

Operation JUMP START

**A case study in defense support to civil authorities
and its implications for border security**

by Maj Jonathan E. Marang

In June of 2006, in accordance with a memorandum of agreement between the governors of the states of Arizona, California, Texas, and the Department of Defense, National Guard troops deployed to the United States' southern border in support of U.S. Customs and Border Protection (CBP). This deployment, known as Operation JUMP START, ran from June 2006 through July 2008 and was intended to provide support to CBP as it hired and trained thousands of new agents. Over the course of slightly two years, more than 30,000 soldiers and airmen provided engineering, aviation, technical, logistical, and administrative support in addition to numerous other functions. While the National Guard has a long history of domestic employment, this deployment is notable because of its length and its implications regarding the future employment of military forces on U.S. soil.

This case study will examine the background and history that drove the governors of four states to request the Federal employment of their state militias in support of border enforcement, a predominantly law enforcement function. It will then analyze the linkages between the Posse Comitatus Act and the memorandum of agreement between the governors and the DOD, which provide the legal basis for Operation JUMP START. Then, it will evaluate the policies that allowed these troops to reinforce Customs and Border Patrol under the defense support of civil authorities. Finally, it will review the benefits and negative consequences of

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Operation JUMP START and their possible future implications.

Operation Overview

The United States has a land border with Mexico that is over 2,000 miles long: thousands of miles of southern coastland and intercostal waterways that can facilitate illegal immigration. In the years between 1970 and 2002,

the number of global migrants, many of whom migrated illegally, more than doubled. The sheer volume of illegal immigrants was overwhelming the less than 12,000 CBP agents tasked with securing the United States' southern border. In 1970, CBP apprehended 231,116 people attempting to enter the U.S. illegally. By 2005, this number had sky rocketed to 1,189,07—a small fraction of the number who successfully entered the U.S. In 2005, legal cases were filed against 19,497 immigration defendants with only 17,757 defendants convicted.

These statistics clearly show that stopping immigration at the border is significantly more effective than dealing with illegal aliens once they have entered the country. CBP was in the



A secure border is the first step in stopping illegal immigration. (Photo by author.)

process of hiring and training thousands of new agents, but this takes several years. These factors contributed to the governors of four southern states requesting Federal support in the form of National Guard troops mobilized under state control but funded by the Federal Government.

State Versus Federal Employment of the National Guard

The U.S. Constitution established the authority to raise an Army and a Navy and clearly delineated the state militias, which would become the modern National Guard, as separate but related formations. The Army was intended for defense of the Nation from external threats and *in extremis* to enforce domestic law when regular law enforcement capabilities and the state militias proved unable to keep the peace, e.g., during a large-scale insurrection. This intent was challenged in the period after the American Civil War, when local authorities began using Federal troops to police southern elections. Clearer legislation was required to ensure the founders' intent was preserved.

Posse Comitatus Act

In order to limit the use of Federal troops domestically, the Posse Comitatus Act was passed, making it a crime for anyone to use the Army for law enforcement unless specifically authorized by Congress. The Air Force was officially added to the Act in 1956, and the Navy and the Marine Corps are subject to its restrictions because of DOD regulation. The Act contains several exceptions that allow the use of Federal forces, complemented by the exemptions found in the Title 10 of the US Code (2016a). Two of the most salient exceptions include National Guard forces operating under the state authority of Title 32 of the U.S. code (2016c) and aerial photography and visual search. These exceptions framed how the requesting governors could seek Federal support.

Memorandum of Agreement

Using the aforementioned exceptions to the Posse Comitatus Act, the governors of Arizona, California, New

Mexico, and Texas officially requested that the Federal Government assist in enforcing Federal immigration laws. Once approved, the DOD and the governors, of the requesting states signed a memorandum of agreement which outlined the scope of assistance provided. It also outlined the restrictions on the National Guard forces operating under Title 32 and their rules for the use of force, such as the CBP remaining the lead agency and the governors of each state retaining authority to decline missions at their discretion. It was under these legal precedents that federally funded National Guard troops deployed to conduct law enforcement support activities in the United States.

Defense Support of Civil Authorities

As previously discussed, the Posse Comitatus Act restricts the use of federally controlled troops for law enforcement activities in most cases. Because of state and Title 32 authorities there are instances when the DOD is involved in domestic law enforcement.

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These efforts are categorized as defense support of civil authorities (DSCA). JP 3-28, *Defense Support of Civil Authorities*, defines DSCA as support provided by DOD forces and assets to provide assistance to civil authorities in response to domestic emergencies or other special events. It further outlines that such assistance must be requested by the governor of a state and be approved by the Secretary of Defense. When determining what, if any, support to provide, the Secretary of Defense uses six criteria. These criteria are legality, lethality, risk, cost, appropriateness, and readiness. Operation JUMP START provides an opportunity to analyze these criteria.

Legality. The DOD considers legality, i.e., compliance with laws, when deciding if providing DSCA is suitable. In the case of Operation JUMP START, the correct legal decision was made concerning the mobilization status of the National Guard troops. National Guard troops can be called to active duty in three ways: state active duty, Title 10 status, and Title 32 status. State active duty would have been costly to each state with over 30,000 troops employed over a period of 2 years. Title 10 status would have prevented them from conducting law enforcement activities. Title 32 allowed for Federal funding with state control of mobilized troops facilitating law enforcement support activities.

Lethality and risk. Lethality, the potential use of lethal force by or against DOD forces, and risk, the safety of DOD forces, are intertwined. Operation JUMP START presented significant risk to DOD forces with the millions of illegal immigrants entering the southern border and the high threat of crime and drug activities. In order to minimize

the likelihood of any unnecessary violence, rules for the use of force, which included weapons arming conditions, were written into the memorandum of agreement, limiting the threat to DOD forces and minimizing the possibility of civilian injuries.

Cost and readiness. The cost borne by individual states combating illegal immigration was crippling their budgets. In 2005, Arizona first declared an emergency in their border counties and released \$1.5 million dollars to combat illegal crossings. This was swiftly followed in 2006 with another \$100 million dollars. This cost was clearly unsustainable by the southern states and would inevitably require Federal

support. Operation JUMP START did not present a significant threat to the overall readiness of the DOD at the time, as the forces only employed up to approximately 2,000 at any one point. In addition, they were National Guard troops who would possibly have been employed by the states regardless of a Federal Government refusal of a Title 32 mobilization.

Appropriateness. When assessing appropriateness, the DOD focuses on whether if providing the requested support is in the best interest of the Department. The DOD has a long-standing tradition of providing support to civilian authorities whenever legally allowable and militarily feasible. As previously covered, the exceptions to the Posse Comitatus Act and the memorandum of agreement between the DOD and the state leadership ensured legality. It was clearly appropriate for the DOD to follow its own policy in the case of Operation JUMP START.

In addition to DOD policy, border security is a vital factor for Homeland security. In a recent testimony before the Senate, the Director of National Intelligence noted growing global displacement as a threat to U.S. security. While this threat is currently regionalized predominantly in Europe and the Middle East, it threatens to spread. Pervasive violence and potential failing states in South and Central America could cause a similar threat to emerge on the U.S. southern border.

Benefits and Negative Implications

In the just over two years that Operation JUMP START existed, it provided many benefits and arguably numerous negative implications. While the operation was clearly legal and requested by the state governments, the deployment of uniformed service members to conduct law enforcement support activities can be contentious.

Benefits. During the course of the operation, 176,721 illegal aliens were apprehended, over 320,000 pounds of marijuana and cocaine were seized, 1,116 vehicles were seized, and 102 illegal aliens were rescued from life-threatening situations. Thousands of miles of roads and fencing were built



Service member and a working dog searching a vehicle at a border checkpoint and the sun rising over a border check point post. (Photo by author.)

and improved throughout the southern states providing greater access for CBP agents and citizens alike. Arizona continues to cite the effectiveness of National Guard troops in combating illegal drug trade and illegal immigration as a result of the state's experience with Operation JUMP START. National Guard efforts allowed for CBP vehicle readiness rates to reach over 90 percent, an impressive number for any large fleet of government vehicles, and their administrative efforts resulted in hundreds of additional sworn law enforcement personnel to return to service on the border rather than in a distal office.

Many advancements have been made as a result of Operation JUMP START in the realm of joint interoperability, not only between the National Guard and civilian authorities but between the different Services and the Active and Reserve Components they contain. While Operation JUMP START provided many impressive results, there are some notable negative implications for operations of this type.

Negative implications. Any type of military operation, specifically one that involves deployment to a field environment, carries inherent risk. During the course of Operation JUMP START, three service members lost their lives. One service member took his own life, one

was killed in a vehicle accident, and one succumbed to heat stroke. These types of casualties would likely occur in any future border operations.

The media has brought forth some challenges regarding Operation JUMP START. The deployment of armed troops along the U.S. border can make the area seem unsafe, while, statistically, the area is one of the safer regions in the country. Further, some would argue that using military assets to counter illegal immigration is too costly, with thousands of dollars being spent for every illegal alien captured and only a small portion of the immigrants being detained. Finally, DOD officials have pointed out the myriad of additional responsibilities the Department has and how utilization of forces for domestic border security can threaten other operational requirements. Department of State and DOD officials have voiced concerns that the perception that the United States is militarizing its southern border presents international image and political ramifications that can be farther reaching than just Mexico.

Future Implications

The employment of military assets to support domestic law enforcement activities along the U.S. borders will continue to be an issue. From

June 2010 through September 2011, National Guard forces once again returned to the southern border under Operation PHALANX. While this type of mission is attractive because of its seeming ease and the existence of the appropriate legal authorities, it should be avoided to the greatest extent possible in the future. The documented benefits of ease of deployment—and tangible results—are outweighed by the costs of such operations as a long-term solution. These costs come not only in monetary forms but in blows to the national image and damage to military readiness and proficiencies in military core competencies.

In recent testimony before the House Armed Services Committee, both the Secretary of Defense and the Chairman of the Joint Chiefs of Staff emphasized how over-worked and task-saturated the DOD is and stressed that it is at risk of losing the ability to project force and win wars. While Operation JUMP START itself wasn't a threat to overall DOD readiness, the possibility of this type of operation becoming more frequent, coupled with the crippling damage done by sequestration, present a serious threat to readiness.

The numerous negative implications of employing military forces, coupled with the clear intent of the framers of the Constitution for a separation of civilian law enforcement and military power, shows that operations like Operation JUMP START should be avoided in the future. While some may argue that building a border wall would ease required efforts, a recent study by the Congressional Research Service has shown that not only would this be logistically challenging but there are also significant legal hurdles which would need to be overcome. With a physical barrier currently untenable and continuous military deployments undesirable, border security must remain the pre-view of CBP working in conjunction with other Federal, state, and local law enforcement agencies.

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