

**Written Statement for the Record
Submitted by David V. Aguilar to the
U.S. Senate Homeland Security and Governmental Affairs Committee
Hearing on Fencing Along the Southwest Border
April 4, 2017**

Mr. Chairman, Ranking Member McCaskill, distinguished members of the Committee. I am honored to appear before you today to testify on issues associated with securing the southern border of the United States, to include what has taken center stage in the ongoing border security discussion – construction of a physical wall along the Southwest border.

My testimony is informed by my 35-year career as a Border Enforcement Officer and Department of Homeland Security Executive. I served as an Agent in multiple Border Patrol sectors, including as the Chief of the Tucson Sector at the time when unlawful entries into the United States across our border with Mexico were at an all-time high.

My views also reflect my experience as the former Acting Commissioner of U.S. Customs and Border Protection (CBP), Deputy Commissioner of U.S. Customs and Border Protection, and National Chief of the U.S. Border Patrol. It was during my tenure as National Chief, that we developed and implemented our nation's first-ever National Southwest Border Strategy, doubled the size of the Border Patrol, constructed over 650 miles of border infrastructure, and initiated the organized application of technology along our border with Mexico.

Maintaining a safe and secure environment along the U.S. – Mexico border is critical. A safe and orderly border that is predicated on the strong rule of law deprives criminal organizations, drug cartels, and criminal individuals the opportunity to thrive. It also provides a solid foundation for trade and economic development between Mexico and the United States and provides for improved security and quality of life in our border communities and throughout our nation.

Today's Southwest Border Security Challenges

Illegal border crossings have dropped dramatically, our border communities are some of the safest cities and communities in the United States, and trade between our two nations is thriving. The barriers and infrastructure built and expanded between 2005 and 2011 along the border played a large part in the enhanced control of our southwest border. We have done much to secure the border but there is much more to do.

Borders are dynamic, significant challenges remain, and new ones are developing. Drug trafficking into the United States is still a major problem, as is the illegal flow of bulk cash and firearms to Mexico from the United States. These criminal activities are the principal causes of the violence that has afflicted Mexico.

Border fences, walls, and tactical infrastructure, are a definitive part of the border

security solution. Those of us with first-hand knowledge and security experience at the U.S. – Mexico border understand that infrastructure, technology and personnel are critical aspects of the solution that will ensure enhanced control over the entire border. Walls, fences and vehicle barriers are an integral part of a border enforcement system. Their purpose is to impede, deter, and slow down the illegal flow of people and vehicles across our land borders between the ports of entry. Properly designed, placed and supported, this type of physical infrastructure creates an environment which enhances the Border Patrol's enforcement capabilities and its efforts to detect, deter, identify, classify, respond, and resolve illegal border entries.

The Department of Homeland Security's (DHS) Current Fencing Authority

The statute which authorizes DHS to deploy barriers along the international borders is Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and supporting amendments. The Secure Fence Act of 2006 (Public Law 109 367) directed the Secretary of Homeland Security to establish operational control of the border to prevent unlawful entries into the United States between the ports of entry. The act also provided the Secretary of Homeland Security the authority to construct fencing and security improvements in the border area from the Pacific Ocean to the Gulf of Mexico. The executive order on Border Security and Immigration Enforcement Improvements issued on January 25, 2017 by President Trump restates the authorities included in the Secure Fence Act and explicitly directs the Secretary to take all appropriate steps to immediately plan, design, and construct a physical wall along the southern border. There is no restriction that would bar DHS from constructing additional fencing or other barriers along the border provided that the Secretary concludes such construction is essential to achieve control of the border.

Congress has also provided the Secretary broad authority to waive "all legal requirements" that may impede construction of barriers and roads. Despite these authorities, challenges remain, including:

- Environmental Considerations
 - There are numerous federally endangered or threatened species living along the border.
 - In Arizona for example, 85% of the land along the border are Federal lands set aside to protect wilderness and wildlife, such as Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge.
- Land Ownership
 - Most of the land along the Texas border is privately owned. Landowners will have to be compensated for use of their lands for either construction or construction access. Eminent domain may have to be exercised to take land required for the construction of border infrastructure.
 - While the Federal Government does have a 60-foot easement (the Roosevelt Reservation) along the border (except in Texas), this will be insufficient to

construct certain types of barriers, access roads, and apply supporting technology (e.g. double fencing with a patrol lane between them).

- Tribal Autonomy
 - The Tohono O'odham nation occupies 75 miles of the U.S.-Mexico border in Arizona.
 - The U.S. Government will need to reach agreement with this Native American nation to construct barriers on their land.

The Border Patrol's Experience with Barriers at the Border

The above noted issues will have to be taken into consideration. But it is important to note that there is nothing more destructive to environmentally sensitive land and quiet communities than the uncontrolled illegal flow of people, vehicles, smugglers, and criminal organizations. The placement of fences and deterrent infrastructure in previously uncontrolled parts of the border have actually allowed for the rejuvenation of areas that had previously been devastated due to heavy illegal pedestrian and vehicular traffic. Fences, barriers, and walls have been instrumental to the Border Patrol's successes on the border. But we must not forget that personnel and technological capabilities are a vital part of an integrated border-control strategy. Situational awareness, observation/surveillance capabilities, and Border Patrol resources are essential in order to be able to promptly respond to detected border incursions.

As of May 2015, DHS had installed 353 miles of primary pedestrian fencing and 300 miles of vehicle fencing along the U.S.-Mexico border. These barriers – along with significant increases in Border Patrol personnel, improved detection and surveillance capabilities and the strategic deployment of resources to support iterative border control strategies – have significantly improved control of the border. Migrant apprehensions at the border have decreased significantly, dropping from nearly 1.7 million in Fiscal Year 2000 to 408,870 in fiscal year 2016. In the first quarter (Oct-Dec) of the current fiscal year, the Border Patrol apprehended 136,670 individuals at the U.S.-Mexico border.

President Trump directed the Secretary of Homeland Security to develop a strategy within 180 days to obtain and maintain complete operational control of the southern border. I believe walls, fences, and border infrastructure will definitely be a part of what the Border Patrol will be identifying as current requirements. The Secretary's findings should inform what types of barriers should be constructed, where they should be constructed, and construction priorities.

Other Considerations

There are multiple threats that must be addressed at the U.S.-Mexico border. These include trafficking of drugs, trafficking of arms, contraband within legal trade, and money laundering. The criminal organizations that work to defeat our border enforcement efforts are too often solely looked upon as drug and human smuggling organizations.

These same organizations will provide illegal access into our country for anyone willing to pay the going price. Our military men and women are fighting the enemy on foreign ground. We have enemies that will pay any price to get to us and our way of life. We have hardened our airports and ports of entry making it extremely difficult to get to us by air. We must responsibly address our borders.

Conclusion

Since the Border Patrol first began building infrastructure (fences, walls, vehicle barriers) along our nation's border there has been endless debate on its' value. Border Patrol Agents and the Border Patrol as an organization agree that properly constructed, placed, and supported physical infrastructure is essential to border security.

Thank you for the opportunity to provide testimony to this committee as you consider how to support the Department of Homeland Security in meeting its critical mission of achieving a higher level of control, from all threats, at the U.S.-Mexico border. I look forward to your questions.