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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNION PACIFIC RAILROAD COMPANY
Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY and
SECRETARY MICHAEL CHERTOFF, in his
official capacity

Defendants.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY RELIEF,
PRELIMINARY INJUNCTION,
AND PERMANENT INJUNCTION
AND REQUEST FOR PLACE OF
TRIAL AT OMAHA, NEBRASKA**

Nature of the Action

1. This complaint seeks a determination that United States Customs and Border Protection (“CBP”) has unlawfully applied the Tariff Act of 1930 (the “Tariff Act”) to Union Pacific Railroad Company (“UP”) in connection with the smuggling of illegal narcotics from Mexico to the United States in trains. In addition, UP seeks to vindicate its right to be free of unconstitutionally excessive forfeitures, seizures, and penalties levied by CBP, currently and in the future.

2. Since September 2002, CBP’s application of the Tariff Act in the forty-two cases listed on **Exhibit A**, attached (each, a “Case,” and collectively, the “Cases”), has resulted in the assessment of \$37,765,494 in proposed penalties against UP, and the seizure of six railroad cars intended for delivery, ultimately, to UP customers. Thirty-seven of the Cases involve marijuana found on trains inspected by CBP at Calexico, California. Four of the Cases involve marijuana found on trains inspected by CBP at Nogales, Arizona. One Case involves cocaine found on a train inspected by CBP at Brownsville, Texas. In each Case, CBP discovered the illegal drugs on a train in-bound to the United States from a Mexican railroad while the train was in CBP custody and prior to the train’s delivery to UP. Despite UP’s complete lack of control over the trains and their rail cars until CBP releases them to UP, CBP has assessed penalties on UP for these drugs.

1 3. In each Case, CBP asserts that UP is either (a) the “person in charge of” a
2 “vehicle” “bound to the United States” containing unmanifested illegal narcotics, (b) the
3 “owner” of such vehicle, or (c) “a person directly or indirectly responsible” for the presence of
4 the illegal narcotics.

5 4. UP cannot be a “person in charge” or “owner” of “vehicles” (i.e., railroad
6 trains) bound to the United States over which it has no control. Nor can UP be “directly or
7 indirectly responsible” for the drugs. At all times prior to the discovery of the illegal narcotics,
8 either the Mexican railroad operating the train or CBP had exclusive control of the trains in
9 which they were found.

10 5. CBP also asserts that UP failed to exercise the “highest degree of care and
11 diligence” to ensure that no illegal drugs were on the trains. It is CBP’s position that UP has not
12 met the required standard of care because UP does not conduct “basic railcar inspections in
13 Mexico.” *See, e.g.*, CBP decision of March 17, 2008, in Case No. 2003-2301-300135-01, at p.
14 4, attached as **Exhibit B**.

15 6. CBP’s position is without lawful basis. UP owns no railroad facilities in
16 Mexico and conducts no railroad operations in that country. UP does not and cannot hire,
17 supervise, or in any way direct the individuals involved in any Mexican railroad’s terminal and
18 switching operations. As more fully described below, UP receives trains of rail cars assembled
19 in Mexico and transported by Mexican rail carriers to six railroad border crossings but only after
20 the trains in question have been inspected by CBP for illegal drugs. UP has no control over
21 these trains until after they have arrived in the United States and have been inspected by CBP.
22 The Tariff Act does not obligate UP to enter Mexico and conduct extraterritorial inspections,
23 and to do so would require UP to take extraordinarily dangerous and costly measures that the
24 United States itself has found too dangerous and/or futile to undertake.

25 7. All but one of the Cases involve illegal narcotics found on trains operated
26 by Ferrocarril Mexicano, S.A. de C.V. (“FXE”). (The one exception involves a train operated
27 by Kansas City Southern de Mexico, S.A. de C.V.) UP has a 26% ownership interest in FXE.
28 In holding UP liable under the Tariff Act, CBP appears to believe that UP can force FXE to take

1 drug interdiction actions, and also suggests that UP work in conjunction with FXE or a third
2 party contractor to conduct basic railcar inspections in Mexico.

3 8. However, UP does not control FXE, and its minority stock ownership
4 interest does not give UP the right to compel FXE to undertake inspections or take other actions
5 in Mexico designed to prevent railroad equipment in FXE's custody and control from being
6 used to smuggle illegal narcotics into the United States. Nor can UP compel FXE to allow such
7 inspections or other actions by a third party contractor hired by UP.

8 9. UP has exhausted all recourse provided by CBP to protect its rights.
9 Specifically, UP has filed petitions and supplemental petitions for relief. UP officials have met
10 with CBP officials in Washington D.C. and UP's Chairman and Chief Executive Officer has
11 corresponded with United States Department of Homeland Security ("DHS") Secretary Michael
12 Chertoff. However, CBP has repeatedly taken the position that it will not limit its application of
13 the Tariff Act to those entities having actual control over conveyances in-bound to the United
14 States. Accordingly, further resort to administrative procedures would be futile. Without a
15 judicial determination of UP's obligations under the Tariff Act, UP will continue to accrue
16 substantial fines and lose costly physical assets.

17 **Jurisdiction and Venue**

18 10. UP seeks judicial review of notices and decisions issued by CBP levying
19 fines and/or forfeitures on UP for contraband discovered on rail equipment brought into the
20 United States at various railroad crossing points along the border between the United States and
21 Mexico. This case therefore arises under the Administrative Procedure Act, 5 U.S.C. §§ 701,
22 704, 706(2). UP suffered a legal wrong because of, and is adversely affected or aggrieved by,
23 the challenged CBP notices and decisions assessing the penalties and making the seizures.
24 Because these decisions were issued by CBP without providing UP a meaningful opportunity to
25 challenge the determination of the applicability of the Tariff Act to UP, they are final agency
26 actions under APA § 704.

1 1584(a)(2). Penalties levied under this provision are secured by a lien on the vessel or vehicle
2 in which the illegal substances are found.

3 18. Under Section 1584(a)(2) a common carrier - - even if it is the master or
4 owner - - is not liable if it is established that it did not know that the narcotics were on board and
5 could not, "by the exercise of the highest degree of care and diligence," have known that such
6 illegal narcotic drugs were on board.

7 19. The Tariff Act also authorizes CBP to seize a common carrier
8 conveyance used to transport illegal drugs into the United States, subject to certain exceptions.
9 19 U.S.C. §§ 1594 and 1595.

10 20. For drugs hidden in or on the rail car itself but not inside the cargo, the
11 standard of care is the same as that found in 19 U.S.C. § 1584(a)(2) - a conveyance will not be
12 subject to seizure if the common carrier did not know that the narcotics were on board and could
13 not, "by the exercise of the highest degree of care and diligence," have known that such illegal
14 narcotic drugs were on board. 19 U.S.C. § 1594(c)(2).

15 21. For drugs contained inside manifested cargo containers, a conveyance
16 will not be subject to seizure if the common carrier did not know that the narcotics were on
17 board, and it was not "grossly negligent" in discovering or preventing the violation. 19 U.S.C. §
18 1594(b)(1).

19 22. In 1991, the Department of the Treasury (of which CBP was formerly a
20 component) engaged in a rulemaking to define the phrase "highest degree of care and
21 diligence." 56 Fed. Reg. 5665. The resulting proposed rules set forth different requirements for
22 sea, air, and land carriers. Under the proposed rules, land carriers such as railroads "engaged in
23 international traffic" would have been responsible for undertaking certain specified actions.

24 23. The Department of the Treasury never adopted these proposed
25 regulations, and formally withdrew them on March 25, 1995. Accordingly, no regulations
26 interpret the statute.

27 24. That same year, CBP created the Land Border Carrier Initiative Program
28 ("LBCIP") as a substitute for the withdrawn regulations. 62 Fed. Reg. 67766. CBP's stated

1 purpose for the program was to “provide[] guidance and training through the [LB]CIP to
2 alleviate the harsh consequences of those laws in the face of a carrier’s diligent and good faith
3 effort to comply with them.” *Id.*

4 25. The regulations defining the LBCIP state that it “is a program designed to
5 enlist the voluntary cooperation of commercial conveyance entities in Customs’ effort to
6 prevent the smuggling of controlled substances into the United States. Participation in the
7 LBCIP requires the land or rail commercial carrier to enter into a written agreement with
8 Customs that describes the responsibilities of participants in the LBCIP.” 19 C.F.R. § 123.71.

9 26. CBP, therefore, intends agreements under the LBCIP to provide a safe
10 harbor for carriers to know what steps they may take to satisfy the “highest degree of care and
11 diligence” under the Tariff Act.

12 **Cross-Border Railroad Interchanges and CBP Searches**

13 27. In the railroad industry, rail cars are routinely “interchanged” between
14 railroads in both international and domestic movements. During interchanges of a rail car, the
15 railroad to which it is interchanged (a) takes custody and possession of the car and (b) generally
16 becomes responsible for damage to the car occurring while in its possession. The receiving
17 railroad effectively becomes “the person in charge” of the car, controls the movement of the car,
18 and is responsible for the car’s safety and security.

19 28. Unlike domestic interchanges, Mexican border interchanges do not occur
20 directly between the Mexican and domestic railroads. Instead, the Mexican railroad first
21 delivers trains into CBP’s exclusive control for inspection. It is only after CBP’s inspection is
22 complete that CBP releases control over in-bound trains to the domestic railroad.

23 29. To effect a northbound interchange, the Mexican railroad delivers rail
24 cars to the border in a train crewed by its employees. Trains consist of one or more locomotives
25 (crewed by the Mexican railroad and owned by it unless “borrowed” from another railroad for
26 use in so-called “run-through” service) and can contain up to 150 rail cars extending over two
27 miles in length.

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1 control and direction of CBP officers for inspection by CBP using, among other things, a
2 permanent Vehicle and Cargo Inspection System ("VACIS") unit located on UP right-of-way
3 and K9 units (sometimes with the assistance of UP K9 teams, if requested by CBP and under
4 CBP's direction).

5 36. During these movements, CBP officers followed and maintained
6 surveillance of the trains.

7 37. At the commencement of each CBP inspection, the train's locomotives
8 were decoupled from the train, and the Mexican crew and locomotives returned to Mexico. (If,
9 as was occasionally the case during this period, a locomotive powering a train was a borrowed
10 UP locomotive controlled and operated by the Mexican railroad in run-through service, it
11 remained on the train.)

12 38. Except for any UP K9 teams requested and directed by CBP, CBP
13 allowed no UP employee access (or even close proximity) to the trains throughout this entire
14 process

15 39. Only after CBP had concluded its inspection, seized any illegal drugs
16 found on board, and released the cars in the train to UP did UP employees first gain access to,
17 and custody of, the train.

18 **Mexican Border Interchanges After September 2006**

19 40. Beginning in September 2006, and continuing to the present, the
20 interchange process at the five of the six border crossings changed slightly but not materially
21 (the process remains unchanged at Brownsville/Matamoros).

22 41. The trains are assembled in Mexico and depart the Mexican railroad's
23 terminal as described in paragraph 31 above. They then proceed to the Mexico/U.S. border,
24 where their crews disembark. Any locomotives which are not in run-through service are
25 decoupled from the trains and remain in Mexico, while any run-through locomotives remain on
26 the trains. Additional locomotives are added to the trains if necessary.

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1 42. CBP officers unlock and open the gates extending across the track at the
2 border.

3 43. While the gates are unlocked and opened by CBP, the rail cars in the
4 trains remain in Mexico, extending for up to two miles, where they are exposed and unsecured
5 against tampering.

6 44. Under CBP supervision, UP crews replace the Mexican railroad's crews,
7 and the trains are moved at CBP's direction to a point just short of the VACIS unit.

8 45. At all six locations, the moment the trains cross the border, custody of the
9 trains and the rail cars they contain passes from the Mexican railroad to CBP.

10 46. UP is not permitted by CBP to do anything with the trains other than to
11 move them at CBP's direction.

12 47. At CBP's direction, the UP crews operate the trains past the VACIS unit
13 in a rolling inspection in an effort to discover equipment structure and lading anomalies.

14 48. At CBP's discretion, a further inspection may take place, including the
15 use of K9 units (sometimes with the assistance of UP K9 teams, if requested by CBP and under
16 CBP control).

17 49. During these movements, CBP officers follow and maintain surveillance
18 of the trains.

19 50. UP has no control over the trains and no opportunity to inspect them until
20 after CBP conducts its own inspections and releases the trains to UP.

21 **UP is Not "in Charge of" a "Vehicle Bound to the United States"**

22 51. Under both delivery processes, UP did not and does not have custody or
23 possession of the trains until after their inspection and release by CBP. Thus, under the plain
24 language of the statute, UP was not and is not "in charge of any vehicle bound to the United
25 States" at the time of the discovery of any illegal drugs during CBP's inspection.

26 52. Either the delivering Mexican railroad or CBP has sole custody and is "in
27 charge of" the trains until after CBP's inspection and discovery of the unmanifested illegal
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1 drugs. UP did not and does not take custody or possession of the trains until their release by
2 CBP to UP. Accordingly, UP was not and cannot be the person in charge of the trains when
3 they were bound to the United States as required by the statute.

4 **UP is Not the “Owner” of a “Vehicle Bound to the United States”**

5 53. UP does not “own” the trains in which CBP discovers illegal drugs. The
6 “vehicle” bound for the United States is a train owned/controlled by the delivering Mexican
7 railroad and/or CBP at the time of its entry into the U.S.

8 54. Other than on those occasions when UP provides the inspection
9 assistance of its K9 teams at CBP’s request and under CBP’s control, at no time during the
10 process of CBP’s receipt, inspection, and removal of the illegal drugs from the train are UP
11 employees allowed access or even close proximity to the train. It is only after CBP has
12 concluded its inspection and released the train to UP that UP employees first gain access to and
13 control over the train.

14 55. Thus, UP is not the owner of “a vehicle bound to the United States” as
15 required by the statute.

16 **UP is Not “Directly or Indirectly Responsible” for the Drugs**

17 56. There is no basis for asserting that UP, as the statute requires, is “directly
18 or indirectly responsible” for the presence of illegal drugs on the trains. Indeed, CBP has never
19 claimed in any Case that UP is responsible for the drugs.

20 **UP Exercises the “Highest Degree of Care and Diligence”**

21 57. Even if UP were somehow considered, as required by the statute, to be a
22 “person in charge” or “owner” of trains “bound to the United States,” or a “person directly or
23 indirectly responsible” for drugs found on those trains, UP is not liable under the statute because
24 it does not know, and cannot “by the exercise of the highest degree of care and diligence” know,
25 that drugs are on the trains. Indeed, UP exercises the “highest degree of care and diligence”
26 under the circumstances.

1 58. Safety risks and the potential to violate Mexican law preclude UP from
2 inspecting rail cars in Mexico. As CBP is well aware, the business of transporting illegal drugs
3 into the U.S. from Mexico is both highly lucrative and highly dangerous. UP is aware that
4 employees of Mexican railroad operators and their families have been threatened by the
5 Mexican drug cartels. The United States Department of Agriculture ceased conducting
6 inspections in Mexico due to safety concerns. Anyone who interferes with drug gangs in
7 Mexico risks injury and death.

8 59. Recently, gunmen believed to be associated with drug cartels assassinated
9 Mexico's national chief of police, Edgar Eusebio Millán Gómez, in Mexico City, and it was
10 reported that three police chiefs in northern Mexico, fearing for their lives, had sought political
11 asylum at the Mexican-U.S. border. Scores of Mexican police have been killed or kidnapped.
12 See "Mexico's Police Chief is Killed in Brazen Attack by Gunmen," Wash. Post, May 9, 2008,
13 at A1; "Violence in Mexico Spills Across U.S. Border," Assoc. Press, May 14, 2008, attached
14 as **Exhibit C**.

15 60. In the United States, UP's Police make extensive use of highly trained K9
16 teams to detect concealed narcotics. The Mexican authorities will not, however, permit UP to
17 bring its K9 teams into Mexico. UP Police Officers, who are armed and commissioned police
18 officers in the United States, have no authority in Mexico, cannot take firearms into that
19 country, would not be permitted to make arrests there, and could even risk arrest themselves for
20 possessing any drugs they seize.

21 61. If UP police found illegal drugs during inspections in Mexico and were
22 not arrested or assaulted, they would be obligated to turn the drugs over to Mexican authorities
23 who may be involved in the drug trade. Accordingly, any UP inspection program would be
24 futile, as well as unlawful.

25 62. In order for UP to comply with CBP's interpretation of the Tariff Act, UP
26 or a third party contractor hired by it would have to conduct inspections in Mexico of trains and
27 cars over which UP has no control at facilities which UP is not authorized to access and over
28 which it has no control. Setting up security operations in Mexico would expose UP's or its

1 contractor's personnel to the risks of murder and mayhem at the hands of Mexican drug cartels,
2 while at the same time potentially running afoul of Mexican law. Also, doing so would
3 accomplish nothing. If CBP and the full power of the United States government cannot
4 effectively seize drugs in Mexico, there is no reason to believe that UP could.

5 63. In lieu of proposed regulations defining the phrase "highest degree of care
6 and diligence," CBP created the LBCIP to "provide[] guidance and training through the
7 [LB]CIP to alleviate the harsh consequences of those laws in the face of a carrier's diligent and
8 good faith effort to comply with them." 62 Fed. Reg. 67766.

9 64. In 1998, UP entered into an LBCIP agreement with CBP (the "LBCIP
10 Agreement"). The LBCIP Agreement is a standard form agreement that requires UP to take a
11 number of measures in foreign facilities (if any) which are "under Carrier's control" or
12 "operated" by Carrier. UP has no such facilities.

13 65. The LBCIP Agreement does not require UP to establish security at or
14 conduct inspections of foreign facilities that are not under UP's control.

15 66. UP owns no railroad operating facilities in Mexico and has no railroad
16 operating employees there. UP does not hire, supervise, or in any way direct the individuals
17 involved in any Mexican operators' terminal and switching operations. In fact, UP has no
18 control over the trains until after their arrival in the United States and after their inspection by
19 CBP.

20 67. UP has always complied with its obligations under the LBCIP
21 Agreement.

22 68. Moreover, CBP has never notified UP that its efforts to comply with the
23 terms of the LBCIP Agreement were insufficient. Nor has CBP made such an assertion in the
24 Cases. Accordingly, UP has complied with the "highest degree of care and diligence" as
25 defined by CBP.

26 69. In addition to meeting its commitments under the LBCIP Agreement, UP
27 has also undertaken a variety of voluntary actions to cooperate with CBP to prevent the
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1 smuggling of illegal drugs from Mexico into the United States (see list of activities attached as
2 **Exhibit D**).

3 70. CBP appears to hold UP liable under 19 U.S.C. §§ 1584 and 1594 at the
4 UP/FXE border interchange crossings at Calexico/Mexicali and Nogales/Nogales because of its
5 mistaken belief that UP, as the owner of 26% of FXE's stock as an investment, can force FXE to
6 take drug interdiction actions. UP, however, has no ability to force FXE to take any interdiction
7 actions. The 74% of FXE stock not owned by UP is privately owned by a Mexican corporation
8 whose Mexican owners resist any operational control by UP. UP's rights are restricted to
9 written, specified, narrow financial covenants. UP has no control over FXE's day-to-day
10 operations and is unable to compel it to act to take additional steps to prevent the use of
11 equipment in FXE's custody and control to smuggle drugs into the United States.

12 71. As previously stated in paragraph 30 above, UP and KCSM interchange
13 trains at the Laredo/Nuevo Laredo and Brownsville/Matamoros rail border crossings. UP has no
14 corporate relationship with KCSM, or its corporate parent KCS, that would permit it to conduct
15 inspections of equipment in KCSM's control in Mexico or elsewhere.

16 72. The Department of Transportation's Surface Transportation Board
17 ("STB") has developed a substantial body of law establishing that control of a carrier by another
18 carrier exists if one has the ability to control the "day-to-day" operations of the other. As a
19 minority shareholder in a closely-held corporation (the Mexican corporation Infraestructura y
20 Transportes Mexico owns the 74% of FXE not owned by UP), UP has no "control" over FXE
21 under those STB precedents or under other authorities. Absent FXE's permission, UP has no
22 more right to conduct inspections of rail cars in FXE's possession in Mexico than does a
23 stranger unrelated to FXE. It is also highly unlikely that Mexican rail unions would permit
24 such inspections. UP can neither impose nor enforce the kind of detailed operating procedures
25 and practices that CBP desires in order to prevent the use of FXE equipment and facilities to
26 transport illegal drugs from Mexico to the United States. Any belief that UP can do so is
27 incorrect.

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1 73. Notwithstanding UP's inability to direct or control FXE's on-the-ground
2 operations, UP has repeatedly urged FXE to take action to interdict drugs on its trains, and has
3 made numerous suggestions to FXE. UP's Chairman and Chief Executive Officer has raised the
4 issue with FXE's Board of Directors, which is as high as UP can take the issue in the FXE
5 organization.

6 **The Presentation of Manifests**

7 74. CBP's decisions in the Cases also find UP liable under 19 U.S.C. § 1584
8 for failure to manifest the illegal drugs found on trains of which UP takes charge only after they
9 have entered the U.S. and been inspected by CBP.

10 75. Manifests for in-bound trains are provided through an Automated
11 Manifest System ("AMS") adopted by the railroad industry at CBP's request.

12 76. AMS allows shippers, customs brokers, and CBP to electronically
13 exchange shipment information. AMS expedites the flow of goods by rail into the United States
14 through the use of an electronic system that automates the customs clearance process for rail
15 import shipments by providing manifest information for loaded rail cars prior to their arrival at
16 the border. It thus permits shipments northbound from Mexico to be processed for clearance
17 with CBP prior to physical interchange.

18 77. AMS enables CBP to review documentation and determine in advance
19 whether a shipment should be physically examined prior to its release. In the AMS process, UP
20 merely receives the information from shippers, their brokers and the delivering Mexican
21 railroad, merges it with car identification information, and makes it available to CBP.

22 78. Under AMS, none of the information in the bills of lading, train sheets, or
23 manifests made available to CBP originates from UP.

24 79. UP cannot validate the information provided to it by Mexican railroads
25 and shippers via AMS.

26 80. CBP regulations reflect the fact that UP is merely a conduit in the
27 presentation of advance cargo information to CBP. 19 C.F.R. § 123.6 specifies that the
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1 “conductor of a railroad train arriving from Canada or Mexico shall present to the Customs
2 officer at the port of arrival individual car manifests and a train sheet.”

3 81. The process by which this information is presented is further elaborated
4 in 19 C.F.R. § 123.91(a), which states that “for any train requiring a train sheet under § 123.6 ...
5 CBP must electronically receive from the rail carrier certain information concerning the
6 incoming cargo.... Specifically, to effect the advance electronic transmission of the required rail
7 cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange
8 system.”

9 82. The “rail carrier” who originates the information contained in individual
10 car manifests and a train sheet under § 123.6 is the Mexican railroad, whereas UP’s role is to
11 provide the “CBP-approved electronic data interchange system” used to transmit that
12 information.

13 83. Under applicable regulations currently in force, CBP must take into
14 consideration whether UP (if it is the presenter) is able to verify reported manifest information.
15 If not, CBP must permit UP to present the information “on the basis of what [it] reasonably
16 believes to be true.” 19 C.F.R. § 123.91(c)(2).

17 84. UP does not have, nor can it obtain, sufficient knowledge of cargo
18 moving to the border to permit it to verify the manifest and know whether drugs have been
19 introduced. To hold UP liable for its accuracy would undermine the intent of AMS and unfairly
20 make UP strictly liable for the accuracy of information that it cannot verify.

21 85. Section 343(a)(3)(B) of the Trade Act of 2002 recognized and addressed
22 this inequity by imposing the requirement to provide particular information under an electronic
23 data interchange system like AMS “on the party most likely to have direct knowledge of that
24 information.” The Trade Act of 2002 further requires that where this is not practicable:

25 “the regulations shall take into account how, under ordinary
26 commercial practices, information is acquired by the party on
27 which the requirement is imposed, and whether and how such
28 party is able to verify this information. Where information is not
reasonably verifiable by the party on which a requirement is

1 imposed, the regulations shall permit that party to transmit
2 information on the basis of what it reasonably believes to be true.”

3 In CBP Dec. 03-32, CBP amended its regulations to implement this directive and other
4 stipulations of the Trade Act of 2002. As a result, 19 C.F.R. § 123.91(c)(2) now provides that
5 rail carriers not reasonably able to verify information will be permitted to electronically present
6 the information on the basis of what the carrier reasonably believes to be true.

7 86. Since the required information on the in-bound cars originates
8 electronically from the Mexican railroads and shippers under AMS, CBP must take into account
9 that UP acquires the information from third parties in Mexico and is unable to verify its
10 accuracy. Taking those circumstances into account, as CBP is directed to do under the Trade
11 Act of 2002 and by its own regulations, CBP must find that UP is not responsible for any
12 discrepancy between the advance cargo information and the presence of drugs in or on the cars.

13 **The Administrative Process**

14 87. In each Case, CBP issued and sent to UP a penalty notice or notice of
15 seizure. In each Case in which CBP sought a penalty, UP submitted an initial petition in
16 response to the notice seeking CBP’s determination that UP is not liable under 19 U.S.C. § 1584
17 or, in the alternative, mitigation of the penalty to \$0.

18 88. In its discretion, CBP may decide to mitigate the penalty in response to a
19 petition based on a variety of factors enumerated in Customs regulations. 19 U.S.C. § 1618.

20 89. In response to UP’s initial petitions, CBP has typically mitigated penalties
21 to ten percent (10%) of the amount originally assessed.

22 90. In response to supplemental petitions by UP for further relief in the Cases
23 that have reached that stage of the administrative process, CBP has denied further mitigation,
24 but has suggested that UP petition to offset security-related expenditures made by UP at the
25 U.S.-Mexican border against the mitigated penalties.

26 91. Though UP spends at least \$3.6 million annually in ongoing programs
27 that support CBP’s efforts to prevent the smuggling of illegal drugs from Mexico into the United
28 States (see list of activities attached as **Exhibit D**), UP has declined to apply for offsets because

1 it would be deemed by CBP as an admission of liability for penalties. UP denies that it is
2 subject to any penalty under 19 U.S.C. § 1584 for operations out of its control.

3 92. In each Case in which CBP seized a rail car, UP submitted an initial
4 petition in response seeking to have the car(s) released on the basis that the car(s) was not
5 subject to seizure under 19 U.S.C. § 1594. In two of the seizure Cases, CBP issued decisions on
6 July 10, 2008, remitting the forfeitures upon payment of storage charges. In the remaining
7 seizure Cases, CBP issued decisions on July 25, 2008, remitting the forfeitures upon payment of
8 penalties which UPRR is advised equal 5% of the seized cars' value.

9 93. The administrative process is designed to force operators to give up their
10 legal rights to judicial review with the promise of mitigation. CBP assesses most penalties "at
11 the statutory maximum." *See* Customs Administrative Enforcement Process (February 2004), at
12 p. 25. Depending on the weight (per ounce) of the illegal drugs, penalties can range into the
13 millions of dollars. Thus, UP has no real option but to seek mitigation of the penalty.

14 94. CBP's regulations state that acceptance of a mitigated penalty constitutes
15 an accord and satisfaction, and thus a waiver of any legal defenses the asserted violator may
16 have in a subsequent lawsuit. CBP's administrative process presents UP with no choice at all --
17 seek a mitigated penalty and waive any legal defense it may have, or expose itself to a
18 potentially substantial penalty in order to assert those legal defenses in a challenge to the
19 applicability of the particular penalty.

20 95. The result of this administrative process is that CBP may continually
21 assess large, unjustified penalties without any fear of judicial intervention, while holding the
22 "carrot" of mitigated penalties with a waiver of rights. Thus, further resort to the administrative
23 process would be futile.

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Count II - VIOLATION OF APA § 706 (2)(A)

Erroneous Interpretation of Standard of Liability

102. UP herein incorporates by reference the allegations set forth in paragraphs 1- 95 above.

103. Under the APA, 5 U.S.C. § 706(2)(A), this Court is required to hold unlawful and to set aside final agency action that is “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.”

104. The penalties and seizures are arbitrary, capricious, and unsupported by substantial evidence because there is no factual basis for CBP to conclude that UP did not exercise the “highest degree of care and diligence” required by 19 U.S.C. § 1584(a)(2) and 1594(c). The penalties and seizures are therefore unlawful under APA § 706(2)(A) and must be set aside.

Count III - EXCESSIVE FINES

105. UP herein incorporates by reference the allegations set forth in paragraphs 1- 95 above.

106. Under the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the United States may not impose a fine, including by way of seizure, disproportional to the offense committed. *See United States v. Bajakajian*, 524 U.S. 321 (1998). Because it is impossible for UP to discover illegal drugs on trains it does not control, and does not have access to until CBP has conducted its searches, UP could not have committed any offense.

107. Accordingly, penalties of any amount and seizures are unconstitutionally excessive under the Eighth Amendment, and they must be set aside.

Count IV - DUE PROCESS

108. UP herein incorporates by reference the allegations set forth in paragraphs 1- 95 above.

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UNION PACIFIC RAILROAD COMPANY,
Plaintiff

s/William M Lamson, Jr.
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and

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1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-6000
Fax: (202) 662-6291
dgrace@cov.com

ITS ATTORNEYS

Dated: July 31, 2008

435265

CBP ACTIVE PROCEEDINGS

Case No.	Location & Date of Incident	Car Number	Weight & Drug	Proposed Penalty Amount Per FP&F
2002-2501-30022001	Calexico 11/29/01	JTTX930807 JTTX912566	60.95 kg MJ	1,072,720.00
2003-2301-30013501	Brownsville 6/26/03	TMIX200074	117 kg coke	4,128,000.00
2003-2501-30008201	Calexico	CNW350249	28.75 kg MJ	507,064.00
2003-2501-30012601	Calexico 6/4/03	TTPX81240	28.55 kg MJ	503,536.00
2003-2501-30013501	Calexico 4/25/03	MP643708	60.98 kg MJ	1,075,504.00
2003-2501-30015601	Calexico 5/23/03	CNW175605	29.44 kg MJ	519,235.00
2003-2501-30016501	Calexico 6/4/03	TTPX80355	15.16 kg MJ	267,377.00
2003-2501-30017301	Calexico 6/9/03	CNW350481 SP365099 CHTT286808 CHTT37013 MP651186	49.8 kg MJ	878,325.00
2003-2501-30017601	Calexico 6/11/03	WP12036	36.28 kg MJ	638,107.00
2003-2501-30017701	Calexico 6/12/03	UP78779	14.7 kg MJ	259,264.00
2003-2501-30019601	Calexico 6/20/03	SRIX003300	7.44 kg MJ	131,219.00

Case No.	Location & Date of Incident	Car Number	Weight & Drug	Proposed Penalty Amount Per FP&F
2003-2501-30019801	Calexico 6/26/03	UP090414 UP089061	25.66 kg MJ	452,565.00
2006-2501-30008201	Calexico 2/27/04	MP716952 MP711553	72.14 kg MJ	1,272,332.00
2006-2501-30008301	Calexico 3/1/04	UTLX37968	0.94 kg MJ	16,579.00
2006-2501-30008401	Calexico 3/5/04	PTLX17365	14.7 kg MJ	289,265.00
2006-2501-30008501	Calexico 3/29/04	DRGW310596	6.48 kg MJ	114,288.00
2006-2501-30008601	Calexico 3/30/04	HPLX411019	37.15 kg MJ	655,215.00
2006-2501-30008701	Calexico 4/9/04	UP215799	25.36 kg MJ	447,274.00
2006-2501-30008801	Calexico 4/16/04	MP705566	13.32 kg MJ	234,925.00
2006-2501-30008901	Calexico 4/22/04	SSW76964	35.1 kg MJ	619,010.00
2006-2501-30009001	Calexico 4/29/04	MP712207	22.1 kg MJ	389,780.00
2006-2501-30009101	Calexico 5/3/04	SRY286186	103.84 kg MJ	1,831,426.00
2006-2501-30009201	Calexico 5/6/04	MP712251	23.4 kg MJ	412,706.00
2006-2501-30009301	Calexico 5/7/04	CNW137008	27.8 kg MJ	490,309.00
2006-2501-30009401	Calexico 7/30/04	CTRN100836	468.42 kg MJ	8,261,525.00
2006-2501-30009501	Calexico 8/30/04	TILX512158 GACX5636	113.78 kg MJ	2,006,738.00

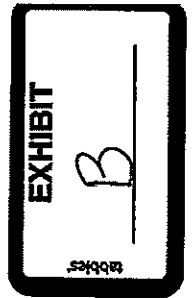
Case No.	Location & Date of Incident	Car Number	Weight & Drug	Proposed Penalty Amount Per FP&F
2006-2501-30009601	Calexico 9/13/04	TILX512216 MP72308 KCS152129	105.72 kg MJ	1,864,585.00
2006-2501-30010301	Calexico 11/1/04	CRDX13874 CRDX13899	15.3 kg MJ	296,846.00
2006-2501-30010401	Calexico 12/30/04	SP365076	35.24 kg MJ	621,528.00
2006-2501-30010501	Calexico 3/29/05	RBOX35704	141.34 kg MJ	2,492,814.00
2006-2501-30010601	Calexico 4/27/05	CMEX13006	80.64 kg MJ	1,422,248.00
2006-2501-30010701	Calexico 5/11/05	LW66539	56.05 kg MJ	449,391.00
2006-2501-30010801	Calexico 6/21/05	TTPX806275	26 kg MJ	458,562.00
2006-2501-30010901	Calexico 7/6/05	NATX071881	31.94 kg MJ	563,326.00
2006-2501-30011001	Calexico 8/30/05	UP079628	58.86 kg MJ	1,034,586.00
2006-2501-30011101	Calexico 10/6/05	CEMX013051	54.41 kg MJ	959,629.00
2006-2501-30011201	Calexico 12/12/05	MP705836	5.8 kg MJ	102,295.00
2008-2501-30004901	Calexico 10/18/06	UP89614	1.44 kg MJ	25,395.00
				\$37,765,494
2008-2604-000399-01	3/29/08 Nogales	UP090387		Seized car
2008-2604-000408-01	4/1/08 Nogales	MKT00562		Seized car
2008-2604-000424-01	4/10/08 Nogales	SOO125074		Seized car

Case No.	Location & Date of Incident	Car Number	Weight & Drug	Proposed Penalty Amount Per FP&F
2008-2604-000546-01	6/7/08 Nogales	MDW9012 MDW9078 MDW9087		Seized cars

PO Box 3130
Laredo, TX 78044-3130



U.S. Customs and
Border Protection



APR 23 2008

CERTIFIED RETURN RECEIPT: 7001 1140 0004 3456 6242

ENF: 4-02-L:F LGV
CN: 2003-2301-3-00135-01
CODE: 327 - \$412,800.00

LAW DEPT.

APR 23 2008

REC'D UPRR

Mr. William G. Barr
Assistant General Solicitor
Union Pacific Railroad
1400 Douglass Street, Stop 1580
Omaha, Nebraska 68179-1589

Re: Penalty Notice

Dear Mr. Barr:

This will refer to your petition dated August 28, 2003, requesting relief from a penalty assessed in the amount of \$4,128,000.00, pursuant to the provisions of 19 U.S.C. 1584(a)(2) for failure to manifest 117 kilograms of cocaine. Since the cocaine was unmanifested, CBP issued a statutory penalty in the amount \$4,128,000.00, representing \$1,000 per ounce of cocaine.

Pursuant to the provisions of 19 C.F.R. § 171.12, the petition was referred to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters for decision and ruling. This office is now in receipt of a response from that office. See enclosure.

By letter dated March 17, 2008, that office has concluded that petitioner did not exercise the highest degree of care and due diligence. As such, petitioner is liable for the assessed penalty. For purposes of mitigation, that office has determined the level of culpability to be negligence. Under our current mitigation guidelines for findings of negligence and multiple violations within a two-year period, we would usually mitigate the penalty to an amount between 15-25% of the assessed penalty. However, in view of petitioner's cooperation, the penalty is hereby mitigated to the amount of \$412,800.00, an amount equal to 10% of the assessed penalty amount.

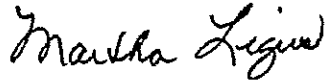
Please submit payment in the amount of \$412,800.00 in the form of a cashier's check or money order to Customs and Border Protection, Attn: Port Cashier, 715 Bob Bullock Loop, Laredo, Texas 78045, within 10-days from the date of this letter. Please submit a copy of this letter and indicate the case number on the check. Failure to submit payment within the specified time frame will result in appropriate collection action taken for the full liability incurred.

- 2 -

Be advised that this office has yet to receive your statute of limitations waiver, which was requested by letter dated December 18, 2007.

If you have any questions regarding this matter, please feel free to contact Paralegal Specialist Leticia Valdez of my staff at (956) 523-7357.

Sincerely,



MARTHA LIGUS
Fines, Penalties and
Forfeitures Officer

Enclosure

cc: Safeco Insurance Company
Safeco Plaza
Surety Claims
Seattle, WA 98185



U.S. Customs and
Border Protection

MAR 17 2008

OT:RR:BSTC:PE
H024491 WAS

Fines, Penalties & Forfeitures Officer
U.S. Customs & Border Protection
P.O. Box 3130
Laredo, TX 78044-3130

Dear Ms. Guardiola:

This is in response to your memorandum dated September 27, 2005, forwarding the petition for relief submitted by Ms. Cindy A. Wilhelm, Litigation Asst. II, on behalf of Union Pacific Railroad Company ("UPRR" or "petitioner"). The petition seeks relief from a penalty issued against petitioner on June 26, 2003, in the amount of \$4,128,000, in Laredo Port Case Number 2003-2301-300135-01, for failure to manifest 117 kilograms of cocaine in violation of 19 U.S.C. 1584(a)(2).

BACKGROUND:

The record reflects that on June 16, 2003, an empty railcar (TMIX 200074) pulled by Union Pacific Railroad (UPRR) entered the United States from Mexico at the Port of Brownsville. During a Rail VACIS examination, U.S. Customs and Border Protection ("CBP") inspectors noticed an anomaly in the "A" side of the railcar. The VACIS image showed a false wall and a dense area on the bottom of the "A" side of the railcar. A hole was cut through the exterior of the railcar and a CBP inspector discovered several plastic packages concealed inside. Some of the packages were burned through and a white powdery substance was visible. A sample of the white powder was extracted and field-tested positive for cocaine. A total of 99 packages were discovered containing 117 kilograms of cocaine.

Since the cocaine was unmanifested, CBP issued a statutory penalty in the amount of \$4,128,000, representing \$1,000 per ounce of cocaine, against the petitioner on June 26, 2003.

All narcotics manifesting penalties assessed against UPRR have been held in abeyance since 2003, as ongoing discussions have occurred between CBP and UPRR concerning penalty issuance and offset processes. The parties established working groups in September 2003 at the ports of El Paso, Calexico, and Laredo to create strategies to address UPRR's supply chain security vulnerabilities. There have been ongoing meetings to deal with security issues. After the most recent meetings with UPRR, CBP has decided to terminate the 2003 agreement and to recommence processing narcotics-related penalty cases.

STATEMENT OF LAW:

As a common carrier, petitioner is liable for the penalty under 19 U.S.C. 1584(a)(2) if there was either knowledge of the drug smuggling or a failure to exercise the highest degree of care and diligence in preventing it. In the land border environment, exercising the highest degree of care and diligence involves establishing a comprehensive security plan that addresses the high threat level for drug smuggling on railcars, along with evidence that it was successfully implemented at the time of the drug incident.

It also includes, among other things, the following: conducting employee background checks and updating them on a regular basis; providing security training to its workforce; ensuring the integrity of railcars at all times from the time of pick-up and/or loading, including the verification of container seal numbers; establishing security measures to prevent foul play during the delivery of railcars to the border; as well as reporting to CBP anomalies or suspicious behavior at anytime during the transportation process.

PETITIONER'S CLAIMS:

Petitioner claims that it is not liable under 19 U.S.C. 1584 since it was not the master, person in charge of or owner of the trains when they were bound to the United States. UPRR claims that it did not have custody or possession of the railcar containing cocaine until after it had arrived in the United States, the cocaine was discovered by CBP, and the railcars were released by CBP to UPRR. Further, UPRR claims that it was not directly or indirectly responsible for any failure to manifest the cocaine on the railcars.

UPRR argues that even if it was considered the master or owner, it exercised the highest degree of care and diligence in this case. The petitioner claims that considering: (1) UPRR's inability to inspect (or even approach) any railcars it receives from Ferromex prior to its inspection by CBP, and (2) the steps and actions UPRR has taken individually and cooperatively with CBP show that it exercised the highest degree of care and diligence to determine if illegal drugs are concealed in or on any equipment it receives from Ferromex.

UPRR claims that it cannot and should not undertake inspection of Ferromex equipment in Mexico for a variety of reasons: 1) the Mexican authorities will not permit UPRR to bring its K9 teams into Mexico; 2) the business of transporting illegal drugs into the U.S. from Mexico is both highly lucrative and highly dangerous. Ferromex employees and their families have been threatened by Mexican drug cartels. UPRR Police officers on the U.S. side of the border have no authority in Mexico and cannot take firearms into that country; 3) UPRR cannot and will not put its employees in such a potentially dangerous environment in an attempt to curtail such a dangerous activity without the necessary resources; 4) interdicting the flow of illegal narcotics from Mexico to

the U.S. by intercepting them in Mexico could well have unintended adverse consequences. UPRR would be obligated to turn any illegal drugs it discovers in Mexico over to Mexican authorities. UPRR claims that it cannot be certain that the drugs would not find their way back into the illegal "pipeline" from Mexico to the U.S.

UPRR argues that although it owns 26% of Ferrromex's stock, as a minority owner it has no control over Ferrromex and is unable to compel it to act. Rather, UPRR states that it is Grupo Mexico that has control over Ferrromex's day-to-day operations. UPRR states that it cannot impose and enforce the kind of detailed operating procedures and practices required to effectively prevent the use of Ferrromex equipment and facilities to transport illegal drugs from Mexico to the U.S.

UPRR further argues that if CBP continues to believe that it is liable for a penalty, extenuating circumstances justify the mitigation of this case to \$0. These extenuating circumstances include: 1) the factual circumstances surrounding rail car interchanges between Ferrromex and UPRR at the border; and 2) actions UPRR has taken on its own and the extraordinary cooperation that UPRR has given to CBP in the effort to prevent the transportation of illegal drugs into the U.S.

Finally, UPRR states that Surface Transportation Board ("STB") has certified that UPRR's revenues represent an inadequate return on its investment. Furthermore, the adverse financial impact on UPRR of penalties and/or the expenditure of resources to fight them can only hurt UPRR's ability to further cooperate with CBP to meet its and our nations' needs.

ANALYSIS:

As a common carrier, petitioner is liable for the penalty under 19 U.S.C. 1584(a)(2) if there was either knowledge of the drug smuggling or a failure to exercise the highest degree of care and diligence in preventing it. Upon review of the record in this case, we find that petitioner did not have any knowledge that the drugs were being smuggled inside the railcar. Thus, the pertinent issue becomes whether or not petitioner exercised the highest degree of care and diligence in preventing the drug smuggling incident in this case.

We find that under the facts in this case, wherein 117 kilograms were able to be smuggled inside a false wall in the railcar, petitioner did not exercise the highest degree of care and diligence. While we recognize petitioner's contention that it did not have custody or possession of the train in which the railcars containing cocaine were delivered until after it had arrived in the U.S., the pertinent issue is whether the petitioner exercised the highest degree of care and diligence in preventing the smuggling of narcotics on the railcar in this instance. We note that CBP has advised petitioner on numerous occasions that by presenting the

manifest, it is responsible for its accuracy. Thus, it is incumbent upon petitioner to ensure that the railcars are inspected in Mexico prior to crossing the border. CBP does not expect UPRR to create a police force in Mexico equal to that of its force in the U.S. Instead, we ask that petitioner provides for basic railcar inspections in Mexico, utilizing CBP training on the subject. If petitioner alone cannot achieve this objective, then it should work in conjunction with its business partner, Ferrocarril Mexicano, S.A. de C.V. ("Ferromex"), or hire a third party security contractor. (We note that U.S. air and sea carriers in similarly high-risk environments do not have their own police forces abroad and instead usually hire outside security contractors).

Furthermore, it is important to note that the subject drug seizure incident and several prior ones are factually similar, i.e., drugs secreted above the wheel area, in a false compartment, within the center beam of a railcar, within a side sill or in an empty railcar. This begs the question, how many more drug seizure incidents of these types will occur until petitioner effectively addresses the problem? CBP has consistently encouraged carriers to have procedures in place that ensure knowledge of who they are doing business with – whether they are customers or business partners – and in turn, promote increased diligence in security practices by all. In today's environment, this effort is paramount not only to drug interdiction, but also to our national interest in the fight against terrorism and the smuggling of weapons of mass destruction. We note that in addition to being a signatory to the Land Border Carrier Initiative Program ("LBCIP"), petitioner is also a signatory to the Customs-Trade Partnership Against Terrorism ("C-TPAT"). Thus, petitioner has twice agreed not only to implement its own security practices, but to encourage its customers and partners to do the same.

Petitioner claims that penalties of this nature have had an adverse financial impact on the company which will have an affect on its ability to further cooperate with CBP. In response to this claim, we call petitioner's attention to the 11th Circuit Court of Appeals' affirmation of the following in reference to a section 1584 drug penalty involving a commercial airline that was similarly concerned about the financial impact of security investments:

"Arca has **chosen** to compete in the high-risk market of carriage from Bogota to Miami. Security measures are part of the cost of doing business. . . ." ARCA Airlines, Ltda. v. U.S. Customs Service, 726 F. Supp. 827, 828 (S.D. Fla.), *affd.*, 945 F2d 413 (11th Cir. 1991) (emphasis added).

Like ARCA, petitioner has chosen to engage in a high-risk market of carriage (in this instance, from Mexico to the U.S.); thus, any costs incurred by investing in appropriate security measures are ones that petitioner should expect.

Without documentary evidence including copies of income tax returns for the previous three years and an audited financial statement for the most recent fiscal

quarter from UPRR, we are unable to assess UPRR's claimed financial inability to pay the penalty in this case.

CONCLUSION:

For purposes of mitigation, we find petitioner's level of culpability to be one of negligence. We find as an aggravating factor that petitioner has multiple violations of section 1584(a)(2) within a two-year period. However, we view as a mitigating factor petitioner's cooperation with CBP, as demonstrated by its participation in a Working Group with CBP along the South West Border. Under our current mitigation guidelines for findings of negligence and multiple violations within a two-year period, we would usually mitigate the penalty to an amount between 15-25% of the assessed penalty. However, in view of petitioner's cooperation as noted above, it is our decision to grant extraordinary mitigation and mitigate the penalty to \$412,800, an amount equal to 10% of the assessed penalty. In so doing, CBP expects petitioner to specifically address the reoccurring problem of drug smuggling on its railcars entering the Calexico, California, Port of Entry.

In appropriate circumstances, CBP will grant further relief in the form of a refund of penalties. We will grant offsets in instances in which the carrier purchases equipment and/or tools specifically designed to prevent drugs from being smuggled onboard conveyances or inside cargo. CBP may also grant offsets for increased security measures such as hiring additional guards, restricting access of unauthorized persons, implementing anti-terrorism enhancements, and expending fees for security consultants. Evidence must be submitted, to CBP's satisfaction, of costs of the equipment, tools, enhancements, additional personnel, or services. Should petitioner wish to explore this alternative, it may do so in the context of a "Request for Penalty Offsets." It should forward its request, through the Fines, Penalties & Forfeitures Officer at the Port of San Diego, CA, to the Land Border Carrier Initiative Rail program manager, Office of Cargo and Conveyance Security, C-TPAT, U.S. Customs and Border Protection, Department of Homeland Security, Washington, D.C. 20229. The program manager will review the submission and issue a written decision either granting or denying offsets.

Please notify petitioner of our decision and forward a copy of this letter with your notification. Please also notify the local CBP offices that were involved in this penalty case and provide them with a copy of this decision.

Sincerely,



Charles D. Ressin
Chief, Penalties Branch

EXHIBIT

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washingtonpost.com

Mexico's Police Chief Is Killed In Brazen Attack by Gunmen

By Manuel Roig-Franzia
Washington Post Foreign Service
Friday, May 9, 2008; A01

MEXICO CITY, May 8 -- Gunmen assassinated Mexico's national police chief Thursday, blasting him with nine bullets outside his home in the capital and dealing a significant setback to the government's campaign against drug cartels.

Edgar Eusebio Millán Gómez, the public face of Mexico's offensive against drug cartels, became the highest-ranking law enforcement official to be killed since the launch of the effort 17 months ago. The assassination could give new confidence to drug cartels blamed for 6,000 killings in the past 2 1/2 years, and embolden other anti-government groups in this violence-plagued nation.

"This could have a snowball effect, even leading to the risk of ungovernability," Luis Astorga, a Mexico City-based sociologist and drug expert, said in an interview. "It indicates terrible things, a level of weakness in our institutions -- they can't even protect themselves."

Mexico's drug and violence problem now engulfs the entire country, swamping cities along the U.S.-Mexico border and rugged drug cartel redoubts in the western mountains, and piercing into the heart of national power in Mexico City. The capital, once relatively immune to such brazen drug killings, has been the scene of four assassinations of high-ranking federal police officials in about a week.

Millán Gómez's forces have conducted large-scale counter-narcotics operations throughout much of Mexico. He had ordered thousands of federal police to take over crime-fighting responsibilities from local police suspected of aiding drug traffickers. Those field operations -- often conducted with the military -- have led to widespread resentment among local and state law enforcement offices plagued by corruption.

It has long been common for assassins to target local and state police chiefs in Mexico, but this year, cartels have been increasingly going after some of the biggest names in the federal law enforcement structure. In January, police in Mexico City confiscated grenade launchers and arrested three men who have been accused of planning to assassinate José Luis Santiago Vasconcelos, a top prosecutor who oversees the extraditions of drug

Advertisement



traffickers.

Before Millán Gómez was slain, assassins also killed Robert Velasco Bravo, the head of the federal police agency's organized crime tactical analysis office, as well as two other top police officials, all of them in Mexico City. One of the killings was in Coyoacan, an old-money haven popular with tourists.

Alejandro Gertz Manero, Mexico's former secretary of public safety, said in a Thursday interview on Radio Formula that Millán Gómez's killing demonstrated "a desire to generate an atmosphere of terror."

The capital is also on edge because the once-dormant People's Revolutionary Army, a rebel group that bombed oil pipelines last year, has been demanding the release of several jailed members. The rebels could see the killing of Millán Gómez as a sign of weakness, Astorga, the sociologist, said.

Federal police forces are stretched thin across Mexico, chasing an ever-growing number of suspects in drug killings. Last week, for instance, at least 17 people were killed in an attack on a ranch in the western state of Guerrero. This week, the military was engaged in a major battle with suspected cartel assassins in the central state of Zacatecas. That incident left three dead.

Millán Gómez, 42, had led the federal police for just four months -- and was still considered the interim chief. But for years he had maintained a high profile and had developed a reputation as an uncompromising figure in the battle against cartels.

President Felipe Calderón praised Millán Gómez on Thursday, comparing him to heroes of the Mexican Revolution and calling his assassination a "cowardly" act. Calderón, who has dispatched more than 25,000 federal police and soldiers throughout Mexico to fight drug gangs, vowed to redouble efforts to crush cartels. In an appearance just hours after the killing, Calderón called on the U.S. Congress to approve a \$1.4 billion counter-narcotics aid package for Mexico, known as the Merida Initiative.

Millán Gómez was cut down shortly before 1 a.m. outside his apartment building in the Colonia Guerrero neighborhood, a poor section of Mexico City that associates say he chose because it is close to law enforcement offices. He died after being rushed to a hospital. Two bodyguards were injured in the attack but are expected to survive. One suspect was captured. Millán Gómez's family was under police protection, a law enforcement source said.

Suspicion immediately centered on the Sinaloa cartel, a violent drug gang that has waged full-scale battles with federal police and the Mexican military. Mexican law enforcement officials believe the cartel has recently sought to cripple rivals and broaden its control of drug trafficking here -- a business that U.S. authorities estimate generates as much as \$23

billion a year.

In January, Millán Gómez made headlines with his announcement that federal police had found a series of safe houses and captured 11 of the Sinaloa cartel's hit men in Mexico City.

At a news conference, Millán Gómez displayed a large arsenal of weapons and three dozen bulletproof vests emblazoned with the initials "FEDA," which police said stood for "Arturo's Special Forces" in Spanish. The initials were believed to be a reference to Arturo Beltrán Leyva, a suspected leader of the Sinaloa cartel whose brother, Alfredo Beltrán Leyva, had been captured days earlier. The captured hit men, Millán Gómez said at the time, were in Mexico City to plot revenge killings.

Even before then, associates say, Millán Gómez considered himself a marked man.

"He knew his life was at risk all the time," Javier Ortiz, a federal police spokesman and friend of Millán Gómez, said in an interview. "But he was absolutely convinced that pounding the cartels was the best thing he could do for Mexico."

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Los Angeles Times World

You are here: LAT Home > Articles > 2008 > May > 14 > World

Violence in Mexico spills across US border

By Ap

May 14, 2008

Three Mexican police chiefs have requested political asylum in the U.S. as violence escalates in the Mexican drug wars and spills across the U.S. border, a top Homeland Security official told The Associated Press.

In the past few months, the police officials have shown up at the U.S. border, fearing for their lives, according to Jayson Ahern, the deputy commissioner of Customs and Border Protection.

"They're basically abandoned by their police officers or police departments in many cases," Ahern told AP.

Ahern said the Mexican officials – whom he didn't name – are being interviewed and their cases are under review for possible asylum.

In the most recent high-level assassination, a top-ranking official on a local Mexican police force was shot more than 50 times and killed. Drug-related violence killed more than 2,500 people last year alone in Mexico.

"It's almost like a military fight," Ahern said Tuesday. "I don't think that generally the American public has any sense of the level of violence that occurs on the border."

As the cartels fight for territory, this carnage spills over to the U.S., Ahern said – from bullet-ridden people stumbling into U.S. territory, to rounds of ammunition coming across U.S. entry ports.

U.S. humvees retrofitted with steel mesh over the glass windows patrol parts of the border to protect agents against guns shots and large rocks regularly thrown at them. At times agents are pinned down by sniper fire as people try to illegally cross into the U.S.

Mexico's drug cartels have long divided the border, with each controlling key cities. But over the past decade Mexico has arrested or killed many of the gangs' top leaders, creating a power vacuum and throwing lucrative drug routes up for the taking.

President **Felipe Calderon**, who took office in December 2006, responded by deploying more than 24,000 soldiers and federal police to areas where the government had lost control. Cartels have reacted with unprecedented violence, beheading police and killing soldiers.

In general, violence along the U.S. border has gone up over the years. Seven frontline border agents were killed in 2007, and two so far in 2008. Assaults against officers have also shot up from 335 in fiscal 2001 to 987 in fiscal 2007.

There have been 362 assaults against officers during the first four months of 2008, according to Border Patrol statistics. The pattern has been that when more security resources are deployed along the U.S. border, violence against officers spike in response.

Most assaults are along the San Diego and Calexico, Calif., border, as well as the Arizona border near Yuma and south of Tucson.

Now, about 14,000 U.S. border agents work on the southern border, up from more than 9,000 in 2001.

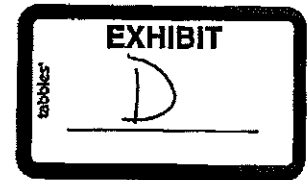
The Bush administration has requested \$500 million to fight drug crime in Mexico. Congress is currently considering the proposal.

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UP SUPPORT OF CBP EFFORTS

Jointly developed computer profile to identify possible drug traffickers with CBP in 1998 while conducting four week SPS Operations

Trained patrol, narcotics and/or tracking detection dogs (certified by NNDDA) at following locations:

Laredo (border)	4 K9 teams	2 trained in narcotics detection
Eagle Pass (border)	1 K9 team	1 trained in narcotics detection
El Paso (border)	1 K9 team	1 trained in narcotics detection
Brownsville/Harlingen (border)	1 K9 team	1 trained in narcotics detection
Calexico (border)	1 K9 team	1 trained in narcotics detection
Nogales (border)	1 K9 team	1 trained in narcotics detection
Del Rio	1 K9 team	1 trained in narcotics detection

UPRR's certified canine instructors trained and certified narcotics teams for:

- Laredo DEA and FBI Task Forces
- El Paso DEA Task Force
- Eagle Pass Task Force
- McAllen Task Force

Developed software program that provides CBP daily fax report of all "in bond" seal exception reports (sample provided upon request)

Constructed a number of inspection towers along UPRR's right of way to enhance train inspections

Constructed two camera towers for use by CBP in Laredo

Constructed CBP's office building in Port Laredo

UPRR was first railroad to sign the Land Border Carrier Initiative Rail Agreement (9/1/98)

UPRR is a member of COBIJA, a Texas, Arizona and California multi-agency drug interdiction operation

Member of DEA Anti-Smuggling Task Force since 1994

UPRR is an approved member of the Customs Trade Partnership Against Terrorism (C-TPAT) agreement

As part of its 2003 agreement with CBP, UPRR added a K9 narcotics team at Calexico, at a cost of approximately \$110,000 per year.

UPRR spends approximately \$1,500 yearly for K9 maintenance on each dog (K9 purchase is \$5,000 to \$10,000). Maintenance expense does not include training costs (160 hours per year)

UPRR spends approximately \$2.4 million yearly (salary/benefits) for its special agent forces at the Texas, California and Arizona borders

UPRR spends an additional \$468,000 yearly on fuel, vehicle costs, and personal and general expenses per special agent

Laredo contract freight inspection costs UPRR an average of \$641,562 per year (details provided upon request)

UPRR spent \$615,000 to install its Train Rider Inspection program (TriDs) to detect unauthorized train riders

Allowing future construction of CBP's inspection building on UPRR property at the Laredo International Bridge