



HOW TO FIX A BROKEN BORDER: **HIT THE CARTELS WHERE IT HURTS**

PART I OF III

By Terry Goddard

SEPTEMBER 2011

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ABOUT PERSPECTIVES ON IMMIGRATION

The Immigration Policy Center's *Perspectives* are thoughtful narratives written by leading academics and researchers who bring a wide range of multi-disciplinary knowledge to the issue of immigration policy.

ABOUT THE AUTHOR

Terry Goddard completed his second and final term as Arizona's Attorney General in January 2011 and has reentered the private practice of law. A native of Tucson, Arizona and graduate of Harvard College, he was first elected Arizona Attorney General in 2002. Over 8 years in office, he focused on protecting consumers and fighting the organized criminal activities of the drug cartels. He made significant progress in attacking cartel money laundering, seizing approximately \$20 million and culminating in an historic \$94 million settlement with Western Union in February, 2010. He received the Kelly-Wyman Award for 2010, the top recognition given by his fellow Attorneys General. Terry's first job out of ASU law school in 1976 was prosecuting corporate fraud. During his legal career, he has handled a wide variety of cases from a challenge to a federal highway route to election law matters before the state Supreme Court. Before law school, he served on active duty in the Navy, retiring as a commander after 27 years in the Reserves. Mr. Goddard is currently teaching at Columbia Law School in the Attorney General Project and a graduate course entitled "The Art of Public Decision Making" at Arizona State University School of Public Affairs. He has been selected a Wasserstein Fellow at Harvard Law School and is a Senior Fellow at the American Immigration Council. Terry lives in Phoenix with his wife Monica and teenage son.

ABOUT THE IMMIGRATION POLICY CENTER

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Introduction

Both sides of the immigration debate agree that our southwest border is “broken,” but they have very different views as to why or how to fix it. On one side, immigration reform advocates point to a broken immigration system that forces immigrants into the hands of increasingly violent smugglers in order to make the trip to the United States. This side of the debate seeks to improve border security by taking border crossers who seek legitimate work out of the flow of unauthorized immigrants. But the opponents of immigration reform argue that we can’t act on reform until we first “secure the border.” The Obama Administration seems to have accepted this argument, ramping up spending on border enforcement and deporting record numbers as a down payment on immigration reform at some unspecified time in the future.

As the Attorney General of Arizona, I have been part of law enforcement on the southwestern border for most of the past decade. My office confronted border crime on an almost daily basis. From that view, it is clear that much of the “secure the border” debate is nonsense. Again and again, symbols trump reality, misinformation buries the truth. Programs like building a bigger border wall or enlisting police in the local enforcement of immigration laws are sold as ways to make the border more secure. They will not. In the latter instance, the “cure” could actually make the crime problem worse. Equally misguided is the idea that a force buildup alone can keep the border secure in the face of increasingly sophisticated smuggling organizations—the cartels.

Since improved border security is a common denominator in the immigration debate, both sides should be anxious to know what actually works. This paper is based on the assumption that sincere parties on both sides want to go beyond the rhetoric and the symbols. I believe a more effective border defense is possible, but not on the present course. Not by the Administration’s defense-only buildup of Border Patrol and National Guard on the border, and not by the huge investment in bricks and mortar or the quasi-military responses proposed by the Administration’s critics.

A more effective border strategy starts with the money; the torrent of cash pouring across the border into the cartel pocketbooks. Cartels are, first and foremost, business enterprises.¹ Sophisticated cartel organizations are formed not for any lust for power or to employ the bosses’ relatives, but because they maximize profits. Cartel agents do not threaten, terrorize, and kill because they love the work, or out of religious zeal. They do it because they are very well-paid. So, go after the money. Taking away the profit cripples the organization. Conversely, as long as the money from drug sales and human smuggling—which may total more than \$40 billion a year²—flows to the cartels, the violence in Mexico, the sophisticated smugglers crossing our border, and the perception that nothing is being done to defend the border will continue.

We can also do a much better job of taking the fight directly to the drug cartels using the full arsenal of law-enforcement methods. We can significantly reduce the number of illegal crossers and the amounts of illegal drugs smuggled, as well as the violence in Mexico. The answers are straightforward; the mystery is why they have not been taken up long ago.

How Do We Define “Success”?

We in Arizona know something about border problems. Roughly 380 miles of the 2,000-mile border with Mexico are in our state. The most rugged terrain of the whole 2,000 miles is in the Tucson Sector of the Border Patrol. With intensified border enforcement in California and most of Texas, Arizona has become the primary corridor for the smuggling of drugs, guns, money, and people. In the last few years, Arizona has emerged as the poster child for ineffective border defenses.

From my first days as Arizona’s Attorney General, I found it astonishing and frustrating that, in the face of the huge smuggling problem, many of the steps law enforcement would normally take to fight crime, especially organized crime, were not being taken. Before spending billions on border security, my law-enforcement colleagues would first identify what threat is being defended against, decide how best to confront that threat, and estimate how much effort is needed to succeed. They would set clear goals so they could tell whether or not their strategy is successful. In short, before setting up a border defense, they would heed the words of Robert Frost’s poem, “Mending Wall,” and determine exactly “What I was walling in or walling out...”

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That has not happened. A clear objective—a precise statement of what we are walling out—was the first casualty in the post-9/11 border security buildup. It is often stated that our border security response is “risk based.” But it is far from clear what risk is being guarded against. What started as a mission to prevent terrorists from entering the country has morphed into preventing all illegal crossers from entering, including the thousands seeking work. Then it became a fight against drug smuggling by the international cartels, and—most recently—an effort to stop the spread of violence from Mexico.

What is appropriate border strategy depends on the threat we are fighting. The tactics and strategies to confront one threat may not work against others. No defense can be effective against every threat simultaneously. But, since the Obama Administration has been unwilling to state exactly what threat it is defending against, critics have enjoyed a field day decrying each Administration action as a “failure,” without having to be specific themselves. Last summer, every Administration border announcement was greeted by a chorus of “it’s not enough.”³ But no one asked the obvious question, “enough to do what”? The Administration protests, rightly, that the goal posts are continually being moved, yet they do not define where those posts should be.

Although relatively recent as a border concern, much of this country and Congress have begun to focus on the organized criminal organizations that smuggle massive amounts of drugs and people into the United States, and guns and money into Mexico. Despite the significant buildup of U.S. border defenses and the courageous efforts of the Calderón Administration, the drug

cartels have been spectacularly successful in their cross-border criminal activities and have taken over much of the civil authority in parts of Mexico. Their obvious successes moving contraband across the border gives added credibility to “broken border” proclamations.

Many Americans also have become concerned, bordering on hysterical, about the wave of cartel-related violence in Mexico. This is no fear of phantoms. An estimated 45,000 people have died since President Calderón began an all-out assault on the drug cartels over four years ago.⁴ Some killings have been singularly gruesome, with victim beheadings a cartel signature. Although the north side of the border has remained relatively safe, many in this country are convinced that the violence is already sweeping into the United States.

Without agreed-upon indicators to measure border-enforcement efforts, it is impossible to say whether they are succeeding or failing. The Obama Administration makes fulsome claims that they are creating a “21st Century Border,”⁵ but what does that mean? Presumably, a 21st Century Border is one that keeps criminals out, while permitting the vigorous flow of legitimate commerce. Unfortunately, according to many long-time border residents, the tactics being used today have the opposite effect. They disrupt and, in some cases, destroy commerce, while the effect on criminal activity is negligible.

Since no terrorists have been apprehended on the southwest border, our border-security efforts against the terrorist threat are either a total success or a total failure. Either border defenses missed every terrorist or deterred them all! It would be unfair to attribute the continued decline in the street prices for marijuana, heroin, cocaine, and meth to the current border-enforcement effort, since efforts to choke off the flow of illegal drugs have been failing for decades. Perhaps the greatest border success has been the low rate of violent crime on the U.S. side of the border. However, to my knowledge, crime suppression in border communities has never been a declared border goal, and no one gives Homeland Security credit for it anyway. In fact, many Americans believe that the border region is a free-fire zone.

DHS recently proclaimed that its border-security efforts have been successful because fewer illegal crossers are being caught. I will put aside the apparent illogic that the huge buildup of forces and technology has produced fewer arrests. Before the reduction in the number of illegal crossers arrested can be used as a valid indicator of success, DHS must prove that there were fewer actual attempts to cross illegally, and that those who attempted the trip were not just better at avoiding apprehension. An impossible task. We must also consider the impact of the reduced number of jobs available to immigrants in the U.S., and the strengthening of the Mexican economy, before accepting the decline in arrests as proof of effective deterrence.

More fundamentally, when did the number of illegal crossers arrested become the best indicator of border success? The view from Arizona is that the illegal crossers are a symptom of a much more serious disease, not the disease itself. Most people would never attempt to cross the treacherous desert in the Tucson Sector of the Border Patrol without criminal assistance. The sophisticated network of scouts, drivers, guards, drop houses, transportation equipment, and intelligence gatherers who monitor the Border Patrol and other law-enforcement agents are what make movement across the border possible. If anyone tries to cross the Arizona

border without the help of a criminal enterprise, they will be quickly arrested or join the hundreds who have perished in that parched and treacherous desert. In short, without the legions of cartel agents and subcontractors who service every mile of the route across the border and into destinations in the United States, illegal entry becomes far more difficult—or impossible.

“Until the cartels are eliminated, the border cannot be considered secure. Period.”

The problem is not the crossers, but the criminal organizations that make their crossing possible. In the face of heightened border enforcement and treacherous terrain, they get their “cargo” across the border. The arrest and deportation of those who make it across simply gives the cartels more customers. Heightened border security means the cartels charge more for the trip. Plus, thousands of arrests give the false impression that something is being done to reduce border crimes. Whether arrests are up or down is inconsequential as long as the cartels are in operation. Until the cartels are eliminated, the border cannot be considered secure. Period.

Targeting the Cartels—and Their Money

Any serious border defense must go after the cartel’s money, but that is not happening. Only recently have southbound, bulk cash shipments—shrink-wrapped bales of \$100 bills—been seized by DHS in any quantity. But, the spectacular seizures reported are a drop in the bucket of cross-border transfers. The main culprit is not DHS or the Department of Justice; it is the U.S. Department of the Treasury. Treasury officials who observe and regulate the international movement of currency remain unwilling or unable to go after money laundering across the Mexican border. For years, they ignored the hundreds of millions of dollars that were wire transferred to pay for human smuggling. In spite of concerns raised by Congress and by parts of Treasury itself, “stored value instruments” can still be taken across the border regardless of the amount of cash stored on them.⁶ Moreover, “funnel” accounts in major banks have moved billions of dollars illegally across the border. Yet when money-smuggling crimes have been uncovered, the perpetrators walk with no criminal penalties. Apparently, in Treasury’s view, allowing billions of dollars to flow into the cartel bank accounts is merely a technical violation of the law and not a deadly serious enterprise affecting the lives of tens of thousands on both sides of the border.

By not stopping the money from illegal enterprises flowing across the border, one thing is sure; the cartels will continue to have the resources to attack the border successfully. By not moving aggressively against illegal money transfers across the border, this country is literally providing our enemies the resources to continue operating at a level of organizational and technological sophistication that is almost unstoppable.

As Arizona’s Attorney General, I focused on cartel money transfers. Rather than wait for federal action, Arizona established the most robust and innovative state program in the nation. We were successful in driving hundreds of millions of dollars of proceeds from illegal activity out of our state. Through extended litigation, I forced reforms in the wire transfer industry so that the

virtually anonymous transactions which paid for much of the human smuggling in the past are no longer available. One state acting alone did a lot.

Unfortunately, the cartels have the whole 2,000-mile border to pick on. They simply shifted their money laundering operations away from Arizona in response to our prosecutions. Human smuggling into this country continued. Now, as a result of our settlement with Western Union in February 2010, the data on wire transfers along the entire southwest border is available to law enforcement. The Arizona successes can now be taken nationwide, if there is the will to do so. Last year, the U.S. Government Accountability Office (GAO) recommended a careful study of what we did in Arizona for implementation by DHS.⁷ It remains to be seen if the federal authorities will use this data treasure trove to uncover criminal operations along the border.⁸

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“Trade-based” money laundering and black market peso exchanges appear to be on the increase. The cartels are subcontracting with a virtual cottage industry of financial experts in the U.S.—people who make the illegal movement of money resemble legitimate international transactions. Transfers are broken down or structured into many accounts to evade suspicion from data analysts, and phony invoices are produced to make payments appear to be for legitimate goods or services. Failure to act means that every day the cartels are getting better and better at moving dollars out of the U.S. How long are we going to allow them to train in our backyard?

Going After the Cartel Bosses

In addition to disrupting the flow of cash, another law-enforcement tactic that can be used more effectively on the border is targeting the leaders of the criminal enterprises. When faced with sophisticated criminal organizations, cops will attack the top of the organization with every means at their disposal. Every charge they can make stick against the crime bosses will be used. It does little good to round up and imprison or deport the foot soldiers of the cartels. They are easily replaced with no damage to the organization. Yet most current efforts are directed at the small fries and the subcontractors. The highly publicized immigrant sweeps splash on nightly news and give the appearance of being tough, but the impact is minimal. The smuggling of drugs and people over the southwest border will not be reduced until it becomes hazardous to manage the criminal enterprises.

This country must break down the elaborate coordination required for successful smuggling. Arrest and incarceration of the bosses who coordinate the scouts, manage the money, and purchase the advanced technology will do just that. And we need to send a clear message that it will be extremely hazardous for anyone to take a fallen leader’s place. Such pressure, applied

at the same time the cartel money is disrupted, will destroy the criminal organization. Without the organizations, the holes in our border defenses disappear.

In Arizona, my office never had any doubt that dismantling the criminal organizations was our primary objective. With our federal and local partners, we investigated and prosecuted multiple cartel operations in cash, human, gun, and drug smuggling. Whenever possible, we closed the operations down, soup to nuts. We arrested not just the easily replaceable foot soldiers and subcontractors, but the top bosses.

Unfortunately, one state acting alone only has jurisdiction on the U.S. side of the border. Going after the major cartel bosses in Mexico was beyond our power. Ultimately, going after the bosses will require federal leadership and close cooperation with the law enforcement of Mexico; something which has been slow to come together, and which no state operating alone can accomplish. Such a multinational effort will require a much closer working relationship with Mexican law enforcement than has been achieved so far. There has been progress in that effort, especially in the last several months, but it is very hard to understand the protracted failure to engage in extensive common investigative efforts.

Yes, there is still corruption among Mexican law enforcement and the chance, although much progress has been made, that some targets might be warned off and investigations frustrated. But what is the alternative? No one can doubt the commitment of the Mexican government and people to the fight against the cartels. They have paid a huge price in blood for President Calderón's attempt to destroy these criminal organizations. If anyone has earned our respect and deserves our support, it is Mexico. With the Merida Initiative, begun by the Bush Administration and continued under Obama, the United States has placed extensive technology and firepower in the hands of the Mexican government. The support in material and arms has undoubtedly helped. But it is not enough.

The lack of bi-national coordination, in effect, provides cartel leaders a sanctuary south of the border. Without much better coordination with Mexican law enforcement on the most important cases involving the leaders of the cartels, they will continue to make a mockery of our border defenses.

Going on Offense

So far, United States' border efforts have been basically defensive. We have made very significant investments in manpower and technology on our side of the border. But a team that only plays defense, however inspired, will lose. And, so will we. The legions of Border Patrol agents lined up along the north side of the border are sure to fail without the rest of a focused, multi-faceted, anti-crime package: stopping the flow of cartel money, going after the cartel leaders, and dismantling their criminal organizations. We could double again the number of Border Patrol agents and see little improvement. The cartels will continue to pick the weakest spots and bring their contraband, human and drug, across. It is time for a new game plan.

One goal which would be specific enough to give a clear idea of whether we were succeeding or failing would be the arrest, prosecution, and incarceration of Chapo Guzman, the notorious leader of the Sinaloa cartel. Such a goal, clearly stated and unequivocal, would provide focus and accountability to the efforts and would force a close working relationship among law enforcement across the border. If U.S. forces can find Osama bin Laden, I am sure, with Mexican help, they can find and arrest Chapo. After all, *Forbes* magazine publishes his photograph in its annual edition on the world's billionaires. That arrest would do more to stop the flow of contraband into the U.S. and the slaughter in Mexico than all the billions spent so far. With Chapo and other cartel leaders in custody awaiting trial, the Obama Administration could validly proclaim that it has made the border materially safer.

Time is of the essence. The cartels are gaining significant authority within some areas in Mexico, and the Mexican people understandably tire of the bloodshed and cost of fighting them. I have little doubt that, when the Calderón Administration ends in just over a year, Mexico's commitment to the fight against the cartels will wane significantly, if not actually come to an end. In addition, the cartels are rapidly diversifying into new lines of criminal activity, taking over the production and sale of pirated music CDs, videos, and software. They steal and distribute petroleum and hijack commercial trucks on an unprecedented scale. As they diversify, the cartels become harder and harder to isolate from the mainstream economy and harder to close down.

This is the time for a maximum coordinated push. If leaders in the United States are serious about defending our border and not just using border failures as an excuse for doing nothing on immigration reform, this country must become more than a glowering presence. Put the offensive team on the field and commit to finishing the job. Border defense is far more than just playing a deadly version of Red Rover.

Protecting the Ports

One of the consequences of the hysteria about border security is the buildup of the Border Patrol at the expense of customs enforcement. The emphasis on protecting the long stretches of remote border between the official crossings (or "ports") has a price. With the de-emphasis on customs inspections at the ports and the resulting strain on Customs and Border Protection (CBP), more contraband gets through the ports.

Always opportunistic, the cartels have seen and seized the opportunity to put more contraband through the ports of entry. Most of the criminal activity has shifted to the border crossings, not the places in between. Texas congressmen have become particularly concerned by this misallocation of resources. But, the popular demand is for beefing up enforcement, not better inspections. Moreover, low staffing at the ports has damaged legitimate cross-border trade, with imported goods condemned to sit additional hours waiting to be inspected. By appearing tough—making fortification of the border with additional Border Patrol the top priority, while deemphasizing the ports of entry—it is easier for the criminals to come through our front door. Once again, the symbol has trumped reality.

A Changing Mexican Criminal Justice System

In the midst of waging an all-out war against the cartels, Mexico has been quietly revolutionizing its justice system. Their current criminal trial procedures convict only one percent of the defendants. Trials are held behind closed doors using documentary evidence only, without confrontation of live witnesses, and are easily corrupted. For the assault on organized crime to succeed, Mexico recognized that it must adopt a more public prosecution system. The country is now transitioning to public trials and live confrontation of witnesses, similar to the U.S. It would be a massive undertaking to make such a fundamental change in normal times, but to do so in the midst of the cartel wars, with prosecutors' and judges' lives literally on the line, is nothing short of heroic.

The new criminal justice system is being rolled out state by state across Mexico. Thousands of prosecutors and judges are being trained in an effort funded in large part by monies from the Merida Initiative. Training has been done by the U.S. Department of Justice and state Attorneys General's offices. Very quietly, this transformation of the Mexican criminal justice system has been a huge success, perhaps the brightest spot in the entire border defense. It has the potential to make huge differences in the fight against the cartels, yet it has been largely unnoticed by the media and the border hawks. And, typical of the failure of coordination on the border, the most recent State Department budget cuts the training funds in half. Just when the new Mexican criminal justice system is poised to take flight, the U.S. is inexplicably cutting its wings.

Conclusion

If the United States wants effective border security and not just a political punching bag, where symbolism trumps common sense, then more effective law-enforcement measures must be taken. By attacking money laundering and making bi-national criminal investigation and prosecution of the cartel bosses a priority, the border can be made significantly more secure. In the process, the mayhem in Mexico and the smuggling of drugs and people into the United States will be reduced. There must be a unified focus. All agencies must get on the same page for the effort to succeed. State and local law enforcement, with the coordinated efforts of all relevant federal agencies, can win this. Nothing less will.

Arizona can provide an instructive classroom for many of the procedures needed for success. We took the critical first steps in attacking the money laundering by human smugglers; we learned that trade through almost six years of trial and error. What is more, we developed excellent cross-border relationships, personal and institutional, and have—through the settlement with Western Union—unlocked a treasure trove of data relevant to illegal money transfers across the border. It is now up to the other states on the border, and federal officials, to take advantage of the lessons and mine the data bank for criminal leads. If that happens, we will take a long step toward eliminating the cartels. They are still flourishing today, precisely because one state working alone cannot make the comprehensive, bi-national, border-wide effort that is needed. Only the federal authorities can do that.

However relevant my experience may be to the challenges of border security, I cannot influence those whose only mission is to find fault instead of workable solutions. Those whose real intent is not to fix the border, but to stop—and, if possible, reverse—all immigration into the United States. They will never be satisfied. However, to those who are seriously interested in results, for those who want to see a secure and commercially viable border between the United States and the Republic of Mexico, a real 21st Century Border, my experience and the Arizona story can point the way.

Endnotes

¹ Calling these criminal enterprises “drug cartels” is a misnomer. Unlike the 19th century industrial Robber Barons, they are vigorously, often viciously, competitive. Drug cartels are also rapidly moving away from a concentration on the production, smuggling, and distribution for sale of illegal drugs, using their organization and resources to diversify into other criminal activities, including kidnapping for ransom, extortion, and media piracy. Mexico has become the media piracy capital of Latin America, exporting so many illegal movies that the recording studios no longer try to sell their products in Central America. The rival cartels even brand their illegal products with their unique logos. They have also become a serious producer of illegal software, making thousands of copies of computer operating systems like Microsoft’s Windows XP. Drug cartels are more accurately called “transnational criminal organizations” (TCOs), but I will stick with the common denomination of “drug cartel,” or just “cartel.”

² This estimate is derived from U.S. Department of Justice, National Drug Intelligence Center, [2009 National Drug Threat Assessment](#), December 2008, p. 49, and United Nations Office on Drugs and Crime, [The Globalization of Crime: A Transnational Organized Crime Threat Assessment](#), 2010, p. 65.

³ Arizona Governor Jan Brewer demanded 250 National Guardsmen at the beginning of the summer, but when the Administration promised twice that many, she did not hesitate to say the number was not nearly enough. See E. J. Montini, [“Brewer got twice what she asked for,” The Arizona Republic](#), July 23, 2010.

⁴ Mexican casualties in the cartel wars exceed the combined U.S. military losses in Iraq and Afghanistan.

⁵ See The White House, Office of the Press Secretary, [“Remarks by President Obama and President Calderón of Mexico at Joint Press Conference,”](#) March 3, 2011.

⁶ Congress, as part of credit card reform, ordered Treasury to write regulations for stored value instruments by February 2009. They did not. When regulations were finally drafted in 2010, they failed to cover international movement of the cards. The final rule has recently been promulgated, making some long overdue changes in how stored value instruments are reported and monitored, but still not closing the loophole in international money laundering by requiring them to be disclosed at the border.

⁷ U.S. Government Accountability Office, [Alien Smuggling: DHS Could Better Address Alien Smuggling along the Southwest Border by Leveraging Investigative Resources and Measuring Program Performance](#), GAO-10-919T, July 22, 2010, p. 6.

⁸ The Internal Revenue Service (IRS) and Immigration and Customs Enforcement (ICE) are showing interest in this data, although no arrests have yet been made.