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 San Diego 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 San Diego Sector is an area of high illegal entry. In fiscal year 2019, the United States Border Patrol (“Border Patrol”) apprehended over 58,000 illegal aliens attempting to enter the United States between border crossings in the San Diego Sector. Also in fiscal year 2019, there were over 300 drug-related events between border crossings in the San Diego Sector, through which Border Patrol seized over 3,300 pounds of marijuana, over 1,280 pounds of cocaine, over 293 pounds of heroin, over 3,985 pounds of methamphetamine, and over 107 pounds of fentanyl. Additionally, San Diego County, California, which is located in the San Diego Sector, has 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 San Diego Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the San Diego Sector. Therefore, DHS will take immediate action to replace existing and construct new pedestrian fencing in a number of non-contiguous segments of the border in the San Diego Sector. The segments where such construction will occur are referred to herein as the “project area,” which is more specifically described in Section 2 below.

The existing pedestrian fencing within the projects area, which includes landing mat fencing that is easily breached and has been damaged to the extent it is ineffective, is susceptible to exploitation. Replacement of the existing pedestrian fencing will increase the impedance capability in the San Diego Sector. Additionally, the construction of new fencing will close gaps and serve to slow or stop illegal activity, including narcotics smuggling and illegal entry. Within the project area 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 San Diego 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 area described in Section 2 below.

**Section 2**

I determine that the following area in the vicinity of the United States border, located in the State of California within the United States Border Patrol’s San Diego Sector, is an area of high illegal entry (the “project area”): Starting approximately one and one-half (1.5) miles east of Border Monument 243 and extending east to the San Diego – Imperial County line.

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 area, 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 area, 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 area, 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:

(16 U.S.C. 1531 et seq.)); the Federal Water Pollution Control Act (commonly referred to as the
Clean Water Act (33 U.S.C. 1251 et seq.)); the National Historic Preservation Act (Pub. L. 89-
Bird Conservation Act (16 U.S.C. 715 et seq.); the Clean Air Act (42 U.S.C. 7401 et seq.); the
Archeological Resources Protection Act (Pub. L. 96-95 (16 U.S.C. 470aa et seq.)); the
Paleontological Resources Preservation Act (16 U.S.C. 470aaa et seq.); the Federal Cave
Resources Protection Act of 1988 (16 U.S.C. 4301 et seq.); the National Trails System Act (16
U.S.C. 1241 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Noise Control
Act (42 U.S.C. 4901 et seq.); the Solid Waste Disposal Act, as amended by the Resource
Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Comprehensive Environmental
Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.); the Archaeological and
Historic Preservation Act (Pub. L. 86-523, as amended, repealed, or replaced by Pub. L. 113-287
seq.)); the Antiquities Act (formerly codified at 16 U.S.C. 431 et seq., now codified at 54 U.S.C.
320301 et seq.); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16
U.S.C. 461 et seq., now codified at 54 U.S.C. 3201-320303 & 320101-320106); the Farmland

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