



Testimony of

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*The Executive Proclamation Designating the Organ Mountains-Desert Peaks a National
Monument: Implications for Border Security*

Before

House Committee on Homeland Security
Subcommittee on Oversight and Management Efficiency

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Chairman Duncan, Ranking Member Barber, and Members of the Subcommittee:

Good afternoon. I am Marc Rosenblum, deputy director of the U.S. Immigration Policy Program at the Migration Policy Institute, an independent, non-partisan think tank in Washington that analyzes U.S. and international migration trends and policies. Thank you for the opportunity to testify today.

As you know, there's broad, bipartisan congressional consensus in favor of creating an Organ Mountains-Desert Peaks national monument, and President Obama recently exercised his authority to create a monument there by presidential proclamation. What is in dispute is how *much* land should be protected in this way. Legislation introduced by Senators Udall and Heinrich (S.1805) would protect approximately 500,000 acres, while a bill by Congressman Pearce (H.R. 995) would protect an estimated 50,000 acres. The president's proclamation sets aside about 500,000 acres.

A second set of questions concerns what type of access U.S. Customs and Border Protection (CBP) and other federal, state and local agencies should have to protected areas for law enforcement purposes. Historically, some border enforcement operations on certain federal lands have been compromised because the Department of Interior (DOI) Bureau of Land Management (BLM) and other federal land managers prioritize conservation and their own core missions over the Department of Homeland Security's (DHS) law enforcement goals. In an effort to remedy this, DHS and DOI, along with the U.S. Department of Agriculture (USDA), signed a series of Memoranda of Understanding (MOUs) between 2006 and 2009 that established policies and procedures for inter-agency coordination on federal lands.

Under the proclamation issued by President Obama, CBP access to the new Organ Mountains-Desert Peaks national monument would be governed by these existing MOUs. The Senate bill would supplement the MOUs by explicitly permitting CBP to conduct certain specified law enforcement activities within parts of the protected area. The House bill would take the additional step of allowing *any* federal, state or local law enforcement personnel to have unfettered access to the entire monument for all types of law enforcement activities.

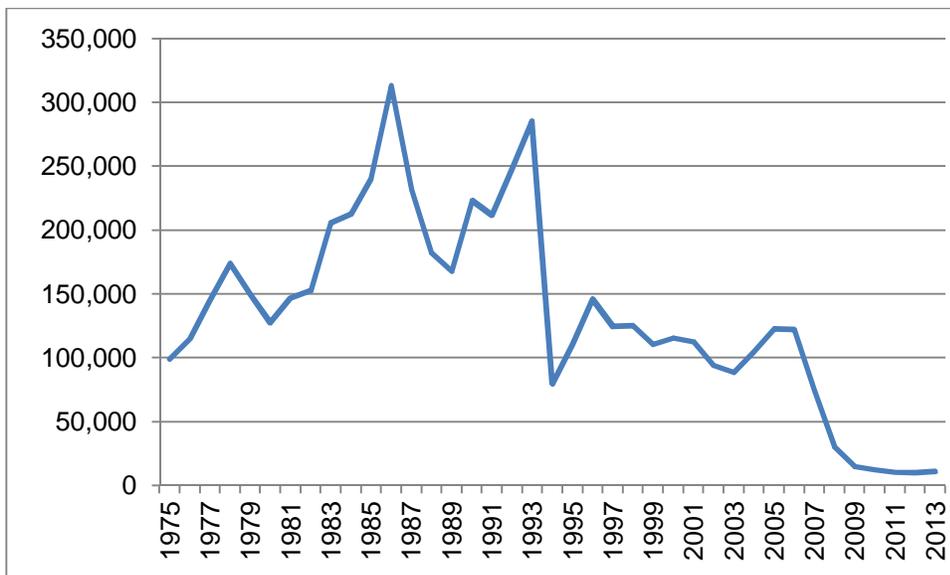
The House and Senate bills and the presidential proclamation also differ in terms of how they handle national wilderness areas located within the monument. In general, wilderness areas enjoy stricter environmental protection than other parts of the monument because wilderness areas are closed to motorized vehicles. The Senate bill would convert most of the existing Wilderness Study Area within the new monument into a permanent wilderness area, but would create special rules within a 5-mile strip of wilderness near the border to permit unfettered border security operations in that area. The House bill, in creating a smaller monument, does not address this border wilderness area, and the president is not permitted to do so by proclamation.

How large should the monument be, and what type of access should CBP and other law enforcement agencies have to the protected areas?

The answers to these questions depend on how preservation and public access to this area are valued, as well as how we assess the severity of border threats in this region.

I'm not an expert on the environmental and cultural attributes of this location, but one point I want to emphasize in my testimony is that southern New Mexico is not characterized by particularly acute border threats. The Organ Mountains-Desert Peaks region falls in the middle of the Border Patrol's El Paso Sector, which is generally seen as a Border Patrol (USBP) success story. Between the early 1980s and the early '90s, an average of more than 230,000 migrants per year were apprehended in the El Paso Sector. In 1994, Border Patrol Sector Chief Silvestre Reyes initiated Operation Blockade, moving a large number of agents and infrastructure up to the border line. Apprehensions fell by two-thirds that year, and entered a period of sustained declines over the next two decades after a brief increase in 1995-96. In the last five years, the Border Patrol has averaged fewer than 12,000 apprehensions per year in the entire El Paso Sector, about 5 percent of the level observed during the 1980s and early '90s (see Figure 1).

Figure 1: U.S. Border Patrol Apprehensions, El Paso Sector, 1975-2013



Source: Migration Policy Institute (MPI) analysis of U.S. Border Patrol data, "Legal Alien Apprehensions, by Fiscal Year," www.cbp.gov/newsroom/media-resources/stats.

The El Paso Sector remains both heavily fortified and relatively safe, even as apprehensions have increased significantly in other Texas sectors in the past few years. For the last three years, El Paso has ranked 2nd or 3rd among the nine Southwest border sectors in terms of the number of Border Patrol agents, while it has ranked 7th in terms of the number of people apprehended, 5th in number of people prosecuted for border criminal offenses and between 4th and 9th in drug seizures (see Table 1). While the Mexican city of Juarez, right across the border from El Paso, has been one of the most dangerous cities in the world, its Texas neighbor is consistently ranked among the two or three safest large cities in the country.

Focusing on the Organ Mountains area in particular, the scale of illegal activity is also held in check, to a degree by the region’s remoteness and by its tough desert terrain. Thus, there is nothing about this section of the border that makes it stand out as particularly vulnerable to border threats.

Table 1: El Paso Sector Profile and Rankings Among all Nine Southwest Border Sectors, 2011-2013

	USBP Agents	Rank	Apprehensions	Rank	Marijuana (pounds)	Rank	Cocaine (pounds)	Rank	Prosecutions	Rank
2013	2,631	3	11,154	7	66,940	4	215	4	8,503	5
2012	2,718	3	9,678	7	39,933	6	206	7	7,086	5
2011	2,738	2	10,345	7	43,667	8	116	9	6,906	5

Source: MPI analysis of U.S. Border Patrol data, %Sector Profile, FY2011-FY2013,+ <http://www.cbp.gov/newsroom/media-resources/stats>.

My second point is that the existing MOUs between DHS, DOI and USDA appear to be a successful model for managing diverse policy goals on federal border lands. Prior to developing the MOUs, certain public lands were particularly vulnerable to illegal border crossers because CBP had limited access to these areas and other federal land managers do not have a border security mission. Before turning to the MOUs’ effectiveness, let me explain that in general, they require that federal land managers and CBP develop management practices to ensure that CBP has access to DOI and USDA roads and trails, as well as minimize the adverse impact of border infrastructure construction, encourage the sharing of information about law enforcement activities in border regions, and conduct certain joint training programs, among other provisions. In short, the goal of the MOUs is to ensure that land managers and CBP work *together* to balance conservation and border security on public lands.

Turning now to the question of the effectiveness of the MOUs, a 2011 Government Accountability Office (GAO) study of CBP access to federal lands evaluated how the agreements have worked in practice. GAO reached the following conclusions:

- In general, DHS, DOI and USDA have used the national-level MOU and established interagency liaison mechanisms to successfully negotiate DHS access to federal lands and the installation of border infrastructure in several different locations.¹
- A majority of Border Patrol station chiefs (17 out of 26) reported some type of delay or restriction in obtaining access to certain federal lands in their jurisdictions, but an even larger majority (22 out of 26) reported that such delays *had not affected* border security in their areas of operation.²
- GAO found, in some cases, that when the Border Patrol faces delays in adding infrastructure, such as fencing and other tactical infrastructure, the agency can mitigate wait times by assigning USBP resources to work directly with partner agencies to expedite

¹ U.S. Government Accountability Office (GAO), *Southwest Border: Border Patrol Operations on Federal Lands*, GAO-11-573T (Washington, DC: GAO, 2011), 8, www.gao.gov/products/GAO-11-573T.

² *Ibid.*, 9.

environmental reviews. USBP did not always dedicate the resources to do so because many of the stations experiencing delays were in remote border regions where CBP did not perceive pressing border security threats.

- Overall, scarce Border Patrol resources were seen as more fundamental constraints on DHS's ability to secure the border than were requirements imposed by federal environmental and other laws. Border Patrol station chiefs interviewed by GAO reported that the most important factors influencing their ability to secure federal lands near the border were the number of Border Patrol agents and the availability of adequate surveillance technology and tactical infrastructure. GAO concluded that these investments in border security *per se* were more important for controlling the border than were limitations on DHS' access to federal lands.³

This assessment has been echoed in DHS congressional testimony, as Border Patrol officials have told Congress that the existing MOU allows the Border Patrol to adequately carry out its border security mission.⁴

Similarly, CBP has described the Organ Mountains-Desert Peaks monument designation as “in no way limiting” CBP’s ability to perform its border security mission, and giving the agency “important flexibility” to do so.⁵

Finally, it’s important to emphasize that the monument’s size and access rules are questions that get at real trade-offs between border security and other goals that we as a nation also care about at the border, such as protecting the environment, preserving historical and cultural landmarks, and permitting public access and tourism. In general, many of the concrete actions that strengthen border security—such as installing fencing and other physical infrastructure and conducting high-profile patrols—can conflict with other goals, such as environmental preservation and sustainable tourism.

In light of the fact that U.S. policy at the border must grapple with this more diverse set of concerns, the solution is to develop workable policies and tools that can be incorporated into the enforcement practices of CBP and other agencies. Creating a national monument and restricting certain enforcement practices within the monument—in ways that still permit law enforcement to carry out its missions—are mechanisms to ensure that these competing priorities are part of the equation.

³ Ibid., 17.

⁴ Statement of U.S. Border Patrol Deputy Chief Ronald Vitiello before the House Committee on Oversight and Government Reform, Subcommittee on National Security, Homeland Defense and Foreign Operations, 112th Cong., 1st sess., April 15, 2011, <http://naturalresources.house.gov/uploadedfiles/vitiellotestimony04.15.11.pdf>. At the hearing, Deputy Chief Vitiello described in detail how U.S. Customs and Border Protection (CBP) collaborates with the Department of the Interior (DOI) and U.S. Department of Agriculture (USDA) to fulfill CBP’s border enforcement responsibilities while respecting and enhancing the environment.

⁵ Phil Taylor, “National Monuments: DHS Says Organ Mountains Designation Won’t Impede Border Security,” E&E Publishing, May 21, 2014, <http://www.eenews.net/stories/105999955/print>.

In conclusion, CBP's own statements as well as GAO findings suggest that CBP and BLM have worked together in other cases to strike an appropriate balance between border security and conservation—including in border sectors with higher levels of illegal activity. In light of the relatively low level of illegal traffic in the El Paso sector, existing MOUs between DHS and DOI should provide an appropriate framework for the agencies to secure the new Organ Mountains-Desert Peaks monument as well. Congress may wish to consider additional changes to existing wilderness areas, which could further strengthen law enforcement activities in the border region.

Mr. Chairman, this concludes my testimony. I thank you for the opportunity to testify and would be pleased to answer any questions.