INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Title: If We Build It, Will They Still Come?

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INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

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If We Build It, Will They Still Come?

An update on the case study, *Local Governments and Immigration*, published in the January/February 2007 issue of *Municipal Lawyer* and on the article, *Now That's a Fence…But Will It Work?* published September 2006 in the IMLA Special Work Session on Immigration Issues

by Steven W. Moore, City Attorney
City of Yuma, Arizona

> *Unfortunately the United States has not been in complete control of its borders for decades and, therefore, illegal immigration has been on the rise. We have a responsibility to address these challenges. We have a responsibility to enforce our laws. We have a responsibility to secure our borders.*
>
> *– President Bush, signing the Secure Fence Act of 2006.*[1]

For years Arizona has been a focal point of this nation's struggle to curtail illegal immigration. In fact, the state comprises two of the U.S. Border Patrol's (USBP) 20 sectors nationwide, and the Yuma and Tucson sectors are the busiest in the nation.[2] In 2005, it is estimated that one-half of all illegal immigrants crossed into this country through Arizona.

After passage of the Secure Fence Act and the unveiling of Operation Jump Start, the federal government stepped up its enforcement efforts along the U.S./Mexican border in Arizona by erecting security fences and deploying 6,200 National Guardsmen to border states.[3] State-of-the-art technology also was mobilized locally to improve border

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[1] Secure Fence Act of 2006, Pub.L.No. 109-367, 120 Stat. 2638 (2006).

[2] USBP is under the jurisdiction of U.S. Customs and Border Protection, a division of the U.S. Department of Homeland Security.

[3] In May, 2006, President Bush announced Operation Jump Start, promising to send up to 6,000 National Guard troops to southern border states. U.S. White House Press Release, August 9, 2007.

security. Notwithstanding the tremendous cost of such actions, the question remains: Will it work? The answer appears to be, yes.

Can a Fence Stem the Tide?

The USBP Yuma Sector accounts for only 125 miles of the approximately 2,000-mile U.S./Mexican border. Yet, in 2005, agents there apprehended 138,437 immigrants from 35 countries attempting to enter the U.S. illegally.[4] So, it should come as no surprise that the question looms, "What effect, if any, will building a fence have on the flood of illegal immigrants into the United States?"

In fairness, this is not just any fence. The new border enforcement zones will have a 15-foot steel primary fence, a secondary 20-foot steel-mesh fence, a 6-foot chain-link fence topped with barbed wire, all-purpose roadways for high-speed Border Patrol access, and high-intensity lighting. (See Attachments 1, 2.) To date, the Yuma Sector has installed approximately 9.69 miles of primary fence, 5.14 miles of secondary fence, more than 20 miles of vehicle barriers, and 1.1 miles of vehicle barriers with fencing attached.

Most of this construction in the Yuma Sector has been adjacent to Mexican urban areas. This has left no physical barrier to protect most of the sector's border area. Therefore, USBP has had to rely on other methods of securing the border. Traditional means of patrolling urban areas along the border include bicycles, automobiles, boats and K9 units. For more remote or dangerous areas, USBP continues to use humvees, modified humvees and armored trucks. (See Attachment 3.) In addition, helicopter coverage is now around the clock, utilizing the following: McDonnell Douglas OH-6 Cavuse Helicopter, the American Eurocopter EC-120, the American Eurocopter AS 350 A-Star, and the Sikorsky UH 60 Blackhawk Helicopter. (See Attachment 4.)

Other unconventional resources used in the Yuma Sector are all-terrain vehicles, sandrails and hovercraft. (See Attachment 5.) High-tech surveillance gear includes infrared and night vision, stationary and mobile cameras, scope trucks (with extendable cameras), ground radar, infrared sensors, magnetic sensors, seismic sensors, an integrated automated fingerprint identification system, and unmanned aerial vehicles. (See Attachment 6, 7.)

All of this fencing and technology would do little to stop the flow of illegal border traffic without a significant increase in manpower. For this reason, USBP has been authorized to increase its number of agents from 12,000 to 19,000. Currently, USBP

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[4] Unless otherwise indicated, the source for all Border Patrol statistics is the U.S. Border Patrol, Yuma Sector Public Affairs Office, Yuma, Arizona. The authors would like to thank Yuma Sector United States Border Patrol for their cooperation on this article.

estimates the apprehension of illegal immigrants crossing the border has dropped almost 70% in the Yuma Sector.

Apprehensions of Illegal Immigrants in the Yuma Sector*

FY 05	138,437
FY 06	118,544
FY 07	35,802 (ten months)

*See Attachment 8 for 1997-2007 figures.

This dramatic decrease suggests that, given sufficient resources, the U.S. may in fact be able to secure its borders. However, not all of the news is positive. For example, assaults on USBP agents in the Yuma Sector are on the rise. In addition, President Bush recently announced the withdrawal of one-half of the National Guard troops assigned to the border. This announcement was not well received by Arizona Governor Janet Napolitano, who argues it is the federal government's responsibility to secure this nation's borders.

Assaults on Border Patrol agents in the Yuma sector*

FY 05	123
FY 06	150
FY 07	180 (ten months)

*See Attachment 9 for 1997-2007 figures.

Additional fallout from tighter border security in urban areas has been increased illegal immigration through the Arizona desert. This, in turn, has led to a substantial increase in immigration-related deaths this year along dangerous desert crossings. In Nogales, Arizona, and surrounding areas, immigration-related deaths are up 23% even as arrests are down.[5] Throughout Arizona, heat exposure remains the number one killer of illegal immigrants, according to county medical examiners' reports. However, the number of undocumented aliens being preyed upon by bandits and smugglers as they enter Arizona also is increasing.[6]

Most dangerous crossings in Arizona occur between Yuma and Tucson near the small border community of Sasabe, where construction is underway on 7 miles of anti-pedestrian fencing. This fence will have 12-foot high steel posts set 4 inches apart, thereby barring human intruders while allowing water and small creatures to pass. The

[5] Arizona Republic, "Migrant Fatalities Rise at Arizona Border," 8/9/07.

[6] *Id.*.

work is being performed by a private contractor through a contract with the U.S. Army Corps of Engineers for a reported $31.5 million.[7]

A Mexican Municipal Perspective

The City of San Luis Sonora, Mexico (approx. pop. 200,000), a sister city to Yuma, Arizona, is located approximately 30 miles south of Yuma on the U.S./Mexican border. San Luis Mayor Hector Ruben Espino Santana graciously granted the author's request for an interview with various officials for a Mexican municipality's perspective on migrants crossing into the United States. Surprisingly, those officials report that no one from the U.S. had ever asked their thoughts on the subject.

The general consensus among those interviewed was that migrants attempting to cross the border result in a significant, but as yet unquantified, cost to San Luis city services.[8] Specifically, migrants draw upon the city's medical and social services. Another concern is the burden of policing migrant-related criminal activity, including theft, panhandling, migrants being robbed, fights between migrants, and some drug and alcohol abuse. However, as great as the law-enforcement burden is upon the city, most officials there acknowledge that, for the most part, crimes by migrants are merely the result of their attempts to secure food, water or shelter.

Migrants also congregate at the city park plaza, a cultural focal point in most Mexican municipalities. This deters many families from using the park due to the groups of (mostly) men waiting to contact agents for smugglers to get them across the border. Interestingly, many believe that migrants initially come to the border towns with enough money to sustain themselves and to pay for a guide to cross the U.S. border, thus

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[7] Yuma Sun, "Construction Set on Stretch of Border Fence Near Sasabe", 8/24/07.

[8] The author wishes to thank the following individuals for their time as they were the sources for all information contained in this section: A) MUNICIPAL AUTHORITIES – **Lic. Rubén Espino Santana**, Mayor, City of San Luís Río Colorado, Sonora, Mexico, Presidente Municipal del XXIV Ayuntamiento de San Luís Río Colorado, **Cristian Lardín Apodaca**, City Government Secretariat Secretario del Ayuntamiento de San Luís Río Colorado, **Leslie Pantoja**, City Council Member, Regidor del Ayuntamiento de San Luís Río Colorado, **Verónica Saldaña**, Integral Development of the Family Desarrollo Integral de la Familia - XXIV Ayuntamiento de San Luís Río Colorado, **Luís A. Campa**, Chief of Police, City of San Luís Río Colorado, Director del Departamento de Seguridad Publica, **Carlos Zamora**, City Police Department, City of San Luís Río Colorado, Comandante del Departamento de Seguridad Pública, **Marcos Ochoa Ortega**, Director, Protección Civil (Civil Protection); B) FEDERAL AUTHORITIES - **Antonio Mejía Ramos**, Federal Prosecutor, Procuraduría General de la República, **Tomás Molina Chaires**, Federal Preventive Police Officer, Capitán Policía Federal Preventiva, **Enrique López Hermosillo**, Director, National Institute of Immigration, Instituto Nacional de Inmigración (INAMI), **Jorge A. Vázquez Oropeza**, Director, Grupo Beta en San Luís Río Colorado, Sonora (Federal Migrant Protection Agency), **Ricardo Martínez**, Agent Grupo Beta en San Luís Río Colorado, Sonora (Federal Migrant Protection Agency); C) PRIVATE NON-PROFIT ORGANIZATION - **Mrs. Maria E. Ames de Salgado**, President, Asociación Casa del Migrante La Divina Providencia, Private Non-Profit Organization "House of the Migrant", **Mrs. Martha Vargas de Andrade**, Social Worker, Asociación Casa del Migrante La Divina Providencia, Private Non-Profit Organization "House of the Migrant".

contributing some revenues to the community. However, once apprehended by USBP and deported, migrants typically return to Mexican border towns without those financial resources while awaiting the next opportunity to cross.

New enforcement zones and fencing appear to be very effective in preventing migrants from moving across the border, according to most Mexican officials interviewed. The fenced areas and additional manpower enforcement are moving migrant crossings from urban centers to the desert. In 2005, a total of 562 non-Mexicans (mostly Central Americans) were caught by Mexican port authority agents in the San Luis area.[9] However, due to new U.S. border enforcement efforts, those numbers have dropped in 2006 to 75 and in 2007 to only 9 (to date).

Questioned about any positive effects on their city from the migrants, most officials pointed to some economic benefit and the fact that some migrants eventually settle in San Luis, thereby contributing to the work force and population base. Especially interesting is that, because the migrants arrive from all parts of Mexico, some officials believe this has contributed to a greater diversification of the Mexican cultures in San Luis, enriching the city as a whole.

Conclusion

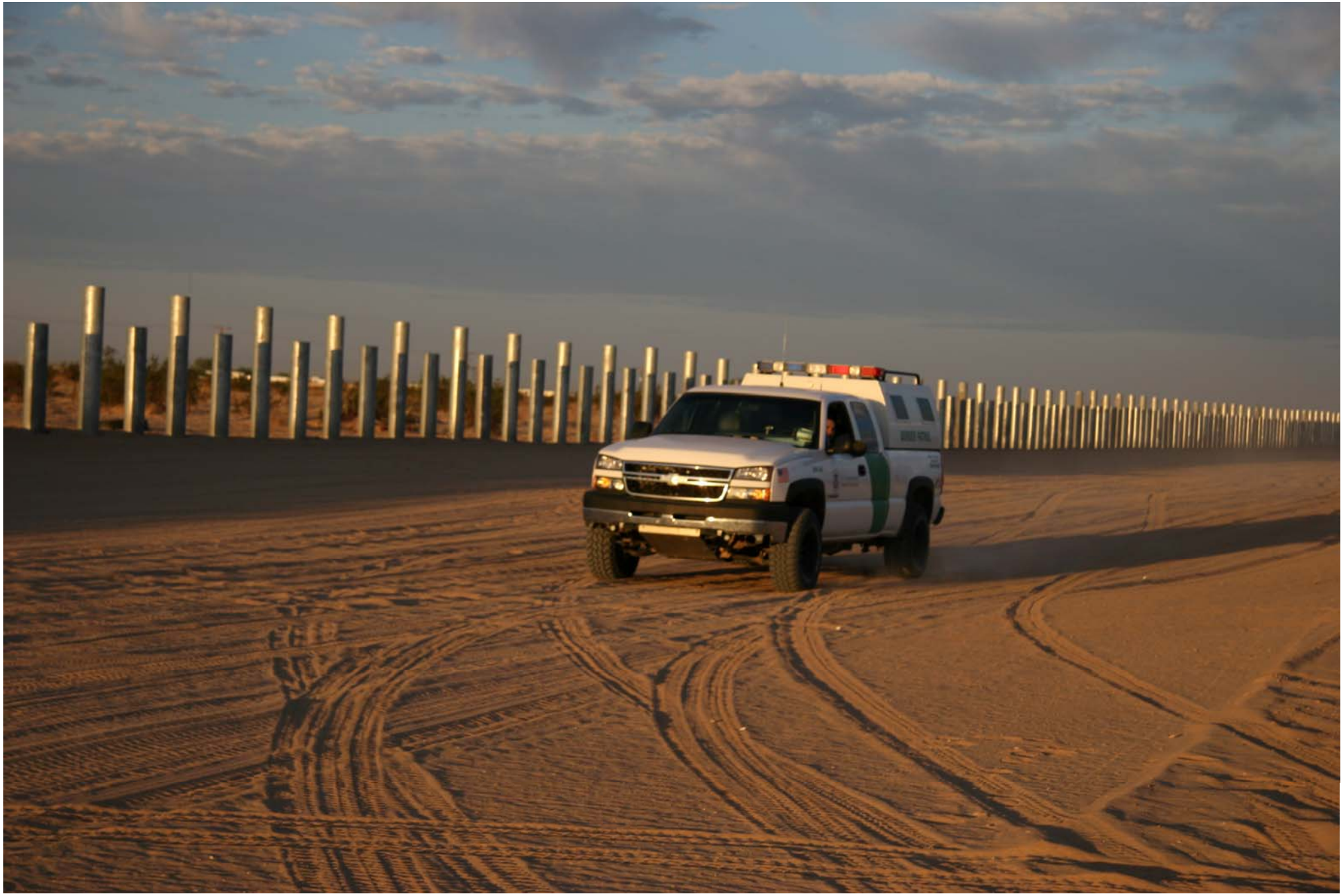
In summary, the question regarding the "fence," and whether it is working, turns out to be deceptively complex. Clearly the barriers, increased manpower and improved technology have had a significant impact on illegal immigration in Arizona's two USBP sectors. Less clear is the answer to the question in the title: If We Build It, Will They Still Come? Whether the apparent reduction in illegal immigration will continue or simply be replaced by other methods of illegal entry is unknown. What we do know is that the trends are escalating violence against border patrol agents and higher border-crossing mortality rates. What we also know is that illegal immigration is, and will remain, a politically charged issue, on both sides of the border, and that no solution is likely to be painless, fair to everyone, or inexpensive.

[9] Research provided by Mexico's National Institute of Migration.



Border Enforcement Zone

Attachment 1



Permanent Vehicle Barrier

Attachment 2



War Wagon



General Motors Hummer H1



Cadillac Armored Car Division Peacekeeper Armored Truck



Hummer H1 War Wagon



McDonnell Douglas OH-6 Cayuse Helicopter



American Eurocopter EC-120



American Eurocopter AS 350 A-Star



Sikorsky UH-60 Blackhawk Helicopter



Suzuki LTZ-400 Quad



Patrol Sandrail



Modified 19’ Flats Cat Fishing Boat



Neoteric Hovertrek Hovercraft

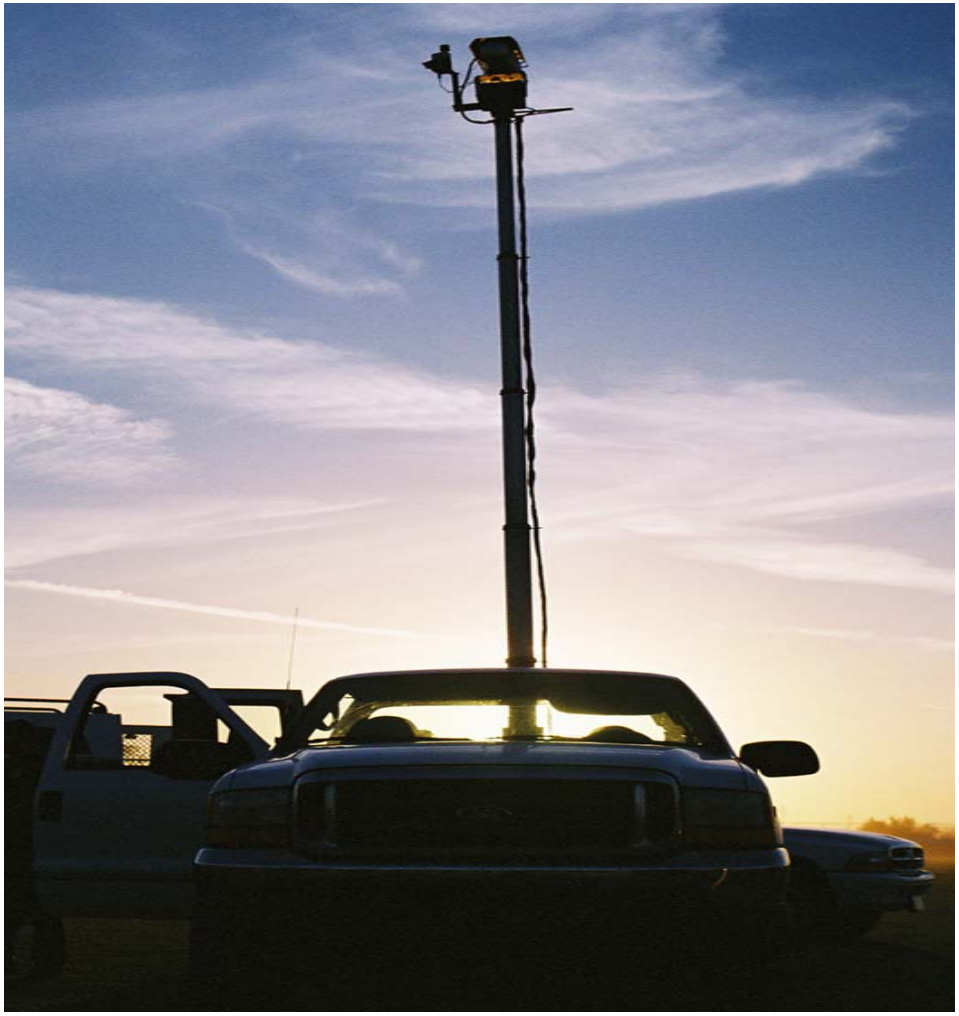
Attachment 5



Skv Watch Mobile Surveillance Tower



Remote Surveillance Tower



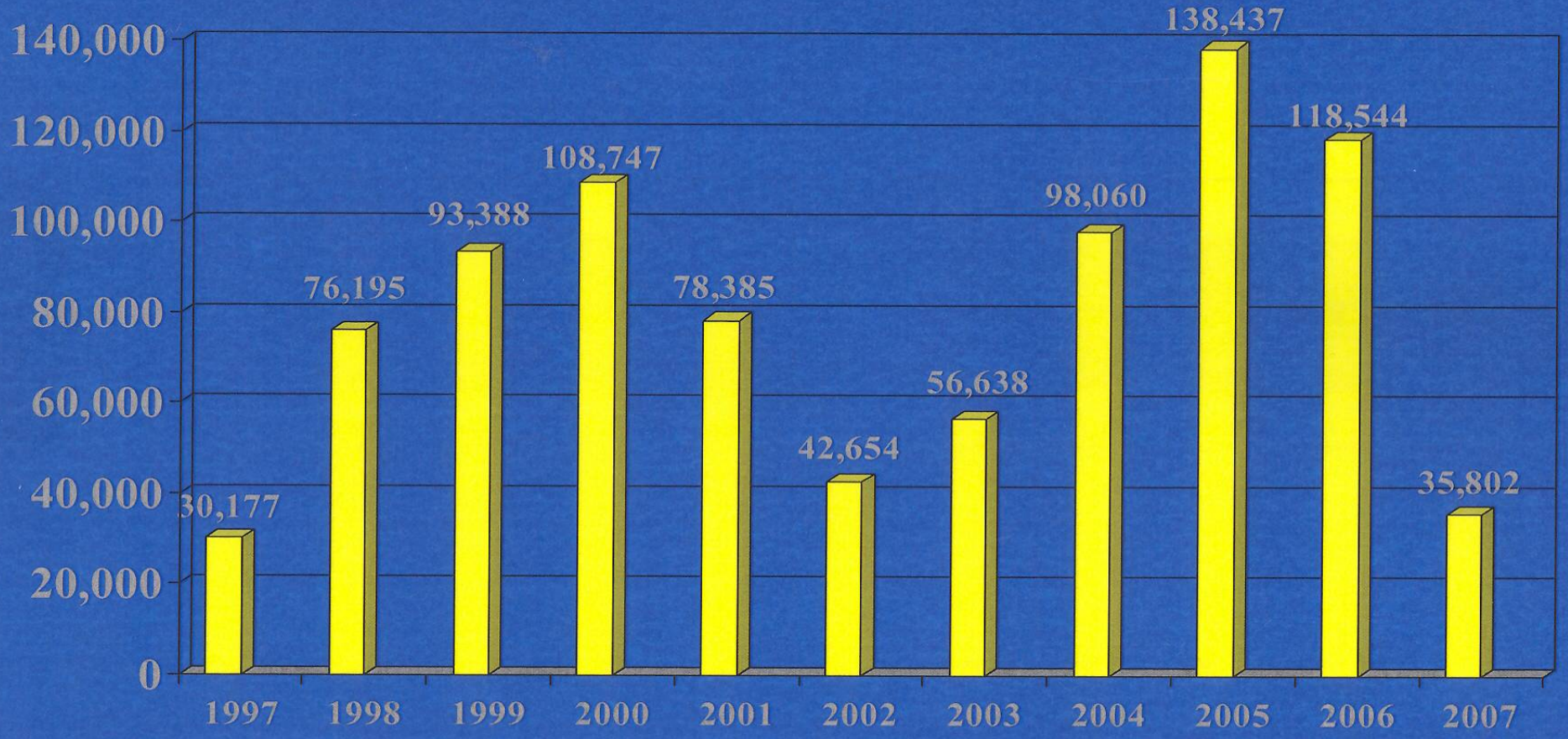


Unmanned Aerial Vehicle



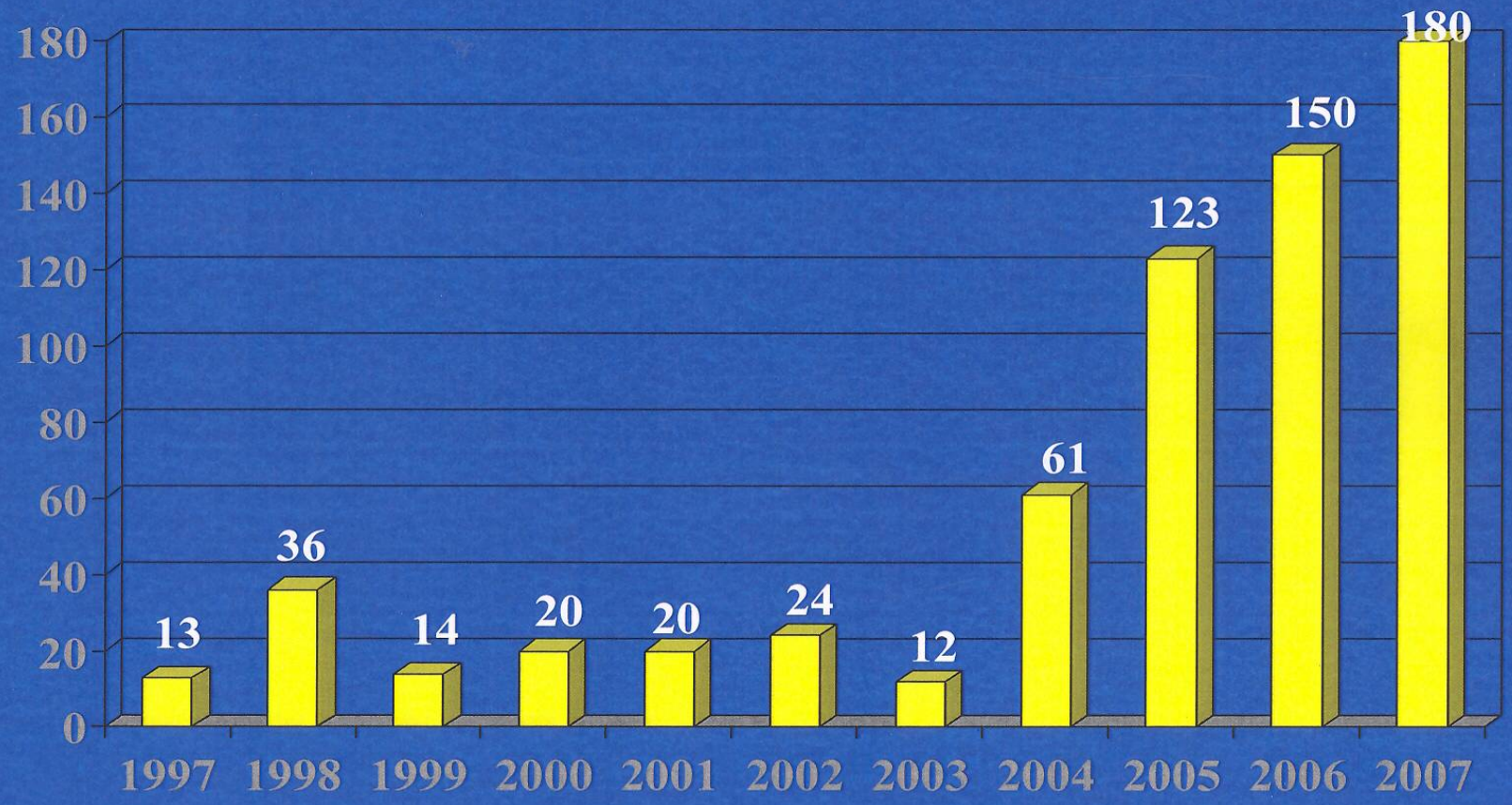
Remote Video Surveillance System

SECTOR APPREHENSIONS
1997-2007



U.S. Customs and Border Protection

ASSAULTS AGAINST AGENTS
1997-2007



U.S. Customs and Border Protection