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## The Border Wall: An Ineffective Solution

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# THE BORDER WALL: AN INEFFECTIVE SOLUTION

*Shivangi Mehta*<sup>1</sup>

## I. Introduction

When Donald Trump (“Trump”) announced his candidacy for President, one of his most controversial platforms was “build[ing] a great wall...on our southern border and...hav[ing] Mexico pay for [it].”<sup>2</sup> On January 25, 2017, just months after Trump was elected President of the United States, Trump signed his first Executive Order regarding border security.<sup>3</sup>

This Executive Order found authority in past acts and the overall policy considerations of the executive branch. This article examines the relevant sections of the January 25, 2017 Executive Order, the history of the border between the United States and Mexico, costs of border security, immigration history in the United States, and arguments for and against the construction of the border wall. This analysis reveals the ineffective nature of further construction of the border wall and its inability to offer a viable long-term solution for undocumented immigration.

## II. January 25, 2017 Executive Order: Relevant Sections

The White House cited authority from the “Immigration and Nationality Act for the January 25 Executive Order, (8 U.S.C. 1101

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<sup>1</sup> Associate Member, 2018-2019 *Immigration & Human Rights Law Review*.

<sup>2</sup> Time Staff, *Here’s Donald Trump’s Presidential Announcement Speech*, TIME (Jun. 16, 2015), <http://time.com/3923128/donald-trump-announcement-speech/>.

<sup>3</sup> *Executive Order: Border Security and Immigration Enforcement Improvements*, Executive Orders (Jan. 25, 2017), <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

et seq.) (INA), the Secure Fence Act of 2006 (Public 109-367) (Secure Fence Act, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208 Div. C) (IIRIRA).”<sup>4</sup> These actions were said to be taken “to ensure the safety and territorial integrity of the United States as well as to ensure that the Nation’s immigration laws [were] faithfully executed.”<sup>5</sup>

The Executive Order is broken down into seventeen subsections.<sup>6</sup> Section One focuses on the purpose of the Executive Order.<sup>7</sup> Specifically, the Section states the critical importance of border security in ensuring the national security of the United States.<sup>8</sup> Section One states that individuals who enter the country illegally, and evade inspection, can be a serious threat to both national security and public safety as these people have not been screened.<sup>9</sup> This section goes on to state that illegal immigration from the southern border puts a significant strain on federal resources, and can overwhelm agencies that are tasked specifically with maintaining border security.<sup>10</sup>

Section Two focuses on the executive branch’s policy considerations and how it aims to achieve these considerations through the construction of a border wall.<sup>11</sup> Specifically, the section states the executive branch’s policy, which is to secure the border between the United States and Mexico “through the immediate construction of a physical wall...monitored and supported by adequate personnel so as to prevent illegal immigration, drug and human trafficking, and acts of terrorism.”<sup>12</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Section Four focuses on how the wall, once built, will provide physical security of the southern border.<sup>13</sup> There are subsections detailing with how this goal is to be accomplished; some of the considerations include allocating federal funds to plan, design, and build the wall, developing long term funding budgets, and producing a study of the geophysical and topographical aspects of the southern border.<sup>14</sup>

Section Eight briefly discusses the hiring of additional Border Patrol agents. Specifically, the Section states that 5,000 more agents would be hired.<sup>15</sup>

The January 25, 2017 executive order was the Trump administration's first formal attempt to state their position on the border wall and lists proactive steps to effectuate the construction of the wall. While Trump's support of the border wall, and insensitive comments regarding immigration, have received widespread criticism, he was not the first person to suggest a barrier between the United States and Mexico.

### **III. History of the United States-Mexico Border**

The border between the United States and Mexico spans approximately 2,000 miles.<sup>16</sup> While Trump has recently spoken publicly of the proposed border wall, the United States has been erecting physical barriers between the two countries long before 2015.<sup>17</sup> Overall, about one-fourth of the border already contains some type of physical structure.<sup>18</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Gerald S. Dickinson, *Property Musing at the U.S.-Mexico Border*, 33 Md. J. Int'l L. 162, 164 (2018).

<sup>17</sup> Roy R. Brandys; Nicholas P. Laurent; Blaire A. Knox, *The US-Mexico Border Wall: a Unique Project with Unique Real Estate Issues*, 33 Prob. & Prop. 36, 36-37 (2019).

<sup>18</sup> *Id.*

Before beginning construction, however, the actual boundary between the countries needed to be established. This process has taken over 100 years to complete. In 1848, the Treaty of Guadalupe was signed.<sup>19</sup> The Treaty had two main goals: to end the Mexican-American War, and to set forth a new border between Mexico and the United States.<sup>20</sup> Under the Treaty, Mexico was obligated to surrender parts of present day New Mexico, California, Arizona, Colorado, and Nevada, and the United States was ordered to pay \$15 million in war related compensation for damage to Mexican land.<sup>21</sup> In 1853, the last main adjustment to the border occurred through the Gadsden Purchase when United State's President Franklin Pierce purchased 30,000 miles of land between California and El Paso for \$10 million.<sup>22</sup>

After border lines were established, actual construction of a fence began. In 1915, construction of a fence was ordered by a Mexican Governor to separate the American and Mexican cities of Nogales.<sup>23</sup> However, this structure did not last long and was torn down in the following months.<sup>24</sup> The United States waited almost eighty years before moving towards construction of a more concrete type of barrier, with actual construction beginning in the 1990s.<sup>25</sup> In the early to mid 1990s, more Mexicans attempted to enter the United States illegally than ever before.<sup>26</sup> The value of the peso had

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *U.S.-Mexico Relations 1810-2010*, Council on Foreign Relations, <https://www.cfr.org/timeline/us-mexico-relations> (last visited Apr. 23, 2019).

<sup>22</sup> *Id.*

<sup>23</sup> *The Fence*, <https://apps.cndls.georgetown.edu/projects/borders/exhibits/show/the-fence/overview> (last visited Apr. 16, 2019).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Operation Gatekeeper, Operation Hold the Line, Operation Safeguard*, Global Security,

depreciated and Mexico was dealing with an economic crisis, causing the increase in migration.<sup>27</sup> Between 1993 and 1994, Bill Clinton (“Clinton”) led the first major federal move towards construction.<sup>28</sup> Clinton signed off on three measures to authorize the barrier: Operation Hold the Line, Operation Gatekeeper, and Operation Safeguard.<sup>29</sup> All three measures held the common goal of controlling illegal immigration and drug trafficking by constructing a border wall, placing more agents at various border positions, and increasing funding for border security.<sup>30</sup>

Operation Hold the Line was initiated in October 1993 and focused on crossings in El Paso, Texas.<sup>31</sup> Border security agents would take positions, spanning the border, and make themselves visible to individuals who may try to cross the border.<sup>32</sup> It is believed that this deployment of agents decreased the number of people who would try and cross during the day, resulting in an overall 70% reduction in apprehensions.<sup>33</sup>

In August 1994, Operation Gatekeeper was launched at the Imperial Beach Station in San Diego.<sup>34</sup> This location was experiencing some of the highest numbers of individuals crossing the border.<sup>35</sup> Operation Gatekeeper utilized a three tier agent

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<https://www.globalsecurity.org/military/ops/gatekeeper.htm> (last visited April 23, 2019).

<sup>27</sup> *Id.*

<sup>28</sup> *Operation Gatekeeper, Operation Hold the Line, Operation Safeguard, supra.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Operation Gatekeeper: An Investigation Into Allegations of Fraud and Misconduct*, USDOJ/OIG Special Report (Jul. 1998), <https://oig.justice.gov/special/9807/exec.htm>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

approach and new equipment.<sup>36</sup> The first tier of agents were positioned in high visible locations (similar to Operation Hold the Line).<sup>37</sup> The second tier agents were further north and would focus on individuals who made it past the first tier.<sup>38</sup> Finally, the third tier agents would focus on capturing individuals who made it past the second tier.<sup>39</sup> If people crossing the border made it passed one tier of agents, those agents would notify the second or third tiers to let them know individuals were moving in their direction.<sup>40</sup> Operation Gatekeeper also employed night-scopes (to allow agents to see individuals crossing in the dark), seismic sensors to detect movement, radios, and a new electronic finger printing system.<sup>41</sup> Operation Gatekeeper was controversial as agents were limited and constrained in the individuals they could apprehend and how.<sup>42</sup> Many believed Clinton's operation was a political ploy because the stated goal was deterrence and lower apprehension numbers.<sup>43</sup> However, the Office of Inspector General investigated these fraud claims and concluded "that neither INS nor Border Patrol personnel participated in an organized effort to falsify records regarding the performance of Operation Gatekeeper."<sup>44</sup> Overall, Operation Gatekeeper did not significantly reduce border crossings but rather shifted crossing away from the San Diego area.<sup>45</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Joseph Nevins, *Operation Gatekeeper: The Rise of the "Illegal Alien" and the Remaking of the U.S.-Mexico Boundary*, Foreign Affairs, <https://www.foreignaffairs.com/reviews/capsule-review/2003-03-01/operation-gatekeeper-rise-illegal-alien-and-remaking-us-mexico> (last visited Apr. 23, 2019).

Operation Safeguard was implemented in late 1994, in southern Arizona.<sup>46</sup> One of the main goals was to redirect individuals crossing the border to the Nogales port, where they could be more easily controlled by Border Patrol.<sup>47</sup>

Operations Gatekeeper and Safeguard increased the death toll while trying to effectuate the goal of decreasing border crossings. For example, the number of deaths in 1994 were 14; however, by 2002 the number was more than 163.<sup>48</sup> This has led to criticism on how effective these operations truly were in dealing with undocumented immigration.

While the three operations were controversial, federal momentum did not falter. Thirteen years later, the Secure Fence Act was signed by then United States President George W. Bush.<sup>49</sup> The Secure Fence Act vowed to construct 700 miles of fencing along the southern border.<sup>50</sup> The Act also included implementing checkpoints, vehicle barriers, and lighting to deter illegal immigration.<sup>51</sup> The Secure Fence Act passed with bipartisan support, with support from then Senators Barak Obama and Hillary Clinton.<sup>52</sup>

Today, man-made physical barriers cover 654 of the 1,954 miles of the southern border.<sup>53</sup> Vehicle fencing covers 280 miles,

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<sup>46</sup> Timothy J Dunn; José Palafox, *Handout 4.1 - Militarization of the Border*, UUA Immigration Study Guide, <https://www.uua.org/sites/live-new.uua.org/files/documents/washingtonoffice/immigration/studyguides/handout4.1.pdf> (last visited Apr. 23, 2019).

<sup>47</sup> *Id.*

<sup>48</sup> Dunn, *supra*.

<sup>49</sup> Catherine E. Schoichet; Generva Sands, *This is how much of the border wall has been built so far*, CNN Politics (Jan 19, 2019), <https://www.cnn.com/2019/01/19/politics/us-mexico-border-wall-numbers/index.html>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

while pedestrian fencing covering 374 miles.<sup>54</sup> Vehicle fencing is low to the ground and can prevent a vehicle from driving through; however, it cannot stop individuals from stepping over it.<sup>55</sup> Pedestrian fencing, on the other hand, is taller and able to block people attempting to cross the border on foot.<sup>56</sup>

#### IV. Cost of Border Security

The American Immigration Council estimates that the Federal Government has utilized \$263 billion on immigration enforcement.<sup>57</sup> This enforcement spending includes both border security (for the U.S. Customs and Border Protection or “CBP”) and interior enforcement (for U.S. Immigration and Customs Enforcement or “ICE”).<sup>58</sup>

Specifically, since 2007, CBP has stated that approximately \$2.3 billion has been spent on fencing and physical structures along the southern border.<sup>59</sup> In 2017 and 2018, since Trump has taken office, \$300 million has been spent to build 40 miles of replacement barriers and \$1.375 billion has been provided to build 82 miles of new barriers as well as replacement structures in specified locations.<sup>60</sup>

Trump is currently asking for \$5.7 billion for barrier construction.<sup>61</sup> This money would go towards building 150 miles

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *The Cost of Immigration Enforcement and Border Security*, American Immigration Council (Jan. 25, 2017), [https://americanimmigrationcouncil.org/sites/default/files/research/the\\_cost\\_of\\_immigration\\_enforcement\\_and\\_border\\_security.pdf](https://americanimmigrationcouncil.org/sites/default/files/research/the_cost_of_immigration_enforcement_and_border_security.pdf).

<sup>58</sup> *Id.*

<sup>59</sup> Schoichet, *supra*.

<sup>60</sup> *Id.*

<sup>61</sup> Amanda Holpuch, *What exactly is Trump’s border wall and why does he want \$5.7bn for it?*, *The Guardian* (Jan. 15, 2019),

worth of new barriers and the remaining would go towards replacement barriers.<sup>62</sup>

The American Immigration Council has concluded that today, our border and interior enforcement personnel is at record levels, over 650 miles of fencing exists along the southern border, and we are investing in and utilizing new resources everyday (i.e. drones, virtual fencing).<sup>63</sup> However, the Council finds these measures are not effective in dealing with the challenges of undocumented immigration.<sup>64</sup> The costs are not just monetary in nature but deadly (as seen with the rising death toll from the operations implemented in the 1990s). While many agree that undocumented immigration is an issue in the United States, the country is split on what the viable, long term solution is. The current administration believes more funding, for the wall and Border Patrol agents, is the most productive route.

#### **IV. Immigration in the United States**

As of 2016, there were approximately 10.7 million unauthorized immigrants in the United States.<sup>65</sup> That number

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<https://www.theguardian.com/us-news/2019/jan/15/trump-mexico-border-wall-status-migrants>.

<sup>62</sup> Dara Lind, *The border wall flight at the center of the government shutdown, explained*, Vox (Jan. 2, 2019), <https://www.vox.com/policy-and-politics/2018/12/21/18151974/trump-border-wall-steel-slats-shutdown>. See also Jake Gibson, *Here's what \$5 billion in border wall funding would buy*, Fox New (Dec. 21, 2018), <https://www.foxnews.com/politics/heres-what-5-billion-in-border-wall-funding-would-buy>.

<sup>63</sup> *The Cost of Immigration Enforcement and Border Security*, *supra*.

<sup>64</sup> *Id.*

<sup>65</sup> Jens Manuel Krogstad; Jeffery S. Passel; D'Vera Cohn, *5 facts about illegal immigration in the U.S.*, Pew Research Center (Nov. 28, 2018), <http://www.pewresearch.org/fact-tank/2018/11/28/5-facts-about-illegal-immigration-in-the-u-s/>.

represents 3.3% of the total population of the United States that year.<sup>66</sup> This has lowered 13%, since 2007, when there were 12.2 million unauthorized immigrants, a total of 4% of the total population.<sup>67</sup> As of 2017, there are a total of 44 million immigrants who reside in the United States.<sup>68</sup>

While the unauthorized population in the United States is declining, the overall immigration population is growing.<sup>69</sup> These immigrants, however, are more likely to be coming to the United States from Asia as opposed to Mexico.<sup>70</sup> In the 1970s-1990s the make-up of most newcomers were mainly from Mexico.<sup>71</sup> However, after the 2007 recession, immigrants are now more likely to be traveling here from India and China.<sup>72</sup> What is most interesting is Mexican immigrants, from 2017 to 2010, represent the biggest decline of all immigrant populations present in the United States.<sup>73</sup> However, many still believe the southern border is not secure and is the cause of most unauthorized immigration, thus concluding the border wall is the best solution.

There has been disagreement about whether or not the border wall should be built, as well as how much it would actually be able to curb illegal immigration. This controversy was most recently illustrated in the longest government shutdown in United States'

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Jie Zong; Jeanne Batalova; Micayla Burrows, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (Mar. 14, 2019), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Health>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

history.<sup>74</sup> This 35-day shutdown resulted from disagreement over wall funding.<sup>75</sup> A recent NPR poll found 69% of Americans “do not believe building a wall should even be an immediate priority for Congress,” while 28% “believe it should be an immediate priority.”<sup>76</sup>

## V. Supporters of the Border Wall

Three areas supporters for further construction of the border wall ground their beliefs in include a comparison to the European refugee crisis, costs of undocumented immigration on the United States, and the symbolic message a wall would illustrate, especially in light of the migrant caravan.

Supporters of further construction of the border wall often draw their reasoning from Europe and the current refugee crisis.<sup>77</sup> James Jay Carafano, writing for The Heritage Foundation, states one million refugees, without being vetted, have flooded Europe.<sup>78</sup> Carafano states: “European officials who opened their borders to the migrants now find themselves beset by an intense political backlash, severe security challenges, and widespread social and economic

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<sup>74</sup> Bob Bryan, *The government shutdown is in day 35 and has shattered the record for the longest shutdown in history*, Business Insider (Jan. 25, 2019), <https://www.businessinsider.com/history-of-government-shutdowns-in-congress-2018-1>.

<sup>75</sup> *Id.*

<sup>76</sup> Domenico Montanaro, *Poll: Americans Want Trump To Compromise On Border Wall to Avoid Possible Shutdown*, NPR (Dec. 11, 2018), <https://www.npr.org/2018/12/11/675334306/poll-americans-want-trump-to-compromise-on-border-wall-amid-possible-shutdown>.

<sup>77</sup> James Jay Carafano, *We Need Trump’s Border Wall Plus Other Measures to Reduce Illegal Immigration*, The Heritage Foundation (dec. 26, 2018), <https://www.heritage.org/homeland-security/commentary/we-need-trumps-border-wall-plus-other-measures-reduce-illegal>.

<sup>78</sup> *Id.*

unrest. Europe today stands as a case study in the problems caused by uncontrolled migration.”<sup>79</sup>

Carafano cites a Gallup poll reporting: “[o]ne in five potential migrants (21%) - or about 158 million adults worldwide - name the U.S. as their desired future residence.”<sup>80</sup> He argues, when children are added into the equation, this number is likely to be even higher.<sup>81</sup> Mass migration, according to Carafano, of such a high number of people, would economically, socially, and culturally destabilize the United States making this country even more dangerous.<sup>82</sup>

Costs of illegal immigration is another common basis for support for the border wall. The border wall is believed to be capable of being a serious deterrent against illegal immigration. The Federation for American Immigration Reform (“FAIR”) issued a report titled: “The Fiscal Burden of Illegal Immigration on the United States Taxpayers (2017).”<sup>83</sup> The report breaks down associated costs from undocumented immigration between federal expenditures, and state and local expenditures.<sup>84</sup> The report states the total burden on taxpayers is \$115,894,597,664. Of that total, the federal expense was calculated to be \$45.87 billion. One subsection of this federal expense is education, which the report estimates costs approximately \$1.69 billion. The Elementary and Secondary Education Act of 1965 provides additional federal funding “to increase educational opportunities and improve the academic performance of children from poor families.”<sup>85</sup> The report

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *The Fiscal Burden of Illegal Immigration On United States Taxpayers (2017)*, Federation for American Immigration Reform, <https://fairus.org/sites/default/files/2017-09/Fiscal-Burden-of-Illegal-Immigration-2017.pdf> (last visited Apr. 23, 2019)

<sup>84</sup> *Id.* at 1.

<sup>85</sup> *Id.* at 6-8.

concludes that most children from unauthorized immigrants qualify under this economic eligibility criteria.<sup>86</sup>

Medical costs are another area the FAIR report focuses on.<sup>87</sup> Hospitals and other emergency clinics are mandated to provide certain urgent medical care without first identifying one's immigration status.<sup>88</sup> The report found \$32.8 billion was the federal amount allotted to cover uncompensated care of individuals who were uninsured in 2013.<sup>89</sup> The United States Congressional Budget Office estimated at least one fourth of those uninsured individuals are undocumented immigrants.<sup>90</sup>

The symbolic message behind the border wall is also a driving force for further construction.<sup>91</sup> Specifically, the wall would symbolize an actual separation and would be there to make others think twice before entering the country illegally. One recent issue that has solidified the need for the symbolic message are migrant caravans.<sup>92</sup> It is believed that there is a physical invasion at the southern border, and without a proper barrier, the United States border is essentially open.<sup>93</sup>

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 10.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Susannah Crockford, *Why building a wall on the US-Mexico Border is a symbolic monument, not a sensible immigration policy*, LSE US Centre, <https://blogs.lse.ac.uk/usappblog/2017/02/21/why-building-a-wall-on-the-us-mexico-border-is-a-symbolic-monument-not-sensible-immigration-policy/> (last visited Apr. 23, 2019).

<sup>92</sup> Jan Brewer, *Migrant caravan proves we must fully fund Trump's border wall, former Arizona governor says*, AZ Central (Nov. 29, 2018), <https://www.azcentral.com/story/opinion/op-ed/2018/11/29/migrant-caravan-congress-fund-trump-border-wall-reform-asylum/2140703002/>.

<sup>93</sup> *Id.*

The migrant caravan sparked conversation in October 2018.<sup>94</sup> The caravan was formed in violent northern Honduras and originally consisted of 200 people.<sup>95</sup> However, this number quickly grew as the caravan crossed into Guatemala; at that point the number was over 1,000 people, traveling either on foot or by vehicle.<sup>96</sup> Some even estimated the number reached over 4,000 at one point.<sup>97</sup> While numbers for overall border crossings declined in 2017, the numbers began climbing again in late 2018. Some attribute this climb to the record number of people traveling with families.<sup>98</sup> Such high numbers of individuals, approaching the border at once, could make it a difficult situation to control.

The migrants claim they are leaving their violent countries in hopes of building a better future with their families.<sup>99</sup> The United States is the chosen destination for many because of the potential to earn higher salaries and live safer lives.<sup>100</sup> The Trump administration believes these groups of individuals are mixed with “many gangs members and some very bad people.”<sup>101</sup>

## VI. Opponents of the Border Wall

Three areas opponents of the border wall ground their beliefs in include the legal obstacles that must be overcome for construction

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<sup>94</sup> Kirk Semple, *What Is the Migrant Caravan and Why does Trump Care?*, New York Times (Oct. 18, 2018), <https://www.nytimes.com/2018/10/18/world/americas/trump-migrant-caravan.html>.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Migrant caravan: What is it and why does it matter?*, BBC News (Nov. 26, 2018), <https://www.bbc.com/news/world-latin-america-45951782>.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

to occur, the effectiveness of the actual wall, and the incorrect reporting of funds that are utilized by undocumented immigrants.<sup>102</sup>

Approximately 70% of the existing barrier is on federally controlled land, in California, Arizona, and New Mexico.<sup>103</sup> Native American tribes and private individuals control over two-thirds of the remaining property; this is especially true in Texas where private parties own most of the border.<sup>104</sup> For example, the Native American tribe Tohono O’odham Nation has land on either side of the border and has the capacity to stop construction of a barrier.<sup>105</sup> In 2007, the tribe allowed for the building of vehicle barriers.<sup>106</sup> However, in the process of doing so, Indian burial grounds were desecrated and human remains were dug up.<sup>107</sup> In order to try and build barriers on the tribe’s land, Trump would need Congress to pass a bill to condemn the land.<sup>108</sup> This, however, is unlikely to pass as Senate Democrats would likely filibuster the effort.<sup>109</sup>

Private property is another legal obstacle facing the construction of the wall.<sup>110</sup> The government can try to acquire the necessary land through negotiations and voluntary sale.<sup>111</sup> However, if that fails, the only alternative would be obtain the land through eminent domain.<sup>112</sup> Eminent domain is the power of the government

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<sup>102</sup> David Bier, *Why the Wall Won’t Work*, CATO Institute, <https://www.cato.org/publications/commentary/why-wall-wont-work> (last visited Apr. 23, 2019).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Eminent Domain*, Cornell Law School, [https://www.law.cornell.edu/wex/eminent\\_domain](https://www.law.cornell.edu/wex/eminent_domain) (last visited Apr. 23, 2019).

<sup>112</sup> Dickinson, *supra* at 164.

to convert property that is privately owned into public use.<sup>113</sup> However, the Fifth Amendment's Takings Clause makes clear that private property that is taken for public use cannot be done without providing just compensation.<sup>114</sup> Even if that is an avenue this administration turns to, lawsuits will create serious delays.<sup>115</sup>

Critics against the construction of a border wall have practical concerns about the actual success that would come from the wall. While a fence or barrier can make it difficult to cross into the United States, it does not make it impossible.<sup>116</sup> Weather conditions, for example, can impede on the structure's proposed success.<sup>117</sup> One storm left a hole that remained for months, and other fences located near rivers and beaches have eroded over time. Also, fencing can be cut through; one-year Border Patrol was required to repair over 4,000 holes in fencing.<sup>118</sup>

The height of the wall may not even matter. Some individuals have easily climbed over walls standing over eighteen feet tall, while others drive over sections of the fencing with use of a ramp.<sup>119</sup> Trump states the wall he would build would be an "impenetrable physical wall...30...[or] 40 feet long."<sup>120</sup> Even if height was not an issue, tunnels still will be. From 2007 to 2010, more than one tunnel was found per month by the Border Patrol.<sup>121</sup> While Trump responds by stating that "tunnel technology" will prevent people from going under, Homeland Security has concluded that technology for detecting tunnels beneath the border is not quite enhanced enough for the Border Patrol's needs.<sup>122</sup>

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<sup>113</sup> *Eminent Domain, supra.*

<sup>114</sup> Dickinson, *supra* at 164.

<sup>115</sup> Bier, *supra.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

While a physical barrier may look imposing, it will not be able to completely halt illegal immigration because while a wall may be able to deter some from crossing, the wall itself is unable to apprehend those individuals.<sup>123</sup> From 1990 to 1996, some fencing was built and reinforced, and more agents were assigned, along the southern border but it had little impact on the number of individuals who crossed over in total.<sup>124</sup> In 1997 and 1999, secondary fencing was added with even more border agents and the numbers slowed slightly in those locations.<sup>125</sup> However, it ended up pushing people looking to cross further east.<sup>126</sup>

There are also many misconceptions about illegal immigration. Specifically, even though fencing and the number of agents increased, and the number of unauthorized immigrants entering into the United States from the southern border decreased, the number of overall immigrants (who entered legally and then stayed illegally) increased.<sup>127</sup> People who come to the United States temporarily as tourists, for business, or as students come with a visa.<sup>128</sup> As of 2012, 58% of all new unauthorized immigrants were a result of individuals who overstayed their visas.<sup>129</sup>

Since the barrier is not believed to be effective by some, many argue the cost is far too high for such an inviable solution. In 2006, Congress allocated \$1.2 billion for 700 miles of fencing; however, it ended up spending \$3.5 billion in construction costs.<sup>130</sup> The Border Patrol estimated the upkeep and maintenance costs on this fencing would be \$325 million per year for twenty years.<sup>131</sup> By 2015, Congress had already spent a total of \$7 billion on the border

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

wall project.<sup>132</sup> The Trump administration is looking to build a thirty foot wall, with a ten foot tunnel barrier, for the full 1,000 miles.<sup>133</sup> This would cost a total of \$31.2 million per mile according to the Massachusetts Institute of Technology engineers.<sup>134</sup> Others, such as an internal Department of Homeland Security report from 2017, state the construction would cost \$21.6 billion for fencing for 1,250 miles of the border.<sup>135</sup> Both of these estimates cover only the up-front construction costs of the barrier and not the necessary ongoing maintenance that would be needed through the years.<sup>136</sup>

As stated in the January 25, 2017 Executive Order, a comprehensive analysis needs to be conducted regarding the construction of the border wall. However, as of July 2018, while CBP did evaluate different barrier design prototypes for the southern border, CBP did not analyze the costs of putting these physical barriers in each of the potential locations.<sup>137</sup> These costs can vary depending on the type of land building is to occur on, who owns that specific land, as well as other factors.<sup>138</sup> The U.S. Government Accountability Office (GAO) recommends a further analysis of the costs to build these barriers needs to be conducted.<sup>139</sup> Thus, the GAO has concluded that while the CBP is evaluating potential designs and locations for this proposed wall, in doing so, it is missing key information.

Opponents of the wall also look at the actual number of immigrants who utilize health insurance. For example, in 2017, 57%

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Southwest Border Security: CBP Is Evaluating Design and Locations for Border Barriers but is Proceeding Without Key Information*, U.S. Government Accountability Office (Jul. 30, 2018), <https://www.gao.gov/products/GAO-18-614>.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

of immigrants had private health insurance and 30% of immigrants had public insurance.<sup>140</sup> Since the Affordable Care Act in 2014, health insurance coverage has improved for both United States born individuals and immigrants.<sup>141</sup> In fact, by 2017, the immigrant uninsured rate decreased from 32% to 20% (with the rate falling from 12% to 7% for the native born population).<sup>142</sup>

## VII. Conclusion

Millions of dollars have already been invested in border security since the 1990s when the undocumented immigration threat was believed to be coming from Mexico. Our immigration policy needs have vastly changed from 1990 to 2019.

From 2012, almost 60% of unauthorized immigrants resulted from individuals who overstayed their visas. Today, most immigrants are coming from countries like India and China, often with degrees and on student visas. These individuals are more than just undocumented; they are looking to better both their lives and the United States. Their skills and hard work contribute to the continuing growth of our country. Our immigration policies were founded in fear of keeping our country safe in the 1990s. Today, however, we need to revisit the issue and create a viable long-term solution, which starts with determining what exactly the issue is.

Having a wall in place may be symbolic and act as a deterrent, however over \$263 billion has already been spent on this endeavor with billions more being requested by the Trump administration. Walls require maintenance, but more importantly require agents on the other side to apprehend border crossers. Spending billions more on a wall, that is unlikely to be successful, is not only a waste of resources, but unlikely to come to fruition because of the various legal obstacles. We need to first establish what we believe the true issue is and, if it is undocumented

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<sup>140</sup> Zong, *supra*.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

immigrants coming to the country at extraordinarily high numbers, we need to understand where exactly these individuals are coming from, why they are coming, and how they are coming. Only then will we be able to create a productive, long term solution. The first step is determining what the true issue is. This will lead the way to understanding whether the country's fears and concerns are well-founded or rather just the result of fear mongering.