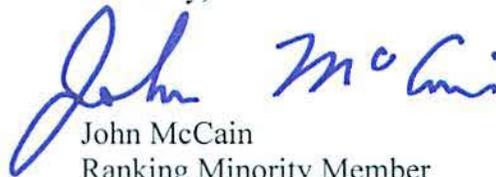
Border security remains a critical national priority, and we must make sure that the agents achieving that goal are not hindered by misguided policies. With that in mind, please provide answers to the following questions by January 29, 2014:

1. How much time can agents at the FOBs currently spend actively patrolling the border on a daily basis? How do agents make use of their remaining time spent at the FOBs?
2. Why do agents work eight hour shifts at the FOBs while being required to be present at the FOBs for sixteen hours?
3. Has there been any decision by management within DHS or CBP to limit Administratively Uncontrollable Overtime (AUO) for agents detailed to FOBs?
4. If so, why was that decision made? And, is DHS actively considering reversing that decision or otherwise relaxing this limitation? If not, why not?
5. What goals and performance measures have been developed by DHS or CBP leadership to ensure that the FOBs are serving their intended function? Based on those metrics, how effectively have these FOBs performed as intended in providing required border-security capability?

6. How do DHS and CBP plan to address the reported state of physical disrepair at the FOBs?
7. Currently, many BP agents are assigned to border stations but do not conduct active patrolling. They perform non-patrol functions, such as serving as liaisons to other organizations. According to the GAO, in 2011, 57 percent of BP agents in the Tucson Sector were assigned to interior zones with no international border miles. What goals and performance measures have been developed to inform the identification and allocation of these resources to secure the border?
8. According to recent testimony from then-Secretary Napolitano, apprehensions along the border have increased from previous years. Why have apprehensions increased? Is this an indicator that border security has decreased?
9. Many BP agents that work along the Southern border, in rural, high-traffic areas, seek requests for transfer when provided the opportunity. What incentives, if any, are given to agents to keep them working in the operating areas where they have substantial experience and where DHS has a substantial need in connection with its border security priority?
10. According to JFC management, the JFC has increased efficiency along the Arizona border. Agents in the field, however, report that the JFC is hindering BP operations, especially by making it harder for field agents to get Air and Marine support. What reforms, if any, will CBP institute to ensure that the JFC is an information-sharing tool instead of a bureaucratic hindrance to agents in the field?
11. Why did CBP decide to create the JFC instead of a simpler liaison and information-sharing organization such as the South Texas Campaign?
12. In previous years, the Arizona border has seen the highest rate of narcotics trafficking in the country. Is this still currently the case? What percentage of narcotic trafficking moves across the Arizona border compared to the rest of the United States border?

Thank you for your attention to this important matter. If you have any questions, please have your staff contact Jack Thorlin, Counsel to the Minority, Permanent Subcommittee on Investigations, at 202/224-3721.

Sincerely,

A handwritten signature in blue ink that reads "John McCain". The signature is written in a cursive, flowing style.

John McCain  
Ranking Minority Member  
Permanent Subcommittee on Investigations