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Description of document: Immigration and Customs Enforcement (ICE) / Homeland Security Investigations Office of Intelligence Report: Baseline Assessment of Illegal Tunnel Activity, 2010

Requested date: 11-January-2017

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Source of document: U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Fax: (202) 732-0660
Email: ICE-FOIA@dhs.gov
[Online FOIA request form](#)

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**U.S. Immigration
and Customs
Enforcement**

March 23, 2017

RE: ICE FOIA Case Number 2017-ICFO-13641

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 11, 2017. You have requested copies of the following records: a digital/electronic copy of ICE/HSI document: HSI's Baseline Assessment of Illegal Tunnel Activity, December 2010.

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of ICE Homeland Security Investigations (HSI) for records responsive to your request produced 62 pages that are responsive to your request. After review of those documents, I have determined that portions of the 62 pages will be withheld pursuant to Exemptions of the FOIA as described below.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of DHS employees contained within the documents.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, ICE has

determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal intelligence report numbers and sensitive law enforcement techniques/information contained within the documents.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. ICE has determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you are not satisfied with the response to this request, you have the right to appeal following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.


Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.¹

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2017-ICFO-13641**. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

¹ 6 CFR § 5.11(d)(4).

Sincerely,

A handwritten signature in black ink, appearing to read "Katrina M. Pavlik-Keenan".

 Katrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 62 pages



HOMELAND SECURITY INVESTIGATIONS OFFICE OF INTELLIGENCE INTELLIGENCE REPORT

Baseline Assessment of Illegal Tunnel Activity

December 15, 2010



HSIR ID #: (b)(7)(E)

PREPARED BY:

ICE Homeland Security Investigations, Office of Intelligence

Preparer: (b)(6);(b)(7)(C) Phone: (202)732-

email: (b)(6);(b)(7)(C) non-secure

(b)(6);(b)(7)(C) (HSDN).

(b)(6);(b)(7)(C)

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DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INTELLIGENCE REPORT

EXECUTIVE SUMMARY

This Baseline Assessment of Illegal Tunnel Activity was prepared to provide U.S. Immigration and Customs Enforcement (ICE) officials with a strategic overview of illegal tunneling and offer recommendations for mitigating this threat.

Illegal tunneling activity on the Southwest border of the United States represents a significant and persistent threat to border security and will likely remain so in the near future. The United States shares an extensive land border with Canada and Mexico. (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

The rise in illegal tunneling is likely a response to increasingly heightened border security. Tunnel activity has been on the rise since the first reported discovery in 1990, though the trend has accelerated since 2006. The first tunnels discovered were sophisticated, traveling long distances and often containing electricity, ventilation, and lighting. In the late 1990s, the use of interconnecting tunnels, which took advantage of subterranean infrastructure to covertly approach and circumvent border security, spiked. Currently, both sophisticated and interconnecting tunnels are prevalent. In addition, although tunneling attempts have risen dramatically in the past four years, many of these tunnels were interdicted prior to completion.

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Notwithstanding these efforts, the level of illegal tunneling activity along the Southwest border remains high. Criminal organizations continue to invest heavily in diverse techniques to circumvent U.S. border security. In order to more strategically attack the illegal tunneling threat, U.S. law enforcement must increasingly employ an investigation-led approach toward dismantling the criminal networks involved in tunnel construction, finance, and use. (b)(7)(E)

(b)(7)(E)

REPORT HIGHLIGHTS

1. Illegal tunneling represents a significant threat to border security and will likely remain so in the near future.

2. (b)(7)(E)

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6. The trend in illegal tunnel construction is on the rise with a notable and sustained increase since 2005.

7. (b)(7)(E)

8. The two most common types of tunnels are sophisticated tunnels using shoring, ventilation, or electricity, and interconnecting tunnels, which take advantage of existing subterranean infrastructure.
9. Almost half of all tunnels accounted for in this assessment were discovered prior to completion.¹
10. Transnational Criminal Organizations have been associated with the construction of sophisticated tunnels. This is likely due to the cost and complexity of constructing sophisticated tunnels.

11. (b)(7)(E)

¹ This specifically refers to all tunnels or tunneling attempts included in this assessment. This is a broader view of tunneling activity (146 incidents) than is currently in place in other agencies.

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PURPOSE

This assessment is intended to provide a baseline review of illegal tunnel activity along the U.S. Southwest border. It identifies areas of vulnerability, defines tunnel classifications for the purposes of this assessment, analyzes tunnel characteristics and trends, and identifies agencies involved in combating the tunnel threat. This assessment also provides an analysis of the relationship between tunneling activity and Transnational Criminal Organizations (TCOs) and considers pertinent factors involved in combating the tunnel threat, including relevant U.S. and Mexican legislation, current tunnel detection technology, and emerging tunnel threats.

SCOPE AND METHODOLOGY

This assessment uses official law enforcement and unclassified Intelligence Community reporting and presentations, informal interviews with individuals working in the counter-tunnel community, and open source material. Annex 1 includes a complete list of all sources used in the analysis of tunnel characteristics and trends. The definitions for classification of tunnels were determined in collaboration with the ICE HSI National Border Enforcement Security Task Force (BEST) Unit.

It is important to note that the analysis of tunnel characteristics and trends includes subterranean excavations that do not meet the threshold of classification as a tunnel according U.S. Customs and Border Protection (CBP), which stipulates that a tunnel must cross the U.S. borderline. These excavations, however, were often tunnels that were halted prior to crossing the U.S. border and provide useful intelligence. The information on those tunnels also provides a more comprehensive assessment of the tunnel threat, and successes in preventing an actual breach of U.S. border security. For these reasons, the number of tunnels and tunneling attempts used in this report (146) as of December 15, 2010 is larger than the number of tunnels counted by other agencies. The information on the organizations countering illegal tunnels through operations, intelligence, technological development, inter-agency coordination, or other types of support was gathered from agency web-sites and employee presentations and interviews. The relevant counter-tunnel legislation was identified and analyzed using open source material and interviews with the members of the counter-tunnel community. The information on tunnel detection technology and emerging threats was derived from open source material, Departments of Defense (DoD) documents, and various technology and tunnel presentations. The material on emerging threats was taken from comprehensive law enforcement reporting, open source material, as well industry web-sites and resources.

DEFINITIONS

DEFINITION OF A TUNNEL

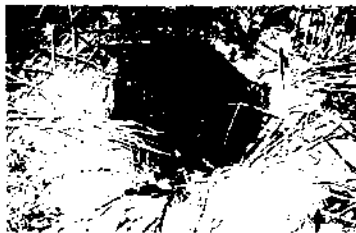
HSI Intelligence defines a tunnel as:

“An underground structure built with the intended purpose of circumventing U.S. border security. A tunnel may use existing subterranean infrastructure but must include at least one section requiring excavation.”

There is neither a standard interagency definition for a tunnel, nor a set of agreed upon tunnel classifications. The definition presented in this assessment builds on earlier definitions posited in the counter-tunnel community to better account for the transnational nature of tunnels and other emerging threats.

CLASSIFICATION OF TUNNELS

In order to monitor trends in the types of illegal tunnels being used to circumvent the U.S. border, it is useful to classify discovered tunnels according to their characteristics. The tunnel classifications for the purpose of this assessment are as follows:²



Rudimentary

A rudimentary tunnel is crudely constructed and travels a short distance (i.e., less than 20 feet) without evidence of shoring, use of machinery, power, or ventilation. Also, the entrance and exit of a rudimentary tunnel are usually open air or primitively concealed (e.g., plywood).

Source: Homeland Security Investigations Counter-Tunnel Investigations PowerPoint Presentation

Interconnecting

An interconnecting tunnel uses at least one purpose-built section to connect existing subterranean infrastructure in order to bypass border security. This classification includes tunnels that use existing infrastructure (e.g., road or sidewalk) as one or more walls of the purpose-built tunnel. The purpose-built section is often crudely constructed.

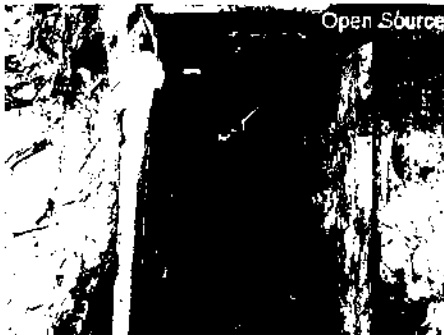
One specific type of interconnecting tunnel is known as a corrugated cut-out. A corrugated cut-out occurs when a tunnel constructor cuts a hole into a corrugated drain pipe for the purpose of



Source: CBP, U.S. Border Patrol Discovers Smuggling Tunnel, 4 October 2010

² Homeland Security Investigations Counter-Tunnel Investigations PowerPoint. 6 Oct 2010.

accessing the soil to construct a tunnel to circumvent border security measures. The exit of the tunnel is usually into subterranean infrastructure in the United States. Once in the United States, users of the tunnel can navigate through the infrastructure and access multiple exits points, a number of which are over a mile from the border.



Sophisticated

A sophisticated tunnel is elaborately constructed and may utilize shoring, ventilation, electricity, rail, or a water pump and span a long distance. Also, the entrance and exit of a sophisticated tunnel are often within an existing structure such as a residence or warehouse.

Source: The San Diego Union Tribune, "8 Arrested After Tunnel Discovered Near Border," 3 September 2008

Conduit

A conduit tunnel is linked to an emerging threat that is discussed later in this assessment; a classification is being developed herein, in order to initiate documentation for further intelligence gathering. A conduit tunnel would be composed either primarily or entirely of piping. This type of tunnel would likely be created through horizontal directional drilling.

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(b)(7)(E)	(See pages 46-49 for more detailed information.)

BACKGROUND

DEFINING THE AREA OF VULNERABILITY

The area vulnerable to illegal tunnel activity is influenced by geographic characteristics and manmade infrastructure. Along much of the border, geographic characteristics limit the length of border at risk for illicit tunneling. The land border between the United States and Mexico extends for 1,954 miles³ according to the International Boundary Water Commission (IBWC); however, 65 percent of the border consists of rivers. The Colorado River and Rio Grande River form 24 and 1,255 miles of the border, respectively.⁴ In unimproved areas, the presence of the river typically indicates a shallow water table, which would likely impede traditional tunneling efforts. (b)(7)(E)

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The physical infrastructure present in and around the border also influences the area's susceptibility to tunnel activity. (b)(7)(E)

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The Secure Fence Act of 2006 authorized up to 700 miles of border fence.⁵ By December 31, 2008, DHS had constructed or contracted for 370 miles of fencing specifically designed to stop illegal border crossers traveling on foot. This fence was built in the areas of San Diego, El Centro, Yuma, Tucson, Marfa, Del Rio, and Rio Grande Valley.⁶ In addition, DHS completed approximately 300 miles of fencing designed to stop vehicles but permeable to pedestrians in the same sectors.⁷ (b)(7)(E)

(b)(7)(E)

³ Internal Boundary Water Commission, http://www.ihwc.gov/Files/US-Mx_Boundary_Map.pdf.

⁴ Ibid.

⁵ Fact Sheet: The Secure Fence Act of 2006, <http://georgewbushwhitehouse.archives.gov/news/releases/2006/10/20061026-1.html>.

⁶ Pedestrian Fence 225 (PF225), http://www.ebp.gov/xp/egov/border_security/ti/ti_projects/pf225.xml.

⁷ Fence Technology Along the Southern U.S. Border: Map, <http://www.popularmechanics.com/technology/military/news/us-southern-border-fence-tech-map>.

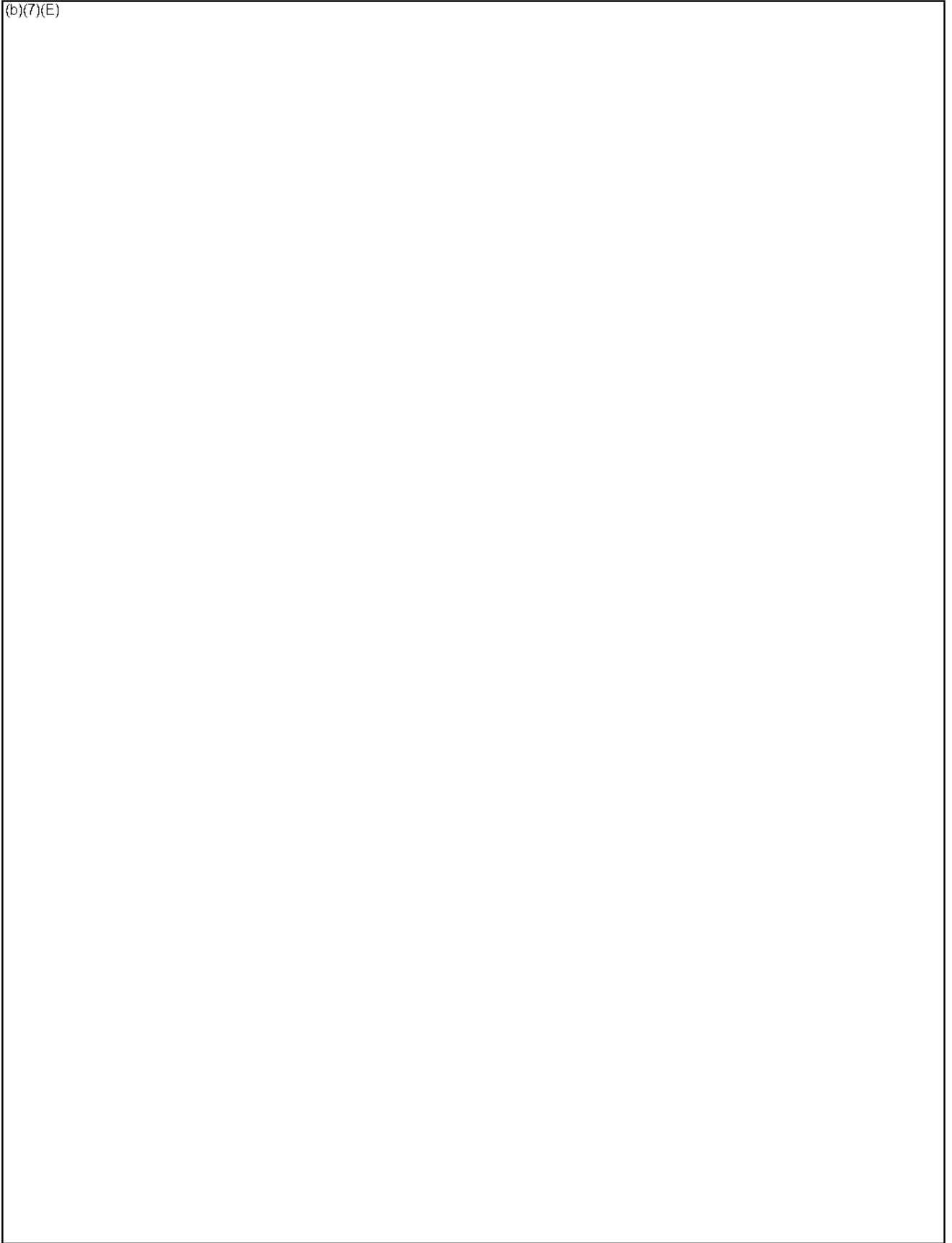
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TUNNEL ACTIVITY ON THE NORTHERN BORDER

On July 20, 2005, a 360-foot sophisticated tunnel was discovered in Lynden, Washington. The tunnel originated in a structure in Canada and terminated in a residence in the United States. This is the only reported illegal tunneling activity on the northern border of the United States.

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¹³ Boundary Facts, <http://www.internationalboundarycommission.org/boundaryfacts.html>.

¹⁴ Ibid.

¹⁵ Ibid.

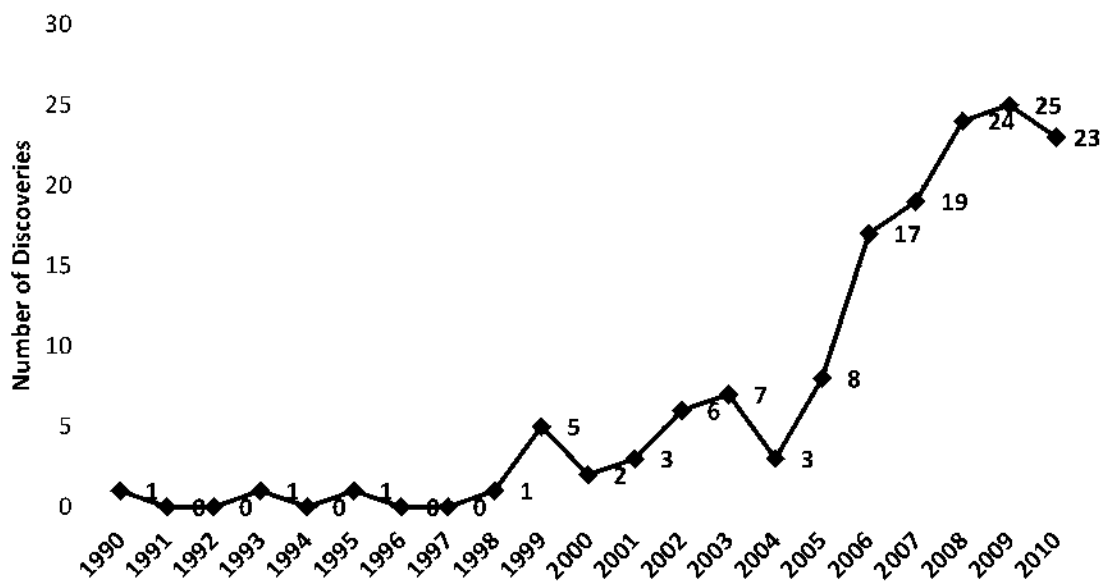
ANALYSIS OF TUNNELING ATTEMPTS CHARACTERISTICS AND TRENDS

The following is an analysis of tunnel characteristics and trends for the 146 identified tunnel attempts. This number includes completed subterranean excavations crossing the U.S. border, as well as incomplete tunnel attempts that did not meet the threshold to be classified as a tunnel but still provide valuable intelligence. This analysis includes identification of patterns and trends in tunnel characteristics, as well as classification of each tunnel as rudimentary, interconnecting, sophisticated, or conduit based on the definitions presented in this assessment.

TRENDS IN TUNNEL USE, LOCATION, AND TYPE

Illegal Tunnel Use over Time

Figure 4: Trend in Tunnels over Time



The first illegal cross-border tunnel was discovered in Arizona on May 17, 1990. However, the number of tunnel discoveries remained low until the mid-2000s. Beginning in 2005, the number of tunnel discoveries escalated. In 2008, 24 tunnels were discovered. The number of discoveries slightly increased to 25 in 2009, and as of December 15, 2010, 23 tunnels have been discovered in 2010. The trend in illegal tunneling use appears to be stabilizing at a historically high level.

***Analyst Note:** The rise of illegal tunnels after 2005 may be the result of increased border security beginning with Operation Jump Start. Operation Jump Start was announced in May 2006 and called for the deployment of 6,000 National Guard troops to help secure the*

Southwest border while CBP hired and trained 6,000 new Border Patrol Agents.^{16,17} One of the objectives of the operation was to provide support to CBP so that Border Patrol Agents could focus on interdicting undocumented migrants and drug smugglers.¹⁸ Another objective of the operation was to construct border fencing. Ultimately, 176,000 undocumented migrants were apprehended, 321,000 pounds of marijuana and cocaine were seized, and 38 miles of border fencing and 96 miles of vehicles barriers were built.¹⁹ The program terminated in July 2008. By this time the number of Border Patrol Agents rose from 12,000 to 18,000.

The success of Operation Jump Start, the newly created border fencing, and the subsequent elevation in Border Patrol Agent levels may have caused TCOs to seek alternative methods for transporting drugs across the U.S./Mexico border. It is possible that the simultaneous rise in tunneling activity during this time period was the result of heightened border security.

Tunnel Discoveries by SAC AOR

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¹⁶ To clarify, the scale-up in Border Patrol Agents was not part of Operation Jump Start.

¹⁷ Fact Sheet: Operation Jump Start: Acting Now to Secure the Border. <http://georgewbush-whitehouse.archives.gov/news/releases/2006/08/20060803-7.html>.

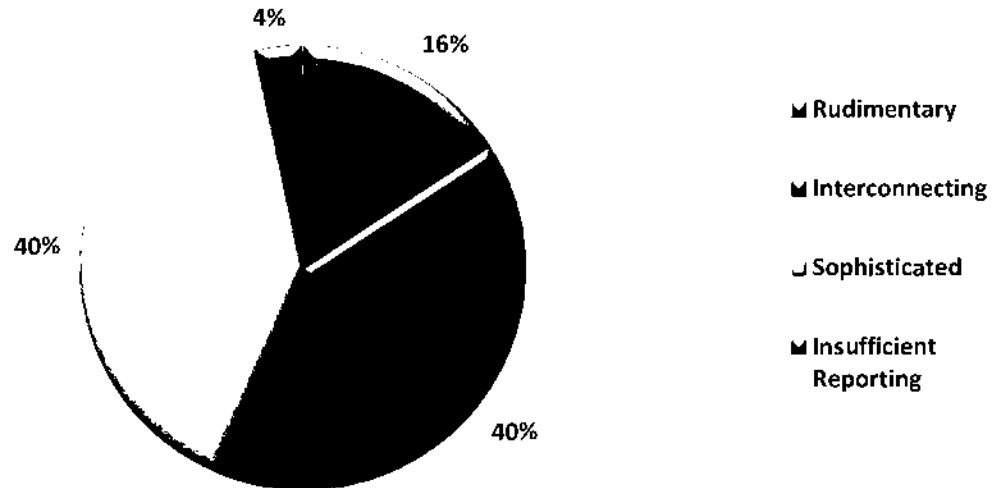
¹⁸ Jump Starting Border Security. <http://www.nationalreview.com/articles/227170/jump-starting-border-security/buzz-jacobs>.

¹⁹ Operation Jump Start Fact Sheet. http://www.ng.mil/features/Border/factsheets/OJS_Fact_Sheet%2028JUL08.pdf.

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Tunnel Discoveries by Tunnel Type

Figure 6: Relative Frequency of Tunnel Types



As of December 15, 2010, tunnels that used existing subterranean infrastructure and sophisticated tunnels were tied for the most common (40 percent) type discovered. Many fewer (23 tunnels, or 16 percent) were considered rudimentary, and five tunnels could not be classified due to insufficient reporting.

Tunnel Discoveries by Tunnel Type and SAC AOR

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The November 25, 2010 discovery of a 2,200-foot tunnel resulting from a BEST Tunnel Task Force (TTF) investigation in the SAC San Diego AOR demonstrates the persistence of sophisticated tunneling activity on the Southwest border. This tunnel traveled nearly half a mile at a depth of 90 feet and included shoring, electricity, ventilation, and a rail system to assist in ferrying contraband.²⁰ The entrance was

Source: New drug tunnel found at U.S.-Mexico border,
<http://www.reuters.com/article/idUSTRE6AP4FS20101127>

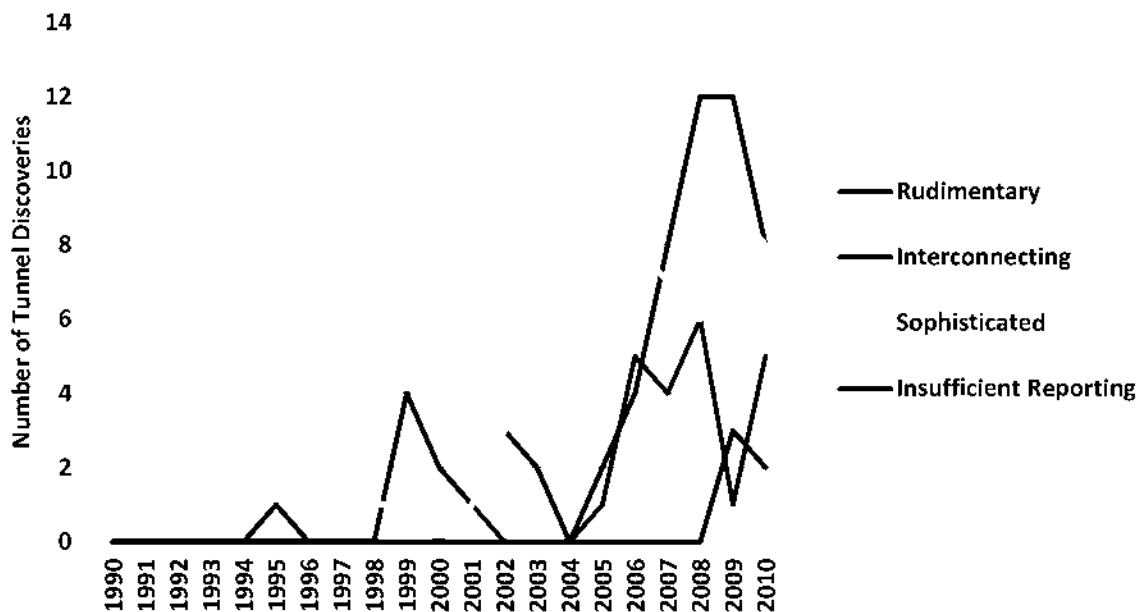
²⁰ Cross-border pot smuggling tunnel has sophisticated features,
<http://latimesblogs.latimes.com/lanow/2010/11/marijuana-smuggling-tunnel-shows-great-sophistication-with-rail-system-and-multiple-routes-authorite.html>.

concealed under a hydraulic steel door in the kitchen of a Tijuana, Mexico residence.²¹ The tunnel exited into a warehouse near the Otay Mesa POE. It is estimated that this tunnel took more than a year to construct at a cost of one million dollars.²²

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Trends in Tunnel Type

Figure 8: Trends in Tunnel Type over Time



The first documented tunnel discovery occurred in 1990; this tunnel was sophisticated and traveled over 220 feet with the entrance concealed under a pool table. In 1995, the first

²¹ New drug tunnel found at U.S.-Mexico border, <http://www.reuters.com/article/idUSTRE6AP4FS20101127>.

²² Drug Tunnel Discovery Signals New Cartel In Town, <http://www.npr.org/2010/11/28/131647387/drug-tunnel-discovery-signals-new-cartel-in-town>.

interconnecting tunnel originating in a storm drain was interdicted. Until 2001, only sophisticated and interconnecting tunnels were reported. On September 4, 2001, however, the first rudimentary tunnel consisting of a simple hole in the ground was reported. Since 2001, there has been an escalation in the discovery of all three tunnel types. The incidence of interconnecting tunnels has risen the most quickly, followed by sophisticated tunnels. The discovery of rudimentary tunnels rose during the middle of the 2000s, hitting a peak of six interdictions in 2008 before falling significantly in 2009. As of December 15, 2010, five rudimentary tunnels have been discovered in 2010. U.S. officials have yet to find a conduit tunnel.

TUNNEL CHARACTERISTICS

Tunnel Entry

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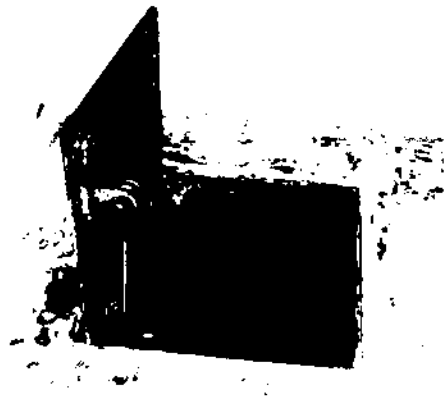
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Tunnel Entry Concealment

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Source: New drug tunnel found at U.S.-
Mexico border.
[http://www.reuters.com/article/idUSF6A
P4FS20101127](http://www.reuters.com/article/idUSF6A
P4FS20101127)

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Source: San Diego-Tijuana drug tunnel bust, Prop. 19, and Latin America's drug war debate.
<http://www.esmonitor.com/World/Global-News/2010/1104/San-Diego-Tijuana-drug-tunnel-bust-Prop.-19-and-Latin-America-s-drug-war-debate>

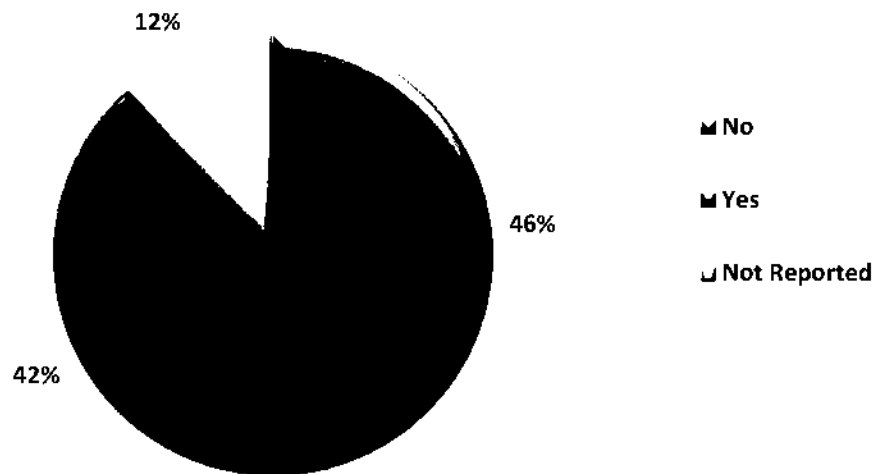
Tunnels Reused

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(b)(6);(b)(7)(C)

Tunnels Completed

Figure 14: Percentage of Tunnels Completed



As of December 15, 2010, 146 tunnels or tunneling attempts have been discovered. Of the 146, 62 tunnels were reported as completed. A tunnel is considered complete when it offers a viable route to illegally enter the United States. An even greater number of tunnels or tunnel attempts (67) were reported as incomplete. For 12 percent of tunnels, it was not reported whether or not the tunnel was complete.

Methods of Tunnel Discovery

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RELATIONSHIP BETWEEN TUNNELS AND TRANSNATIONAL CRIMINAL ORGANIZATIONS

The materials reviewed in support of the analysis of tunnel characteristics and trends identified a total of 10 tunnels associated with six different Transnational Criminal Organizations (TCOs):

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²³ These numbers do not add to 10 because one tunnel was associated with both (b)(7)(E)

²⁴ *United States v. Felipe de Jesus Corona-Verbera*, 7 Dec 2007.

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³¹ Drug Tunnel Discovery Signals New Cartel in Town, <http://www.npr.org/2010/11/28/131647387/drug-tunnel-discovery-signals-new-cartel-in-town>.

³² Southwest Border Gatekeeper North Nexus 2010.

ENTITIES INVOLVED IN COUNTERING THE TUNNEL THREAT

There are numerous entities involved in countering the use of tunnels to circumvent U.S. border security. These entities can be loosely classified under interagency coordination, operations, support, intelligence, and technological development and testing.

INTERAGENCY COORDINATION

There are currently two mechanisms for tunnel-specific interagency collaboration: the Border Enforcement Security Task Force Tunnel Task Force and the Counter-Tunnel Operations Working Group.



Source: Homeland Security Investigations Counter-Tunnel Investigations PowerPoint

Border Enforcement Security Task Force (BEST) Tunnel Task Force (TTF)

The BEST TTF is a series of multi-agency teams with the aim to identify, disrupt, and dismantle TCOs that threaten border security. The BEST TTF, hosted by HSI, includes ICE HSI, CBP, DoD, DEA, and FBI, as well as international, state, local, and tribal partners. The BEST created the TTF to counter the threat of illegal cross-border tunnels. Through collaboration, the partners in the BEST TTF are able to combine their respective agencies'

intelligence and reporting to combat the tunnel threat. The Southwest border BEST units (San Diego, Calexico, Yuma,

Nogales/Tucson, and El Paso) serve as the lead for interdepartmental and interagency deconfliction and coordination. Each Southwest border BEST TTF team serves as the local point of contact for counter-tunnel investigations, intelligence, tunnel remediation, detection technology development, equipment field testing, state and local coordination, coordination with the U.S. Attorney's Office, congressional inquiries, rescue and emergency services, and community outreach.³³

Counter-Tunnel Operations Working Group (CTOWG)

The CTOWG is an interagency forum for collaboration among stakeholders on counter-tunnel issues including technology development efforts, trends at home and abroad, and current and future threats. This group holds an annual Subterranean Operations Conference. Members of the CTOWG include HSI, CBP, Homeland Security Institute, AFRL, EPIC, JTF-N, San Diego Tunnel Task Force, Sandia National Labs, and DHS Science and Technology Directorate. The CTOWG is run by the Combating Terrorism

³³ Border Enforcement Security Task Force, <http://www.ice.gov/best/>.

Technical Support Office (CTTSO) Technical Support Working Group (TSWG) Physical Security Subgroup.

OPERATIONAL ENTITIES

Counter-tunnel operations can be sub-divided into three parts: investigation, interdiction, and remediation.

Investigation

ICE//Homeland Security Investigations (HSI)

ICE HSI is the lead agency for counter-tunnel investigations and has primary jurisdiction to investigate and coordinate the prosecution of individuals and organizations engaged in illegal tunnel activities. HSI special agents are charged with the investigation of complex TCOs involved in trade, travel, and financial crime that exploit vulnerabilities at land, sea, and air borders in order to perpetuate their criminal activity. The BEST TTF is HSI's primary vehicle for counter-tunnel activities.

Joint ICE-GoM Tunnel Response Team

Cooperation between the GoM and U.S. officials on issues related to tunnels has been on the rise in the past several years. HSI Assistant Attaché Tijuana is seeking to formalize collaboration with the GoM through the creation of a joint HSI-GoM Tunnel Response Team. This team will focus on the identification and investigation of illegal tunnels originating in Mexico. ICE will also provide counter-tunnel training and equipment to the Mexican Military and the Secretaria de Seguridad Publica (SSP). The Joint HSI-GoM Tunnel Response Team currently being formed represents the only formal collaboration between the U.S. Government and the GoM regarding illegal tunnels.

BEST//Tunnel Task Force//San Diego Tunnel Detection Outreach

The San Diego Tunnel Detection Outreach program is a community outreach and an intelligence-driven enforcement initiative. The goal of this program is to educate the owners of property near the border on the indicators of tunneling activity and to increase communication between citizens and the Tunnel Task Force. In turn, this initiative aims to leverage the increased awareness and communication to generate new tunnel leads, cultivate source informants, and initiate increased criminal investigations and prosecutions. The San Diego Tunnel Detection Outreach program is primarily performed by door-to-door canvassing of properties near the border in areas known for illegal tunnel activity.

Interdiction

CBP

CBP is considered the agency responsible for the remediation of illegal cross-border tunnels discovered in the United States. In order to counter the threat posed by tunnels, CBP has modified its operations including creating special tunnel interdiction groups or training agents to operate in confined spaces and performing counter-tunnel sweeps of vulnerable infrastructure. These interdiction groups work in conjunction with the BEST TTF.

Local CBP Tunnel Interdiction Groups

Four Border Patrol stations have adopted specific practices to counter the threat of illegal cross-border tunnels.

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Remediation

Remediation is the process of rendering a tunnel unusable following interdiction. The type of remediation used depends on the tunnel type. For example, a hand-dug tunnel may be filled with concrete, while a corrugated cut-out requires welding a metal patch over the breach in the tube.



Source: Nogales Border Patrol Illicit Tunnels PowerPoint

CBP//Finance, Facilities Management, and Engineering (FFME)

FFME is the DHS lead for tunnel remediation.

Currently, there is no established time limit for tunnel remediation; however, it is FFME's general practice to remediate newly discovered tunnels as soon as possible. If the remediation of the tunnel involves federal property such as a POE, FFME collaborates with the General Services Administration.

INTELLIGENCE

Four entities specifically perform tunnel intelligence functions in support of tunnel operational entities.

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SUPPORT ENTITIES

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³⁴ U.S. Northern Command, <http://www.northcom.mil/About/index.html>.

³⁵ Joint Task Force - North Mission, <http://www.jtfn.northcom.mil/subpages/mission.html>.

³⁶ § 1385 Use of Army and Airforce as Posse Comitatus, <http://www.law.cornell.edu/uscode/18/1385.html>.

³⁷ Overview of the Posse Comitatus Act,
http://www.rand.org/pubs/monograph_reports/MR1251/MR1251.AppD.pdf.

TECHNOLOGICAL DEVELOPMENT AND TESTING ENTITIES

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RELEVANT LEGISLATION

The interdiction of incomplete and operational tunnels is reactionary by nature; by the time the tunnel or tunneling attempt is located by U.S. officials, the tunnel constructors have breached or threatened to breach U.S. border security. Legislation specifically targeting the financiers, constructors, and users of tunnels is necessary to prosecute those who have breached or sought to breach U.S. border security; it is also a key instrument to help deter tunnel construction prior to excavation.

U.S. LEGISLATION

18 U.S.C. § 555 - Border Tunnels and Passages

The first border tunnels legislation was included as part of the Department of Homeland Security Appropriations Act of 2007. It amended Title 18 Chapter 27 by adding section 554 (later changed to 555), which criminalized three types of conduct involving border tunnels:

- (a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by Immigration and Customs Enforcement, shall be fined under this title and imprisoned for not more than 20 years.
- (b) Any person who knows or recklessly disregards the construction or use of a tunnel or passage described in subsection (a) on land that the person owns or controls shall be fined under this title and imprisoned for not more than 10 years.
- (c) Any person who uses a tunnel or passage described in subsection (a) to unlawfully smuggle an alien, goods (in violation of section 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (as defined in section 2339B(g)(6)) shall be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel or passage.

Relevant Penalties

In order to be effective, anti-tunnel legislation must include penalties severe enough to deter possible tunnel constructors, financiers, and users. In its 2009 Federal Sentencing Guidelines Manual, the U.S. Sentencing Commission provided the following penalty recommendations for violations of 18 U.S.C. § 555:

§2X7.1. Border Tunnels and Subterranean Passages

(a) Base Offense Level:

- (1) If the defendant was convicted under 18 U.S.C. § 555(c), 4 plus the offense level applicable to the underlying smuggling offense. If the resulting offense level is less than level 16, increase to level 16.
- (2) 16, if the defendant was convicted under 18 U.S.C. § 555(a); or
- (3) 8, if the defendant was convicted under 18 U.S.C. § 555(b).⁴⁴

Each criminal offense is assigned a base offense level up to 43 which reflects the severity of the crime.⁴⁵ Higher base offense levels are associated with more serious crimes. When an individual is convicted of a crime, the base offense level is adjusted based on mitigating and aggravating factors such as admission of guilt or prior convictions.⁴⁶

The sentencing guidelines recommend a base offense level of 16 for violations of 18 U.S.C. § 555(a) – constructing or financing a tunnel – and 18 U.S.C. § 555(c) – using a tunnel smuggle contraband. Based on the sentencing guidelines, without any adjustments, the recommended sentence for an individual convicted of a crime with an offense level of 16 is 21 to 27 months.⁴⁷ Also, the sentencing guidelines recommend that individuals convicted in violation of 18 U.S.C. § 555(b) receive a base offense level of eight. With no adjustments, this converts into a prison sentence of zero to six months.⁴⁸

***Analyst Note:** It is likely that an individual arrested in association with a tunnel would be charged with other offenses in addition to the violation of 18 U.S.C. § 555. The base offense level alone, however, is probably too weak to serve as a deterrent to tunnel construction and use. In fact, the number of tunnel discoveries has increased since the passage of 18 U.S.C. § 555 in 2007.*

⁴⁴ U.S. Sentencing Commission, http://www.uscc.gov/2009guid/2x7_1.htm.

⁴⁵ Federal Sentencing Guideline, <http://www.criminaldefenselawyer.com/federal-sentencing-guidelines.cfm>.

⁴⁶ Ibid.

⁴⁷ Federal Sentencing Table, http://www.losangelesfederalattorneys.com/sentencing_chart.html.

⁴⁸ Ibid.

Relevant Case Law

In spite of the rising trend in tunnel discovery since the November 1, 2007 effective date for the Border Tunnels and Subterranean Passages legislation, only one individual has been charged with violating 18 U.S.C. § 555.

*United States v. Daniel Bernabe Alvarez-Peralta (2009)*⁴⁹

On December 11, 2009, the Mexican Military alerted HSI Special Agents of the discovery of a subterranean tunnel in a Mexicali/Baja-based warehouse. Three days later, HSI investigators executed a search warrant for this location and confirmed the subterranean tunnel and its exit/entry point in Calexico, California. A hotel receipt found in the tunnel led HSI investigators directly to a hotel room rented by Mr. Daniel Bernabe Alvarez-Peralta, a U.S. citizen already under HSI surveillance for suspected illegal importation of controlled substances into Mexico. HSI Special Agents arrested Alvarez on December 21, 2009. Upon his arrest, Alvarez admitted to having constructed a tunnel with three other individuals in exchange for \$300 per week.

Alvarez-Peralta pled guilty to one count of knowingly and intentionally constructing a tunnel that crossed the border between the United States and Mexico, and aiding and abetting the construction of said tunnel, all in violation of 18 U.S.C. § 555. The defendant was sentenced to 15 months in prison, three years of conditional, supervised release, and a \$100 penalty assessment.

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⁴⁹ *United States v. Alvarez-Peralta*, No. 10-cr-00195, slip op (S.D. Cal. May 28, 2010).

Additional Relevant Legislation

In addition to 18 U.S.C. § 555, United States Sentencing Guidelines (U.S.S.G.) § 3B1.3.A can impact the penalty for individuals convicted of a tunnel related offense. U.S.S.G. § 3B1.3 allows for a two-level sentence enhancement if the court determines that the defendant used a “special skill in a manner that significantly facilitated the commission of concealment of the offense.” There is a two-part test to establish if an expertise qualifies as a “special skill:” 1) the skill must not be possessed by the general public; and 2) the skill requires substantial training, education, or licensing.

This sentencing guideline was successfully applied in the case of *United States v. Felipe de Jesus Corona-Verbera*.⁵⁰ During the hearing, the prosecution established that Corona served as the architect for the first cross-border tunnel discovered May 11, 1990. Further, the court determined that in acting as the architect, Corona had used a special skill in the commission of the offense. As a result, Corona received a two-level sentence enhancement.

Analyst Note: In light of the complexity of sophisticated tunnels, it is likely that at least one individual with engineering or architecture expertise was involved in either the planning or construction of each of these tunnels. In the event of an arrest of such an individual, U.S.S.G. § 3B1.3 can be used to augment their sentence.

Limitations to Existing U.S. Legislation

Since the passage of the FY 2007 DIIS appropriations bill including the Border Tunnels and Passages legislation, there has been only one individual charged with violating 18 U.S.C. § 555. This is partially due to the low number of tunnel-related arrests, but may also be the result of limitations in the existing legislation.

Violation of 18 U.S.C. § 555 does not allow criminal and civil forfeiture.

The violation of certain U.S. laws allows the U.S. Government to confiscate property as part of the punishment resulting from a conviction (criminal forfeiture) and/or because the property was illegally gained (civil forfeiture). U.S. attorneys are more likely to prosecute an individual if the conviction results in civil or criminal forfeiture because the seizure of assets is effective in dismantling criminal organizations. Currently, a conviction for a violation of 18 U.S.C. § 555 does not allow for either civil or criminal forfeiture.⁵¹

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⁵⁰ *United States v. Corona*, 509 F.3d 1105, 9-19 (9th Cir. 2007).

⁵¹ About Forfeiture, <http://www.ustreas.gov/offices/enforcement/coal/about-forfeiture.shtml>.

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MEXICAN LEGISLATION

At present, there is no criminal statute under Mexican law to prosecute an individual or group specifically for constructing a tunnel. Individuals arrested for this activity were charged using federal statutes for involvement in organized crime and/or organized criminal activity with a narcotics nexus. Although it is difficult to secure information on successful prosecutions of tunnel financiers, constructors, and users in Mexico, open sources have reported numerous instances of arrests in Mexico associated with illegal tunneling. Further, one open source from 2008 states that four individuals in Mexico received sentences ranging from 11 to 16 years for constructing and operating a 330-yard tunnel in Nogales.⁵²

Notwithstanding these arrests, U.S. officials have previously requested that Mexico enact counter-tunnel legislation. In March 2006, seven U.S. Senators sent a letter to the members of the Mexican Congress and then-Mexican President Vicente Fox petitioning Mexico to pass legislation mirroring 18 U.S.C. § 555.⁵³ In May 2006, Former California Governor Arnold Schwarzenegger made a similar request.⁵⁴

⁵²Mexican drug tunnel makers sentenced, <http://www.thefreelibrary.com/Mexican+drug+tunnel+makers-sentenced-a01611471623>.

⁵³ Senator Feinstein and 6 Colleagues Urge Mexico to Enact Legislation Criminalizing the Construction or Financing of Border Tunnels, <http://immigration.procon.org/sourcefiles/r-border-tunnel316.pdf>.

⁵⁴ Governor Schwarzenegger, Mexico President Fox Discuss Pressing Cross-Border Issues at Historic Visit, <http://gov.ca.gov/index.php?/press-release/816/>.

DETECTION TECHNOLOGY

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CONCLUSION

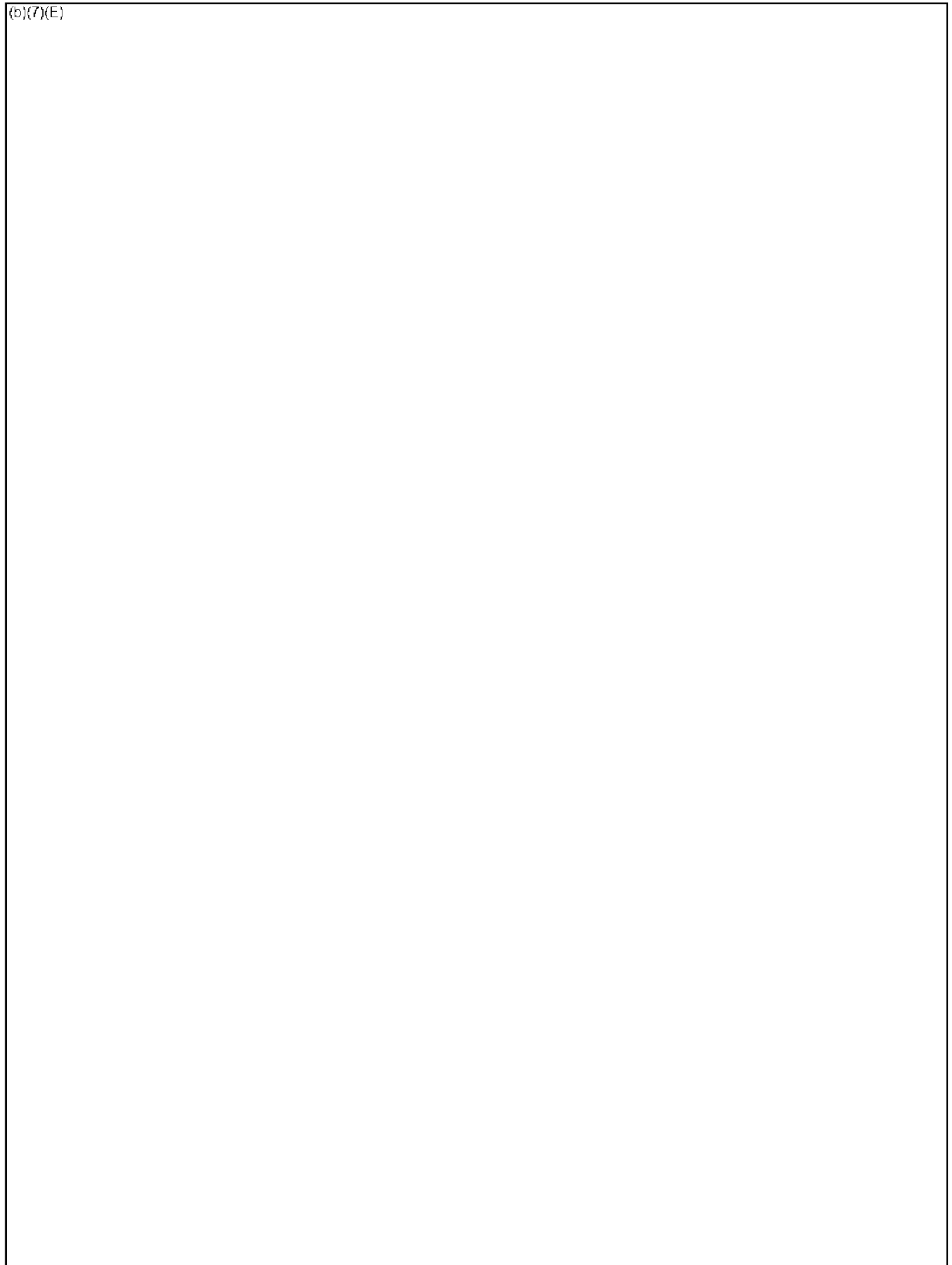
Illegal tunneling activity along the U.S. border remains a persistent threat. The continental United States has 3,742 miles of land borders; however, the area of vulnerability is significantly reduced due to the geographic characteristics of the land surrounding the border and the infrastructure on and around the border. Only one tunnel has been discovered on the northern border with Canada. (b)(7)(E)

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The characteristics and trends of tunnels and tunneling attempt offer insight into illegal tunnel construction and use. The first illegal tunnel was reported discovered on May 11, 1990. As of December 15, 2010, 146 tunnels or tunneling attempts have been discovered. The rate of discoveries remained low through the 1990s and began to rise following 2001; however, the growth in tunneling did not begin rapidly accelerating until 2006, possibly as a result of the increased security and border fencing resulting from Operation Jump Start.

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Illegal tunneling represents a significant threat to border security and will likely remain so in the near future. The institutionalized vulnerability of subterranean cross-border infrastructure and the current limitations of technologies for detecting all types of tunnels hinder U.S. Government efforts to curtail illegal tunneling activity. Nevertheless, adaptive counter-tunnel behaviors instituted by HSI and CBP and increased cooperation with the GoM have increased the number of tunneling attempts interdicted prior to completion. In light of the magnitude and persistence of the threat posed by illegal tunnels, the U.S. Government must continue pursuing measures to deter and prevent illegal border tunneling activity.

RECOMMENDATIONS

OPERATIONAL RECOMMENDATIONS

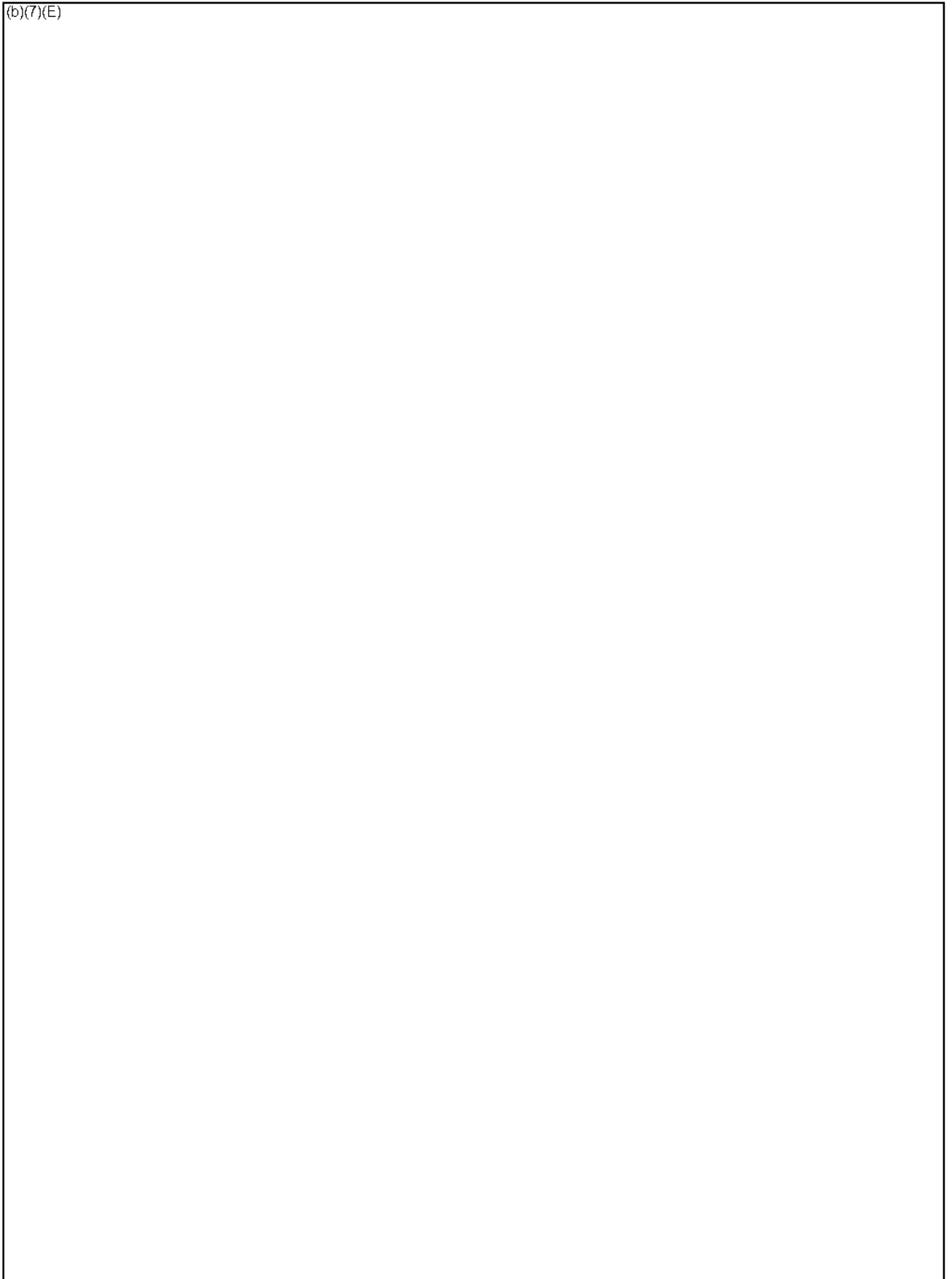
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ACTIONS/FOLLOW-UP:

This report will be provided to the National BEST Unit, HSI Field Intelligence Groups, HSI International HQ, and HSI Attaché Mexico for use in counter-tunnel efforts. This report will also be shared with CBP Office of Intelligence and Operations Coordination, DHS Office of Intelligence and Analysis Southwest Border Group, and DHS Office of Policy Mexico Desk for situational awareness.

Annex 1: Source List for Analysis of Tunnel Characteristics and Trends

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Open Source

“Mexican authorities find tunnel at federal facility,”

<http://www.signonsandiego.com/news/2010/feb/12/tunnel-found-under-federally-guarded-area-in/>

“Suspected smuggling tunnel found near border,”

<http://www.signonsandiego.com/news/2010/mar/11/ijuana-cops-find-smuggling-tunnel-east-otay-mesa/>

CBP, “U.S. Border Patrol Discovers Smuggling Tunnel,” (Press Release), 4 October 2010.
Unfinished Tunnel Found in Calexico, <http://kxoradio.com/content/view/7606/2/>

“Ariz. drug tunnel opened to metered parking space,” <http://www.washingtonpost.com/wp->

dyn/content/article/2010/12/14/AR2010121406010.html

“Pot seizure leads to Nogales tunnel” http://azstarnet.com/news/local/border/article_bc4ab54e-6ab6-5759-8c99-25647bc83b0a.html

“San Diego-Tijuana drug tunnel bust, Prop. 19, and Latin America's drug war debate,”
<http://www.csmonitor.com/World/Global-News/2010/1104/San-Diego-Tijuana-drug-tunnel-bust-Prop.-19-and-Latin-America-s-drug-war-dcbate>

“Drug Tunnel Discovery Signals New Cartel In Town,”
<http://www.npr.org/2010/11/28/131647387/drug-tunnel-discovery-signals-new-cartel-in-town>

“Cross-border pot smuggling tunnel has sophisticated features,”
<http://latimesblogs.latimes.com/lanow/2010/11/marijuana-smuggling-tunnel-shows-great-sophistication-with-rail-system-and-multiple-routes-authorite.html>

“New drug tunnel found at U.S.-Mexico border,”
<http://www.reuters.com/article/idUSTRE6AP4FS20101127>

Significant Event Notifications (SENs)

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Significant Incident Reports (SIRs)

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