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STATEMENT
SUBMITTED TO THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

at a
HEARING ON
THE RISE OF THE MEXICAN DRUG CARTELS AND U.S. NATIONAL SECURITY

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Chairman Towns, Representative Issa, Members of the Committee, I respectfully submit this statement as you consider the rise of Mexican drug cartels and U.S. national security.

Mr. Chairman, you may recall I accompanied you to Mexico and four other Latin American nations in August 1983 on a fact finding mission of the House Select Committee on Narcotics Abuse and Control and I have worked steadily on these issues in the years since.

Summary

I commend the House Committee on Oversight and Government Reform for conducting this hearing on the “Rise of the Mexican Drug Cartels and U.S. National Security.” The cartels’ capacity for assassination, bribery, and intimidation in one of our closest economic and political partners present a clear and present danger to U.S. national security. Our approach to combating this illegal drug trafficking-related violence has actually resulted in thousands of Mexican deaths, and must be dramatically revised.

First, the Congress and the Justice Department should reduce the power of local U.S. Attorneys to select cases for drug prosecution. We need a national process for targeting the prosecution of high level, violent international drug trafficking organizations (DTOs). Currently, the distraction of the political and professional ambitions of local U.S. Attorneys creates inefficiency and misdirects Federal resources toward insignificant cases. Remaining limited U.S. Attorney case selection must be

subject to effective oversight to reward appropriate use of federal resources and punish poor case selection. The days of wasting federal law enforcement resources on local drug traffickers who are also violating state law, and who can be prosecuted by state criminal justice systems, must end now.

Second, we must acknowledge that the U.S. is a major source of firearms for the Mexican DTOs. **Therefore, the Congress should enact effective control of weapons traffic control grounded on a guaranteed individual right to firearm ownership** for self-defense. Such a guarantee can be established by amending the Second Amendment to memorialize the opinion of the Supreme Court in District of Columbia v. Heller, No. 07-290, 554 U.S. ___ (2008).¹ Affirmation of the right to private gun ownership should be accompanied with a requirement to register all firearms transfers in order to effectively block the sale or transfer of firearms to those with records of violence. Gun ownership is a right and a responsibility. Gun registration is a tool to enforce those responsibilities. If you lose your gun or it is stolen, it must be reported. We need an effective system regulating the transfers of all firearms to protect the commerce in firearms from fraud and stolen weapons.

Third, we must dramatically expand the availability of drug treatment. Drug addiction in the U.S. (and Mexico) fuels the high demand of the drug trade. Drug addiction is a “brain disease,” as the National Institute on Drug Abuse likes to say, and it is not adequately nor appropriately addressed by law enforcement measures. Reducing demand requires credible drug treatment and prevention programs. The availability of these programs in the U.S. remains inadequate to the need. Less than one-fifth of those who need substance abuse treatment are able to get it.

Finally, the Congress must acknowledge that it is the enormous profit inherent in the illegal nature of the drug business that is driving and financing the violence from the Mexican cartels. **The only solution to the violence and corruption from Mexican drug cartels is to establish legal control over production and distribution to the drug trade.** The role of law makers in fighting the Mexican DTOs should eventually focus on taking control of this highly profitable market away from criminals. We must abandon policies that have the effect of funding groups that undermine U.S. national security.

Background

The extensive violence resulting from the Mexican drug cartels may seem to be a relatively new crisis in the press, but certainly, it is not new in Mexico. A decade ago, articles reported on the mass graves found outside Ciudad Juarez in Mexico that were a direct result of the violence between drug cartels. See my analysis, “Legalize Drugs or

¹ www.supremecourtus.gov/opinions/07pdf/07-290.pdf or <http://search.access.gpo.gov/supreme-court/SearchRight.asp?ct=Supreme-Court&q1=Heller&x=0&y=0>

Expect More Mass Graves” on the inextricable relationship between drug trafficking violence and our policies.²

A contributor to this violence is that the Mexican police and justice institutions have a long history of corruption and accommodation for criminals at all levels of government. See the recent reports on the candidates for last Sunday’s election in *The Wall Street Journal*, for example.³ The recent spike in intense violence is, in part, a reaction to extensive law enforcement efforts by the Calderón Administration.

In 2007, the Bush Administration and the Calderón Administration developed the Mérida Initiative. The Mérida Initiative provides U.S. financial aid – on the order of \$1.4 billion – to the Mexican government to assist it to combat the drug cartels. In return, the U.S. promised to do more to reduce demand for drugs, to reduce the number of firearms smuggled into Mexico from the U.S., and to curb shipments of currency and precursor chemicals to Mexico. Congress has appropriated nearly \$1 billion for the Mérida Agreement on three separate occasions. This is the wrong approach. The atrocities in Mexico that have resulted from this conflict have been well documented. The U.S. needs to change its domestic policies to impact the violence in Mexico. An outline of genuinely effective solutions to these problems has been missing.

Effective Decision Making in Allocating Federal Drug Enforcement Resources

Direction of Federal drug enforcement activity should be centralized in Washington D.C., not dispersed to 96 U.S. Attorneys throughout the nation. Local U.S. Attorneys’ control of decision making for federal prosecution is a relic from the times communications were slow and when much of the land area of the U.S. was comprised of unorganized territories and “U.S. Marshal Matt Dillon” and Federal law enforcement was the only public safety force.

Today, every state has under its jurisdiction highly trained investigators, prosecutors, judges, and corrections officers. Every state also has criminal justice resources that far exceed the number of Federal agents and prosecutors in that state. In general, states don’t need Federal “super cops.” **It is essential that the United States direct its finite federal anti-crime resources toward the global criminal organizations** that the states are incapable of effecting because these criminals endanger us now. The greatest contribution U.S. law enforcement can make is the investigation and prosecution of Mexican DTOs by fully staffed and equipped Federal cross-agency task forces.

Extensive research by the U.S. Sentencing Commission on cocaine sentencing

² Eric E. Sterling, “Legalize Drugs or Expect More Mass Graves” *Los Angeles Times*, December 6, 1999. <http://articles.latimes.com/1999/dec/06/local/me-41051>

³ Jose De Cordoba and Joe Millman, “Drug-Cartel Links Haunt an Election South of Border” *The Wall Street Journal*, July 3, 2009. <http://online.wsj.com/article/SB124657442789989017.html>

reveals a scandalous over-emphasis on low-level, insignificant drug offenders throughout the nation. At the conclusion of this statement are two tables from the U.S. Sentencing Commission's 2007 report that fully document this waste of resources.⁴

The opportunity cost of wasted federal resources due to the prosecution of such insignificant drug offenders can be measured in the thousands of lives lost in Mexico.

Controlling the Flow of Firearms to Criminals

I handled federal gun control legislation for the House Judiciary Committee from 1981 to 1989 and processed the Firearms Owners Protection Act of 1986. The American people have suffered from a firearms policy debate that is often dishonest and unnecessarily polarizing.

Most gun owners are law abiding citizens who own guns for self-protection and/or sport. As long as lawful gun ownership is a politically uncertain question, gun owners will resist any measures that appear to be or are alleged to be intermediate steps toward the confiscation of lawfully owned weapons. Lawful gun owners should be the strongest allies of law enforcement in fighting the illegal trade in weapons.

Political leaders across the political spectrum should unite to affirm an individual right to own firearms, including handguns, which are reasonably related to self-protection and sport. Once such a right is affirmed, grounded in the right to self defense, then regulatory measures to substantially limit criminal access to firearms can be implemented. If lawful gun ownership is guaranteed, the registration of firearms will present no threat to individual liberty. All firearms transfers should be subject to background checks for criminal history, period. Such an approach will dramatically reduce the gray market in hard-to-trace firearms that are arming the Mexican drug cartels.

Easy Access to Drug Treatment to Dramatically Reduce Demand for Heroin, Cocaine, and Methamphetamine

Third, while it will help Mexico, America will be the primary beneficiary when adequate drug treatment is available and credible drug abuse prevention programs are disseminated. Our national commitment to easily-entered, easily-accessed drug treatment borders on the farcical. Getting a bed in a drug treatment facility if you are a poor addict is never easy and usually slow. Roughly 80% of the drugs used in the U.S. are consumed by 20% of the users. The heaviest users are usually uninsured and indigent. The second best way to reduce the cartel profits (after legalization) is to create enormous opportunities and incentives for entering drug treatment. We could offer addicts who are

⁴ U.S. Sentencing Commission, *Report to the Congress on Cocaine and Federal Sentencing Policy*, May 2007, Tables 5-2 and 5-3, pp. 108 - 114.
http://www.ussc.gov/r_congress/cocaine2007.pdf

in treatment daily incentives that would reward their abstinence and reduce the drug trade far more cost effectively than funding local drug enforcement task forces.

We need to revise probation and parole to enforce court ordered abstinence by adopting more sophisticated urinalysis regimes. See Mark A.R. Kleiman, *When Brute Force Fails*, Princeton University Press, forthcoming, September 2009.

Effective Drug Control

Finally, even the current drug prohibition paradigm with refocused resources will be inadequate to separate the violent drug cartels from their nourishing profits. The U.S. must establish effective control of the use and distribution of drugs that are currently illegal. The U.S. can most easily accomplish such reform in changing laws regarding marijuana and heroin. A regulatory system for stimulant drugs such as cocaine and methamphetamine is more difficult to develop, but this should not deter lawmakers from supporting effective control regimes for the sale and use of these drugs when possible.

Conclusion

On Sunday, Mexico's DTOs won numerous important political victories as their political allies won election to Mexico's Congress, governorships, and mayors' offices.

If America continues our current anti-drug strategy, it is only a matter of time before these criminals gain more power in the United States, since they are already based in over 200 American cities.

All the doleful adjectives that are applied to Mexican DTOs – ruthless, vicious, and dangerous – are true. Their power grows directly out of the reality that the demand for drugs in the U.S. cannot be extinguished. Over the past four decades, we have used civil commitment, mandatory minimum sentences, long sentences, “zero tolerance,” campaigns by the First Lady and by the “drug czar,” housing evictions, denial of federal benefits, etc. but drug use remains entrenched.

China reduced its opium addiction problem by mass executions. It still executes drug users, but drug use remains a serious problem in various provinces of China. To see drug users as subhumans deserving summary execution is a Third Reich approach to “social undesirables.” Fortunately, America is moving away from this approach.

As long as we pretend that drug production and consumption exist outside the normal economic rules, we will enrich DTOs with the excess profits of prohibition.

We need to fight criminals who endanger us, not drug users who are part of us. We need to enlist all the sectors of the society into supporting the law – gun owners who get

mischaracterized by one side of the culture war, and drug users who are mischaracterized by another side of the culture war.

Americans should have legal access to firearms and to drugs. The traffic in both markets needs to be carefully controlled to minimize the role of criminals.

Law enforcement needs to be re-organized. The traditional federal organizational model is inherently unstrategic.

The results of our drug enforcement effort speak for themselves, and the results have been terrible. Congress can remain paralyzed in partisan bickering and pontification, or it can force the Executive branch to address the problems.

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