



A Lawyer's Deployment to the Front Lines of the U.S.-Mexico Border

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Illegal immigration has been a popular yet controversial topic in the news for several years, and it is often difficult to know the true facts regarding what takes place on our southern border when viewed through the lens of potential media bias. One way to know for sure, however, is through firsthand experience. In the latter half of 2018, I was fortunate enough to obtain some of that firsthand experience through a military tour.

Traditionally, the military has played little to no role in the general day-to-day enforcement of immigration laws along the U.S. southern border, but that changed a few years ago. For the typical American, “military deployment to the desert” likely conjures up the image of a combat tour in the Middle East. For example, I deployed to Iraq in 2009 while on active duty in the Air Force. In any event, “military deployment to the desert” probably does not bring to mind an image of the city of El Paso, Texas, but that is where I “deployed” to in the summer of 2018 for a unique six-month tour related to immigration enforcement.

While no longer on active duty, I am an attorney (commonly referred to as a JAG) in the Florida Air National Guard. Typically, performing duty involves serving one weekend a month at the Air National Guard base in Jacksonville, Fla. From June to December of 2018, however, I went on extended leave from my full-time civilian employment at a law firm in Orlando, Fla., and was activated, along with about 20 other reserve or National Guard JAGs, for a one-time

military mission as part of the federal government’s enhanced efforts to enforce U.S. immigration laws.

El Paso is bisected by a large mountain range called the Franklin Mountains. These mountains are located within the city, cutting between it in such a way that the city has developed around the mountains in a “U” shape. While barren of any significant foliage, these desert mountains are a beautiful addition to the city and a great place for a challenging hike. Visible from the top of these mountains (and many other elevated spots in the city) is Ciudad Juarez (“Juarez”) directly across the border in Mexico.

El Paso and Juarez make up one large metropolitan area divided only by a small stream of water (the Rio Grande is not so “grande” as it flows through the city) and a large metal wall (more about walls later). As a result, crossing from the United States into Mexico is as simple as paying 50 cents to use the walking bridge to stroll through the nonexistent Mexican customs booth into Juarez. The return trip to the United States is almost as simple, except that on the U.S. side, there is, of course, your typical customs screening, comparable to what you would see at an airport. The trip between Mexico and the United States at any of the several ports of entry in or near El Paso is made legally by thousands of pedestrians and vehicles each day, whether to go to work, visit family, transport goods or food to distribute throughout the United States, or just to go shopping for the day. Unfortunately, the border is also a large source of illegal immigration and drugs into the United States, and that is the reason why JAGs were sent to help the overworked prosecutors in the U.S. attorneys’ offices along the border.

More specifically, the mission involved prosecuting immigration related crimes in federal district court in cities along the southwest border of the United States. In order to prosecute in federal court,

the JAGs who deployed to the various border towns for the assignment were appointed as special assistant U.S. attorneys for the duration of our tours. Shortly after arriving in El Paso, I received training from the full-time assistant U.S. attorneys in the office regarding immigration-related federal crimes (such as illegal reentry into the United States, alien smuggling, and visa fraud) as well as some on-the-job training in federal criminal procedure. After that, I was assigned my own case load that I was expected to litigate from the initial probable cause and detention hearing through sentencing.

The most significant takeaway from my tour in El Paso was perspective. First and foremost, large-scale illegal immigration on our southern border is real. As part of my prosecutorial responsibilities, I saw hundreds of illegal aliens in court from many different countries. Multiply my six-month experience in one federal district along the border by the experiences of dozens of other federal prosecutors in the six different districts along the border, and the result is an incredibly large number of aliens entering the country illegally each year.

While many Americans assume that the illegals are from Mexico or Central America, I also saw defendants who were from the Middle East, Asia, South America, and Cuba. As a result, I heard languages spoken in court, through interpreters, that I never knew existed, like K'iche', an indigenous language from Guatemala. I cannot begin to convey the difficulty in conducting a hearing when the defendant is speaking in K'iche', an interpreter then translates from K'iche' to Spanish, and then a second interpreter translates from Spanish to English for the record. It becomes particularly challenging when one or both of the interpreters attend the hearing by cell phone from Central America. There is nothing more valuable for a smooth hearing than a K'iche' interpreter who also speaks English (and is physically present). Unfortunately, they are few and far between.

While in court during hearings, I heard all different types of explanations as to why the defendants entered or attempted to enter the United States illegally. Some stories were sad. Some were funny. Others were dubious. Some were apologetic. Others were not. The motivations ran the gamut from pure to criminal. Some of the illegal aliens had no criminal records and had never previously been to the United States. Others had extensive, violent criminal records and had been deported multiple times. Some came with only the clothes on their backs. Others came with large packs of drugs on their backs. Some of the illegals had a college education, while others had not even completed the first grade.

Those individuals who had never previously been deported and were caught entering the United States illegally were prosecuted under 8 U.S.C. § 1325 for illegal entry (we will call these defendants "1325s"). This crime is a misdemeanor that carries with it a punishment of zero to six months in prison. To provide context, in the six months that I was in El Paso, the Navy Reserve JAG who was with me and I prosecuted about 2,600 of the 1325s. The average sentence each of these individuals received was about two to three days confinement because many were given the opportunity to conduct their initial appearance, plea, and sentence all in the same day.

This leads to the question of the sufficiency of due process when defendants have their initial appearance and are sentenced in one day. At least in the Western District of Texas (the district where El Paso is located), the due process for these misdemeanor offenses is robust. The 1325s are usually assigned a private attorney under the Criminal Justice Act at no expense to the defendants, and that attorney is provided all the discovery in the government's possession



before the initial appearance. This way, when the attorney meets with his or her client, that attorney is able to evaluate whether the defendant has any viable defenses or if it would be in the alien's best interest to accept responsibility by pleading guilty and being sentenced right away. Almost without fail, a quick guilty plea and a "time served" sentence is in the defendant's best interest. However, I saw a few 1325s contest the charge against them, demand a trial, and ultimately be found not guilty. So, while the initial appearance, guilty plea, and sentencings are oftentimes held in mass, from a few defendants at a time to up to about 70, each 1325 has an attorney, is addressed individually by the judge, and has as much time as he or she needs to decide on whether to plead guilty or to demand a trial. From what I observed, it is a fair, efficient system and all individuals involved (prosecutor, defense counsel, and judge) take their respective roles seriously. Whether they serve only a few days in confinement or obtain a not guilty verdict at trial, after the 1325s complete their time in the criminal justice system, they are then transferred to the Department of Homeland Security for immigration proceedings. There, they can potentially receive an expedited deportation to their country of citizenship or request asylum or some other form of relief depending on their circumstances.

The procedure for defendants charged with illegal reentry into the United States under 8 U.S.C. § 1326 (the "1326s") is similar to the 1325s but takes longer because the crime is a felony. These are the aliens who have been to the United States before and have been officially deported at least once. The 1326s usually are appointed an as-

sistant federal public defender to represent them. In my experience, these attorneys are zealous, effective advocates for their clients. The 1326s proceed under the typical federal criminal procedure process, which can take from a few months to up to a year depending on the facts, defenses, and criminal histories of the defendants. The 1326s with no prior felony criminal histories (along with defendants who commit visa fraud that does not involve identity theft) and who have been deported only once or twice typically enter a fast-track program where, if convicted, they will spend approximately two months in prison from start to finish. Then, like the 1325s, the 1326s move into the immigration system where they can request an expedited deportation or some other form of relief (though, by the time they are a 1326, the defendants typically, but not always, have exhausted most options to stay in the United States). Of course, the 1326s with multiple deportations or felony convictions will spend more time in confinement (just like an American citizen who has been convicted of a crime and has an extensive criminal history).

So, what is the utility of prosecuting the 1325s and first time 1326s? The case has been made by some that federal resources would be better spent by simply deporting these individuals rather than spending the time and money to prosecute them in federal court. Without delving into the politics, the rationale for prosecuting the 1325s and first time 1326s is one of both specific and general deterrence. There was a time when these defendants were not prosecuted at all and were simply deported. Under this procedure, there were basically no negative consequences for the illegal alien. If he (at that time the illegals were mostly “he”) was detained and deported, he could try and try again until he managed to not get caught. Now, in 2018 and beyond, with many illegal border crossings being prosecuted, a message is sent to the alien that there are consequences for his or her actions (female illegal aliens are now commonplace). As for general deterrence, this same message of consequences spreads to others who are considering attempting to enter into the United States illegally via word of mouth or social media.

While this latter point regarding general deterrence may be hard to believe given some of the impoverished countries in Central America where many of these defendants live, I have seen definitive proof that word does, in fact, spread. The “zero tolerance” policy is a good example of this phenomenon. The zero tolerance policy was the federal government’s stated goal announced in April 2018 of prosecuting 100 percent of the adults who entered the United States illegally. This policy ultimately was ended due to political pressure because some immigrant parents who entered the United States illegally accompanied by a minor child were held separately from the child while awaiting prosecution, resulting in a number of different legal issues.

When the zero tolerance policy ended and the Depart-

ment of Justice generally stopped prosecuting adults who entered illegally into the United States if they had a child with them, word of this spread throughout Mexico and Central America. The message was clear: show up alone and do jail time or show up with a child and avoid prosecution. Once the word got out, it encouraged some illegal aliens to bring juveniles (sometimes related and sometimes not) with them to avoid prosecution. This meant that parents would bring their children; aunts and uncles would bring nieces and nephews; or sometimes adults would bring children of friends, neighbors, or total strangers and then pretend as if they were related. I saw this with my own eyes in court and read a number of arrest reports where immigration officials would struggle to determine the relationship between juvenile and adult. I watched the number of adults traveling with children rise exponentially from when I started my tour in June to when I ended in December. The point is that the United States can send a message (intentionally or not) through its actions because word does spread.

While in El Paso, I took three separate tours of the border: one in and around the city, one in the desert, and one at a port of entry. There are different challenges associated with enforcing the integrity of the border depending on the terrain. Customs and Border Protection (CBP) officers—the immigration officials who wear dark blue uniforms—are responsible for the ports of entry (the entry points into the United States where people legally enter and exit). In contrast, the Border Patrol (BP) officers, who wear dark green, are responsible for the portions of the border in between ports of entry.

In the city, the challenge in enforcing the border comes from the proximity to civilization. There are large numbers of CBP and BP agents in El Paso, but if an immigrant is able to cross the border illegally within the city limits, there are many places to hide or blend in with other pedestrians. Americans usually think of illegal aliens “sneaking” into the country at points along the border that are not ports of entry. However, I prosecuted several defendants who tried to run through a port of entry without being checked, tried to low crawl at night through the port of entry hoping they would not be spotted by CBP, were caught hiding in the back of trucks or in secret vehicle compartments, or even rappelling into the United



States from the bridges over the Rio Grande that make up the ports of entry. The various ways that aliens attempt to enter the United States illegally are creative and are only limited by their imaginations. I recall vividly one defendant who put on a neon vest and tried to blend in (unsuccessfully) with some construction workers who were building a raised highway along the border and another defendant who pretended (unconvincingly) to be a Mexican water purification official when he was caught by CBP ambling into the United States near the river.

In the desert, the challenge in enforcing the border is based on the vast amount of terrain that BP agents are responsible for monitoring. According to the agents to whom I spoke, walls and fencing work, and they want more of them in strategic locations. However, on the day I toured the border in and around Sierra Blanca, Texas (population just over 500), we spent all day driving in a BP truck in the desert, and we still did not cover all of the territory that the local BP station is responsible for patrolling. There are miles and miles of uninhabited desert with large mountain ranges, no paved roads, and no cell phone service. As a result, given the small number of BP agents responsible for that large amount of land, it is hard to imagine how they ever catch anyone, especially when the illegal aliens usually only travel at night, and some are wearing camouflage. In the desert, where there is no wall or fencing marking the border (just the Rio Grande), the BP relies heavily on technology, the natural barriers created by the mountains, and the BP agents' knowledge of the land.

For example, the BP agents know from experience that an alien smuggler leading a group of illegal aliens into the United States through the desert to a highway about 20 or 30 miles away will take the path of least resistance. So, rather than going up and over the peak of a mountain, the smuggler will lead his group through the valleys. It is in these valleys that the BP has sensors and cameras. Something will trip a sensor and a camera will then take a picture of it. The BP agents showed me some of these photos. I saw a very clear photo of three illegal aliens with backpacks wearing all camouflage. I also saw a photo of a mountain lion that had set off a sensor. Once the BP agents verify that it is a human that has tripped a sensor, based on the direction of travel, BP agents can go to the point where they know the illegals will emerge. Other times, the BP agents will spot footprints or other signs of illegal aliens and track them for miles and miles on horseback or in their four-wheelers.

Alien smuggling is prosecuted under 8 U.S.C. § 1324. The crime of alien smuggling encompasses the leaders of the smuggling organization, the guides who lead illegal aliens through the desert, the drivers who transport illegal aliens into and throughout the United States, the individuals who harbor the illegal aliens in homes or motels or other buildings, and generally anyone else who facilitates alien smuggling. Alien smuggling is a business, and the leaders of the smuggling organizations treat it as such. Aliens certainly do not require the services of a smuggler to attempt to enter the United States illegally, but those that choose to hire one have many options. Some alien smugglers are employed by the drug cartels (and use the same routes through the desert that they use to import drugs), while other smugglers are freelance operators.

The cost of being smuggled can vary significantly. An illegal alien may pay anywhere from a \$1,000 to over \$10,000 for the service of being smuggled. Some of the alien smuggling organizations have even made themselves more marketable by offering "all-inclusive, lifetime packages" to their potential illegal alien customers. An all-in-

clusive lifetime package might typically include a guide, the food and water required for a trip through the desert, a backpack for carrying the supplies, camouflage clothing, special shoes designed to minimize or eliminate leaving footprints, a ride to the alien's final destination after the trek through the desert, and a "lifetime guarantee." This lifetime guarantee ensures that, if the illegal alien is caught by the BP and eventually deported, he or she can try again with a new guide and supplies for no extra charge. Of course, in true business fashion, this makes an alien smuggling organization more competitive in the marketplace to potential illegal alien customers.

These facts about alien smuggling and all the other stories above are just a small handful of the memories, knowledge, and perspective that I gained from my desert deployment to El Paso. It is empowering in a sense to have had that first-hand experience and know what it is really like along our southwest border (again, with the lens of any media bias removed). What is easy to forget though, is that for me, it was a six-month military tour. For the attorneys and immigration agents with whom I worked, those stories are their lives every day, all the time. Illegal immigration did not stop when my tour in El Paso ended.

Since leaving, I have been back to see friends (and hike in the mountains I mentioned), and I can report that there are immigrants still attempting to enter into the United States illegally. Anecdotally, the numbers are lower in El Paso, but that can be based on a number of different factors—from weather (if it is too hot or too cold, the numbers decrease) to the enhanced enforcement measures to fewer referrals to the DOJ from DHS. Nevertheless, in my new full-time job as an assistant U.S. attorney in Atlanta (I moved from Orlando), I have handled illegal reentry and alien smuggling cases, although in much lower volumes.

In the meantime, the DOJ has hired many more assistant U.S. attorneys along the border, so they no longer need JAGs to help with the overflow of cases. Still, my deployment to El Paso was memorable for many reasons (the cases, the border tours, the friendly coworkers, the tacos, etc.). So, while I have tried hard to keep this article to just the facts, I hope that any legal professional who has taken the time to read the entire piece will ideally have gained some perspective on the reality of the immigration situation along the southern border of the United States and the challenges surrounding it. ☺

The views expressed in this column are those of the author and do not necessarily reflect the official policy or position of the U.S. Air Force, the Florida Air National Guard, the Department of Defense, the Department of Justice, or the U.S. government.



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