



WRITTEN STATEMENT OF THE  
SOUTHERN BORDER COMMUNITIES COALITION

For a Hearing on

**“THE NON-GOVERNMENTAL ORGANIZATION PERSPECTIVE ON THE  
SOUTHWEST BORDER”**

**Submitted to the U.S. Senate Homeland Security and Governmental Affairs  
Committee  
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## **Introduction**

Formed in 2011, the Southern Border Communities Coalition (SBCC), a project of Alliance San Diego, brings together networks from San Diego, California, to Brownsville, Texas, to ensure that border enforcement policies and practices are accountable and fair, respect human dignity and human rights, and prevent the loss of life in the region.

The Southern Border region has always been a place of hope, welcoming and opportunity. With the current challenges facing us in the region, our nation has a chance and a responsibility to live up to our values, do the right thing, and develop fair, humane and functional systems to welcome vulnerable newcomers, as well as border residents, at our southern border. We want to make sure we, as people who live and work in the southern border region, set the record straight.

### ***Why is ‘border governance’ a better approach than ‘border enforcement’?***

The term “border governance” (sometimes referred to as “border management”) and the policies that embody that approach represent a break from the enforcement-only approach and the “prevention through deterrence” border policies of the past. Instead, it represents a move towards responsible border governance that is aligned with our values of dignity and respect for human and civil rights.

On a typical day, more than 600,000 people cross through land ports of entry at our northern and southern borders to visit family and friends, shop, attend school or work, and conduct business, yet border region residents and visitors are subjected to prolonged wait times, crumbling ports, and harassment, often based on racial and religious profiling. A move towards good border governance means investing in infrastructure improvements at ports of entry and adequate, accountable personnel to reduce border-crossing wait times and to ensure that border region residents and newcomers, including asylum seekers, are welcomed with humanity and dignity.

Good border governance also means restricting the role of border officials at the ports of entry to the role of inspectors – to identify and clear people into the country and refer children and families seeking safety to humanitarian, rights-respecting agencies and organizations with expertise in protecting the welfare of children and other vulnerable populations.

We in the border region know better than anyone that the challenges we're experiencing right now are NOT a 'crisis' and are not new — they stem from the hyper-militarization, enforcement-only approach to the Southern Border over the last almost three decades, which includes policies that criminalize migrants, rather than recognize them as human beings.

A shift in terminology towards 'border management' and 'border governance signals an important and welcome symbolic change, but is meaningless without an accompanying change in policies. The near total closure of the border to people seeking safety has created confusion and desperation. Thus far, the current Administration has refused to rescind harmful policies like Title 42 — which results in immediate expulsions and denies due process to people seeking protection or to reunite with family members in the United States. The Administration's slow response in creating a welcoming system also represents an abdication of the United States government's responsibility to the global community — and we urge Congress to take an active role in creating a system to welcome border residents and vulnerable newcomers alike.

### ***What should Border Patrol's role be?***

Border Patrol's role should be limited to detection between the ports of entry *at the actual border* with a focus on organized crime and national threats. Border Patrol — nor any government agency — should ever dehumanize or criminalize migrants. Upon encounter, migrants should be treated with dignity and respect, promptly transferred out of Border Patrol custody, and provided the opportunity to present their claim for an immigration or humanitarian remedy. This should be an administrative proceeding, not a criminal proceeding, and it should be supported through community-based case management, not detention.

Furthermore, Border Patrol should not be operating inside the United States, far from the international border line, to engage in warrantless stops, searches and seizures. In other words, they should not be running interior checkpoints far from the border or roving patrols through our neighborhoods. They should cease to engage in the kind of intrusive surveillance and policing that undermines our civil liberties and human rights that undergird our democracy.

The power and resources of Border Patrol to police our communities — rather than detect organized crime and national threats entering the country — must be curtailed and affirmatively limited. It does not make us more safe nor more free. On the contrary, the agency has a disturbing track record of excessive force, racial profiling, sexual assault and misconduct coupled with a lack of accountability and oversight that, according to DHS's

Homeland Security Advisory Council, make CBP “[vulnerable to a corruption scandal that could potentially threaten the security of our nation.](#)”

Since January 2010, [more than 100 people have died](#) as the result of an encounter with CBP agents and officers. Despite deaths in custody and uses of excessive, [deadly force](#), agents aren't held accountable. The agency's discipline system is [broken](#) and agency leadership has long failed to stop a trend of [corrupt](#) agents. Furthermore, Border Patrol's [militarized](#) over-policing of border communities, including roving patrols and [dozens of internal checkpoints](#) that subject border-region residents to harassment by CBP, creates a pervasive climate of fear among immigrant and border community members, and contributes to the abusive over-policing of Black, Indigenous and people of color (BIPOC) communities.

The criminalization of migrants is not only inhumane, it is also costly. Currently, the federal government wastes more than **\$23 billion per year** on jailing and deporting immigrants. This includes funding for CBP, the largest law enforcement agency in the country. Better use of that money would be to invest in border governance such as through improvements for effective and efficient inspections at ports of entry, the creation of welcoming centers to process claims for entry and address humanitarian needs, and establishing pathways for people to rejoin their families or meet workforce demands. The Biden Administration must stop funding the militarization of our region, and the unaccountable agents who continue to harm our binational, tribal and multicultural communities with impunity.

### ***Do we need to “finish” the wall or add more “virtual” or “smart” walls?***

We do not need a border wall — physical or virtual — scarring our communities. Over the last three decades, the border has become home to one of the most militarized regions in the world. The deadly border wall, built under both Democratic and Republican administrations, has divided vibrant communities, put people's lives at risk during floods and natural disasters, harmed wildlife and critical habitat, and destroyed sacred indigenous sites.

Construction has already cost U.S. taxpayers billions of dollars. During the previous administration, a staggering \$16.3 billion taxpayer dollars were spent on the lethal border wall — which included \$9.9 billion that the previous administration illegally pilfered from the military and counter-narcotics funding. These taxpayer dollars could be better spent on implementing a humane and orderly welcoming system for people seeking safety at our borders and addressing the root causes of migration..

Environmental groups, private property owners, Indigenous communities and advocates have made calls to remediate the devastating impacts of the wall, including to remove portions of the wall that harm or threaten to harm people, communities, wildlife and/or the land. In February, SBCC joined a coalition of 75 organizations in [identifying priority segments of the wall for demolition](#).

A “virtual” or “smart” wall is not a humane or benign alternative to a physical wall – and must be sharply restricted. In fact, a “smart” wall, mass surveillance and many other technologies present real harms for the environment, infringe on privacy rights of border communities, and can lead to more deaths as border crossers take more dangerous routes to avoid detection.

***What are specific policy recommendations that can strengthen good border governance practices in addition to those already mentioned above?***

The U.S.-Mexico border is [home to millions of people](#), has a deeply rich cultural and indigenous history that predates national boundaries, and its unique wildlife habitats form the dynamic landscape that is home to endangered species like wolves, jaguars, and ocelots. Southern Border cities are some of the [safest communities in the country](#) and the region is a key engine of economic growth; an international trade hub that creates jobs and generates wealth.

But, for decades, border communities have borne the brunt of a deeply misguided (often bipartisan) political strategy that unwisely attempts to offset immigration reforms with subjectively defined border “security” that perennially shifts its goalposts. This paradigm has proven to be catastrophic, counterproductive, and costly. Further heightened by a “prevention through deterrence” strategy, it has led to the hyper-militarization of our border communities; a massive erosion of the rights of our community members; increased abuse with impunity by border enforcement officials of community members of color, including immigrants with long ties to the region, tribal members, and those seeking protection. *It has also resulted in almost zero advances in humane and fair immigration policies.*

We encourage members of the 117th U.S. Congress to take a new approach to border policy that prioritizes accountability, consultation with impacted communities, and protection of rights and life.

- **Re-think Borders.** The border region needs accountable, rights-respecting governance, not more harmful enforcement. Congress should recognize the

profound harms that have resulted from the legacy of deeply misguided border policies grounded in a “law enforcement-only” or “prevention through deterrence” model that have not made us safer as a nation, but instead have threatened the wellbeing and rights of immigrants and border communities, contributed to the loss of life of thousands,<sup>1</sup> and wasted billions of taxpayer dollars.<sup>2</sup> Lawmakers — *in consultation with border communities* — must develop a new border governance model that offers a welcoming system for those who live and work in the border region, visitors, and people seeking safety; expands community safety for all; and protects life and human rights.

- **Repeal the border wall waiver authority.** The equal protection of the law must be restored to border communities and lands. The [Real ID Act of 2005](#) gives the Department of Homeland Security Secretary the extraordinary authority to waive and ignore all local, state and federal laws, regulations and statutes to expedite construction of physical barriers—and the Trump Administration exploited this authority more than any other in history to a devastating effect. Dozens of bedrock laws passed by Congress to protect public health, water, the environment, religious sites, and our tax dollars have been waived to expedite construction of the border wall.<sup>3</sup> Congress should move quickly to enact legislation that repeals the waiver authority section in the Real ID Act.
- **Bring Customs and Border Protection (CBP) policy and practices into full compliance with Fourth Amendment standards and restrict interior enforcement.** Border community members experience widespread Fourth Amendment and other constitutional violations when encountering CBP operations while going about their daily lives.<sup>4</sup> Congress should require CBP personnel to receive regular training for certification to carry out their duties in compliance with the Fourth Amendment protection from unreasonable search and seizure and to not default to abusive and discriminatory treatment, especially against people of color

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<sup>1</sup> [Cornelius \(2004\)](#) found that border enforcement policies were directly linked and responsible for border deaths, noting that these policies increased the “costs and physical risks associated with illegal entry.” At [least 8,000 deaths](#) in the Southern Border region have been recorded by Border Patrol since 1998.

<sup>2</sup> Princeton researchers found that U.S. immigration enforcement measures failed to prevent a flow of undocumented crossings, and instead transformed a circular migratory flow into a permanent one by “promoting the large-scale settlement of undocumented migrants who otherwise would have continued moving back and forth across the border.” ([Massey et al. 2016](#))

<sup>3</sup> Over 30 waivers have been issued since 2005 for border wall construction. These waivers have cast aside at least 60 individual laws. Researchers also argue that the use of waiver authority causes irreparable environmental damage, threatens species, and purposefully excludes public oversight (Garbus, 2018).

<sup>4</sup> Border Patrol agents routinely [rely on racial and ethnic profiling](#) to detain and search people in border areas. These acts have been [upheld by some courts](#), but government reports also conclude that relying on “ethnic appearance” may violate people’s constitutional right to equal protection. The [ACLU argues](#) that Border Patrol agents continually stop and interrogate border residents without any suspicion of wrongdoing, “often in ways that our Constitution does not permit.”

and individuals speaking “accented” English or another language. Congress should eliminate interior checkpoints that grossly interfere with the daily lives of border communities going about to school, work, shopping, and doctor’s appointments up to 100 miles into the interior.<sup>5</sup> A [2017 GAO report](#) showed that the vast majority of arrests at checkpoints was of U.S. citizens. Congress should take action to ensure constitutional protections are upheld in statute and fully complied with throughout the border region.

- **Replace Abusive Over-Policing with Accountability.** CBP, our nation’s largest law enforcement agency, should be included in our broader national dialogue about policing and law enforcement violence. CBP’s decades-long track record of rights abuses and impunity has greatly intensified over the past four years. These include the unaccountable deaths of [six children](#) in custody, [family separations](#), [arrests of children receiving urgent medical care](#), and the BORTAC tactical unit’s [seizure](#) of protesters in Portland in the summer of 2020. Congress should both scale down the Border Patrol force through a reduction in funding to the agency and support legislation to reform and bring accountability and oversight to CBP. This legislation should include an independent, efficient and effective system to hold Border Patrol agents and CBP officers accountable for abuses and excessive use of force<sup>6</sup> and require concrete policy and practices changes, including use of body-worn cameras and use-of-force policy reforms, to bring the agency in line with best practices as recommended by the [Police Executive Research Forum \(PERF\)](#) and other policing reform experts and racial justice experts. Congress should also pass legislation that provides a private right of action for damages against federal officials alleged to have violated an individual’s constitutional right(s) and that overturns the current barrier to accountability imposed by the “qualified immunity” doctrine. Congress should end all collaborations between federal immigration enforcement officials and local police, which disrupt community trust and threaten public safety, including by ending the 287(g) program and all FEMA Stonegarden grants.
- **End the criminalization of migration and mass incarceration of migrants and asylum seekers.** Our commitment to ending systemic racism in our country extends

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<sup>5</sup> Interior checkpoints affect all border residents. For example, [concern was raised by community advocates](#) about an interior checkpoint in San Diego County that lies on a freeway connecting two cities to the nearest hospital. At the height of the pandemic, advocates grew worried that the checkpoint served as an additional deterrent for undocumented immigrants to seek medical care in the nearest emergency room.

<sup>6</sup> Researchers and advocates have documented hundreds of instances of [abuse of power](#) and excessive use of force by Border Patrol agents, including the [deaths of over 100 people](#) since 2010. PERF’s limited review of CBP practices and cases revealed that agents too-often relied on deadly force against rock throwers, and the agency very rarely investigated shootings. Similarly, [researchers have documented](#) the stark lack of accountability for Border Patrol agents. For example, an analysis of complaints data by the American Immigration Council showed that in 95.9% of cases analyzed no action was taken against an agent.

to our immigration system. The laws used to prosecute migrants for entering and reentering the U.S. without authorization are rooted in xenophobia and white supremacist ideology.<sup>7</sup> The large-scale use of detention centers and prisons contributes to mass incarceration of Black and Brown individuals in the United States. We call on Congress to: (1) overturn 8 U.S.C. §§ 1325 and 1326—the laws that are used to criminalize migration; (2) reduce funding for the portion of the DOJ budget that funds criminal prosecution of border crossers and incarceration in DOJ-contracted facilities for migrants convicted of unauthorized entry or re-entry; and (3) defund DHS immigration detention centers and instead prioritize alternatives to detention such as community-based alternatives and non-profit case management programs.

- **Rescue and Recovery.** Congress should pass legislation that ensures policies and programs between ports of entry focus squarely on the protection and rescue of migrants. ‘[Prevention through deterrence](#)’ strategies must be a thing of the past and should be forbidden. In this legislation, Congress should direct border enforcement officials to halt the [use of tactics that threaten the life and safety](#) of migrants (such as helicopter “dusting” and fast-speed vehicle pursuits<sup>8</sup>), establish a working group with relevant state, local, and federal authorities and stakeholders to protect life, expand rescue operations, and provide humanitarian care in the border region. Appropriators should ensure that the provisions in the Missing Persons and Unidentified Remains Act ([Public Law 116-277](#)) to support groups that respond to migrant deaths, including forensic labs and humanitarian aid groups, and rescue beacons are fully funded.
- **Welcome people seeking safety without relying on detention.** Congress should support the Administration’s efforts to create a welcoming system to expeditiously welcome and process those arriving at our borders seeking protection. Congress should also insist on the immediate elimination of the use of Title 42, which was used by a prior administration to take advantage of a global pandemic as an excuse to quickly expel people seeking safety at our southern border. After the prior administration implemented this policy at the onset of the pandemic, [several public health officials objected](#), saying that asylum seekers could continue to be processed

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<sup>7</sup> See John Blake, “When Americans tried to breed a better race: How a genetic fitness ‘crusade’ marches on,” CNN, October 18, 2018, <https://www.cnn.com/2018/10/16/us/eugenics-craze-america-pbs/index.html>. Becky Little, “How Border-Crossing Became a Crime in the United States,” History, July 1, 2019, <https://www.history.com/news/illegal-border-crossing-usa-mexico-section-1325>.

<sup>8</sup> A 2019 investigation revealed that at least 250 people had been injured and more than 20 killed between 2015-2018 as a result of a Border Patrol vehicle chase. The report also showed that at least 1 in 3 car pursuits ended in a crash. These avoidable deaths and injuries are attributed to lax standards and policies by the Border Patrol that do not match national policing standards.



in a way that protected public health. These expulsions have [disproportionately affected Black immigrants](#) — particularly Haitians — as the Biden administration continues to rapidly expel them, including infants, back to extremely dangerous conditions. *A new welcoming system cannot be developed and implemented fast enough.* As noted above, this system should not rely on detention<sup>9</sup> and must instead create humanitarian welcoming centers—staffed by social workers, trauma specialists, asylum officers, child specialists, and health professionals.

- **Create a modern, functional, humane immigration system.** More than one in every five DACA recipients [live in the border region](#) and 43 percent of the [11 million undocumented people](#) in the United States live in the four Southwestern states of California, Arizona, New Mexico and Texas. *It is way past time to acknowledge how immigrants strengthen our nation.* We urge U.S. senators to pass the revised 2021 Dream and Promise Act and the Farm Workforce Modernization Act, which have already passed the House. Congress should also pass legislation to create a modern, functional and humane immigration system that includes a roadmap to citizenship for the 11 million undocumented people who call this country home. Immigration reform initiatives should be bold, restorative and transformative, and should **not** include enforcement tradeoffs, including against border communities.

## Conclusion

**The Southern Border Communities Coalition (SBCC)** encourages everyone — including our elected congressional members — to help tell the real stories of the Southern Border, and to look at the real data and stories coming from our region. One way to do that is to visit [Border Lens](#), our data portal about the region that can be used to inform the conversation about the border. We also encourage policy makers to check out our [New Border Vision](#) for a glimpse at what good border governance can actually look like.

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<sup>9</sup> Alternatives to detention programs - such as an intensive case management system - have a near-perfect rate of compliance and have been shown to be less costly than detention.