

**Testimony of Brandon Judd
On Behalf of the National Border Patrol Council
Before the U.S. House of Representatives Committee on Natural Resources
Subcommittee on Oversight and Investigations
February 15, 2018**

Chairman Westerman, Ranking Member McEachin, and distinguished Members of the Subcommittee, I would like to thank you for inviting me to testify before you today in order to communicate the significant challenges that our nation's Border Patrol Agents are facing, specifically when patrolling on federal lands.

My name is Brandon Judd and I currently serve as the President of the National Border Patrol Council, where I represent approximately 16,000 Border Patrol field agents and support staff. I have 20 years of experience as a Border Patrol Agent and a thorough understanding of the policies affecting border security.

While this is my first time testifying before this Subcommittee, I know that both the Subcommittee and full Committee have been working for years to address the issues before us today and I am grateful for your continued oversight and steadfast dedication to solving these problems. Thank you for allowing me the opportunity to describe the current state of the border and how the myriad of laws, regulations and bureaucratic policies related to federally managed and protected lands prevent Border Patrol Agents in the field from fully doing their job on a daily basis. Ultimately, these laws undermine our ability to effectively and efficiently secure our borders and put the lives of our agents and the public at greater risk.

As the Subcommittee is undoubtedly aware, the vast majority of apprehensions made by the Border Patrol occur on our southern land border with Mexico. Even though we saw apprehension numbers drop to historic lows soon after President Trump took office, the Border Patrol still made over 310,000 total apprehensions across the country during Fiscal Year 2017. Of those 310,000 apprehensions, nearly 304,000 or roughly 98 percent, occurred along the Southwest border.

Along this very same border, roughly 40 percent of the land that makes up our 2,000 mile-long border is designated by the federal government as some type of federal land, according to a Government Accountability Office analysis. This is land that is managed, controlled or protected by multiple agencies, spread across two separate cabinet-level departments, not including the Department responsible for border security.

Simply looking at a map of border areas in California, Arizona, New Mexico and Texas, one will see a landscape blanketed by federal lands that include National Conservation Areas, Forests, Monuments, Parks, Recreation Areas, Scenic Areas, and Wildlife Refuges. The restrictions that agents face on these lands on a daily basis are due to a laundry list of some three dozen laws that date back over a century.

Even with the significant impediments to our work stemming from these legal requirements and regulations, morale among rank-and-file Border Patrol Agents is surging thanks to the support and backing we've received from the Trump Administration encouraging agents to go out and do the job we

were hired to do. In fact, from his very first week in office, President Trump has demonstrated his unwavering commitment to finally securing our land borders. On January 25 of last year, President Trump signed Executive Order 13767 to improve border security and immigration enforcement. Most relevant for the Subcommittee is Section 12 of the Order which directs the Secretaries of Homeland Security, the Interior and Agriculture to “take all appropriate action” to ensure that the men and women of the Border Patrol have access to all federal lands in order to secure our land borders.

This important executive action is a crucial step to solve a problem that has long plagued the Border Patrol and our ability to do our job. Even former President Obama’s Homeland Security Secretary Janet Napolitano acknowledged the significance of the problem when she wrote in a 2009 letter that:

“While the USBP recognizes the importance and value of wilderness area designations, they can have a significant impact on USBP operations in border regions. This includes that these types of restrictions can impact the efficacy of operations and be a hindrance to the maintenance of officer safety. The USBP, in accordance with [a] 2006 MOU [with DOI and USDA] makes every reasonable effort to use the least impacting means of transportation within wilderness; however along the southwest border it can be detrimental to the most effective accomplishment of the missions. For example, it may be inadvisable for officer safety to wait for the arrival of horses for pursuit purposes, or to attempt to apprehend smuggling vehicles within wilderness with a less capable form of transportation.”

While the “detrimental” impact to the border security mission is certainly concerning when reading former Secretary Napolitano’s letter, what I’d like the Subcommittee to focus on for a moment are the real-life implications for agent safety – something that should be of paramount concern to everyone. To ever suggest that an agent – who is likely working alone, probably on terrain making he or she vulnerable to attack, and almost certainly in a remote location – should wait for the arrival of agents mounted on horses in order to safely make an apprehension of an illegal entrant is completely and utterly absurd. I hope that the Subcommittee would never tolerate policies of this nature and allow senior agency bureaucrats in Washington to prioritize possible impacts on the environment over the safety of the men and women of the Border Patrol. This is of particular concern at a time when we’ve seen a dramatic increase in assaults on agents. Just last year, assaults on Agents were up by 76 percent and totaled 774 for 2017.

With the threats facing agents at an all-time high due to drug cartels, violent criminal aliens and ever-growing personnel shortages, the last thing agents need to contend with are the added burdens created by environmental laws, regulations and memos drafted by supervisors and managers sitting behind desks. As Chairmen Westerman and Bishop recently saw first-hand, the challenges created by these legal requirements, rules and policies are very real for those patrolling our borders. For example, in the Coronado National Forest within the Tucson Sector of Arizona, our inability to build proper access roads along and near the line, including secondary roads, diminishes agent mobility while patrolling and ultimately prevents agents from being as effective as they could otherwise be. Because there is no actual east-west border road beyond the fence, which only stretches a short distance into the Forest, the United States in essence has ceded approximately a quarter-mile of U.S. territory to criminal enterprise, including drug and human traffickers.

While my primary concern is overall border security including the safety of agents and the public, I'd like to highlight for the Subcommittee how unintended consequences stemming from environmental laws meant to protect our natural resources can have the opposite effect and actually harm the environment. For example, in one of my personal experiences in the mid-2000s in the Naco Area of Operations within the Tucson Sector, the Border Patrol built a continuous fence that was constructed right up to the San Pedro River within the San Pedro National Conservation Area. This conservation area runs north from the border and is made up of approximately 57,000 acres of public land, managed by the Interior Department's Bureau of Land Management. While we were able to continue with the construction of the fence to the west of this sensitive riparian area, due to legal restrictions, we had to wait to complete construction within the conservation area until we had the required permitting and the environmental impact studies were complete. During this long waiting period, the massive hole left in our fencing allowed criminal enterprises to drive their vehicles up the riparian area along and near the riverbed, with absolutely no regard for this environmentally sensitive area. While we now have some barriers in place that make it a little more difficult for criminal enterprises to spoil this riparian area, due to the difficulty of the laws the barriers are a far cry from what's needed and are easily defeated.

Tactical infrastructure and barriers, such as the fencing in Naco, are crucial to preventing illegal entries and securing our border. While there has been no shortage of debate and controversy over the proposed border wall, in my opinion serving in the Border Patrol for the past 20 years, including in the busiest sector in the history of the Border Patrol, a wall, in strategic locations is pivotal to securing our border. Without physical barriers, such as a wall, we're far less able to dictate and direct where illegal entries are made, making us less effective and inefficient. A wall in strategic locations will ultimately lead to far greater effectiveness and allow us to direct our very limited manpower resources to areas without barriers and where illegal crossings are more likely to take place. If, in the coming months and years, new plans and efforts to build physical barriers are blocked, delayed or otherwise stopped because of these environmental laws, then the safety and security of our agents and citizens will suffer greatly.

Finally, I'd like to close by urging Congress to consider and pass legislation that would solve these very real problems. Mr. Chairman, I would like to commend this Subcommittee, Chairman Bishop and Congressman Johnson for your work in crafting reform language that has been included in HR 4760, Securing America's Future Act, sponsored by Chairmen Goodlatte, McCaul, and Labrador, as well as Chairwoman McSally. This Committee's contribution to the broader border security reform effort is crucial to ensure that agents have the ability to properly patrol federal lands and prevent all unlawful entries into the U.S. While this legislation is still pending before the House, I'd like to suggest that the Committee consider amending Section 1118 to ensure that the Border Patrol can conduct proper maintenance of physical barriers, tactical infrastructure and technology on federal lands. Additionally, the Committee may want to consider an amendment to ensure that Border Patrol efforts to close off tunnels used by drug and human smugglers are not delayed or blocked by existing laws. Regardless of these two suggestions, by waiving the relevant environmental laws and thus eliminating the restrictions imposed on the Border Patrol, the Committee's legislation will finally take the handcuffs off of agents, and allow us to simply do our jobs.

I want to thank the Subcommittee for your time this morning and I look forward to answering any questions that you may have.