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 Yuma County, Arizona, and Imperial County, California.

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 Yuma Sector is an area of high illegal entry. In fiscal year 2019, the United States Border Patrol (“Border Patrol”) apprehended over 68,000 illegal aliens attempting to enter the United States between border crossings in the Yuma Sector. Also in fiscal year 2019, there were over 800 drug-related events between border crossings in the Yuma Sector, through which Border Patrol seized over 3,000 pounds of marijuana, over 33 pounds of heroin, over 1,186 pounds of methamphetamine, and over 50 pounds of fentanyl. Additionally, Yuma County, Arizona, which is located in the Yuma Sector, and Imperial County, California, a portion of which is located in the Yuma Sector, have been identified as a High Intensity Drug Trafficking Area by the Office of National Drug Control Policy.

Due to the high levels of illegal entry of people and drugs within the Yuma Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Yuma Sector. Therefore, DHS will take immediate action to construct new secondary fencing and replace existing vehicle barriers and primary pedestrian and secondary fencing in the Yuma Sector. The segments of the border 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 barriers within the project areas include outmoded vehicle barriers as well as primary pedestrian fencing and secondary fencing that no longer meet the Border Patrol’s operational needs. The older fencing designs are easily breached and have been damaged to such a degree that they are ineffective. Both will be replaced with fencing that has a more operationally effective design. Although the deployment of vehicle barriers in the Yuma Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal
organizations have adapted their tactics by switching to foot traffic, cutting the barriers, or simply driving over them to smuggle illicit cargo into the United States. To respond to these changes in tactics, Border Patrol now requires pedestrian fencing rather than vehicle barrier. Additionally, constructing new and replacing existing secondary fencing will mean that a portion of the Yuma Sector will have a contiguous enforcement zone, which is critical to securing the border. 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 Yuma 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 Arizona within the United States Border Patrol’s Yuma Sector, are areas of high illegal entry (the “project areas”):

- Starting approximately three-quarters (.75) of a mile west of the Andrade Port of Entry and extending east to the Colorado River;
- Starting approximately five and one-half miles (5.5) miles south of the Morelos Dam and extending south and generally following the Colorado River for approximately seven and one-half (7.5) miles; and
Starting at the point where the Colorado River crosses the international border between the United States and Mexico and extending east to approximately Border Monument 201.

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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