

**THE COSTS OF DENYING BORDER  
PATROL ACCESS: OUR ENVIRON-  
MENT AND SECURITY**

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**OVERSIGHT HEARING**

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND  
INVESTIGATIONS

OF THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

Thursday, February 15, 2018

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**OVERSIGHT HEARING ON THE COSTS OF  
DENYING BORDER PATROL ACCESS: OUR  
ENVIRONMENT AND SECURITY**

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**Thursday, February 15, 2018  
U.S. House of Representatives  
Subcommittee on Oversight and Investigations  
Committee on Natural Resources  
Washington, DC**

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The Subcommittee met, pursuant to call, at 10:00 a.m., in room 1324, Longworth House Office Building, Hon. Bruce Westerman [Chairman of the Subcommittee] presiding.

Present: Representatives Westerman, Gohmert, Labrador, Radewagen, Bergman, Johnson, Bishop (ex officio), McEachin, Gallego, Huffman, Soto, and Grijalva (ex officio).

Also Present: Representatives Lamborn, Gosar, Napolitano, Beyer, Torres, Barragán, Gomez, and Vela.

Mr. WESTERMAN. The Subcommittee on Oversight and Investigations will come to order.

The Subcommittee is meeting today to hear testimony on the costs of denying Border Patrol access: our environment and security. I ask unanimous consent that the gentleman from Arizona, Mr. Gosar; the gentleman from Colorado, Mr. Lamborn; the gentlewoman from California, Mrs. Napolitano; the gentleman from Virginia, Mr. Beyer; the gentlewoman from California, Mrs. Torres; the gentlewoman from California, Ms. Barragán; the gentleman from California, Mr. Gomez; and the gentleman from Texas, Mr. Vela, be allowed to sit with the Committee and participate in the hearing.

Without objection, so ordered.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman, the Ranking Minority Member, and the Vice Chair. This will allow us to hear from our witnesses sooner and help Members keep to their schedules. Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record, if they are submitted to the Subcommittee Clerk by 5 p.m. today.

Without objection, so ordered.

**STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS**

Mr. WESTERMAN. Seventy-five pounds of marijuana, almost \$8,000 of brown heroin, 5 illegal border crossers with unknown intentions, and 11 more illegals who got away. In the course of just one evening 2 weeks ago, that is what I witnessed along a small portion of the Border Patrol's Tucson Sector.

Nationally, in the past few months alone, Border Patrol has already apprehended more than 100,000 border violators, seized over 200,000 pounds of marijuana, 113 pounds of heroin, and 196 pounds of the deadly opioid, fentanyl. These numbers do not even account for the seizures of drugs at ports of entries. And we should keep in mind that these statistics only represent what we have caught. Border Patrol uses estimates, so God only knows what we have really missed coming through our borders.

We are dealing with professional drug and human traffickers who are organized, well-manned, and sophisticated. During an aerial tour on my visit to the border, we spotted scout locations hidden in the rocky mountain tops on the U.S. side of the border. These difficult to detect spots are used by criminals to monitor and communicate Border Patrol's every move on the ground to guide smugglers away from our agents.

You see the display there. In one of these particular areas, you can see in the circle there, is actually a solar panel that was packed in that is used to charge cell phones and radios so that these scouts can communicate.

[Slide.]

You can see from these photos that these scouts are prepared to camp out for weeks or months. They have gotten so advanced that they have even set up these solar panels. Aside from the garbage that they leave behind, at least they are being environmentally conscious by using alternative energy sources.

Border security is a complex and daunting issue that affects our lives and public safety. One thing, however, was abundantly clear on my trip with Chairman Bishop to the border. We need to ensure that we give our law enforcement agents appropriate access to the Federal lands they patrol to keep us safe.

Take, for example, the Tucson Sector's 262 miles of border, 86 percent of which is on Federal or tribal lands. Of the approximate 1,900 miles on the southern border, about 35 percent is on Federal or tribal lands. With vast amounts of Federal land, accompanied by an array of environmental laws, our Border Patrol agents face statutory restraints in addition to the physical challenges and dangers of their jobs.

Meanwhile, cross-border violators are not just comprised of families and children, they are also human traffickers, drug smugglers, and violent criminals. While our agents spend time seeking and waiting for authorization from Federal land managers to make sure environmental impacts are addressed, criminals trample through environmentally sensitive areas leaving tons of garbage and waste along their paths.

On Federal borderlands, it can take months or even years for Border Patrol to receive approval to maintain roads or install tactical infrastructure, such as communications relays, video surveillance towers, and radars.

After securing approval from Federal land managers, Border Patrol actions may be subject to the NEPA review process, causing further delays in operational deployment. Securing approval to build just a few miles of new roads on federally owned borderland, something agents we spoke to identified as particularly important in rugged, isolated terrain, can be a multiple-year process. These

authorization requirements and permitting delays can have a crippling effect on border security.

During our visit to the Arizona border, one agent explained to us the tremendous bureaucratic delays Border Patrol can face to remediate or fill illicit tunnels used for drug smuggling. In one instance, we were told about a known tunnel left unfilled for months because of the presence of a threatened or endangered species. This is unacceptable, and I can guarantee that the drug cartels using the tunnel did not care about the welfare of that species.

Cartels and illegal immigrants don't wait for environmental assessments, they don't participate in Section 7 ESA consultations, and they don't follow Wilderness Act restrictions. High volumes of illegal border crossings do cause extensive environmental damage to our public lands by igniting costly wildfires, sometimes as diversionary tactics, and destroying species habitat.

In addition, safety concerns related to illegal immigration, drug smuggling, and even the murder of a park ranger have forced national monuments, forests, and wildlife refuges on the border to close to the public for extended periods of time. Denying public access betrays our promise to present and future generations to use and enjoy these lands as intended.

Cross-border violators take advantage of Border Patrol's lack of operational flexibility on Federal lands. We need to ensure that our environmental laws do not compromise Border Patrol's ability to detect, identify, track, and respond to cross-border violations.

This hearing gives us the opportunity to hear from people who have grappled with the problems of illegal immigration and an unsecured border. I look forward to their testimony and to continuing this Committee's work toward a solution.

[The prepared statement of Mr. Westerman follows:]

PREPARED STATEMENT OF THE HON. BRUCE WESTERMAN, CHAIRMAN, SUBCOMMITTEE  
ON OVERSIGHT AND INVESTIGATIONS

Seventy-five pounds of marijuana, almost \$8,000 of brown heroin, five illegal border crossers with unknown intentions, and 11 more illegals who got away. In the course of just one evening 2 weeks ago, that's what I witnessed along a small portion of the Border Patrol's Tucson Sector.

Nationally, in the past few months alone, Border Patrol has already apprehended more than 100,000 border violators, seized 200,909 pounds of marijuana, 113 pounds of heroin, and 196 pounds of the deadly opioid, fentanyl. These numbers do not even account for the seizures of drugs at ports of entries.

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Meanwhile, cross-border violators are not just comprised of families and children. They are also human traffickers, drug smugglers, and violent criminals. While our agents spend time seeking and waiting for authorization from Federal land managers to make sure environmental impacts are addressed, criminals trample through environmentally sensitive areas leaving tons of garbage and waste along their paths.

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Cartels and illegal immigrants don't wait for Environmental Assessments, they don't participate in Section 7 ESA consultations, and they don't follow Wilderness Act restrictions. High volumes of illegal border crossings do cause extensive environmental damage to our public lands by igniting costly wildland fires—sometimes as diversionary tactics—and destroying species habitat.

In addition, safety concerns related to illegal immigration, drug smuggling, and even the murder of a park ranger, have forced national monuments, forests, and wildlife refuges on the border to close to the public for extended periods of time. Denying public access betrays our promise to present and future generations to use and enjoy these lands as intended.

Cross-border violators take advantage of Border Patrol's lack of operational flexibility on Federal lands. We need to ensure that our environmental laws do not compromise Border Patrol's ability to detect, identify, track, and respond to cross-border violations.

This hearing gives us the opportunity to hear from people who have grappled with the problems of illegal immigration and an unsecured border. I look forward to their testimony and to continuing this Committee's work toward a solution.

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Mr. WESTERMAN. The Chairman now recognizes the Ranking Minority Member for any statement.

**STATEMENT OF THE HON. A. DONALD MCEACHIN, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA**

Mr. MCEACHIN. Thank you, Mr. Chairman.

And thank you to each of our witnesses for taking time and spending your own treasure to be with us here today. I also want to thank Ranking Member Grijalva for taking the time to join us and share his thoughts as someone who lives, and represents people who live, near the border.

I am disappointed to see that, once again, no one from the Administration was invited to be a witness today. This Subcommittee is charged with conducting oversight over Federal policies in our jurisdiction. It is beyond me to understand how we can effectively do that if we continue to fail to invite the entity responsible for carrying them out. Nevertheless, I am pleased to have



the opportunity to talk about environmental and public safety issues along the border.

As has become a trademark of President Trump and congressional Republicans, some of my colleagues want to blame all of our problems on aspiring Americans. They will have you believe that immigrants are criminals and gang members who are not only dangerous, but now also apparently environmentally reckless.

This rhetoric vilifies real human beings who, many times, are risking their lives to reunite with their families or escape violence from their countries. These are people seeking a better life, not seeking to break the law.

When we finally stop blaming others, we can see that we have put laws and systems in place that endanger the economy, environment, and health of our border communities far more than the discarded trash of a border crosser.

For those who are unaware, the Secretary of Homeland Security already has sole authority to waive all laws and legal requirements that potentially get in the way of building fences, walls, and roads along the border. That means that any law, including our bedrock environmental, public health, and safety laws, can be totally ignored when it comes to building a fence, or worse, the President's preposterous wall. If this sounds like an over-reach of power, that is because it is. In fact, it has been described as having greater reach than any other waiver authority in statute. Some legal experts have even deemed it unconstitutional.

Despite the backlash and opposition to the waiver, however, the Secretary of Homeland Security has used it eight times, three of which were in the last 6 months of the Trump administration alone. Each time the Secretary has used the waiver, a whole slew of environmental and public safety laws have been tossed aside. The poster behind me names all 48 of the laws that have been waived. These laws are American rights. Rights to hold the government accountable. Rights to be protected from toxic waste and unsafe drinking water. Rights for tribes to protect their own burial grounds, to name a few.

When these laws are recklessly ignored, the people and wildlife that live along the border suffer the most. Their health and safety are put at risk in the name of a fence.

If that is not bad enough, Republicans have recently introduced a bill that would expand the waiver further. This bill would allow the Secretary to use the waiver for all infrastructure and technology, not just building fences and roads. This is unacceptable and, quite frankly, dangerous for the communities and public lands along our borders.

Scapegoating the victims and building walls is simply not the solution to our border security issues. This Committee owes the American public a real conversation, not this sham.

I yield back the remainder of my time. Thank you, Mr. Chairman.

[The prepared statement of Mr. McEachin follows:]

PREPARED STATEMENT OF THE HON. A. DONALD McEACHIN, RANKING MEMBER,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Thank you, Mr. Chairman. Thank you to each of our witnesses for taking the time and expense to be here today. I also want to thank Ranking Member Grijalva for taking the time to join us and share his thoughts as someone who lives, and represents people who live, near the border.

I am disappointed to see that, once again, no one from the Administration was invited to be a witness today. This Subcommittee is charged with conducting oversight over Federal policies in our jurisdiction. I just do not understand how we can effectively do that if we continue to fail to invite the entity responsible for carrying them out. Nevertheless, I am pleased to have the opportunity to talk about environmental and public safety issues along the border.

As has become a trademark of President Trump and congressional Republicans, some of my colleagues want to blame all our problems on aspiring Americans. They will have you believe that immigrants are criminals and gang members who are not only dangerous, but who are now also environmentally reckless, apparently.

I would like to think we can do better than blaming the victim. This rhetoric vilifies real human beings who, many times, are risking their lives to reunite with their families or escape the violence of their countries. These are people seeking a better life, not seeking to break the law.

When we finally stop blaming others, we can see that we have put laws and systems in place that endanger the economy, environment, and health of our border communities far more than the discarded trash of a border crosser.

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Scapegoating the victims and building walls is simply not the solution to our border security issues. This Committee owes the American public a real conversation, not this sham.

I yield back the remainder of my time.

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Mr. WESTERMAN. The gentleman yields back.

I now recognize the Vice Chairman of the Committee, Mr. Johnson from Louisiana, for an opening statement.

**STATEMENT OF THE HON. MIKE JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Mr. JOHNSON. Thank you, Mr. Chairman. I want to thank you for holding this critical hearing to explore the challenges faced by Border Patrol agents on Federal borderlands, as well as for your trip with Chairman Bishop earlier this month to visit the U.S.-

Mexico border so we could get an update on the latest status of the Nation's border security.

Our government has placed the men and women who patrol our border, as well as the American citizens who live on or near the border, in a very difficult position. We all recognize that. As is all too often the case, Washington has created bureaucratic hurdles that have adversely impacted the Border Patrol agents' abilities to secure our southern border.

While well intentioned, the Memorandum of Understanding that the Departments of Interior, Homeland Security, and Agriculture have entered into has created challenges and delayed Border Patrol agents' abilities to respond to illegal activity in Federal lands adjacent to the border.

Nearly 35.3 percent of the southern border runs along or through federally owned lands. Understanding the regulatory difficulties posed to Border Patrol officers due to the Wilderness Act, the National Environmental Policy Act, the Endangered Species Act, and other policies, illegal immigrants, human traffickers, and drug smugglers have targeted Federal lands to conduct their illicit activities.

Those illicit activities not only threaten the personal security of those who live along the border, but they have caused extensive ecological and environmental damage. Human waste, garbage, wildfires, tunnels, and the like have contributed to serious damage to wildlife habitats.

In a July 2011 Department of the Interior report, the U.S. Fish and Wildlife Service identified mass illegal immigration as a likely contributing factor in the 79 percent decline in the U.S. Sonoran pronghorn population between 2000 and 2002. This is at the Organ Pipe Cactus National Monument, 79 percent, that is a massive impact to an endangered species that is found nowhere else in the world.

Republican and Democrat administrations alike have highlighted the need to address this issue. For example, former Department of Homeland Security Secretary Napolitano wrote in a 2009 letter to our Chairman, Mr. Bishop, "While the U.S. Border Patrol recognizes the importance and value of wilderness area designations, they can have a significant impact on U.S. Border Patrol operations in border regions. This includes that these types of restrictions can impact the efficacy of operations and be a hindrance to the maintenance of officer safety."

Former Department of the Interior Secretary Salazar stated in 2010, "We have seen that national security and environmental conservation are mutually supporting goals."

It was with all of the above in mind that I introduced H.R. 3593, the Securing Our Borders and Wilderness Act, which provides a statutory fix to an issue perpetuated by bureaucracy that, as we have said, is endangering both border security and our Federal lands. The bill allows for the Department of Homeland Security to conduct border security activities on Federal lands in a manner that, to the greatest extent possible, also protects wilderness areas. I look forward to highlighting how my bill will help to alleviate the impediments Border Patrol agents are facing at present, as well as the issues more broadly that we will be discussing today.

I want to thank all of our witnesses for taking the time to speak to this Committee. I yield back, Mr. Chairman.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF THE HON. MIKE JOHNSON, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF LOUISIANA

Mr. Chairman, I want to thank you for holding this critical hearing to explore the challenges faced by Border Patrol agents on Federal borderlands, as well as for your trip with Chairman Bishop earlier this month to visit the border with Mexico to get an update on the state of the Nation's border security.

Our government has placed the men and women who patrol our border, as well as the American citizens who live on or near the border, in a very difficult position. As is all too often the case, Washington has created bureaucratic hurdles that have adversely impacted the Border Patrol agent's abilities to shore up our southern border. While well-intentioned, the Memorandum of Understanding that the Departments of Interior, Homeland Security, and Agriculture entered into has created challenges and delayed Border Patrol agent's abilities to respond to illegal activity in Federal lands adjacent to the border.

Nearly 35.3 percent of the southern border runs along or through federally owned lands. Understanding the regulatory difficulties posed to Border Patrol due to the Wilderness Act, NEPA, ESA and other policies, illegal immigrants, human traffickers, and drug smugglers have targeted Federal lands to conduct their illicit activities.

These illicit activities not only threaten the personal security of those who live along the border, but they have caused extensive ecological and environmental damage. Human waste, garbage, wildfires, tunnels and the like have contributed to serious damage to species habitat.

In a July 2011 DOI report, the U.S. Fish and Wildlife Service (FWS) identified mass illegal immigration as a likely contributing factor in the 79 percent decline in the U.S. Sonoran pronghorn population between 2000 and 2002 at the Organ Pipe Cactus National Monument—79 percent. That is a massive impact to an endangered species that is found nowhere else in the world.

Republican and Democrat administrations alike have highlighted the need to address this issue. For example, former DHS Secretary Napolitano wrote in a 2009 letter to Chairman Bishop, "While the USBP recognizes the importance and value of wilderness area designations, they can have a significant impact on USBP operations in border regions. This includes that these types of restrictions can impact the efficacy of operations and be a hindrance to the maintenance of officer safety." Former DOI Secretary Salazar stated in 2010, ". . . we have seen that national security and environmental conservation are mutually supporting goals."

It was with all of the above in mind that I introduced H.R. 3593, the Securing Our Borders and Wilderness Act, which provides a statutory fix to an issue perpetuated by bureaucracy and endangers both border security and our Federal lands. The bill allows for DHS to conduct border security activities on Federal lands, in a manner that, to the greatest extent possible, protects wilderness areas. I look forward to exploring how my bill will help to alleviate the impediments Border Patrol agents face at present, as well as the issue more broadly today.

Thank you to all of our witnesses for taking the time to speak to this Committee, and I yield back.

---

Mr. WESTERMAN. The gentleman yields back.

I now recognize the Ranking Minority Member of the Full Committee, Mr. Grijalva of Arizona, for an opening statement.

**STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. GRIJALVA. Thank you, Mr. Chairman. And I appreciate the courtesy.

The Ranking Member has outlined my point of view on this hearing very well. I can't do much better. But there is an irony today. We are at the dawn of another senseless mass murder, 17 students

and 15 wounded, some critically, in Florida, by a shooter with a semiautomatic AR-15.

No doubt the House will pause today, and we should, to give our condolences and prayers to the victims and the families. Then there will be a lot of talk about mental health, and then we are going to ask people to be more vigilant, but nothing else. No legislative efforts to reduce gun violence. No prohibition of bump stocks. No universal background checks. Nothing. NRA will keep that from happening. They will talk about the sanctity of the Second Amendment and people's individual rights, and that will take precedent over reducing gun violence, that doesn't take the right from Americans to own and have guns.

But, on the contrary, the Majority of this Committee has—wherever that legislation is to allow silencers on public land, to allow armor-piercing ammunition, to allow lead contamination once again to kill wildlife. And then today, we are discussing another set of rights. And the agenda that the Department of Homeland Security wants to have ultimate power to waive laws, ignore the public's right to know, and within the 100-mile zone, to ignore and handcuff due process and basic rights and constitutional guarantees that all Americans have.

I mention that because the question today is simply, does Homeland Security and Border Patrol need more power beyond the unprecedented authority that the Ranking Member outlined since 2005 on our public lands, and within that 100-mile area, the authority that already exists relative to search and seizure, probable cause, that are handcuffed in that area? And we are asking about a unilateral authority to an agency with no review, no accountability, and no responsibility for any negative consequences.

Besides the constriction of—this is all a tactical response, Mr. Chairman, a response in enforcement only justified by some level of political hysteria. Things like the mass invasion of MS-13 pouring over the border. Not true. The gateway in my district of drug smuggling and poisoning of America. That was a tweet that came from the Majority Committee, which described that part of my district. It was cute, but it was a lie.

And I can swear to you, Mr. Chairman, nowhere in my district is there a large pharmaceutical plant like Pfizer pumping out Oxy or other opioid-based drugs that have savaged America and made a huge profit for them, and continue to be overprescribed. To attack drug and human smuggling, those cartels and organized crimes need a strategic, focused, consistent, law enforcement response, not a pointless \$25 billion wall, 10,000 more private for-profit beds, waiving environmental laws, handcuffing basic individual and constitutional rights, and, fundamentally, Mr. Chairman, creating a distinct second class America in that part of the borderlands, that 100 miles of the southwest.

This hearing comes at a time when we are engulfed in a debate about DACA, engulfed in a debate about what will happen with border security. This is not a time for exaggeration, untruths, generalizations, scare tactics that won't solve anything. And nor does the position that DHS has just taken to oppose any reasonable bipartisan Senate compromise on DACA, that shouldn't be the guide. They only endorse the most extreme pieces of legislation that have

come out. No bipartisan, no compromise legislation will they tolerate.

I think what we are doing here today is handing over to an agency extrajudicial power. We are handing over to an agency a police function, turned into much more than that. The border region should not be under martial law, it should not feel like an occupied part of America, and should not be treated different than any other place. People in Utah, Montana, and Wyoming would not appreciate what is going on in the borderlands.

I thank you for the witnesses today, and yield back.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF ARIZONA

The question for today is whether the Border Patrol needs even more power. What do they have now?

The REAL ID Act of 2005 gave the Department of Homeland Security authority to waive “all legal requirements” that might impede the construction of barriers and roads. Think about that for a second. All legal requirements. On any land, public or private. That includes any Federal law that gives you and me the right to basic things like clean water, clean air, the right to participate in government decisions, and the right for native Americans to maintain their sacred burial grounds. It also includes any state and local law that might get in the way. The Congressional Research Service called the authority “unprecedented.”

That waiver authority has had consequences for nearby communities. It has produced flooding, erosion, death of animals that endangered or threatened, and loss of economic opportunities like ecotourism in low income communities, for starters.

As anti-democratic, unprecedented and harmful as that waiver authority is, it is not enough for the Majority. They want to expand it with authority they call “waiving certain Federal environmental laws.” Let me translate that for you. They want to waive “all legal requirements” when the Border Patrol is working not just on walls and roads, but also tactical infrastructure and technology which applies to a much larger swath of Border Patrol activity.

They also want to remove the requirement that the American people are notified when the waiver authority is used on Federal lands. That effectively allows individual Border Patrol agents to decide on the spot whether to waive any legal requirements on Federal lands within 100 miles of the border.

Aside from the occasional anecdote, hear-say, and outdated reports, there is no evidence that access to Federal lands is a problem. An existing Memorandum of Understanding already facilitates the Border Patrol and Federal land management agencies to work smoothly together on accessing Federal lands, according to past testimony from the Border Patrol.

It’s not clear to me why, of all the crimes committed in the United States, unapproved entry into the country is the only one to merit a waiver-fueled police state in the eyes of the Majority. Given the Majority’s recent letter in defense of the rights of the Bundys, it is clear that even repeated domestic terrorism doesn’t rise to that level.

The creeping militarization of our border has done little to slow border crossings. But it has affected our border communities.

I should know. I have border communities in my district. If the Chairmen of this Full Committee and Subcommittee had told me they were taking a Committee-funded trip to my district and surrounding area, I could have shown them the non-border patrol view of border communities. They would have found local economies that rely on cross-border commerce. They would have seen a desert landscape arbitrarily split by a wall, blocking local wildlife from their natural migration patterns, and scarring the ecology of the entire region. And they would have heard from the people who call this region home about what it means to have to surrender their basic rights to the Border Patrol.

Instead, they saw what they wanted to see. Chairman Bishop went so far as to tweet to me directly that my “district has become the gateway for cartels to smuggle dangerous drugs into the United States and poison American communities.” That view of our border communities, and my district, is based on some very old and very dangerous stereotypes and it is just not true. But those are the kinds of views moti-

vating this campaign to destroy the quality of life in border communities with this wall.

Does the Border Patrol need even more power than the unprecedented power they already have?

The clear answer is no.

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Mr. WESTERMAN. The gentleman's time has expired.

I want to thank our witnesses for being here today, and I will now take a moment to give a brief introduction of our witnesses.

Mr. Andrew Arthur is a Resident Fellow in Law and Policy at the Center for Immigration Studies and a former immigration judge; Mr. Dan Bell is President of the ZZ Cattle Corporation; Mr. Scott Nicol is the volunteer Co-Chair of the Sierra Club Borderlands Campaign; and Mr. Brandon Judd is President of the National Border Patrol Council.

Let me remind the witnesses that under our Committee Rules, you must limit your oral statements to 5 minutes, but your entire statement will appear in the hearing record. Our microphones are not automatic. When you start your testimony, please push the button, it will turn green. After 4 minutes, the yellow light will appear on the timer. And when the red light comes on, I will ask that you please complete your statement. I will also allow the entire panel to testify before questioning the witnesses.

The Chair now recognizes Mr. Arthur to testify for 5 minutes.

**STATEMENT OF THE HONORABLE ANDREW R. ARTHUR,  
RESIDENT FELLOW IN LAW AND POLICY, CENTER FOR  
IMMIGRATION STUDIES, WASHINGTON, DC**

Mr. ARTHUR. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member McEachin, and members of the Subcommittee on Oversight and Investigations, I appreciate you inviting me here today to discuss these important issues.

Over the past few years, I have had the opportunity to experience the natural beauty of our national parks. Recently, however, I have had the misfortune of seeing the degradation caused by illegal cross-border traffic. Paths worn through natural landscapes and abandoned rafts, garbage, and human waste were all evidence of illegal entry.

While cross-border traffic has declined in my 25 years in the field of immigration, the numbers are still staggering. In Fiscal Year 2017, Border Patrol apprehended 303,916 individuals along the southwest border. Not all of this traffic consisted of aliens coming to the United States for work. Last year, for example, Border Patrol seized 9,346 pounds of cocaine, 953 pounds of heroin, 10,328 pounds of methamphetamines, and 181 pounds of fentanyl. On my calculations, this is enough fentanyl alone to kill 36 million Americans.

In the last fiscal year, Border Patrol agents apprehended 8,531 criminal aliens. They also arrested 228 aliens associated with MS-13, a gang so organized and dangerous that in 2012 the Obama Treasury Department designated them a transnational criminal organization.

As my written testimony reveals, suspected terrorists are also believed to have attempted illegal entry along our southern border.

Border Patrol agents must confront well-organized, well-funded, and extremely violent operatives in their attempts to secure the southwest border.

Transnational criminal organizations like the Gulf Cartel, Los Zetas, and the Sinaloa Cartel, founded by the notorious Joaquin “El Chapo” Guzman, control territory and smuggling routes along the border, and profit from the illegal cross-border traffic of aliens, drugs, and other contraband. The drugs that they deliver flow into every corner of our country, ruining lives, destroying families, and undermining our communities and our way of life.

But the consequences are worse for Mexico. In fact, last year was that country’s most violent on record. Because of these groups, corruption there is rampant and civil society reels. And as the Mexican Government has targeted these groups, the situation has gotten worse because rival cliques war over smuggling routes and territory, with innocent civilians caught in the crossfire.

But you don’t need to believe me about the violent nature of these criminals. Last week’s *Wall Street Journal* quoted an opponent of the President’s wall proposal whose family owns land near the Santa Ana Wildlife Refuge in Alamo, Texas. She is concerned the wall would divide her property, resulting in, “drug smugglers attacking farmworkers in hopes of getting the code needed to open an access gate.” She understands the danger.

However, our agents have been hamstrung in responding to these threats. As you know, Border Patrol must obtain permission from Federal land management agencies before its agents can maintain roads and install critical infrastructure such as surveillance equipment when operating on Federal lands. The agency’s access to portions of those lands along the southwest border has also been limited by land management laws.

Given the threat that illegal cross-border traffickers pose to our communities and our national security, and the well-funded and organized nature of the organizations that profit from that traffic, this is unacceptable. We all agree that protecting the American people must be the first duty of government.

Border Patrol must be able to move freely across Federal lands when necessary and have unconstrained access to a tactical infrastructure and maintain needed access roads. This will not only make our country safer and more secure, it will also prevent the environmental degradation caused by such traffic and protect the land management employees who work to preserve that land.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Arthur follows:]

PREPARED STATEMENT OF ANDREW R. ARTHUR, RESIDENT FELLOW IN LAW AND  
POLICY, CENTER FOR IMMIGRATION STUDIES

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).<sup>1</sup>

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 the United States between the ports of entry.<sup>2</sup> 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 6 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.<sup>3</sup> In addition, I played a role in the drafting of the Homeland Security Act of 2002,<sup>4</sup> 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,<sup>5</sup> 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 8 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 3 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.<sup>6</sup>

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, 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.

<sup>1</sup>*About the Office*, United States Department of Justice, Executive Office for Immigration Review, available at: <https://www.justice.gov/eoir/about-office>.

<sup>2</sup>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](https://help.cbp.gov/app/answers/detail/a_id/1084/~legal-authority-for-the-border-patrol).

<sup>3</sup>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>.

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

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

<sup>6</sup>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>.

## 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.<sup>7</sup>*

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.<sup>8</sup>*

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 INA<sup>9</sup> 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 INA<sup>10</sup> 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 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 INA<sup>11</sup> 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),<sup>12</sup> 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 INA,<sup>13</sup> “[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

<sup>7</sup>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](https://help.cbp.gov/app/answers/detail/a_id/1084/-/legal-authority-for-the-border-patrol).

<sup>8</sup>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/homesecc/R42138.pdf>.

<sup>9</sup>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>.

<sup>10</sup>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>.

<sup>11</sup>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>.

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

<sup>13</sup>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>.

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 INA,<sup>14</sup> 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.”<sup>15</sup>

In addition, there are several criminal penalties for illegal entry. For example, section 275(a) of the INA<sup>16</sup> 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.*

Section 274(a) of the INA contains criminal penalties for alien smuggling.<sup>17</sup> 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.”<sup>18</sup> 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.”<sup>19</sup>

Border Patrol is not limited in its responsibilities to the enforcement of laws relating to aliens. Under section 287(a)(5) of the INA,<sup>20</sup> 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.*<sup>21</sup>

(Internal footnote omitted).

<sup>14</sup> 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>.

<sup>15</sup> *Id.*

<sup>16</sup> 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>.

<sup>17</sup> 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>.

<sup>18</sup> *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>.

<sup>19</sup> *Id.*

<sup>20</sup> 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>.

<sup>21</sup> 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/homesecc/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 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,<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

There are, essentially, four different statutes that authorize the Department of Homeland Security (DHS) to erect barriers along the border:<sup>25</sup> the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),<sup>26</sup> the REAL ID Act of 2005,<sup>27</sup> the Secure Fence Act of 2006,<sup>28</sup> and the Consolidated Appropriations Act, 2008.<sup>29</sup> These legislative provisions are consolidated<sup>30</sup> at 8 U.S.C. § 1103 note.<sup>31</sup>

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

<sup>22</sup> 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>.

<sup>23</sup> 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>.

<sup>24</sup> 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/>.

<sup>25</sup> 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/homsec/R43975.pdf>.

<sup>26</sup> 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>.

<sup>27</sup> 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>.

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

<sup>29</sup> 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>.

<sup>30</sup> 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/homsec/R43975.pdf>.

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

illegal entry into the United States.”<sup>32</sup> 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.”<sup>33</sup> 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.<sup>34</sup>

Section 102 of the REAL ID Act amended section 102(c) of IIRIRA<sup>35</sup> 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 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*

<sup>32</sup> 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>.

<sup>33</sup> *Id.* at 102(c).

<sup>34</sup> *Id.* at 102(d).

<sup>35</sup> 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>.

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.<sup>36</sup>

In *Defenders of Wildlife v. Chertoff*,<sup>37</sup> 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 2008,<sup>38</sup> 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, 2008,<sup>39</sup> 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.”<sup>40</sup>*

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 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.

<sup>36</sup>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>.

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

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

<sup>39</sup>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>.

<sup>40</sup>*Id.*

## 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 CBP,<sup>41</sup> 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 CBP,<sup>42</sup> 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 3 months of FY 2018,<sup>43</sup> Border Patrol seized 161 additional pounds of fentanyl, a drug the Drug Enforcement Administration states<sup>44</sup> is “30–50 times more potent than heroin and 50–100 times more potent than morphine.” Oxford Treatment Center identifies<sup>45</sup> 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 reports<sup>46</sup> 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.<sup>47</sup>

In October 2012, the Department of Treasury designated MS-13 as a “transnational criminal organization” (TCO).<sup>48</sup> 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 United States is consolidated and funneled to the group’s leadership in El Salvador.<sup>49</sup>*

Attorney General Jeff Sessions, in prepared remarks<sup>50</sup> 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*

<sup>41</sup>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>.

<sup>42</sup>CBP Enforcement Statistics FY2018, U.S. Customs and Border Protection (undated), available at: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

<sup>43</sup>*Id.*

<sup>44</sup>FAQ’s-Fentanyl and Fentanyl-Related Substances, U.S. Drug Enforcement Administration (undated), available at: <https://www.dea.gov/druginfo/fentanyl-faq.shtml>.

<sup>45</sup>Fentanyl: What Is a Lethal Dosage?, Oxford Treatment Center (undated), available at: <https://www.oxfordtreatment.com/fentanyl/lethal-dose/>.

<sup>46</sup>CBP Enforcement Statistics FY2018, U.S. Customs and Border Protection (undated), available at: <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

<sup>47</sup>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>.

<sup>48</sup>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>.

<sup>49</sup>*Id.*

<sup>50</sup>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>.

*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 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.<sup>51</sup> 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 reported:<sup>52</sup>

*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 U.S.-Mexico border and an illicit crossing into America.*

*The business was set up by Anthony Joseph Tracy, a U.S. citizen and Muslim convert, who told federal agents that he had helped 272 Somalis travel illegally to the U.S., 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.<sup>53</sup>*

*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 U.S., 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 U.S. 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 U.S. 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.*

<sup>51</sup> Warren Richey, *Are terrorists crossing the U.S.-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>.

<sup>52</sup> *Id.*

<sup>53</sup> *Who are Somalia's al-Shabab?*, BBC News (Dec. 22, 2017), available at: <http://www.bbc.com/news/world-africa-15336689>.



Another intriguing reference in that article<sup>54</sup> 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 U.S. Government offered a \$5 million reward for information leading to his capture.*

*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 U.S. 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*,<sup>55</sup> a formerly classified document revealed that in 2004, "officials at the U.S. 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.<sup>56</sup> The paper reports<sup>57</sup> 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,"<sup>58</sup> 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)."*<sup>59</sup>

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 Customs Enforcement (ICE) has reported: "Moving human beings as cargo pays in the billions of dollars for transnational criminal smuggling organizations."<sup>60</sup> 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.*<sup>61</sup>

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> 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>.

<sup>59</sup> *Id.*

<sup>60</sup> *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>.

<sup>61</sup> *Id.*

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

As *CNN* explained in December 2017:<sup>62</sup> “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.”<sup>63</sup>

To illustrate this point, the United States Department of State (DOS) latest travel advisory for Mexico<sup>64</sup> 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* explains<sup>65</sup> 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.*<sup>66</sup>

In Guerrero:

*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.*<sup>67</sup>

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.*<sup>68</sup>

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.*<sup>69</sup>

With respect to Tamaulipas, DOS warns:<sup>70</sup>

*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

<sup>62</sup>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>.

<sup>63</sup>Christopher Woody, *The State Department is telling U.S. 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>.

<sup>64</sup>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>.

<sup>65</sup>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-htmistory.html>.

<sup>66</sup>*Id.*

<sup>67</sup>*Id.*

<sup>68</sup>*Id.*

<sup>69</sup>*Id.*

<sup>70</sup>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>.

of Mexico and the U.S. border, highways that cross it, and the energy infrastructure in the area.”<sup>71</sup>

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

According to *Business Insider*:<sup>74</sup>

*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.”<sup>75</sup> In a 2012 article, the *New York Times* reported that Guzman formed the Sinaloa cartel following the 1989 arrest of Miguel Angel Felix Gallardo,<sup>76</sup> “El Padrino,” a one-time policeman and the head of the former Guadalajara cartel.<sup>77</sup>

As the *Los Angeles Times* describes<sup>78</sup> 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.*

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

With respect to Baja California, DOS warns:<sup>81</sup>

*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*

<sup>71</sup> 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>.

<sup>72</sup> June S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations (R41576)*, Cong. Research Serv. (Apr. 25, 2017), at 16, available at: <https://fas.org/spp/crs/row/R41576.pdf>.

<sup>73</sup> *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>.

<sup>74</sup> 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>.

<sup>75</sup> 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-htmistory.html>.

<sup>76</sup> 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>.

<sup>77</sup> 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>.

<sup>78</sup> 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-htmistory.html>.

<sup>79</sup> Nuevo León, Border Legislative Conference (undated), available at: <http://www.borderlegislators.org/nuevo-leon-eng.htm>.

<sup>80</sup> Membership, Border Legislative Conference (undated), available at: <http://www.borderlegislators.org/membership-eng.htm>.

<sup>81</sup> Mexico Travel Advisory, U.S. Dept of State (Jan. 10, 2018), available at: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

*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 reports:<sup>82</sup> “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.*<sup>83</sup>

According to DOS:<sup>84</sup> “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.<sup>85</sup>

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.”<sup>86</sup> The *Irish Times* reported<sup>87</sup> 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.*<sup>88</sup>

Finally, DOS states:<sup>89</sup> “Violent crime and gang activity are common in parts of Nuevo Leon state.”

An April 2017 CRS report<sup>90</sup> 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.*<sup>91</sup>

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*

<sup>82</sup> *Id.*

<sup>83</sup> 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>.

<sup>84</sup> 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>.

<sup>85</sup> 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>.

<sup>86</sup> 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>.

<sup>87</sup> Sorcha 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>.

<sup>88</sup> *Id.*

<sup>89</sup> 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>.

<sup>90</sup> 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>.

<sup>91</sup> *Id.* at 7.

*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.*<sup>92</sup>

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) website<sup>93</sup> 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 entrants, a number of which were marked by the presence of deflated rafts that crossers had used to ford the river:

<sup>92</sup> *Id.* at 25.

<sup>93</sup> *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>.



While Texas law<sup>94</sup> 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.*<sup>95</sup>

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.

<sup>94</sup>Tex. Agric. Code §201.0225 (2018), available at: <http://codes.findlaw.com/tx/agriculture-code/agric-sect-201-0225.html>.

<sup>95</sup>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.<sup>96</sup> 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).<sup>97</sup>*

(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.”<sup>98</sup> It admits: “Differences in missions and jurisdictional complexity among these agencies have been identified as potentially hindering border control.”<sup>99</sup>

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.<sup>100</sup>*

The tension among these agencies in executing their individual missions on Federal lands was the subject of an October 2010 report<sup>101</sup> 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 found,<sup>102</sup> 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*

<sup>96</sup> 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>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *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>.

<sup>102</sup> *Id.*

*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 “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 MOU<sup>103</sup> 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 10 document for a post-September 11 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.<sup>104</sup> 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 . . . .*<sup>105</sup>

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.

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.<sup>106</sup> To assess the environmental impact of illegal immigration on Federal lands, Ms.

<sup>103</sup> *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>.

<sup>104</sup> *Id.*, at 4.

<sup>105</sup> *Id.*

<sup>106</sup> 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>.



Kephart filed a Freedom of Information Act (FOIA) seeking documentation related to this issue.<sup>107</sup> 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.<sup>108</sup>*

In June 15, 2006 testimony<sup>109</sup> 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 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*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *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>.

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* reported<sup>110</sup> 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 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.<sup>111</sup> 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.<sup>112</sup>*

That website explains:<sup>113</sup>

*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 notes<sup>114</sup> that border trash “has been shown to affect human health, the environment and economic wellbeing.” Included among the specific impacts listed<sup>115</sup> 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 website,<sup>116</sup> 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.”<sup>117</sup>

<sup>110</sup>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>.

<sup>111</sup>*Arizona Border Trash*, Ariz. Dep't of Environmental Quality (undated), available at: <https://www.azbordertrash.gov/about.html>.

<sup>112</sup>*Id.*

<sup>113</sup>*Id.*

<sup>114</sup>*Id.*

<sup>115</sup>*Id.*

<sup>116</sup>*Id.*

<sup>117</sup>*Id.*

Similar points are made in the Southern Arizona Project 2016 Border Report from BLM.<sup>118</sup> 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.<sup>119</sup>*

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.<sup>120</sup>*

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.

#### 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 describes<sup>121</sup> 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*

<sup>118</sup> *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>.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Kris Eggle*, U.S. Nat'l Park Service (updated May 24, 2016), available at: <https://www.nps.gov/orpi/learn/historyculture/kris.htm>.

*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 article<sup>122</sup> in the *Seattle Times*, captioned “Park rangers’ jobs increasingly dangerous.”

While that article discussed the risks faced by Park Rangers nationwide, it specifically quoted<sup>123</sup> 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 noted:<sup>124</sup> “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 website<sup>125</sup> 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.”

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 testimony<sup>126</sup> 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 coordinating border security work with local federal land managers.*

<sup>122</sup> 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/>.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Securing our Border on Federal Lands: Problem Overview*, House Comm. on Natural Resources (undated), available at: <https://naturalresources.house.gov/info/borderoverview.htm>.

<sup>126</sup> *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>.

*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.*<sup>127</sup>

It is clear from the foregoing that 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.

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.<sup>128</sup> 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 . . .<sup>129</sup>

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."

<sup>127</sup> *Id.*

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

<sup>129</sup> *Id.*

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:

*[All 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.

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Mr. WESTERMAN. The Chair now recognizes Mr. Bell to testify for 5 minutes.

**STATEMENT OF DAN BELL, PRESIDENT, ZZ CATTLE CORPORATION, NOGALES, ARIZONA**

Mr. BELL. Chairman Westerman, Ranking Member McEachin, and members of the Committee, good morning. My name is Daniel Bell. I am a third-generation rancher from Nogales, Arizona. Our family has been ranching on the same piece of country just west of the city of Nogales since the late 1930s. The ranch has approximately 10 miles of actual border with Mexico, 2 miles of bollard fence, a few hundred yards of vehicle barrier, and the remaining 8 miles is a four-strand barbed wire fence.

In the mid-1990s, illegal border crossers impacting the ranch were at an all time high. Groups of 50 or larger were being apprehended at any given time. Violence along the border was also spiking.

In 1998, Border Patrol Agent Alexander Kirpnick was murdered by drug smugglers on our ranch. On May 12, 2010, the ranch foreman from Mexico, our neighboring ranch in Mexico, was murdered and found in a shallow grave. On December 17, 2010, Border Patrol Agent Brian Terry was murdered on our neighbor's ranch directly to the north of us. And on March 27 of 2010, my friend, Rob Krentz, was murdered on his ranch in Cochise County.

With the increase in illegal border crossers came an increase in fire frequency on the ranches along the border. Failure to extinguish warming fires, fires lit for those in distress, and fires lit by smugglers to create diversions were common. Year after year, fires started by illegal border crossers have cost the U.S. taxpayers millions upon millions of dollars.

Much of our time on the ranch is spent fixing fences cut by illegal border crossers, dealing with trespass cattle from Mexico, and fixing water developments illegal border crossers have broken, leaving livestock and wildlife to suffer. Trash left behind by illegal border crossers is a huge problem. We have literally picked up many tons of discarded duffel bags, backpacks, clothing, water bottles, and hauled them off to the landfill, only to find them trashed again several months later.

The trash left behind can be dangerous to curious livestock as well as wildlife. The situation on the ground is not good for wildlife, yet the environmental groups will throw out concerns for wildlife and endangered species to thwart border security. In many cases, the Endangered Species Act is being misapplied to species

occupying the border region. More often than not, they are abundant and healthy throughout their extensive range in Mexico and as far south as South America.

Along the same lines, the wilderness designations along the border have the effect of creating unenforceable corridors and pathways into the United States. Vehicle access and the use of mechanized and motorized equipment are not permitted. These are the areas that tend to be the most heavily used drug trafficking routes. Access, infrastructure, and roads are drastically needed along the international boundary with Mexico. These measures will reduce the footprint of illegal border activity and benefit the natural resources.

Implementing border projects on federally owned borderland is a lengthy process. In 2001, the Border Patrol had a desire to build a 4-mile long road along the border on our ranch. Actual construction began in 2011. As of today, we can see light at the end of the tunnel, nearly 17 years later.

In recent years, there has been an added emphasis on streamlining the process and implementing projects in a timely manner on the Coronado National Forest, and they have designated a border liaison to assist Border Patrol in planning and implementation. The Coronado Forest and the Border Patrol are to be commended for the many recent accomplishments along the border we see today. I can attest to the effectiveness of these measures and how illegal activity has been reduced where law enforcement has been given more access to the border. This in turn produces the footprint of law enforcement which has a positive effect on the environment.

I believe that this is a good model that other Federal agencies and state land management agencies need to adopt. Over the years, I have witnessed the construction of 2 miles of bollard-style fence, 4 miles of road systems along the international boundary, the placement of remote video surveillance system towers and integrated fixed towers.

Also, new border roads have enabled wildland firefighters to respond rapidly and get control of fires. Continuing to establish better access roads along the international boundary with Mexico is vital. Being able to get to the border is paramount, if one expects to defend it.

There is still work to be done on what is probably some of the most challenging terrain encountered along the border. It will not be easy, but I have faith we will get it done. I have witnessed significant improvements over the past decade and it coincided with implementation of the measures that I have mentioned here today.

Thank you for your time and allowing me to come before you today.

[The prepared statement of Mr. Bell follows:]

PREPARED STATEMENT OF DANIEL G. BELL, PRESIDENT, ZZ CATTLE CORPORATION,  
NOGALES, ARIZONA

Good morning my name is Daniel G. Bell. I am a third-generation rancher from Nogales, Arizona and President of the ZZ Cattle Corporation. I am a University of Arizona Graduate with a Bachelor of Science Degree in Renewable Natural Resources, with emphasis in Rangeland Management. Our family has been ranching on the same piece of country since the late 1930s. The ranch is located west of the

city of Nogales, Arizona, along the border with Mexico. The ranch is located within the Nogales Station area of responsibility in the Tucson Sector of the Border Patrol.

Our ranch is nearly 40,000 acres (62.5 sq. mi.) in size and has approximately 10 miles of actual border with Mexico. Apart from a 2-mile stretch of Bollard Fence and a few hundred yards of vehicle barrier, the remainder of the international boundary with Mexico is comprised of a 4-strand barb wire cattle fence. The ranch consists primarily of four Federal grazing permits with the USDA forest service, three of which are situated directly on the international boundary with Mexico. The ranch also utilizes private land and Arizona State Trust Land. The entire ranch is subject to negative impacts revolving around illegal border crossers and drug smuggling.

While there have always been impacts regarding illegal border crossers and drug smuggling on the ranch, things changed drastically in the 1990s! With the implementation of Operation Gatekeeper in California and Operation Hold the Line in Texas, illegal border traffic was essentially forced into Arizona. The increased illegal border traffic forced our border cities and towns to fortify fencing along the border, which in turn forced the illegal activity on to the adjacent ranch lands. The areas where it was once common to see one or two illegal border crossers, exploded into groups ranging in the number of 50 or more. With that increase, came increases in property damage, theft, fire frequency and violence. Our fences were being cut, watering facilities were being tampered with and drained, our houses were being broken into and valuables were taken. We even had vehicles stolen. On one occasion, the wife of one of our employees was forced at knife point to prepare meals for a small group. Upon arriving home, our employee tracked the illegal border crossers and led authorities to their location.

Over the years, violence in the border region had been on the increase. Nogales Station agents had been fired upon and in a few incidents, agents were wounded by apparent sniper style shootings. In 1998, Border Patrol Agent Alexander Kirpnick was murdered as he was apprehending drug smugglers in one of our grazing pastures. On March 27, 2010 while checking livestock, watering facilities and fences, my friend Rob Krentz was murdered on his ranch in Cochise County. On May 12, 2010, the ranch foreman from the neighboring ranch in Mexico was found murdered and buried in a shallow grave after he had gone missing a month earlier. On December 17, 2010, Border Patrol Agent Brian Terry, a member of BORTAC, the elite tactical unit of the Border Patrol, was murdered on the neighboring ranch to the north. His team was in the area to rid the area of violent rip-off crews that were targeting illegal border crossers and drug carriers.

In addition to an increase in violence over the years, fire frequency had also increased on the ranches along the border. Failure to extinguish warming fires, along with fires lit by illegal border crossers in distress, and fires lit by smugglers to create diversions were most common. In the mid 2000s, an unoccupied house on the Bear Valley portion of our ranch was set ablaze by undocumented aliens when they attempted to light the propane powered lights. In 2011, we experienced one of the worst fire seasons ever. I believe there were 13 different fires that year that burned approximately two-thirds of the entire ranch. Only one of those fires was considered a naturally caused fire, all the others were either diversion fires or distress fires. In the years that followed, there have been many more fires started by illegal border crossers that have cost the U.S. taxpayers millions upon millions of dollars to extinguish.

Because the ranch relies on only the grass production from summer monsoon rains, we utilize rotational grazing systems that allow for different seasons of use and rest. Each grazing permit is divided into fenced pastures and the livestock are moved into fresh pastures upon reaching a specified utilization level. Under normal circumstances this is a substantial undertaking with 4 separate herds and 30 pastures. When you ranch on or near the border you can expect that fences will be cut by illegal border crossers on a regular basis, causing ranchers to constantly inspect fences to ensure cattle remain in the proper pasture. Also, when the international boundary with Mexico is a 4-strand barb wire fence, you can expect to experience problems with trespass cattle from Mexico, which also takes considerable time and effort to get the cattle back to our Mexican neighbors. The rancher bears the cost of the damage at the hands of those engaged in the illegal border activity.

When you live in and operate a ranch in an arid environment, water is an essential piece in the health and welfare of livestock, as well as the wildlife that have grown accustomed to the water we provide. Most of the water systems located on the ranch are outfitted with water faucets to allow anyone to get drink. Unfortunately, illegal border crossers have in many instances broken the water develop-



ments and drained thousands and thousands of gallons of water. Again, the rancher bears this cost, as well as, livestock and wildlife dependent on this vital resource.

Several years ago, we participated in a University of Arizona study that estimated the additional costs that border ranchers face in the wake of illegal immigration. What the study indicated is that for every 100 pounds of weight that a calf puts on over its life on the ranch, there is an additional \$15.00 in cost to the rancher. Those are the costs that I mentioned above. The average weight of a steer or heifer when marketed is 500 lbs which equates to \$75.00 per head. If a ranch sold 300 head, it would equate to \$22,500.00 which is a substantial additional cost.

In addition to the additional costs, the trash left behind by illegal border crossers is a huge problem. We have literally picked up many tons of discarded duffel bags, back packs, clothing, water bottles and hauled it off to the landfill, only to go to the same spot a few months later and clean it up again. In recent years trash has been bagged up and hidden in shrubs to conceal the movement of the illegal border crossers. The trash left behind is not only unsightly but also can be dangerous to livestock and wildlife. Curious animals have been known to eat plastic bags containing remnants of food. Cloven hooved animals like deer, javelina and cattle have had issues with food containers like tuna and sardine cans. The cans get stuck on an animal's foot and eventually wear through the bottom of the can, causing it to ride up the animal's leg and eventually constrict the leg as the animal grows.

Where border security measures are lacking, the situation on the ground is not a good for wildlife, yet "radical environmental groups" will throw-out concerns for wildlife and endangered species to thwart border security. Much of the area along the border is fringe habitat for so-called threatened and endangered species. In many cases, the Endangered Species Act (ESA) is being misapplied to species that are abundant and healthy throughout their extensive range in Mexico and as far as South America. There is a definite double standard when the border is used to define a species' limited range in the United States to garner protections under ESA, but in the next breath we are told you can't have border security because wild-life species do not recognize borders.

Along the same lines wilderness designations and natural areas along the border have the effect of creating unenforceable corridors and pathways into the United States, where vehicles, as well as mechanized and motorized equipment are not permitted. In fact, these areas are the most heavily drug trafficked routes on the ranch. We have had chance encounters with armed drug smugglers and their human mules in the Pajarito Wilderness and a local chapter of the Boy Scouts of America will not go backpacking in the area after an encounter they had on one of their field days. Wilderness areas that limit access are available to Border Patrol Agents on only foot or horseback.

Access and infrastructure in the form of roads is drastically needed along the border, otherwise the area of operation remains unwieldy. By creating better access along the international boundary, the footprint of illegal border activity will be greatly reduced.

With better access, infrastructure like barriers, walls and fences can be constructed. Better access will also facilitate implementation of technology in the form Remote Video Surveillance Systems (RVSS), Integrated Fixed Towers (IFTs) and Mobile Surveillance Capable (MSC) Vehicles. Agents will be more efficient in securing the border when the area they are responsible for patrolling is significantly reduced.

The reality of gaining access and constructing infrastructure along the border on Federal lands is a lengthy process and it needs to be streamlined. In 2001, Border Patrol had a desire to build a 4-mile road, referred to by some as the 222-interconnector road, along the border on our ranch. Actual construction began in 2011 and as of today there is light at the end of the tunnel, nearly 17 years later. In recent years there has been added emphasis on streamlining the process and implementing projects in a timely manner. For several years now, the Coronado National Forest has had a liaison assigned, to assist Border Patrol and try to streamline projects on the Forest.

The Nogales Ranger District and the Border Patrol are to be commended for many of the recent accomplishments along the border today. I can attest to the effectiveness of these measures and how illegal traffic has been reduced in areas where law enforcement has been given more access to the border. That access reduces the footprint of the illegal activity as well as the footprint required for law enforcement, which is a positive for the environment. I believe that this is a good model that other Federal and state land management agencies need to adopt.

Until access and infrastructure can be established in rugged and remote areas, it is extremely important that we do not lose focus of the other important aspects of border security. Air assets like helicopters, and fixed wing aircraft, as well as

drones, need to be available to detect illegal activity. Providing support from above, inserting agents, guiding them to intercept points, and providing the much-needed situational awareness.

Another area of importance, especially in remote areas is the lack the necessary communications technology for both law enforcement and civilians. This is important as there are citizens out recreating in the forest despite the travel caution signage warnings of smuggling and illegal immigration in the area.



Of course, the most crucial factor is having boots on the ground, in the right place and at the right time to intercept illegal activity. In rugged areas Border Patrol must increase horse patrols and establish Forward Operating Bases in remote areas which have been effectively used in the past.

Funding State and Federal Attorneys' Offices must be adequate to assure timely prosecution of border related offenses. As part of that, ensuring that there are judicial resources in place to provide consequences to offenders is imperative.

Border Patrol Ranch Liaison Programs to address concerns and gather intelligence. I am fortunate to be a part of the Citizens Advisory Boards and the Rancher Liaison Group for the Nogales Border Patrol Station. It gives me the opportunity to address security issues in areas of our operation and allows Border Patrol the ability to communicate with the public and the folks most affected by illegal activity. I view these groups as another sort of metric.

My focus here today is to highlight what I consider to be useful and positive measures to help secure the border and the lands we work on. Measurables like creating access and establishing roads along the international boundary with Mexico. Being able to get to the border is paramount if one expects to defend it. Border Patrol has done an excellent job in many areas along the border and in my estimation the easier areas have been addressed. What remains on the table is probably some of the most challenging terrain encountered along the border, most of which has no vehicle access. It will not be easy, but I have faith it will get done.

Over the last decade, I have witnessed the construction of 2 miles of a Bollard style fence, focusing attention to the international boundary with Mexico. The fence construction improved range condition by eliminating the constant flow of illegal border crossers that created havoc with trails and left trash throughout the landscape. It only took the resource a short time heal and become productive once again.

In establishing 4 miles of road systems along the international boundary and simultaneously erecting RVSS Towers and Integrated Fixed Towers, the traffic patterns were again changed nearly overnight with the flick of switch. We were no longer getting the traffic at the ranch headquarters 7 miles from the border. Again, we were witness as the range responded and trails healed. We also noticed that there were less trespass cattle from Mexico as cuts in the barb wire fence were fewer. I even queried friends who lived in the unincorporated community of Rio Rico on the northern boundary of the ranch and asked if they were experiencing the same reductions in activity, to which the answer was yes.

In the areas with better access to the border there is a notable reduction in fire frequency and with less incidence of fire spreading as the roads have enabled wildland firefighters to respond and get control of fires.

As I have stated before, I have witnessed improvement over the past few years in certain areas and it has coincided with the implementation of the measures that I have mentioned to you here today.

Thank you for your time and allowing me to come before you today!

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Mr. WESTERMAN. The Chair now recognizes Mr. Nicol to testify for 5 minutes.

**STATEMENT OF SCOTT NICOL, CO-CHAIR, SIERRA CLUB BORDERLANDS CAMPAIGN, THE SIERRA CLUB, McALLEN, TEXAS**

Mr. NICOL. Thank you.

I am the volunteer Co-Chair for the Sierra Club Borderlands Team, and I live and teach in McAllen, one of the safest cities in the state of Texas. My house is 12 miles north of a section of border wall. The actual border is another mile further south. The wall south of my home cuts off a World Birding Center, established to attract eco-tourism dollars to a community in one of the poorest counties in the United States from an adjacent U.S. Fish and Wildlife refuge. And like most of the rest of the 654 miles of border that already have a wall or barrier, it was built without regard for local, state, and Federal laws meant to protect the environment and border communities like mine.

The authority given to DHS to selectively disregard laws it deems inconvenient when it builds walls along either the U.S.-Mexico or U.S.-Canada border should not be expanded to cover all enforcement activities on all Federal lands within 100 miles of both borders, as has been proposed. The laws that are swept aside are not merely red tape, they are critical protections that were put in place for a reason, to protect people, their communities, and the environment.

The levee border wall that stands 12 miles south of my home is a prime example. Twenty-seven laws were waived to expedite its construction. The pre-existing levee was essentially a pile of earth with a gentle slope on either side that terrestrial animals could easily surmount. To convert it into a levee border wall, the river-facing side was carved away and replaced with an 18-foot tall vertical concrete slab.

Like many of the levee border walls in the Rio Grande Valley, this one cuts off a portion of the lower Rio Grande Valley National Wildlife Refuge, which was intended to provide habitat for endangered ocelots, a small wild cat. A year after the levee wall's completion, flooding of the Rio Grande inundated farmlands and refuge tracts for 3 to 4 months. Where sloping levees had been converted into levee border walls, the U.S. Fish and Wildlife reported that, "The floodwall blocked almost all egress for terrestrial wildlife species. . . . Hundreds of shells of Texas tortoise have been found demonstrating the probability of mortality for species which could not retreat from rising water levels. The Service fears any ocelots or jaguarundi that may have been caught in these areas when

water began to rise may have been malnourished, injured, or perished.”

Other walls have been built without regard for laws that protect people from unnecessary flooding. We have seen devastating floods in communities like Nogales and in protected natural areas such as Organ Pipe Cactus National Monument. When walls are built across our rivers, arroyos, and flash flood zones, they catch debris, back up water as much as 6 feet deep, and cause massive damage.

The Native American Graves Protection and Repatriation Act was also waived when barriers were built in the Tohono O’odham Nation in southern Arizona. Chairman Ned Norris, Jr. testified that during the building of border barriers, “Fragments of human remains were observed in the tire tracks of the heavy construction equipment. Barriers of the border road now cross the site. Imagine a bulldozer parking in your family graveyard turning up bones.”

The expansion of waivers to cover not only the construction of walls along the border but any Border Patrol or Customs and Border Protection activity on Federal lands within 100 miles of the U.S.-Mexico and U.S.-Canada border would add to the unnecessary damage.

In 2011, Ron Vitiello, who is currently the Acting Deputy Commissioner of Customs and Border Protection, testified that, “In law enforcement, we operate within the confines of the rule of law and regulations. Would our efforts be easier without these legal frameworks? Yes, it would. However, we find a way to reasonably and sensibly solve problems within the parameters of law. Does the Border Patrol face challenges with respect to operating around protected lands when they are in our enforcement zones? Yes. But, again, we have been able to establish practical solutions to allow for mission success.”

Laws have also been waived for patrol roads along the border. In addition to causing environmental harm, carving a road through a formerly roadless locale can make that area more accessible to drive-throughs by smugglers. This occurred in the San Bernardino National Wildlife Refuge, which stated in its 2008 annual report that newly installed tactical infrastructure, “Allowed vehicles loaded with marijuana to drive into the United States, using the new system of all-weather roads constructed by DHS. Drive-through drug loads have subsequently increased in the San Bernardino Valley.”

So, the waiving of laws has proved to be environmentally destructive, and by short-circuiting the normal deliberative process, has allowed for counter-productive activities to be undertaken. It has also hurt borderland communities.

Thank you.

[The prepared statement of Mr. Nicol follows:]

PREPARED STATEMENT OF SCOTT NICOL, SIERRA CLUB BORDERLANDS TEAM CO-CHAIR, McALLEN, TEXAS

My name is Scott Nicol. I am the Volunteer Co-Chair for the Sierra Club’s Borderlands Team and I live and teach in McAllen, one of the safest cities in the state of Texas. My house is 12 miles north of a section of border wall; the actual border is another mile further south. The wall south of my home cuts off a World Birding Center, established to attract eco-tourism dollars to a community in one of the poorest counties in the United States, from an adjacent U.S. Fish and Wildlife

Refuge. Like most of the rest of the 654 miles of border wall that currently stand, it was built without regard for local, state, and Federal laws meant to protect the environment and border communities like mine.

The authority given to the Department of Homeland Security to disregard laws it deems inconvenient when it comes to border walls along both the U.S.-Mexico and U.S.-Canada border should not be expanded to cover all enforcement activities on all Federal lands within 100 miles of both borders, as has been proposed. This flies in the face of the basic tenet that the United States is a nation of laws, and sets a terrible precedent that could be applied to other destructive Federal projects.

But the biggest problem with waiving laws is not judicial or philosophical, it is concrete. The laws that are swept aside are not merely red tape. They are critical protections that were put in place for a reason—to protect people, their communities, and the environment that we depend upon.

The levee-border wall that stands 12 miles south of my home is a prime example. In 2008, 27 laws were waived to “expedite” construction, and it was completed in 2009. The pre-existing levee was essentially a pile of earth with a gentle slope on either side that terrestrial animals could easily surmount. To convert it into a levee-border wall, the river-facing side was carved away and replaced with an 18-foot tall vertical concrete slab. It is a barrier that is readily climbed by humans, as the ever-replenishing piles of ladders that still accumulate beside it attest to, but which animals that don’t have wings or ladder technology cannot get past.

Like many of the levee-border walls in the Rio Grande Valley, this one cuts off a portion of the Lower Rio Grande Valley National Wildlife Refuge, which was intended to provide habitat for endangered ocelots, a small wildcat with spots resembling a leopard’s. With the Endangered Species Act and the National Environmental Policy Act waived, the wall’s impact upon ocelots was detrimental.

A year after the levee-wall’s completion, the Rio Grande flooded, backing water up to the levees and inundating farmlands and refuge tracts for 3 to 4 months. Where sloping levees had been converted to levee-border walls, U.S. Fish and Wildlife reported that:

“The floodwall blocked almost all egress for terrestrial wildlife species. [ . . . ] Hundreds of shells of Texas Tortoise have been found demonstrating the probability of mortality for species which could not retreat from rising water levels. The Service fears any ocelots or jaguarundi that may have been caught in these areas when water began to rise may have been malnourished, injured, or perished.”<sup>1</sup>

The decision to waive laws in order to build border walls has caused harm that might otherwise have been avoided.

Walls have been built without regard for laws that protect people from unnecessary flooding. We have seen devastating floods in communities like Nogales and in protected natural areas such as Organ Pipe Cactus National Monument. When walls are built across our rivers, arroyos and flash flood zones, they catch debris, back up water as much as 6-feet deep, and cause massive damage.

In 2008, flooding caused by the border wall in Nogales, Sonora, caused millions of dollars of property damage and was responsible for two deaths. Following that event many walls were retrofitted with gates that were intended to allow water and debris to pass through, but in 2011 and 2014 those measures failed to stop debris from piling up, flood water building up, and sections of border wall being washed away.

The Native American Graves Protection and Repatriation Act is, as its title implies, intended to prevent the desecration and destruction of Native American burials, a goal which one might assume would be widely shared. But when waivers were issued for border barrier construction through the Tohono O’odham Nation, the Native American Protection and Repatriation Act was suspended in the project area. The compilation of a list of laws that are to be waived implies a degree of forethought, as there is no reason to waive a law that border barriers or roads are unlikely to violate.

The waiving of the Native American Graves Protection and Repatriation Act proved prescient. In 2008, Tribal Chairman Ned Norris Jr. testified that during the building of border barriers:

“ . . . fragments of human remains were observed in the tire tracks of the heavy construction equipment. Barriers and the border road now cross the

<sup>1</sup> Rationale and Justification for Conservation Measures Rio Grande Valley Sector. U.S. Fish and Wildlife Corpus Christi Ecological Services Field Office. March 9, 2011.

site. Imagine a bulldozer parking in your family graveyard, turning up bones.”<sup>2</sup>

The expansion of waivers to cover not only the construction of walls along the border, but any Border Patrol or Customs and Border Protection activity on all Federal lands within 100 miles of the U.S.-Mexico and U.S.-Canada border, would add to the unnecessary damage.

In light of the existing Memorandum of Understanding between Customs and Border Protection and the Department of the Interior, granting Border Patrol agents access to Federal lands there is no clear need to waive laws, environmental or otherwise, to facilitate Border Patrol activities. In 2011, Ron Vitiello, who is currently the Acting Deputy Commissioner of Customs and Border Protection, testified that:

“In law enforcement, we operate within the confines of the rule of law and regulations. Would our efforts be easier without these legal frameworks? Yes, it would. However, we find a way to reasonably and sensibly solve problems within the parameters of law. Does the Border Patrol face challenges with respect to operating around protected lands when they are in our enforcement zones? Yes, but again, we have been able to establish practical solutions to allow for mission success.”<sup>3</sup>

Since Acting Deputy Commissioner Vitiello made this statement, in a congressional committee hearing discussing a proposal to waive laws on Federal lands very similar to the one being made today, Border Patrol apprehensions have decreased, and seizures of marijuana have plummeted.

It has been alleged that the need to comply with Federal laws when new patrol roads are established or existing roads are repaired through protected Federal lands undermines Border Patrol interdiction efforts. But in addition to the environmental harm that cutting a road through a refuge or wilderness area can inflict, carving a road through a formerly roadless area can make an area that was previously impassable to smugglers easily accessible. This occurred in the San Bernardino National Wildlife Refuge, where 10 miles of barrier and patrol roads were built following the issuance of a waiver. Located in Arizona’s southeastern corner, where the terrain is heavily eroded, with deep fissures that make much of the area impassable to vehicles. Nonetheless, in 2008 Customs and Border Protection proposed the erection of barriers and construction of a graded patrol road through the area. In response a local stakeholder who had been working with the Malpai Borderlands Group (an association of ranchers who work together to restore and maintain natural processes while encouraging ranching and other traditional livelihoods) warned:

“They are going to open 10 miles-plus of access to illegal vehicles and Border Patrol vehicles through country that has no access now. Where there are barriers west of us, the illegals had already cut them with torches.

The Refuge is being compromised and so is the security of the U.S.

We are furious that they can’t be stopped from building this road and barriers.

We can’t seem to get anyone to see what the damage will be.

Mark my word, within a year there will be so much increase in traffic and damage that it will never be stopped. Then DHS will say they can’t figure out how to solve the huge breach in our security.”<sup>4</sup>

<sup>2</sup>Norris Jr., Ned. Written testimony of The Honorable Ned Norris Jr., Chairman Tohono O’odham Nation to the to the Subcommittee on Fisheries, Wildlife, and Oceans and Subcommittee on National Parks, Forests, and Public Lands of the House Committee on Natural Resources. Joint Oversight Hearing “Walls and Waivers: Expedited Construction of the Southern Border Wall and Collateral Impacts to Communities and the Environment.” U.S. House of Representatives Committee on Natural Resources. Subcommittee on National Parks, Forests and Public Lands. Subcommittee on Fish, Wildlife and Oceans. April 28, 2008.

<sup>3</sup>Vitiello, Ron. “The Border: Are Environmental Laws and Regulations Impeding Security and Harming the Environment?” Joint Hearing before the Subcommittee on National Security, Homeland Defense and Foreign Operations of the Committee on Oversight and Government Reform and the Subcommittee on National Parks, Forests, and Public Lands of the Committee on Natural Resources. April 15, 2011.

<sup>4</sup>“Subject: Natural disaster cancels trip . . .” Sender redacted. September 17, 2008. Email obtained by the Sierra Club via Freedom of Information Act request.

Absent the need to comply with Federal laws, construction crews inflicted tremendous damage that otherwise might have been avoided. With the Antiquities Act waived, a known archaeological site which refuge managers had asked workers to avoid harming, was destroyed to create an equipment staging area. Two bodies of water that are home to fish listed under the Endangered Species Act were partially filled with loose dirt in an effort to create a roadbed. A bulldozer sank and got stuck in the resulting saturated muck in one of the ponds. As predicted, soon after the barriers and patrol road were constructed through the previously impassable terrain, refuge staff reported that the new “tactical infrastructure” facilitated, rather than deterred, illicit cross-border traffic. The San Bernardino National Wildlife Refuge’s annual report for 2008 stated that this:

“ . . . allow[ed] vehicles loaded with marijuana to drive into the United States using the new system of all-weather roads constructed by DHS. Drive-through drug loads have subsequently increased in the San Bernardino Valley.”<sup>5</sup>

So the waiving of laws has not only proved to be environmentally destructive, by short-circuiting the normal deliberative process, it has allowed for counter-productive activities to be undertaken. It has also hurt borderlands communities. With the waiving of protections like the Clean Water Act and National Environmental Policy Act, towns have flooded and borderlands residents are left with the aftermath. Expanding the waiver to include more Federal lands and more types of projects would expand and exacerbate these problems.

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Mr. WESTERMAN. The Chair now recognizes Mr. Judd to testify for 5 minutes.

**STATEMENT OF BRANDON JUDD, PRESIDENT, NATIONAL  
BORDER PATROL COUNCIL, TUCSON, ARIZONA**

Mr. JUDD. Chairman Westerman, Ranking Member McEachin, and distinguished members of the Subcommittee, I appreciate the opportunity to testify today.

The myriad of laws, regulations, and bureaucratic policies related to federally managed and protected lands prevent Border Patrol agents in the field from fully doing their job on a daily basis. Ultimately, these laws undermine our ability to effectively and efficiently secure our borders, and put the lives of our agents and the public at greater risk.

The vast majority of apprehensions made by the Border Patrol occur on the southern border with Mexico. Along this very same border, roughly 40 percent of the land that makes up our 2,000-mile long border is designated by the Federal Government as some type of Federal land. This is land that is managed, controlled, or protected by multiple agencies spread across two separate cabinet-level departments, not including the department responsible for border security.

Simply looking at a map of border areas in California, Arizona, New Mexico, and Texas, one will see a landscape blanketed by Federal lands that include national conservation areas, forests, monuments, parks, recreation areas, scenic areas, and wildlife refuges. The restrictions that agents face on these lands on a daily basis are due to a laundry list of some three dozen laws that date back over a century.

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<sup>5</sup> San Bernardino National Wildlife Refuge, Leslie Canyon National Wildlife Refuge Annual Narrative Report Calendar Year 2008. U.S. Department of the Interior, Fish and Wildlife Service, National Wildlife Refuge System.

Even with the significant impediments to our work stemming from these legal requirements and regulations, morale among rank and file Border Patrol agents is surging, thanks to the support and backing we have received from the Trump administration encouraging agents to go out and do the job we were hired to do.

In fact, from his very first week in office, President Trump has demonstrated his unwavering commitment to finally securing our land borders. On January 25 of last year, President Trump signed Executive Order 13767 to improve border security and immigration enforcement. Most relevant for the Subcommittee is Section 12 of the order, which directs the Secretaries of Homeland Security, Interior, and Agriculture, to take all appropriate action to ensure that the men and women of the Border Patrol have access to all Federal lands in order to secure our land borders.

This important executive action is a crucial step to solve a problem that has long plagued the Border Patrol and our ability to do our job.

As Chairman Westerman and Bishop recently saw firsthand, the challenges created by these legal requirements, rules, and policies are very real for those patrolling our borders. For example, in the Coronado National Forest within the Tucson Sector of Arizona, our inability to build proper access roads along and near the line, including secondary roads, diminishes agent mobility while patrolling, and ultimately prevents agents from being as effective as they could otherwise be.

Because there is no actual east-west border road beyond the fence, which only stretches a short distance into the forest, the United States, in essence, has ceded approximately a quarter mile of U.S. territory to criminal enterprise, including drug and human traffickers.

While my primary concern is overall border security, including the safety of agents and the public, I would like to highlight for the Subcommittee how unintended consequences stemming from environmental laws meant to protect our natural resources can have the opposite effect and actually harm the environment.

For example, in one of my personal experiences in the mid-2000s, in the Naco area of operations within the Tucson Sector, the Border Patrol built a continuous fence that was constructed right up to the San Pedro River within the San Pedro National Conservation Area. While we were able to continue with the construction of the fence to the west of this sensitive riparian area, due to legal restrictions, we had to wait to complete construction within the conservation area until we had the required permitting and the environmental impact studies were complete.

During this long waiting period, the massive hole left in our fencing allowed criminal enterprises to drive their vehicles up to the riparian area with absolutely no regard for this environmentally sensitive area. While we now have some barriers in place that make it a little more difficult for criminal enterprises to spoil this riparian area, due to the difficulty of the laws, the barriers are a far cry from what is needed and are easily defeated.

Finally, I would like to close by urging Congress to consider and pass legislation that would solve these very real problems.



Mr. Chairman, I would like to commend the Subcommittee, Chairman Bishop, and Congressman Johnson, for your work in crafting reform language that has been included in H.R. 4760, Securing America's Future Act. This Committee's contribution to the broader border security reform is crucial to ensure that agents have the ability to properly patrol Federal lands and prevent all unlawful entries into the United States.

Additionally, the Committee may want to consider an amendment to ensure that Border Patrol efforts to close off tunnels used by drug and human smugglers are not delayed or blocked by existing laws. Regardless of this amendment, by waiving the relevant environmental laws and thus eliminating the restrictions imposed on Border Patrol, the Committee's legislation will finally take the handcuffs off the agents and allow us to simply do our jobs.

I want to thank the Subcommittee, and I look forward to answering any and all of your questions.

[The prepared statement of Mr. Judd follows:]

PREPARED STATEMENT OF BRANDON JUDD, ON BEHALF OF THE NATIONAL BORDER  
PATROL COUNCIL, TUCSON, ARIZONA

Chairman Westerman, Ranking Member McEachin, and distinguished members of the Subcommittee, I would like to thank you for inviting me to testify before you today in order to communicate the significant challenges that our Nation's Border Patrol Agents are facing, specifically when patrolling on Federal lands.

My name is Brandon Judd and I currently serve as the President of the National Border Patrol Council, where I represent approximately 16,000 Border Patrol field agents and support staff. I have 20 years of experience as a Border Patrol Agent and a thorough understanding of the policies affecting border security.

While this is my first time testifying before this Subcommittee, I know that both the Subcommittee and Full Committee have been working for years to address the issues before us today and I am grateful for your continued oversight and steadfast dedication to solving these problems. Thank you for allowing me the opportunity to describe the current state of the border and how the myriad of laws, regulations and bureaucratic policies related to federally managed and protected lands prevent Border Patrol Agents in the field from fully doing their job on a daily basis. Ultimately, these laws undermine our ability to effectively and efficiently secure our borders and put the lives of our agents and the public at greater risk.

As the Subcommittee is undoubtedly aware, the vast majority of apprehensions made by the Border Patrol occur on our southern land border with Mexico. Even though we saw apprehension numbers drop to historic lows soon after President Trump took office, the Border Patrol still made over 310,000 total apprehensions across the country during Fiscal Year 2017. Of those 310,000 apprehensions, nearly 304,000 or roughly 98 percent, occurred along the southwest border.

Along this very same border, roughly 40 percent of the land that makes up our 2,000 mile-long border is designated by the Federal Government as some type of Federal land, according to a Government Accountability Office analysis. This is land that is managed, controlled or protected by multiple agencies, spread across two separate cabinet-level departments, not including the Department responsible for border security.

Simply looking at a map of border areas in California, Arizona, New Mexico and Texas, one will see a landscape blanketed by Federal lands that include National Conservation Areas, Forests, Monuments, Parks, Recreation Areas, Scenic Areas, and Wildlife Refuges. The restrictions that agents face on these lands on a daily basis are due to a laundry list of some three dozen laws that date back over a century.

Even with the significant impediments to our work stemming from these legal requirements and regulations, morale among rank-and-file Border Patrol Agents is surging thanks to the support and backing we've received from the Trump administration encouraging agents to go out and do the job we were hired to do. In fact, from his very first week in office, President Trump has demonstrated his unwavering commitment to finally securing our land borders. On January 25 of last year, President Trump signed Executive Order 13767 to improve border security and immigration enforcement. Most relevant for the Subcommittee is Section 12 of the

Order which directs the Secretaries of Homeland Security, the Interior and Agriculture to “take all appropriate action” to ensure that the men and women of the Border Patrol have access to all Federal lands in order to secure our land borders.

This important executive action is a crucial step to solve a problem that has long plagued the Border Patrol and our ability to do our job. Even former President Obama’s Homeland Security Secretary Janet Napolitano acknowledged the significance of the problem when she wrote in a 2009 letter that:

*“While the USBP recognizes the importance and value of wilderness area designations, they can have a significant impact on USBP operations in border regions. This includes that these types of restrictions can impact the efficacy of operations and be **a hindrance to the maintenance of officer safety**. The USBP, in accordance with [a] 2006 MOU [with DOI and USDA] makes every reasonable effort to use the least impacting means of transportation within wilderness; however along the southwest border it can be **detrimental to the most effective accomplishment of the missions**. For example, it may be **inadvisable for officer safety** to wait for the arrival of horses for pursuit purposes, or to attempt to apprehend smuggling vehicles within wilderness with a less capable form of transportation.”*

While the “detrimental” impact to the border security mission is certainly concerning when reading former Secretary Napolitano’s letter, what I’d like the Subcommittee to focus on for a moment are the real-life implications for agent safety—something that should be of paramount concern to everyone. To ever suggest that an agent—who is likely working alone, probably on terrain making he or she vulnerable to attack, and almost certainly in a remote location—should wait for the arrival of agents mounted on horses in order to safely make an apprehension of an illegal entrant *is completely and utterly absurd*. I hope that the Subcommittee would never tolerate policies of this nature and allow senior agency bureaucrats in Washington to prioritize possible impacts on the environment over the safety of the men and women of the Border Patrol. This is of particular concern at a time when we’ve seen a dramatic increase in assaults on agents. Just last year, assaults on Agents were up by 76 percent and totaled 774 for 2017.

With the threats facing agents at an all-time high due to drug cartels, violent criminal aliens and ever-growing personnel shortages, the last thing agents need to contend with are the added burdens created by environmental laws, regulations and memos drafted by supervisors and managers sitting behind desks. As Chairmen Westerman and Bishop recently saw firsthand, the challenges created by these legal requirements, rules and policies are very real for those patrolling our borders. For example, in the Coronado National Forest within the Tucson Sector of Arizona, our inability to build proper access roads along and near the line, including secondary roads, diminishes agent mobility while patrolling and ultimately prevents agents from being as effective as they could otherwise be. Because there is no actual east-west border road beyond the fence, which only stretches a short distance into the Forest, the United States in essence has ceded approximately a quarter-mile of U.S. territory to criminal enterprise, including drug and human traffickers.

While my primary concern is overall border security including the safety of agents and the public, I’d like to highlight for the Subcommittee how unintended consequences stemming from environmental laws meant to protect our natural resources can have the opposite effect and actually harm the environment. For example, in one of my personal experiences in the mid-2000s in the Naco Area of Operations within the Tucson Sector, the Border Patrol built a continuous fence that was constructed right up to the San Pedro River within the San Pedro National Conservation Area. This conservation area runs north from the border and is made up of approximately 57,000 acres of public land, managed by the Interior Department’s Bureau of Land Management. While we were able to continue with the construction of the fence to the west of this sensitive riparian area, due to legal restrictions, we had to wait to complete construction within the conservation area until we had the required permitting and the environmental impact studies were complete. During this long waiting period, the massive hole left in our fencing allowed criminal enterprises to drive their vehicles up the riparian area along and near the riverbed, with absolutely no regard for this environmentally sensitive area. While we now have some barriers in place that make it a little more difficult for criminal enterprises to spoil this riparian area, due to the difficulty of the laws the barriers are a far cry from what’s needed and are easily defeated.

Tactical infrastructure and barriers, such as the fencing in Naco, are crucial to preventing illegal entries and securing our border. While there has been no shortage of debate and controversy over the proposed border wall, in my opinion serving in

the Border Patrol for the past 20 years, including in the busiest sector in the history of the Border Patrol, a wall, in strategic locations is pivotal to securing our border. Without physical barriers, such as a wall, we're far less able to dictate and direct where illegal entries are made, making us less effective and inefficient. A wall in strategic locations will ultimately lead to far greater effectiveness and allow us to direct our very limited manpower resources to areas without barriers and where illegal crossings are more likely to take place. If, in the coming months and years, new plans and efforts to build physical barriers are blocked, delayed or otherwise stopped because of these environmental laws, then the safety and security of our agents and citizens will suffer greatly.

Finally, I'd like to close by urging Congress to consider and pass legislation that would solve these very real problems. Mr. Chairman, I would like to commend this Subcommittee, Chairman Bishop and Congressman Johnson for your work in crafting reform language that has been included in H.R. 4760, Securing America's Future Act, sponsored by Chairmen Goodlatte, McCaul, and Labrador, as well as Chairwoman McSally. This Committee's contribution to the broader border security reform effort is crucial to ensure that agents have the ability to properly patrol Federal lands and prevent all unlawful entries into the United States. While this legislation is still pending before the House, I'd like to suggest that the Committee consider amending Section 1118 to ensure that the Border Patrol can conduct proper maintenance of physical barriers, tactical infrastructure and technology on Federal lands. Additionally, the Committee may want to consider an amendment to ensure that Border Patrol efforts to close off tunnels used by drug and human smugglers are not delayed or blocked by existing laws. Regardless of these two suggestions, by waiving the relevant environmental laws and thus eliminating the restrictions imposed on the Border Patrol, the Committee's legislation will finally take the handcuffs off of agents, and allow us to simply do our jobs.

I want to thank the Subcommittee for your time this morning and I look forward to answering any questions that you may have.

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QUESTIONS SUBMITTED FOR THE RECORD BY REP. GRIJALVA TO BRANDON JUDD,  
PRESIDENT, NATIONAL BORDER PATROL COUNCIL

Please answer the following questions regarding the 2014 incident you described in which Border Patrol could not fill a cross-border tunnel near the San Diego area due to the presence of a bird's nest:

*Question 1.* What was the specific location of the opening of the tunnel? Was the opening located on Federal lands?

Answer. Prior to the hearing, Customs and Border Protection (CBP) management sent one of my consultants an e-mail regarding tunnel remediation delays stemming from environmental laws. Below are the relevant portions of the e-mail with the example. The agency is the entity that provided me with this information and thus allowed me to use the information if relevant questions were asked at the hearing. The information provided by CBP does not give the specific location in San Diego of the opening of the tunnel nor if it was on Federal lands. I have no additional information regarding the 2014 incident described by CBP management beyond what was in the e-mail and recommend that you ask the agency for additional information.

Email from CBP management (bold added for emphasis):

**"All tunnel remediations have to go through the NEPA process. This requirement can and often does delay remediation."** The e-mail goes on to mention, **". . . an incident in 2014 in the SDC AOR in which a bird nesting in a tunnel delayed a remediation."**

Last, in order to better assist the Ranking Member and the Committee in its oversight, I wanted to let the Committee know that based on additional information provided by CBP, 194 illicit cross-border tunnels have been discovered nationally since Fiscal Year 2000. Based on the CBP data, four cross-border tunnels were discovered during Fiscal Year 2014 in the San Diego Sector.

*Question 2.* What species of bird occupied the nest near the tunnel opening? How close was the nest to the tunnel opening?

Answer. Please refer to the answer to Question Number 1. I have no additional information regarding the 2014 incident described by CBP management beyond

what was in the e-mail and recommend that you ask the agency for additional information.

*Question 3.* Which Federal agency directed Border Patrol to postpone filling the tunnel until the bird's eggs had hatched? Under what authority or environmental law was this directive given?

Answer. Please refer to the answer to Question Number 1. I have no additional information regarding the 2014 incident described by CBP management beyond what was in the e-mail and recommend that you ask the agency for additional information.

*Question 4.* How long did the tunnel remain unfilled since being discovered? How much of this time was due solely to the presence of the bird's nest?

Answer. Please refer to the answer to Question Number 1. I have no additional information regarding the 2014 incident described by CBP management beyond what was in the e-mail and recommend that you ask the agency for additional information.

*Question 5.* Was an environmental impact statement required to fill the tunnel? Has Border Patrol established a categorical exclusion under NEPA for filling cross borders tunnels? If not, why not?

Answer. Please refer to the answer to Question Number 1. I have no additional information regarding the 2014 incident described by CBP management beyond what was in the e-mail and recommend that you ask the agency for additional information.

*Question 6.* Has the tunnel since been filled? If not, why not? Is the portion of the tunnel on the Mexico side of the border filled?

Answer. Please refer to the answer to Question Number 1. I have no additional information regarding the 2014 incident described by CBP management beyond what was in the e-mail and recommend that you ask the agency for additional information.

Other questions for Mr. Judd:

*Question 7.* What was NBPC's involvement in Mark Morgan's dismissal?

Answer. The first time I was made aware that former Chief Mark Morgan was being dismissed was on the morning of January 26, 2017 when CBP Acting Commissioner Kevin McAleenan called me and informed me he made the decision to remove Chief Mark Morgan from his position as the Chief of the Border Patrol. There were several NBPC officers with me when Acting Commissioner McAleenan called me. The call was professional and appropriate. Acting Commissioner McAleenan knew I would get numerous questions from the media and he asked that, "I do not dance on his grave." I am not aware that I or NBPC played a role in Chief Morgan's dismissal and I certainly never asked Acting Commissioner McAleenan to remove Morgan.

Furthermore, I am not aware of any statute, regulation or policy that would have given me, as a GS-12 Border Patrol Agent and President of the NBPC, or the NBPC itself, the authority to determine the employment status of any CBP employee, including the Chief of the Border Patrol. As per the call referenced above with Acting Commissioner McAleenan, he made it very clear that the decision to remove Chief Morgan was his and his alone.

At the time he was appointed to be the Chief, Chief Morgan was a retired Federal employee and was hired to the Chief's post as a rehired annuitant and therefore did not have the protections of a career employee. Acting Commissioner McAleenan was free to dismiss him without the customary formalities because he was not a career employee but rather was a rehired annuitant.

What is true and is well known is that I, acting on behalf of the bargaining unit as the President of the NBPC, believed there was a culture problem in the Border Patrol and continue to hold this belief to this day. When Chief Morgan was selected, I was informed that he was selected to bring about a much needed culture change. I was publicly supportive of his selection but quickly became disenchanted due to the fact that he surrounded himself with the same management officials who were the cause of the culture problems. During his short tenure the culture did change but changed for the worse, as those same people who were in part responsible for the agency's long-standing culture problems were emboldened when Chief Morgan failed to make needed changes. Sadly under his watch there was less accountability in the agency and that lack of accountability continues to this day.

*Question 8.* Has NBPC ever condemned the use of excessive force?

Answer. Yes. The NBPC does not and will not condone “excessive force.” Excessive force is against the law and I personally do not know any Border Patrol Agent who believes it is acceptable for law enforcement officers/agents to break the law. The NBPC *does* believe in due process for all persons including those accused of crossing the border illegally, as outlined in law, and that also includes any law enforcement officer/agent *accused* of excessive force.

*Question 9.* The FBI has not found any evidence to suggest that the death of Border Patrol agent Rogelio Martinez was caused by an attack. What evidence does NBPC use when continuing to characterize this incident as a “heinous attack?”

Answer. On Monday, November 20, 2017, El Paso Sector Assistant Chief Patrol Agent Richard C. Whitman sent an e-mail to one of my former Local Presidents in which he describes the death of BPA Rogelio Martinez as a “heinous attack.” When speaking with the media since the incident, I have been using the verbiage given to NBPC by management officials in the Border Patrol. The following is the text of the e-mail in its entirety.

“I’m sure you are aware of the LOD death of the BBT agent and his partner that is in serious condition. While FBI has the lead, HQ/OBP has directed EPT to throw as much personnel and resources as possible to assist in locking down that area to **locate the perpetrators of this heinous attack** [emphasis added]. Obviously, this will cause an additional strain on EPT’s already thinly spread staffing. The details on what this might look like are still being put together. To this end, I was wondering if the Agency were to grant a blanket extension on grievances, replies, etc., would you support a moratorium on official time?”

Furthermore, the morning following Agent Martinez’ death a Supervisory Border Patrol Agent from the El Paso Sector sent the following text message to several individuals. Please forgive any punctuation or grammar mistakes, I am quoting the text message verbatim:

“2 agents got assaulted in Van Horn last night and got airlifted to UMC. There was a sensor activation and 1 agent responded went back to his vehicle to call out that the sensor was good. Not sure what happened after that but I’m hearing he got jumped by 6 mules and had his face basically smashed in. 2nd agent arrived to help out with trail without knowing 1st agent had been assaulted and he also got jumped. Word is 1st agent passed away and 2nd agent is in critical but stable condition. They r back tracking the group south of van horn. Everyone’s been activated. We sent 3 guys to assist”

As you can clearly see, it was Border Patrol management that characterized the death of Rogelio Martinez as an attack. NBPC had no reason to believe the information by the agency itself was incorrect.

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Mr. WESTERMAN. I say thank you to all of the witnesses for your testimony.

I would like to remind the members of the Committee that Committee Rule 3(d) imposes a 5-minute limit on questions. I will now recognize Members for any questions they may wish to ask the witnesses. I will recognize myself to start with for 5 minutes.

I also remind the witnesses that we are going to keep this to 5 minutes per person. We have votes coming up here shortly, so if we cut you off, it is because we have a lot of questions we want to ask.

My first question is for the whole panel. There is a graphic up here, the one on the top left shows a lot of ad hoc roads along the border. You see examples of the trash that we talked about in some of these areas.

[Slide.]

In March of 2010, then-Secretary Salazar, while on a border visit with Ranking Member Grijalva, stated that, and I quote,

“Deterring unlawful activity along the border is the best option for preventing damage to cultural and natural resources and minimizing risks to visitors and employees.”

The Fish and Wildlife Service found almost 8,000 miles of ad hoc roads used by cross-border violators in the Cabeza Prieta National Wildlife Refuge. Millions of pounds of trash and waste are collected from layup areas. Wildland fires are also often ignited by border violators.

I want to ask each of you a simple yes or no question. Do you agree with Secretary Salazar’s statement that deterring unlawful activity along the border best protects our natural resources?

Mr. ARTHUR. Yes.

Mr. BELL. Chairman Westerman, yes.

Mr. WESTERMAN. Mr. Nicol, yes or no?

Mr. NICOL. It is more complicated than that, unfortunately.

Mr. WESTERMAN. Mr. Judd?

Mr. JUDD. I do agree, yes.

Mr. WESTERMAN. OK. Mr. Bell, as a third-generation rancher along the southern border, you have experienced firsthand the impact illegal activity can have on Federal lands. Can you briefly describe for us how Border Patrol’s increased presence and infrastructure has improved the health of your grazing land?

Mr. BELL. We have a permit that we graze cattle on called the Mariposa, and when we started grazing there, there was so much illegal activity and trash and trails and trespass from Mexican cattle, we were unable to actually go in there because utilization levels of the grass were already hit. Once Border Patrol established a presence on the border, put in a portion of the bollard-style fence, we were able to start using that the next season. It healed that quickly.

Mr. WESTERMAN. OK. Mr. Judd, a 2006 Memorandum of Understanding between the Department of the Interior, Agriculture, and Homeland Security attempted to provide guidance and increase coordination between Customs and Border Protection and Federal land managers to balance border security and environmental issues. In what ways is this MOU insufficient for Border Patrol agents’ needs?

Mr. JUDD. It is the large bureaucracy that the government currently has. When we have to go and discuss issues with so many different agencies to try to make something happen, we see what happened in the San Pedro riparian area. We weren’t able to build the barriers that were necessary, which allowed the human and narcotics smugglers to ruin that area for a time until it was able to heal, which took several years. But to even put Normandy-style barriers in that area took about 2 years, just to be able to do that.

Mr. WESTERMAN. And, Mr. Arthur, based on your experience drafting some of the most significant border security laws since September 11, 2001, what would you change in the 2006 MOU to ensure that Border Patrol can accomplish its mission on Federal lands?

Mr. ARTHUR. I would actually refer to the way that the MOU operates. Right now, it puts environmental agencies in charge of border security. Law enforcement should be the entity that actually controls the process rather than the other way around.

Mr. WESTERMAN. OK. Mr. Judd, as mentioned in my opening statement, during my visit to the southern border, we heard from Border Patrol about tunnels being used for drug smuggling, and you referenced that as well. Can you briefly explain the statutory and regulatory obstacles that agents face when trying to remediate one of these cartel tunnels?

Mr. JUDD. Just to remediate a tunnel, we have to follow the NEPA laws. And in 2014, in San Diego, we had a tunnel that we were not able to remediate because a bird had nested in that area and we had to wait until the eggs hatched before we could remediate that tunnel. The problem with that was that we had to allocate resources to guard that tunnel, which then left other areas on the border unsecured, which allowed the cartels to exploit that area. We have to be able to remediate these tunnels immediately.

Mr. WESTERMAN. OK. And I am going to stick to my rule, not going past 5 minutes, or the Committee Rule. So, I won't ask a question where you only have a few seconds to answer.

With that, I will recognize the Ranking Minority Member of the Subcommittee, Mr. McEachin, for questions.

Mr. MCEACHIN. Thank you, Mr. Chairman.

Mr. Arthur, is your Center for Immigration Studies the same one that was founded by John Tanton?

Mr. ARTHUR. It was not founded by John Tanton.

Mr. MCEACHIN. Was it founded in 1985?

Mr. ARTHUR. It was founded in 1985. I only began working—

Mr. MCEACHIN. Thank you. That answers my question.

Mr. Nicol, there has been some suggestion by some of the witnesses here that the Border Patrol has been handcuffed. And I assume by being handcuffed, we are talking about handcuffed by environmental and public policy safety laws. What rights and protections do these so-called handcuffs help to keep in place?

Mr. NICOL. I think it is important to see the interaction between the Border Patrol and land management agencies as a net positive. You have two different agencies that are responsible for work in a given area, they should be working together to minimize the kind of harm that could be done. Giving one an upper hand over the other is not helpful in any way.

Mr. MCEACHIN. All right, sir. The Chairman asked a yes or no question concerning a quotation from a few years back. You gave the answer, it is more complicated than that. Do you care to elaborate on your answer at this point?

Mr. NICOL. Certainly. Trash can be remediated fairly easily, it can be picked up. Trails that somebody leaves walking across the border can heal themselves relatively quickly.

If the laws are waived to build border walls, those walls cause significantly more damage, they tend to dam water, they cause flooding, the roads that have been carved through are far worse than trails. So, yes, it is good to limit the amount of trash that is left behind. But if the measures that are used to do that are more destructive than the trash itself, then that is a bigger problem.

Mr. MCEACHIN. Thank you. It also has been suggested that public land management agencies like the Department of the Interior and the USDA are to blame for delays in Border Patrol's border security efforts. However, it is my understanding that these public

land agencies hold an MOU with the Department of Homeland Security that helps to ensure cooperative management of border security on public lands. In fact, both Customs and Border Protection and the Department of the Interior have submitted testimony to this Subcommittee before saying that the MOU is working well.

To your knowledge, is this MOU working as it was intended?

Mr. NICOL. I think generally it is. I think that there are going to be issues in which one agency or the other, I think this goes on both sides, feel that things did not go as quickly as they would like.

I think one thing that might slow things down is the lack of biologists within the U.S. Fish and Wildlife. They have had a decreasing workforce, so possibly hiring some more biologists would help things like that to speed up. But I think overall it has been a positive.

Mr. MCEACHIN. That is probably a nice segue into my final question to you. How do you think the severe funding cuts proposed for the Department of the Interior and the USDA in the President's Fiscal Year 2019 budget will affect their ability to make land management decisions along the border?

Mr. NICOL. It will have a tremendous impact. These land management agencies also have their own law enforcement officers. If they don't have the funds to hire those officers or retain those officers, if they don't have people on the ground in these places, they are less able to do their jobs and they are also less able to work with Border Patrol.

Mr. MCEACHIN. Thank you.

Mr. Chairman, while that concludes my questions, I would ask unanimous consent to enter into the record the evidence that led the Southern Poverty Law Center to declare the Center for Immigration Studies a hate group.

Mr. WESTERMAN. Without objection.

The Chair will now recognize the Vice Chair of the Committee, Mr. Johnson from Louisiana, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Judd, I had a couple of questions for you. I want to thank you for your service first, and just kind of highlight some of the things you have said here today and what you have presented. On page 2 of your submitted testimony, you focus on the real life implications for agency safety, and you talked about that this morning.

Specifically, something that really drew my attention from page 2 of your written testimony, you say, "This is a particular concern at a time when we have seen a dramatic increase in assaults on agents. And just last year, assaults on agents were up 76 percent. They totaled 774 for 2017."

It is a dangerous job, and I think the American people recognize that or are beginning to appreciate it more. And we need to do all we can, that is our commitment, to assist you all and protect those who protect us.

Since my time is limited, I am not going to repeat everything you stated in those comments, but I do want to associate myself with that because I think your comments well articulate the importance of the topic that we are discussing today.

But here is my question. In your testimony, you also raise the point of how unintended consequences of environmental laws,



which are meant to protect our national resources, are actually harming the very areas they are supposed to protect. I am curious, in your personal experience that you related in your testimony, specifically with regard to the Naco area of operations, this is where the Border Patrol was required to leave the conservation area alone until it received the necessary permits and completed the environmental impact studies.

You mention that you had a long waiting period in that interim time, but you didn't say exactly how long. I know you probably cannot give a detailed number of days, but approximately how long was that waiting period? Are we talking weeks, months, a year? How long was it?

Mr. JUDD. To the best of my recollection, it was approximately 2 years.

Mr. JOHNSON. So, for nearly 2 years, for that amount of time, there was a massive hole that allowed criminal enterprises to drive their vehicles along areas that were intended to be nationally protected areas. Is that right?

Mr. JUDD. Yes. I personally chased several of these vehicles that crossed the border in that area.

Mr. JOHNSON. I think the importance of this hearing today is that I don't think the American people are aware of how nonsensical these things are and that it is jeopardizing our public safety. I am so grateful you brought it. It is very frustrating to all of us, and it must be very frustrating to the agents on the ground. I can just imagine what they must be saying about Congress and those who are making these laws.

Does it affect morale in that way? I know you said morale is trending upward, thankfully, because of the Administration's appreciation and the increasing awareness of all this. But that has to be a problem on the ground, right?

Mr. JUDD. I believe that all individuals want to feel like they are productive. I remember the best job that I ever had was when I worked construction when I was a college student. I was able to leave the construction site, look back and see what I accomplished. Border Patrol agents want to feel exactly the same way. They want to feel like they are in fact securing the border.

Mr. JOHNSON. I appreciate that.

I had one question for Mr. Nicol with regard to testimony you just gave. I think I heard you say that the trash that is left behind can be picked up, collected easily. Am I characterizing your response?

Mr. NICOL. A lot more easily than remediating problems that are caused by border walls and patrol roads, yes.

Mr. JOHNSON. The reason that piqued my interest is that we know that Border Patrol estimates that every CBV leaves approximately 8.5 pounds of garbage behind, each individual. So, if you do the math, based on the Border Patrol's conservative estimate of 1.3 million known CBVs, that means illegal immigrants and smugglers left approximately 11,050,000 pounds of trash over a 3-year period. Are you suggesting today that that is an easy thing to control and pick up?

Mr. NICOL. Again, the amount of harm that that does to an environment, it is significant, but it is far less than the amount of

harm done by border walls or by roads that are cut through roadless areas.

Mr. JOHNSON. But just so we are clear. Are you saying that 11 million pounds of trash is an easy thing to contain and control? Because I thought that is what you said a few minutes ago.

Mr. NICOL. It is matter of which one is greater, which does the greater harm.

Mr. JOHNSON. OK. I will yield back.

Mr. WESTERMAN. The gentleman yields back.

The Chair now recognizes the Ranking Member for 5 minutes, Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman. And, Mr. Chairman, the Committee staff, Mr. McEachin's Subcommittee staff, searched long and hard for an example which was in Mr. Judd's testimony of a tunnel that was never closed or never mitigated because of environmental regulations or laws. The example that he just gave about San Diego, I would request, Mr. Chairman, that you share the information with the staff so we can look at that, because we could not find any information on that example right there.

Mr. Nicol, the Majority is going to have us think that local communities are so overwrought by border crossers and things that they leave behind, that border communities should be thrilled to surrender their rights and their decision making to the Department of Homeland Security. That is not my experience from my own discussions with people in my district.

However, how do border communities you have talked to, that you worked with, feel about surrendering these prerogatives or rights, essentially against their will? Do you think the right to clean water or due process is red tape? Number one. Because I think that we are minimizing the effect on people themselves that live there and have lived there for generations. I would like to know if you could respond to that, please.

Mr. NICOL. Thank you. I live in a border community. I live in McAllen, Texas, just a few miles north of the border. The general feeling among people who are aware of the waiver of laws that is in place currently for the wall is a sense of offense. That we don't have the same level of legal protections that the rest of the country has. That someone in the interior of the Nation has the protection of the Safe Drinking Water Act, but the Safe Drinking Water Act was waived to build the border wall. All of my drinking water has to come through that to get to my home because all of my drinking water comes out of the Rio Grande.

We live in safe communities. McAllen is one of the safest communities in Texas. El Paso is one of the safest communities in the United States. Border communities are not over-run horrifying, dangerous war zones. They are safe. They are quiet. If anything, they are a little boring. The idea that we need to suspend the rule of law, and that only our safe communities get the rule of law suspended is, frankly, offensive to many people that I know.

Mr. GRIJALVA. And for local governments in those communities, those towns, those counties, how do they feel about having their legal requirements subject to basically irrelevance by the Department of Homeland Security and Border Patrol?

Mr. NICOL. I think it is the same basic thing. It also makes for a lot of legal uncertainty. You had the El Paso Water District challenge the waiver back in 2009 because they didn't know what their legal framework was to draw water out of the Rio Grande, if the laws had been waived, if the Clean Water Act and the Safe Drinking Water Act had been waived. So, I think it causes a tremendous amount of difficulty. It is a very broad-brush approach to waive everything.

Mr. GRIJALVA. Thank you.

Mr. Judd, if I may, just one question. On February 2 of last year, San Diego's NBPC Local 1613 said in a tweet that appears to now have been deleted, "It is morning in America. With new leadership having the will to secure the border, a Hemingway quotation follows: Certainly there is no hunting like the hunting of man, and those who have hunted armed men long enough and liked it, never really care for anything else thereafter."

This tweet was deleted. I just want to ask you, do you stand by that quote or are you aware of that quote, Mr. Judd?

Mr. JUDD. I personally had that quote deleted. I made sure that quote was deleted.

Mr. GRIJALVA. Why?

Mr. JUDD. I didn't think that quote was appropriate.

Mr. GRIJALVA. About the hunting of man?

Mr. JUDD. That is correct.

Mr. GRIJALVA. Thank you. I yield back.

Mr. WESTERMAN. The gentleman yields back.

The Chair now recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

Mr. Nicol, in your testimony, you said, as I read it, "laws that are swept aside are not merely red tape. They are critical protections that were put in place for a reason—to protect people, their communities, and the environment that we depend on."

Is that your belief?

Mr. NICOL. Yes, it is.

Mr. GOHMERT. But, apparently, it is only your belief when it comes to certain laws, but it is not your belief regarding laws about our border. Would you be happier if there were no U.S.-Mexico border?

Mr. NICOL. I am concerned about a lot of different laws, including—

Mr. GOHMERT. Let me ask it again, and listen real carefully. Would you be happier if there were no U.S.-Mexico border?

Mr. NICOL. No.

Mr. GOHMERT. You would not. So, you are OK with a border as long as it is not enforced and there is no wall, correct?

Mr. NICOL. The border has been enforced for a long time before there was a wall. The wall is not necessary for—

Mr. GOHMERT. Well, you are not answering my question. Because the fact is, when we have a national park that allows people to come in, drug smugglers, to use the park at will, and they destroy the park, they leave tons of trash, and we cannot allow our enforcement people to go out there and stop them, then that is not enforcing the border.

And when we put up a sign that, to me, is the most repugnant thing we can do to American citizens that says, look, basically, drug cartels have taken over our park, you will be safer if you don't use this area, go north of I-10, that is completely neglecting our duty as the U.S. Government and our oath to protect this country.

And I know you have such great judgment. I have certainly had my disagreements with Mr. Cornyn, our Senator, but isn't it true you said in response to John Cornyn's statement regarding Dreamers, "He forgot to add that he is a tool with no scruples and his head looks like a thumb with a face drawn on it." Aren't those your words? It was your post, wasn't it?

Mr. NICOL. Yes.

Mr. GOHMERT. And another post here, "We all know Ted Cruz is slimy and evil," and that, "if he were to crawl back under the rock from whence he was spawned, the world would be a better place." That was one of your posts. But you also post that you would like to see more of a coming together between the sides. Isn't that right?

Mr. NICOL. Those are personal, yes. But I do feel that it would make far more sense to have immigration—

Mr. GOHMERT. All right. Well, let me ask you about this, since I get to ask questions.

Another entry you had is that, "It is important to have some historical perspective and understand the racist reasons that our immigration laws were put in place."

Let me ask you, have you ever heard of MS-13?

Mr. NICOL. Yes.

Mr. GOHMERT. You know who they are. Have you seen the kind of hideous murders they have inflicted upon Americans in the United States? Have you seen that?

Mr. NICOL. I have read about them, yes.

Mr. GOHMERT. Yes. OK. And how about ISIS? You are familiar with who and what ISIS is, correct?

Mr. NICOL. Yes.

Mr. GOHMERT. And you are aware that they have made plans, and the FBI Director has testified that we now have ISIS in every state. He said there is an investigation in every state in the Union. Are you aware of that?

Mr. NICOL. Yes.

Mr. GOHMERT. And it was the FBI Director, even though people made fun of me for pointing out and quoting the FBI Director, he said that there are Middle Eastern terrorists who have changed their names to sound Hispanic and sneak across the U.S. border so that they can do damage in this country. That is also a threat.

We also have people like Kim Jong-un that has made clear he wants to destroy our Nation. We also know that drug cartels' estimated about \$80 billion or so last year that they brought in that has done massive damage on the rule of law in Mexico. It is why Mexico is not one of the top 10 economies in the country.

And, I would just suggest to you, that, hopefully, we will do as the Secret Service found when they raised the wall and the fence around the White House by 5 feet, fences and walls work. If they don't, as I told the head of the Secret Service, then tear down the wall around the White House. They haven't seen fit to do that.

I yield back.

Mr. WESTERMAN. The gentleman's time has expired.

The Chair now recognizes the gentleman from California, Mr. Huffman, for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman. Thanks to the witnesses for being here.

Environmental protections and bedrock environmental laws like NEPA are in place so that we can protect communities and the resources they depend on and provide an opportunity for public input into land management decisions. And, unfortunately, although I have heard my colleagues across the aisle many times say that local voices are the most important, it seems that it is only certain voices that matter and there is some selective listening going on. They seem to hear only the local voices that they agree with when it comes to things like national monuments and certainly with this rhetoric around border security we are hearing today.

Ignoring tribal rights, community voices, and our country's laws, as some are proposing, doesn't help solve problems, but it does advance President Trump's very authoritarian, dystopic agenda. In fact, today, it looks like we are having a blue light special, a two-for-one on scapegoating. We get to scapegoat environmental laws and Mexicans at the same time, so what an irresistible opportunity for this authoritarian agenda.

\* \* \* \* \*

Mr. GOHMERT. I would ask that the gentleman's words be taken down. He has impugned my motivation, and it is entirely inappropriate. It violates the rules of decorum in the House, and it is simply not true. I did not scapegoat any Mexicans—

Mr. HUFFMAN. Mr. Chair—

Mr. GOHMERT [continuing]. So, I ask the rule—

Mr. HUFFMAN [continuing]. The clock is running during Mr.—

Mr. GOHMERT. Yeah, he is going to have a whole time—

Mr. WESTERMAN. The gentleman will suspend.

Mr. GOHMERT [continuing]. As long as it doesn't violate the rules.

Mr. WESTERMAN. Does the gentleman wish to take down his words?

Mr. GOHMERT. Yes, I do.

Mr. HUFFMAN. He can do whatever he would like. I haven't violated any rules.

Mr. WESTERMAN. We need to consult for just a moment.

Can the official reporter report the words? Will the official reporter report the words?

[Discussion off the record.]

Mr. HUFFMAN. Mr. Chair, may I be heard for a point of clarification?

Mr. WESTERMAN. Still waiting for counsel. We will be right back.

Mr. HUFFMAN. I think we might be able to obviate some of the further delay and inquiry.

The gentleman from Texas, when he interrupted and I did not yield, but he did ask a question during that point about his personal motivation, and I answered in the affirmative. I am happy to withdraw that because, frankly, my earlier point was a

rhetorical point about the effect of the hearing and not about any individual Member's personal motivation. So, if withdrawing that colloquy, which I hadn't yielded for in any event, but I am happy to withdraw it, would move us forward, I would be happy to do that.

Mr. WESTERMAN. The gentleman from Texas.

Mr. GOHMERT. If I might respond. I would gladly accept that withdrawal, but I hope the gentleman understands, under the rules of decorum, if someone uses words that impugn a Member of Congress' integrity or motivation, I know it is not normally polite to interrupt, but if there is no challenge to have the words taken down while that speaker is still speaking and present, then you waive the right, and that was why I interrupt. Otherwise, I would apologize for interrupting because it was your time, but that is the only time I have to make clear "were you speaking directly to me?" And on the gentleman's explanation, I appreciate it. And my request for his words to be taken down is withdrawn. Thank you.

Mr. WESTERMAN. Does the gentleman wish to withdraw his words?

Mr. GOHMERT. And I would ask that his time be restored too.

Mr. WESTERMAN. Does the gentleman wish to withdraw his words?

Mr. HUFFMAN. I am happy to withdraw the words as the gentleman just—

Mr. GOHMERT. Thank you. And, Mr. Chairman, I—

Mr. WESTERMAN. Without objection, the words are withdrawn, and the gentleman may resume and ask questions.

Mr. GOHMERT. And his time be restored because he shouldn't be charged for my—

Mr. WESTERMAN. And his time will be restored.

Mr. GOHMERT. Thank you.

Mr. WESTERMAN. Please add 1 minute to the clock.

Mr. HUFFMAN. Well, thank you, Mr. Chairman and Mr. Gohmert. And certainly, I don't offer any words about individual motivations, but my rhetorical point about the effect of this hearing being one of scapegoating Mexicans and the environmental laws at the same time, I stand by completely.

Now, Mr. Nicol, you have already pointed out that where border infrastructure projects fail to fully consider impacts, local communities were left to deal with the consequences of that. And you mentioned eco-tourism, which is a large part of your local border economy.

According to a 2011 study, nature tourism contributes roughly \$460 million to the economy in south Texas every year. Could you please elaborate on the economic impacts of the border wall that cut off the World Birding Center? And then, maybe also speak to how you expect increased wall construction to impact wildlife and related eco-tourism that drives economic development in border communities.

While you are at it, it has been suggested that protecting wildlife is perhaps a rationale for this wall. I found that very creative, almost as good as the one from the President about putting solar panels on the wall, and now suddenly, we are for renewable energy. This wall can mean many things to many people and,

apparently, it is now a wildlife wall to some people. I would appreciate your thoughts on that rationale.

Mr. NICOL. Certainly. As far as eco-tourism is concerned, the wall that is south of my house was built between a World Birding Center that a local community established to try to tap into the some of the eco-tourism dollars that come to south Texas every year. We are in a migratory flyaway. All the birds heading north and south from about the Rockies to the East Coast bottle up and come through our area. So, in the fall and the spring, eco-tourism and bird watching are a tremendous part of the local economy.

The wall that was put up between the World Birding Center and the adjacent wildlife refuge, which is where all the habitat for the birds actually is, has a gate on it. The locals were promised that that gate would be opened during regular business hours. It has never been opened. There is a sign that points to it saying, "Pedestrian walking trail this way," but the gates never open so the birders can't go there.

If the same thing is done at the Santa Ana National Wildlife Refuge, the National Butterfly Center, Bentsen-Rio Grande State Park, and World Birding Center, all of which are on the map for President Trump's proposed walls, we can expect the same sort of thing. And even if the gate is opened, it is hard to imagine that very many tourists would want to go between prison bars to go see the birds they are interested in. It is not a very good vacation option.

As far as the wildlife is concerned, the levee wall in particular is terrible for wildlife because it takes an easy slope and turns it into a sheer cliff, essentially an 18-foot tall slab of concrete. And when we get floods, the wildlife is trapped, so you turn a wildlife refuge into a wildlife deathtrap. There is no way that an ocelot can get over that. People get over it pretty easily. There is usually a pile of ladders stacked up at the end of the wall. But for something that can't fly or can't build a ladder, the wall becomes a deathtrap.

Mr. HUFFMAN. What about the antelope that were referred to earlier as being impacted by illegal immigration, an antelope or mobile migratory animals? Does the construction of a continuous border wall impact the wildlife corridors that species like that would normally—

Mr. NICOL. The antelope, that was out in Arizona. I have read that report as well. The report did not say that it was just because of cross-border traffic. It was the whole package of enforcement and traffic that impacted those animals. So, it was also including the walls, the roads, patrols, helicopters, and everything else.

Mr. HUFFMAN. Thank you. I yield back.

Mr. WESTERMAN. The gentleman yields back.

If you notice, votes were just called, but we want to try to get one more round of questioning in. And I want to recognize the Chairman of the Full Committee, Mr. Bishop from Utah, for 5 minutes.

Mr. BISHOP. Thank you.

Let me see if I can get a few of these things in here quickly and change the focus back to what we are talking about.

Mr. Arthur, very quickly, is there a conflict between the missions of the Interior Department and Homeland Security?

Mr. ARTHUR. They can work together, but they actually have two very different missions. And, quite frankly, when they do work together, when we do enforce our—

Mr. BISHOP. It works real well.

Mr. ARTHUR. It works best, yes.

Mr. BISHOP. But that requires personality, which is something we don't—we legislate on worst-case scenario, not on best-case personality.

Mr. Bell, is the violence that you are witnessing on the border increasing or decreasing? I knew the Krentz family. I feel bad about everything. Is it increasing?

Mr. BELL. Where we have seen the access granted and the infrastructure and the road systems come in, we see less activity if there is less conflict. We don't run into folks. There hasn't been very much violence in our area. We do know that assault on agents is up, though. I belong to the Citizens Advisory Committee for our Nogales Border Patrol Station, and the statistics are up on that. And we get briefed on that regularly.

Mr. BISHOP. OK. Mr. Judd, we are talking here not necessarily about a wall. We are talking about access. The Border Patrol needs the access that happens to be there.

Have you served in other areas? You have served in Tucson, right?

Mr. JUDD. I have. I have also served in California, Maine, and Montana.

Mr. BISHOP. How many apprehensions did you have in Maine in a year?

Mr. JUDD. At my station, we had maybe two a year.

Mr. BISHOP. A little bit fewer than in Tucson.

Mr. JUDD. Yes.

Mr. BISHOP. Which means the history is somewhat cyclical. It also means that each border area is different. And having a one-size-fits-all MOU probably does not meet all the circumstances. So, for example, historically, San Diego is the entrance port of choice, until they actually waived those iconic bedrock laws and build a fence, and then it kind of shifted over to the Tucson Sector.

Rio Grande actually has more, but there is a different kind of personality going across. Rio Grande, a lot of those illegals that are coming across are kids, women, but in Tucson, isn't that mainly adults, males?

Mr. JUDD. It is, yes.

Mr. BISHOP. So, in each of these sectors, what we really need to have for the Border Patrol to be effective is to give them flexibility to meet the differences of those situations and give them access.

This is what I really want you to talk to me about, because when we were down there, you explained why east-west access is so significant. If somebody is crossing the border illegally and you have the ability of finding that out, what is your method? What do you try to do to catch those people?

Mr. JUDD. Well, what you want to do is you want to box those individuals in between two agents, because if you can do that, your effectiveness goes sky high. Whereas, if you are chasing from behind, the chances of you actually catching those individuals are nearly none.



Mr. BISHOP. So, to do that, you need different kinds of access points, one at the border wall, one further up there, further up again. You need to be able to go behind the group as well as in front of the group.

Mr. JUDD. To be effective, we have to have those.

Mr. BISHOP. And that is where the east-west access becomes critical.

Mr. JUDD. Absolutely.

Mr. BISHOP. Do you have a problem with maintenance of access routes that you already have?

Mr. JUDD. No, we don't.

Mr. BISHOP. All right. But you do need significantly more, as we were talking, were we in the Coronado at the time?

Mr. JUDD. We were, yes.

Mr. BISHOP. All right. Is there the ability of getting that access point right along the border so you can have somebody behind as well as somebody in front?

Mr. JUDD. We could absolutely build a border road that would help us be effective.

Mr. BISHOP. Is it there now?

Mr. JUDD. It is not.

Mr. BISHOP. Why not?

Mr. JUDD. The environmental laws, frankly.

Mr. BISHOP. You mean to tell me that sometimes it takes so long to get approval from the land managers, you don't even have time, you don't even ask the question?

Mr. JUDD. Oftentimes, we just don't even want to go through the process because we know what the outcome is going to be.

Mr. BISHOP. Borderland has a specific meaning, correct?

Mr. JUDD. It does, yes.

Mr. BISHOP. It is 100 miles.

Mr. JUDD. Yes.

Mr. BISHOP. It is different. And some of the frustrations I have of, obviously, people who simply, I think, try to put their head in the sand and ignore that there is an opinion. Sometimes we make a decision that if we are giving Homeland Security the ability of making these kinds of decisions on local communities, aren't we already doing that with the Department of the Interior and the Department of Agriculture? Aren't they already making these arbitrary decisions on these local communities?

Mr. JUDD. They have, yes.

Mr. BISHOP. The difference is not significant, except that the difference is national security has an interest in those areas. The difference is the topography. So, that Tucson Sector is 80 percent controlled by the Federal Government, and almost half of that is in wilderness area. You don't find that along the Texas border. You don't find that in Maine or Montana.

Mr. JUDD. No, you don't.

Mr. BISHOP. What we need to do is make sure that we give flexibility for access. Access has to be critical. If the Border Patrol does not have access, we cannot do our job with security. It is not the same thing as a wall. But that access becomes significant, and our environmental laws inhibit that access from taking place.

I yield back, in 1 second.

Mr. WESTERMAN. Great job. The gentleman yields back.

There are several people still on the list to ask questions, so the Committee will stand in recess, and we will reconvene after votes.

[Recess.]

Mr. WESTERMAN. The Committee will reconvene.

I now recognize the gentleman from Arizona, Mr. Gosar, for 5 minutes of questions.

Mr. GOSAR. Thank you, Mr. Chairman.

Mr. Judd, regarding Border Patrol agents that are under scrutiny for sabotaging water stashes set up by humanitarian groups and coyotes, who are aiding the commission of criminal crimes, what is the procedure for Border Patrol agents who find humanitarian groups or supply stashes along and around the border?

Mr. JUDD. When you look at those pictures, what they are not telling you is why we would dispose of that water. If that water heats up in the desert, it is actually a lot more dangerous to drink extremely heated water than what it is if you don't have that water at all.

So, what our agents are doing is they are actually taking a humanitarian effort to try to save these individuals. And it is on record to the extraordinary length that we have gone to save individuals, including an agent that went into the Colorado River and lost his life trying to save somebody who had crossed the border illegally. We have procedures in which we try our best to be as humanitarian to those that we come in contact with at all times.

Mr. GOSAR. Are the agents actively dismantling supplies for coyotes and individuals being smuggled?

Mr. JUDD. Absolutely not.

Mr. GOSAR. About how much of the waste and garbage throughout the borderlands comes from these humanitarian groups and the human and drug smugglers that they enable?

Mr. JUDD. A great deal. In fact, the vast majority of all the trash that is left in the desert is left from smugglers, the people that cross the border illegally, and from these humanitarian groups that leave these water jugs and these food piles around.

Mr. GOSAR. I have been to the border many times and have witnessed it firsthand.

In your view, would Border Patrol agents benefit from a clear plan and procedure for combating supposed humanitarian groups that are aiding and abetting and smuggling environmental pollution in felony border crossings?

Mr. JUDD. Well, in fact, under the Obama administration, we were not able to enter into these camps to extricate these individuals that crossed the border illegally, even if we had the foot sign that clearly showed that illegal aliens were entering into these humanitarian camps.

We know that these groups are helping people cross the border illegally, and that is just flat out against the law. If we are there to help for humanitarian purposes, that is perfect, but you can help through humanitarian purposes by reporting to the Border Patrol that people crossed the border illegally and let them know what hospital you are taking them to. But in reality, what they are doing is they are furthering the entrance of these individuals.

Mr. GOSAR. Well, to the law, they are aiding and abetting, right?

Mr. JUDD. They are.

Mr. GOSAR. OK. Mr. Nicol, you stated in your written testimony that there is no clear need to waive laws, environmental or otherwise, to facilitate Border Patrol activities. To make clear for the record, how many years of experience do you have in border security law enforcement?

Mr. NICOL. As a law enforcement officer, none.

Mr. GOSAR. Really? Can you say that again for the record?

Mr. NICOL. None.

Mr. GOSAR. Mr. Judd, in your decades of serving as a Border Patrol agent, do you agree with Mr. Nicol's statements that the 2006 MOU grants sufficient access to our agents to successfully deter illegal activity on the border?

Mr. JUDD. The way it is being implemented at this time, absolutely not.

Mr. GOSAR. Would there be any means to change that that you would find would suffice to actually work?

Mr. JUDD. No. It needs to be rewritten.

Mr. GOSAR. Thank you.

Mr. Bell, your family has ranched land along the border for some 80 years. As someone who lives and works on the borderlands, your testimony included mention of violence, murder, and threats. Since the MOU was signed in 2006, have you seen these problems disappear?

Mr. BELL. We have seen things get better on the border as far as that is concerned. When we see infrastructure come in along the border, we actually see conditions get better. We see interactions with illegal border crossers diminish. We don't see the drug smugglers as much. But there are those chance occasions when you run into somebody and you don't know who you are confronting, so—

Mr. GOSAR. Can you give me a timeline? You have seen it get better, let's say around November of 2016 and since that time?

Mr. BELL. Yes, I have seen it actually get better prior to that, actually. When they started to get these liaisons with the Forest Service in with the Border Patrol and actually work on projects to get roadways implemented on the border and infrastructure, like RVSS towers and IFT towers. Those were all done in coordination with the Forest Service.

Mr. GOSAR. So, has the deterrence been sufficient as Mr. Nicol would state?

Mr. BELL. No. There is still a lot of smuggling going on in the area. There are still a lot of groups coming through the area. And in fact, they are using the areas where the agents have less capability of patrolling. Right now, the biggest area on our ranch where drugs are being smuggled is through the wilderness area.

Mr. GOSAR. Oh, absolutely. I thank the gentleman.

My time has expired. I appreciate it.

Mr. WESTERMAN. The gentleman's time has expired.

We will now move into a second round of questions, and I recognize myself for 5 minutes.

Mr. Judd, can you clarify what types of challenges you have that you face in order to conduct maintenance on tactical infrastructure? This is infrastructure that is already in place.

I know when I was at the border, we were in a vehicle, looked like it had new tires on it, but we spent part of the time changing a flat on the vehicle driving along the road that was on the border.

Mr. JUDD. The main issue that we have with maintenance, if we have a road, we can maintain that road, to answer Chairman Bishop's question. But the problem is, is we don't have north-south access roads that allow us to get to the border roads that allow us to maintain it in a timely fashion.

To drive a road grader from, let's just say, the Naco or the Brian Terry Memorial Border Patrol Station to the Coronado National Forest, as opposed to driving that same road grader on the highway, taking it into the forest and then having that north-south access road, greatly diminishes the time. So, we have to have access to those roads.

Mr. WESTERMAN. And, Mr. Arthur, in Mr. Nicol's testimony he talked about the decrease in the amount of drugs coming over the southern border. Is that true? I thought there has actually been an increase in fentanyl and methamphetamine?

Mr. ARTHUR. I don't have the numbers in front of me, but I can tell you right now that the amount of fentanyl—and again, I cannot overstate the toxicity of this drug—the amount of fentanyl that we have seen has actually increased significantly month to month in the first 4 months of Fiscal Year 2018. It is almost as much as we saw in all of Fiscal Year 2017.

Mr. WESTERMAN. OK. And, Mr. Judd, recently when I traveled to the Border Patrol's Tucson Sector with Mr. Bishop, we witnessed the various effects of illicit border crossing activity. We were able to see firsthand how transnational criminal organizations utilize gaps in our border security to circumvent criminal operations. We saw these hideouts in the hills where the scouts operate from. And we know this can often lead to the creation of tunnels that are used for human trafficking and smuggling of narcotics. And I found out something else interesting when I was there, that the city of Nogales treats the sewage from Mexico and drugs actually get smuggled through the sewer system.

Can you lead us through the steps your agents must take after the discovery of a cross-border tunnel and what it takes to remediate that tunnel or fill it in?

Mr. JUDD. Yes, it is a very difficult and lengthy process. We have to contact, again, as per the National Environmental Policy Act, or NEPA, we have to contact several different agencies in order just to fill that tunnel in, which is what we are hoping to do. In remediating it, you are trying to take it back to its natural state. And it takes weeks, even months, to be able to take that tunnel back to its natural state because of the bureaucracy that is involved with these laws.

Mr. WESTERMAN. Mr. Nicol, a report on the Cabeza Prieta National Wildlife Refuge found almost 8,000 miles of ad hoc roads that were associated with illegal border crossings, and recommended Border Patrol be allowed to access the refuge and install tactical infrastructure. Since you believe the Border Patrol and security infrastructure are ineffective, what would you do to reduce the number of and the amount of damage that these unauthorized roads cause in the refuge?

Mr. NICOL. Many of those roads are being created by east-west traffic, not just north-south traffic. One of the remediation efforts that has been undertaken at Cabeza Prieta and at Organ Pipe Cactus National Monument has been to retire and repair unneeded roads, because those are used by smugglers the same way as they are used by Border Patrol agents. So, reducing the number of roads would not only help to remediate the damage, but it would also make it so that when you do have cross-border traffic, it is more concentrated in specific areas, which would in turn make it easier for Border Patrol to intercept.

Mr. WESTERMAN. Mr. Judd, you spent a lot of time in this area. Do you think these roads are mainly east-west or do you see north-south? The image we saw earlier looked like a vast web of ad hoc roads.

Mr. JUDD. The roads that Border Patrol agents use are east-west, but the roads that the smugglers use are all north-south. I mean, they might go east-west for a couple hundred yards until they go north-south again, but they are all north-south.

Mr. WESTERMAN. OK. My time has almost expired.

I will now recognize Mr. Beyer for 5 minutes.

Mr. BEYER. Thank you, Mr. Chairman, very much. Mr. Chairman, we are here today to talk about the border wall while the Senate is talking about immigration legislation, so I think it is only fair that I take a few minutes to express my extreme disappointment with how disingenuous this immigration conversation has been in Congress. I think the American public is being spun, confused, misled by the President and Republican congressional leadership, so let me set the record straight.

Number one, President Trump told us that Mexico would pay for the wall. Number two, Mr. Trump ended protection for Dreamers. Number three, now President Trump is insisting that we agree on his plan to limit immigration or else.

Trump insists he is a dealmaker, but nothing could be further from the truth. He says he wants a bipartisan deal, but then he says he won't support any that are brought to him. He says Mexico will pay for the wall. Now, he is begging for us to fund it. He says he wants to protect Dreamers, but he won't do it unless Congress agrees to limit legal immigration. And he is holding immigration conversations hostage.

This is reckless, period. The anti-immigrant right wants to build a border wall despite efforts that experts have said already decried because it doesn't make us any safer. And the anti-immigrant right wants to limit immigration, which is a fundamentally different conversation from anything that we have had before. No one was talking about this before because it is truly radical.

Our economy needs immigration to be competitive and a lead. We need to protect our Dreamers, and nearly 80 percent of Americans and a vast majority of Republicans agree this must happen. We need to look at our high-skilled immigrants and per country caps, for example, House Bill H.R. 392. We need the American Hope Act, a meaningful bill for Dreamers, or my bill with Congressman Espaillat and Bonamici, the Protecting Sensitive Locations Act, or Congresswoman Chu's Reuniting Families Act. We need meaningful discussion on temporary protective status.

Congressman McGovern has a bill pushing this. We need meaningful treatment toward refugees, like Congressman Pascrell and Cicilline have been pushing. And we need meaningful access to health services, like Congresswoman Luján Grisham has been advocating.

But that is not our conversation. We are not being heard. The scared children and families are not being heard. Arguments about merit ignore that we already have merit in our system. Yes, it needs tweaks. The skills-based visa system is not perfect, but that is not the conversation we are having. Family reunification is now called chain migration, but we all understand the importance of family reunification. President Trump's own wife brought her parents here through that family reunification system.

So, let's be real. Let's eliminate the coded language that tries to make us more comfortable with a nativist and even racist immigration policy. Look, we are all children, grandchildren, great grandchildren of immigrants, mostly when there were little or no immigration restrictions, and there were certainly no walls.

Mr. Chairman, that is the end of my formal statement, but I do have a question or two.

Mr. Nicol, in your testimony, you mention that the waiver to build roads and public lands is not only environmentally destructive, but can be counterproductive to border security efforts. We have heard a lot about the east-west walls needed just on the side. Can you give an example how the public roads could be counterproductive?

Mr. NICOL. Probably the best documented example is in the San Bernardino National Wildlife Refuge. They are in an area that is very fissured and eroded and has deep crevices that someone cannot drive through. A patrol road was built along the southern edge of the refuge. That patrol road involved filling in lakes that are used by endangered fish. It didn't work very well because they got their bulldozers stuck when they tried to just dump dirt into it. But once the road was built, the refuge reported, in 2008, that that road was being used by smugglers, and that areas that previously had not seen any cross-border vehicle activity because one could not drive a vehicle through, were now being used by smugglers.

There may well be other examples that have not been as well documented. That one, because you have land banners on the ground observing it, has been.

Mr. BEYER. One more question. In Mr. Judd's written testimony, he described the need for some Border Patrol agents to use horses to patrol public lands as "absurd." As someone who lives on the border, do you think it is absurd that the Border Patrol may need to use horses as transports in some cases?

Mr. NICOL. For me?

Mr. BEYER. Yes, Mr. Nicol.

Mr. NICOL. Sure. I think that it makes a lot of sense in certain areas. It doesn't make sense to create a road when a horse is a more effective way to get across that terrain. There are some very rugged parts of the border where a horse is just the most appropriate and most effective way to get from point A to point B.

Mr. BEYER. Mr. Chairman, I yield back.

Mr. WESTERMAN. The gentleman yields back.

The Chair now recognizes the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Mr. GOSAR. Mr. Judd, Mr. Nicol made a comment about it is easier to pick up trash than building a wall. You are familiar with lower Santa Cruz, right?

Mr. NICOL. I am, yes.

Mr. GOSAR. What happens in the lower Santa Cruz? Mexico is high ground. We are low ground in Arizona. So, what ends up happening, we get this episodic flooding, right?

Mr. JUDD. And we get a lot of trash washed into our areas.

Mr. GOSAR. Not just trash, but sewage, right?

Mr. JUDD. Yes, correct.

Mr. GOSAR. OK. Mr. Arthur, when we start looking at disease, I would talk about trash with disease, is the antibiotic-resistant tuberculosis advancing in the United States or receding?

Mr. ARTHUR. I know that we have seen incidents of antibiotic tuberculosis in the United States. The source of it, I cannot actually identify, but I believe it is increasing.

Mr. GOSAR. Well, epidemiology-wise, in Arizona, it is moving farther north. OK? We have tons of illegals that come in, because we are one of the ones that actually have the treatments for that.

So, where I am going with this is, the lower Santa Cruz, we made a comment about a wall. So, Mr. Judd, if we were to build a management of water with Mexico, would that actually be as good as a wall?

Mr. JUDD. I am sorry?

Mr. GOSAR. Like an infrastructure project where we actually mitigate the process and direct water along the mitigation, along the lower Santa Cruz.

Mr. JUDD. Absolutely. What we need to do is we need to be able to keep anything that is flowing from Mexico into the United States that could be bringing trash, sewage, or anything like that. And whether that is a wall, whether that is building an infrastructure with Mexico, we just need to be able to keep that out from the United States.

Mr. GOSAR. Let me ask you another question. Maybe you can't answer, but I have the answer. When you do something along the international border between Mexico, the United States, and Arizona, who helps pay for it?

Mr. JUDD. The United States does, as far as I know.

Mr. GOSAR. Can you say it? What is the other country south of us?

Mr. JUDD. I don't know very much that Mexico pays for anything.

Mr. GOSAR. No, but Mexico would pay for that on an infrastructure—

Mr. JUDD. Oh, yes. In that case, yes.

Mr. GOSAR. Absolutely, so once again, President Trump said, "no, Mexico would pay for it," well, this is a creative way of looking at something that actually mitigates trauma to our infrastructure aspects that both sides take care of. And it is even better than a wall.

Mr. JUDD. Yes.

Mr. GOSAR. We can actually extrapolate that to Nogales because of the wastewater problem. Once again, we have rampant sewage coming into the United States from Mexico. When we do the

wastewater aspect, we are the low ground, they are high ground. So, we can actually mitigate this and it makes it something that both countries mitigate.

Oh, by the way, let me ask you the question. There is also another tribe down there, right, the Tohono O'odham that are along that border as well?

Mr. JUDD. That is correct, yes.

Mr. GOSAR. So, this might be an interesting facade in regards to a mitigation on how we look at border security with an infrastructure project, would it not?

Mr. JUDD. It would, yes.

Mr. GOSAR. Wow. Interesting. But I guess I am the racist, because that is what was said here. It is disingenuous for my colleagues on the other side to say that. Over and over again, that is all I hear.

You know what, there is an old analogy: "Look in the mirror. The enemy is me."

I yield back.

Mr. WESTERMAN. The gentleman yields back.

We will do one more round of questioning.

Mr. Arthur, you stated that you observed environmental concerns in your recent visit to the Rio Grande Valley Sector that hinders border security. Can you please explain the problems that agents face there? We have been talking about the Tucson Sector in Arizona, but let's look at some other areas along the border.

Mr. ARTHUR. The main issue that I saw when I was down there was carrizo cane. Carrizo cane is an invasive species that grows along the banks of the Rio Grande River. And to quote *The New Yorker*, "it forms a grassy forest along the border within which visibility is roughly 12 to 24 inches and makes an excellent hiding space." It is also a woody substance. It is very difficult to get through. Once smugglers, once any sort of cross-border traffic, enter that cane, it is next to impossible to find it. There are cane eradication projects, but the cane remains. And for some reason, nothing has been done. The curious thing is that when I stood on the bluffs of Roma, Texas, and I stared across the river at Ciudad Miguel Alemán, I believe it is, I actually saw Mexican workers cutting the cane on the other side of the border, when I looked down and I saw the cane growing along our own border. I don't know why we still have it.

Mr. WESTERMAN. Mr. Nicol, in your opening statement, you mentioned the San Bernardino National Wildlife Refuge as an example where border security infrastructure has failed. But you failed to note that Border Patrol's access to the refuge must be negotiated at the supervisor's level on a case-by-case basis.

Do you think that if Border Patrol had more immediate access to the refuge's roads, it would deter illegal immigration and drug smugglers from using those roads?

Mr. NICOL. I think that the interaction between the land management agencies and Border Patrol for any kind of interdiction efforts where they are both having jurisdiction is critical.

Mr. WESTERMAN. I want to change the format here just a little bit. We asked a lot of questions, but there may be something on



your mind that you think the Committee needs to hear that we haven't asked.

Mr. Bell, I want to start with you. Are there any other issues regarding border security, environmental laws, regulations and access that you think we need to hear?

Mr. BELL. Well, it just doesn't stop with getting access to the border and waiving rules. We still need other things. We have to make sure there are boots on the ground. We have to make sure that we have aerial assets. We have to make sure they have the technology. All those things coupled together. But it doesn't stop there either.

We need to make sure there is the infrastructure in place in the courts that allow for timely prosecutions and a judicial system that is willing to put out consequences. Only then can we really see a change if we impose consequences on folks.

Mr. WESTERMAN. Being from Arkansas and making a trip down to the border like I did recently, it was really eye-opening to me the vastness of the land there, the issues that the agents face, the obstacles that are in their way.

Mr. Judd, I want to ask you, is there something else you think the Committee should know that would enhance the Border Patrol's ability to do their job in regards to rules and regulations and environmental policy that currently is on the books?

Mr. JUDD. Absolutely. I think that the main issue that we currently face is the access that we have to these public lands. Horse patrol is extremely important, and we always have to have horse patrol. But if we cannot respond in a timely manner to activity that is currently happening on the border, we are never going to be able to control the border and we are never going to be able to secure the border. Without that access, and without us being able to stop those people from entering into the country, we will never be able to secure the border.

Mr. WESTERMAN. Another thing I noticed there was that it is a system of protection with walls and roads and remote-sensing equipment. And access is a critical component of that. Even if you have a wall in a remote area, people could figure out how to breach that. And if you can't access it, you can't stop them.

Mr. Arthur, do you have anything to add to that on anything the Committee should know that you haven't had a chance to tell us?

Mr. ARTHUR. Absolutely. I would commend to the Committee Section 118, Division C, Title I of the Securing America's Future Act. It will respond to a lot of the issues that Agent Judd and Mr. Bell have raised today about Border Patrol agents having their hands tied. Basically, what it would do is it would waive a variety of laws in very critical situations when Border Patrol needs to get access and needs to provide crucial infrastructure along the border.

In fact, I would expand it to include all laws so that state laws are not able to stop this critical work.

Mr. WESTERMAN. The Chair now recognizes Mr. Beyer for 5 minutes.

Mr. BEYER. Thank you, Mr. Chair, very much.

Mr. Nicol, I want to ask you about flooding. My friend Mr. Gosar talked about Nogales. There is the waiver authority in the border wall. What happened in 2008 in Nogales?

Mr. NICOL. In 2008, seasonal monsoon rains that hit this area every 3 to 5 years came through Sonora and Nogales, Arizona. Rainfall that goes kind of from uphill in Mexico to downhill into the United States was dammed by the border wall that separates the two cities.

In addition to the wall above ground, there had been a wall built below ground, without discussion with the International Boundary Water Commission, that backed up water that was going through the drainage culvert underneath and caused the road above to heave up so that water was flowing along the top and pouring out of the ground. Water on the Mexican side was about up to the door frames. On the U.S. side, it was ankle deep. Hundreds of buildings were damaged and two people drowned in Mexico.

After that, there were efforts to retrofit border walls where they cross washes, but after that retrofitting occurred in 2011, water backed up behind a section of border wall in Organ Pipe Cactus National Monument, a section that had been retrofitted. It then went over the top of the obstruction, carved out the foundation of the wall, and blew out a 60-foot wide section. We were told that that was an error and would not occur again, but in 2014 it occurred again, just outside of Nogales.

Mr. BEYER. Would a NEPA analysis have made any difference in Organ Pipe National Monument or Nogales?

Mr. NICOL. More than likely, because the land managers at Organ Pipe, before the wall went up, foresaw that walls were going to obstruct debris that would be going down awash during a flood. They actually commissioned a channel morphology report to be done as a baseline so they could see how it changed before the wall and after the wall. So, they saw it coming.

Mr. BEYER. In my statement the last round, I complained about how candidate Trump and President Trump had promised that Mexico was going to pay for the wall. In his Fiscal Year 2019 budget we just got the other day, it has an \$18 billion request for building the border wall across the U.S.-Mexico border, including 65 miles in the Rio Grande Valley. We all know that initial estimates tend to go way up. But my friend, Mr. Gosar, made some comment about how Mexico was actually paying.

I was going to ask Congressman Gosar, but he left, anyone understand what he said and could explain that to me, how currently we are expecting Mexico to pay for this wall, or some parts of it?

This is a friendly question. It would have been a friendly question for him.

Mr. ARTHUR. If I could, Mr. Beyer, I believe that the statement had to do with levee walls being built on either side of the border. And if there were to be a levee on the United States side and a levee on the Mexican side, that, in fact, would be a border wall that Mexico would pay for.

Mr. BEYER. OK. Do we anticipate that much of the remaining wall that has to be built along the Mexican border is going to be these parallel levees?

Mr. ARTHUR. That I can't answer. But it actually goes exactly to the point that Mr. Nicol made, because what he was saying was, if you put a wall on one side and you don't have a wall on the other, you end up having a flood control problem. If you cure the

flood control problem, you cure it on both sides, and that is one way that you would alleviate the problem.

Mr. BEYER. But we are also depending on Mexico deciding that they have to build a wall on their side.

Mr. ARTHUR. As I said, I was surprised to see the Mexicans—there seems to be this impression that the Mexicans don't care about border security. This is a real bread-and-butter issue for them because they don't want the gangs in their country either. That is why I saw them cutting the carrizo cane in Ciudad Miguel Alemán. They don't want this, so, quite frankly, it is possible that that could happen.

Mr. BEYER. Thank you.

Mr. Nicol, you talked about the Tohono O'odham Nation. It is a long history with the Border Patrol. Nevertheless, I understand that a waiver is used to construct a vehicle barrier across their land. Can you describe how that waiver affected the Tohono O'odham Nation?

Mr. NICOL. They have complained that it has made it more difficult for them to interact with tribal members on both sides of the border. Their nation pre-exists the border being placed there. It restricts access to sacred sites and to family on the south of the border. And they have come out very strongly against converting that vehicle barrier into a pedestrian barrier as has been proposed.

Mr. BEYER. OK. Mr. Chairman, I yield back. Thank you.

Mr. WESTERMAN. The gentleman yields back.

I, again, want to thank all the witnesses for your valuable testimony, and the Members, to those that are still here, for our questions. The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing.

Under Committee Rule 3(o), members of the Committee must submit witness questions within 3 business days following the hearing by 5:00 p.m., and the hearing record will be held open for 10 business days for their responses.

In closing, I ask unanimous consent that the following items be entered into the record: A November 9, 2017, Congressional Research Service Report on Federal and Indian Lands on the U.S. Mexico Border. And as a point of clarification, a *Washington Post* article, and articles from *The Daily Signal*, and a document from the Center for Immigration Studies that address the Southern Poverty Law Center's allegations about the Center for Immigration Studies.

Without objection, so ordered.

If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 12:43 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

**Rep. Grijalva Submission**

SENT BY E-MAIL

February 14, 2018

Hon. Bruce Westerman, Chairman  
 Hon. A. Donald McEachin, Ranking Member  
 Committee on Natural Resources  
 Subcommittee on Oversight and Investigations

Dear Chairman Westerman and Congressman McEachin:

I am writing to request that the attached research brief be read into the record for the hearing on “The Costs of Denying Border Patrol Access: Our Environment and Security” scheduled for 10:00 a.m. on Thursday February 15, 2018. Our statement summarizes findings from seven years of research on interagency cooperation on the U.S. Mexico Border conducted by my colleagues and me at the University of Arizona. We hope that the information we provide is of help to the subcommittee’s deliberations. If members have questions or want further clarification on our research brief, we would be glad to respond to any requests.

Sincerely,

KIRK EMERSON,  
 Professor of Practice  
 School of Government and Public Policy  
 University of Arizona

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[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE  
 COMMITTEE’S OFFICIAL FILES]

**Rep. Grijalva Submission**

—Research Brief—“Interagency Cooperation on the U.S. Mexico Border,” University of Arizona, February 14, 2018.

**Rep. McEachin Submission**

—Southern Poverty Law Center, article titled, “Center for Immigration Studies,” accessed February 15, 2018.

**Rep. Westerman Submissions**

- The Daily Signal*, article titled “The Southern Poverty Law Center Almost Got Me Killed. Why Does the Media Still Propagate Its ‘Hate Map?’”, September 5, 2017.
- The Daily Signal*, article titled, “CNN’s ‘Hate Groups’ Map Puts Conservative Lives at Risk,” July 13, 2017.
- Letter addressed to House Committee on Natural Resources, Subcommittee on Oversight and Investigations staff from Carol Hardy Vincent, Specialist in Natural Resources Policy, Congressional Research Service, dated November 9, 2017.
- Center for Immigration Studies, article titled “Immigration and the SPLC,” March 11, 2010.
- The Washington Post*, article titled “How labeling my organization a hate group shuts down public debate,” March 17, 2017.