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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; correction.

SUMMARY: The Acting Secretary of Homeland Security determined, pursuant to law, that it was 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, Imperial County, California, Yuma County, Arizona, Pima County, Arizona, Santa Cruz County, Arizona, Cochise County, Arizona, Luna County, New Mexico, Doña Ana County, New Mexico, El Paso County, Texas, Val Verde County, Texas, and Maverick County, Texas. The notice of determination was published in the Federal Register on February 20, 2020. 85 FR 9794. The description of one project area within the United States Border Patrol's Tucson Sector was inadvertently omitted from the February 20, 2020, publication. For clarification purposes, this document is a republication of the February 20, 2020, document including the omitted description of one project area within the United States Border Patrol's Tucson Sector.

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).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS’s border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”). Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, section 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, section 564, 121 Stat. 2090 (Dec. 26, 2007). In section

102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

DETERMINATION AND WAIVER:

Section 1

The United States Border Patrol’s San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sectors are areas 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. There were also 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. In fiscal year 2019, Border Patrol apprehended over 35,000 illegal aliens attempting to enter the United States between border crossings in the El Centro Sector. There were also approximately 180 drug-related events between border crossings in the El Centro Sector, through which Border Patrol seized over 100 pounds of marijuana, over 60 pounds of cocaine, over 100 pounds of heroin, and over 2,600 pounds of methamphetamine. In fiscal year 2019, the Border Patrol apprehended over 68,000

illegal aliens attempting to enter the United States between border crossings in the Yuma Sector. There were also 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. In fiscal year 2019, the Border Patrol apprehended over 63,000 illegal aliens attempting to enter the United States between border crossings in the Tucson Sector. There were also over 1,200 drug-related events between border crossings in the Tucson Sector, through which Border Patrol seized over 59,000 pounds of marijuana, over 150 pounds of cocaine, over 155 pounds of heroin, over 2,700 pounds of methamphetamine, and over 12 pounds of fentanyl. In fiscal year 2019, the Border Patrol apprehended over 182,000 illegal aliens attempting to enter the United States between border crossings in the El Paso Sector. There were also 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. In fiscal year 2019, the Border Patrol apprehended over 57,000 illegal aliens attempting to enter the United States between border crossings in the Del Rio Sector. There were also over 146 drug-related events between border crossings in the Del Rio Sector, through which Border Patrol seized over 40 pounds of marijuana, over 15 pounds of cocaine, over 24 pounds of heroin, and over 195 pounds of methamphetamine. Additionally, San Diego County, California, Imperial County, California, Yuma County, Arizona, Pima County, Arizona, Santa Cruz County, Arizona, Cochise County, Arizona, Luna County, New Mexico, Doña Ana County, New Mexico, El Paso County, Texas, Val Verde County, Texas, and Maverick County, Texas, which are located in the Border Patrol

Sectors identified above, 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 Border Patrol Sectors identified above, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in such Sectors. Therefore, DHS will take immediate action to construct new pedestrian and secondary fencing and replace existing vehicle barriers and primary pedestrian and secondary fencing in the Border Patrol's San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sectors. 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.

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 Border Patrol Sectors identified above 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 Border Patrol's San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sector are areas of high illegal entry (the "project areas") –

Within the San Diego Sector:

- Starting approximately one and one-half (1.5) miles east of Border Monument 243 and extending east to the San Diego – Imperial County line;

Within the El Centro Sector:

- Starting at the San Diego – Imperial County line and extending east approximately 11 miles;

Within the Yuma Sector:

- 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;
- 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;

Within the Tucson Sector:

- Starting two (2) miles north and west of Border Monument 140 and extending south and east to approximately one and one-half (1.5) miles east of Border Monument 124;
- Starting approximately one-half (.5) of a mile west of Border Monument 118 and continuing east to approximately one-half (.5) of a mile east of Border Monument 118;
- Starting approximately one (1) mile west of Border Monument 116 and extending east to approximately one mile (1) east of Border Monument 100;

- Starting at approximately Border Monument 98 and extending east for approximately 10 miles;
- Starting approximately one-half (0.5) of a mile west of the Naco Port of Entry and extending east to approximately Border Monument 92;
- Starting approximately one-half (0.5) of a mile west of Border Monument 91 and extending east for approximately 16 miles;
- Starting approximately one-half (0.5) of a mile east of Border Monument 83 and extending west for two (2) miles;
- Starting approximately one-half (0.5) of a mile west of Border Monument 74 and extending east to the Arizona – New Mexico state line;

Within the El Paso Sector:

- 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;
- 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;

Within the Del Rio Sector:

- Starting approximately two and one-half (2.5) miles north and west of the Del Rio Port of Entry and extending south and east for approximately three and one-half (3.5) miles; and
- Starting approximately one-half (0.5) mile south of the Eagle Pass II Port of Entry and extending north for approximately three (3) miles.

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 all contracting actions associated with 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 and regulations, including any legal requirements of, deriving from, or related to the subject of, the following statutes and regulations: 10 U.S.C. 2304; 10 U.S.C. § 2304c; 10 U.S.C. 2306a; 10 U.S.C. 2305(a)-(c), (e)-(f); Section 813 of Public Law 114-328, as amended by Section 822 of Public Law 115-91; 15 U.S.C. 657q; 48 CFR 17.205; 48 CFR 17.207; 10 U.S.C. 2305a(b)-(e); 48 CFR 22.404-5; and 48 CFR 28.102-1(c).

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.

SIGNATURE

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the *Federal Register*.

Chad R. Mizelle,
Senior Official Performing the Duties of the General Counsel.

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