



**U.S. Citizenship and
Immigration Services**

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Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended [73 FR 19078] [FR 33-08]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

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

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

ACTION: Notice of determination; correction.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States. The notice of determination was published in the Federal Register on April 3, 2008. Due to a publication error, the description of the Project Areas was inadvertently omitted from the April 3 publication. For clarification purposes, this document is a republication of the April 3 document including the omitted description of the Project Areas.

DATES: This Notice is effective on April 8, 2008.

Determination and Waiver

I have a mandate to achieve and maintain operational control of the borders of the United States. Public Law 109-367, 2, 120 Stat. 2638, 8 U.S.C. 1701 note. Congress has provided me with a number of authorities necessary to accomplish this mandate. One of these authorities is found at section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, 564, 121 Stat. 2090 (Dec. 26, 2007). In Section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to inst all additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In Section 102(b) of IIRIRA, Congress has called for the installation of fencing, barriers, roads, lighting, cameras, and sensors on not less than 700 miles of the southwest border, including priority miles of fencing that must be completed by December 2008. Finally, in section 102(c) of the IIRIRA, Congress granted to me the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

I determine that the following areas in the vicinity of the United States border, located in the States of California, Arizona, New Mexico, and Texas are areas of high illegal entry (collectively

"Project Areas"):

California

- Starting approximately 1.5 mile east of Border Monument (BM) 251 and ends approximately at BM 250.
- Starting approximately 1.1 miles west of BM 245 and runs east for approximately 0.8 mile.
- Starting approximately 0.2 mile west of BM 243 and runs east along the border for approximately 0.5 mile.
- Starting approximately 0.7 mile east of BM 243 and runs east along the border for approximately 0.9 mile.
- Starting approximately 1.0 mile east of BM 243 and runs east along the border for approximately 0.9 mile.
- Starting approximately 0.7 mile west of BM 242 and stops approximately 0.4 mile west of BM 242.

- Starting approximately 0.8 mile east of BM 242 and runs east along the border for approximately 1.1 miles
- Starting approximately 0.4 mile east of BM 239 and runs east for approximately 0.4 mile along the border.
- Starting approximately 1.2 miles east of BM 239 and runs east for approximately 0.2 mile along the border
- Starting approximately 0.5 mile west of BM 235 and runs east along the border for approximately 1.1 miles
- Starting approximately 0.8 mile east of BM 235 and runs east along the border for approximately 0.1 mile.
- Starting approximately 0.6 mile east of BM 234 and runs east for approximately 1.7 miles along the border
- Starting approximately 0.4 mile east of BM 233 and runs east for approximately 2.1 miles along the border
- Starting approximately 0.05 mile west of BM 232 and runs east for approximately 0.1 mile along the border
- Starting approximately 0.2 mile east of BM 232 and runs east for approximately 1.5 miles along the border
- Starting 0.6 mile east of Border Monument 229 heading east along the border for approximately 11.3 miles to BM 225.
- Starting approximately 0.1 mile east of BM 224 and runs east along the border for approximately 2.5 miles
- Starting approximately 2.3 miles east of BM 220 and runs east along the border to BM 207.

Arizona

- Starting approximately 1.0 mile south of BM 206 and runs south along the Colorado River for approximate 13.3 miles.
- Starting approximately 0.1 mile north of County 18th Street running south along the border for approximate 3.8 miles.
- Starting at the Eastern edge of BMGR and runs east along the border to approximately 1.3 miles west of E 174.
- Starting approximately 0.5 mile west of BM 168 and runs east along the border for approximately 5.3 miles.
- Starting approximately 1 mile east of BM 160 and runs east for approximately 1.6 miles.
- Starting approximately 1.3 miles east of BM 159 and runs east along the border to approximately 0.3 mile east of BM 140.
- Starting approximately 2.2 miles west of BM 138 and runs east along the border for approximately 2.5 miles.
- Starting approximately 0.2 miles east of BM 136 and runs east along the border to approximately 0.2 mile west of BM 102.
- Starting approximately 3 miles west of BM 99 and runs east along the border approximately 6.5 miles.
- Starting approximately at BM 97 and runs east along the border approximately 6.9 miles.
- Starting approximately at BM 91 and runs east along the border to approximately 0.7 miles east of BM 89.
- Starting approximately 1.7 miles west of BM 86 and runs east along the border to approximately 0.7 mile west of BM 86.

- Starting approximately 0.2 mile west of BM 83 and runs east along the border to approximately 0.2 mile east of BM 73.

New Mexico

- Starting approximately 0.8 mile west of BM 69 and runs east along the border to approximately 1.5 miles west of BM 65.
- Starting approximately 2.3 miles east of BM 65 and runs east along the border for approximately 6.0 miles.
- Starting approximately 0.5 mile east of BM 61 and runs east along the border until approximately 1.0 mile west of BM 59.
- Starting approximately 0.1 miles east of BM 39 and runs east along the border to approximately 0.3 mile east of BM 33.
- Starting approximately 0.25 mile east of BM 31 and runs east along the border for approximately 14.2 miles.
- Starting approximately at BM 22 and runs east along the border to approximately 1.0 mile west BM 16.
- Starting at approximately 1.0 mile west of BM 16 and runs east along the border to approximately BM 3.

Texas

- Starting approximately 0.4 miles southeast of BM 1 and runs southeast along the border for approximately 3.0 miles.
- Starting approximately 1 Mi E of the intersection of Interstate 54 and Border Highway and runs southeast approximately 57 miles in proximity to the IBWC levee to 3.7 miles east of the Ft Hancock POE.
- Starting approximately 1.6 miles west of the intersection of Esperanza and Quitman Pass Roads and runs along the IBWC levee east for approximately 4.6 miles.

- Starting at the Presidio POE and runs west along the border to approximately 3.2 miles west of the POE.
- Starting at the Presidio POE and runs east along the border to approximately 3.4 miles east of the POE.
- Starting approximately 1.8 miles west of Del Rio POE and runs east along the border for approximately 2.0 miles.
- Starting approximately 1.3 Mi north of the Eagle Pass POE and runs south approximately 0.8 miles south of the POE.
- Starting approximately 2.1 miles west of Roma POE and runs east approximately 1.8 miles east of the Roma POE.
- Starting approximately 3.5 miles west of Rio Grande City POE and runs east in proximity to the Rio Grande river for approximately 9 miles.
- Starting approximately 0.9 miles west of County Road 41 and runs east approximately 1.2 miles and then north for approximately 0.8 miles.
- Starting approximately 0.5 mile west of the end of River Dr and runs east in proximity to the IBWC levee for approximately 2.5 miles.
- Starting approximately 0.6 miles east of the intersection of Benson Rd and Cannon Rd and runs east in proximity to the IBWC levee for approximately 1 mile.
- Starting at the Los Indios POE and runs west in proximity to the IBWC levee for approximately 1.7 miles.
- Starting at the Los Indios POE and runs east in proximity to the IBWC levee for approximately 3.6 miles.
- Starting approximately 0.5 mile west of Main St and J Padilla St intersection and runs east in proximity to the IBWC levee for approximately 2.0 miles.

- Starting approximately 1.2 miles west of the Intersection of U.S. HWY 281 and Los Ranchitos Rd and runs east in proximity to the IBWC levee for approximately 2.4 miles.
- Starting approx 0.5 miles southwest of the intersection of U.S. 281 and San Pedro Rd and runs east in proximity to the IBWC levee for approximately 1.8 miles.
- Starting approximately 0.1 miles southwest of the Intersection of Villanueva St and Torres Rd and runs east in proximity to the IBWC levee for approximately 3.6 miles.
- Starting approximately south of Palm Blvd and runs east in proximity to the City of Brownsville's levee to approximately the Gateway-Brownsville POE where it continues south and then east in proximity to the IBWC levee for a total length of approximately 3.5 miles.
- Starting at the North Eastern Edge of Ft Brown Golf Course and runs east in proximity to the IBWC levee for approximately 1 mile.
- Starting approximately 0.3 miles east of Los Tomates-Brownsville POE and runs east and then north in proximity to the IBWC levee for approximately 13 miles.

In order to deter illegal crossings in the Project Areas, there is presently a need to construct fixed and mobile barriers (such as fencing, vehicle barriers, towers, sensors, cameras, and other surveillance, communication, and detection equipment) and roads in the vicinity of the border of the United States. In order to ensure the expeditious construction of the barriers and roads that Congress prescribed in the IIRIRA in the Project Areas, which are areas of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that is vested in me by section

102(c) of the IIRIRA as amended.

Accordingly, I hereby waive in their entirety, with respect to the construction of roads and fixed and mobile barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting) in the Project Areas, all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.)), the Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.)), the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (33 U.S.C. 1251 et seq.)), the National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 et seq.)), the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), the Archeological Resources Protection Act (Pub. L. 96-95, 16 U.S.C. 470aa et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Noise Control Act (42 U.S.C. 4901 et seq.), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Comprehensive Environmental

Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.), the Archaeological and Historic Preservation Act (Pub. L. 86-523, 16 U.S.C. 469 et seq.), the Antiquities Act (16 U.S.C. 431 et seq.), the Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 et seq.), the Wild and Scenic Rivers Act (Pub. L. 90-542, 16 U.S.C. 1281 et seq.), the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.), the Coastal Zone Management Act (Pub. L. 92-583, 16 U.S.C. 1451 et seq.), the Wilderness Act (Pub. L. 88-577, 16 U.S.C. 1131 et seq.), the Federal Land Policy and Management Act (Pub. L. 94-579, 43 U.S.C. 1701 et seq.), the National Wildlife Refuge System Administration Act (Pub. L. 89-669, 16 U.S.C. 668dd-668ee), the Fish and Wildlife Act of 1956 (Pub. L. 84-1024, 16 U.S.C. 742a, et seq.), the Fish and Wildlife Coordination Act (Pub. L. 73-121, 16 U.S.C. 661 et seq.), the Administrative Procedure Act (5 U.S.C. 551 et seq.), the Otay Mountain Wilderness Act of 1999 (Pub. L. 106-145), Sections 102(29) and 103 of Title I of the California Desert Protection Act (Pub. L. 103-433), 50 Stat. 1827, the National Park Service Organic Act (Pub. L. 64-235, 16 U.S.C. 1, 2-4), the National Park Service General Authorities Act (Pub. L. 91-383, 16 U.S.C. 1a-1 et seq.), Sections 401(7), 403, and 404 of the National Parks and Recreation Act of 1978 (Pub. L. 95-625), Sections 301(a)-(f) of the Arizona Desert Wilderness Act (Pub. L. 101-628), the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Eagle Protection Act (16 U.S.C. 668 et seq.), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.), the American Indian Religious Freedom Act (42 U.S.C. 1996), the Religious Freedom Restoration Act (42 U.S.C. 2000bb), the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.), and the Multiple Use and Sustained Yield Act of 1960 (16 U.S.C. 528-531).

This waiver does not supersede, supplement, or in any way modify the previous waivers published in the **Federal Register** on September 22, 2005 (70 FR 55622), January 19, 2007 (72 FR 2535), and October 26, 2007 (72 FR 60870).

I reserve the authority to make further waivers from time to time as I may determine to be necessary to accomplish the provisions of section 102 of the IIRIRA, as amended.

Michael Chertoff,

Secretary.

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