



May 23, 2018

To the Texas Sunset Advisory Commission
Hon. Sen. Brian Birdwell, Chair
Hon. Rep. Chris Paddie, Vice Chair

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Director/Legislative
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Re: Sunset Review of the Department of Public Safety

I respectfully submit this testimony on behalf of the American Civil Liberties Union of Texas, and its thousands of members and supporters around the state, to address widespread concerns regarding the concentration of Department of Public Safety along the Texas-Mexico border. We call for greater accountability, oversight, and transparency from the Department of Public Safety (DPS), which has received insufficient public scrutiny on its operations and expenditures.

Starting in 2014, we saw a disproportionate and wasteful increase of resources sent to our border as a response to the humanitarian crisis in the Rio Grande Valley. Some State leaders presented this biannual expenditure of \$800 million as making border communities more safe and secure. As an organization with an office in the region, we know the border areas of Texas continue to be one of the safest communities in America, as they were *before* this unnecessary surge. Border residents do not want to live in communities that now are militarized. Residents report fear of interacting with the enormous number of law enforcement agents. Moreover, immigrants will not report crimes they suffer or witness if they think police are the same as federal immigration enforcement. We all lose as a result.

Impact on the community and racial profiling concerns

Since the border surge started, the Rio Grande Valley has seen an increase in DPS citations and stops in counties like Hidalgo and Starr¹. This comes at a time of wide racial disparities

¹Schadlen, Marty, "In Rio Grande Valley, officials question the reason for DPS stops" *El Paso Times* (Mar 28, 2015) <http://www.elpasotimes.com/story/archives/2015/03/28/rio-grande-valley-officials-question-reason-dps-stops/73899258> and Rosenthal, Brian, "What Texas' Border Surge Means: Traffic Stops" *Houston Chronicle* (Sept 8, 2015)

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in DPS stops and searches.² The Rio Grande Valley is predominantly Hispanic, so the question our community asks is: What is the trooper's real mission when *our residents* are being harassed and stopped over and over?

DPS must address its racial disparity problem and make public investigations into racial profiling complaints. Racial profiling reporting must be expanded for these officers to ensure the public and the legislature can monitor this ongoing problem.

The ACLU of Texas agrees with the Sunset Commission Staff Recommendation, DPS Should Better Measure and Report Its Border Security Performance to Allow the State to Determine the Return on Its Significant Investment

State officials instructed DPS in June 2014 to: “[p]rovide an operation plan and detailed cost estimate; establish metrics and collect all necessary data to enable the measurement of the impact and effectiveness of the operation; and report monthly on significant developments or impact³”.

In 2016, it was reported that “the surge ha[d] led to more than 22,000 arrests, \$1.2 billion worth of drugs seized, and the apprehension of almost 100,000 undocumented immigrants,”⁴ but DPS has not provided an individual report of its contributions. It is impossible to assess, for example, DPS's claim that “almost 100,000” apprehensions occurred without explaining its role as compared to federal immigration authorities, which have exclusive authority over immigration enforcement. When Politifact concluded that claims about the surge's success were “mostly false,” DPS refused to isolate its own contributions because, according to a spokesman, that would be like “trying to determine if a basketball team won a game by asking the point guard how many points he scored”. Texas taxpayers deserve better, particularly given a border-security expert's opinion that the surge “really add[s] very little to the enormous federal government efforts in progress

<http://www.houstonchronicle.com/local/gray-matters/article/A-close-up-lesson-on-police-work-along-the-6490668.php>

²Dexheimer, Eric; Schwartz, Jeremy; McDonald, Christian, “Not So Black and White” *Austin American-Statesman* (Sept 9, 2016) <http://specials.mystatesman.com/dps-stop-search-data/>

³State of Texas, Governor Rick Perry, Perry, Rick, David Dewhurst, and Joe Straus. “Border Letter.” Letter to Col. McGraw. 18 June 2014. *Gov.texas.gov*. Web: <http://gov.texas.gov/files/press-office/border-letter-06-18-2014.pdf>

⁴Nelsen, Aaron, “Border Surge Fuels Sense of Safety for Many, but Also Reduces Income for Small-town Police” *San Antonio Express-News* (Sept 27, 2016) <http://www.expressnews.com/news/local/article/Border-surge-fuels-sense-of-safety-for-many-but-7098451.php>

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well before Texas intervened.”⁵ Many crossers in the last several years have been mothers and children, or unaccompanied children, fleeing violence in Central America to seek refuge here. They turn themselves in to agents of U.S. Customs and Border Protection, without any DPS involvement.

During the September 2016 House Committee on Homeland Security and Public Safety hearing in Brownsville, when questioned by lawmakers about success and metrics, Col. McCraw “did not offer a metric to measure success or a vision for when additional funds would be necessary;”⁶ he also added that: “ultimately, border security depends largely on federal Government investment in technology and manpower”⁷. If that is the case, then why is Texas investing so much in border security, especially when DPS has not been transparent with its metrics for measuring successful use of taxpayer money? Lawmakers and the public expect and demand a mechanism in the state to measure how the money it provides DPS results in real security and not a “faux security meant to placate an irrational fear”⁸. The public and our policy makers deserve to know precisely what DPS’s claimed successes amount to given the massive expenditures made and requested. At a time when Texas is being cautious about expenses, we cannot devote billions to an operation from which we have yet to see successes.

Recommendations

Given the dire need for transparency, we propose the following metrics and data be reported to the Legislature and the public with the goal of enhancing analysis of DPS operations and determining the effectiveness of the agency in combating criminal activities:

- Track arrests, currency seizures and criminal activity that are related to organized

⁶Nelson, Aaron, “DPS McCraw says as cross-border crimes moves east, west security sure to worsen” *San Antonio Express-News* (Sept 28, 2016) <http://www.expressnews.com/news/local/article/DPS-McCraw-says-as-cross-border-crimes-moves-9395841.php>

⁷ Nelson, Aaron, “DPS McCraw says as cross-border crimes moves east, west security sure to worsen” *San Antonio Express-News* (Sept 28, 2016) <http://www.expressnews.com/news/local/article/DPS-McCraw-says-as-cross-border-crimes-moves-9395841.php>

⁸ Nelson, Aaron, “DPS McCraw says as cross-border crimes moves east, west security sure to worsen” *San Antonio Express-News* (Sept 28, 2016) <http://www.expressnews.com/news/local/article/DPS-McCraw-says-as-cross-border-crimes-moves-9395841.php>

crime⁹;

- Improve reporting to differentiate between enforcement linked to serious, organized crime and routine traffic enforcement or minor drug possession arrests;
- Report serious crimes addressed or interdicted by DPS officers as part of the border operation, such as state or federal felonies or crimes listed on the FBI Index Crimes;
- Report the number of traffic stops and interactions between law enforcement and civilians including stops that result in no law enforcement action. Include in that reporting information the race and ethnicity of the person stopped, the basis for the stop, and the duration of the stop;
- Similarly, expand DPS racial profiling reporting in border areas to include any interaction with a civilian including interactions on foot and interactions that result in no law enforcement action being taken;
- Maintain video of interactions for two years for legislators and interested members of the public to review;
- Investigate and report on civil rights or legal violations resulting from pretextual stops;
- Report every transfer or handoff from DPS custody to federal immigration authorities and complete the Illegal Alien Referral Form for each person transferred to immigration authorities;
- Track the length of all civilian stops and report to the legislature on the longest 5% of such stop and the overall average time residents were held by DPS officers;
- Report on complaints received in areas of the state with increased DPS presence;
- Report on border specific and cultural competency training received by DPS officers along the border;
- Gather and report to the legislature and the public on local crime reporting rates before, during, and after targeted operations in border communities; and
- Offer an assessment of force reductions in areas outside of the border resulting from the ongoing border surge.

Additional Recommendations

- Make homeland security appropriations accountable to a third party, such as the Comptroller's Office, which should be responsible for auditing homeland security expenditures¹⁰;
- Task the Legislative Budget Board and the Comptroller with assessing the level of

⁹ ACLU of Texas, *Operation Border Star: Wasted Millions and Missed Opportunities*, pag. 8 (March 16, 2009) available at: https://www.aclutx.org/sites/default/files/field_documents/2009OperationBorderStarReport.pdf

¹⁰ Id. at 10

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- state spending verses federal spending along the Texas-Mexico border; and
- Enlist the assistance of a regional university to conduct a community survey to gauge the public safety needs and law-enforcement perception in border communities.

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