DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the
Illegal Immigration Reform and Immigrant Responsibility Act of 1996,
as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Luna County, New Mexico, Doña Ana County, New Mexico, and El Paso County, Texas.

DATES: This determination takes effect on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

SUPPLEMENTARY INFORMATION:

Important mission requirements of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109-367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. Id. Consistent with that mandate from Congress, the President’s Executive Order on Border Security and
Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, section 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, section 4(a).

DETERMINATION AND WAIVER:

Section 1

The United States Border Patrol’s El Paso Sector is an area of high illegal entry. In fiscal year 2019, the United States Border Patrol (“Border Patrol”) apprehended over 182,000 illegal aliens attempting to enter the United States between border crossings in the El Paso Sector. Also in fiscal year 2019, there were over 400 drug-related events between border crossings in the El Paso Sector, through which the Border Patrol seized over 11,000 pounds of marijuana, over 137 pounds of cocaine, over 35 pounds of heroin, over 340 pounds of methamphetamine, and over two pounds of fentanyl. Additionally, Luna County, New Mexico, Doña Ana County, New Mexico, and El Paso County, Texas, which are located in the El Paso Sector, have been identified as High Intensity Drug Trafficking Areas by the Office of National Drug Control Policy.

Due to the high levels of illegal entry of people and drugs within the El Paso Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the El Paso Sector. Therefore, DHS will take immediate action to construct new primary pedestrian fencing and replace existing primary pedestrian and secondary fencing in the El Paso Sector. The segments within which such construction will occur are referred to herein as the “project areas” and are more specifically described in Section 2 below.

The existing pedestrian and secondary fencing within the project areas no longer meets Border Patrol’s operational needs. The existing pedestrian and secondary fencing is not of sufficient height. Further, the existing pedestrian fencing was constructed with thinner materials that are easily breached. It therefore does not provide the level of impedance necessary to meet Border Patrol’s operational needs. Both will be replaced with fencing that has a more
operationally effective design. In addition, the construction of new fencing in the El Paso Sector is intended to slow or stop illegal activity. Increasing the level of impedance will improve Border Patrol’s ability to respond to narcotics smuggling and illegal entries. Within the project areas roads will also be constructed or improved and lighting will be installed.

To support DHS’s action under section 102 of IIRIRA, I requested that the Secretary of Defense, pursuant to 10 U.S.C. 284(b)(7), assist by constructing fence, roads, and lighting within the El Paso Sector in order to block drug smuggling corridors across the international boundary between the United States and Mexico. The Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. 284(b)(7) and that the Department of Defense will provide such support in the project areas described in Section 2 below.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the State of Texas and the State of New Mexico within the United States Border Patrol’s El Paso Sector, are areas of high illegal entry (the “project areas”):

- Starting at approximately Border Monument 33 and extending east for approximately three (3) miles;
- Starting at approximately Border Monument 24 and extending east to approximately Border Monument 20;
- Starting approximately two and one-half (2.5) miles west of Border Monument 4 and extending east to approximately one-half (0.5) of a mile east of Border Monument 3;
- Starting approximately one and one-quarter (1.25) miles east of Border Monument 3 and extending east to approximately Border Monument 2;
• Starting at approximately the New Mexico – Texas state line and generally following the International Boundary and Water Commission levee south and east for approximately two (2) miles;

• Starting approximately one-half (0.5) of a mile north and west of the Paso Del Norte Port of Entry and generally following the International Boundary and Water Commission levee east to approximately one-half (0.5) of a mile south and east of the Bridge of the Americas Port of Entry; and

• Starting approximately one and one-half (1.5) miles south and east of the Bridge of the Americas Port of Entry and generally following the International Boundary and Water Commission levee south and east to approximately nine (9) miles south and east of the Tornillo Port of Entry.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.


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Chad F. Wolf,
Acting Secretary of Homeland Security

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