

No. 19-51144

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

EL PASO COUNTY, TEXAS; BORDER NETWORK FOR HUMAN RIGHTS,

Plaintiffs-Appellees Cross-Appellants,

v.

DONALD J. TRUMP, President of the United States
in his official capacity, *et al.*,

Defendants-Appellants Cross-Appellees.

On Appeal from the United States District Court
for the Southern District of Texas
No. 3:19-CV-66
The Honorable David Briones

**BRIEF OF FORMER U.S. GOVERNMENT OFFICIALS AS
AMICI CURIAE IN SUPPORT OF
PLAINTIFFS-APPELLEES CROSS-APPELLANTS**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae, listed in the Appendix to this brief, are former U.S. government officials who worked on national security and homeland security issues. They served in senior leadership roles in administrations of both major political parties, and they held the highest security clearances, and participated in the highest levels of policy deliberations on a broad range of policy areas, among them immigration, border security, counterterrorism, military operations, and our nation's relationship with other countries, including those south of the U.S. border. Collectively, they have devoted a great many decades to protecting the security interests of the United States. *Amici* respectfully submit this brief because, in their professional opinion, there is no factual basis for the declaration of a national emergency for the purpose of circumventing the appropriations process and reprogramming billions of dollars in funding to construct a wall at the southern border.

ARGUMENT

On February 15, 2019, the President declared a “national emergency” for the purpose of diverting appropriated funds from previously designated uses to build a wall along the southern border. *Amici* are aware of no emergency that remotely justifies such a step. The President's actions are at odds with the overwhelming evidence in the public record, including the current administration's own data and estimates. *Amici* have lived and worked through national emergencies and support

¹ *Amici* affirm that no counsel for any party authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting the brief; and no person, other than *amici*, their members, and counsel, contributed money that was intended to fund preparing or submitting this brief. The views expressed by Yale Law School's legal clinics are not necessarily those of the school. Plaintiffs-Appellees consent to the filing of a brief. Defendants-Appellants consent to a timely amicus brief that complies with the rules.

the President's power to mobilize the Executive Branch to respond quickly to genuine national emergencies. But under no plausible assessment of the evidence is there such an emergency today, let alone one that would entitle the President to tap into funds appropriated for other purposes to build a wall at the southern border, which will take many years to complete.

I. Illegal border crossings have been at near historic lows.

According to the administration's own data, the numbers of apprehensions at the southern border through the end of fiscal year 2018 were near forty-year lows.² There was a modest increase in apprehensions in 2018 over previous years, but the total in 2018 was in line with the number of apprehensions only two years earlier,³ and the overall trend continued to exhibit a dramatic decline over the last 15 years in particular. The number of undetected unlawful entries at the southern border also fell from over 1,000,000 to below 57,000 between fiscal years 2006 to 2017, the most recent year for which data is publicly available.⁴ The United States hosts what is estimated to be the smallest number of undocumented immigrants since

² U.S. Border Patrol, Southwest Border Sectors, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-apps-fy1960-fy2018.pdf>.

³ *Id.* (noting 396,579 southwest border apprehensions during FY 2018, 408,870 during FY 2016, and 479,371 in FY 2014); *see also* U.S. Customs and Border Protection, Total Illegal Alien Apprehensions by Month, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-apps-sector-area-fy2018.pdf> (466,623 southwest border apprehensions during CY 2018, 442,940 during CY 2016, and 458,745 during CY 2014).

⁴ U.S. Dep't of Homeland Security, Dep't of Homeland Security Border Security Metrics Report 14 (Feb. 26, 2019), https://www.dhs.gov/sites/default/files/publications/ndaa_border_metrics_report_fy_2018_0_0.pdf.

2004.⁵ And, in recent years, the majority of currently undocumented immigrants entered the United States legally, but overstayed their visas,⁶ a problem that will not be addressed by the declaration of an emergency along the southern border.

II. The recent increase in crossings did not present a national emergency.

For a period of several months in the middle of 2019, there was a sharp rise in the number of individuals apprehended at the southern border relative to previous years. This surge was due to an increase in the number of families and unaccompanied children turning themselves in to border officials for asylum—family units and unaccompanied children comprised 67% of apprehensions at the southern border in July 2019, compared to 11% in July 2012.⁷ Further, many asylum seekers were forced to seek asylum *between* ports of entry, where they were counted as apprehensions, because this administration placed a strict cap on asylum entrants *at* ports of entry. These events placed a strain on the capacity of our border system, which is equipped to address individuals who are covertly crossing the border for work, rather than families and children openly seeking asylum. While these changes may require an investment of resources, the

⁵ Jeffrey S. Passel & D’Vera Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, Pew Res. Ctr. (Nov. 27, 2018).

⁶ Richard Gonzales, *For 7th Consecutive Year, Visa Overstays Exceeded Illegal Border Crossings*, NPR (Jan. 16, 2019, 7:02 PM) (noting “that from 2016-2017, people who overstayed their visas accounted for 62 percent of the newly undocumented, while 38 percent had crossed a border illegally”).

⁷ U.S. Customs and Border Protection, *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016*, <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016> (last visited Feb. 13, 2020); U.S. Customs and Border Protection, *Southwest Border Migration FY 2019*, <https://www.cbp.gov/newsroom/stats/sw-border-migration> (last visited Feb. 13, 2020).

administration does not and cannot explain how they present a national security emergency, let alone one that would be solved with a border wall.

III. There is no evidence of a terrorist or national security emergency at the southern border.

There is no reason to believe there is a terrorist or national security emergency at the southern border, let alone one that could justify the President's proclamation. The current administration's own Country Reports on Terrorism explained that "there was no credible evidence indicating that international terrorist groups have established bases in Mexico, worked with Mexican drug cartels, or sent operatives via Mexico into the United States."⁸ Since 1975, there has been only one reported incident in which immigrants who had crossed the southern border illegally attempted to commit a terrorist act. That incident occurred more than 12 years ago, and involved three brothers from Macedonia who had been brought into the United States as children more than 20 years earlier.⁹

Although the White House has claimed, as an argument favoring a wall at the southern border, that almost 4,000 known or suspected terrorists were intercepted at the southern border in a single year,¹⁰ this assertion has since been widely and consistently repudiated, including by this administration's own

⁸ U.S. Dep't of State, Country Reports on Terrorism 2017, at 205 (Sept. 2018).

⁹ See Alex Nowrasteh, *Trump's Wall Will Not Stop Terrorism*, Cato Inst. (Dec. 18, 2018).

¹⁰ See *Congressional Border Security Briefing: A Border Security and Humanitarian Crisis*, White House (Jan. 4, 2019); Holly Rosenkrantz, *Sanders Repeats Claim on Terrorists at the Border Refuted by Administration's Own Data*, CBS News (Jan. 7, 2019). Vice President Mike Pence made similar statements during his appearance on ABC the next week. See Betsy Klein, *Pence Misleadingly Cites Some Statistics to Push Trump Border Wall*, CNN (Jan. 8, 2019).

Department of Homeland Security.¹¹ The overwhelming majority of individuals on terrorism watchlists who were intercepted by U.S. Customs and Border Patrol were attempting to travel to the United States by air¹²—of the individuals on the terrorist watchlist who were encountered while entering the United States during fiscal year 2017, only 13% traveled by land.¹³ And for those who have attempted to enter by land, only a small fraction do so at the southern border—between October 2017 and March 2018, 41 foreign immigrants on the terrorist watchlist were intercepted at the *northern* border,¹⁴ and only *six* such immigrants were intercepted at the southern border.¹⁵

IV. There is no emergency related to violent crime at the southern border.

Nor can the administration justify its actions on the grounds that the incidence of violent crime on the southern border constitutes a national emergency. The data consistently shows that unauthorized immigrants have no special proclivity to engage in criminal or violent behavior. According to a Cato Institute analysis of criminological data, undocumented immigrants are 49% *less likely* to

¹¹ See U.S. Dep't of Homeland Security, *Myth/Fact: Known and Suspected Terrorists/Special Interest Aliens* (Jan. 7, 2019); see also, e.g., Brett Samuels, *Conway: Sarah Sanders Made 'Unfortunate Misstatement' About Terror Suspects at Border*, *The Hill* (Jan. 8, 2019).

¹² See U.S. Dep't of Homeland Security, *supra* note 11.

¹³ See Press Release, Dep't of Homeland Security, DOJ, DHS Report: Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related Offenses were Foreign-Born (Jan. 16, 2018).

¹⁴ See Julia Ainsley, *Only Six Immigrants in Terrorism Database Stopped by CBP at Southern Border from October to March*, *NBC News* (Jan. 7, 2019).

¹⁵ The Government does not claim in its papers that COVID-19 motivated or can now somehow justify the reprogramming of funds to build a wall at the border.

be incarcerated nationwide than are native-born citizens.¹⁶ And a recent longitudinal study that examined the period between 1990 and 2014 found a “generally negative” relationship between the presence of undocumented immigrants and violent crime.¹⁷ In Texas, the state with the best data availability, undocumented immigrants were found to have a first-time conviction rate 32% below that of native-born Americans,¹⁸ and the conviction rates of unauthorized immigrants for violent crimes such as homicide and sex offenses were also lower than those of native-born Americans.¹⁹ Meanwhile, overall rates of violent crime in the United States have declined significantly over the past 25 years, falling 49% from 1993 to 2017.²⁰ And violent crime rates in the country’s 30 largest cities decreased on average by 2.7% in 2018 alone.²¹

V. There is no drug or human trafficking emergency that can be addressed by a wall at the southern border.

The overwhelming majority of opioids that enter the United States across a land border are carried through legal ports of entry in personal or commercial vehicles, not smuggled through unauthorized border crossings.²² A border wall

¹⁶ Michelangelo Landgrave & Alex Nowrasteh, *Criminal Immigrants: Their Numbers, Demographics, and Countries of Origin*, Cato Inst. (Mar. 15, 2017).

¹⁷ Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent Crime?*, 56 *Criminology* 370 (2018).

¹⁸ Michaelangelo Landgrave & Alex Nowrasteh, *Criminal Immigrants in 2017: Their Numbers, Demographics, and Countries of Origin*, Cato Inst. (Mar. 4, 2019).

¹⁹ Alex Nowrasteh, *Criminal Immigrants in Texas: Illegal Immigrant Conviction and Arrest Rates for Homicide, Sex Crimes, Larceny, and Other Crimes*, Cato Inst. (Feb. 26, 2018).

²⁰ John Gramlich, *5 Facts About Crime in the U.S.*, Pew Res. Ctr. (Jan. 3, 2019)

²¹ Ames Grawert & Cameron Kimble, *Crime in 2018: Updated Analysis*, Brennan Ctr. for Justice (Dec. 18, 2018).

²² *2018 National Drug Threat Assessment*, U.S. Dep’t of Justice Drug Enforcement Admin. (2018). Ninety percent of heroin seizures at U.S. borders and more than

would not stop these drugs from entering the United States. Nor would a wall stop drugs from entering via other routes, including smuggling tunnels (which circumvent physical barriers such as fences and walls)²³ and international mail (which is how high-purity fentanyl, for example, is usually shipped from China directly to the United States).²⁴ Likewise, illegal crossings at the southern border are not the principal source of human trafficking victims. About two-thirds of the human trafficking victims served by nonprofit organizations that receive funding from the Department of Justice Office for Victims of Crime are U.S. citizens, and even among non-citizens, most trafficking victims usually arrive in the country on valid visas.²⁵ None of these instances of trafficking could be addressed by a border wall. The three states with the highest per capita trafficking reporting rates are not even located along the southern border.²⁶

At the same time, very real and disturbing humanitarian concerns at the border have resulted from the current administration's own deliberate policies towards migrants. As only one example, the administration has used a "metering" policy to turn away the families fleeing extreme violence and persecution in their home countries, forcing them to wait indefinitely at the border to present their asylum cases. This measure, in concert with a series of other punitive steps

85% of cocaine and methamphetamine seizures occur at ports of entry, where drugs can be smuggled in personal vehicles or hidden among legal commercial goods in tractor trailers. Joe Ward & Anjali Singhvi, *Trump Claims There Is a Crisis at the Border. What's the Reality?*, N.Y. Times (Jan. 11, 2019).

²³ See Gustavo Solis, *Drug Smuggling, and the Endless Battle To Stop It*, USA Today (last visited Feb. 16, 2020).

²⁴ 2018 National Drug Threat Assessment, *supra* note 22, at 33.

²⁵ Jenna Krajeski, *The Hypocrisy of Trump's Anti-Trafficking Argument for a Border Wall*, New Yorker (Feb. 5, 2019).

²⁶ Holly Yan, *The Deadly Toll of Human Smuggling and Trafficking in the U.S.*, CNN (July 28, 2017).

restricting asylum at the southern border,²⁷ has forced asylum-seekers to live on the streets or in makeshift shelters and tent cities with abysmal and dangerous living conditions throughout Mexico, with limited access to basic sanitation, pervasive violence, outbreaks of disease, and death.²⁸ The choices this administration has made have fueled rather than allayed a humanitarian crisis—and erecting a wall will do nothing to ease the suffering of these people.

²⁷ Dara Lind, *The US has made migrants at the border wait months to apply for asylum. Now the dam is breaking*, Vox, Nov. 28, 2018.

²⁸ Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy*, October 2019.

VI. Redirecting funds will undermine U.S. national security and foreign policy interests.

In the face of a nonexistent threat, redirecting funds for the construction of a wall along the southern border will degrade our national security and foreign policy interests.

a. Repurposing funds from the defense construction budget will drain money from critical defense infrastructure projects, including the construction and needed repair of training facilities, air traffic control centers, and on-base housing.²⁹

b. The proclamation will divert resources away from other military priorities in a manner that is likely to degrade troop readiness and effectiveness.³⁰ In a March 2019 memorandum, General Robert Neller, the Commandant of the Marine Corps, warned that the “Marine Corps faces fiscal challenges without precedent” and that the transfer of troops and funding to the southern border was contributing to “unacceptable risk to Marine Corps combat readiness and solvency.” General Neller warned that these pressures would force the Marine Corps to cancel or scale back training exercises “at a time when we are attempting to double down on strengthening alliances and attracting new partners.” As “Marines rely on the hard, realistic training provided by these events . . . the experience lost by these units at a critical time in their preparation cannot be

²⁹ See, e.g., Aaron Gregg & Erica Werner, *Pentagon has warned of dire outcomes if military projects canceled for wall don't happen*, Wash. Post, Sept. 18, 2019.

³⁰ Leo Shane III, *Democrats Want To Know Why Active-Duty Troops Are Still on the Southern US Border*, Mil. Times (Jan. 29, 2019); Thomas Gibbons-Neff & Helene Cooper, *Impact of Border Deployments Is Felt by Troops at Home and Away*, N.Y. Times (Dec. 24, 2018); Ashley Roque, *Readiness Questions Abound, the Pentagon Prepares To Send Thousands of Additional Troops to Border*, Jane's Defence Wkly. (Jan. 29, 2019).

recouped.”³¹

c. The administration’s unilateral actions at the border are heightening tensions with our neighbors to the south, at a moment when we need their help to address a range of concerns in the Western Hemisphere. These actions are placing friendly governments under impossible pressure, and driving potential partners away. These actions have especially strained our diplomatic relationship with Mexico, an alliance that is vital to regional efforts ranging from critical intelligence and law enforcement partnerships to cooperative efforts to address the growing tensions with Venezuela. The proclamation also could well lead to the degradation of the natural environment in a manner that could only contribute to long-term socioeconomic and security challenges.

d. By declaring a national emergency for domestic political reasons with no compelling reason or justification from his senior intelligence and law enforcement officials, the President has further eroded his credibility with foreign leaders, both friend and foe. Should a genuine foreign crisis erupt, this lack of credibility will materially weaken this administration’s ability to marshal allies to support the United States, and will embolden adversaries to oppose us.

VII. The statements of government officials confirm that there is no basis for circumventing the appropriations process at the southern border.

In a briefing before the Senate Intelligence Committee on January 29, 2019, less than one month before the Presidential Proclamation, the Directors of the CIA, DNI, FBI, and NSA testified about numerous, serious current threats to U.S.

³¹ Memorandum from Gen. Robert Neller, Commandant, U.S. Marine Corps, to Richard V. Spencer, Sec’y, U.S. Navy (Mar. 18, 2019), <https://www.latimes.com/nation/politics/la-marine-corps-commandant-memos-20190321-story.html>.

national security, but none of the officials identified a security crisis at the U.S.-Mexico border.³² When asked about the Presidential Proclamation, senior military officials struggled to explain why the situation at the southern border constituted a military or national emergency.³³ When asked what the military is doing at the border that couldn't be done by the Department of Homeland Security if it had the funding, a top-level defense official responded, "None of the capabilities that we are providing [at the southern border with Mexico] are combat capabilities. It's not a war zone along the border."³⁴ Legislators with access to classified information³⁵ and the President's own statements³⁶ have strongly suggested, if not confirmed, that there is no evidence supporting the administration's claims of an emergency. And it is reported that the President made the decision to circumvent the appropriations process and reprogram money without the Acting Secretary of Defense having even begun to consider where the funds might come from.³⁷

These concessions undercut Appellants' claim of an emergency, and

³² See Shane Harris, *Testimony by intelligence chiefs on global threats highlights differences with president*, Wash. Post (Jan. 29, 2019).

³³ See Heather Timmons, *The US Border Situation Isn't a National Emergency, Pentagon Officials Tell Congress*, Quartz (Jan. 29, 2019), <https://qz.com/1536879/trump-border-wall-isnt-an-emergency-pentagon-tells-congress/>

³⁴ *Id.*

³⁵ See, e.g., Press Release, Sen. Lamar Alexander, Statement on National Emergency Announcement (Feb. 15, 2019); Press Release, Sen. Susan Collins, Statement on Reports President Trump Will Declare National Emergency To Fund More Border Walls (Feb. 14, 2019); Press Release, Sen. Mitt Romney, Statement on Spending, Border Security Deal (Feb. 14, 2019).

³⁶ *Remarks by President Trump on the National Security and Humanitarian Crisis on our Southern Border*, White House (Feb. 15, 2019) ("I didn't need to do this. But I'd rather do it much faster.").

³⁷ Noah Gray, *Acting U.S. Defense Secretary Will Review Programs To Cut for Wall Funding*, CNN (Feb. 17, 2019).

suggests an absence of consultation and internal deliberations that in *Amici*'s experience are necessary and expected before taking a decision of this magnitude. *Amici* do not deny that our nation faces real immigration and national security challenges. But these challenges demand a thoughtful, evidence-based strategy, not a manufactured crisis that rests on falsehoods, fearmongering, and the President's desire to fulfill a campaign promise.

CONCLUSION

For the foregoing reasons, *Amici* respectfully submit that there is no factual basis for the declaration of a national emergency for the purpose of circumventing the appropriations process and reprogramming billions of dollars in funding to construct a wall at the southern border.

Dated: April 3, 2020

Respectfully submitted,

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APPENDIX - List of *Amici Curiae*

1. Madeleine K. Albright served as Secretary of State from 1997 to 2001. A refugee and naturalized American citizen, she served as U.S. Permanent Representative to the United Nations from 1993 to 1997.

2. Jeremy B. Bash served as Chief of Staff of the U.S. Department of Defense from 2011 to 2013, and as Chief of Staff of the Central Intelligence Agency from 2009 to 2011.

3. John B. Bellinger III served as the Legal Adviser to the U.S. Department of State from 2005 to 2009. He previously served as Senior Associate Counsel to the President and Legal Adviser to the National Security Council from 2001 to 2005.

4. Daniel Benjamin served as Ambassador-at-Large for Counterterrorism at the U.S. Department of State from 2009 to 2012.

5. Antony Blinken served as Deputy Secretary of State from 2015 to 2017. He previously served as Deputy National Security Advisor to the President from 2013 to 2015.

6. John O. Brennan served as Director of the Central Intelligence Agency from 2013 to 2017. He previously served as Deputy National Security Advisor for Homeland Security and Counterterrorism and Assistant to the President from 2009 to 2013.

7. R. Nicholas Burns served as Under Secretary of State for Political Affairs from 2005 to 2008. He previously served as U.S. Ambassador to NATO and as U.S. Ambassador to Greece.

8. William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, as U.S. Ambassador to Russia from 2005 to 2008, as Assistant Secretary of State for Near Eastern Affairs from 2001 to 2005, and as U.S. Ambassador to Jordan from 1998 to 2001.

9. Johnnie Carson served as Assistant Secretary of State for African Affairs from 2009 to 2013. He previously served as the U.S. Ambassador to Kenya from 1999 to 2003, to Zimbabwe from 1995 to 1997, and to Uganda from 1991 to 1994.

10. James Clapper served as U.S. Director of National Intelligence from 2010 to 2017.

11. David S. Cohen served as Under Secretary of the Treasury for Terrorism and Financial Intelligence from 2011 to 2015 and as Deputy Director of the Central Intelligence Agency from 2015 to 2017.

12. Bathsheba N. Crocker served as Assistant Secretary of State for International Organization Affairs from 2014 to 2017.

13. Ryan Crocker served as U.S. Ambassador to Afghanistan from 2011 to 2012, as U.S. Ambassador to Iraq from 2007 to 2009, as U.S. Ambassador to Pakistan from 2004 to 2007, as U.S. Ambassador to Syria from 1998 to 2001, as U.S. Ambassador to Kuwait from 1994 to 1997, and U.S. Ambassador to Lebanon from 1990 to 1993.

14. Jen Easterly served as Special Assistant to the President and Senior Director for Counterterrorism from 2013 to 2016.

15. Nancy Ely-Raphel served as Senior Adviser to the Secretary of State and Director of the Office to Monitor and Combat Trafficking in Persons from 2001 to 2003. She previously served as the U.S. Ambassador to Slovenia from 1998 to 2001.

16. Daniel P. Erikson served as Special Advisor for Western Hemisphere Affairs to the Vice President from 2015 to 2017, and as Senior Advisor for Western Hemisphere Affairs at the U.S. Department of State from 2010 to 2015.

17. John D. Feeley served as U.S. Ambassador to Panama from 2015 to 2018. He served as Principal Deputy Assistant Secretary for Western Hemisphere Affairs at the U.S. Department of State from 2012 to 2015.

18. Daniel F. Feldman served as Special Representative for Afghanistan and Pakistan at the U.S. Department of State from 2014 to 2015.

19. Jonathan Finer served as Chief of Staff to the Secretary of State from 2015 to 2017, and Director of the Policy Planning Staff at the U.S. Department of State from 2016 to 2017.

20. Jendayi Frazer served as Assistant Secretary of State for African Affairs from 2005 to 2009. She served as U.S. Ambassador to South Africa from 2004 to 2005.

21. Suzy George served as Executive Secretary and Chief of Staff of the National Security Council from 2014 to 2017.

22. Phil Gordon served as Special Assistant to the President and White House Coordinator for the Middle East, North Africa and the Gulf from 2013 to 2015, and Assistant Secretary of State for European and Eurasian Affairs from 2009 to 2013.

23. Chuck Hagel served as Secretary of Defense from 2013 to 2015, and previously served as Co-Chair of the President's Intelligence Advisory Board. From 1997 to 2009, he served as U.S. Senator for Nebraska, and as a senior member of the Senate Foreign Relations and Intelligence Committees.

24. Avril D. Haines served as Deputy National Security Advisor to the President from 2015 to 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency.

25. Luke Hartig served as Senior Director for Counterterrorism at the National Security Council from 2014 to 2016.

26. General (ret.) Michael V. Hayden, USAF, served as Director of the Central Intelligence Agency from 2006 to 2009. From 1995 to 2005, he served as Director of the National Security Agency.

27. Kathleen H. Hicks served as Principal Deputy Under Secretary of Defense for Policy from 2012 to 2013, and as Deputy Under Secretary of Defense

for Strategy, Plans, and Forces from 2009 to 2012.

28. Heather A. Higginbottom served as Deputy Secretary of State for Management and Resources from 2013 to 2017.

29. Christopher R. Hill served as Assistant Secretary of State for East Asian and Pacific Affairs from 2005 to 2009. He also served as U.S. Ambassador to Macedonia, Poland, the Republic of Korea, and Iraq.

30. Roberta Jacobson served as U.S. Ambassador to Mexico from 2016 to 2018. She previously served as Assistant Secretary of State for Western Hemisphere Affairs from 2011 to 2016.

31. Gil Kerlikowske served as Commissioner of Customs and Border Protection from 2014 to 2017. He previously served as Director of the Office of National Drug Control Policy from 2009 to 2014.

32. John F. Kerry served as Secretary of State from 2013 to 2017.

33. Prem Kumar served as Senior Director for the Middle East and North Africa at the National Security Council from 2013 to 2015.

34. John E. McLaughlin served as Deputy Director of the Central Intelligence Agency from 2000 to 2004 and as Acting Director in 2004. His duties included briefing President-elect Bill Clinton and President George W. Bush.

35. Lisa O. Monaco served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor from 2013 to 2017. Previously, she served as Assistant Attorney General for National Security from 2011 to 2013.

36. Janet Napolitano served as Secretary of Homeland Security from 2009 to 2013. She served as the Governor of Arizona from 2003 to 2009.

37. James D. Nealon served as Assistant Secretary for International Engagement at the U.S. Department of Homeland Security from 2017 to 2018. He served as U.S. Ambassador to Honduras from 2014 to 2017.

38. James C. O'Brien served as Special Presidential Envoy for Hostage

Affairs from 2015 to 2017. He served in the U.S. Department of State from 1989 to 2001, including as Principal Deputy Director of Policy Planning and as Special Presidential Envoy for the Balkans.

39. Matthew G. Olsen served as Director of the National Counterterrorism Center from 2011 to 2014.

40. Leon E. Panetta served as Secretary of Defense from 2011 to 2013. From 2009 to 2011, he served as Director of the Central Intelligence Agency.

41. Anne W. Patterson served as Assistant Secretary of State for Near Eastern Affairs from 2013 to 2017. Previously, she served as the U.S. Ambassador to Egypt from 2011 to 2013, to Pakistan from 2007 to 2010, to Colombia from 2000 to 2003, and to El Salvador from 1997 to 2000.

42. Thomas R. Pickering served as Under Secretary of State for Political Affairs from 1997 to 2000. He previously served as Ambassador to El Salvador from 1983 to 1985, and as U.S. Permanent Representative to the United Nations from 1989 to 1992.

43. Amy Pope served as Deputy Homeland Security Advisor and Deputy Assistant to the President from 2015 to 2017.

44. Samantha J. Power served as U.S. Permanent Representative to the United Nations from 2013 to 2017. From 2009 to 2013, she served as Senior Director for Multilateral and Human Rights at the National Security Council.

45. Jeffrey Prescott served as Deputy National Security Advisor to the Vice President from 2013 to 2015, and as Special Assistant to the President and Senior Director for Iran, Iraq, Syria and the Gulf States from 2015 to 2017.

46. Nicholas Rasmussen served as Director of the National Counterterrorism Center from 2014 to 2017.

47. Alan Charles Raul served as Vice Chairman of the Privacy and Civil Liberties Oversight Board from 2006 to 2008. He previously served as General Counsel of the U.S. Department of Agriculture from 1989 to 1993, General

Counsel of the Office of Management and Budget in the Executive Office of the President from 1988 to 1989, and Associate Counsel to the President from 1986 to 1989.

48. Dan Restrepo served as Special Assistant to the President and Senior Director for Western Hemisphere Affairs at the National Security Council from 2009 to 2012.

49. Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor to the President from 2013 to 2017.

50. Anne C. Richard served as Assistant Secretary of State for Population, Refugees, and Migration from 2012 to 2017.

51. Eric P. Schwartz served as Assistant Secretary of State for Population, Refugees, and Migration from 2009 to 2011. From 1993 to 2001, he was responsible for refugee and humanitarian issues at the National Security Council, ultimately serving as Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs.

52. Andrew J. Shapiro served as Assistant Secretary of State for Political-Military Affairs from 2009 to 2013.

53. Wendy R. Sherman served as Under Secretary of State for Political Affairs from 2011 to 2015.

54. Vikram J. Singh served as Deputy Special Representative for Afghanistan and Pakistan from 2010 to 2011 and as Deputy Assistant Secretary of Defense for Southeast Asia from 2012 to 2014.

55. Dana Shell Smith served as U.S. Ambassador to Qatar from 2014 to 2017. Previously, she served as Principal Deputy Assistant Secretary of Public Affairs.

56. Jeffrey H. Smith served as General Counsel of the Central Intelligence Agency from 1995 to 1996. He previously served as General Counsel of the Senate Armed Services Committee.

57. Jake Sullivan served as National Security Advisor to the Vice President from 2013 to 2014. He previously served as Director of Policy Planning at the U.S. Department of State from 2011 to 2013.

58. Strobe Talbott served as Deputy Secretary of State from 1994 to 2001.

59. Linda Thomas-Greenfield served as Assistant Secretary for the Bureau of African Affairs from 2013 to 2017. She previously served as U.S. Ambassador to Liberia and Deputy Assistant Secretary for the Bureau of Population, Refugees, and Migration from 2004 to 2006.

60. Arturo A. Valenzuela served as Assistant Secretary of State for Western Hemisphere Affairs from 2009 to 2011. He previously served as Special Assistant to the President and Senior Director for Inter-American Affairs at the National Security Council from 1999 to 2000, and as Deputy Assistant Secretary of State for Mexican Affairs from 1994 to 1996.

CERTIFICATE OF COMPLIANCE

As required by Federal Rule of Appellate Procedure 27(d)(1)(E), this brief complies with the length limit designated by Fed. R. App. P. 32(a)(7)(B) and 29(a)(5), because this brief contains 3,222 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) & (a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman font.

Dated: April 3, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that I am a registered CM/ECF user and service for all participants in the case that are registered CM/ECF users will be accomplished by the appellate CM/ECF system. Service for all non-registered participants will be accomplished by U.S. mail.

Dated: April 3, 2020

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