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To the Subcommittee on Oversight and Investigations
United States House of Representatives
Committee on Natural Resources

For A Hearing Titled:
“The Costs of Denying Border Patrol Access: Our Environment and Security”
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Room 1324 Longworth House Office Building
Washington, DC 20515

Mr. Chairman, Ranking Member McEachin, and Members of the Subcommittee on Oversight and Investigations, I want to thank you for inviting me here today to discuss this important issue.

MY BACKGROUND

For more than 24 years, I served in various roles in the federal government in the field of immigration.

I began as a law clerk in the Executive Office for Immigration Review (EOIR), the agency in the Department of Justice (DOJ) with jurisdiction over removal proceedings and adjudications relating to sections 274A (employer sanctions), 274B (unfair immigration-related employment practices, and 274C (civil document fraud) of the Immigration and Nationality Act (INA).¹

From there, I started as a trial attorney at the former Immigration and Naturalization Service (INS), working my way up to Associate General Counsel. For a period of time, I served as the Acting Chief of the National Security Law Division (NSLD), the unit within the INS General Counsel’s Office with jurisdiction over terrorists, espionage risks, and persecutors.

During my term at the INS, the agency had jurisdiction over the Border Patrol, then and now the federal government component with primary jurisdiction for enforcing the immigration laws of

¹ *About the Office*, UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *available at*: <https://www.justice.gov/eoir/about-office>.

the United States between the ports of entry.² As Associate General Counsel in the INS Enforcement Division, and later in the NSLD, I regularly handled issues relating to border security, and the need for barriers along the Southwest border.

I left the INS six weeks before September 11, 2001, because I was concerned about vulnerabilities in our immigration enforcement system that could be exploited by aliens who posed a risk to our national security. Believing that those vulnerabilities could only properly be addressed by Congress, I took a position as Oversight Counsel for Immigration at the House Judiciary Committee.

I was in this position when the committee, responding to the attacks of September 11, drafted the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism,” or USA PATRIOT Act.³ In addition, I played a role in the drafting of the Homeland Security Act of 2002,⁴ which established the Department of Homeland Security in more or less its present form.

I later transitioned to the position of legislative counsel for the House Judiciary Committee’s Subcommittee on Immigration, Border Security, and Claims. Most importantly for purposes of today’s hearing, it was in this position that I served as one of the primary staff drafters of the REAL ID Act of 2005,⁵ which I will discuss further below.

I left Congress to take the bench as an Immigration Judge at the York Immigration Court in York, Pennsylvania, where I served for more than eight years. At the beginning of my service in this position, the vast majority of aliens who appeared before me had been apprehended in the interior of the United States. During my last three years on the bench, however, I began to see more and more aliens who have been apprehended after entering the United States illegally along the Southwest border and claiming credible fear.⁶

In January 2015, I left the bench to serve as the Staff Director at the House Oversight and Government Reform Committee’s National Security Subcommittee, a position that I held until September 2016. In this role, I had oversight jurisdiction of the activities of U.S. Customs and Border Protection (CBP), among other agencies.

Since April 2017, I have worked as the Resident Fellow in Law and Policy at the Center for Immigration Studies, a nonpartisan, nonprofit research organization here in Washington, DC. In this role, I toured the border in the Rio Grande Valley (RGV), between McAllen and Roma,

² Legal authority for the Border Patrol, U.S. CUSTOMS AND BORDER PROTECTION, *available at*:

https://help.cbp.gov/app/answers/detail/a_id/1084/~/legal-authority-for-the-border-patrol.

³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, Pub. L. 107-56 (2001), *available at*: <https://www.congress.gov/bill/107th-congress/house-bill/3162/text>.

⁴ Homeland Security Act of 2002, Pub. L. 107-296 (2002), *available at*: <https://www.congress.gov/bill/107th-congress/house-bill/5005>.

⁵ REAL ID Act of 2005, Pub. L. 109-13, div. B (2005), *available at*: <https://www.congress.gov/bill/109th-congress/house-bill/1268>.

⁶ See Andrew R. Arthur, *Fraud in the “Credible Fear” Process, Threats to the Integrity of the Asylum System*, Center for Immigration Studies (Apr. 19, 2017), *available at*: <https://www.cis.org/Report/Fraud-Credible-Fear-Process>.

Texas, with the Texas Department of Public Safety and the Border Patrol, as well as the border in and near Del Rio, Texas with the Val Verde County Sheriff in August 2017.

BORDER SECURITY

As I noted above, the Border Patrol is responsible for securing the border between the ports of entry. As CBP describes Border Patrol's enforcement efforts, the agency:

[U]se[s] a layered approach that includes patrolling the border itself, (including the use of electronic surveillance devices), patrolling nearby areas and neighborhoods where illegal immigrants can quickly fade into the general population, and conducting checkpoints - both stationary and temporary.⁷

The Congressional Research Service (CRS) has described the foundations of this border-control strategy:

Since the 1990s, migration control at the border has been guided by a strategy of "prevention through deterrence"—the idea that the concentration of personnel, infrastructure, and surveillance technology along heavily trafficked regions of the border will discourage unauthorized migrants from attempting to enter the United States. Since 2005, CBP has attempted to discourage repeat unauthorized migrant entries and disrupt migrant smuggling networks by imposing tougher penalties against certain unauthorized migrants, a set of policies eventually described as "enforcement with consequences." Most people apprehended at the Southwest border are now subject to "high consequence" enforcement outcomes.⁸

Before I discuss this strategy and its implementation further, I want to list a few of the laws that Border Patrol enforces, and more importantly, its authority to enforce those laws.

POWERS AND AUTHORITY OF THE BORDER PATROL

Section 287(a)(1) of the INA⁹ grants Border Patrol Agents the authority "to interrogate any alien person believed to be an alien as to his right to be or to remain in the United States" without warrant.

Section 287(a)(2) of the INA¹⁰ provides a Border Patrol Agent the power, without warrant:

[T]o arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest

⁷ Legal authority for the Border Patrol, U.S. CUSTOMS AND BORDER PROTECTION, *available at:*

https://help.cbp.gov/app/answers/detail/a_id/1084/~/legal-authority-for-the-border-patrol.

⁸ Carla N. Argueta, *Border Security: Immigration Enforcement Between Ports of Entry (R42138)*, CONG RESEARCH SERV. (Apr. 19, 2016), *available at:* <https://fas.org/sgp/crs/homesec/R42138.pdf>.

⁹ Section 287(a) of the INA (2018), *available at:* <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9505.html>.

¹⁰ Section 287(a)(2) of the INA (2018), *available at:* <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9505.html>.

any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest. . . .

Section 287(a)(3) of the INA¹¹ provides authority to Border Patrol Agents “within a reasonable distance from any external boundary the United States, to board and search for aliens on any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle” without a warrant. The implementing regulation, 8 C.F.R. § 287.1(a)(2)¹², defines “reasonable distance” as “100 air miles from any external boundary of the United States.” This provides Border Patrol the authority for checkpoints away from the border.

Border Patrol agents can bring charges against border violators on several different grounds, both civil and criminal.

Under section 212(a)(6)(A)(i) of the INA¹³, “[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General is inadmissible,” meaning that such alien is subject to (or more properly, “amenable to”) removal. Removal under this ground is a civil penalty.

Under section 212(a)(6)(E)(i) of the INA¹⁴, alien smugglers are also amenable to removal. Specifically, that provision states: “Any alien, who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of the law, is inadmissible.”¹⁵

In addition, there are several criminal penalties for illegal entry. For example, section 275(a) of the INA¹⁶ states:

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

¹¹ Section 287(g) of the INA (2018), available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9505.html>.

¹² 8 C.F.R. § 287.1(a)(2) (2018), available at: <https://www.law.cornell.edu/cfr/text/8/287.1>.

¹³ Section 212(a)(6)(A)(i) of the INA (2018), available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-2006.html>.

¹⁴ Section 212(a)(6)(E)(i) of the INA (2018), available at: <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-17138/0-0-0-17444.html#0-0-0-1785>.

¹⁵ *Id.*

¹⁶ Section 275(a) of the INA (2018), available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9025.html>.

Section 274(a) of the INA contains criminal penalties for alien smuggling.¹⁷ Specifically, subparagraphs 274(a)(1)(i) through (v) of the INA “prohibit[] alien smuggling, domestic transportation of unauthorized aliens, concealing or harboring unauthorized aliens, encouraging or inducing unauthorized aliens to enter the United States, and engaging in a conspiracy or aiding and abetting any of the preceding acts.”¹⁸ Paragraph 274(a)(2) of the INA, on the other hand, “prohibits bringing or attempting to bring unauthorized aliens to the United States in any manner whatsoever, even at a designated port of entry.”¹⁹

Border Patrol is not limited in its responsibilities to the enforcement of laws relating to aliens. Under section 287(a)(5) of the INA²⁰, Border Patrol agents have the authority without warrant to make arrests:

(A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

(B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony, if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

This authority allows Border Patrol agents to apprehend and charge smugglers of drugs and other contraband into the United States.

THE ROLE OF FENCING AND TACTICAL INFRASTRUCTURE IN BORDER ENFORCEMENT

Fencing and tactical infrastructure plays a significant, but often misunderstood, role in the Border Patrol’s enforcement strategy. CRS has detailed various forms of tactical infrastructure along the border:

*Border tactical infrastructure includes roads, lighting, pedestrian fencing, and vehicle barriers. Tactical infrastructure is intended to impede illicit cross-border activity, disrupt and restrict smuggling operations, and establish a substantial probability of apprehending terrorists seeking entry into the United States.*²¹

(Internal footnote omitted).

¹⁷ Section 274(a) of the INA (2018), available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-8381.html>.

¹⁸ *Criminal Resource Manual*, OFFICES OF THE UNITED STATES ATTORNEYS (undated), available at: <https://www.justice.gov/usam/criminal-resource-manual-1907-title-8-usc-1324a-offenses>.

¹⁹ *Id.*

²⁰ Section 287(a)(5) of the INA (2018), available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9505.html>.

²¹ Carla N. Argueta, *Border Security: Immigration Enforcement Between Ports of Entry (R42138)*, CONG RESEARCH SERV. (Apr. 19, 2016), at 14, available at: <https://fas.org/sgp/crs/homesec/R42138.pdf>.

Put in layman's terms, pedestrian fencing, roads, lighting, sensors, and vehicle barriers each play two different, but complementary, roles in border enforcement:

First, they serve as a deterrent to attempted entry. For example, pedestrian fencing increases the difficulty and cost of such entry, and by eliminating easy access across the border, reduces the likelihood of attempted entry. Illegal entrants and smugglers follow the same rules of incentives and economics that most actors follow, and amend their actions accordingly. Similarly, lighting inhibits the ability of those caught crossing the border illegally to do so under cover of darkness, making it more likely that they will be caught, and less likely that they will be enter the United States to, for example, work.

Second, such infrastructure creates an impediment to illicit crossing. Even if an individual attempts illegal entry by going around barriers or over fencing, those impediments will slow entry, providing Border Patrol more time to deploy agents to the incursion point. In the same way, sensors and cameras notify Border Patrol about illegal entries, again facilitating timely deployment. This enables CBP to direct its limited resources effectively and efficiently to those areas where active incursions are occurring.

And, by any measure, those resources are limited. As of February 2017, CBP had fewer than 20,000 Border Patrol Agents,²² below its authorization of 21,000. While this number might seem high, the U.S.-Mexican border is approximately 1,933 miles long, and the U.S.-Canadian border spans some 3,987 miles, not including the Canadian border with Alaska.²³ Tactical infrastructure is therefore critical to the Border Patrol's mission.

AUTHORITY FOR BORDER BARRIERS

There has been significant discussion, both during the election campaign and especially since President Trump's inauguration, about the need for additional border barriers (including more walls, pedestrian fencing, and vehicle barriers) along the Southwest border.²⁴

There are, essentially, four different statutes that authorize the Department of Homeland Security (DHS) to erect barriers along the border²⁵: the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)²⁶, the REAL ID Act of 2005²⁷, the Secure Fence Act of

²² Brian Naylor, *Trump's Plan To Hire 15,000 Border Patrol And ICE Agents Won't Be Easy*, NPR (Feb. 23, 2017), available at: <https://www.npr.org/2017/02/23/516712980/trumps-plan-to-hire-15-000-border-patrol-and-ice-agents-wont-be-easy-to-fulfill>.

²³ Janice Cheryl Beaver, *U.S. International Borders: Brief Facts*, CONG. RESEARCH SERV. (updated Nov. 9, 2006), available at: <https://fas.org/sgp/crs/misc/RS21729.pdf>.

²⁴ See, e.g., Paul Sperry, *This town is proof that Trump's wall can work*, N.Y. POST (Jan. 13, 2018), available at: <https://nypost.com/2018/01/13/we-already-have-a-border-wall-and-it-works/>.

²⁵ See Michael John Garcia, *Barriers Along the U.S. Borders: Key Authorities and Requirements (R43975)*, CONG. RESEARCH SERV. (Jan. 27, 2017), at 1, available at: <https://fas.org/sgp/crs/homesec/R43975.pdf>.

²⁶ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, div. C, §102(c) (1996), available at: <https://www.gpo.gov/fdsys/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>.

²⁷ REAL ID Act of 2005, Pub. L. 109-13, div. B, § 102 (2005), available at: <https://www.congress.gov/bill/109th-congress/house-bill/1268>.

2006²⁸, and the Consolidated Appropriations Act, 2008²⁹. These legislative provisions are consolidated³⁰ at 8 U.S.C. § 1103 note³¹.

A review of those laws emphasizes the need for broader waiver authority to ensure that there is sufficient fencing and tactical infrastructure to support the Border Patrol in its mission.

At the time that I, as a staffer on the House Judiciary Committee, was reviewing the INA for potential national security vulnerabilities in the 109th Congress, section 102(a) of IIRIRA directed the Attorney General to “to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.”³² Section 102(c) of that act waived “provisions of the Endangered Species Act of 1973 and the National Environmental Policy Act of 1969 . . . to the extent the Attorney General determines necessary to ensure expeditious construction of the barriers and roads under this section.”³³ Section 102(d) gave the Attorney General the authority to acquire land “essential to control and guard the boundaries and borders of the United States against any violation of” the INA, including through condemnation.³⁴

Section 102 of the REAL ID Act amended section 102(c) of IIRIRA³⁵ to grant the Secretary of Homeland Security authority to waive all legal requirements the Secretary determined to be necessary to ensure expeditious construction of barriers and roads in the vicinity of the United States border.

As the Conference Report for that legislation stated:

Section 102 of [IIRIRA] provides for construction and strengthening of barriers along U.S. land borders and specifically provides for 14 miles of barriers and roads along the border near San Diego, beginning at the Pacific Ocean and extending eastward. It provides for a waiver of the Endangered Species Act of 1973 (ESA) and the National Environmental Policy Act of 1969 (NEPA) to the extent the Attorney General determines is necessary to ensure expeditious construction of barriers and roads. Despite the existing waiver provision, construction of the San Diego area barriers has been delayed due to a dispute involving other laws. The California Coastal Commission has prevented completion of the San Diego border security infrastructure because it alleges that

²⁸ Secure Fence Act of 2006, Pub. L. 109-367, § 3 (2006), available at: <https://www.congress.gov/bill/109th-congress/house-bill/6061>.

²⁹ Consolidated Appropriations Act of 2008, Pub. L. 110-161, div. E, tit. V, §564(a) (2007), available at: <https://www.congress.gov/bill/110th-congress/house-bill/2764>.

³⁰ Michael John Garcia, *Barriers Along the U.S. Borders: Key Authorities and Requirements (R43975)*, CONG. RESEARCH SERV. (Jan. 27, 2017), at 1, available at: <https://fas.org/sgp/crs/homesec/R43975.pdf>.

³¹ 8 U.S.C. § 1103 note, available at: <https://www.law.cornell.edu/uscode/text/8/1103>.

³² Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, div. C, §102(a) (1996), available at: <https://www.gpo.gov/fdsys/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>.

³³ *Id.* at 102(c).

³⁴ *Id.* at 102(d).

³⁵ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, div. C, §102(c) (1996), available at: <https://www.gpo.gov/fdsys/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>.

plans to complete it are inconsistent with the California Coastal Management Program, a state program approved pursuant to the federal Coastal Zone Management Act (CZMA)--notwithstanding the fact that the San Diego border security infrastructure was designed to avoid and/or minimize adverse environmental impacts, and the Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security testified before the California Coastal Commission that the plans for completion were consistent with the Coastal Management Program to the maximum extent practicable without sacrificing the effectiveness of the border security infrastructure. Continued delays caused by litigation have demonstrated the need for additional waiver authority with respect to other laws that might impede the expeditious construction of security infrastructure along the border, such as the Coastal Zone Management Act.

Current Law. Section 102(c) of IIRIRA provided for a waiver of the ESA and NEPA to the extent the Attorney General determines is necessary to ensure expeditious construction of barriers and roads.

Section 102 of the conference report would amend the current provision to require the Secretary of Homeland Security to waive all laws that he or she determines, in his or her sole discretion, are necessary to ensure the expeditious construction of the border barriers.

Additionally, it would prohibit judicial review of a waiver decision or action by the Secretary and bar judicially ordered compensatory, declaratory, or injunctive, equitable, or any other relief or other remedy for damage alleged to result from any such decision or action. As discussed above, current statutes and the Reorganization Plan for the Department of Homeland Security have not amended and clarified references to executive authority throughout the INA. Accordingly, the provision would have replaced the reference in current law to the Attorney General by a reference to the Secretary of Homeland Security.

The Conferees have revised the House provision in the following respects. First, the revised provision authorizes but does not require the Secretary of DHS to waive any legal requirements that he or she, in his or her sole discretion, determines are necessary to ensure expeditious construction of border security infrastructure. Second, the provision clarifies the intent of the conference report by substituting a reference to waiver of "all legal requirements" for the prior reference to waiver of "all laws", clarifying Congress' intent that the Secretary's discretionary waiver authority extends to any local, state or federal statute, regulation, or administrative order that could impede expeditious construction of border security infrastructure. Third, the conferees provided that any such waiver would become effective upon publication in the Federal Register, thereby ensuring appropriate public notice of such determinations. Finally, the Conferees have provided federal judicial review for claims alleging that the actions or decisions of the Secretary violate the United States Constitution. The Conferees have further provided that such claims must be filed within sixty days of the Secretary's action or decision, and that interlocutory or final judgments, decrees, or orders of federal district courts on such claims may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States. The

*Conferees' intent is to ensure that judicial review of actions or decisions of the Secretary not delay the expeditious construction of border security infrastructure, thereby defeating the purpose of the Secretary's waiver.*³⁶

In *Defenders of Wildlife v. Chertoff*³⁷, a judge of the U.S. District Court for the District of Columbia rejected a claim that the waiver authority in section 102 of the REAL ID Act was unconstitutional, a decision the Supreme Court declined to review.

In section 3 of the Secure Fence Act of 2008³⁸, section 102(b)(1) of IIRIRA was amended to identify specific areas where fencing should be installed, and to specify the type of fencing that should be used.

While section 102(b)(1) of IIRIRA was amended again in the Consolidated Appropriations Act, 2008³⁹, those amendments were significantly more legally substantive, and restrictive, than the amendments in the Secure Fence Act of 2008. Most importantly for purposes of today's hearing, the Consolidated Appropriations Act, 2008 completely rewrote subparagraphs (A), (B), and (C) in that provision; as amended, subparagraph (C) states:

Consultation.—

“(i) In general.—

In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of the Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.

“(ii) Savings provision.—Nothing in this subparagraph may be construed to—

“(I) create or negate any right of action for a State, local government, or other person or entity affected by this subsection; or

*“(II) affect the eminent domain laws of the United States or of any State.”*⁴⁰

Notwithstanding the caveats in those two subclauses, or the fact that the Consolidated Appropriations Act, 2008, left the waiver authority in section 102(c) of IIRIRA as amended by section 102 of the REAL ID Act in place, a plaintiff could easily assert that this consultation

³⁶ H.R. Rep. 109-72, div. B, tit. I, § 102 (2005), available at: <https://www.congress.gov/congressional-report/109th-congress/house-report/72/1?overview=closed>.

³⁷ *Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119, 129-30 (D. D.C. 2007), cert. denied, 554 U.S. 918 (2008).

³⁸ Secure Fence Act of 2006, Pub. L. 109-367, § 3 (2006), available at: <https://www.congress.gov/bill/109th-congress/house-bill/6061>.

³⁹ Consolidated Appropriations Act, 2008, Pub. L. 110-161, div. E, tit. V, §564(a) (2007), available at: <https://www.congress.gov/bill/110th-congress/house-bill/2764>.

⁴⁰ *Id.*

provision requires the Secretary of Homeland Security to alter or abandon a fencing project based on environmental impacts identified by “the Secretary of the Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners.” Clear waiver authority is necessary to overcome such assertions, and ensure that the Secretary of Homeland Security is able to erect barriers to protect against, and/or mitigate the effect of, cross-border incursions.

DANGERS POSED BY ILLEGAL CROSS-BORDER INCURSIONS

The enforcement mission of the Border Patrol is vital to protecting our national security and the safety and health of the American people.

According to the latest statistics from CBP⁴¹, in FY 2017, 303,916 aliens were apprehended between the ports of entry along the Southwest border, which was down from 408,870 in FY 2016 (but which itself was up from FY 2015, when 331,333 apprehensions occurred). Despite the downward trend in the past year, the number of aliens attempting illegal entry is still significant.

In addition to aliens, Border Patrol Agents apprehended a significant quantity of narcotics in FY 2017. According to CBP⁴², last year, agents seized 9,346 pounds of cocaine, 953 pounds of heroin, 861,231 pounds of marijuana, 10,328 pounds of methamphetamines, and 181 pounds of fentanyl.

In fact, in just the first three months of FY 2018⁴³, Border Patrol seized 161 additional pounds of fentanyl, a drug the Drug Enforcement Administration states⁴⁴ is “30-50 times more potent than heroin and 50-100 times more potent than morphine.” Oxford Treatment Center identifies⁴⁵ 2 milligrams as a lethal dose of fentanyl, meaning that 161 pounds of the drug would be sufficient to kill 36,514,156 people.

Additionally, CBP reports⁴⁶ that in FY 2017, Border Patrol Agents encountered 8,531 criminal aliens, of whom 2,675 had outstanding wants or warrants. Border Patrol Agents also arrested “536 illegal aliens who are affiliated with a gang,” including 228 of whom were affiliated with MS-13.⁴⁷

⁴¹ *Southwest Border Migration FY2017*, U.S. CUSTOMS AND BORDER PROTECTION (updated Dec. 15, 2017), available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017>.

⁴² CBP Enforcement Statistics FY2018, U.S. CUSTOMS AND BORDER PROTECTION (undated), available at: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

⁴³ *Id.*

⁴⁴ *FAQ’s-Fentanyl and Fentanyl-Related Substances*, U.S. DRUG ENFORCEMENT ADMINISTRATION (undated), available at: <https://www.dea.gov/druginfo/fentanyl-faq.shtml>.

⁴⁵ *Fentanyl: What Is a Lethal Dosage?*, OXFORD TREATMENT CENTER (undated), available at: <https://www.oxfordtreatment.com/fentanyl/lethal-dose/>.

⁴⁶ CBP Enforcement Statistics FY2018, U.S. CUSTOMS AND BORDER PROTECTION (undated), available at: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

⁴⁷ *CBP Border Security Report, FY 2017*, U.S. CUSTOMS AND BORDER PROTECTION (Dec. 5, 2017), at 3, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/cbp-border-security-report-fy2017.pdf>.

In October 2012, the Department of Treasury designated MS-13 as a “transnational criminal organization” (TCO).⁴⁸ At that time, Treasury explained:

MS-13 consists of at least 30,000 members in a range of countries, including El Salvador, Guatemala, Honduras, and Mexico, and is one of the most dangerous and rapidly expanding criminal gangs in the world today. MS-13 is active within the United States, with at least 8,000 members operating in more than 40 states and the District of Columbia. MS-13’s criminal nature can be seen in one of its mottos, “Mata, roba, viola, controla” (“Kill, steal, rape, control”).

Domestically, the group is involved in multiple crimes including murder, racketeering, drug trafficking, sex trafficking and human trafficking including prostitution. The group frequently carries out violent attacks on opposing gang members, often injuring innocent bystanders. MS-13 members have been responsible for numerous killings within the United States.

*Local MS-13 cliques take direction from the group’s foreign leadership for strategic decisions involving moves into new territories and efforts to recruit new members. Money generated by local MS-13 cliques in the U.S. is consolidated and funneled to the group’s leadership in El Salvador.*⁴⁹

Attorney General Jeff Sessions, in prepared remarks⁵⁰ on April 18, 2017, described how the gang has exploited loopholes in the U.S. immigration system, and how it operates in the United States today:

Because of an open border and years of lax immigration enforcement, MS-13 has been sending both recruiters and members to regenerate gangs that previously had been decimated, and smuggling members across the border as unaccompanied minors. They are not content to simply ruin the lives of adults – MS-13 recruits in our high schools, our middle schools and even our elementary schools.

Just a few days ago, law enforcement believes that members of MS-13 murdered four young men and dumped their bodies in a park on Long Island. Last month, it was two teenage girls [in] Brentwood, New York who were killed with machetes and baseball bats. A few weeks ago, the FBI added an MS-13 member to their Ten Most Wanted Fugitives List for a suspected brutal murder with a baseball bat and screwdriver – all purportedly to earn his MS-13 tattoo. Violence is an

⁴⁸ Treasury Sanctions Latin American Criminal Organization, U.S. DEP’T OF THE TREASURY (Oct. 11, 2012), available at: <https://www.treasury.gov/press-center/press-releases/Pages/tg1733.aspx>.

⁴⁹ *Id.*

⁵⁰ Remarks by Attorney General Jeff Sessions at Meeting of the Attorney General’s Organized Crime Council and OCDETF Executive Committee, U.S. DEP’T OF JUSTICE (April 18, 2017), available at: <https://www.justice.gov/opa/speech/remarks-attorney-general-jeff-sessions-meeting-attorney-general-s-organized-crime-council>.

initiation rite. They've killed mothers alongside their children and vice versa. They have gang raped and trafficked girls as young as 12 years old.

Plainly, stopping these criminals from entering the United States is a law-enforcement priority, one that is critical to protecting the public and the many communities in which the gang operates.

Individuals with ties to terrorism have also attempted to enter the United States across the U.S.-Mexico border, as the *Christian Science Monitor* reported in January 2017.⁵¹ Most of the individuals identified in that article were apprehended after they attempted to enter illegally through the ports of entry. One case that bears particular notice as it pertains to illegal incursions, however, involves Anthony Joseph Tracy. As the paper reported⁵²:

Noor Services was a travel business in Nairobi, Kenya, that offered a very specific kind of assistance to its clients. The company specialized in helping would-be travelers from Somalia obtain visas to Cuba.

They weren't making the trip to the Caribbean island to enjoy the hospitality of Havana, its food and music, or the nearby beaches. Instead, according to federal prosecutors, Cuba was seen as a doorway to the US-Mexico border and an illicit crossing into America.

The business was set up by Anthony Joseph Tracy, a US citizen and Muslim convert, who told federal agents that he had helped 272 Somalis travel illegally to the US, according to court documents.

Federal prosecutors were concerned about more than just illegal immigration. During a polygraph examination, Tracy admitted to investigators that he'd been approached by members of the Somali terror group Al Shabab.⁵³

⁵¹ Warren Richey, *Are terrorists crossing the US-Mexico border? Excerpts from the case file*, CHRISTIAN SCIENCE MONITOR (Jan. 15, 2017), available at: <https://www.csmonitor.com/USA/Justice/2017/0115/Are-terrorists-crossing-the-US-Mexico-border-Excerpts-from-the-case-file>.

⁵² *Id.*

⁵³ In December 2017, BBC reported:

Al-Shabab means The Youth in Arabic.

It emerged as the radical youth wing of Somalia's now-defunct Union of Islamic Courts, which controlled Mogadishu in 2006, before being forced out by Ethiopian forces.

There are numerous reports of foreign jihadists going to Somalia to help al-Shabab, from neighbouring countries, as well as the US and Europe.

It is banned as a terrorist group by both the US and the UK and is believed to have between 7,000 and 9,000 fighters.

Al-Shabab advocates the Saudi-inspired Wahhabi version of Islam, while most Somalis are Sufis. It has imposed a strict version of Sharia in areas under its control, including stoning to death women accused of adultery and amputating the hands of thieves.

* * * *

Somalia's government blamed it for the killing of at least 500 people in a huge truck bombing in the capital Mogadishu in October 2017. It was East Africa's deadliest bombing. Al-Shabab, however, did not claim responsibility for it.

He passed that portion of the polygraph. But he failed the part when asked whether he helped members of the terror group travel to the US, according to court documents.

A prosecutor complained to the judge in Tracy's case that investigators had "no idea who these individuals are that he assisted." She suggested Tracy's clients might pose a risk to national security.

Tracy pleaded guilty to a single charge of conspiring to induce non-citizens to enter the US without legal authorization.

Under the conspiracy outlined in court, Tracy helped his clients produce fraudulent documents to support their visa applications. He also paid bribes to a clerk at the Cuban Embassy in Kenya who issued the visas.

Clients flew from Kenya to Dubai to Moscow to Cuba. From there they would fly to Belize and then travel to Mexico to make their way across the US border.

During a search, investigators found an email from a prospective client asking for Tracy's help, according to court documents. Tracy sent a reply that reads in part: "i helped a lot of somalis and most are good but there are some who are bad and I leave them to ALLAH...."

Tracy told investigators he'd made about \$90,000 during his nine months in business.

Another intriguing reference in that article⁵⁴ pertains to Adnan El Shukrijumah:

After Al Qaeda's Sept. 11, 2001 attacks on the World Trade Center and Pentagon, Adnan El Shukrijumah spent more than a decade at the top of the FBI's most wanted list. The US government offered a \$5 million reward for information leading to his capture.

It did confirm carrying out a massive attack on a Kenyan military base in Somalia's el-Ade town in January 2016, killing, according to Somalia's then-President Hassan Sheikh Mohamud, about 180 soldiers. The Kenyan military disputed the number, but refused to give a death toll.

It has also staged several attacks in Kenya, including the 2015 massacre at Kenya's Garissa University, near the border with Somalia.

A total of 148 people died when gunmen stormed the university at dawn and targeted Christian students.

In 2013, its gunmen stormed the Westgate shopping mall in Nairobi, resulting in a siege which left at least 67 people dead.

During the 2010 football World Cup final between Spain and the Netherlands, it bombed a rugby club and a restaurant in Uganda's capital Kampala, killing 74 people watching the match.

Who are Somalia's al-Shabab?, BBC NEWS (Dec. 22, 2017), available at: <http://www.bbc.com/news/world-africa-15336689>.

⁵⁴ *Id.*

He was believed to have been hand-picked by Osama Bin Laden and 9/11 mastermind Khalid Sheikh Mohammed to plan and launch follow-up attacks against the US and other Western countries. Federal agents were determined to find him before he could carry out a mass-casualty operation.

Mr. Shukrijumah, a green-card holder from Saudi Arabia who had lived for many years in Brooklyn and south Florida, disappeared shortly before the 9/11 attacks.

According to the *Christian Science Monitor*⁵⁵, a formerly classified document revealed that in 2004, “officials at the US Consulate in Ciudad Juarez received a tip about ‘suspect Arab extremists who have been smuggled through Mexico to the United States/Mexico border.’” Those “extremists” were purportedly in hiding in Agua Prieta, Sonora, Mexico, which is adjacent to Douglas, Arizona.⁵⁶ The paper reports⁵⁷ that the aforementioned document stated that “one of the three men is ‘likely Adnan G. El Shukrijumah, alleged to be a Saudi Arabian terrorist cell leader thought to be in Mexico.’”

Concerns about such illegal incursions by potential terrorists over the Southwest border were the focus of “The Ultra-Marathoners of Human Smuggling: How to Combat the Dark Networks that Can Move Terrorists over American Land Borders,”⁵⁸ a scholarly examination of transnational smuggling by Todd Bensman that appeared in *Homeland Security Affairs* in May 2016. As Bensman writes:

Even before 9/11, . . . human smuggling networks were regularly transporting migrants—and potentially, terrorists among them—from some 35-40 Islamic “countries of special interest” in the Middle East, South Asia and North Africa. The asylum-seeking people they moved would come to be known as “Other than Mexicans, (OTMs)” and then, even more specifically as American strategy developed around them, the OTM subcategory “special interest aliens (SIAs).”⁵⁹

It is beyond cavil that the Border Patrol’s mission of disrupting the cross-border transit of aliens, terrorists, drugs, and other contraband plays an essential role in keeping the American people safe. Unfortunately, in performing that mission, the Border Patrol faces well-organized, violent, and sophisticated foes.

CRIMINAL SMUGGLING ORGANIZATIONS

Drug trafficking organizations (DTOs), other TCOs, and various subsidiary groups are actively involved in illicit cross-border traffic. With respect to alien smuggling, U.S. Immigration and

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Todd Bensman, *The Ultra-Marathoners of Human Smuggling: How to Combat the Dark Networks that Can Move Terrorists over American Land Borders*, *HOMELAND SECURITY AFFAIRS* (May 2016), available at: <https://www.hsaj.org/articles/10568>.

⁵⁹ *Id.*

Customs Enforcement (ICE) has reported: “Moving human beings as cargo pays in the billions of dollars for transnational criminal smuggling organizations.”⁶⁰ ICE continues:

*Human smuggling operates as a contract business; an understanding exists among transnational criminal organizations, smugglers and individuals seeking transport that trying to cross the border independently is not an option. Smugglers escort the illegal aliens through the desert, across the border, to stash houses and onto their final destinations within the interior of the U.S. A portion of the smuggling fees paid to the transnational criminal organizations helps fuel their other criminal enterprises.*⁶¹

These groups have caused tremendous damage in Mexico, both in terms of human life and societal disruption.

As CNN explained in December 2017⁶²: “The Mexican government has been fighting a war with drug traffickers since December 2006. At the same time, drug cartels have fought each other for control of territory.” In fact, *Business Insider* recently reported that “2017 was Mexico's most violent year on record, with 26,573 homicide victims during the first 11 months of the year.”⁶³

To illustrate this point, the United States Department of State (DOS) latest travel advisory for Mexico⁶⁴ advises United States citizens not to travel to five Mexican states (Colima, Guerrero, Michoacán, Sinaloa, and Tamaulipas). The latter state, Tamaulipas, borders the United States along the RGV, while the other four are in the interior of Mexico.

The *Los Angeles Times* explains⁶⁵ that cartel activity is largely responsible for the threats in those five states. In Colima:

*Rival cartels have been battling for control of Manzanillo's port, a primary point of entry for drugs from South and Central America as well as for precursor chemicals coming from Asia that are used to manufacture synthetic drugs.*⁶⁶

In Guerrero:

⁶⁰ *Human smuggling equals grave danger, big money*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (updated Jan. 16, 2018), available at: <https://www.ice.gov/features/human-smuggling-danger>.

⁶¹ *Id.*

⁶² Mexico Drug War Fast Facts, CNN (Dec. 20, 2017), available at: <https://www.cnn.com/2013/09/02/world/americas/mexico-drug-war-fast-facts/index.html>.

⁶³ Christopher Woody, *The State Department is telling US citizens 'do not travel' to 5 states in Mexico*, BUSINESS INSIDER (Jan. 11, 2018), available at: <http://www.businessinsider.com/mexico-states-no-go-zones-for-americans-us-state-department-2018-1>.

⁶⁴ Mexico Travel Advisory, U.S. Dep't of State (Jan. 10, 2018), available at: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁶⁵ Kate Linthicum, *Why the State Department Said these 5 Mexican states Are Unsafe for Travel*, LOS ANGELES TIMES (Jan. 11, 2018), available at: <http://www.latimes.com/world/la-fg-mexico-states-warning-20180111-htmlstory.html>.

⁶⁶ *Id.*

*The cartel that once dominated Acapulco and the rest of the state fractured years ago, leaving smaller criminal groups to violently vie for power. There are more than a dozen gangs fighting in Acapulco, which is now Mexico's homicide capital. Up in the Tierra Caliente, a region that encompasses parts of northern Guerrero and neighboring [Michoacán] state, gangs have been battling for control of poppy production. Poppy grown in Guerrero and other states has made Mexico the No. 1 exporter of heroin to the U.S.*⁶⁷

In Michoacán:

*Violence erupted . . . starting in the mid-2000s, as cartels battling for control of methamphetamine production expanded to extortion and kidnapping. The government's failure to bring order spawned a citizen vigilante movement, and to this day, masked citizen police roam the state. In some towns, they have taken over local governments.*⁶⁸

As for Tamaulipas, that state:

*[H]as been engulfed in violence between factions of the Gulf cartel and the Zetas criminal group. While the homicide rate there is not as high as in other states, extortion and kidnappings are rampant. About one-fourth of all kidnappings in Mexico occur in the state.*⁶⁹

With respect to Tamaulipas, DOS warns⁷⁰:

Do not travel due to crime. Violent crime, such as murder, armed robbery, carjacking, kidnapping, extortion, and sexual assault, is common. Gang activity, including gun battles, is widespread. Armed criminal groups target public and private passenger buses traveling through Tamaulipas, often taking passengers hostage and demanding ransom payments. Local law enforcement has limited capability to respond to violence in many parts of the state.

As *Business Insider* explained in July 2017: "Tamaulipas in Mexico's northeast corner is valuable territory [for criminal groups] because of its proximity to the Gulf of Mexico and the US border, highways that cross it, and the energy infrastructure in the area."⁷¹

CRS reports that the Gulf Cartel, "a transnational smuggling operation with agents in Central and South America," is "[b]ased in the border city of Matamoros, Tamaulipas, with operations in other Mexican states on the Gulf side of Mexico," although that cartel has "reportedly has split

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Mexico Travel Advisory, U.S. Dep't of State (Jan. 10, 2018), available at:

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁷¹ Christopher Woody, *Turmoil in Mexico's criminal underworld is intensifying the violence in a valuable border territory*, BUSINESS INSIDER (Jun. 29, 2017), available at: <http://www.businessinsider.com/cartel-gang-violence-in-reynosa-nuevo-laredo-matamoros-mexico-border-2017-6>.

into several competing gangs.”⁷² It is now also allegedly facing competition from Los Zetas cartel, “its former enforcement wing” in northeast Mexico.⁷³

According to *Business Insider*⁷⁴:

Those two cartels, as well as rivals with designs on controlling the territory, have been responsible for much of the violence in Tamaulipas over the last 20 years. The border cities of Reynosa, Nuevo Laredo, and Matamoros appear to be straining under a new wave of bloodshed driven by inter and intra-cartel feuding.

The pervasive influence of criminal groups has undermined police in the state, and those groups are believed to have won political influence through intimidation and inducement.

As for Sinaloa, that state “was . . . the birthplace of Joaquin ‘El Chapo’ Guzman, a poor kid who sold oranges in the street before becoming Mexico’s most infamous drug cartel leader.”⁷⁵ In a 2012 article, the *New York Times* reported that Guzman formed the Sinaloa cartel following the 1989 arrest of Miguel Angel Felix Gallardo⁷⁶, “El Padrino,” a one-time policeman and the head of the former Guadalajara cartel.⁷⁷

As the *Los Angeles Times* describes⁷⁸ the situation in Sinaloa today:

After Guzman’s arrest and extradition to the U.S. last year, his Sinaloa cartel fragmented into warring factions. Those factions are fighting each other as well as well as gangsters aligned with the ascendant Jalisco New Generation cartel, which has quickly taken control of wide swaths of the country with its brutal tactics.

⁷² June S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations (R41576)*, CONG. RESEARCH SERV. (Apr. 25, 2017), at 16, available at: <https://fas.org/sgp/crs/row/R41576.pdf>.

⁷³ *Id.*; see also Christopher Woody, Turmoil in Mexico’s criminal underworld is intensifying the violence in a valuable border territory, BUSINESS INSIDER (Jun. 29, 2017), available at: <http://www.businessinsider.com/cartel-gang-violence-in-reynosa-nuevo-laredo-matamoros-mexico-border-2017-6>.

⁷⁴ Christopher Woody, *Turmoil in Mexico’s criminal underworld is intensifying the violence in a valuable border territory*, BUSINESS INSIDER (Jun. 29, 2017), available at: <http://www.businessinsider.com/cartel-gang-violence-in-reynosa-nuevo-laredo-matamoros-mexico-border-2017-6>.

⁷⁵ Kate Linthicum, *Why the State Department Said these 5 Mexican states Are Unsafe for Travel*, LOS ANGELES TIMES (Jan. 11, 2018), available at: <http://www.latimes.com/world/la-fg-mexico-states-warning-20180111-htmlstory.html>.

⁷⁶ See Christopher Woody, *The ‘godfather’ of Mexico’s cartels has been sentenced for killing of a DEA agent*, BUSINESS INSIDER (Aug. 30, 2017), available at: <http://www.businessinsider.com/miguel-angel-felix-gallardo-godfather-of-mexicos-cartel-sentenced-2017-8>.

⁷⁷ Patrick Radden Keefe, *Cocaine Incorporated*, NEW YORK TIMES (Jun. 15, 2012), available at: <http://www.nytimes.com/2012/06/17/magazine/how-a-mexican-drug-cartel-makes-its-billions.html>.

⁷⁸ Kate Linthicum, *Why the State Department Said these 5 Mexican states Are Unsafe for Travel*, LOS ANGELES TIMES (Jan. 11, 2018), available at: <http://www.latimes.com/world/la-fg-mexico-states-warning-20180111-htmlstory.html>.

Five other Mexican states border the United States: Baja California, Sonora, Chihuahua, Coahuila, and (for nine miles)⁷⁹ Nuevo Leon.⁸⁰

With respect to Baja California, DOS warns⁸¹:

Criminal activity and violence, including homicide, remain an issue throughout the state. According to the Baja California State Secretariat for Public Security, the state experienced an increase in homicide rates compared to the same period in 2016. While most of these homicides appeared to be targeted, criminal organization assassinations, turf battles between criminal groups have resulted in violent crime in areas frequented by U.S. citizens. Bystanders have been injured or killed in shooting incidents.

As for Chihuahua, the State Department reports⁸²: “Violent crime and gang activity are widespread.”

With respect to those two states, CRS explains:

*The well-established Sinaloa [Drug Trafficking Organization (DTO)] with roots in western Mexico, has fought brutally for increased control of routes through the border states of Chihuahua and Baja California, with the goal of remaining the dominant DTO in the country. Sinaloa has a more decentralized structure of loosely linked smaller organizations, which has been susceptible to conflict when units break away. Nevertheless, the decentralized structure has enabled it to be quite adaptable in the highly competitive and unstable environment that now prevails.*⁸³

According to DOS⁸⁴: “Sonora is a key location utilized by the international drug trade and human trafficking networks.” CRS reports that the Sinaloa DTO “controls crime” in that state.⁸⁵

In Coahuila, DOS reports: “Violent crime is widespread. Local law enforcement has limited capability to prevent and respond to crime, particularly in the northern part of the state.”⁸⁶ The

⁷⁹ Nuevo León, BORDER LEGISLATIVE CONFERENCE (undated), available at:

http://www.borderlegislators.org/nuevo_leon_eng.htm.

⁸⁰ Membership, BORDER LEGISLATIVE CONFERENCE (undated), available at:

http://www.borderlegislators.org/membership_eng.htm.

⁸¹ Mexico Travel Advisory, U.S. Dep’t of State (Jan. 10, 2018), available at:

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁸² *Id.*

⁸³ June S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations (R41576)*, CONG. RESEARCH SERV. (Apr. 25, 2017), at 10, available at: <https://fas.org/sgp/crs/row/R41576.pdf>.

⁸⁴ Mexico Travel Advisory, U.S. Dep’t of State (Jan. 10, 2018), available at:

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

⁸⁵ June S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations (R41576)*, CONG. RESEARCH SERV. (Apr. 25, 2017), at 13, available at: <https://fas.org/sgp/crs/row/R41576.pdf>.

⁸⁶ Mexico Travel Advisory, U.S. Dep’t of State (Jan. 10, 2018), available at:

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

Irish Times reported⁸⁷ in January 2017: “Since the appearance of the Zetas cartel in Coahuila in 2009, people in the northern state live each day fearing for their safety.” The paper quotes “human rights defender Cristina Auerbach,” who states that the Zetas:

*[A]re a very disciplined operation and run an elaborate communication network far superior to any of the local authorities We are living in a time of absolute terror. We are living in a world not only of drug trafficking, but also of money laundering, human trafficking, child trafficking, the trafficking of women. These cartels have complete control over our state, and as a result we live in absolute terror.*⁸⁸

Finally, DOS states⁸⁹: “Violent crime and gang activity are common in parts of Nuevo Leon state.”

An April 2017 CRS report⁹⁰ contains an in-depth analysis of the various cartels and other DTOs that are responsible for the majority of the criminal violence in Mexico, as well as their tactics and the vicious nature of their activities. Of particular note is the following passage:

Police corruption has been so extensive that law enforcement officials corrupted or infiltrated by the DTOs and other criminal groups sometimes carry out their violent assignments. Purges of Mexico’s municipal, state, and federal police have not contained the problem.

*The relationship of Mexico’s drug traffickers to the government and to one another is now a rapidly evolving picture, and any current snapshot (such as the one provided in this report) must be continually adjusted.*⁹¹

In addition, that report notes:

*An[] emerging factor has been the criminal diversification of the DTOs into poly-crime organizations. In addition to trafficking illegal narcotics, they have branched into other profitable crimes, such as kidnapping, assassination for hire, auto theft, controlling prostitution, extortion, money-laundering, software piracy, resource theft, and human smuggling. The surge in violence due to inter- and intra-cartel conflict over lucrative drug smuggling routes has been accompanied by an increase in kidnapping for ransom and other crimes.*⁹²

⁸⁷ Sorch Pollak, *Shafted: Mexico’s miners and its drug cartels*, *Campaigners want Ireland to help with their country’s human rights crisis*, *IRISH TIMES* (Jan 28, 2017), available at:

<https://www.irishtimes.com/news/world/shafted-mexico-s-miners-and-its-drug-cartels-1.2949396>.

⁸⁸ *Id.*

⁸⁹ Mexico Travel Advisory, U.S. Dep’t of State (Jan. 10, 2018), available at:

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>. The

⁹⁰ June S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations (R41576)*, CONG. RESEARCH SERV. (Apr. 25, 2017), available at: <https://fas.org/sgp/crs/row/R41576.pdf>.

⁹¹ *Id.* at 7.

⁹² *Id.* at 25. If

In short, the Border Patrol must respond to the efforts of violent, well-financed, ever-evolving criminal organizations on a daily basis in performing its mission. Given these facts, “border security” cannot easily be separated from “domestic security,” “homeland security,” or “national security.”

CARRIZO CANE ERADICATION

Not all of the challenges that Border Patrol faces in performing its duties are the work of man, however. Along the Rio Grande River in the RGV and in the populated sections of Del Rio, Texas, I saw the impact of carrizo cane on the agency’s ability to prevent cross-border incursions.

As the Texas State the Soil & Water Conservation Board (S&WCB) website⁹³ describes the problem:

Large dense stands of non-native carrizo cane (Arundo donax) now occupy the banks and floodplains of the Rio Grande, thwarting law enforcement efforts along the international border, impeding and concealing the detection of criminal activity, restricting law enforcement officers’ access to riverbanks, and impairing the ecological function and biodiversity of the Rio Grande.

Arundo is an exceptionally fast growing plant, able to grow about 4 inches per day and reach a mature height of over 25 feet in about 12 months. These stands of invasive riparian weeds present considerable obstacles for the protection of the international border by law enforcement and agricultural inspectors, by both significantly reducing visibility within enforcement areas and by providing favorable habitat for agriculturally-damaging cattle ticks.

Carrizo cane is considered one of the greatest threats to the health of riparian ecosystems in the southwestern United States, with great negative impact to biodiversity and ecological processes. Arundo does not provide any food sources or nesting habitats for native wildlife. Carrizo cane is linked to sediment accumulation, channel constriction, and increased flooding frequency threatening the riparian ecosystem of the Rio Grande.

Carrizo cane is a noxious brush species that consumes precious water resources to a degree that is detrimental to water conservation. As a result of this weed’s high evapotranspiration capacity, infestations threaten water supplies for agriculture and municipal drinking water uses in south Texas.

Because of the thickness of the cane, and its height, those crossing the border illegally along the river are able to quickly enter stands of the plant, and remain or proceed undetected. During my August trip to the border, I saw numerous paths through the cane that had been worn by illegal

⁹³ Rio Grande Carrizo Cane Eradication Program, TEXAS STATE THE SOIL & WATER CONSERVATION BOARD (undated), available at: <https://www.tsswcb.texas.gov/programs/rio-grande-carrizo-cane-eradication-program>.

entrants, a number of which were marked by the presence of deflated rafts that crossers had used to ford the river:





While Texas law⁹⁴ requires SWCB to “develop and implement a program to eradicate Carrizo cane along the Rio Grande River,” the Texas Tribune reported in 2016:

*[F]earing that herbicides used for the project will pollute the river, the primary water source for several border communities, an environmental group is planning a full-fledged effort to halt the plan and is recruiting local governments to join its side.*⁹⁵

The results of that effort are not clear.

Eradicating this invasive plant would significantly facilitate control of the border in the areas where it proliferates, according to both federal and state law-enforcement officials to whom I spoke. That plant also presents an officer-safety issue, as it conceals the presence of often-dangerous (and armed) smugglers and traffickers.

⁹⁴ TEX. AGRIC. CODE § 201.0225 (2018), available at: <http://codes.findlaw.com/tx/agriculture-code/agric-sect-201-0225.html>.

⁹⁵ Julian Aguilar, *New Effort to Wipe Out Carrizo Cane Reignites Environmental Debate*, Texas Tribune (Apr. 5, 2016), available at: <https://www.texastribune.org/2016/04/05/new-carrizo-eradication-effort-reignites-old-debat/>.

BORDER SECURITY ON FEDERAL LANDS

The interplay between the Border Patrol and other federal agencies (with primarily environmental missions) is a significant issue because there are large numbers of federal lands within close proximity to the Southwest border that are managed by those other agencies.⁹⁶ CRS, for example, has reported:

Precise estimates of the acreage [within 50 and 100 miles from the U.S.-Mexican border] are not readily available because the agencies do not distinguish their lands by distance from the border. One estimate provided by the agencies to the House Committee on Natural Resources reported that within 100 miles of the border, there were about 26.7 million acres of federal lands. Nearly half of this land (12.3 million acres) was managed by [the Bureau of Land Management (BLM)], and the other federal lands were managed by [the Department of Defense (DOD)] (5.8 million acres), [Forest Service (FS)] (3.8 million acres), [National Park Service (NPS)] (2.4 million acres), [Fish and Wildlife Service (FWS)] (2.2 million acres), and other federal agencies (0.2 million acres).⁹⁷

(Footnote omitted).

As CRS notes, while Border Patrol “is the lead agency for border security between ports of entry,” at least 40 percent “of the southwestern border abuts federal and tribal lands overseen by the FS and four [Department of the Interior (DOI)] agencies (including the Bureau of Indian Affairs) that also have law enforcement responsibilities.”⁹⁸ It admits: “Differences in missions and jurisdictional complexity among these agencies have been identified as potentially hindering border control.”⁹⁹

It reported:

To facilitate control efforts, the three departments—DHS, the Department of Agriculture (for the FS), and DOI—signed memoranda of understanding (MOUs) on border security. These MOUs govern information sharing, budgeting, and operational planning; [Border Patrol] access to federal lands; and interoperable radio communications, among other topics.¹⁰⁰

⁹⁶ See Carol Hardy Vincent, Laura A. Hanson, and Carla N. Argueta, *Federal Land Ownership: Overview and Data (R42346)*, CONG. RESEARCH SERV. (Mar. 3, 2017), at 24, available at: <https://fas.org/sgp/crs/misc/R42346.pdf>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

The tension among these agencies in executing their individual missions on federal lands was the subject of an October 2010 report¹⁰¹ issued by the Government Accountability Office (GAO). In that report, GAO explained:

When operating on federal lands, Border Patrol has responsibilities under several federal land management laws, including the National Environmental Policy Act, National Historic Preservation Act, Wilderness Act, and Endangered Species Act. Border Patrol must obtain permission or a permit from federal land management agencies before its agents can maintain roads and install surveillance equipment on these lands. Because land management agencies are also responsible for ensuring compliance with land management laws, Border Patrol generally coordinates its responsibilities under these laws with land management agencies through national and local interagency agreements. The most comprehensive agreement is a 2006 memorandum of understanding intended to guide Border Patrol activities on federal lands.

GAO found¹⁰², however:

Border Patrol's access to portions of some federal lands along the southwestern border has been limited because of certain land management laws, according to patrol agents-in-charge for 17 of the 26 stations, resulting in delays and restrictions in agents' patrolling and monitoring these lands. Specifically, patrol agents-in-charge for 14 of the 17 stations reported that they have been unable to obtain a permit or permission to access certain areas in a timely manner because of how long it takes for land managers to conduct required environmental and historic property assessments. The 2006 memorandum of understanding [2006 MOU] directs the agencies to cooperate with one another to complete, in an expedited manner, all compliance required by applicable federal laws, but such cooperation has not always occurred. For example, Border Patrol requested permission to move surveillance equipment to an area, but by the time the land manager conducted a historic property assessment and granted permission--more than 4 months after the initial request--illegal traffic had shifted to other areas. Despite the access delays and restrictions, 22 of the 26 agents-in-charge reported that the overall security status of their jurisdiction is not affected by land management laws.

As an aside, I would note that “overall security status” is a weak benchmark by which to measure the effect of such “access delays and restrictions,” given that it encompasses all operations at the Border Patrol facility in question, and not individual operations. That said, the fact that these

¹⁰¹ SOUTHWEST BORDER: More Timely Border Patrol Access and Training Could Improve Security Operations and Natural Resource Protection on Federal Lands (GAO-11-38), GOV'T ACCOUNTABILITY OFFICE (Oct. 19, 2010), available at: <https://www.gao.gov/products/GAO-11-38>.

¹⁰² *Id.*

“access delays and restrictions” affected the overall security status at four facilities is significant, and any delays affect Border Patrol’s operations, as is apparent from the cite above.

The 2006 MOU¹⁰³ is problematic in a number of ways, but the most fundamental issue with that MOU is that it fails to recognize the exigencies of Border Patrol operations, and in essence requires Border Patrol to seek DOI and/or USDA permission before undertaking its most critical missions. Simply put, it is a September 10th document for a post-September 11th world, and one that fails to recognize, comprehend, or appreciate the sophistication and agility of the criminal entities operating along the Southwest border.

Take for example paragraph IV.A.5 in that MOU.¹⁰⁴ It states:

*The Parties will cooperate with each other to identify methods, routes, and locations for CBP-[Border Patrol (BP)] operations that will minimize impacts to natural, cultural, and wilderness resources resulting from CBP-BP operations while facilitating needed CBP-BP access . . .*¹⁰⁵

By definition, such “cooperation” gives DOI and USDA significant say in the manner in which Border Patrol executes its mission. As a practical matter, however, it gives those departments, which do not otherwise have a significant national-security mission, veritable veto power over at least some of the “methods, routes, and locations” of the operations of the law-enforcement component of the United States government with expertise in border security, the Border Patrol.

No one disputes the fact that “impacts to natural, cultural, and wilderness resources” should be minimized to the greatest extent possible. What the 2006 MOU does, however, is to put the “environmental cart” in front of the “national-security horse.”

Congress should reassess the respective roles of the Border Patrol and the each of the land management agencies, to ensure that critical law-enforcement activities are not impeded in any way. Given the sophistication and funding of the entities with which it must contend, Border Patrol must be able to act swiftly, without restrictions, to respond to any criminal or national security threat that it faces. Any delay will allow those criminal organizations to exploit critical vulnerabilities along the border, a fact that can have significant safety implications for the United States, as shown above.

ENVIRONMENTAL DAMAGE CAUSED BY CROSS-BORDER INCURSIONS

The large number of cross-border traffickers who have attempted to enter the United States illegally have caused harm to our most vulnerable, and culturally and environmentally valuable, federal lands.

¹⁰³ Memorandum of Understanding Among U. S. Department of Homeland Security and U. S. Department of the Interior and U. S. Department of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States’ Borders (Mar. 2006), available at:

<https://cis.org/sites/cis.org/files/articles/2010/mou.pdf>. If

¹⁰⁴ *Id.*, at 4.

¹⁰⁵ *Id.* If

Janice L. Kephart, a former National Security Fellow at the Center for Immigration Studies, described some of these issues in a March 2011 post for the Center.¹⁰⁶ To assess the environmental impact of illegal immigration on federal lands, Ms. Kephart filed a Freedom of Information Act (FOIA) seeking documentation related to this issue.¹⁰⁷ As she described the results:

*Some of the material I received from the request included internal memos discussing the problem within the Department of Interior, as well as PowerPoint presentations created by Park Service personnel from the Tohono O'odham Indian Reservation, Organ Pipe National Monument, and Buenos Aires Wildlife Refuge showing that nearly all national park destruction on these central Arizona border areas was due to illegal alien traffic. The threat from illegal activity is so bad, in fact, that for years the Park Service has completely closed these parks due to the "unacceptable level of risk to the public and staff" from the "high level of illegal activity going on" in these parks.*¹⁰⁸

In June 15, 2006 testimony¹⁰⁹ before the House Committee on Appropriations, Subcommittee on Interior, Environment and Related Agencies, Tina Terrell, then-Forest Supervisor of the Cleveland National Forest, described the impacts of illegal crossers on that forest:

The Cleveland National Forest in California continues to experience cross-border violators creating unwanted trails and leaving large numbers of abandoned campfires and large amounts of trash on the Forest as they travel through the area. . . . Since 1997, the Cleveland National Forest has staffed a border fire prevention and resource protection crew to remedy impacts created by cross-border violators. Their primary job is to find and extinguish illegal campfires before they expand and become wildfires. Each year these fire prevention efforts have helped reduce resource damage and wildfire costs. Despite these efforts, in 2005, over 370 acres of the National Forest burned due to illegal campfires and over 4 tons of trash was removed from the National Forest, much of which can be attributed to illegal immigration.

She testified, however, that the effects of illegal border traffic on the Coronado National Forest had been much greater than on the Cleveland National Forest. She noted that:

The natural and cultural resources on the Coronado have regional, national and international importance. There are 12 separate and uniquely distinct mountain

¹⁰⁶ Janice Kephart, *My Great-Grandfather, President Obama, and Preserving Our Federal Lands*, CENTER FOR IMMIGRATION STUDIES (Mar. 3, 2011), available at: <https://www.cis.org/Kephart/My-GreatGrandfather-President-Obama-and-Preserving-Our-Federal-Lands>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Effects of Illegal Border Activities on the Federal Land Management Agencies Before the H. Comm. on Appropriations, Subcomm. on Interior, Environment and Related Agencies*, 109th Cong. (2006) (statement of Tina Terrell, Forest Supervisor of the Cleveland National Forest, U.S. Dept of Agriculture, Forest Service), available at: <https://www.doi.gov/ocl/illegal-immigration>.

ranges, eight designated wilderness areas, containing approximately 203 threatened, endangered, or sensitive species. These resources are suffering significant adverse impacts due to illegal border traffic.

With respect to impacts to natural resources from such traffic in that forest, she asserted:

Activities by cross-border violators sometimes adversely affect the natural resources we protect and manage, and interfere with authorized management activities and uses. Repeated damage to a livestock enclosure fence next to the border established to protect an endangered fish species, the Sonoran Chub, has been so extensive that the enclosure fence has had to be completely rebuilt several times and has often been rendered ineffective in restricting livestock use. This fence damage has allowed the destruction of endangered species habitat to continue and has resulted in very expensive, unplanned repairs.

Literally hundreds of miles of unauthorized trails and roads have been created on the Forest by illegal foot and vehicle traffic. This proliferation of trails and roads damages and destroys cactus and other sensitive vegetation; disrupts or prohibits revegetation; disturbs wildlife, their security and travel routes; causes soil compaction and erosion; impacts stream bank stability; and puts the public at risk by creating confusion as to which routes are lawful and safe.

Perhaps one of the most well[-]known of the impacts of illegal immigration is the litter left behind, which we note, tends to accumulate in higher amounts than found in other urban National Forests. Additionally, cleaning up the litter is difficult due to the lack of facilities and remoteness of the border areas. The presence of trash also detracts from scenic qualities and from the visitors' experience. Water sources near this contamination are often so fouled by pollution that wildlife can no longer use them. Where trash is left behind in designated wilderness or other areas far from roads, expensive and difficult removal by the use of horses or mules is required. Adding to the fire risk and agency expense are the hundreds of vehicles, most stolen, abandoned by smugglers and other cross-border violators or seized during law enforcement operations.

Similarly, in July 2009, *Fox News* reported¹¹⁰ on a 2007 internal federal government memo that detailed the effect of illegal alien crossings on DOI activities at National Parks in the Southwest:

According to the memo, which was obtained by FOXNews.com, the Department of Interior warns that refuge officers are spending 100 percent of their time at Cabeza Prieta National Wildlife preserve and between 90 to 95 percent of their time in Buenos Aires National Wildlife Refuge and Leslie Canyon dealing with

¹¹⁰ Stephen Clark, *Memo Reveals Refuge Officers' Struggle to Secure Lands Along Southwest Border*, FOX NEWS (July 9, 2010), available at: <http://www.foxnews.com/politics/2010/07/09/federal-park-rangers-struggle-secure-public-land-southwest-border.html>. That

border-related activities. It also notes that the Cabeza Prieta preserve is spending 60 to 70 percent of its budget on border-related activities.

This includes everything from apprehending illegal immigrants until Border Patrol can arrive, to cleaning up the mountains of trash -- about 500 tons a year - - that they leave behind. More than 1,300 miles of illegal trails had been created on the refuge by illegal border-crossers, the memo says.

Nor are such impacts a thing of the past. The Arizona Department of Environmental Quality manages the “Arizona Border Trash” website.¹¹¹ It defines “border trash” as:

*[I]tems discarded by persons involved in illegal immigration such as plastic containers, clothing, backpacks, foodstuffs, vehicles, bicycles and paper. It can also consist of human waste and sometimes medical products.*¹¹²

That website explains¹¹³:

The collection and disposal of waste in remote areas along Arizona's 370-mile border with Mexico poses difficult challenges. An estimated more than 2,000 tons of trash is discarded annually in Arizona's borderlands. A variety of federal and state government entities, Native American tribes and private landowners are affected by the problem, and addressing it requires extensive coordination.

The environmental impact caused by illegal immigration, and the trash left behind, is increasingly being found in areas that are more fragile and remote.

The website notes¹¹⁴ that border trash “has been shown to affect human health, the environment and economic wellbeing.” Included among the specific impacts listed¹¹⁵ are: “[s]trewn trash and piles;” “[i]llegal trails and paths;” “[e]rosion and watershed degradation;” “[d]amaged infrastructure and property;” “[l]oss of vegetation and wildlife;” and “[c]ampfires and escaped fires.”

According to the website¹¹⁶, each of the approximately 64,900 border crossers apprehended in the Tucson Sector in FY 2016 (and others who were not apprehended) “leave approximately six to eight pounds of trash in the desert during his or her journey.” Disposing of this trash is costly for the communities affected: “Landfill fees range from \$37 to \$49 per ton in Southern Arizona. These fees do not include costs for materials, equipment, labor and transportation for the collection and transfer of the trash to the landfill.”¹¹⁷

¹¹¹ *Arizona Border Trash*, ARIZ. DEP’T OF ENVIRONMENTAL QUALITY (undated), available at: <https://www.azbordertrash.gov/about.html>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

Similar points are made in the Southern Arizona Project 2016 Border Report from BLM.¹¹⁸ That report states:

*While smuggling has been a long term concern along on the border, by the late 1990s, illegal transnational activity was prompting safety concerns for public land users in Arizona, as well as causing adverse effects on the health of public lands themselves. Initially, most impacts were concentrated near major ports of entry such as Yuma and Nogales. However, as port enforcement increased, smugglers moved to more remote, isolated areas, including BLM-managed public lands. As law enforcement patrols increased in these more remote areas, smugglers began traveling off-road in order to evade detection. These travelers leave more than tracks. The traffic creates new, ad-hoc roads and trails, damages native vegetation and disturbs wildlife. Drug and human smuggling also generates tons of garbage, including discarded personal items, bicycles, tires and abandoned vehicles. Millions of pounds of trash and waste along with damaged roads, structures, and fences have impacted Wilderness areas, riparian habitat, and other back-country natural resources.*¹¹⁹

The danger to the environment from these activities is clear from that report:

The Sonoran Desert boasts the highest biological variety of any North American desert. These two National Monuments exemplify this tremendous diversity. The striking vegetation protected by these monuments - saguaro cacti, palo verde, ironwood and mesquite trees, wildflowers - shape the iconic images of the American Southwest. The Monuments also protect a record of human habitation dating back more than 10,000 years. These delicate sites are easily disturbed by off-road travel.

*Border-related impacts are also felt on other significant public lands near the international border such as the San Pedro Riparian National Conservation Area and Las Cienegas National Conservation Area. Both areas contain intact examples of river and stream habitats that are rare in the Southwest. These riparian areas can also serve as expedient routes for illegal activity.*¹²⁰

Cutting the rate of illicit cross-border traffic is critical to protecting these endangered artifacts and environmental treasures. Facilitating the law-enforcement activities of the Border Patrol will deter this flow of traffic, and ensure that these federal lands are maintained in their natural state. Any law or regulation that impedes the Border Patrol's work, but no matter how well-meaning, will thus adversely affect the environment in both the short and long run.

¹¹⁸ Southern Arizona Project 2016 Border Report, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MANAGEMENT (undated), available at:

<https://www.blm.gov/sites/blm.gov/files/documents/files/SAP%202016%20%28508%20Final%29.pdf>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

DANGERS TO NATIONAL PARK SERVICE EMPLOYEES

Not all of the dangers posed by cross-border incursions involve the environment, however. I would be remiss if I were not to mention at this point the sacrifice of Park Ranger Kris Eggle. As the National Park Service describes¹²¹ his life:

Kristopher William Eggle was a Law Enforcement Park Ranger from Cadillac, Michigan. He was an Eagle Scout, a National Honor Society Student, and valedictorian of his graduating class at Cadillac High School in 1991. After high school, he attended University of Michigan and earned a degree in wildlife biology. Kris approached his entire life with a kind of contagious enthusiasm that could only inspire everyone who knew him. He constantly gave of himself without ever asking for anything in return.

* * * *

In the wake of 9/11, Kris protected his country by intercepting thousands of pounds of illegal drugs, and guarding a 30-mile stretch of the nation's southern boundary.

Kris Eggle was shot and killed in the line of duty at Organ Pipe Cactus National Monument, on August 9, 2002 while pursuing members of a drug cartel who fled into the United States after committing a string of murders in Mexico.

He was 28 years old.

The dangers facing Park Rangers generally was highlighted by a January 2012 article¹²² in the *Seattle Times*, captioned “Park rangers’ jobs increasingly dangerous.”

While that article discussed the risks faced by Park Rangers nationwide, it specifically quoted¹²³ then-NPS chief spokesman David Barna, who stated: “In California and along the border between us and Mexico, we still fight drug cartels growing marijuana. . . .” It also noted¹²⁴: “The job, like many in federal law enforcement, has become more complex in recent years. With 22 parks along international borders, there are more homeland-security issues.”

Moreover, as this committee’s own website¹²⁵ states: “National parks and forests have become some of the most dangerous and violent areas along the border where shootings, robberies, rapes, murders, kidnappings and car-jackings frequently occur.”

¹²¹ *Kris Eggle*, U.S. NAT’L PARK SERVICE (updated May 24, 2016), available at: <https://www.nps.gov/orpi/learn/historyculture/kris.htm>.

¹²² Craig Welch, *Park rangers’ jobs increasingly dangerous*, *Seattle Times* (Jan. 2, 2012), available at: <https://www.seattletimes.com/seattle-news/park-rangers-jobs-increasingly-dangerous/>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Securing our Border on Federal Lands: Problem Overview*, HOUSE COMM. ON NATURAL RESOURCES (undated), available at: <https://naturalresources.house.gov/info/borderoverview.htm>.

The dangers that Park Rangers and the public face from cross-border criminals must be recognized, and eliminated.

THE ROLE OF BORDER PATROL ENFORCEMENT IN PROTECTING THE ENVIRONMENT AND LAND-MANAGEMENT AGENCY EMPLOYEES

It is plain from the foregoing that stemming the flow of illegal border crossings serves to protect the environment, to prevent the adverse ecological impacts of cross-border traffic, and protect land-management agency employees.

The work of the Border Patrol is key to protecting the environment, as the testimony¹²⁶ of Jon Andrew, the Interagency Borderlands Coordinator for DOI before this Subcommittee in April 2016 made clear:

The deployment of CBP personnel, equipment and infrastructure along the southwest border has led to significant improvements in border security. These improvements have both enhanced the security of our nation, and lead to overall healthier conditions on Interior lands along the border. Many of the natural and cultural resources under Interior's responsibility have been adversely affected by illegal activities due to accumulations of trash, establishment of illegal roads and trails, and overall degradation of the environment. By deploying personnel, equipment, and infrastructure, CBP operations have reduced cross-border illegal activity and the environmental impacts of this illegal activity in a number of areas.

Examples of infrastructure put in place by CBP include: Remote Video Surveillance System towers, Integrated Fixed Towers, rescue beacons, housing for Border Patrol agents, Forward Operating Bases (FOB), equipment storage facilities, horse corrals and mobile surveillance systems such as the Ground Based Operational Surveillance System (GBOSS) used in Arizona.

In his testimony, Mr. Andrew emphasizes the cooperation between DOI and the Border Patrol in these efforts:

Tactical communication needs are critical to the security of Border Patrol agents and Interior personnel and we have worked closely to assure adjustments can be made in placement and maintenance of these facilities when they are present on Interior managed lands. Maintenance of roads and fences have also become more routine through issuance of permits and rights-of-way by Interior's land managing agencies.

During deployment of additional border security resources, Interior worked closely with the Border Patrol to avoid or mitigate impacts to the environment by

¹²⁶ Border Security: Consequences of Federal Lands Management Along the U.S. Border to Rural Communities and National Security: Hearing Before the House Comm. on Natural Resources, Subcomm. on Oversight and Investigations, 114th Cong. (2016) (statement of Jon Andrew, Interagency Borderlands Coordinator, Dep't of the Interior), available at: <https://www.doi.gov/ocl/border-security-1>.

coordinating border security work with local federal land managers. These mitigation activities have had no impact on the ability of the Border Patrol to protect the border.

*We have made and are continuing to make significant progress and we recognize DHS's leadership on these issues.*¹²⁷

It is clear from the foregoing that to the Border Patrol has demonstrated respect for the environment and for protecting our national treasures on federal lands along the border.

I am not as confident as Mr. Andrew, however, about the effect that the agency's cooperation with DOI has had on its enforcement activities. Given the dangers that Border Patrol Agents face on a daily basis, and the numerous contingencies that they must constantly deal with in carrying out their mission, clear, unimpeded authority should be given to the Border Patrol to access and move on federal land, without restriction, to enable them to carry out their statutory duties.

As stated above, facilitating the ability of Border Patrol agents to perform their duties is critical not only to preventing the illegal entry of aliens into the United States, but also to keeping drugs and criminals off of American streets, and to ensuring that individuals who seek to harm our country and our citizens are not able to do so. It is also crucial to protecting the environment from the effects of illegal cross-border traffic, as well as protecting land-management agency employees.

Congress must carefully review any laws that impede the Border Patrol in its law enforcement efforts, and in particular any laws that inhibit, impede, or delay access and movement by the Border Patrol to any section of the border the agency deems necessary to carry out its duties. Border Patrol must not only be allowed to move freely along the border, but it must also have the ability, in a timely manner, to construct, install, and relocate the necessary tactical infrastructure to respond to cross-border threats.

It is incumbent upon Congress to assess whether any laws that inhibit such movement or the employment of such infrastructure should be restricted or waived, at a minimum to the extent necessary to ensure that the critical mission of the Border Patrol is unhindered and successful.

CONGRESSIONAL ACTION

Again, given the sophistication and the violent nature of the criminal groups controlling illicit cross-border traffic, Border Patrol must have the ability to react in a timely manner to any incursion. It is impossible to know whether a group of individuals crossing the border illegally are coming here to work, are carrying drugs, or pose a risk to the American people until they are intercepted. Congress must ensure that Border Patrol has that ability.

¹²⁷ *Id.*

At a minimum, Congress should review the 2006 MOU among DHS, DOI, and USDA, and assess in full the impact of that MOU on the Border Patrol's ability to perform its mission on federal land at and near the Southwest border.

I would argue, however, the Congress should go further, and pass legislation to make clear that the Border Patrol has full, unfettered access of movement on federal land, as well as unfettered access to erect tactical infrastructure and maintain access roads across such land.

For that reason, I would support implementation of Division C, Title I, Subtitle A, section 1118 in H.R. 4760, the Securing America's Future Act of 2018.¹²⁸ That provision would prohibit interference with CBP on covered federal land to execute "search and rescue operations," "patrol the border area, apprehend illegal entrants, and rescue individuals," and to "design, test[], construct[], install[], deploy[], and operat[e] . . . physical barriers, tactical infrastructure, and technology pursuant to section 102 of" IIRIRA. . . ."¹²⁹

As stated above, Border Patrol has shown itself able to both perform its duties and to protect the environment. Further, as stated, the performance of those duties actually supports the efforts of the land-management agencies in protecting vulnerable environmental areas from the abuse inherent in illegal cross-border traffic.

I would also support section 1120 in that subtitle, "Eradication of Carrizo Cane and Salt Cedar." That section would direct the eradication of "the carrizo cane plant and any salt cedar along the Rio Grande River that impedes border security operations."

Finally, I would support section 1111 in that subtitle, which, *inter alia*, would amend 8 U.S.C. § 1103(c) note to give the Secretary of Homeland Security waiver authority to include:

[A]ll legal requirements the Secretary, in the Secretary's sole discretion, determines necessary to ensure the expeditious design, testing, construction, installation, deployment, operation, and maintenance of the physical barriers, tactical infrastructure, and technology under this section.

The agencies of the United States government are all playing on the same team when it comes to protecting the American people, our national security, and the environment. It is up to Congress to help them understand that fact.

¹²⁸Securing America's Future Act, H.R. 4760, 115th Cong. div. C, tit. I, subtit. A, § 1118 (2018).

¹²⁹ *Id.*