



May 13, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security & Governmental Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Thomas Carper
Ranking Member
Committee on Homeland Security & Governmental Affairs
U.S. Senate
Washington, D.C. 20510

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**RE: Senate Committee on Homeland Security & Governmental Affairs Hearing on
“Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers”**

Dear Chairman Johnson and Ranking Member Carper:

On behalf of the American Civil Liberties Union (“ACLU”), we submit this letter for the Senate Committee on Homeland Security & Governmental Affairs hearing on May 13, 2015: “Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers”

For nearly a century the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual’s rights must be protected equally under the law.

**(1) Current proposals to resource the border are damaging to border communities
and unwanted by the Department of Homeland Security**

Border-security bills and proposals are unwanted by DHS and not the type of border policy reform that is needed.

On May 6, 2015 the Committee on Homeland Security & Governmental Affairs approved a border-security bill that even DHS doesn’t want. The bill is the Arizona Borderlands Protection and Preservation Act,¹ sponsored by the state’s two senators, John McCain and Jeff Flake. Despite the bill’s name, there is nothing protective or preserving about this legislation. Rather it threatens to despoil a vast, 10-million-acre area of Arizona without any remotely corresponding border-security benefits. It would allow the government to conduct motorized patrols and to deploy communications, surveillance, and detection equipment on protected public lands, such as national parks, national monuments, and sacred Native American sites.

1 Arizona Borderlands Protection and Preservation Act. S. 750, 114th Cong. (2015), *available at* <https://www.congress.gov/114/bills/s750/BILLS-114s750is.pdf> (non-amended version).

Environmental groups are horrified because laws like this “pose significant risks to our nation’s environment and public lands,² and the rule of law.” The Coalition of National Park Service Retirees has called legislation similar to the McCain/Flake bill,³ and proposals for additional border fencing, “the most direct assault on national parks ever to be advanced at any level in any Congress in U.S. history. . . . The outrage here is that national parks and other U.S. crown jewels could end up being trashed in the name of achieving national security gains that are fictitious.”

The real goal of this bill and proposals for additional border fencing is to entirely seal the Southwest border, which is unattainable. A February 2015 report by the Bipartisan Policy Center stresses that “achieving 100 percent enforcement is an unrealistic expectation in any border security effort,”⁴ noting that even the former East Germany’s “kill zone” stopped only 95 percent of crossers.

Customs and Border Protection itself does not want the authority Arizona’s senators are trying to impose through S.750. Instead, DHS, CBP’s parent organization, has repeatedly disclaimed the idea that such legislation is required to further border security. Commissioner Kerlikowske also recently made comments against full fencing of the border.⁵

Americans do deserve border policy reform, just not like this.

(2) Real border reforms are needed to bring oversight and accountability to Customs and Border Protection

What any border bill *should* include are reforms to CBP that ensure the agency’s oversight and accountability. James F. Tomsheck, CBP’s former head of internal affairs, has called at least eight of the 35 CBP-caused deaths since 2010 “highly suspect,” adding that “thousands of employees hired during an unprecedented expansion of the agency in the post-9/11 era are potentially unfit to carry a badge and gun.”⁶ Recent news reports have highlighted widespread corruption and integrity problems, including a CBS News report on Border Patrol sexual abuse,⁷ and Politico Magazine’s in-depth look at the Border Patrol’s massive growth, which concluded that it is “America’s most out-of-control law enforcement agency.”⁸

S.750 goes in exactly the wrong direction by expanding Border Patrol’s operations, instead of restoring respect for the rights of border residents and their environment. Border Patrol frequently acts as a “Constitution-Free Agency” in border communities up to 100 miles from any land or sea border.⁹ CBP

2 Pew Charitable Trusts, *New Bills Threaten National Parks, Wilderness, Wildlife Refuges Within 100 Miles of Borders With Canada, Mexico*, <http://www.pewtrusts.org/en/about/news-room/news/2015/03/31/new-bills-threaten-national-parks-wilderness-wildlife-refuges> (last visited May 12, 2015).

3 PR Newswire, *NPS Retirees: 54 National Park Areas Jeopardized Under Bogus "National Security" Bill Advancing in U.S. House*, <http://www.prnewswire.com/news-releases/nps-retirees--54-national-park-areas-jeopardized-under-bogus-national-security-bill-advancing-in-us-house-147948645.html> (last visited May 12, 2015).

4 BIPARTISAN POLICY CTR., *MEASURING THE METRICS 44* (Feb. 2015), available at http://bipartisanpolicy.org/wp-content/uploads/2015/02/BPC_Immigration_MeasuringEnforcement.pdf.

5 *Hearing on proposed fiscal 2016 appropriations for programs under its jurisdiction before the House Appropriations Committee, Homeland Security Subcommittee*, 114th Cong. (2015) (statement of Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection).

6 Andrew Becker, *Border agency’s former watchdog says officials impeded his efforts*, WASH. POST, Aug. 16, 2014, available at http://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390_story.html.

7 Anna Werner and Laura Strickler, *“Disturbing” sex abuse within agency that patrols U.S. border, says former top official*, CBS EVENING NEWS, May 4, 2015, available at <http://www.cbsnews.com/news/u-s-border-patrol-has-a-sex-abuse-problem-says-whistleblower/>.

8 Garrett M. Graff, *The Green Monster*, POLITICO MAGAZINE, Nov./Dec. 2014, available at <http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html#.VVJBbUfF-Ah>.

9 See James Lyall, *The Constitution –Free Agency*, POLITICO MAGAZINE, July 29, 2014, available at <http://www.politico.com/magazine/story/2014/07/border-patrol-constitution-free-agency-109375.html#.VVJB5EfF-Ah>, see also ACLU, *Know Your Rights: The Government’s 100-mile border zone-map*, <https://www.aclu.org/know-your-rights-governments-100-mile-border-zone-map>

instead urgently needs reforms to adopt best policing practices such as body-worn cameras,¹⁰ an end to racial profiling,¹¹ and the type of comprehensive data collection lifted up by the President's own Task Force on 21st Century Policing.¹²

Support for S.750, and similar stand-alone border-security bills, is also a vote against comprehensive immigration reform because its enforcement-only approach offers no workable solutions to the broken immigration system, none of the common-sense immigration fixes that would benefit America enormously.

Senators should oppose S. 750 and similar proposals, leaving millions of acres in the border region alone, and instead enact sensible border and immigration reforms.

For more information, please contact ACLU Policy Counsel Chris Rickerd (202/675-2339); crickerd@aclu.org).

Sincerely,



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Acting Director, Washington Legislative Office



Chris Rickerd
Policy Counsel

10 Fact Sheet, ACLU, Strengthening CBP with the Use of Body-Worn Cameras (June 27, 2014), *available at* <https://www.aclu.org/strengthening-cbp-use-body-worn-cameras>.

11 Chris Rickerd, ACLU, A Dangerous Precedent: Why Allow Racial Profiling at or Near the Border <https://www.aclu.org/blog/speakeasy/dangerous-precedent-why-allow-racial-profiling-or-near-border> (Dec. 8, 2014).

12 President's Task Force on 21st Century Policing, Interim Report (March 2015), *available at* http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf.