



Interagency Border Coordination

Briefing Paper – For Information

DOI – INTERAGENCY BORDER COORDINATION

The position of Interagency Borderlands Coordinator (IBC) was created in 2007 during the George W. Bush administration to provide a means to coordinate northern and southern border security activities with the Department of the Interior (DOI) mission and to oversee implementation of mitigation projects. The IBC assures regular coordination between DOI and its Bureaus with the Department of Homeland Security (DHS), participates in Borderland Management Task Force activities occurring in each sector and assists U.S. Border Patrol (USBP) with the development of environmental and cultural training materials for use by Border Patrol agents. The Coordinator also provides information on the status of border coordination to DOI leadership, DHS and Congress as appropriate.

INTRODUCTION

Increased illegal immigration, drug and human smuggling along the U.S. Mexico border increased significantly in the 1980s extending to 2007 when arrest rates began to decline. Arrest rates peaked at 1.6 million in 2000 and averaged over 1 million for the previous decade. This level of sustained illegal activity eventually resulted in large increases in the USBP agent workforce from less than 5 thousand to over 20,000. In addition to more agents the DHS constructed substantial border security infrastructure including surveillance towers, roads, bridges and some 700 miles of vehicle and pedestrian barriers along the U.S.-Mexico border and to a much lesser degree on the U.S.-Canadian border.

A significant portion of this infrastructure and USBP patrol activities occur on or near lands under the jurisdiction of the DOI requiring frequent coordination with land managers. To expedite construction of fencing, environmental review of the construction activities was waived on three occasions in 2007 and 2008 under authority provided by the Congress. This wave of construction was mostly concluded by 2010.

In association with issuance of the waivers and to offset the impacts of border security construction a mitigation fund was established with a pledge of up to \$50 million to be provided by DHS. Approximately \$18 million was eventually provided to be managed by DOI. Projects were focused on endangered species and habitat restoration. All mitigation funds have been expended and no additional funding is expected.

The IBC works very closely with the USBP Public Lands Liaison Program which is comprised of Border Patrol Agents in each sector assigned to coordinate with federal and state agencies in conducting their activities. In addition to coordination work the IBC also provides training to USBP agents as needed and facilitates coordination with Bureau personnel in the field.

Since about 2010-11 the construction of new border security infrastructure had subsided significantly. Some additional smaller projects such as Forward Operating Bases and surveillance towers have been constructed in a few locations but for the most part activities are now focused on maintenance and operation of existing facilities. DHS activities are monitored with the aim of avoiding or minimizing impacts on DOI lands and resources.



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The need for continued coordination with the Department of Homeland Security and U.S. Border Patrol remains due to the size and scope of their activities and the proximity of that work to DOI lands. Significant ongoing projects and issues are described below.

INTEGRATED FIXED TOWER PROGRAM-ARIZONA

Construction of approximately 15 long distance surveillance towers in the vicinity of Douglas and Sonoita, Arizona is now underway. Construction of these towers will provide valuable information on illegal activities in that area. Environmental reviews are completed and construction is expected to be operational within the next year. Seven towers have been completed and 8 others towers are in now in the construction phase. One tower will be constructed on the Coronado National Memorial (National Park Service) and the remaining 7 are to be constructed on the Coronado National Forest. Issuance of a permit by the National Park Service is expected by the end of the calendar year. The U.S. Forest Service issued permits on December 2, 2016 and construction is now underway. All construction is expected to be completed by the end of April 2017. No significant issues are expected to delay construction but the work requires continued coordination.

The construction of 15 Integrated Fixed Towers on the Tohono O'odham Nation is under review. Principal involvement of DOI is through the U.S. Fish and Wildlife Service through consultation under the Endangered Species Act. The Biological Opinion and Environmental Assessment is in preparation and coordination with Customs and Border Protection is continuing. Negotiations for rights-of-way and cultural reviews are also underway with the Tohono O'odham Nation.

BOG CREEK ROAD REPAIR-IDAHO

Repair of a closed logging road on the Idaho Panhandle National Forest is being assessed through the preparation of an Environmental Impact Statement. The repaired road would provide access to a portion of the northern border identified by the USBP as required for patrol and surveillance. Completion of the EIS is scheduled for the spring of 2017 at which time a decision will be made concerning the issuance of a USFS permit for repair and use of the road. The lack of progress on resolving this access issue has been raised in recent border oversight hearings convened by the Natural Resource Committee-Subcommittee on Oversight Investigations. The role of DOI relates to impacts on the endangered grizzly bear and consultation under the Endangered Species Act. U.S. Forest Service and DHS have established a schedule for completion of an Environmental Impact Statement. Planned completion is in May of 2017. There is significant local interest on the part of environmental groups.

CONSTRUCTION OF REMOTE VIDEO SURVEILLANCE TOWERS- SOUTH TEXAS

An array of as many as 60 towers are being planned for deployment in extreme South Texas. Most of the towers are not on DOI land. Coordination and preplanning on this project has been very good and no significant issues are expected. Environmental reviews have been completed and construction is expected to be completed within the year.



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FIFTH ANNUAL BORDER FORUM

DOI has facilitated an annual Border Forum in Arizona bringing together leadership in DOI Bureaus, U.S. Forest Service, DHS and USBP to discuss issues and opportunities with border security and the environment. At the completion of the last forum in March of 2016 interest was expressed in expanding the scope to include the entire southwest border. Preliminary plans are now underway to convene the fifth forum in March of 2017 in Phoenix or Tucson.

DEPUTY ASSISTANT SECRETARY, PUBLIC SAFETY, RESOURCE PROTECTION AND EMERGENCY SERVICES

FROM: Jon Andrew, Interagency Borderlands Coordinator

I. SUMMARY OF OFFICE

The Interagency Borderlands Coordinator (IBC) position was established in 2008 in response to a rapid increase in the construction of border security measures including, fences, roads, and surveillance towers. Construction of border security infrastructure began to increase in 2007 following legislation which required the construction of a total of 670 miles of vehicle and pedestrian barriers. Approximately 200 miles of this fencing was later constructed on DOI borderlands in Arizona, 115 miles in California, 125 miles in New Mexico and 55 miles in Texas. To assure that this work could be accomplished so as to minimize impacts on DOI lands and resources the IBC position was established at the Senior Executive Service level. The primary mission is to assure that coordination and communication with the Department of Homeland Security (DHS), primarily the U.S. Border Patrol (USBP) is timely and effective. The Coordinator supports training for DHS personnel, negotiates cooperative agreements to facilitate work of both Departments and assures resolution of disputes as quickly as possible. Much of the work of the office is guided by a 2006 Memorandum of Understanding signed by DOI, DHS and the Department of Agriculture (U.S. Forest Service).

Beginning in 2013 the IBC also assumed responsibility for directing enhancements in the DOI field communications program as Chair of the Radio Executive Steering Committee. The IBC coordinates among DOI Bureaus to improve the efficiency of field communications including land mobile radio, communications infrastructure and operations. Current efforts are focused on improvements to infrastructure and dispatch operations along the southwest border.

II. MANAGEMENT AND KEY PERSONNEL

Leadership

Jon Andrew, Interagency Borderlands Coordinator (SES)

This is a single person program supervised and administratively supported by the DAS/PRE

Total Staffing Complement: 1

III. CRITICAL POLICY, LEGAL, MANAGEMENT AND INFRASTRUCTURE

Coordination between the Department of Homeland Security and the DOI -- Construction of new border security infrastructure has subsided significantly in recent years. Coordination activities are now focused on maintenance and operation of existing facilities and the monitoring of operational activities of the USBP. Efforts are focused on avoiding and minimizing impacts on DOI lands and resources. The need for continued coordination with the Department of Homeland Security and USBP remains due to the size and scope of their activities and the proximity of border security work to DOI lands.

Bog Creek Road Repair – Repair of a closed logging road on the Idaho Panhandle National Forest is being assessed through the preparation of an Environmental Impact Statement. The repaired road would provide access to a portion of the northern border identified by the USBP as required for patrol and surveillance. The U.S. Fish and Wildlife Service is involved in consultation under the Endangered Species Act due to the presence of the endangered Grizzly Bear. Completion of the EIS is scheduled for the spring of 2017 at which time a decision will be made by the USFS issuance of a permit for repair and use of the road.

Integrated Fixed Tower Construction in Sonoita, Arizona -- Construction of 7 surveillance towers is scheduled for the winter and early spring of 2016/17. These towers were previously reviewed and permitted but DHS experienced delays in commencing construction. One tower will be constructed on the Coronado National Memorial (National Park Service) and the remaining 6 are to be constructed on the Coronado National Forest. Issuance of permits by the National Park Service is expected by the end of the calendar year. The U.S. Forest Service issued permits on December 2, 2016 and construction is now underway. All construction is expected to be completed by April of 2017.

Integrated Fixed Tower Construction on Tohono O’odham Nation – The construction of 15 Integrated Fixed Towers on the Tohono O’odham Nation is under review. Principal involvement of DOI is through the U.S. Fish and Wildlife Service through consultation under the Endangered Species Act. The Biological Opinion and Environmental Assessment is in preparation and coordination with Customs and Border Protection is continuing. Negotiations on rights of way and cultural reviews are continuing with the Tohono O’odham Nation

Fifth Forum on Border Security and the Environment – Planning is underway to convene the fifth in a series of meetings focused on coordination among all DOI Bureaus, the U.S. Border Patrol, Customs and Border Protection and the U.S. Forest Service. The Forum was developed to provide an opportunity for federal agencies active along the southwest border to meet and exchange ideas, success stories and challenges related to border security and the environment. Previous meetings have focused on activities in Arizona. This meeting tentatively scheduled for March 22, 2017 will include representation from all four states bordering Mexico.

Management of Land Mobile Radio and Field Communications – Significant issues were identified in the DOI land mobile radio program by the Inspector General in 2007. Safety, facility condition and overall management of the program were identified as material weaknesses. Since 2007 major progress has been made in resolving the identified problems. Management of the DOI program is now guided by the Radio Executive Steering Committee chaired by the Interagency Borderlands Coordinator. Current work is focused on the southwest border and includes: upgrading of hardware and software at the Phoenix Dispatch Center, piloting of personnel tracking devices for non LE personnel, and development of a 10 year strategic plan. The strategic plan will be used to guide additional improvements in the field communications program. Approximately \$1.7 is expected to be available in FY 17 for improvements to land mobile radio infrastructure and operational support as part of a pilot project in Arizona and New Mexico. In 2016 the DOI proposed closure of the report and that recommended actions had been implemented or were no longer relevant.

Good Neighbor Environmental Board—The IBC is the designated DOI representative on this Federal Advisory Committee Act Board. The 17th report of the GNEB was presented on December 7, 2016 to the White House and the Council on Environmental Quality. This report focused on climate change impacts on the southwest border and included recommendations for action by the President. Work will begin on a new report early in January 2017. The topic of the next report has not been determined at this time.

Summary of MOUs and MOAs entered into by the Department of the Interior on border security, environmental coordination, and related matters (chronological order).

March 2015

General Agreement Between the National Park Service – Amistad National Recreation Area and U.S. Border Patrol-Del Rio Sector

Signatories: NPS Superintendent and Chief Patrol Agent

Duration: Five years with provisions for renewal

March 2014

Memorandum of Understanding Between United States Customs and Border Protection and U.S. Fish and Wildlife Service Regarding The Repair and Maintenance of Roads Within Buenos Aires National Wildlife Refuge, Pima County, Arizona

Signatories: Refuge Manager, NWRS and Div. Director Real Estate and Environmental Services, BPFTI

Duration: Five years with provisions for renewal

December 2013 (update – original January 2008)

Memorandum of Agreement for Environmental Coordination and Review of Border Security Activities Between the U.S. Department of the Interior, U.S. Department of Agriculture (USDA) Forest Service and U.S. Customs and Border Protection.

Signatories: DOI, Associate Deputy Secretary, CBP Commissioner

Duration: effective until December 31, 2017, renewable upon mutual agreement

August 2013

Memorandum of Understanding Between United States Customs and Border Protection and U.S. Fish and Wildlife Service Regarding The Repair and Maintenance of Roads Within the Cabeza Prieta National Wildlife Refuge , Pima and Yuma Counties, Arizona.

Signatories: Refuge Manager, NWRS and Div. Director Real Estate and Environmental Services, BPFTI

Duration: Five years with provisions for renewal

November 2012 (update - original July 2008)

Memorandum of Understanding Among U.S. Department of Homeland Security and U.S. Department of the Interior and U.S. Department of Agriculture Regarding Secure Radio Communication.

Signatories: Chief, U.S. Border Patrol, Chief, U.S. Forest Service, Deputy Assistant Secretary, PRE

Duration: effective until December 31, 2017, renewable upon mutual agreement

February 2012

Memorandum of Understanding Between United States Customs and Border Protection and National Park Service Regarding The Repair and Maintenance of Roads Within the Organ Pipe Cactus National Monument , Pima County, Arizona.

Signatories: Superintendent, ORPI and Director BPFTI, FM+E

Duration: Five years with provisions for renewal

January 2009

Memorandum of Agreement Between U.S. Customs and Border Protection and U.S. Department of the Interior Regarding Natural and Cultural Resource Mitigation Associated with Construction and Maintenance of Border Security Infrastructure along the Border of the United States and Mexico.

Signatories: Secretary, DOI and Commissioner CBP

Duration: Expired January 2014, under review for renewal

March 2006

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.

Signatories: Secretaries for each Department.

Duration: in effect until cancelled

March 31, 2006

Memorandum of Understanding between the Department of the Interior Acting Through the U.S. Geological Survey and the Department of Homeland Security Pertaining to Geospatial Information and Remote Sensing for Homeland Security.

Signatories: Secretaries of DOI and DHS

Duration: No expiration specified, may be updated by mutual consent

November 2003

Memorandum of Understanding Between U.S. Fish and Wildlife Service, Region 2, Buenos Aires National Wildlife Refuge and Bureau of Homeland Security, Bureau of Customs and Border Protection, United States Border Patrol, Tucson Sector.

Signatories: Refuge Manager and Chief Patrol Agent, Tucson Sector

Duration: One year—the agreement was not renewed.

March-July 2001

Memorandum of Understanding between the U.S. Border Patrol and the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Indian Affairs Office of Law Enforcement Services, U.S. Forest Service and U.S. Environmental Protection Agency.

Signatories: USBP Chief Patrol Agents – Tucson, El Paso, Yuma, USBP HQ, Regional Directors, FWS, NPS, BIA, SW and Western Regional Directors, BIA-Office of LE Services, BLM State Directors, AZ, NM, USFS SW Regional Forester, NRCS, Regional Directors AZ and NM, US EPA Regional Administrator Regions 6 and 9

Duration: No specified expiration date, cancellation or renewal mentioned

July 1999

Memorandum of Understanding between the U.S. Bureau of Land Management and the U.S. Border Patrol

Signatories: El Centro Field Office Manager, BLM and Chief Patrol Agent USBP El Centro

Duration: No specified expiration date

International Border Agreements

October 2008

Agreement Between the Government of the United States of America and the Government of the United Mexican States on Emergency Management and Cooperation in Cases of Natural Disasters and Accidents

Signatories: Secretary of State for the United States, Secretary of Foreign Affairs for the United Mexican States

Duration: Five years with an automatic renewal of an additional five years.

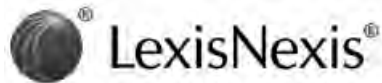
November 2003 – Revision/renewal in preparation

Wildfire Protection Agreement Between The Department of Agriculture and the Department of the Interior of the United States of America and the Secretariat of Environment Natural Resources , and Fisheries of the United Mexican States for the Common Border

Signatories: Secretaries of the Interior and Agriculture for the United States, Secretariat of Environment and Natural Resources and National Forestry Commission, United Mexican States.

Duration: Expired in June of 2014

Updated April 28, 2015



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TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12. IMMIGRATION AND NATIONALITY
GENERAL PROVISIONS

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8 USCS § 1103

§ 1103. Powers and duties of the Secretary, the Under Secretary, and the Attorney General

(a) Secretary of Homeland Security.

(1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens, except insofar as this Act or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

(2) He shall have control, direction, and supervision of all employees and of all the files and records of the Service.

(3) He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this Act.

(4) He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service.

(5) He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper.

(6) He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service.

(7) He may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail employees of the Service for duty in foreign countries.

(8) After consultation with the Secretary of State, the Attorney General may authorize officers of a foreign country to be stationed at preclearance facilities in the United States for the purpose of ensuring that persons traveling from or through the United States to that foreign country comply with that country's immigration and related laws.

(9) Those officers may exercise such authority and perform such duties as United States immigration officers are authorized to exercise and perform in that foreign country under reciprocal agreement, and they shall enjoy such reasonable privileges and immunities necessary for the performance of their duties as the government of their country extends to United States immigration officers.

(10) In the event the Attorney General determines that an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal re-

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sponse, the Attorney General may authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service.

(11) The Attorney General, in support of persons in administrative detention in non-Federal institutions, is authorized--

(A) to make payments from funds appropriated for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by the Service pursuant to Federal law under an agreement with a State or political subdivision of a State; and

(B) to enter into a cooperative agreement with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services in any State or unit of local government which agrees to provide guaranteed bed space for persons detained by the Service.

(b) Land acquisition authority.

(1) The Attorney General may contract for or buy any interest in land, including temporary use rights, adjacent to or in the vicinity of an international land border when the Attorney General deems the land essential to control and guard the boundaries and borders of the United States against any violation of this Act.

(2) The Attorney General may contract for or buy any interest in land identified pursuant to paragraph (1) as soon as the lawful owner of that interest fixes a price for it and the Attorney General considers that price to be reasonable.

(3) When the Attorney General and the lawful owner of an interest identified pursuant to paragraph (1) are unable to agree upon a reasonable price, the Attorney General may commence condemnation proceedings pursuant to the Act of August 1, 1888 (Chapter 728; 25 Stat. 357) [40 USCS § 3113].

(4) The Attorney General may accept for the United States a gift of any interest in land identified pursuant to paragraph (1).

(c) Commissioner; appointment. The Commissioner shall be a citizen of the United States and shall be appointed by the President, by and with the advice and consent of the Senate. He shall be charged with any and all responsibilities and authority in the administration of the Service and of this Act which are conferred upon the Attorney General as may be delegated to him by the Attorney General or which may be prescribed by the Attorney General. The Commissioner may enter into cooperative agreements with State and local law enforcement agencies for the purpose of assisting in the enforcement of the immigration laws.

(d) Statistical information system.

(1) The Commissioner, in consultation with interested academicians, government agencies, and other parties, shall provide for a system for collection and dissemination, to Congress and the public, of information (not in individually identifiable form) useful in evaluating the social, economic, environmental, and demographic impact of immigration laws.

(2) Such information shall include information on the alien population in the United States, on the rates of naturalization and emigration of resident aliens, on aliens who have been admitted, paroled, or granted asylum, on nonimmigrants in the United States (by occupation, basis for admission, and duration of stay), on aliens who have not been admitted or have been removed from the United States, on the number of applications filed and granted for cancellation of removal, and on the number of aliens estimated to be present unlawfully in the United States in each fiscal year.

(3) Such system shall provide for the collection and dissemination of such information not less often than annually.

(e) Annual report.

(1) The Commissioner shall submit to Congress annually a report which contains a summary of the information collected under subsection (d) and an analysis of trends in immigration and naturalization.

(2) Each annual report shall include information on the number, and rate of denial administratively, of applications for naturalization, for each district office of the Service and by national origin group.

(f) Minimum number of agents in States. The Attorney General shall allocate to each State not fewer than 10 full-time active duty agents of the Immigration and Naturalization Service to carry out the functions of the Service, in order to ensure the effective enforcement of this Act.

(g) Attorney General.

(1) In general. The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

(2) Powers. The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.

(h) [Repealed]

HISTORY:

(June 27, 1952, ch 477, Title I, § 103, 66 Stat. 173; Oct. 24, 1988, P.L. 100-525, § 9(c), 102 Stat. 2619; Nov. 29, 1990, P.L. 101-649, Title I, Subtitle C, § 142, 104 Stat. 5004; Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle A, § 102(d), Subtitle B, § 125, Subtitle C, § 134(a), Title III, Subtitle A, § 308(d)(4)(C), (e)(4), Subtitle F, §§ 372, 373, 110 Stat. 3009-555, 3009-562, 3009-564, 3009-618, 3009-620, 3009-646; Nov. 25, 2002, P.L. 107-296, Title XI, Subtitle A, § 1102, 116 Stat. 2273; Feb. 20, 2003, P.L. 108-7, Div L, § 105(a)(1), (2), 117 Stat. 531; Dec. 17, 2004, P.L. 108-458, Title V, Subtitle E, § 5505(a), 118 Stat. 3741.)

(As amended Dec. 22, 2009, P.L. 111-122, § 2(a), 123 Stat. 3480.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act June 27, 1952, ch 477, popularly known as the "Immigration and Nationality Act", which appears generally as 8 *USCS* §§ 1101 et seq. For full classification of such Act, consult *USCS Tables* volumes.

The "Act of August 1, 1888," referred to in this section, was repealed by § 6(b) of Act Aug. 21, 2002, P.L. 107-217, which appears as a note preceding 40 *USCS* § 101. Section 1 of the 2002 Act enacted Title 40 as positive law, and § 5(c) of such Act (40 *USCS* prec § 101 note) provided that a reference to a law replaced by § 1 of such Act is deemed to refer to the corresponding provision enacted by such Act. In the case of Act Aug. 1, 1888, ch 728, § 1 was replaced by 40 *USCS* § 3113, and § 2 was previously superseded by *FRCP* 71A.

The "Immigration Reform, Accountability and Security Enhancement Act of 2002", referred to in subsec. (g)(1), was S. 2444 of the 107th Congress, as introduced on May 2, 2002, which was not enacted into law. For provisions related to the Executive Office for Immigration Review, see 6 *USCS* § 521.

Explanatory notes:

In subsec. (b)(3), "40 *USCS* § 3113" has been inserted in brackets pursuant to § 5(c) of Act Aug. 21, 2002, P.L. 107-217, which appears as a note preceding 40 *USCS* § 101. Section 1 of such Act enacted Title 40 as positive law, and § 5(c) of such Act provided that a reference to a law replaced by § 1 of such Act is deemed to refer to the corresponding provision enacted by such Act.

Effective date of section:

Act June 27, 1952, ch 477, Title IV, § 407, 66 Stat. 281, which appears as 8 *USCS* § 1101 note, provided that this section is effective at 12:01 ante meridian United States Eastern Standard Time on the 180th day immediately following enactment on June 27, 1952.

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Amendments:

1988. Act Oct. 24, 1988, in subsec. (a), substituted "instructions" for "intructions", substituted the sentence beginning "He may require or authorize . . ." for one which read: "He is authorized, in accordance with the civil-service laws and regulations and the Classification Act of 1949, to appoint such employees of the Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this Act; he may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service."; and, in subsec. (b), deleted ", and shall receive compensation at the rate of \$ 17,500 per annum" following "of the Senate".

1990. Act Nov. 29, 1990 (effective 10/1/91 and applicable beginning with fiscal year 1992, as provided by § 161(a) of such Act, which appears as *8 USCS § 1101* note) added subsecs. (c) and (d).

1996. Act Sept. 30, 1996, in subsec. (a), added the sentences beginning "After consultation . . ." and "Those officers . . ."; redesignated subsecs. (b), (c), and (d) as subsecs. (c), (d), and (e), respectively, and inserted new subsec. (b); in subsec. (c) as redesignated, added the sentence beginning "The Commissioner may enter into cooperative agreements . . ."; and, in subsec. (e) as redesignated, in para. (1), substituted "subsection (d)" for "subsection (c)".

Such Act further, in subsec. (a), inserted "(1)" after the subsection designation, designated each sentence after the first sentence as a separate paragraph with appropriate consecutive numbering, and added paras. [(10)](8) and [(11)](9).

Such Act further (effective as provided by § 309(a) of such Act, which appears as *8 USCS § 1101* note), in subsec. (c)(2), substituted "not been admitted or have been removed" for "been excluded or deported" and substituted "cancellation of removal" for "suspension of deportation".

Such Act further (effective 90 days after enactment as provided by § 134(b) of such Act, which appears as a note to this section) added subsec. (f).

2002. Act Nov. 25, 2002 (effective on the date of the transfer of functions from the Commissioner of Immigration and Naturalization to officials of the Department of Homeland Security, as provided by § 1104 of such Act, which appears as *6 USCS § 521* note), as amended by Act Feb. 20, 2003, substituted the section heading for one which read: "Powers and duties"; in subsec. (a), in the heading, substituted "Secretary of Homeland Security" for "Attorney General", in para. (1), substituted "The Secretary of Homeland Security" for "The Attorney General" and inserted "Attorney General", and redesignated paras. [(10)](8) and [(11)](9) as paras. (10) and (11), respectively; and added subsec. (g).

2003. Act Feb. 20, 2003 amended Act Nov. 25, 2002, which amended this section.

2004. Act Dec. 17, 2004, added subsec. (h).

2009. Act Dec. 22, 2009, deleted subsec. (h), which read:

"(h) Office of Special Investigations.

(1) The Attorney General shall establish within the Criminal Division of the Department of Justice an Office of Special Investigations with the authority to detect and investigate, and, where appropriate, to take legal action to denaturalize any alien described in section 212(a)(3)(E).

"(2) The Attorney General shall consult with the Secretary of Homeland Security in making determinations concerning the criminal prosecution or extradition of aliens described in section 212(a)(3)(E).

"(3) In determining the appropriate legal action to take against an alien described in section 212(a)(3)(E), consideration shall be given to--

"(A) the availability of criminal prosecution under the laws of the United States for any conduct that may form the basis for removal and denaturalization; or

"(B) the availability of extradition of the alien to a foreign jurisdiction that is prepared to undertake a prosecution for such conduct."

Transfer of functions:

For abolition of the Immigration and Naturalization Service, transfer of functions, and treatment of related references, see transfer of functions note under 8 *USCS* § 1551.

Other provisions:

Pilot programs for criminal investigation of aliens; evaluation. Act Oct. 27, 1986, P.L. 99-570, Title I, Subtitle M, § 1751(e), 100 Stat. 3207-48, provided:

"(1) From the sums appropriated to carry out this Act [for full classification, consult USCS Tables volumes], the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the computer capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject to criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

"(2) At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded."

Repeal of provisions relating to machine-readable document border security program. Act Nov. 18, 1988, P.L. 100-690, Title IV, Subtitle G, § 4604, 102 Stat. 4289, which formerly appeared as a note to this section, was repealed by Act Nov. 2, 1992, P.L. 102-583, § 6(e)(1), 106 Stat. 4933. Such section provided for development of a machine-readable document border security program.

Assignment of Emergency preparedness responsibilities. For provisions assigning responsibility of developing national security emergency plans for regulation of immigration, regulation of nationals of enemy countries, and plans to implement laws for control of persons entering or leaving the United States, see § 1104(4) of Ex. Or. 12656 of Nov. 18, 1988, 53 *Fed. Reg.* 47191, as amended, which appears as 42 *USCS* § 5195 note.

Immigration and Naturalization Service personnel enhancement. Act Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle J, § 7350, 102 Stat. 4473, provides:

"(a) Pilot program regarding the identification of certain aliens.

(1) Within 6 months after the effective date of this subtitle [effective on enactment], the Attorney General shall establish, out of funds appropriated pursuant to subsection (c)(2) [not enacted], a pilot program in 4 cities to improve the capabilities of the Immigration and Naturalization Service (hereinafter in this section referred to as the 'Service') to respond to inquiries from Federal, State, and local law enforcement authorities concerning aliens who have been arrested for or convicted of, or who are the subject of any criminal investigation relating to, a violation of any law relating to controlled substances (other than an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act [8 *USCS* § 1101(a)(43)], as added by section 7342 of this subtitle).

"(2) At the end of the 12-month period after the establishment of such pilot program, the Attorney General shall provide for an evaluation of its effectiveness, including an assessment by Federal, State, and local prosecutors and law enforcement agencies. The Attorney General shall submit a report containing the conclusions of such evaluation to the Committees on the Judiciary of the House of Representatives and of the Senate within 60 days after the completion of such evaluation.

"(b) Hiring of investigative agents.

(1) Any investigative agent hired by the Attorney General for purposes of this section shall be employed exclusively to assist Federal, State, and local law enforcement agencies in combating drug trafficking and crimes of violence by aliens.

"(2) Any investigative agent hired under this section who is older than 35 years of age shall not be eligible for Federal retirement benefits made available to individuals who perform hazardous law enforcement activities."

General transitions, admissibility standards, and construction. For provisions relating to the general transitions, admissibility standards and construction of the amendments made by Act Nov. 29, 1990, P.L. 101-649, see § 161(c)--(e) of such Act, which appears as 8 *USCS* § 1101 note.

Improvement of barriers at border. Act Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle A, § 102(a)-(c), 110 Stat. 3009-554; May 11, 2005, P.L. 109-13, Div B, Title I, § 102, 119 Stat. 306; Oct. 26, 2006, P.L. 109-367, § 3, 120 Stat. 2638; Dec. 26, 2007, P.L. 110-161, Div E, Title V, § 564, 121 Stat. 2090, provides:

"(a) In general. 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.

"(b) Construction of fencing and road improvements along the border.

(1) Additional fencing along southwest border.

(A) Reinforced fencing. In carrying out subsection (a), the Secretary of Homeland Security shall construct reinforced fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border.

"(B) Priority areas. In carrying out this section, the Secretary of Homeland Security shall--

"(i) identify the 370 miles, or other mileage determined by the Secretary, whose authority to determine other mileage shall expire on December 31, 2008, along the southwest border where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States; and

"(ii) not later than December 31, 2008, complete construction of reinforced fencing along the miles identified under clause (i).

"(C) 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.

"(D) Limitation on requirements. Notwithstanding subparagraph (A), nothing in this paragraph shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, and sensors in a particular location along an international border of the United States, if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control over the international border at such location.

"(2) Prompt acquisition of necessary easements. The Attorney General, acting under the authority conferred in section 103(b) of the Immigration and Nationality Act [8 USCS § 1103(b)] (as inserted by subsection (d)), shall promptly acquire such easements as may be necessary to carry out this subsection and shall commence construction of fences immediately following such acquisition (or conclusion of portions thereof).

"(3) Safety features. The Attorney General, while constructing the additional fencing under this subsection, shall incorporate such safety features into the design of the fence system as are necessary to ensure the well-being of border patrol agents deployed within or in near proximity to the system.

"(4) Authorization of appropriations. There are authorized to be appropriated such sums as may be necessary to carry out this subsection. Amounts appropriated under this paragraph are authorized to remain available until expended.

"(c) Waiver.

(1) In general. Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section. Any such decision by the Secretary shall be effective upon being published in the Federal Register.

"(2) Federal court review.

(A) In general. The district courts of the United States shall have exclusive jurisdiction to hear all causes or claims arising from any action undertaken, or any decision made, by the Secretary of Homeland Security pursuant to paragraph (1). A cause of action or claim may only be brought alleging a violation of the Constitution of the United States. The court shall not have jurisdiction to hear any claim not specified in this subparagraph.

"(B) Time for filing of complaint. Any cause or claim brought pursuant to subparagraph (A) shall be filed not later than 60 days after the date of the action or decision made by the Secretary of Homeland Security. A claim shall be barred unless it is filed within the time specified.

"(C) Ability to seek appellate review. An interlocutory or final judgment, decree, or order of the district court may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States."

Improved border equipment and technology. Act Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle A, § 103, 110 Stat. 3009-555, provides: "The Attorney General is authorized to acquire and use, for the purpose of detection, interdiction, and reduction of illegal immigration into the United States, any Federal equipment (including fixed wing aircraft, helicopters, four-wheel drive vehicles, sedans, night vision goggles, night vision scopes, and sensor units) determined available for transfer by any other agency of the Federal Government upon request of the Attorney General."

Hiring and training standards. Act Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle A, § 106(a), (b), 110 Stat. 3009-556, provides:

"(a) Review of hiring standards. Not later than 60 days after the date of the enactment of this Act, the Attorney General shall complete a review of all prescreening and hiring standards used by the Commissioner of Immigration and Naturalization, and, where necessary, revise such standards to ensure that they are consistent with relevant standards of professionalism.

"(b) Certification. At the conclusion of each of fiscal years 1997, 1998, 1999, 2000, and 2001, the Attorney General shall certify in writing to the Committees on the Judiciary of the House of Representatives and of the Senate that all personnel hired by the Commissioner of Immigration and Naturalization for such fiscal year were hired pursuant to the appropriate standards, as revised under subsection (a)."

Report on border strategy. Act Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle A, § 107, 110 Stat. 3009-557, provides:

"(a) Evaluation of strategy. The Comptroller General of the United States shall track, monitor, and evaluate the Attorney General's strategy to deter illegal entry in the United States to determine the efficacy of such strategy.

"(b) Cooperation. The Attorney General, the Secretary of State, and the Secretary of Defense shall cooperate with the Comptroller General of the United States in carrying out subsection (a).

"(c) Report. Not later than one year after the date of the enactment of this Act, and every year thereafter for the succeeding 5 years, the Comptroller General of the United States shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the results of the activities undertaken under subsection (a) during the previous year. Each such report shall include an analysis of the degree to which the Attorney General's strategy has been effective in reducing illegal entry. Each such report shall include a collection and systematic analysis of data, including workload indicators, related to activities to deter illegal entry and recommendations to improve and increase border security at the border and ports of entry."

Effective date of § 134(a) of Act Sept. 30, 1996. Act Sept. 30, 1996, P.L. 104-208, Div C, Title I, Subtitle C, § 134(b), 110 Stat. 3009-564, provides: "The amendment made by subsection (a) [adding subsec. (f) of this section] shall take effect 90 days after the date of the enactment of this Act."

Compensation for immigration judges. Act Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle F, § 371(c), 110 Stat. 3009-645 (effective 90 days after enactment as provided by § 371(d)(2) of such Act, which appears as a note to this section), provides:

"(1) In general. There shall be four levels of pay for immigration judges, under the Immigration Judge Schedule (designated as IJ-1, 2, 3, and 4, respectively), and each such judge shall be paid at one of those levels, in accordance with the provisions of this subsection.

"(2) Rates of pay.

(A) The rates of basic pay for the levels established under paragraph (1) shall be as follows:

- IJ-1.....70% of the next to highest rate of basic pay for the Senior Executive Service
- IJ-2.....80% of the next to highest rate of basic pay for the Senior Executive Service
- IJ-3.....90% of the next to highest rate of basic pay for the Senior Executive Service
- IJ-4.....92% of the next to highest rate of basic pay for the Senior Executive Service.

"(B) Locality pay, where applicable, shall be calculated into the basic pay for immigration judges.

"(3) Appointment.

(A) Upon appointment, an immigration judge shall be paid at IJ-1, and shall be advanced to IJ-2 upon completion of 104 weeks of service, to IJ-3 upon completion of 104 weeks of service in the next lower rate, and to IJ-4 upon completion of 52 weeks of service in the next lower rate.

"(B) Notwithstanding subparagraph (A), the Attorney General may provide for appointment of an immigration judge at an advanced rate under such circumstances as the Attorney General may determine appropriate.

"(4) Transition. Immigration judges serving as of the effective date shall be paid at the rate that corresponds to the amount of time, as provided under paragraph (3)(A), that they have served as an immigration judge, and in no case shall be paid less after the effective date than the rate of pay prior to the effective date."

Effective date of amendments made by § 371 of Act Sept. 30, 1996. Act Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle F, § 371(d)(2), 110 Stat. 3009-645, provides:

"(2) Subsection (c) [8 USCS § 1103 note] shall take effect 90 days after the date of the enactment of this Act."

Acceptance of FD-258 fingerprint cards. Act Nov. 26, 1997, P.L. 105-119, Title I, 111 Stat. 2448, provides: "Beginning seven calendar days after the enactment of this Act and for each fiscal year thereafter, none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service may be used by the Immigration and Naturalization Service to accept, for the purpose of conducting criminal background checks on applications for any benefit under the Immigration and Nationality Act [8 USCS §§ 1101 et seq. generally; for full classification, consult USCS Tables volumes], any FD-258 fingerprint card which has been prepared by or received from any individual or entity other than an office of the Immigration and Naturalization Service with the following exceptions: (1) State and local law enforcement agencies; and (2) United States consular offices at United States embassies and consulates abroad under the jurisdiction of the Department of State or United States military offices under the jurisdiction of the Department of Defense authorized to perform fingerprinting services to prepare FD-258 fingerprint cards for applicants residing abroad applying for immigration benefits."

Task force on New Americans. Ex. Or. No. 13404 of June 7, 2006, *71 Fed. Reg. 33593*, provides:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen the efforts of the Department of Homeland Security and Federal, State, and local agencies to help legal immigrants embrace the common core of American civic culture, learn our common language, and fully become Americans, it is hereby ordered as follows:

"Section 1. Establishment. The Secretary of Homeland Security (Secretary) shall immediately establish within the Department of Homeland Security (Department) a Task Force on New Americans (Task Force).

"Sec. 2. Membership and Operation. (a) The Task Force shall be limited to the following members or employees designated by them at no lower than the Assistant Secretary level or its equivalent:

"(i) the Secretary of Homeland Security, who shall serve as Chair;

"(ii) the Secretary of State;

"(iii) the Secretary of the Treasury;

"(iv) the Secretary of Defense;

"(v) the Attorney General;

"(vi) the Secretary of Agriculture;

"(vii) the Secretary of Commerce;

"(viii) the Secretary of Labor;

"(ix) the Secretary of Health and Human Services;

"(x) the Secretary of Housing and Urban Development;

"(xi) the Secretary of Education;

"(xii) such other officers or employees of the Department of Homeland Security as the Secretary may from time to time designate; and

"(xiii) such other officers of the United States as the Secretary may designate from time to time, with the concurrence of the respective heads of departments and agencies concerned.

"(b) The Secretary shall convene and preside at meetings of the Task Force, direct its work, and as appropriate, establish and direct subgroups of the Task Force that shall consist exclusively of Task Force members. The Secretary shall designate an official of the Department to serve as the Executive Secretary of the Task Force, and the Executive Secretary shall head the staff assigned to the Task Force.

"Sec. 3. Functions. Consistent with applicable law, the Task Force shall:

"(a) provide direction to executive departments and agencies (agencies) concerning the integration into American society of America's legal immigrants, particularly through instruction in English, civics, and history;

"(b) promote public-private partnerships that will encourage businesses to offer English and civics education to workers;

"(c) identify ways to expand English and civics instruction for legal immigrants, including through faith-based, community, and other groups, and ways to promote volunteer community service; and

"(d) make recommendations to the President, through the Secretary, from time to time regarding:

"(i) actions to enhance cooperation among agencies on the integration of legal immigrants into American society;

"(ii) actions to enhance cooperation among Federal, State, and local authorities responsible for the integration of legal immigrants;

"(iii) changes in rules, regulations, or policy to improve the effective integration of legal immigrants into American society; and

"(iv) proposed legislation relating to the integration of legal immigrants into American society.

"Sec. 4. Administration. (a) To the extent permitted by law, the Department shall provide the funding and administrative support the Task Force needs to implement this order, as determined by the Secretary.

"(b) Nothing in this order shall be construed to impair or otherwise affect:

"(i) authority granted by law to an agency or the head thereof; or

"(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

"(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

"(d) This order is intended to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, its departments, agencies, entities, instrumentalities, officers, employees, agents, or any other person."

Creating welcoming communities and fully integrating immigrants and refugees. Pres Mem. of Nov. 21, 2014, 79 *Fed. Reg.* 70765, provides:

"Our country has long been a beacon of hope and opportunity for people from around the world. Nearly 40 million foreign-born residents nationwide contribute to their communities every day, including 3 million refugees who have resettled here since 1975. These new Americans significantly improve our economy. They make up 13 percent of the population, but are over 16 percent of the labor force and start 28 percent of all new businesses. Moreover, immigrants or their children have founded more than 40 percent of Fortune 500 companies, which collectively employ over 10 million people worldwide and generate annual revenues of \$ 4.2 trillion.

"By focusing on the civic, economic, and linguistic integration of new Americans, we can help immigrants and refugees in the United States contribute fully to our economy and their communities. Civic integration provides new Americans with security in their rights and liberties. Economic integration empowers immigrants to be self-sufficient and allows them to give back to their communities and contribute to economic growth. English language acquisition allows new Americans to attain employment or career advancement and be more active civic participants.

"Our success as a Nation of immigrants is rooted in our ongoing commitment to welcoming and integrating newcomers into the fabric of our country. It is important that we develop a Federal immigrant integration strategy that is innovative and competitive with those of other industrialized nations and supports mechanisms to ensure that our Nation's diverse people are contributing to society to their fullest potential.

"Therefore, I am establishing a White House Task Force on New Americans, an interagency effort to identify and support State and local efforts at integration that are working and to consider how to expand and replicate successful models. The Task Force, which will engage with community, business, and faith leaders, as well as State and local elected officials, will help determine additional steps the Federal Government can take to ensure its programs and policies are serving diverse communities that include new Americans.

"By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

"Section 1. White House Task Force on New Americans. (a) There is established a White House Task Force on New Americans (Task Force) to develop a coordinated Federal strategy to better integrate new Americans into communities and support State and local efforts to do the same. It shall be co-chaired by the Director of the Domestic Policy Council and Secretary of Homeland Security, or their designees. In addition to the Co-Chairs, the Task Force shall consist of the following members:

"(i) the Secretary of State;

"(ii) the Attorney General;

"(iii) the Secretary of Agriculture;

"(iv) the Secretary of Commerce;

"(v) the Secretary of Labor;

"(vi) the Secretary of Health and Human Services;

"(vii) the Secretary of Housing and Urban Development;

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- "(viii) the Secretary of Transportation;
- "(ix) the Secretary of Education;
- "(x) the Chief Executive Officer of the Corporation for National and Community Service;
- "(xi) the Director of the Office of Management and Budget;
- "(xii) the Administrator of the Small Business Administration;
- "(xiii) the Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Engagement;
- "(xiv) the Director of the National Economic Council;
- "(xv) the Assistant to the President for Homeland Security and Counterterrorism; and
- "(xvi) the Director of the Office of Science and Technology Policy.

"(b) A member of the Task Force may designate a senior-level official who is from the member's department, agency, or office, and is a full-time officer or employee of the Federal Government, to perform day-to-day Task Force functions of the member. At the direction of the Co-Chairs, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this subsection, as appropriate.

"(c) The Secretary of Homeland Security shall appoint an Executive Director who will determine the Task Force's agenda, convene regular meetings of the Task Force, and supervise work under the direction of the Co-Chairs. The Department of Homeland Security shall provide funding and administrative support for the Task Force to the extent permitted by law and subject to the availability of appropriations. Each executive department or agency shall bear its own expenses for participating in the Task Force.

"Sec. 2. Mission and Function of the Task Force. (a) The Task Force shall, consistent with applicable law, work across executive departments and agencies to:

"(i) review the policies and programs of all relevant executive departments and agencies to ensure they are responsive to the needs of new Americans and the receiving communities in which they reside, and identify ways in which such programs can be used to increase meaningful engagement between new Americans and the receiving community;

"(ii) identify and disseminate best practices at the State and local level;

"(iii) provide technical assistance, training, or other support to existing Federal grantees to increase their coordination and capacity to improve long-term integration and foster welcoming community climates;

"(iv) collect and disseminate immigrant integration data, policies, and programs that affect numerous executive departments and agencies, as well as State and local governments and nongovernmental actors;

"(v) conduct outreach to representatives of nonprofit organizations, State and local government agencies, elected officials, and other interested persons that can assist with the Task Force's development of recommendations;

"(vi) work with Federal, State, and local entities to measure and strengthen equitable access to services and programs for new Americans, consistent with applicable law; and

"(vii) share information with and communicate to the American public regarding the benefits that result from integrating new Americans into communities.

"(b) Within 120 days of the date of this memorandum, the Task Force shall develop and submit to the President an Integration Plan with recommendations for agency actions to further the integration of new Americans. The Integration Plan shall include:

"(i) an assessment by each Task Force member of the status and scope of the efforts by the member's department, agency, or office to further the civic, economic, and linguistic integration of new Americans, including a report on the status of any offices or programs that have been created to develop, implement, or monitor targeted initiatives concerning immigrant integration; and

"(ii) recommendations for issues, programs, or initiatives that should be further evaluated, studied, and implemented, as appropriate.

"(c) The Task Force shall provide, within 1 year of the date of this memorandum, a status report to the President regarding the implementation of this memorandum. The Task Force shall review and update the Integration Plan periodically, as appropriate, and shall present to the President any updated recommendations or findings.

"Sec. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

"(i) the authority granted by law to an executive department, agency, or the head thereof; or

"(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

"(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

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"(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

"(d) The Secretary of Homeland Security is hereby authorized and directed to publish this memorandum in the Federal Register."

NOTES:

Code of Federal Regulations:

Department of Homeland Security, Office of the Secretary--Sexual abuse and assault prevention standards, *6 CFR 115.5* et seq.

Department of Homeland Security--Authority of the Secretary of Homeland Security, *8 CFR 2.1* et seq.

Department of Homeland Security--Executive Office for Immigration Review, *8 CFR 3.0* et seq.

Department of Homeland Security--Statement of organization, *8 CFR 100.1* et seq.

Department of Homeland Security--Presumption of lawful admission, *8 CFR 101.1* et seq.

Department of Homeland Security--Powers and duties; availability of records, *8 CFR 103.1* et seq.

Department of Homeland Security--Immigrant petitions, *8 CFR 204.1* et seq.

Department of Homeland Security--Revocation of approval of petitions, *8 CFR 205.1* et seq.

Department of Homeland Security--Admission of refugees, *8 CFR 206.1* et seq.

Department of Homeland Security--Procedures for asylum and withholding of removal, *8 CFR 208.1* et seq.

Department of Homeland Security--Adjustment of status of refugees and aliens granted asylum, *8 CFR 209.1* et seq.

Department of Homeland Security--Special agricultural workers, *8 CFR 210.1* et seq.

Department of Homeland Security--Documentary requirements: Immigrants; waivers, *8 CFR 211.1* et seq.

Department of Homeland Security--Documentary requirements: Nonimmigrants; waivers; admission of certain inadmissible aliens; parole, *8 CFR 212.0* et seq.

Department of Homeland Security--Admission of aliens on giving bond or cash deposit, *8 CFR 213.1* et seq.

Department of Homeland Security--Nonimmigrant classes, *8 CFR 214.1* et seq.

Department of Homeland Security--Conditional basis of lawful permanent residence status, *8 CFR 216.1* et seq.

Department of Homeland Security--Visa waiver program, *8 CFR 217.1* et seq.

Department of Homeland Security--Admission of visitors or students, *8 CFR 221.1* et seq.

Department of Homeland Security--Reentry permits, refugee travel documents, and advance parole documents, *8 CFR 223.1* et seq.

Department of Homeland Security--Arrival and departure manifests, *8 CFR 231.1* et seq.

Department of Homeland Security--Detention of aliens for physical and mental examination, *8 CFR 232.2* et seq.

Department of Homeland Security--Contracts with transportation lines, *8 CFR 233.1* et seq.

Department of Homeland Security--Designation of ports of entry for aliens arriving by civil aircraft, *8 CFR 234.1* et seq.

Department of Homeland Security--Inspection of persons applying for admission, *8 CFR 235.1* et seq.

Department of Homeland Security--Apprehension and detention of inadmissible and deportable aliens; removal of aliens ordered removed, *8 CFR 236.1* et seq.

Department of Homeland Security--Expedited removal of aggravated felons, *8 CFR 238.1* et seq.

Department of Homeland Security--Initiation of removal proceedings, *8 CFR 239.1* et seq.

Department of Homeland Security--Voluntary departure, suspension of deportation and special rule cancellation of removal, *8 CFR 240.21* et seq.

Department of Homeland Security--Apprehension and detention of aliens ordered removed, *8 CFR 241.1* et seq.

Department of Homeland Security--Temporary protected status for Nationals of designated States, *8 CFR 244.1* et seq.

Department of Homeland Security--Adjustment of status to that of person admitted for permanent residence, *8 CFR 245.1* et seq.

Department of Homeland Security--Rescission of adjustment of status, *8 CFR 246.1* et seq.

Department of Homeland Security--Adjustment of status of certain resident aliens, *8 CFR 247.1* et seq.

Department of Homeland Security--Change of nonimmigrant classification, *8 CFR 248.1* et seq.

Department of Homeland Security--Creation of records of lawful admission for permanent residence, *8 CFR 249.1* et seq.

Department of Homeland Security--Removal of aliens who have fallen into distress, *8 CFR 250.1* et seq.

Department of Homeland Security--Arrival and departure manifests and lists: Supporting documents, *8 CFR 251.1* et seq.

Department of Homeland Security--Landing of alien crewmen, *8 CFR 252.1* et seq.

Department of Homeland Security--Parole of alien crewmen, *8 CFR 253.1* et seq.

Department of Homeland Security--Limitations on performance of longshore work by alien crewmen, *8 CFR 258.1* et seq.

Department of Homeland Security--Registration and fingerprinting of aliens in the United States, *8 CFR 264.1* et seq.

Department of Homeland Security--Notices of address, *8 CFR 265.1* et seq.

Department of Homeland Security--Penalties for document fraud, *8 CFR 270.1* et seq.

Department of Homeland Security--Diligent and reasonable efforts to prevent the unauthorized entry of aliens by the owners of railroad lines, international bridges, or toll roads, *8 CFR 271.1* et seq.

Department of Homeland Security--Carrier responsibilities at foreign ports of embarkation; reducing, refunding, or waiving fines under section 273 of the Act, *8 CFR 273.1* et seq.

Department of Homeland Security--Seizure and forfeiture of conveyances, *8 CFR 274.1* et seq.

Department of Homeland Security--Control of employment of aliens, *8 CFR 274a.1* et seq.

Department of Homeland Security--Imposition and collection of fines, *8 CFR 280.1* et seq.

Department of Homeland Security--Immigration user fee, *8 CFR 286.1* et seq.

Department of Homeland Security--Field officers; powers and duties, *8 CFR 287.1* et seq.

Department of Homeland Security--American Indians born in Canada, *8 CFR 289.1* et seq.

Department of Homeland Security--Immigration forms, *8 CFR 289.1* et seq.

Department of Homeland Security--Representation and appearances, *8 CFR 292.1* et seq.

Department of Homeland Security--Deposit of and interest on cash received to secure immigration bonds, *8 CFR 293.1* et seq.

Department of Homeland Security--Nationals and citizens of the United States at birth, *8 CFR 301.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Virgin Islanders, *8 CFR 306.1* et seq.

Department of Homeland Security--Naturalization authority, *8 CFR 310.1* et seq.

Department of Homeland Security--Educational requirements for naturalization, *8 CFR 312.1* et seq.

Department of Homeland Security--Membership in the Communist Party or any other totalitarian organizations, *8 CFR 313.1* et seq.

Department of Homeland Security--Persons ineligible to citizenship: Exemption from military service, *8 CFR 315.1* et seq.

Department of Homeland Security--General requirements for naturalization, *8 CFR 316.1* et seq.

Department of Homeland Security--Pending removal proceedings, *8 CFR 318.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Spouses of United States citizens, *8 CFR 319.1* et seq.

Department of Homeland Security--Child born outside the United States and residing permanently in the United States; requirements for automatic acquisition of citizenship, *8 CFR 320.1* et seq.

Department of Homeland Security--Child born outside the United States; requirements for application for certificate of citizenship, *8 CFR 322.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Women who have lost United States citizenship by marriage and former citizens whose naturalization is authorized by private law, *8 CFR 324.1* et seq.

Department of Homeland Security--Nationals but not citizens of the United States: Residence within outlying possessions, *8 CFR 325.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Persons who lost United States citizenship through service in armed forces of foreign country during World War II, *8 CFR 327.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Persons with 1 year of service in the United States Armed Forces, *8 CFR 328.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Persons with active duty or certain Ready Reserve service in the United States Armed Forces during specified periods of hostilities, *8 CFR 329.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Seamen, *8 CFR 330.1* et seq.

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Department of Homeland Security--Alien enemies; naturalization under specified conditions and procedures, *8 CFR 331.1* et seq.

Department of Homeland Security--Naturalization administration, *8 CFR 332.1* et seq.

Department of Homeland Security--Photographs, *8 CFR 333.1* et seq.

Department of Homeland Security--Application for naturalization, *8 CFR 334.1* et seq.

Department of Homeland Security--Examination on application for naturalization, *8 CFR 335.1* et seq.

Department of Homeland Security--Hearings on denials of applications for naturalization, *8 CFR 336.1* et seq.

Department of Homeland Security--Oath of allegiance, *8 CFR 337.1* et seq.

Department of Homeland Security--Certificate of naturalization, *8 CFR 338.1* et seq.

Department of Homeland Security--Functions and duties of clerks of court regarding naturalization proceedings, *8 CFR 339.1* et seq.

Department of Homeland Security--Revocation of naturalization, *8 CFR 340.1* et seq.

Department of Homeland Security--Certificates of citizenship, *8 CFR 341.1* et seq.

Department of Homeland Security--Administrative cancellation of certificates, documents, or records, *8 CFR 342.1* et seq.

Department of Homeland Security--Certificate of naturalization or repatriation: persons who resumed citizenship under section 323 of the Nationality Act of 1940, as amended, or section 4 of the Act of June 29, 1906, *8 CFR 343.1* et seq.

Department of Homeland Security--Loss of nationality, *8 CFR 349.1* et seq.

Department of Homeland Security--Special classes of persons who may be naturalized: Persons who die while serving on active duty with the United States armed forces during certain periods of hostilities, *8 CFR 392.1* et seq.

Executive Office for Immigration Review, Department of Justice--Definitions, *8 CFR 1001.1* et seq.

Executive Office for Immigration Review, Department of Justice--Executive Office for Immigration Review, *8 CFR 1003.0* et seq.

Executive Office for Immigration Review, Department of Justice--Presumption of lawful admission, *8 CFR 1101.1* et seq.

Executive Office for Immigration Review, Department of Justice--Appeals, records, and fees, *8 CFR 1103.3* et seq.

Executive Office for Immigration Review, Department of Justice--Immigration *petitions*, *8 CFR 1204.1* et seq.

Executive Office for Immigration Review, Department of Justice--Revocation of approval of *petitions*, *8 CFR 1205.1* et seq.

Executive Office for Immigration Review, Department of Justice--Admission of refugees, *8 CFR 1207.3* et seq.

Executive Office for Immigration Review, Department of Justice--Procedures for asylum and withholding of removal, *8 CFR 1208.1* et seq.

Executive Office for Immigration Review, Department of Justice--Adjustment of status of refugees and aliens granted asylum, *8 CFR 1209.1* et seq.

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Executive Office for Immigration Review, Department of Justice--Documentary requirements: nonimmigrants; waivers; admission of certain inadmissible aliens; parole, *8 CFR 1212.1* et seq.

Executive Office for Immigration Review, Department of Justice--Review of nonimmigrant classes, *8 CFR 1214.1* et seq.

Executive Office for Immigration Review, Department of Justice--Conditional basis of lawful permanent residence status, *8 CFR 1216.1* et seq.

Executive Office for Immigration Review, Department of Justice--Inspection of persons applying for permission, *8 CFR 1235.1* et seq.

Executive Office for Immigration Review, Department of Justice--Apprehension and detention of inadmissible and deportable aliens; removal of aliens ordered removed, *8 CFR 1236.1* et seq.

Executive Office for Immigration Review, Department of Justice--Initiation of removal proceedings, *8 CFR 1239.1* et seq.

Executive Office for Immigration Review, Department of Justice--Proceedings to determine removability of aliens in the United States, *8 CFR 1240.1* et seq.

Executive Office for Immigration Review, Department of Justice--Apprehension and detention of aliens ordered removed, *8 CFR 1241.1* et seq.

Executive Office for Immigration Review, Department of Justice--Temporary protected status for nationals of designated states, *8 CFR 1244.1* et seq.

8 USCS § 1103

Executive Office for Immigration Review, Department of Justice--Adjustment of status to that of person admitted for permanent residence, *8 CFR 1245.1* et seq.

Executive Office for Immigration Review, Department of Justice--Rescission of adjustment of status, *8 CFR 1246.1* et seq.

Executive Office for Immigration Review, Department of Justice--Creation of records of lawful admission for permanent residence, *8 CFR 1249.1* et seq.

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Executive Office for Immigration Review, Department of Justice--Imposition and collection of fines, *8 CFR 1280.1* et seq.

Executive Office for Immigration Review, Department of Justice--Field officers; powers and duties, *8 CFR 1287.4* et seq.

Executive Office for Immigration Review, Department of Justice--Representation and appearances, *8 CFR 1292.1* et seq.

Executive Office for Immigration Review, Department of Justice--Immigration review forms, *8 CFR 1299.1* et seq.

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Department of Justice--Regulations governing the remission or mitigation of administrative, civil, and criminal forfeitures, *28 CFR 9.1* et seq.

Department of Justice--Unfair immigration-related employment practices, *28 CFR 44.100* et seq.

Department of Justice--Rules of practice and procedure for administrative hearings before administrative law judges in cases involving allegations of unlawful employment of aliens, unfair immigration-related employment practices, and document fraud, *28 CFR 68.1* et seq.

Department of Justice and Department of State--Trafficking in persons, *28 CFR 1100.25* et seq.

Related Statutes & Rules:

Alien defined, *8 USCS § 1101(a)(3)*.

Attorney General defined, *8 USCS § 1101(a)(5)*.

Commissioner defined, *8 USCS § 1101(a)(8)*.

Consular officer defined, *8 USCS § 1101(a)(9)*.

Immigration laws defined, *8 USCS § 1101(a)(17)*.

Service defined, *8 USCS § 1101(a)(34)*.

Bond or undertaking as prerequisite to issuance of visas to aliens with certain physical disabilities or likely to become public charges, *8 USCS § 1201(g)*.

Office of Commissioner of Immigration and Naturalization, *8 USCS § 1552*.

This section is referred to in *6 USCS §§ 521, 522*.

Research Guide:

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5 Administrative Law (Matthew Bender), ch 42, Attorney Admission and Discipline in Administrative Practice § 42.01.

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3A Am Jur 2d, Aliens and Citizens §§ 5, 34, 38, 123.

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Immigration:

- 1 Immigration Law and Procedure (rev. ed.), ch 1, General Scheme of Immigration Law § 1.02.
- 1 Immigration Law and Procedure (rev. ed.), ch 2, The Development of the Immigration Laws § 2.04.
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- 3 Immigration Law and Procedure (rev. ed.), ch 35, Special Immigrants § 35.09.
- 3 Immigration Law and Procedure (rev. ed.), ch 39, Employment-Based (EB) Immigrants § 39.03.
- 5 Immigration Law and Procedure (rev. ed.), ch 61, Procedure at Border §§ 61.02, 61.04.
- 5 Immigration Law and Procedure (rev. ed.), ch 64, Removal of Noncitizens § 64.10.
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Emerging Issues Analysis*Reflections on Prosecutorial Discretion One Year After the Morton Memo*

Shoba Sivaprasad Wadhia reflects on the implementation of the famous (or infamous) immigration-agency memos on using "prosecutorial discretion" in favor of various types of noncitizens who could be removed from the United States. Were the people who said the memos went too far correct, or the people who said they should go farther? This article builds on Professor Wadhia's extensive work on prosecutorial discretion in immigration contexts.

Interpretive Notes and Decisions:

- 1. Generally
- 2. Authority of Secretary of Homeland Security
- 3. Authority of Attorney General
- 4.--Question of law determinations and rulings
- 5.--Regulations
- 6.--Delegation of authority
- 7.--Other particular cases
- 8. Authority of INS
- 9. Authority of Board of Immigration Appeals
- 10. Miscellaneous

1. Generally

In spite of broad power of Congress to exclude aliens altogether, or to prescribe terms and conditions upon which they may come to this country, executive is subject to constraints of due process in implementing and enforcing Congressional immigration policy. *Haitian Refugee Center v Smith* (1982, CA5 Fla) 676 F2d 1023 (ovrld in part on other grounds by *Jean v Nelson* (1984, CA11 Fla) 727 F2d 957) and (superseded by statute on other grounds as stated in *Thomas v INS* (1997, WD La) 975 F Supp 840).

Congress clearly intended there to be some level of negotiation between government and owner of property interest prior to institution of eminent domain procedures pursuant to 8 USCS § 1103(b)(3). *United States v 1.04 Acres* (2008, SD Tex) 538 F Supp 2d 995.

2. Authority of Secretary of Homeland Security

8 CFR § 204.12(b) and (d)(4), which impose strict limitations periods on completion of medical practice requirement, are in conflict with, and are ultra vires to, Nursing Relief for Disadvantaged Areas Act of 1999, 8 USCS § 1153(b)(2)(B)(ii), because (1) Congress clearly intended that no limitations period should be imposed on aggregate medical practice requirement, and (2) Secretary of Homeland Security does not have authority under 8 USCS § 1103(a)(1) and (3) to impose obligations not required by law. *Schneider v Chertoff* (2006, CA9 Cal) 450 F3d 944.

Dismissal of plaintiff's action under 8 USCS § 1503(a) for judgment declaring him United States national was affirmed because plaintiff did not claim to be United States national under BIA's interpretation of 8 USCS § 1101(a)(22), and BIA's interpretation was entitled to Chevron deference; BIA had not changed its position that nationality under Immigration and Nationality Act may be acquired only through birth or naturalization, and that 8 USCS § 1101(a)(22) did not confer nationality on aliens who claimed only to have demonstrated permanent allegiance to *United States*. *Patel v Napolitano* (2013, CA4 NC) 706 F3d 370.

Contrary to argument of plaintiff environmental groups, waiver provision of § 102 of REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 306, 8 USCS § 1103 note, was not equivalent to defendant Secretary of Homeland Security having power to amend or repeal duly enacted laws, in as much as waiver provision of Emergency Wartime Supplemental Appropriations Act, Pub. L. No. 108-11, § 1503, 117 Stat. 559, 579, had been found constitutional as being akin to waivers that President of U.S. was routinely empowered to make in areas such as in realm of foreign affairs. *Defenders of Wildlife v Chertoff* (2007, DC Dist Col) 527 F Supp 2d 119, 38 ELR 20005.

United States-Mexico border fence project required Secretary of Homeland Security to construct fencing on land that followed border, but permitted construction at some distance away from border; court could not substitute its own, or landowners', judgment as to what Secretary believed constituted land "along border," 8 USCS § 1103 note (§ 102(b)). *United States v 1.16 Acres of Land* (2008, SD Tex) 585 F Supp 2d 901.

8 USCS § 1103(b) of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which did not require government to set fixed price, and 40 USCS §§ 3113-3114 authorized defendant Secretary of United States Department of Homeland Security to acquire interest in privately-held, border-adjacent property to construct congressionally mandated fence and preemptive challenge by plaintiff, coalition of local governments and commissions, failed since there was no 5 USCS § 704 final agency action. *Tex. Border Coalition v Napolitano* (2009, DC Dist Col) 614 F Supp 2d 54.

Having reviewed 8 USCS § 1357, as well as statutory scheme of governing statute, Immigration and Nationality Act, 8 USCS §§ 1101 et seq., court finds that U.S. Department of Homeland Security's interpretation of § 1357 is consistent with purpose of statute and is not contrary to discernable intent of Congress; given broad authority vested in Secretary of Homeland Security to establish such regulations as she deems necessary for carrying out her authority to administer and enforce laws relating to immigration and naturalization of aliens, and in absence of clear Congressional intent compelling contrary result, court concludes that 8 CFR § 287.7 is permissible construction of statute, particularly when read in light of 8 USCS § 1103. *Comm. for Immigrant Rights v County of Sonoma* (2009, ND Cal) 644 F Supp 2d 1177.

3. Authority of Attorney General

Four conclusions may be drawn from INA § 103(a) and (b) (8 USCS § 1103(a) and (b)): (1) Congress has provided extremely broad powers to Attorney General for enforcement of immigration laws; (2) it may be inferred from nature of immigration offenses, which negatively affect U.S. even when such conduct takes place outside country, that Congress intended INA § 274 (8 USCS § 1324) to apply extraterritorially, and it may be inferred from the broad language of INA § 103(a) (8 USCS § 1103(a)) that Congress intended to grant Attorney General corresponding power to enforce immigration laws both within and outside borders of U.S.; (3) Attorney General may delegate any of these powers to Commissioner of the INS; and (4) Attorney General has direct control over all employees of the INS, whom she may call upon to guard U.S. borders. *United States v Chen* (1993, CA9 Cal) 2 F3d 330, 93 CDOS 6258, 93 Daily Journal DAR 10793, cert den (1994) 511 US 1039, 128 L Ed 2d 205, 114 S Ct 1558.

8 USCS § 1103

8 USCS § 1103(a) is broad ground of general administrative and enforcement authority to Attorney General, and under frequently-applied maxim of statutory construction that specific provision prevails over more general provision. *Castaneda-Gonzalez v Immigration & Naturalization Service* (1977, App DC) 183 US App DC 396, 564 F2d 417.

Attorney General is vested with discretionary power to take actions and develop standards, principles and rules so long as actions are based upon considerations rationally related to statute he is administering; Act need not specifically authorize each and every action taken by Attorney General, so long as action is reasonably related to duties imposed. *Hotel & Restaurant Employees Union, Local 25 v Smith* (1984, DC Dist Col) 594 F Supp 502, affd in part and revd in part on other grounds (1986, App DC) 256 US App DC 227, 804 F2d 1256, 123 BNA LRRM 2947, 6 FR Serv 3d 527, vacated without op, en banc (1987, App DC) 257 US App DC 243, 808 F2d 847.

4.--Question of law determinations and rulings

Filing of asylum petition by alien did not constitute commencement of removal proceedings for purposes of determining applicable commencement date for determining length of time of actual physical presence necessary for eligibility for cancellation of removal; scope of judicial review was limited, as Congress provided that U.S. Attorney General's determinations and rulings with respect to all questions of law were controlling. *Uspango v Ashcroft* (2002, CA3 NJ) 289 F3d 226 (criticized in *Ponnapula v Ashcroft* (2004, CA3 Pa) 373 F3d 480).

Section 103(a) of Immigration & Nationality Act (8 USCS § 1103(a)) confers unlimited authority on Attorney General with respect to all questions of law to extent that his rulings are binding on other departments of government; Attorney General's authority thereunder to resolve divergent legal opinions among different governmental departments has not been delegated to special inquiry officers. *In re E----* (1954, BIA) 6 I & N Dec 388.

Unpublished Opinions

Unpublished: Where review of reinstatement of removal order is at issue, constitutional and statutory claims made by alien are subject to de novo review; however, U.S. Attorney General's interpretation of Immigration and Nationality Act is afforded deference, which deference is particularly appropriate in light of Act's express provision in § 103(a)(1) of Immigration and Nationality Act, 8 USCS § 1103(a)(1), that Attorney General's determination and ruling with respect to all questions of law shall be controlling. *Shtyllaku v Gonzales* (2007, CA6) 252 Fed Appx 16, 2007 FED App 744N.

5.--Regulations

Any court or administrative agency which has power to admit attorneys to practice has authority to disbar or discipline attorneys for unprofessional conduct, and 8 USCS § 1103 empowers Attorney General to establish such regulations as he deems necessary for carrying out his authority under laws relating to immigration and naturalization of aliens. *Koden v United States Dep't of Justice* (1977, CA7 Ill) 564 F2d 228.

Only way to revoke citizenship of naturalized American citizen is provided in 8 USCS § 1451; thus, Attorney General did not have authority to issue regulation (8 CFR § 340.1) which allows INS to denaturalize citizens administratively and bypass courts. *Gorbach v Reno* (2000, CA9 Wash) 219 F3d 1087, 2000 CDOS 6043, 2000 Daily Journal DAR 8001.

Attorney General's implementation of streamlining regulations and Board of Immigration Appeals' (BIA) issuance of "affirmance without opinion" (AWO) in case did not violate either Immigration and Nationality Act, 8 USCS §§ 1101 et seq., or U.S. Constitution; however, immigration judge's (IJ) adverse credibility determination was not based on substantial evidence and, thus, BIA improperly affirmed IJ's decision denying asylum or withholding of removal. *Dia v Ashcroft* (2003, CA3) 353 F3d 228.

Streamlining regulations are permissible construction of Immigration and Nationality Act and permit Attorney General to fulfill his legislatively delegated functions. *De Belbruno v Ashcroft* (2004, CA4) 362 F3d 272.

Attorney General's power under 8 USCS § 1103(a) to establish regulations as he sees necessary for carrying out authority under provisions of Immigration and Nationality Act is adequate basis on which to predicate regulations governing disciplinary actions. *In re Koden* (1974, BIA) 15 I & N Dec 739.

6.--Delegation of authority

Attorney General has authority to delegate to subordinates his power to exercise discretion under 8 USCS § 1255, by virtue of 8 USCS § 1103. *Jarecha v Immigration & Naturalization Service* (1969, CA5) 417 F2d 220.

Immigration judges, or special inquiry officers, are creatures of statute, receiving some of their powers and duties directly from Congress (8 USCS § 1252(b)), and some of them by subdelegation from Attorney General (8 USCS § 1103), and nowhere is there any mention of power of immigration judge to award discretionary relief from deportation proceedings for humanitarian reasons. *Lopez-Telles v Immigration & Naturalization Service* (1977, CA9) 564 F2d 1302.

Four conclusions may be drawn from INA § 103(a) and (b) (8 USCS § 1103(a) and (b)): (1) Congress has provided extremely broad powers to Attorney General for enforcement of immigration laws; (2) it may be inferred from nature of immigration offenses, which negatively affect U.S. even when such conduct takes place outside country, that Congress intended INA § 274 (8 USCS § 1324) to apply extraterritorially, and it may be inferred from the broad language of INA § 103(a) (8 USCS § 1103(a)) that Congress intended to grant Attorney General corresponding power to enforce immigration laws both within and outside borders of U.S.; (3) Attorney General may delegate any of these powers to Commissioner of the INS; and (4) Attorney General has direct control over all employees of the INS, whom she may call upon to guard U.S. borders. *United States v Chen* (1993, CA9 Cal) 2 F3d 330, 93 CDOS 6258, 93 Daily Journal DAR 10793, cert den (1994) 511 US 1039, 128 L Ed 2d 205, 114 S Ct 1558.

Where Board of Immigration Appeals found that returning lawful permanent resident who is described in 8 USCS § 1101(a)(13)(C)(i)-(vi) shall be regarded as seeking admission into U.S., without regard to whether alien's departure from U.S. might previously have been regarded as brief, casual, and innocent under prior judicial doctrine, statutory interpretation of Board under authority delegated from Attorney General was reasonable and thus entitled to judicial deference. *Tineo v Ashcroft* (2003, CA3 NJ) 350 F3d 382.

Because Office of Special Investigations (OSI) for Criminal Division of U. S. Department of Justice was granted authority by Attorney General to take legal action to deport individuals who assisted Nazis in persecution during World War II, issuance of Notice to Appear (NTA) for removal proceedings against such individual by Director of OSI was proper; even though Director was not included in list of officials under 8 C.F.R. § 239.1(a) who were authorized to issue NTAs, list was non-exclusive and Director was clearly delegated authority to issue NTA. *Dailide v United States AG* (2004, CA11) 387 F3d 1335, 17 FLW Fed C 1157.

General language of 8 USCS § 1103(a) should not be construed as delegating authority to Attorney General which is delegated only to Secretary of Labor by 8 USCS § 1182(a)(14), and insofar as that section is concerned, Attorney General's inquiry is limited to whether Secretary of Labor has determined that substantive requirements of that subsection are satisfied; once alien shows that Secretary of Labor has made such determination in his favor, statutorily delegated enforcement power of Attorney General is exhausted, and there is nothing in § 212(a)(14) itself that permits Attorney General to ignore Secretary's determination because he finds it factually defective and to decide for himself that under correct facts labor certificate should not have been granted. *Castaneda-Gonzalez v Immigration & Naturalization Service* (1977, App DC) 183 US App DC 396, 564 F2d 417.

7.--Other particular cases

Attorney General has authority to indefinitely detain excludable aliens, and such indefinite detention does not violate due process. *Guzman v Tippy* (1997, CA2 NY) 130 F3d 64.

Persecution for imputed grounds can satisfy refugee definition in Immigration and Naturalization Act (INA) according to Attorney General, who is ultimate authority on interpretations of INA, INA § 103(a)(1), 8 USCS § 1103(a)(1), *Amanfi v Ashcroft* (2003, CA3) 328 F3d 719.

Withdrawal of appeal after immigrant subject to deportation voluntarily left country did not exceed Attorney General's authority under 8 USCS § 1103(a)(1) because act of leaving country amounted to self-deportation since it executed order. *Aguilera-Ruiz v Ashcroft* (2003, CA9 Cal) 348 F3d 835, 2003 CDOS 9575, 2003 Daily Journal DAR 12050.

Under 8 USCS § 1104(a)(3), State Department is charged with determination of nationality of person not in U.S., but once alien reaches U.S., alien falls within jurisdiction of Attorney General, who is not bound by any determination that may have been made by State Department; hence, FAM Proc Note 4 to 22 CFR § 42.22, which provides that American-born child of foreign diplomat retains resident status even after leaving U.S., was not controlling in case in which three children of foreign diplomat claimed right to permanent resident status, since aliens were currently living in U.S. and fell within jurisdiction reserved to Attorney General under 8 USCS § 1103(a). *Nikoi v Attorney Gen. of United States* (1991, App DC) 291 US App DC 237, 939 F2d 1065.

Increase in fees for applications for stay of deportation and appeals to BIA, pursuant to authority of Attorney General to impose fees for immigration proceedings under 8 USCS § 1103 and 31 USCS § 9701, is proper where (1) any deterrent effect caused by increase in fees is offset by 8 CFR § 103.7(c)(1) allowing waiver of fee by alien unable to pay; (2) fees were adopted based on 2 year process of extensive agency wide review, (3) fee bears reasonable relationship to cost of services rendered by agency; and (4) comparison of fee with certain court fees and other agency fees is irrelevant as each agency is entitled to set its own fees and acts of one agency are not controlling on another. *Auyda, Inc. v Attorney Gen.* (1987, DC Dist Col) 661 F Supp 33, affd (1988, App DC) 270 US App DC 265, 848 F2d 1297.

8. Authority of INS

Provisions of 8 USCS §§ 1103(a), 1184(a), and 1251(a)(9) furnish ample statutory basis for Immigration and Naturalization Service regulations concerning Iranians in United States. *Shoae v Immigration & Naturalization Service* (1983, CA9) 704 F2d 1079.

Absent express delegation of congressional authority, administrative agency cannot create limitations period affecting ability of Article III court to review agency action; thus, INS did not have authority to promulgate regulation (8 CFR § 336.9(b)) which provided that alien had 120 days after final administrative determination to judicially appeal denial of application for naturalization, because relevant statute (8 USCS § 1421(c)) does not specify time within which such review must be sought. *Nagahi v INS* (2000, CA10 Utah) 219 F3d 1166, 2000 Colo J C A R 4323.

9. Authority of Board of Immigration Appeals

Attorney General's implementation of streamlining regulations and Board of Immigration Appeals' (BIA) issuance of "affirmance without opinion" (AWO) in case did not violate either Immigration and Nationality Act, 8 USCS §§ 1101 et seq., or U.S. Constitution; however, immigration judge's (IJ) adverse credibility determination was not based on substantial evidence and, thus, BIA improperly affirmed IJ's decision denying asylum or withholding of removal. *Dia v Ashcroft* (2003, CA3) 353 F3d 228.

Although BIA has discretion over how to resolve motions to reopen, it does not have discretion over whether to resolve such motions, in light of use of word "shall" in 8 USCS § 1103(a) and 8 CFR § 3.1(a)(1) and (3). *Dabone v Thornburgh* (1990, ED Pa) 734 F Supp 195.

Board of Immigration Appeals has authority, under 8 USCS § 1103(a) in deportation proceedings to determine validity of Department of Labor certification presented by alien at time of admission. *In re Welcome* (1969, BIA) 13 I & N Dec 352.

Unpublished Opinions

Unpublished: Alien's constitutional claim of ineffective assistance of counsel lacked merit, as alien did not show that counsel's advice to withdraw asylum application and seek voluntary departure rendered proceedings unfair; therefore, jurisdiction did not exist to review BIA's refusal to reopen alien's removal proceedings sua sponte. *Wimalaratne v United States AG* (2012, CA11) 2012 US App LEXIS 11827.

10. Miscellaneous

There is no constitutionally protected right to political asylum itself, but right to petition is nevertheless valuable one to possessor, and by it he may at least send message and be assured of ear of recipient; whether this minimal entitlement be called liberty or property interest it is sufficient guaranty of due process. *Haitian Refugee Center v Smith* (1982, CA5 Fla) 676 F2d 1023 (ovrld in part on other grounds by *Jean v Nelson* (1984, CA11 Fla) 727 F2d 957) and (superseded by statute on other grounds as stated in *Thomas v INS* (1997, WD La) 975 F Supp 840).

Appellate jurisdiction was lacking under 28 USCS § 1291 to review district court's possession orders granting U.S. temporary easements under 8 USCS § 1103(b) and 40 USCS § 3114(a) to enter onto private properties to construct international border fence because landowners had adequate chance for review after final judgment. *United States v Muniz* (2008, CA5 Tex) 540 F3d 310.

Because nothing in record suggested that alien had requisite intent when he failed to register as sex offender under *Wis. Stat. § 301.45* and statute did not require criminal intent, BIA was required to re-analyze whether conviction was crime of moral turpitude using individualized approach, pursuant to 8 USCS § 1103, so as to determine whether alien was entitled to waiver of inadmissibility under 8 USCS §§ 1182(c) and 1227(a)(2). *Mata-Guerrero v Holder* (2010, CA7) 627 F3d 256.

8 USCS § 1103

It did not follow from fact that immigration was quintessentially federal function that immigration detention was without private non-federal officer analogue under 28 USCS §§ 1346(b)(1), 2674, thus, dismissal of citizen's claim of being falsely detained as removable alien for lack of jurisdiction under Federal Tort Claims Act was error; although power to regulate immigration was unquestionably exclusively federal power, it was not clear that immigration detentions were necessarily and exclusively federal acts, since, under 8 USCS §§ 1252c(a), 1103(a)(10), State and local law enforcement officials could be empowered (consistent with state law) to "arrest and detain" aliens in certain circumstances. *Liranzo v United States* (2012, CA2 NY) 690 F3d 78.

Organizations' action seeking to halt construction of portions of physical barriers pursuant to § 102 of Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA), codified at 8 USCS § 1103 note, was dismissed because even after amended, provision allowed Secretary of Homeland Security to waive all legal requirements determined necessary to ensure expeditious construction of barriers and roads and organizations' challenge did not come within 60-day limitation period expressly provided in § 102. *Save Our Heritage Org. v Gonzales* (2008, DC Dist Col) 533 F Supp 2d 58.

In condemnation action against defendant landowner and her property under 8 USCS § 1103(b)(3) and 40 USCS § 3113 for purpose of constructing fence on Southern Border of U.S., consultation clause of note to 8 USCS § 1103 was not defense to Declaration of Taking Act, 40 USCS § 3114, action. *United States v 1.04 Acres* (2008, SD Tex) 538 F Supp 2d 995.

In condemnation action against defendant landowner and her property under 8 USCS § 1103(b)(3) and 40 USCS § 3113 for purpose of constructing fence on Southern Border of U.S., government was required to put forth bona fide effort to determine whether agreement can be reached; government was to provide court with sufficient evidence for it to determine that government made bona fide effort to negotiate with landowner for this interest in her land. *United States v 1.04 Acres* (2008, SD Tex) 538 F Supp 2d 995.

8 USCS § 1103(b), which did not require government to set fixed price, and 40 USCS §§ 3113-3114 authorized defendant Secretary of United States Department of Homeland Security to acquire interest in privately-held, border-adjacent property to construct congressionally mandated fence and preemptive challenge by plaintiff, coalition of local governments and commissions, failed since there was no 5 USCS § 704 final agency action. *Tex. Border Coalition v Napolitano* (2009, DC Dist Col) 614 F Supp 2d 54.

Sections 103 and 242 of Immigration & Nationality Act (8 USCS §§ 1103 and 1252) authorize inclusion in appearance and delivery bond in connection with deportation proceeding of condition prohibiting unauthorized employment. *In re Toscano-Rivas* (1972, BIA) 14 I & N Dec 523.

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**Memorandum of Understanding
Among
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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**

I. Purpose and Scope

A. This Memorandum of Understanding (MOU) is made and entered into by the Department of Homeland Security (DHS), including and on behalf of its constituent bureau U.S. Customs and Border Protection (CBP) and the CBP Office of Border Patrol (CBP-BP); the Department of the Interior (DOI), including and on behalf of its constituent bureaus, the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and the Bureau of Reclamation (BOR); and the Department of Agriculture (USDA), including and on behalf of its constituent agency the U.S. Forest Service (USFS). Throughout this MOU, these three Departments, including their constituent agencies, may be referred to as "the Parties." Any reference to a bureau, agency, or constituent component of a Party shall not be deemed to exclude application to any appropriate bureau or constituent component of that Party. DHS recognizes that the BIA enters into this agreement only on its own behalf and not on behalf of any Indian tribe.

B. The geographic and jurisdictional scope of this MOU is nationwide. The Parties recognize the national security and counterterrorism significance of preventing illegal entry into the United States by cross-border violators (CBVs), including but not limited to the following: drug and human smugglers and smuggling organizations, foreign nationals, and terrorists and terrorist organizations. The Parties further recognize that damage to DOI and USDA-managed lands and natural and cultural resources is often a significant consequence of such illegal entry. The Parties are committed to preventing illegal entry into the United States, protecting Federal lands and natural and cultural resources, and - where possible - preventing adverse impacts associated with illegal entry by CBVs.

C. This MOU is intended to provide consistent goals, principles, and guidance related to border security, such as law enforcement operations; tactical infrastructure installation; utilization of roads; minimization and/or prevention of significant impact on or impairment of natural and cultural resources; implementation of the Wilderness Act, Endangered Species Act, and other related environmental law, regulation, and policy across land management agencies; and provide for coordination and sharing information

on threat assessments and other risks, plans for infrastructure and technology improvements on Federal lands, and operational and law enforcement staffing changes. This MOU provides guidance in the development of individual agreements, where appropriate, between CBP and land management agencies to further the provisions contained herein.

D. This MOU is entered into pursuant to the governing statutory authorities of each of the Parties.

E. The Parties acknowledge that CBP operation and construction within the sixty-foot "Roosevelt Reservation" of May 27, 1907 (along the US-Mexico border) and the sixty-foot "Taft Reservation" of May 3, 1912 (along the US-Canada border) is consistent with the purpose of those reservations and that any CBP activity (including, but not limited to, operations and construction) within the sixty-foot reservations is outside the oversight or control of Federal land managers.

F. This MOU supersedes any conflicting provision of any prior MOU or Memorandum of Agreement between the Parties or their subordinate bureaus or components.

II. Background

A. DHS, through its constituent bureaus (including CBP and its CBP-BP), is statutorily mandated to control and guard the Nation's borders and boundaries, including the entirety of the northern and southern land and water borders of the United States.

B. DOI and USDA, through their constituent bureaus, are statutorily charged as managers of Federal lands throughout the United States, including DOI and USDA lands in the vicinity of international borders that are administered as wilderness areas, conservation areas, national forests, wildlife refuges, units/irrigation projects of the Bureau of Reclamation, and/or units of the national park system. Tribal governments have primary management roles over tribal lands; however, the United States, through the BIA, may also have a stewardship or law enforcement responsibility over these lands. Many of these Federal and tribal lands contain natural and cultural resources that are being degraded by activities related to illegal cross-border movements.

C. The volume of CBVs can and has, in certain areas, overwhelmed the law enforcement and administrative resources of Federal land managers. In order to more effectively protect national security, respond to terrorist threats, safeguard human life, and stop the degradation of the natural and cultural resources on those lands, DOI and USDA land managers will work cooperatively with CBP to benefit from the enforcement presence, terrorist and CBV interdiction, and rescue operations of CBP.

III. Common Findings and Affirmation of the Parties

A. The Parties to this MOU recognize that CBP-BP access to Federal lands can facilitate rescue of CBVs on Federal lands, protect those lands from environmental damage, have a role in protecting the wilderness and cultural values and wildlife resources of these lands, and is necessary for the security of the United States. Accordingly, the Parties understand that CBP-BP, consistent with applicable Federal laws and regulations, may access public lands and waterways, including access for purposes of tracking, surveillance, interdiction, establishment of observation points, and installation of remote detection systems.

B. The Parties recognize that DOI and USDA have responsibility for enforcing Federal laws relating to land management, resource protection, and other such functions on Federal lands under their jurisdiction.

IV. Responsibilities and Terms of Agreement

A. The Parties Agree to the Following Common Goals, Policies, and Principles:

1. The Parties enter into this MOU in a cooperative spirit with the goals of securing the borders of the United States, addressing emergencies involving human health and safety, and preventing or minimizing environmental damage arising from CBV illegal entry on public lands;
2. The Parties will strive to both resolve conflicts at and delegate resolution authority to the lowest field operational level possible while applying the principles of this MOU in such manner as will be consistent with the spirit and intent of this MOU;
3. The Parties will develop and consistently utilize an efficient communication protocol respecting the chain of command for each of the Parties that will result in the consistent application of the goals, policies, and principles articulated in this MOU, and provide a mechanism that will, if necessary, facilitate the resolution of any conflicts among the Parties. If resolution of conflict does not occur at the local level, then the issue will be elevated first to the regional/sector office; if not resolved at the regional/sector level, then the issue will be elevated to the headquarters level for resolution;
4. The Parties will cooperate with each other to complete, in an expedited manner, all compliance that is required by applicable Federal laws not otherwise waived in furtherance of this MOU. If such activities are authorized by a local agreement as described in sub-article IV.B below, then the DOI, USDA, and CBP will complete the required compliance before executing the agreement;

5. The Parties will cooperate with each other to identify methods, routes, and locations for CBP-BP operations that will minimize impacts to natural, cultural, and wilderness resources resulting from CBP-BP operations while facilitating needed CBP-BP access;
6. The Parties will, as necessary, plan and conduct joint local law enforcement operations consistent with all Parties' legal authorities;
7. The Parties will establish a framework by which threat assessments and other intelligence information may be exchanged, including intelligence training to be conducted by all parties so that the intelligence requirements of each may be identified and facilitated;
8. The Parties will establish forums and meet as needed at the local, regional, and national levels to facilitate working relationships and communication between all Parties;
9. The Parties will develop and share joint operational strategies at the local, regional, and national levels, including joint requests for infrastructure and other shared areas of responsibility;
10. The Parties will share the cost of environmental and cultural awareness training unless otherwise agreed; and
11. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. §1535 when one party is to furnish materials or perform work or provide a service on behalf of another party.

B. Responsibilities and Terms Specific to DOI and USDA. The DOI and the USDA hereby recognize that, pursuant to applicable law, CBP-BP is authorized to access the Federal lands under DOI and USDA administrative jurisdiction, including areas designated by Congress as wilderness, recommended as wilderness, and/or wilderness study areas, and will do so in accordance with the following conditions and existing authorities:

1. CBP-BP agents on foot or on horseback may patrol, or pursue, or apprehend suspected CBVs off-road at any time on any Federal lands administered by the Parties;
2. CBP-BP may operate motor vehicles on existing public and administrative roads and/or trails and in areas previously designated by the land management agency for off-road vehicle use at any time, provided that such use is consistent with presently authorized public or administrative use. At CBP-BP's request, the DOI and the USDA will provide CBP-BP with keys, combinations, or other means necessary to

access secured administrative roads/trails. CBP-BP may drag existing public and administrative roads that are unpaved for the purpose of cutting sign, subject to compliance with conditions that are mutually agreed upon by the local Federal land manager and the CBP-BP Sector Chief. For purposes of this MOU, "existing public roads/trails" are those existing roads/trails, paved or unpaved, on which the land management agency allows members of the general public to operate motor vehicles, and "existing administrative roads/trails" are those existing roads/trails, paved or unpaved, on which the land management agency allows persons specially authorized by the agency, but not members of the general public, to operate motor vehicles;

3. CBP-BP may request, in writing, that the land management agency grant additional access to Federal lands (for example, to areas not previously designated by the land management agency for off-road use) administered by the DOI or the USDA for such purposes as routine patrols, non-emergency operational access, and establishment of temporary camps or other operational activities. The request will describe the specific lands and/or routes that the CBP-BP wishes to access and the specific means of access desired. After receiving a written request, the local Federal land manager will meet promptly with the CBP-BP Sector Chief to begin discussing the request and negotiating the terms and conditions of an agreement with the local land management agency that authorizes access to the extent permitted by the laws applicable to the particular Federal lands. In each agreement between CBP-BP and the local land management agency, the CBP-BP should be required to use the lowest impact mode of travel and operational setup reasonable and practicable to accomplish its mission. The CBP-BP should also be required to operate all motorized vehicles and temporary operational activities in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands. However, at no time should officer safety be compromised when selecting the least impactful conveyance or operational activity. Recognizing the importance of this matter to the Nation's security, the CBP-BP Sector Chief and the local Federal land manager will devote to this endeavor the resources necessary to complete required compliance measures in order to execute the local agreement within ninety (90) days after the Federal land manager has received the written request for access. Nothing in this paragraph is intended to limit the exercise of applicable emergency authorities for access prior to the execution of the local agreement. The Secretaries of the Interior, Agriculture, and Homeland Security expect that, absent compelling justification, each local agreement will be executed within that time frame and provide the maximum amount of access requested by the CBP-BP and allowed by law;

4. Nothing in this MOU is intended to prevent CBP-BP agents from exercising existing exigent/emergency authorities to access lands, including authority to conduct motorized off-road pursuit of suspected CBVs at any time, including in areas designated or recommended as wilderness, or in wilderness study areas when, in their professional judgment based on articulated facts, there is a specific exigency/emergency involving human life, health, safety of persons within the area, or posing a threat to national security, and they conclude that such motorized off-road pursuit is reasonably expected to result in the apprehension of the suspected CBVs. Articulated facts include, but are not limited to, visual observation; information received from a remote sensor, video camera, scope, or other technological source; fresh "sign" or other physical indication; canine alert; or classified or unclassified intelligence. For each such motorized off-road pursuit, CBP-BP will use the least intrusive or damaging motorized vehicle readily available, without compromising agent or officer safety. In accordance with paragraph IV.C.4, as soon as practicable after each such motorized off-road pursuit, CBP-BP will provide the local Federal land manager with a brief report;
5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources, or if other significant issues warrant consultation, then the Federal land manager and the CBP-BP will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;
6. CBP may request, in writing, that the land management agency authorize installation or construction of tactical infrastructure for detection of CBVs (including, but not limited to, observation points, remote video surveillance systems, motion sensors, vehicle barriers, fences, roads, and detection devices) on land under the local land management agency's administrative jurisdiction. In areas not designated as wilderness, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency. In areas designated or managed as wilderness, the local Federal land manager, in consultation with CBP, will promptly conduct a "minimum requirement," "minimum tool," or other appropriate analysis. If supported by such analysis, the local Federal land manager will expeditiously authorize CBP to install such infrastructure subject to such terms and conditions that are mutually developed and articulated in the authorization issued by the land management agency;

7. The DOI and USDA will provide CBP-BP agents with appropriate environmental and cultural awareness training formatted to meet CBP-BP operational constraints. The DOI and USDA will work with CBP-BP in the development and production of maps for use or reference by CBP-BP agents including, as appropriate, site-specific and resource-specific maps that will identify specific wildlife and environmentally or culturally sensitive areas;
8. The DOI and USDA will, as applicable, provide CBP-BP with all assessments and studies done by or on behalf of DOI or USDA on the effects of CBVs on Federal lands and native species to better analyze the value of preventative enforcement actions;
9. The DOI and USDA will assist CBP-BP in search and rescue operations on lands within the respective land managers' administration when requested;
10. The CBP-BP and land management agencies may cross-deputize or cross-designate their agents as law enforcement officers under each other agency's statutory authority. Such cross-deputation or cross-designation agreements entered into by the local land management agency and the field operations manager for the CBP-BP shall be pursuant to the policies and procedures of each agency; and
11. DOI and USDA will work at the field operations level with affected local CBP-BP stations to establish protocols for notifying CBP-BP agents when DOI or USDA law enforcement personnel are conducting law enforcement operations in an area where CBP-BP and DOI/USDA operations can or will overlap.

C. Responsibilities and Terms Specific to the CBP. DHS hereby agrees as follows:

1. Consistent with the Border Patrol Strategic Plan, CBP-BP will strive to interdict CBVs as close to the United States' international borders as is operationally practical, with the long-term goal of establishing operational control along the immediate borders;
2. If the CBP-BP drag any unpaved roads for the purpose of cutting sign under provision IV.B.2 above, then CBP-BP will maintain or repair such roads to the extent that they are damaged by CBP-BP's use or activities;
3. If CBP-BP agents pursue or apprehend suspected CBVs in wilderness areas or off-road in an area not designated for such use under

paragraph IV.B.5, then the CBP-BP will use the lowest impact mode of travel practicable to accomplish its mission and operate all motorized vehicles in such a manner as will minimize the adverse impacts on threatened or endangered species and on the resources and values of the particular Federal lands, provided officer safety is not compromised by the type of conveyance selected;

4. CBP-BP will notify the local Federal land manager of any motorized emergency pursuit, apprehension, or incursion in a wilderness area or off-road in an area not designated for such use as soon as is practicable. A verbal report is sufficient unless either CBP-BP or the land managing agency determines that significant impacts resulted, in which case a written report will be necessary;
5. If motorized pursuits in wilderness areas, areas recommended for wilderness designation, wilderness study areas, or off-road in an area not designated for such use are causing significant impact on the resources as determined by a land manager, or if other significant issues warrant consultation, then the CBP-BP and Federal land manager will immediately meet to resolve the issues subject to paragraphs IV.A.2 and IV.A.3 of this MOU;
6. CBP will consult with land managers to coordinate the placement and maintenance of tactical infrastructure, permanent and temporary video, seismic and other remote sensing sites in order to limit resource damage while maintaining operational efficiency;
7. CBP-BP will ensure that current and incoming CBP-BP agents attend environmental and cultural awareness training to be provided by the land management agencies;
8. CBP-BP will provide land management agencies with appropriate and relevant releasable statistics of monthly CBV apprehensions, search and rescue actions, casualties, vehicles seized, drug seizures and arrests, weapons seizures and arrests, and other significant statistics regarding occurrences on the lands managed by the land manager;
9. CBP-BP will consult with land managers in the development of CBP-BP's annual Operational-Requirements Based Budgeting Program to ensure affected land managers can provide input and are, in the early stages of planning, made aware what personnel, infrastructure, and technology the CBP-BP would like to deploy along the border within their area of operation; and
10. CBP-BP will work at the field operations manager level with affected local land management agencies to establish protocols for notifying

land management agency law enforcement officers when BP is conducting special operations or non-routine activities in a particular area.

V. Miscellaneous Provisions

A. Nothing in this MOU may be construed to obligate the agencies or the United States to any current or future expenditure of funds in advance of the availability of appropriations, nor does this MOU obligate the agencies or the United States to spend funds for any particular project or purpose, even if funds are available.

B. Nothing in this MOU will be construed as affecting the authority of the Parties in carrying out their statutory responsibilities.

C. This MOU may be modified or amended in writing upon consent of all Parties, and other affected Federal agencies may seek to become a Party to this MOU.

D. The Parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOU with respect to, *inter alia*, pay, personnel benefits, injuries, accidents, losses, damages, and civil liability. This MOU is not intended to change in any way the individual employee status or the liability or responsibility of any Party under Federal law.

E. The Parties agree to participate in this MOU until its termination. Any Party wishing to terminate its participation in this MOU shall provide sixty (60) days written notice to all other Parties.

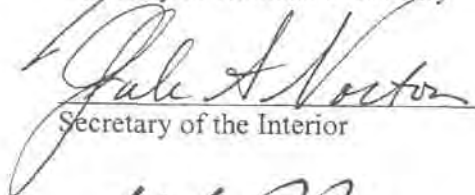
F. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person, party, or entity. This MOU is not and shall not be construed as a rule or regulation.

In witness whereof, the Parties hereto have caused this Memorandum of Understanding to be executed and effective as of the date of the last signature below.

Date: 3/24/06


Secretary of Homeland Security

Date: 3/31/06


Secretary of the Interior

Date: 3/29/06


Secretary of Agriculture

**Statement
of
Kim Thorsen
Deputy Assistant Secretary, Law Enforcement, Security, and Emergency
Management
United States Department of the Interior**

**Before the
House Committee on Oversight and Government Reform,
Subcommittee on National Security, Homeland Defense, and Foreign
Operations
And
House Committee on Natural Resources,
Subcommittee on National Parks, Forests, and Public Lands**

April 15, 2011

Chairmen Bishop and Chaffetz, Ranking Members Grijalva and Tierney, and Members of the Subcommittees, thank you for the opportunity to appear before you today to discuss the important issues of border security and the Department of the Interior's (Interior) role in the Administration's collaborative efforts to address illegal cross-border activity on public lands. My name is Kim Thorsen, and I am the Deputy Assistant Secretary for Law Enforcement, Security, and Emergency Management at Interior. I have been a law enforcement officer for twenty-five years with both Interior and the U.S. Forest Service and have been involved in border issues for the last eight years.

Introduction

We appreciate the attention that your Subcommittees have given to the issue of securing our borders. The Department of Homeland Security (DHS), including U.S. Customs and Border Protection (CBP), has been given the mandate to secure our international borders and deter illegal border related activity. At Interior, we have the responsibility of administering uniquely beautiful and environmentally sensitive lands along the borders.

As manager of one in every five acres of the United States, Interior's land managing agencies, the Bureau of Land Management (BLM), the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Indian Affairs (BIA), take this responsibility very seriously. We recognize the significant ecological and cultural values of the extensive lands Interior agencies manage near this border, and we strive to maintain their character and fulfill our mission to protect and preserve these assets on behalf of the American people.

We also recognize that these two objectives – securing our borders and conserving our federal lands – are not mutually exclusive; we are not faced with a choice between the two. Instead, we can, and should, do both.

We at Interior are proud of the strong working relationship – based on cooperation and a mutual commitment to accomplishing our important agency missions – among all of our partner agencies. In my testimony today, I would like to share with you the many ways that our Departments are working together to achieve our separate and important missions in the context of the dual objectives mentioned above.

Memorandum of Understanding

Cooperative Approach to Operations

Federal agencies with law enforcement presence on federal lands along the borders include DHS' Office of Border Patrol (Border Patrol), a component of CBP; Interior's component agencies, the BLM, NPS, FWS, and, in certain circumstances, the BIA; and the U.S. Department of Agriculture's (USDA's) U.S. Forest Service (USFS). These agencies have developed a cohesive, cooperative approach to border security.

In March 2006, Interior, DHS and USDA entered into a Memorandum of Understanding (MOU) entitled *Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders*. This MOU provides the Departments with goals, principles, and guidance related to securing the borders, addressing emergencies involving human safety, and minimizing the environmental damage arising from illegal cross-border activities on federal lands. The MOU contains provisions related to the development of an efficient means of communication, cooperative identification of patrol routes and operations, conduct of joint enforcement operations, cooperation in the development of environmental and cultural resources awareness training, and guidance on construction and maintenance of tactical infrastructure. And it addresses expedited completion of environmental compliance documents, including documents required by the National Environmental Policy Act and the Endangered Species Act.

Flexible Access to Federal Borderlands

The MOU also contains provisions for access by CBP agents to federal lands along the border, including those lands designated as wilderness areas under the Wilderness Act. Depending on the means of access to these federal lands and the circumstances at the time, little or no consultation may be required. On any federal lands at any time, CBP may patrol on foot or horseback. At any time, CBP may conduct motorized patrols on public and administrative roads and trails, and in areas previously designated by the land management agency for off-road vehicle use.

Under exigent or emergency circumstances, including pursuit of suspected cross-border violators, no consultation is required for CBP to use motorized vehicles to access any of these federal lands.

Our goal is to provide flexibility and realistic options for patrol and infrastructure access to Interior lands by CBP while continuing to maintain an emphasis on protection of federal trust resources such as endangered species, cultural resources, tribal interests, national wildlife

refuges, national parks, public lands, and designated wilderness. We believe the guidelines contained in the MOU have been effective in providing both Interior and CBP with the necessary framework to strike this important balance.

Since entering into this MOU, the three Departments have continually and successfully worked together to carry out the tenets outlined in the MOU at both the Headquarters and the field levels.

Coordinated Federal Responses to Illegal Activity on Federal Lands

Regular Management Collaboration

In order to facilitate efforts with the Border Patrol to address the challenges presented by illegal cross-border activity on our lands, Interior has established at the headquarters level a department-wide coordination structure. This includes the establishment, within Interior's Office of Law Enforcement and Security (OLES), of a Border Management Branch that comprises a full-time Branch Chief, an Interagency Borderlands Coordinator for environmental coordination, a Southwest Border Coordinator in Tucson, Arizona, and a Northern Border Coordinator in Spokane, Washington. The primary function of these positions is to coordinate and collaborate with Border Patrol Sectors and Interior agency representatives on a regular basis. Further facilitating this collaboration, the Border Patrol has agreed to co-location of these Interior field coordinators in applicable Border Patrol Sector offices.

Additionally, at the headquarters level, Interior, USDA, and DHS have formed an interagency Environmental and Cultural Stewardship Training task force to build on existing environmental and cultural training for Border Patrol agents whose patrol activities include federal lands. A first product resulting from this effort will be completed in the summer of 2011 and will consist of a two-hour, on-line training module to be provided to each Border Patrol agent.

On the Ground Collaboration

This collaborative effort is also taking place with the Border Patrol in the field. The Border Patrol, in cooperation with Interior and USDA, established a Public Lands Liaison Agent (PLLA) position in each of its 20 Sectors. Interior land managers communicate and collaborate on issues of mutual interest or concern with these PLLAs on a regular basis. Meetings between the land managers and the PLLAs are held every few months, or as needed, to facilitate open and regular communication, cross-training, and sharing of intelligence.

In addition, Border Patrol agents frequently conduct joint patrols with Interior law enforcement personnel on Interior lands, including national parks, wildlife refuges, and public lands. This close coordination provides staff with training and orientation on each agency's mission, while enhancing homeland security activities and resource-related investigations.

Recently, in the Tucson Sector, joint law enforcement patrol operations were conducted during anticipated peak periods of illegal activity, from January to March 2011, under *Operation Trident Surge*. The operation included the BLM, NPS, FWS, USFS, and the Border Patrol, and consisted of intelligence-supported joint patrols on Interior and USFS lands that were designed to reduce border-related crime and provide additional intelligence to Border Patrol to identify and target Alien Smuggling Organizations and Drug Trafficking Organizations operating on

federal lands. Interior officers focused on resource mission-related violations during this operation. This effort served to deter illegal smuggling into the United States. We additionally are continuing to conduct joint operations under *Operation Trident*.

Shared Intelligence Assessments

With respect to coordinating on intelligence assessments at the field level, the Border Patrol Spokane Sector Intelligence Unit regularly provides briefings and intelligence to Interior law enforcement personnel about current threats and activities on federal lands. This coordination has led to joint Interior-Border Patrol patrols by field personnel and has enabled training and orientation activities on each agency's mission, while enhancing homeland security and resource-related interdictions and investigations.

Similarly, in California, the Border Patrol El Centro Sector and the BLM have coordinated on *Operation Take it Outside*, conducted throughout 2010. This operation allowed for the gathering of intelligence regarding smuggling organizations and traffic patterns that can be used to develop future operational plans and strategies in the area.

These few examples are just a sampling of the ongoing, collaborative dialogue and strong relationship that Interior agencies and personnel have developed with our colleagues in Border Patrol. As discussed in more detail below, the cooperation and collaboration evident in these operations across the border areas, including areas within national parks, wildlife refuges, and public lands, has led to reduced environmental impacts on federal lands along the border.

Addressing the Impacts

The deployment of CBP personnel, equipment and infrastructure along the southwest border has led to significant improvements in border security. We are very pleased with these improvements because of the enhanced security to our Nation, and also because these efforts 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.

During this deployment of additional border security resources, we have worked closely with CBP to avoid or mitigate impacts to the environment from CBP actions. DHS has worked closely and well with Interior and USDA to attempt to offset these impacts through mitigation and coordination with federal land managers to conduct field operations in a manner that avoids or minimizes the impact of those operations on federal lands.

We have made and are continuing to make significant progress and we recognize DHS's leadership on these issues.

Conclusion

Chairmen Bishop and Chaffetz, I want to thank you and the Members of your Subcommittees for your continued interest in the Interior law enforcement program and our role in the Administration's efforts to secure and protect the border region and its natural resources.

In closing, I would like to recognize the collective efforts that Interior, DHS and USDA have taken to meet the intent of the 2006 interagency MOU and the shared commitment by our Departments to accomplishing the missions of our agencies. We are proud of our accomplishments, but at the same time we recognize there is still more to be done. We invite you to come to the border so that we may show you firsthand how successful we have been in cooperating with DHS in achieving our respective missions. We will continue to work with DHS to better our collaborative relationship. We look forward to continuing the positive dialogue to improve our law enforcement and land management capabilities, and to working with the Subcommittees to better understand your concerns.

This concludes my statement, and I am happy to answer any questions that you might have.

**Statement
of
Kim Thorsen
Deputy Assistant Secretary, Law Enforcement, Security, and Emergency
Management
United States Department of the Interior**

**House Committee on Natural Resources,
Subcommittee on National Parks, Forests, and Public Lands**

July 8, 2011

Chairman Bishop, Ranking Member Grijalva, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss H.R. 1505, the National Security and Federal Lands Protection Act. My name is Kim Thorsen, and I am the Deputy Assistant Secretary for Law Enforcement, Security, and Emergency Management at the Department of the Interior (Interior). I have been a law enforcement officer for twenty-five years with both Interior and the U.S. Forest Service and have been involved in border issues for the last eight years.

Introduction

We appreciate the attention that the Subcommittee has given to the issue of securing our borders. The Department of Homeland Security (DHS), including U.S. Customs and Border Protection (CBP), has been given the mandate to secure our international borders and deter illegal border related activity. At Interior, we have the responsibility of managing uniquely beautiful and environmentally sensitive lands along the borders.

As manager of one in every five acres of the United States, Interior's land managing agencies, the Bureau of Land Management (BLM), the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Indian Affairs (BIA), take this responsibility very seriously. We recognize the significant ecological and cultural values of the extensive lands Interior agencies manage near the borders, and we strive to maintain their character and fulfill our mission to protect and preserve these assets on behalf of the American people.

We also believe that these two objectives – securing our borders and conserving our federal lands – are not mutually exclusive; we are not faced with a choice between the two. Instead, we can, and should, do both.

We are proud of the strong working relationship – based on cooperation and a mutual commitment to accomplishing our important agency missions – among all of our partner agencies.

In my testimony today, I would like to share with you the many ways that our Departments are working together to achieve our separate and important missions in the context of the dual objectives mentioned above. Collectively these efforts make additional legislation unnecessary.

Provisions of H.R. 1505

H.R. 1505 would authorize immediate access to the Secretary of Homeland Security to any public land managed by Interior for purposes of conducting activities that assist in securing the border, including access to maintain and construct roads, construction of roads and fences, use of vehicles to patrol, or the setting up of monitoring equipment. H.R. 1505 would also waive all environmental and land management laws within 100 miles of the international land and maritime borders of the United States for DHS activities that assist in securing the border. The bill lists these waived environmental and land management laws.

The Administration opposes H.R. 1505.

H.R. 1505 references the April 1, 2008, decision of then DHS Secretary, Michael Chertoff, to waive certain environmental and land management laws for the expeditious construction of certain portions of the fence along our southern border. Secretary Chertoff's decision was made after consultation and outreach with Interior and other federal, state, local, and tribal entities as well as other interested parties with the goal of minimizing potential effects of the DHS activities. In contrast, H.R. 1505 would extend this waiver to cover practically any activities of DHS on public lands within 100 miles of both the northern and southern borders of this country, and would provide "immediate access" to DHS for these activities. H.R. 1505 would not require consultation with any federal, state, local or tribal governments or with local residents. It would not even require notice of the proposed or undertaken activities.

As drafted, this bill could impact approximately 54 units of the national park system, 228 national wildlife refuges, 122 units of the National Wilderness Preservation System managed by Interior, and 87 units of BLM's National Landscape Conservation System, resulting in unintended damage to sensitive natural and cultural resources, including endangered species and wilderness. The bill could also affect up to 1,000 miles of Bureau of Reclamation project purpose infrastructure (including river channel, levees, canals and bridges) required to meet Colorado River water delivery obligations to U.S. and Mexico water users. H.R. 1505 would likely have a significant impact on Interior's ability to carry out our overall mission related to protection of natural and cultural resources on our federally managed and trust lands.

In addition, authorized users of public lands may be affected by the immediate access provision. Without prior notice or a public review process, border security activities on federal lands managed by Interior, may compromise the safety of both visitors and agency law enforcement personnel.

We believe a better model for the protection of the border is the current approach of collaborating among Departments and using the best expertise in each to solve problems.

Memorandum of Understanding

Federal agencies with law enforcement presence on federal lands along the borders include DHS' Office of Border Patrol (Border Patrol), a component of CBP; Interior's various Bureaus, the BLM, NPS, FWS, and, in certain circumstances, the BIA; and the U.S. Department of Agriculture's (USDA's) U.S. Forest Service (USFS). These agencies have developed a cohesive, cooperative approach to border security.

In March 2006, Interior, DHS, and USDA entered into a Memorandum of Understanding (MOU) entitled *Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders*. This MOU provides the Departments with goals, principles, and guidance related to securing the borders, addressing emergencies involving human safety, and minimizing the environmental damage arising from illegal cross-border activities on federal lands. The MOU contains provisions related to the development of an efficient means of communication, cooperative identification of patrol routes and operations, conduct of joint enforcement operations, cooperation in the development of environmental and cultural resources awareness training, access by CBP agents to federal lands along the border (including access in exigent circumstances), and guidance on construction and maintenance of tactical infrastructure. And it addresses expedited completion of environmental compliance documents, including documents required by the National Environmental Policy Act and the Endangered Species Act.

Our goal is to provide flexibility and realistic options for patrol and infrastructure access to Interior lands by CBP while continuing to maintain an emphasis on protection of federal trust resources such as endangered species, cultural resources, tribal interests, national wildlife refuges, national parks, public lands, and designated wilderness. We believe the guidelines contained in the MOU have been effective in providing both Interior and CBP with the necessary framework to strike this important balance. This MOU has not in any way impeded or impacted DHS's ability to protect the border, including in exigent circumstances. Since entering into this MOU, the three Departments have continually and successfully worked together to carry out the tenets outlined in the MOU at both the Headquarters and the field levels, and have worked to address concerns regarding coordination to continually improve our efforts to secure our borders while conserving the environment.

Coordinated Federal Responses to Illegal Activity on Federal Lands

Regular Management Collaboration

In order to facilitate efforts with the Border Patrol to address the challenges presented by illegal cross-border activity on our lands, Interior has established at the headquarters level a department-wide coordination structure. This includes the establishment, within Interior's Office of Law Enforcement and Security, of a Border Management Branch that comprises a full-time Branch Chief, an Interagency Borderlands Coordinator for environmental coordination, a Southwest Border Coordinator in Tucson, Arizona, and a Northern Border Coordinator in Spokane, Washington. The primary function of these positions is to coordinate and collaborate with Border Patrol Sectors and Interior agency representatives on a regular basis. Further facilitating

this collaboration, the Border Patrol has agreed to co-location of these Interior field coordinators in applicable Border Patrol Sector offices.

Additionally, at the headquarters level, Interior, USDA, and DHS have formed an interagency Environmental and Cultural Stewardship Training task force to build on existing environmental and cultural training for Border Patrol agents whose patrol activities include federal lands. A first product resulting from this effort is being field tested in the coming weeks and is expected to be operational this fall. The training will consist of a two-hour, on-line training module to be provided to each Border Patrol agent annually.

On the Ground Collaboration

This collaborative effort is also taking place with the Border Patrol in the field. The Border Patrol, in cooperation with Interior and USDA, established a Public Lands Liaison Agent (PLLA) position in each of its 20 Sectors. Interior land managers communicate and collaborate on issues of mutual interest or concern with these PLLAs on a regular basis. Meetings between the land managers and the PLLAs are held every few months, or as needed, to facilitate open and regular communication, cross-training, and sharing of intelligence.

In addition, Border Patrol agents frequently conduct joint patrols with Interior law enforcement personnel on Interior lands, including national parks, wildlife refuges, and public lands. This close coordination provides staff with training and orientation on each agency's mission, while enhancing homeland security activities and resource-related investigations.

Recently, in the Tucson Sector, joint law enforcement patrol operations were conducted during anticipated peak periods of illegal activity, from January to March 2011, under *Operation Trident Surge*. The operation included the BLM, NPS, FWS, USFS, and the Border Patrol, and consisted of intelligence-supported joint patrols on Interior and USFS lands that were designed to reduce border-related crime and provide additional intelligence to Border Patrol to identify and target Alien Smuggling Organizations and Drug Trafficking Organizations operating on federal lands. Interior officers focused on resource mission-related violations during this operation. This effort served to deter illegal smuggling into the United States. We additionally are continuing to conduct joint operations under *Operation Trident*.

Shared Intelligence Assessments

With respect to coordinating on intelligence assessments at the field level, the Border Patrol Spokane Sector Intelligence Unit regularly provides briefings and intelligence to Interior law enforcement personnel about current threats and activities on federal lands. This coordination has led to joint Interior-Border Patrol patrols by field personnel and has enabled training and orientation activities on each agency's mission, while enhancing homeland security and resource-related interdictions and investigations.

Similarly, in California, the Border Patrol El Centro Sector and the BLM have coordinated on *Operation Take it Outside*, conducted throughout 2010. This operation allowed for the gathering of intelligence regarding smuggling organizations and traffic patterns that can be used to develop future operational plans and strategies in the area.

These few examples are just a sampling of the ongoing, collaborative dialogue and strong relationship that Interior agencies and personnel have developed with our colleagues in Border Patrol. As discussed in more detail below, the cooperation and collaboration evident in these operations across the border areas, including areas within national parks, wildlife refuges, and public lands, has led to reduced environmental impacts on federal lands along the border.

Addressing the Impacts

The deployment of CBP personnel, equipment and infrastructure along the southwest border has led to significant improvements in border security. We are very pleased with these improvements because of the enhanced security to our Nation, and also because these efforts 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.

During this deployment of additional border security resources, we have worked closely with CBP to avoid or mitigate impacts to the environment from CBP actions. DHS has worked closely and well with Interior and USDA to attempt to offset these impacts through mitigation and coordination with federal land managers to conduct field operations in a manner that avoids or minimizes the impact of those operations on federal lands. These mitigation activities have had no impact on the ability of DHS to protect the border.

We have made and are continuing to make significant progress and we recognize DHS's leadership on these issues.

Conclusion

Unlike the proposed legislation, DHS has only exercised its existing waiver authority in limited circumstances, and after careful consideration. Existing laws ensure that federal and state resources management agencies and the local communities are engaged to carefully identify natural, biological and cultural resources potentially affected by border security activities and to reduce and mitigate impacts to these resources.

As detailed in this testimony, we are committed to the collective efforts that Interior, DHS, and USDA have taken to meet the intent of the 2006 interagency MOU and the shared commitment by our Departments to accomplishing the missions of our agencies. We believe that we can both secure our borders and conserve our federal lands under the existing legal framework.

Chairman Bishop, I want to thank you and the Members of the Subcommittee for your continued interest in the Administration's efforts to secure and protect the border region and its natural resources.

This concludes my statement, and I am happy to answer any questions that you might have.

**Statement
of
Jon Andrew
Interagency Borderlands Coordinator
United States Department of the Interior**

**House Committee on Natural Resources,
Subcommittee on Oversight and Investigations**

April 28, 2016

Chairman Gohmert, Ranking Member Dingell and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss activities of the Department of the Interior along our nations land borders. As the Department's Interagency Borderlands Coordinator, I work to coordinate the activities of the Department of the Interior and its land managing agencies with those of the Department of Homeland Security (DHS), and in particular the U.S. Border Patrol (Border Patrol), a component of Customs and Border Protection (CBP), to secure our international borders without undue damage to our nation's natural and cultural resources.

Introduction

We appreciate the attention that the Subcommittee has given to the issue of securing our borders. DHS, including the CBP and Border Patrol, has been given the mandate to secure our international borders and deter illegal border related activity. The Department of the Interior (Interior) has the responsibility for managing uniquely beautiful and environmentally sensitive lands along these borders. As manager of one in every five acres of the United States, Interior's land managing agencies, the Bureau of Land Management (BLM), the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Indian Affairs (BIA), take very seriously their responsibility to these lands on behalf of the American people.

We also believe that these two objectives – securing our borders and conserving our federal lands – are not mutually exclusive; we are not faced with a choice between the two. Instead, we can, and should, do both together in unison.

We are proud of the strong working relationship – based on cooperation and a mutual commitment to accomplishing our important agency missions – among all of our partner agencies.

In my testimony today, I would like to share with you the many ways that our Departments are working together to achieve our separate and important missions.

Memorandum of Understanding

Federal agencies with law enforcement presence on federal lands along the borders include Border Patrol, a component of CBP; Interior's various Bureaus, the BLM, NPS, FWS, and, in

certain circumstances, the BIA; and the U.S. Department of Agriculture (USDA) U.S. Forest Service (USFS). These agencies have developed a cohesive, cooperative approach to border security.

In March 2006, Interior, DHS, and USDA entered into a Memorandum of Understanding (MOU) entitled *Cooperative National Security and Counterterrorism Efforts on Federal Lands along the United States' Borders*. This MOU provides the Departments with goals, principles, and guidance related to securing the borders, addressing emergencies involving human safety, and minimizing the environmental damage arising from illegal cross-border activities on federal lands. The MOU contains provisions related to the development of an efficient means of communication, cooperative identification of patrol routes and operations, conduct of joint enforcement operations, cooperation in the development of environmental and cultural resources awareness training, access by Border Patrol agents to federal lands along the border (including access in exigent circumstances), and guidance on construction and maintenance of tactical infrastructure. The MOU also addresses expedited completion of environmental compliance documents, including documents required by the National Environmental Policy Act and the Endangered Species Act.

Our goal is to provide flexibility and realistic options for patrol and infrastructure access to Interior lands by CBP while continuing to maintain an emphasis on protection of federal trust resources such as endangered species, cultural resources, tribal interests, national wildlife refuges, national parks, public lands, and designated wilderness. We believe the guidelines contained in the MOU have been effective in providing both Interior and CBP with the necessary framework to strike this important balance.

The MOU has been very useful in providing a framework for Interior agencies to work with the Border Patrol to help the Border Patrol fulfill its mission while mitigating impacts on sensitive resources managed by Interior agencies. For example, work at Organ Pipe Cactus National Monument in Arizona using guidance in the MOU has provided for the establishment of temporary infrastructure, in this case roads, which will assure the Border Patrol access for routine patrol functions. Simultaneously, the Border Patrol was able to identify roads which were not needed and could be closed and the sensitive habitat restored. This cooperation has benefitted the missions of both Departments, as improved border security has also enhanced protection of our natural and cultural resources. We are remaining in close contact with the Border Patrol to make adjustments to this plan as the need arises.

Since entering into this MOU, the three Departments have continually and successfully collaborated to administer the tenets outlined in the MOU at both the Headquarters and the field levels. The Departments have also worked collaboratively to address concerns regarding coordination to continually improve our efforts to secure our borders while conserving the environment. For example, the Departments have entered into additional MOU/MOAs that address issues including road maintenance, secure radio communication, environmental coordination, and sharing of geospatial information, among others. Annual meetings are convened to discuss the need to revise the 2006 MOU but all participants have agreed that no revisions are currently needed.

Coordinated Federal Responses to Illegal Activity on Federal Lands

Regular Management Collaboration

In order to facilitate efforts with the Border Patrol to address the challenges presented by illegal cross-border activity on our lands, Interior has established at the headquarters level a department-wide coordination structure. This includes the establishment, within Interior's Office of Law Enforcement and Security, of an Interagency Borderlands Coordinator for environmental coordination. In addition a Special Agent is embedded with the Border Patrol in Tucson, Arizona to assure coordination of law enforcement activities. The primary function of these positions is to coordinate and collaborate with Border Patrol Sectors and Interior agency representatives on a regular basis.

Additionally, at the headquarters level, Interior, USDA, and DHS have worked together to establish training modules such as the Environmental and Cultural Stewardship Training program. This on-line module is now required training for all Border Patrol agents. It has proven very effective in providing Border Patrol agents with a basic orientation on ways they can help to protect sensitive resources along the border.

Interior has also worked with DHS and the Forest Service to develop a streamlined process for evaluating impacts on cultural and historic resources that is required under Section 106 of the National Historic Preservation Act. The agreement for the Southwest border was signed in 2015 and a similar agreement is expected to be signed for the northern border in the next few weeks.

On the Ground Collaboration

Collaboration also takes place with the Border Patrol at the field level. The Border Patrol, in cooperation with Interior and USDA, established a Public Lands Liaison Agent (PLLA) position for each of its 20 Sectors. Interior land managers communicate and collaborate on issues of mutual interest or concern with these PLLAs on a regular basis. Meetings between the land managers and the PLLAs are held every few months, or more often if needed, to facilitate open and regular communication, cross-training, and sharing of intelligence.

In addition, Border Patrol agents frequently conduct joint patrols with Interior law enforcement personnel on Interior-managed lands, including national parks, wildlife refuges, and public lands. This close coordination provides staff with training and orientation on each agency's mission, while enhancing homeland security activities and resource-related investigations.

Law enforcement patrol operations have been conducted during anticipated peak periods of illegal activity, through joint actions such as *Operation Trident Surge* in Arizona or *Operation Take it Outside* in California. The operations included the BLM, NPS, FWS, USFS, and the Border Patrol, and consisted of intelligence-supported joint patrols on Interior and USFS managed lands. The operations were designed to reduce border-related crime and provide additional intelligence to Border Patrol to identify and target Alien Smuggling Organizations and

Drug Trafficking Organizations operating on federal lands. Interior law enforcement officers focused on resource mission-related violations during this operation. This effort served to deter illegal smuggling into the United States.

These few examples typify the ongoing, collaborative dialogue and strong relationships that Interior agencies and personnel have developed with our colleagues in Border Patrol. As discussed in more detail below, the cooperation and collaboration evident in these operations across the border areas, including areas within national parks, wildlife refuges, and public lands, has led to reduced environmental impacts on federal lands along the border.

Addressing the Impacts

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. 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. 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.

Conclusion

As detailed in this testimony, we are committed to the collective efforts that Interior, DHS, and USDA have taken to meet the intent of the 2006 Interagency MOU and the shared commitment by our Departments to fulfill the mission of each agency. We believe that we have been and will continue to be successful in securing our borders and conserving our federal lands.

Chairman Gohmert, and the Members of the Subcommittee, thank you for your continued interest in the Administration's efforts to secure and protect the border region and its natural and cultural resources. This concludes my statement, and I am happy to answer any questions that you might have.