

## OPERATION STONEGARDEN

### What is “Operation Stonegarden”?

Operation Stonegarden is a federal grant program administered by the Federal Emergency Management Agency (FEMA), a component of the Department of Homeland Security, as part of the State Homeland Security Grant Program. Stonegarden provides funding to state, local, and tribal law enforcement agencies to enhance their capabilities “to jointly secure U.S. borders and territories.”<sup>1</sup> Funds are to be used for additional law enforcement personnel, overtime pay, and travel and lodging for deployment of state and local personnel to “further increase our presence along the borders.”<sup>2</sup>

In August 2009, DHS Secretary Napolitano announced that she was designating an additional \$30 million in funding for Operation Stonegarden.<sup>3</sup> This funding supplemented \$60 million in grants already awarded from DHS’ 2009 fiscal year budget,<sup>4</sup> a funding level that was replicated in the FY2010 budget.<sup>5</sup> There were 38 jurisdictions eligible for Operation Stonegarden funding in FY2009 and 2010.<sup>6</sup> These include counties and federally-recognized tribal governments in states bordering Canada, Mexico, and states and territories with international water borders.<sup>7</sup> In 2009, more than 84 percent of \$90 million total FY2009 Stonegarden funds went to Arizona, California, New Mexico and Texas.<sup>8</sup> Arizona received nearly \$20 million, California nearly \$19.3 million, New Mexico nearly \$6.6 million, and Texas about \$29.5 million.<sup>9</sup> The remaining \$14.6 million was divided among Idaho, Maine, Michigan, Minnesota, Montana, New York, North Dakota, Puerto Rico, Vermont, and Washington. Stonegarden funding had increased every year under the premise that it is contributing to border security, an unsubstantiated assertion.<sup>10</sup> For FY2011, however, the administration’s budget proposes a decrease to \$50 million.<sup>11</sup>

### How does Operation Stonegarden work?

FEMA reviews applications from local and tribal law enforcement agencies, and confers with Customs and Border Protection regarding which applicants should receive Stonegarden funding. According to the official “Stonegarden Guidance and Application Kit,” the review and selection process for funding focuses on two primary factors: relative need compared to the other

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<sup>1</sup> DHS Press Release, *Secretary Napolitano Announces \$60 Million in Operation Stonegarden Grants for Border States*, June 4, 2009, [http://www.dhs.gov/ynews/releases/pr\\_1244070019405.shtm](http://www.dhs.gov/ynews/releases/pr_1244070019405.shtm).

<sup>2</sup> DHS, June 4, 2009 Press Release, *supra* note 1.

<sup>3</sup> DHS Press Release, *Secretary Napolitano Announces Additional \$30 million in Operation Stonegarden Funds to Secure the Southwest Border* Aug. 11, 2009, [http://www.dhs.gov/ynews/releases/pr\\_1250005826355.shtm](http://www.dhs.gov/ynews/releases/pr_1250005826355.shtm).

<sup>4</sup> Federal Emergency Management Agency, FY 2009 Operation Stonegarden (OPSG) available at <http://www.fema.gov/government/grant/opsg/index.shtm>, last updated Aug. 11, 2009;

<sup>5</sup> Federal Emergency Management Agency, FY 2010 Homeland Security Grant Program (HSGP) available at <http://www.fema.gov/government/grant/hsgp/index.shtm>

<sup>6</sup> FEMA FY2009 Operation Stonegarden Grant Program, *FEMA Preparedness Grants and Authorized Equipment List*, available at [https://www.rkb.us/contentdetail.cfm?content\\_id=210243&GetAELSELCats=1](https://www.rkb.us/contentdetail.cfm?content_id=210243&GetAELSELCats=1); FEMA FY2010 Operation Stonegarden Grant Program, available at [http://www.fema.gov/pdf/government/grant/2010/fy10\\_hsgp\\_faq.pdf](http://www.fema.gov/pdf/government/grant/2010/fy10_hsgp_faq.pdf)

<sup>7</sup> Id.

<sup>8</sup> DHS Press Release, *supra* note 4.

<sup>9</sup> DHS Press Releases: *supra* notes 1 and 4.

<sup>10</sup> Brady McCombs and Stephen Caesar, *Border Program Has Vague Goals, Little Oversight*, AZ Daily Star, Nov. 15, 2009.

<sup>11</sup> DHS Detailed Budget FY2011, p. 554.

applicants as determined by CBP<sup>12</sup> and potential impact for achieving maximum border protection at minimum costs.<sup>13</sup> Grantees may use Stonegarden funding for personnel-related costs, including overtime, travel, and per diem costs associated with deployment of personnel to border areas, as well as vehicle rentals, mileage and fuel costs, and other equipment.<sup>14</sup>

### Concerns about Operation Stonegarden

Operation Stonegarden funds are not actually used for enhancing border security, according to a recent investigation of Arizona's participating law enforcement bodies by the *Arizona Daily Star*. The *Star* investigation found that, in addition to enforcement targeting organized violent crime along the border, funding was being used to compensate officer time for issuing routine traffic citations, controlling crowds at parades and soccer games, attending a funeral, monitoring gun shows, and responding to calls about loud music.<sup>15</sup> Bisbee, Arizona, paid its officers \$615,532 with Stonegarden funds since it began participating in the program.<sup>16</sup> Deputy Police Chief Ed Holly worked 14 hours a day for months on end in 2007, earning nearly \$100,000 on top of his regular salary, and there was no documentation about which of his activities were conducted on the Stonegarden-funded overtime shifts.<sup>17</sup> (An investigation of Holly uncovered a long list of violations that include harassment, misuse of police equipment and lying to his superiors and investigators that led to his resignation in December, 2009.<sup>18</sup>)

There have also been serious abuses of the supposed collaboration with federal law enforcement. In New Mexico, a federal court issued an order in September 2008 against illegal searches and seizures carried out by the Otero County Sheriff's Department, which had been conducting raids in immigrant communities with Operation Stonegarden funding. The case led Otero County Sheriff's Department to revise its standard operating procedures to ban the practice of asking for immigration status unless it was directly related to the investigation of criminal activity. The case also led the New Mexico legislature to pass a bill banning racial profiling to prevent similar incidents.<sup>19</sup> In addition, the New Mexico counties of Luna, Hidalgo, McKinley, and Sierra have established local policies that appear to have been modeled from the Otero policy.<sup>20</sup>

Stonegarden is also controversial in the northern borderlands, where local police have become increasingly involved in the Border Patrol's crackdown on immigrants and illegal drugs. Echoing a common complaint that Border Patrol and local police involved in joint operations are intruding into the lives of community members in the Bellingham, Washington area, activist

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<sup>12</sup> FEMA FY2010 Operation Stonegarden Grant Program, *available at* [http://www.fema.gov/pdf/government/grant/2010/fy10\\_hsgp\\_faq.pdf](http://www.fema.gov/pdf/government/grant/2010/fy10_hsgp_faq.pdf)

<sup>13</sup> *Id.*; "Review Criteria: The FY 2009 OPSG will use risk-based prioritization using CBP Sector-specific border risk to include, but not limited to: threat, vulnerability, miles of border, and other border specific "law enforcement intelligence." Each applicant's final funding allocation will be determined using a combination of the results of the risk analysis and feasibility of the Operation Orders. Applications will be evaluated through a State and CBP/BP Sector Headquarters prioritization process for completeness and adherence to programmatic guidelines, as well as consideration of need and impact, followed by a Federal review process comprised of a panel of evaluators from components within FEMA and CBP/BP. The Operations Order requires an Executive Summary and narrative on Situation, Mission, Execution, Budget/Administration/Logistics, and Command/Control/Communications. This information will be used to evaluate the anticipated feasibility of the Operations Orders."

<sup>14</sup> FEMA FY2009 Operation Stonegarden Grant Program, *Fiscal Year 2009 Operation Stonegarden Guidance and Application Kit*, Nov. 2008, *available at* [http://www.fema.gov/pdf/government/grant/opsg/fy09\\_opsg\\_guidance.pdf](http://www.fema.gov/pdf/government/grant/opsg/fy09_opsg_guidance.pdf)

<sup>15</sup> Brady McCombs, *The Work: Road Stops, Remote Patrol, Monitoring Gun Shows*, AZ DAILY STAR, Nov. 16, 2009.

<sup>16</sup> *Id.*

<sup>17</sup> Brady McCombs, *Officers Worked Long Shifts, Accrued Sizable Pay*, AZ DAILY STAR, Nov. 15, 2009.

<sup>18</sup> Brady McCombs, *Bisbee's No. 2 cop quits, accused of host of violations*, Dec. 12, 2009, *Arizona Daily Star*, *available at* [http://azstarnet.com/news/local/border/article\\_46f367d9-d677-5bcd-9202-7336d638a15f.html](http://azstarnet.com/news/local/border/article_46f367d9-d677-5bcd-9202-7336d638a15f.html)

<sup>19</sup> See Daniel Borunda, *Immigration rights, Civil Rights Violations Suit is Settled for \$100,000*, EL PASO TIMES, Mar. 19, 2009.

<sup>20</sup> The Sierra policy change has been proposed but is not final. See Daniel Borunda, *Immigration rights, Civil Rights Violations Suit is Settled for \$100,000*, EL PASO TIMES, Mar. 19, 2009.

Rosalinda Guillen told a local TV station, "It's almost like they're looking for something to do and we're the targets."<sup>21</sup>

In Washington, Sheriff Mike Brasfield in Jefferson County, near the northern border, declined Stonegarden funding, saying that immigration law enforcement is not a public safety priority. "The requirements imposed by the Border Patrol to receive the money are not relevant to the sheriff's office primary mission, and that is to say we have limited personnel resources and we don't have the time to pursue what would amount to misdemeanor civil workload that is the responsibility of the Border Patrol."<sup>22</sup>

The lack of a clear mission for Operation Stonegarden contributes to the misuse of funds. When Stonegarden was established as a pilot program in 2005, it was designed to "assist local authorities with *operational costs and equipment* purchases that contribute to border security."<sup>23</sup> On August 11, 2009, Secretary Napolitano announced \$30 million additional funds for Operation Stonegarden to "enhance the Department's capabilities to coordinate with state, local, and tribal law enforcement along the border in order to effectively deter violence, *enforce immigration laws, and combat illegal trafficking*."<sup>24</sup> As Raymond Michalowski, a professor in the Department of Criminology at Northern Arizona University noted, "there is no clear agenda for the use of the Stonegarden money. There is no clear guidance as to how it will, in fact, improve border security."<sup>25</sup> With weak monitoring, Operation Stonegarden money has blindly poured into local programs without much federal oversight after the initial approval process.

### Recommendations

Operation Stonegarden clearly needs enhanced accountability and oversight. FEMA and CBP should provide periodic reports to both DHS headquarters and to an independent monitoring board, detailing activities, apprehensions, and statistics to track potential racial profiling and other patterns of funding misuse. In addition, jurisdictions found to be misusing or abusing funds should be suspended from the program.

FEMA also should improve grant monitoring to ensure that Operation Stonegarden funds are used for legitimate border safety efforts. It is unclear why the program is under FEMA at all. The border is not an emergency or disaster situation. Operation Stonegarden should be carefully evaluated to assess whether it actually contributes to border security, or whether it is wasting public resources. The widespread use of Stonegarden funds for increased traffic enforcement, for example, is probably not worthy of a federal grant program.

The enforcement of immigration law by state or local authorities should be an explicitly prohibited activity and this clarification should be made in grant language and in public statements or speeches regarding the Stonegarden program. DHS should clearly proscribe racial profiling by grantees, and should sever immigration enforcement from terrorism and crime prevention.

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<sup>21</sup> Rob Piercy, *28 taken into custody in Bellingham ICE raid*, King5 News, Aug. 15, 2009, available at <http://www.king5.com/news/local/60042382.html>

<sup>22</sup> Alison Arthur, *Border Patrol Criticism Emerges: Sheriff Brasfield Declines Funding*, PORT TOWNSEND LEADER, Feb. 7, 2009.

<sup>23</sup> DHS Press Release, *DHS Announces \$12 Million for Operation Stonegarden to Support Local Border Security Efforts*, Dec. 15, 2006, available at [http://www.dhs.gov/xnews/releases/pr\\_1166216119621.shtm](http://www.dhs.gov/xnews/releases/pr_1166216119621.shtm).

<sup>24</sup> DHS, Aug. 11, 2009 Press Release, *supra* note 4.

<sup>25</sup> Brady McCombs and Stephen Caesar, *Border program has vague goals, little oversight*, Arizona Daily Star, Nov. 15, 2009, available at [http://azstarnet.com/news/local/border/article\\_1d28018f-800d-5610-a34d-d8a430c14192.html](http://azstarnet.com/news/local/border/article_1d28018f-800d-5610-a34d-d8a430c14192.html)