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United States Government Accountability Office  
Washington, DC 20548

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September 12, 2011

The Honorable Carl Levin  
Chairman  
The Honorable John McCain  
Ranking Member  
Committee on Armed Services  
United States Senate

The Honorable Howard P. "Buck" McKeon  
Chairman  
The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services  
House of Representatives

*Subject: Observations on the Costs and Benefits of an Increased Department of Defense Role in Helping to Secure the Southwest Land Border*

In order to satisfy the requirement in the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 to report on the security of the southwest land border of the United States, we briefed your offices on July 12, 2011, with our preliminary observations. As agreed with your offices, this is our final report to you on the Department of Defense (DOD) issues we addressed in response to the mandate.<sup>1</sup> As directed by the mandate, we assessed:

- (1) what is known about the costs and benefits of an increased DOD role to help achieve operational control over the southwest land border, including the deployment of additional units, the National Guard, or other DOD personnel; increased use of ground-based mobile surveillance systems by military personnel; and use of additional mobile patrols by military personnel, particularly in rural, high-trafficked areas; and

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<sup>1</sup> Pub. L. No. 111-383, §1057 (2011). In a separate "for official use only" briefing, provided to congressional committees on July 12, 2011, we addressed other portions of the mandate related to: (1) the extent to which the Border Patrol has positioned staffing, technology, and tactical infrastructure resources at high risk locations on the southwest border, (2) the United States has achieved and maintained operational control of the southwest border, (3) the actions that Customs and Border Protection has taken to identify the costs and benefits of additional efforts to enhance security on the southwest border, and (4) the actions that the Department of Homeland Security has taken to evaluate the adequacy of information-sharing agreements between federal, state, local, and tribal law enforcement authorities regarding to the security of the southwest border. A "for official use only" report based on this information was issued on September 12, 2011.

- (2) what is known about the costs and benefits of an increased deployment of additional unmanned aerial systems and manned aircraft to provide surveillance; as well as the impact of any increased deployment of unmanned aerial systems or manned aircraft on national airspace use and availability.

The Department of Homeland Security (DHS) reports that the southwest border continues to be vulnerable to cross-border illegal activity, including the smuggling of humans and illegal narcotics. Several federal agencies are involved in border security efforts, including the Departments of Homeland Security, Defense (DOD), Justice, and State. In recent years, the National Guard has played a role in helping to secure the southwest border by providing the Border Patrol with information on the identification of individuals attempting to cross the southwest border into the United States. Generally, the National Guard can be activated under three authorities:

- (1) State status – State funded under the command and control of the Governor;
- (2) Title 32 status – Federally funded under command and control of the Governor. Title 32 forces may participate in law enforcement activities; and
- (3) Title 10 status – Federally funded under command and control of the Secretary of Defense. Forces serving in this status are prohibited from conducting direct law enforcement activities, but work to provide certain types of support to civilian law enforcement.

Although National Guard forces working in support of law enforcement at the southwest border have been activated under Title 32, the Secretary of Defense has limited their activities with regard to law enforcement. In addition to the National Guard, support at the southwest border is also provided by active duty military forces operating in Title 10 status.

To conduct this work, we reviewed relevant legal authorities governing military forces operating under state—Title 32—and—Title 10 (federal)—status; the funding and cost data related to the deployment of DOD personnel, equipment, unmanned aerial systems, and manned surveillance aircraft; costs and benefits of recent efforts by DOD to assist DHS at the southwest land border; after-action reports and evaluations related to recent efforts to support law enforcement efforts at the southwest land border; and interviewed appropriate officials from the Departments of Defense, Homeland Security, State, and Transportation. We conducted this review from March through September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Cost data, as well as data on apprehensions and seizures, were provided by agency officials. The data on apprehensions and seizures have been used in past GAO reports. Although we did not independently verify the data, we believe the data are sufficiently reliable for providing contextual information for background purposes.

In summary, we found that the cost of an increased DOD role to help achieve operational control over the southwest land border is determined largely by the legal status and mission of military personnel being used, specifically whether military personnel are responding under Title

32 or Title 10 of the United States Code. If Title 32 National Guard forces are used, factors that may impact the cost include whether in-state or out-of-state personnel are used, the number of personnel, duration of the mission, ratio of officers to enlisted personnel, as well as equipment and transportation needs. The costs of Title 32 National Guard forces working at the border can also be impacted by specific missions. For example, if National Guardsmen are to conduct patrols (as discussed in the mandate), they are to be assigned in pairs and would, therefore, require twice as many personnel as the Border Patrol to perform only the identification segment of the mission because they are not permitted to make arrests or seizures. Currently, National Guard personnel assigned to the southwest border are only identifying those individuals attempting to enter the United States and relaying such information to the Border Patrol for possible arrest. The estimated DOD cost has been about \$1.35 billion for two separate border operations conducted by the National Guard forces in Title 32 status from June 2006 to July 2008 and again from June 2010 through September 30, 2011. Efforts of active-duty Title 10 forces at the border are generally conducted under authorities that allow DOD to provide military support to law enforcement agencies for counterdrug operations. Since 1989, DOD estimates the cost of using active duty Title 10 forces nationwide in support of drug law enforcement agencies (with additional operational costs borne by the military services) at about \$10 million annually. According to officials we spoke with, the primary benefits of an increased role for DOD to help achieve operational control over the southwest land border include providing a bridge or augmentation until newly hired Border Patrol agents are trained and deployed to the border, obtaining training opportunities in a geographically inhospitable environment similar to current combat theaters, contributing to apprehensions and seizures along the border, deterring illegal activity at the border, building relationships with law enforcement agencies, and maintaining and strengthening military-to-military relationships with Mexico.

DOD and DHS include different cost factors for deploying manned and unmanned aircraft, and therefore the costs are not comparable. Also, DOD's access to the national airspace is constrained given the safety concerns about unmanned aerial systems raised by the Federal Aviation Administration, specifically the challenges inherent with the unmanned aerial system's ability to detect, sense, and avoid an aircraft. Deploying additional unmanned aerial systems to provide surveillance would improve coverage, real-time imagery, and allow longer mission duration. For example, the Predator B provides a mission duration of 20-30 hours, depending on mission configuration and operational parameters, because there is no need to land and change pilots. On the other hand, we found that, unlike the unmanned aircraft, manned aircraft, whose pilots have the ability to see and avoid other aircraft, may have more routine access to the national airspace. Further, DOD has limited availability of unmanned aerial systems and manned aircraft along the border because these systems are needed to support missions abroad. Officials from DHS reported during our review that they had 7 unmanned aerial system aircraft to provide response and monitoring capabilities throughout North America, and – funding permitting – they plan to expand their fleet to 24 total UASs that are operational by Fiscal Year 2016, including 11 on the southwest border.

In addition, agency officials identified a number of broader issues and concerns surrounding expansion of DOD's assistance in securing the southwest U.S. land border. Specifically, they include:

- DOD officials expressed concerns about the absence of a comprehensive strategy for southwest border security and the resulting challenges to identify and plan a DOD role.

- DHS officials expressed concerns that DOD's border assistance is ad hoc in that DOD has other operational requirements. DOD assists when legal authorities allow and resources are available, whereas DHS has a continuous mission to ensure border security.
- Department of State and DOD officials expressed concerns about the perception of a militarized U.S. border with Mexico, especially when State and Department of Justice officials are helping support civilian law enforcement institutions in Mexico to address crime and border issues.
- Federal Aviation Administration officials, who are part of the Department of Transportation, stated that they are concerned about safety in the national airspace, including challenges in the unmanned aerial system's ability to detect, sense, and avoid an aircraft. The Federal Aviation Administration has granted DHS authority to fly unmanned aerial systems to support its national security mission along the southern U.S. border, and is working with DOD, DHS, and the National Aeronautics and Space Administration to identify and evaluate options to increase unmanned aerial systems access in the national airspace.

We are not making any recommendations for agency action in this report. For additional information see Enclosure I, slides 9 through 11.

We provided a draft of this report to the Departments of Defense, Homeland Security, State, and Transportation and received technical comments, which we have incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees. We are also sending a copy to the Secretaries of Defense, Homeland Security, State, and Transportation. In addition, we are sending a copy to the Administrator, Federal Aviation Administration. This report will be available at no charge on our Web site at <http://www.gao.gov/>. Should you or your staff have questions concerning this report, please contact me at (202) 512-5431 or [dagostinod@gao.gov](mailto:dagostinod@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report can be found in Enclosure II.



Davi M. D'Agostino  
Director  
Defense Capabilities and Management

Enclosures – 2

# Enclosure I: Briefing Slides



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## **Observations on the Costs and Benefits of an Increased DOD Role in Helping to Secure the Southwest Land Border**

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**U.S. Government Accountability Office  
Briefing for the  
Senate and House Committees on Armed Services**

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## Background

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- The Department of Homeland Security (DHS) reports that the southwest border continues to be vulnerable to cross-border illegal activity, including the smuggling of humans and illegal narcotics. Several federal agencies are involved in border security efforts, including the Departments of Homeland Security, Defense (DOD), Justice, and State.
  - National Guard can be activated under three authorities:
    - State Status – State funded under the command and control of the Governor;
    - Title 32 status – Federally funded under command and control of the Governor. Title 32 forces may participate in law enforcement activities; and
    - Title 10 status – Federally funded under command and control of the Secretary of Defense (SECDEF).
  - Although National Guard forces working in support of law enforcement at the southwest border have been activated under Title 32, the SECDEF has limited their activities with regard to law enforcement.
  - Law enforcement support at the southwest border is also provided by active duty military forces operating in Title 10 status.
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## Background (continued)

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- Active duty military forces operating in Title 10 status are generally prohibited from direct participation in law enforcement activities without proper statutory authorization. For example, §1004 of the National Defense Authorization Act for Fiscal Year 1991, as amended, allows the Secretary of Defense to provide support for the counterdrug activities of any other department or agency of the federal government or of any state, local, or foreign law enforcement agency if certain criteria, set out in the statute, are met.
  - National Guard has supported DHS's border security mission in the four southwest border states through two missions: Operation Jump Start (2006-2008) and Operation Phalanx (2010-2011). These missions varied in size and scope.
  - National Guard has a 30-day period to accept or refuse mission support requests generated by law enforcement agencies.
  - Joint Task Force-North (JTF-N) supports drug law enforcement agencies in the conduct of counternarcotic operations.
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## Background (continued) Views of the Southwest Border



Source: GAO

Fencing along the southwest border between the United States (New Mexico) and Mexico



Source: GAO

Arizona Guardsman conducting entry identification along the southwest border (Nogales, Arizona)



## Objectives

The Ike Skelton National Defense Authorization Act for Fiscal Year 2011 mandated, in part, that GAO report on the security of the southwest land border of the United States and ongoing efforts to improve such security by July 6, 2011.<sup>1</sup> Specifically, we assessed:

**Objective 1:** What is known about the costs and benefits of an increased DOD role to help achieve operational control over the southwest land border, including the deployment of additional units, the National Guard, or other DOD personnel; increased use of ground-based mobile surveillance systems by military personnel; and use of additional mobile patrols by military personnel, particularly in rural, high-trafficked areas?

**Objective 2:** What is known about the costs and benefits of an increased deployment of additional unmanned aerial systems (UAS) and manned aircraft to provide surveillance; as well as the impact of any increased deployment of UASs or manned aircraft on national airspace use and availability?

<sup>1</sup> Pub. L. No. 111-383, §1057 (2011). In a separate "for official use only" briefing, we address mandated issues related to the extent to which the Border Patrol has positioned staffing, technology, and tactical infrastructure resources at high risk locations on the southwest border; the United States has achieved and maintained operational control of the southwest border; the actions that Customs and Border Protection has taken to identify the costs and benefits of additional efforts to enhance security on the southwest border; and the actions that DHS has taken to evaluate the adequacy of information sharing agreements between federal, state, local, and tribal law enforcement authorities with regard to the security of the southwest border.



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## Scope and Methodology

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To determine what is known about the costs and benefits of an increased DOD role to help achieve operational control over the southwest land border and the impact of any increased deployment of UAS or manned aircraft on national airspace use and availability, we reviewed:

- the legal authorities governing military forces operating under state, Title 32, and Title 10 status;
  - the cost and benefits of recent efforts by DOD to assist DHS, including Operation Jump Start (2006-2008) and Operation Phalanx (2010-2011);
  - DOD after-action reports and evaluations related to recent DOD efforts to support law enforcement efforts at the southwest land border;
  - strategic and operational plans, and guidance related to addressing security concerns at the southwest land border;
  - funding and cost data and sources of funding related to the deployment of DOD personnel, equipment, UASs, and manned surveillance aircraft;
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## Scope and Methodology (continued)

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- We also interviewed cognizant officials about efforts to secure the southwest land border:
    - Department of Defense, including the Office of the Secretary of Defense, military services (Army, Navy, Air Force, and Marine Corps), National Guard Bureau, U.S. Northern Command, U.S. Army North, and Joint Task Force-North
    - Department of Homeland Security, Customs and Border Protection (CBP) (including U.S. Border Patrol, Office of Air and Marine)
    - Department of Transportation, Federal Aviation Administration
    - Department of State, including Bureau of International Narcotics and Law Enforcement Affairs, and Office of Mexican Affairs
  - GAO conducted this review from March through September 2011.
  - Cost data, as well as data on apprehensions and seizures, were provided by agency officials and CBP data have been used in past GAO reports. Although we did not independently verify the data, we believe the data are sufficiently reliable for providing contextual information for background purposes.
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## Summary of Observations

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**Objective 1:** The costs of an increased DOD role to help achieve operational control over the southwest land border are determined largely by the legal status and mission of military personnel. Factors that may impact the cost of using Title 32 forces include: use of in-state versus out-of-state Guardsmen, the number of personnel, duration of mission, ratio of officers to enlisted personnel, equipment, and transportation needs. According to the National Guard, the cost of border operations carried out by Title 32 forces, conducted from June 2006 to July 2008 and again from July 2010 to June 2011 is about \$1.35 billion. Use of active duty Title 10 forces is limited primarily to situations where there is a counterdrug nexus. The cost of counterdrug operations nationwide conducted by active duty Title 10 forces in support of drug law enforcement agencies since 1989 is about \$10 million annually (with additional operational costs borne by the military services).

According to officials we spoke with, the benefits of an increased DOD role to help achieve operational control over the southwest land border focus primarily on providing a surge capacity; bridge or augmentation until newly hired Border Patrol agents are trained and deployed to the border; real-world training opportunities; an impact on apprehensions and seizures along the border, as well as a deterrent force against illegal activity at the border; building relationships with law enforcement agencies; and maintaining and strengthening military-to-military relationships with Mexico.

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## Summary of Observations (continued)

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**Objective 2:** DOD and DHS include different cost factors for deploying manned and unmanned aircraft, and therefore the costs are not comparable. DOD's access to the national airspace is constrained given the safety concerns about UASs raised by the FAA, specifically the challenges inherent with the UAS's ability to detect, sense, and avoid an aircraft. DHS has requested and obtained Certificates of Waiver or Authorization to conduct UAS missions in the national airspace in support of border security missions. FAA officials report that it has approved DOD UAS training operations in the national airspace. The benefits of an increased deployment of additional UAS to provide surveillance include improved coverage, real-time imagery, and longer mission duration. For example, the Predator B provides a mission duration of 20-30 hours, depending on mission configuration and operational parameters, because there is no need to land and change pilots. As manned aircraft have the ability to see and avoid other aircraft, an increased deployment of manned aircraft may have more direct access to the national airspace. UAS and manned aircraft use and availability from DOD is limited due to the demand from current missions abroad (e.g., Afghanistan and Iraq). DHS officials report that they presently have 7 UAS aircraft to provide response and monitoring capabilities throughout North America, and – funding permitting – they plan to expand their fleet to 24 total UASs that are operational by Fiscal Year 2016, including 11 on the southwest border.

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## Summary of Observations (continued)

### Agency Perspectives

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- DOD officials are concerned that there is no comprehensive southwest border security strategy. As a result, DOD is hampered in identifying its role and planning for that role. DOD is also concerned about “mission creep” because border security is not a core DOD mission.
  - DHS/CBP officials are concerned that DOD assistance is ad hoc in that DOD has other operational requirements. DOD assists when legal authorities allow and resources are available, whereas border security is a continuous and ongoing mission for DHS.
  - Department of State officials are concerned about perception of a “militarized” U.S. border with Mexico, especially in light of efforts by State and the Department of Justice to help support civilian law enforcement institutions in Mexico to address crime and border issues. DOD officials also expressed concerns about militarizing the border.
  - Department of Transportation/Federal Aviation Administration officials are concerned about safety in the national airspace, and provide authorization for government agencies to fly UASs in the national airspace. Because of challenges inherent with a UAS’s ability to detect, sense, and avoid an aircraft, DOD and FAA are working on options that would allow DOD to fly UASs in the national airspace. FAA has granted Certificates of Waiver or Authorization to allow DHS to fly UASs in the national airspace in support of its national security mission along the southern U.S. border. In addition, DOD, DHS, NASA, and FAA have formed an Executive Committee to raise and evaluate options to increase UAS access in the national airspace, according to both DOD and DHS officials.
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## Objective 1: Costs and Benefits of an Increased DOD Role National Guard in Title 32 Status

**Operation Jump Start** (OJS) (June 2006-July 2008) cost \$1.2 billion over 2 years, of which \$84 million was spent for aviation support, according to National Guard officials. OJS involved volunteers from the border states, and volunteers from outside the border states; mission included aviation, engineering, entry identification teams (EIT), among others, according to National Guard officials.

- Costs

- Personnel costs (federal pay). OJS deployed up to 6,000 Guardsmen (more than 30,000 Guardsmen participated during the mission).
- Operation & maintenance costs estimated at \$120 per person per day.
- Transportation costs were “significant” due to use of out-of-state units, according to National Guard officials.
- Equipment operating costs included aviation assets.

- Benefits

- CBP officials reported that during the 2-year operation, the National Guard assisted in the apprehension of 186,814 undocumented aliens, and the seizure of 316,364 pounds of marijuana, among other categories of assistance such as rescues and the seizure of illicit currency. Based on these reported figures, the National Guard assisted in 11.7% of all undocumented alien apprehensions and 9.4% of all marijuana seized on the southwest border.<sup>1</sup>

<sup>1</sup> The official start date for OJS was June 15, 2006, and the official end date was July 15, 2008. CBP's data is reported monthly, and as the beginning and end dates of OJS fell in the middle of the calendar month, for the purposes of this analysis, the 24-month period analyzed was July 2006 (the first full month of the mission) through June 2008 (the last full month of the mission).



## Objective 1: Costs and Benefits of an Increased DOD Role National Guard in Title 32 Status (continued)

**Operation Phalanx** (July 2010-June 30, 2011) cost \$110 million over 1 year; costs to extend Operation Phalanx estimated at about \$35 million (July 1, 2011, through September 30, 2011), according to National Guard officials. Operation Phalanx involves volunteer units, and in-state units. SECDEF limited mission to EIT, criminal analysts, and command and control, according to National Guard officials.

- Costs

- Personnel costs (federal pay). Operation Phalanx has deployed up to 1,200 Guardsmen to date.
- Operation & maintenance costs estimated at \$100 per person per day.
- Transportation costs were limited due to use of in-state units, according to National Guard officials.
- No equipment costs; used CBP equipment (e.g., MEDEVAC helicopters).

- Benefits

- According to CBP officials and CBP's daily reports for the southwest border, as of May 31, 2011, the National Guard assisted in the apprehension of 17,887 undocumented aliens and the seizure of 56,342 pounds of marijuana. Based on these reported figures, the National Guard assisted in 5.9% of all undocumented alien apprehensions and 2.6% of all marijuana seized on the southwest border.<sup>2</sup>

<sup>2</sup> Since there is no official Enforcement Integrated Database (EID) data related to Operation Phalanx, we are presenting daily report totals to provide context as to the extent of National Guard assists during Operation Phalanx, since the Border Patrol relies on the daily report totals.



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Challenges for National Guard in Title 32 Status**

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There are a number of challenges to the National Guard providing support to law enforcement missions that could impact costs and benefits, for example:

- Currently, National Guard personnel involved in activities on the border are under the command and control of the Governor and are receiving federal funding in Title 32 status. In this status, although permitted to participate in law enforcement activities, the SECDEF has limited their activities. For example, Guardsmen are not performing law enforcement functions, such as arrests; therefore, all arrests and seizures are performed by Border Patrol. Currently, National Guard personnel assigned to the southwest border are identifying those individuals attempting to enter the United States and relaying such information to the Border Patrol for possible arrest.
  - Civilians may not distinguish between Guardsmen and active duty military personnel in uniform, which leads to the perception that the border is militarized, according to DOD and National Guard officials.
  - Returns on the value of some training for surveillance activities diminishes over time, according to National Guard officials.



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Challenges for National Guard in Title 32 Status (continued)**

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- The use of out-of-state Guardsmen for long-term missions in an involuntary status may potentially have an adverse affect on future National Guard recruitment and retention, according to National Guard officials.
- Availability for other duties is reduced (e.g., disaster assistance), according to National Guard officials.
- Temporary duty can impact long-term border security planning, according to CBP officials.
- Apprehension and seizure data is collected by CBP. National Guard does not independently collect information on apprehensions and seizures, since National Guard is not involved in those aspects of the law enforcement mission.



## Objective 1: Costs and Benefits of an Increased DOD Role

### Future Cost Considerations for National Guard in Title 32 Status

- To meet the missions identified in the mandate (including deploying additional units, increasing the use of ground-based mobile surveillance systems, and using additional mobile patrols in rural, high-trafficked areas), National Guard officials report that the costs would be impacted by:
  - In-state versus out-of-state Guardsmen. For example, if additional units or individuals originate from outside of border states, then transportation and per diem costs may increase.
  - National Guard versus Border Patrol-owned equipment. For example, to identify the costs of additional ground-based mobile surveillance systems, costs may increase if National Guard provides its own or rents equipment.
  - National Guard patrols require twice as many personnel as Border Patrol to perform only the identification segment of the mission and relay information to the Border Patrol, as the National Guard cannot arrest, as noted earlier. For example, if Guardsmen were to conduct rural patrols, they would be required to work in pairs to identify persons of interest and contact Border Patrol to make arrests or seizures, whereas Border Patrol agents may operate individually to conduct the full range of these activities.
  - Mission duration.
  - Ratio of officers to enlisted personnel (e.g., 20:80 estimate; 10:90 Phalanx).
  - Army National Guard personnel costs are less than those of Air National Guard.



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Active Duty Military Services in Title 10 Status**

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- According to DOD officials, active duty Title 10 military services' efforts at the border are generally being conducted under authorities that allow DOD to provide military support to law enforcement agencies for counternarcotic operations.
- JTF-N is responsible for brokering requests for law enforcement support missions and matching them with available DOD assets. For example, according to DOD officials, in Fiscal Year 2010 DOD conducted 79 missions with 842 DOD personnel in support of law enforcement and assisted in the seizure of about 17,935 pounds of marijuana, assisted in the apprehension of 3,865 undocumented aliens, and constructed 17.26 miles of road. (Statistics on apprehension and seizure amounts provided to DOD by CBP.)
- Military services cover costs of DOD training that concurrently support law enforcement counternarcotic operations, according to DOD officials.



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Financial Costs for Active Duty Military Services in Title 10 Status**

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- According to DOD officials, the Deputy Assistant Secretary of Defense for Counternarcotics receives a budget of about \$1.1 billion annually for counternarcotics efforts, of which about \$10 million goes to JTF-N to meet law enforcement mission support needs nationwide. JTF-N's budget has remained essentially the same since the late 1980s, DOD officials noted.
  - Of that approximate \$10 million, JTF-N budgeted in FY 2011 about \$4.8 million (51%) for operations in support of law enforcement, \$3.7 million (39%) for engineering support, and about \$410,000 (5%) for mobile training teams.
- JTF-N officials report that they receive about 400 requests per year for law enforcement support and are able to fund approximately 80 of those requests (about 20%).



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Challenges for Active Duty Military Services in Title 10 Status**

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According to DOD officials, there are a number of challenges to providing support to law enforcement missions that could impact costs and benefits, for example:

- Complexity of legal authorities and policy issues. It can take up to 180 days to obtain final approval to execute a mission in support of law enforcement.
- Relationships with law enforcement agencies and Mexico. The perception of militarizing the border has kept DOD units from actively patrolling the border and carrying loaded weapons.
- Apprehension and seizure data is collected by CBP. DOD does not independently collect information on apprehensions and seizures, since DOD is not involved in those aspects of the law enforcement mission.



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Challenges for Active Duty Military Services in Title 10 Status (continued)**

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- Operational tempo impacts availability of DOD units to fill support missions. Some DOD units are regularly available to meet specific mission needs at the border (e.g., mechanized units to construct roads). Other units (e.g., ground-based surveillance teams) are deployed or soon will be deployed abroad making it more difficult to fulfill law enforcement requests.
- Information sharing: (1) complex trust relationship between DOD and law enforcement personnel; (2) not a priority to share information among law enforcement personnel (investigators versus interdictors); and (3) lack of security clearances for law enforcement officials, which affects DOD's ability to provide classified information to CBP.
- Force protection is provided for active duty military services in Title 10 status by Border Patrol because these forces do not carry loaded weapons at the border.



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Challenges for Active Duty Military Services in Title 10 Status (continued)**

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There are legal restraints and other challenges that active duty forces must be mindful of when providing assistance to civilian law enforcement:

- The 1878 Posse Comitatus Act, 18 U.S.C. §1385, prohibits the direct use of Title 10 (federal) forces in domestic civilian law enforcement, except where authorized by the Constitution or an act of Congress.
  - Congress has authorized military support to law enforcement agencies in specific situations. For example, federal forces may provide counternarcotic support under a number of legal authorities including §1004 of the National Defense Authorization Act of 1991, as amended, 10 U.S.C. § 124, and 10 U.S.C. § § 371-382, among others. 10 U.S.C. §375 restricts federal forces from directly participating in a search, seizure, arrest or other similar activity without additional statutory authorization.
  - DOD further clarifies restrictions on direct assistance to law enforcement and includes interdiction of a vehicle, vessel, aircraft, or other similar activity; a search or seizure; an arrest, apprehension, stop and frisk, or similar activity; or use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators as prohibited activities. (DOD Directive 5525.5, *DOD Cooperation with Civilian Law Enforcement Officials* (Jan.15, 1986)).
  - DOD has issued guidance setting out the approval process for Title 10 forces providing operational support for counternarcotic law enforcement missions.
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## Objective 1: Costs and Benefits of an Increased DOD Role

### Challenges for Active Duty Military Services in Title 10 Status (continued)

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- Missions on the border, including missions identified in the mandate (deploying additional units, increasing the use of ground-based mobile surveillance systems, and using additional mobile patrols, particularly in rural, high-trafficked areas), are generally being carried out by active duty Title 10 forces under authorities related to counterdrug operations. Therefore, the request for support must meet a number of criteria, set out in an October 2, 2003, DOD memo *Department Support to Domestic Law Enforcement Agencies Performing Counternarcotic Activities*. The mission must:
    - Have a valid counternarcotic nexus.
    - Have a proper request from law enforcement (from an appropriate official, federal law must authorize DOD to provide support, which will assist the law enforcement agency in accomplishing their counternarcotic mission; is consistent with National Drug Control Strategy; and is limited to unique military capabilities and benefit DOD or is essential to national security goals).
    - Improve unit readiness or mission capability.
    - Provide a training opportunity to increase combat readiness.
    - Not use Title 10 forces (military services) for continuing, ongoing, long-term operation support commitments at the same location.
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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Future Cost Considerations for Active Duty Military Services in Title 10 Status**

- For missions conducted by Title 10 forces that meet the criteria, DOD officials note they would consider cost factors including:
  - JTF-N provides some funding for additional units deployed to the border in support of law enforcement missions. For example, JTF-N officials report that JTF-N provides about \$350,000 per mile to DOD engineering units that construct roads at the border. DOD provides the manpower and equipment. CBP provides the materials.
  - JTF-N provides about \$125,000 funding for a DOD unit that provides operational support (e.g., ground based mobile surveillance unit) to law enforcement mission. Military Service (e.g., Marine Corps) provides training funding to cover the cost of the personnel and equipment. JTF-N officials report that one-third of Marine ground sensor platoons train on JTF-N missions.
  - DOD efforts to support counternarcotic border missions, such as mobile patrols, are limited by DOD policies. According to DOD officials, due to a shooting incident in 1997 in Redford, Texas, the SECDEF determined that military personnel will not conduct mobile patrols (e.g., they must remain stationary) and cannot carry loaded weapons.



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## **Objective 1: Costs and Benefits of an Increased DOD Role**

### **Benefits of Increased National Guard and Active Duty Forces**

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According to officials we have spoken with, benefits of an increased National Guard Title 32 presence at the southwest land border would include:

- Providing a bridge (like Operation Jump Start) or augmentation (like Operation Phalanx) until newly hired Border Patrol personnel are trained and assigned to the southwest border;
- Increasing apprehensions and seizures along the southwest border;
- Deterring illegal activity at the southwest border; and
- Providing training opportunities.

According to officials we have spoken with, benefits of an increased active duty Military Service Title 10 presence at the southwest land border would include:

- Training opportunities in a geographically inhospitable environment similar to current combat theaters;
  - Increasing apprehensions and seizures along the southwest border;
  - Deterring illegal activity at the southwest border;
  - Building relationships with law enforcement;
  - Maintaining and strengthening military-to-military relationships with Mexico; and
  - Enhancing intelligence used to help dismantle transnational criminal organization networks.
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## Objective 2: Costs and Benefits and Impact of Increased Deployment of UAS

- DOD and DHS include different cost factors for deploying UASs, and therefore the costs presented below are not comparable.
  - We obtained limited data from DOD and DHS on flight hour costs for UASs. For example:
    - For Fiscal Year 2011, DOD Comptroller reported that an MQ-1B (Predator) and an MQ-9A (Reaper) cost \$859 and \$1,456 per flight hour, respectively; and DOD uses depot level reparable and maintenance costs, asset utilization costs, and military personnel costs to calculate these figures.
      - DOD officials identified additional factors that may impact operating costs of UASs (e.g., transportation for personnel and equipment, rental or lease for hanger space, mission requirements).
      - DOD officials state that UAS cost information may vary by platform design and capabilities.
    - For FY 2010, DHS reported that its Predator B (a variant of DOD's Reaper) costs approximately \$3,234 per flight hour. This is the total direct and indirect cost, including fuel, maintenance, support services, and labor.
- Benefits of UAS deployment to the southwest border identified in 2010 by the Congressional Research Service include: improved coverage along remote sections of southwest border; more precise and real-time imagery; and longer mission duration. For example, the Predator B provides a mission duration of 20-30 hours, depending on mission configuration and operational parameters, because there is no need to land and change pilots.



## Objective 2: Costs and Benefits and Impact of Increased Deployment of UAS (continued)

- Challenges
  - Limited asset availability given the current demand from missions abroad (e.g., Afghanistan and Iraq), according to DOD officials; however, DHS officials report that they presently have 7 UAS aircraft to provide response and monitoring capabilities throughout North America, and – funding permitting – they plan to expand their fleet to 24 total UASs that are operational by Fiscal Year 2016, including 11 on the southwest border.
  - Limited access to national airspace given inherent challenges with the UAS’s ability to detect, sense, and avoid an aircraft. DHS has requested and obtained Certificates of Waiver or Authorization to conduct UAS missions in the national airspace in support of border security missions. FAA officials report that it has approved DOD UAS training operations in the national airspace. In addition, DOD, DHS, NASA, and FAA have formed an Executive Committee to raise and evaluate options to increase UAS access in the national airspace, according to a 2010 DOD report to Congress on challenges for unmanned aircraft systems, and confirmed during our discussions with DOD officials.
    - Illegal domestic surveillance concerns, according to DOD officials.
    - Higher accident rates of UAS than manned aircraft, according to a 2010 Congressional Research Service report.
  - Limited sensor coverage (e.g., “soda straw” view), according to DOD officials. According to DHS officials, its UASs have a sensor capability that does not limit its performance of border security and other missions.
  - Less effective than manned aircraft in supporting apprehension of undocumented aliens, according to a 2005 DHS Inspector General report.



## Objective 2: Costs and Benefits and Impact of Increased Deployment of Manned Aircraft

- DOD and DHS include different cost factors for deploying manned aircraft, and therefore the costs presented below are not comparable.
  - Officials from DOD and DHS provided flight hour cost data for manned assets. Estimated flight hour costs appear to vary because agencies use different inputs to calculate cost estimates; therefore, these costs are not comparable across agencies. For example:
    - In Fiscal Year 2011, DOD reported that a UH-60A (Blackhawk) and a C-12 (King Air) cost \$5,897 and \$1,370 per flight hour, respectively. DOD uses depot-level reparable and maintenance costs, asset utilization costs, and military personnel costs to develop its flight hour estimates.
    - In Fiscal Year 2010, DHS reported that a Blackhawk and a King Air cost \$5,233 and \$3,994 per flight hour, respectively. DHS flight hour costs do not include DOD items listed above, but do include total direct and indirect costs, including fuel, equipment, and labor costs.
  - Variations in DOD and DHS costs could also be attributed to the different fiscal years reported.
  - Consequently, a comprehensive evaluation of total manned aircraft operating costs is hindered by the lack of comparable data from agencies.



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## Objective 2: Costs and Benefits and Impact of Increased Deployment of Manned Aircraft (continued)

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- Benefits
    - Have the ability to see and avoid other aircraft in the national airspace; therefore, gains routine access to national airspace by following FAA requirements, according to DOD officials and DHS and Congressional Research Service documentation.
    - Effective support in apprehension of undocumented aliens per flight hour, according to DHS Inspector General. For example, according to DOD officials, JTF-N's Big Miguel Program (an aerial surveillance mission), which began in Fiscal Year 2011:
      - Contracted Cessna with forward-looking infrared (FLIR) sensor;
      - Costs \$1.2 million per year; and
      - Assisted in the apprehension of 6,500-8,000 undocumented aliens and the seizure of \$54 million in marijuana, according to JTF-N officials.
  - Challenges
    - Limited DOD asset availability given the current operational tempo, according to DOD officials.
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# Enclosure II: GAO Contact and Staff Acknowledgments

## **GAO Contact**

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