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Political Considerations Surround Decision to Deploy National Guard to Southwest Border

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June 15, 2010

Amidst growing political pressure to strengthen border security, the Obama administration announced in late May that it will deploy up to 1,200 members of the National Guard to the Southwest border. The troops are intended to counter smuggling organizations and prevent border violence.

The last time a president deployed a significant number of National Guard troops to the US-Mexico border was in 2006, when President George W. Bush sent 6,000 as part of Operation Jump Start, a two-year "stop gap" measure while Customs and Border Protection (CBP) recruited and trained new Border Patrol agents. The operation ended in July 2008 once the number of agents had increased by almost 40 percent, from approximately 12,000 agents in May 2006 to 16,700 agents.

The recent decision to deploy the Guard came soon after President Barack Obama met with members of the Senate Republican Caucus, many of whom had backed a legislative measure introduced by Senators John McCain (R-AZ) and Jon Kyl (R-AZ) to deploy up to 6,000 National Guard troops.

Despite the disparity in the number of troops needed, the decision has largely been seen as a political necessity by both parties. Democrats needed an alternative to the McCain-Kyl measure, and Republicans needed to renew their enforcement-first credentials.

The Obama administration said the deployment is intended as a temporary "bridge" measure to longer-term enhancements in law enforcement personnel from the departments of Homeland Security and Justice. However, the administration has not yet announced when or what kinds of personnel such enhancements will entail.

Purpose of the Deployment

The newly deployed troops will join more than 300 National Guard members already stationed on the Southwest border; those troops are currently participating in counternarcotics missions. The new Guard troops will not be authorized to arrest suspected unauthorized immigrants or drug or immigrant smugglers.

Rather, they are to support law enforcement officers by assisting with border surveillance and communications and intelligence operations, and analyzing traffic patterns to assist in the interception of illegal drugs.

According to media reports, the Guard troops will be stationed in the four border states of Texas, Arizona, New Mexico and California for up to one year.

The first time a president dispatched a substantial number of National Guard troops to the border was in 1916, when President Woodrow Wilson summoned more than 100,000 National Guardsmen to quell violence on the US side of the border perpetrated by Mexican revolutionary Francisco "Pancho" Villa. No other president took a similar action until Bush in 2006.

In recent months, calls for redeploying the National Guard have come on the heels of violence along the Mexican side of the border due to the Mexican government's confrontations with powerful drug cartels and smuggling organizations. Reports estimate that more than 14,000 people have been killed in Mexico since January 2007. The

violence has been most severe in Mexican border towns, as cartels struggle for control of smuggling routes into the United States.

While a recent report from the Congressional Research Service (CRS) found no indication of "spillover" violence on the US side of the border, and the Obama administration has emphasized that violent crime has decreased in many US border cities, several recent events have escalated fears.

In March, a gunman in Ciudad Juarez, across the border from El Paso, Texas, killed three employees of the US consulate, prompting speculation that Mexican drug cartels would begin targeting US interests or officials. One month later, an explosive device was thrown over the wall of the US consulate in Nuevo Laredo, Mexico.

But it was the March 27, 2010, murder of Arizona rancher Robert Krentz, Jr., that sharpened the focus on concerns of spillover violence. Soon after Krentz was killed on his property in southern Arizona, the police said they suspected a drug or immigrant smuggler was responsible for his death.

Arizona legislators and Governor Jan Brewer cited the Krentz murder as justification for toughened immigration enforcement measures. In April, Brewer signed the Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070), a controversial law that greatly expands the ability of state and local police officers to ask individuals about their immigration status.

Krentz's death also renewed calls to send National Guard troops to the border. In March 2010, Representative Gabrielle Giffords (D-AZ) sent a letter to Homeland Security Secretary Janet Napolitano requesting their deployment. Lawmakers from several border states sent a similar request to Obama on April 28.

In early May, McCain and Kyl introduced the Border Security Enforcement Act of 2010 (S. 3332), which, among other provisions, would send 3,000 members of the National Guard to the Tucson and Yuma sections of the US-Mexico border. The bill has been referred to the Senate Homeland Security and Governmental Affairs Committee.

Meanwhile, McCain and Kyl introduced an amendment to a Department of Defense appropriations bill that requests 6,000 National Guard troops for the Southwest border. The Senate Armed Services Committee approved that measure on May 27.

In a letter to Senator Carl Levin (D-MI), chairman of the Senate Armed Forces Committee, White House National Security Adviser James Jones and Assistant to the President for Homeland Security and Counterterrorism John Brennan objected to the McCain-Kyl amendment, arguing that "there is no modern precedent for Congress to direct the President to deploy troops in the manner sought by the Amendment."

Political Considerations for Deployment

Beyond giving Senate Democrats an alternative to the McCain-Kyl measure, deploying the National Guard was also seen as an attempt to forge a compromise with Brewer on SB 1070.

Obama, who has publicly opposed SB 1070, met with Brewer at the White House on June 3 to discuss the new Arizona law and federal efforts to secure the border. According to media reports, Obama also used the meeting to assure Brewer that the majority of the 1,200 National Guard troops would be deployed to Arizona.

Others viewed the president's decision as a "down payment" toward the passage of comprehensive immigration reform legislation that would include a pathway to legal status for unauthorized immigrants.

Senator Charles Schumer (D-NY), the chairman of the Senate's immigration subcommittee and the likely author of a comprehensive immigration reform bill in the Senate, told reporters that deploying the National Guard could help move comprehensive immigration reform legislation through Congress because "it shows how Democrats are willing to fight for both parts of the issue."

Reaction to the Deployment

Some politicians have argued that the president's measure does not go far enough. McCain and Kyl, as well as Representative Harry Mitchell (D-AZ), released statements criticizing the Obama plan as being a "weak start" that would not utilize nearly enough National Guard troops to have a significant impact on the border.

Immigrant advocates, on the other hand, have heavily criticized the decision. They have expressed concern that the measure will amount to a "militarization" of the border states.

Some have also questioned Obama's strategy of supporting Republican measures to tighten border security without extracting a promise of support from Republicans for a legalization measure for unauthorized immigrants.

In previous years, bills for comprehensive immigration reform have been characterized as compromise measures for including both border security provisions and a path to legalization for unauthorized immigrants.

- Read the **letter** from Assistant to the President for Homeland Security Counterterrorism John Brennan and National Security Advisor General James Jones on the deployment of the National Guard.
- Read the **February 2010 Congressional Research Service Report** on Southwest Border Violence.
- Read the text of the **Secure Border Enforcement Act of 2010 (S. 3332)**.
- Read more about Operation Jump Start in the **June 2006 Policy Beat**.

Debate Continues Over Arizona SB 1070

The controversy over Arizona's new immigration law has continued, with Arizona Governor Jan Brewer discussing the law with President Barack Obama earlier this month and tens of thousands of the law's supporters and opponents rallying in Phoenix over the Memorial Day weekend.

The Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070), which Brewer signed on April 23, 2010, allows Arizona state and local law enforcement officers to ask about the immigration status of anyone the police stop for a state crime if an officer has a "reasonable suspicion" that the individual is an unauthorized immigrant. The law also makes it a state crime for noncitizens to fail to carry proof of their citizenship status.

During Brewer's Oval Office meeting with Obama on June 3, Obama said he would send White House staff to Arizona to discuss securing the US-Mexico border. The president also said he would like Brewer to work with him to pass comprehensive immigration reform. Brewer said she thinks the border must first be secured.

That same day, Brewer responded to a letter from Senator Charles Schumer (D-NY), rejecting Schumer's proposal that Arizona delay implementation of SB 1070 for one year in order to give Congress time to pass comprehensive immigration reform. Brewer emphasized that Arizona's border areas had become "lawless" because of the federal government's inability to secure the border and recommended a border "surge" in law enforcement agents.

Brewer indicated on May 28 that she would not allow Arizona Attorney General Terry Goddard to defend the state in the various legal challenges being brought against SB 1070, because of Goddard's "consistent opposition to Arizona's new immigration laws" and his "curious coordination with the US Department of Justice."

Earlier that day, Goddard had met with US Attorney General Eric Holder to discuss the Arizona measure. Both Goddard and Holder have publicly stated that they oppose SB 1070.

Holder also hosted a meeting with the police chiefs of several major US cities to discuss their concerns about the Arizona law. According to media reports, police chiefs focused on the impact the law would have on immigrants cooperating with the police, and the fact that the law could divert police resources away from investigating more serious crimes.

- Read the text of the **Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070)**, as amended by the Arizona state legislature on April 29.
- Read **Governor Brewer's announcement** in which she says her legal team will defend SB 1070.

- Read Governor Brewer's **letter** to Senator Schumer.
- Read more about the new Arizona law in the **May 2010 Policy Beat**.

Policy Beat in Brief

Supreme Court Ruling on Aggravated Felonies. The US Supreme Court, in a unanimous decision, ruled that an immigrant who pled guilty to two simple misdemeanor drug possession offenses should not have been found to have committed an "aggravated felony" for immigration purposes. Under current immigration law, lawful permanent residents found to have committed aggravated felonies are both deportable from the United States and barred from applying for cancellation of removal. In reversing a decision by the US Court of Appeals for the Fifth Circuit, the Court held that for a second simple drug possession offense to be considered an aggravated felony, an immigrant would have to be charged and convicted as a "recidivist" drug offender under state or federal law.

- Read the Supreme Court's **decision** in *Carachuri-Rosendo v. Holder*.

Obama Administration and Arizona Employer Sanctions Law. The Obama administration has filed a brief recommending that the Supreme Court grant leave to review the legality of the 2007 Legal Arizona Workers Act. The act, which took effect in January 2008, allows the state to penalize employers that hire unauthorized immigrants by taking away their business licenses, and it requires all Arizona employers to use the federal E-Verify program to confirm that new employees are authorized to work. After a federal district court and the US Court of Appeals for the Ninth Circuit upheld the law, the petitioners in the case requested review by the Supreme Court, which then sought the new administration's views on the appeal.

- Read the Ninth Circuit Court's **opinion** in *Chicanos por la Causa, Inc. v. Napolitano*.
- Read the **new brief** from the Solicitor General's office requesting that the Supreme Court consider the case.
- Read more about the Legal Arizona Workers Act in the **January 2008 Policy Beat**.

United States in the State Department's Annual Human Trafficking Report. In its 10th annual Trafficking in Persons Report, the US Department of State (DOS) for the first time has included the United States in its rankings of individual countries' compliance with the Trafficking Victims Protection Act (TVPA), enacted in 2000. Previously, DOS had only included rankings for other countries. Thirteen countries earned a "tier 3" ranking in 2010, indicating that they do not fully comply with TVPA's minimum standards and are not making any significant efforts to do so. TVPA calls for the vigorous prosecution of human trafficking crimes and greater access to social services and legal protections for trafficking victims.

- Read the new Department of State **report** on human trafficking.

Generational Gap on Immigration. A *New York Times* and CBS News poll found that 41 percent of Americans ages 45 to 64 and 36 percent of Americans older than 64 feel that immigration levels in the United States should be decreased, while just 24 percent of those younger than 45 agree with this sentiment. The poll also found that older Americans are more likely than younger Americans to support laws like the new immigration enforcement law in Arizona. The *New York Times* attributed these findings to a recent surge in the foreign-born population, and the fact that younger Americans are likely to have had personal interactions with immigrants and with immigrant communities.

- Read the **poll results**.
- Read more about the size of the foreign-born population and historical levels of immigration in on the Spotlight on **Frequently Requested Statistics on Immigrants and Immigration in the United States**.

Growing Backlog in Immigration Court Cases. The number of cases pending before the Executive Office of Immigration Review (EOIR) reached an all-time high of 242,776 in March 2010, according to the Transactional Records Access Clearinghouse (TRAC) at Syracuse University. Wait times to see immigration judges have also increased, especially in certain states. Analysts at TRAC attribute the growing backlog to unfilled vacancies for

EOIR judges and new requirements introduced as a result of recent decisions by the US Supreme Court and various appellate courts.

- Read the **TRAC report** on the backlog in immigration court cases.

Bersin Confirmation Uncertain. Doubts have been raised about whether the Senate will confirm US Customs and Border Protection (CBP) Commissioner Alan Bersin, after Bersin faced tough questioning last month over his reported failure to prepare and maintain I-9 employment forms for 10 employees working at his home. At a hearing before the Senate Finance Committee, several senators expressed concerns about the commissioner's ability to enforce federal immigration law if he himself had not previously complied with I-9 requirements. Obama appointed Bersin in March during a congressional recess.

- Read the written **statements of witnesses** during the Senate Finance Committee hearing.
- Read more about Obama's appointment of Commissioner Bersin in the **April 2010 Policy Beat**.

Fee Increase for Immigration Applications. US Citizenship and Immigration Services (USCIS) plans to increase government fees for several immigration applications, including applications for lawful permanent residence and work authorization. According to USCIS Director Alejandro Mayorkas, the increase in fees is necessary because the agency is facing a budget shortfall. Notably, USCIS will not raise the citizenship-application fee, which jumped 69 percent in 2007 and currently stands at \$675 (including the biometric fee). The agency has said this is because of the significant public benefit of naturalizing immigrants and "the nation's proud tradition of welcoming new citizens."

- Read the **proposed new rule** published by USCIS.
- Read more about the last increase in USCIS fees in the MPI Fact Sheet **Immigration Fee Increases in Context**.

H-1B Visas Still Available. USCIS has not yet reached its cap of 65,000 H-1B visas for high-skilled immigrants for fiscal year 2011, receiving just 22,200 eligible petitions as of June 11, 2010. In addition, 10,600 H-1B visas (of 20,000 allotted) remain available for those who have obtained advanced degrees in the United States.

- Read the **USCIS update** on the H-1B visa count.
- Read more about the H-1B visa program in the **April 2008 Policy Beat**.

Haitian TPS Count. USCIS had received just over 52,000 applications from Haitian nationals seeking Temporary Protected Status (TPS) as of early June 2010. USCIS agreed to grant TPS — which includes protection against deportation and work authorization — to certain Haitian nationals in the United States following the January 12, 2010, earthquake in Haiti. USCIS had initially estimated that between 100,000 and 200,000 Haitian nationals might be eligible to apply for TPS. Haitian nationals have until July 20, 2010, to register for TPS.

- Read more about TPS for Haitian nationals in the **February 2010 Policy Beat**.

State and Local Policy Beat in Brief

Secure Communities in San Francisco. San Francisco supervisors have overwhelmingly approved a nonbinding resolution urging the city's sheriff, police department, and juvenile probation department not to take part in the Immigration and Customs Enforcement (ICE) program Secure Communities. Through Secure Communities, local jails send the fingerprints of anyone arrested to ICE, which checks whether the arrested individuals are deportable aliens. In May, San Francisco Sheriff Michael Hennessey requested state permission for San Francisco to opt out of the program. California Attorney General Edmund G. (Jerry) Brown denied this request, writing that the program "serves both public safety and the interest of justice." Brown, a Democrat, is currently running for governor of California.

- Read the text of the **San Francisco resolution**.
- Read the text of Brown's **letter** to Sheriff Hennessey.
- Read more about the Secure Communities program in the **June 2009 Policy Beat**.

- Visit the MPI Data Hub for the latest stats on immigrants in **California** and for the **State Responses to Immigration** data tool.

Prosecutions in Maricopa County, Arizona. The new Maricopa County Attorney, Richard Romley, has opted not to file state criminal charges against 32 immigrants recently arrested by the Maricopa County Sheriff's Office, a decision that observers say may indicate a shift away from the policies of Romley's predecessor, Andrew Thomas. In recent years, Thomas's office garnered national attention for its practice of bringing criminal immigration charges against many of the immigrants the sheriff's office arrested. Romley, a Republican, served as the Maricopa County attorney between 1989 and 2004. Since being reappointed as the interim county attorney in April 2010, when Thomas resigned to run for Arizona attorney general, Romley has indicated that he plans to target criminal syndicates and drug cartels.

- Read the Maricopa County Attorney's Office **press release** on criminal charges for immigrants.
- Read more about immigration policies in Maricopa County in the **September 2009 Policy Beat**.
- Visit the MPI Data Hub for the latest stats on immigrants in **Arizona** and for the **State Responses to Immigration** data tool.

Day Laborer Lawsuit in Oyster Bay, New York. A federal judge preliminarily barred implementation of an ordinance in Oyster Bay, New York, that prohibits the hiring of day laborers. The ordinance, which the Oyster Bay town board passed on March 31, 2009, also prohibits standing on the street and stopping or attempting to stop a car for employment purposes. According to the civil-liberties groups bringing suit against Oyster Bay, the ordinance violates the First and Fourteenth amendments to the US constitution.

- Read the **complaint** in *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*.
- Read the **decision** in *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*.
- Visit the MPI Data Hub for the latest stats on immigrants in **New York** and for the **State Responses to Immigration** data tool.

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