

Written Testimony of Seth M.M. Stodder
United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on National Security
Hearing on “The Border Wall: Strengthening Our National Security”
April 27, 2017

Chairman DeSantis, Ranking Member Lynch, and distinguished members of the Subcommittee: Thank you for inviting me to testify today at this important hearing focused on “The Border Wall: Strengthening Our National Security.” It is an honor to appear before the Subcommittee, and present my views on the Trump Administration’s proposed Wall across the U.S.-Mexico border.

I know these issues firsthand. Over the last 15 years since the 9/11 attacks, I have served in senior homeland security and law enforcement positions in both the George W. Bush and Barack Obama Administrations. In the Bush Administration, I served as Director of Policy and Planning for what became U.S. Customs and Border Protection (CBP), as well as Counselor/Senior Policy Advisor to CBP Commissioner Robert C. Bonner, for the three years immediately following the 9/11 attacks. More recently, in the Obama Administration, I served as Assistant Secretary of Homeland Security for Border, Immigration & Trade Policy, and previously as Assistant Secretary of Homeland Security for Threat Prevention & Security Policy. In those roles, I led the teams responsible for advising Secretary Jeh Johnson, as well as DHS and Component leadership, on border security, immigration, and trade policy. I also oversaw the U.S. Visa Waiver Program, as well as national security vetting and screening policy, and all DHS engagements with the countries of the Western Hemisphere, among other things.

In these roles – spanning administrations of both political parties -- I have seen and, indeed, helped lead an extraordinary transformation of not only our border, but also in our deep, cooperative relationship with Mexico. In those 15 years, working in concert with Mexico, we have greatly improved our border security against the most pressing threats to public safety, including terrorism and transnational organized crime, and we have established far greater operational control over illegal migration our Southwest Border than in any time over the last four decades – with Border Patrol yearly apprehension totals at historic lows.

In my view, President Trump’s proposal to build a “Wall” across the U.S.-Mexico border is deeply misguided. If constructed, the Wall will quickly be recognized as a wildly expensive mistake that not only will constitute a massive waste of taxpayer dollars, but also – for the reasons discussed below – one that will undermine our current efforts to secure the American people from threats beyond our borders. Far from making us more safe, the effort to build a “Wall” will only make the job of securing our borders more challenging – while diverting precious taxpayer resources away from more pressing border security and enforcement needs.

The proposed Wall essentially addresses the wrong problem – the rapidly diminishing issue of illegal migration by economic migrants from Mexico across our border in the rural areas between our Ports of Entry – and fails to address any of the actual and pressing challenges we are currently facing at our

border. Specifically, the Wall will not help us with any of the four most important challenges we currently face:

- First, the Wall will not make us more secure against terrorism – in fact, potentially less so, given that the effort to build a Wall may undermine our close cooperative security relationship with Mexico, one of our most essential partners in keeping known or suspected terrorists out of the Western Hemisphere.
- Second, the Wall will not stem the flow of illegal drugs, given that most of the heroin/opioids, cocaine, and methamphetamine come into our country smuggled in the thousands of cars and trucks that enter our official Ports of Entry, such as El Paso or San Ysidro – and no one is proposing we build a Wall across Interstate 5 or block all trade and travel from Mexico. Additionally, some of the illegal drug flow comes in through tunnels and even, in some cases, by aircraft – neither of which would be stemmed by a Wall.
- Third, the Wall not help us interdict or build criminal cases against kingpins or operatives from major transnational gangs, such as the Sinaloa Cartel or the MS-13. Indeed, given that the effort to build a Wall may undermine our currently close cooperative law enforcement relationship with Mexico, the opposite may be true. If Mexico reduces its cooperation in retaliation for the Wall, it will be far more difficult for U.S. Immigration and Customs Enforcement (ICE) or the Drug Enforcement Administration (DEA) to successfully build cases against key figures, or locate them for arrest in Mexico. And, to the extent senior cartel leaders travel to the U.S. at all (and the senior leaders generally do not), they are more likely to enter, again, through our official Ports of Entry, such as El Paso or Los Angeles International Airport. Simply put, well-heeled drug kingpins do not simply wander across the Sonoran Desert or swim the Rio Grande to come to the United States.
- Fourth, the Wall will not help address the most pressing migration challenge we face – which stems from the crisis in Central America, whereby thousands of Guatemalan, El Salvadoran, and Honduran families (and unaccompanied children) have been fleeing violence, extreme poverty, and environmental crises, and coming to our border to seek asylum here. Most of the Central American migrants come to our Ports of Entry, or voluntarily turn themselves in to Border Patrol Agents between Ports of Entry, in order to claim asylum. Under U.S. and international law, we must allow those asylum claims to be heard – and a Wall will only channel those claimants to the Ports of Entry, it won't prevent them in the first place. Moreover, to the extent that Mexico withdraws cooperation on managing Central American migrant flows as retaliation for the Wall, it may result in thousands more heading to our border.

So, a Wall will not help us address any of the most pressing challenges we face at the border – and likely will make addressing them more difficult. Republican Representative Will Hurd from Texas put it well: “Building a wall is the most expensive and least effective way to secure the border.” I’m with Representative Hurd. By most estimates, building a Wall will cost somewhere between \$20-25 billion in

taxpayer dollars – and this massive expenditure will not even remotely help with any of the most pressing issues we are currently facing at the border. It will more likely divert resources from measures that will. In thinking about the proposed Wall, the late Senator William Proxmire’s “Golden Fleece Award” for wasteful federal expenditures comes to mind.

The only conceivable justification for building a Wall is to address what, over the last two decades, has in reality become a dwindling problem – illegal Mexican migration across the border between the Ports of Entry. While, of course, illegal Mexican migration still occurs, the reality is that Border Patrol apprehensions of Mexicans between the Ports of Entry are at historic lows.

Indeed, despite the political rhetoric, the reality is that the U.S.-Mexico border is more secure now than it has been in decades, and far fewer Mexicans are trying to cross. U.S. taxpayer dollars – especially in the extraordinary amounts being considered – should not be thrown wastefully and indiscriminately at solving a problem that, in reality, has for the most part already been solved. What we face now is not the same challenge we faced in the 1990s or early 2000s when, for instance, Mexican migrants were coming in the millions and the double-layer fence was constructed in San Diego.

Indeed, in the 1990s, the border was out of control, with illegal entries mostly from Mexico approaching 2 million a year. But since then, we’ve dramatically strengthened enforcement and brought far greater control to our border. Since 9/11, we have nearly tripled the size of the Border Patrol, we have deployed sensors and aerial drones across the border, and have developed better ways to analyze data and smuggling patterns, which help direct Border Patrol resources to where they are needed. And, yes, we have constructed hundreds of miles of fence along the border – primarily in urban areas, where this fencing is most useful in securing local communities and in helping the Border Patrol catch illegal border crossers. These placements of tactical infrastructure at strategic places along the border, among other factors, have helped CBP gain far greater operational control over the border than ever before.

In addition, the Border Patrol and CBP have evolved their strategy for gaining control of the border – first, through such 1990s-era efforts as Operation Gatekeeper, and more recently under the Bush and Obama Administrations the change to delivering legal consequences to illegal border crossers. Since 2005, CBP has almost entirely stopped voluntarily returning Mexican illegal border crossers, and instead has utilized legal tools such as Expedited Removal, formal removal, referrals to the Department of Justice for criminal prosecution, and deportations into the interior of Mexico or to other parts of the border, so as to disrupt human smuggling operations. Moreover, in addition to CBP’s “Consequence Delivery System,” U.S. Immigration and Customs Enforcement (ICE) has also stepped up its targeting of human smuggling organizations and their financial facilitators.

These enforcement efforts by both CBP and ICE, as well as the prosecutors within the Department of Justice (DOJ), have been extraordinarily successful in bringing greater operational control to the border. It is now far harder to cross, and the economics of human smuggling demonstrate this: It now costs 12 times more in real dollars to hire a “coyote” than 15 years ago. And, most surveys of deported individuals in Mexico show that people, once deported, are not generally trying again – deterrence is a

reality. And, no doubt, the Trump Administration's efforts to strengthen this deterrent will have (and is already having) additional impact.

But this only tells part of the story. The more important part of the story is that Mexico is changing dramatically. Over the past two decades since the implementation of the North American Free Trade Act (NAFTA), Mexico has grown into the world's 11th largest economy. It is deeply integrated with ours through cross-border infrastructure, supply chains, and integrated bi-national manufacturing platforms, all facilitated by binational efforts to reduce barriers to commerce at the border – efforts that have spanned both the Bush and Obama Administrations, as well as Administrations of different political parties in Mexico. As a result, Mexico is now our third largest trading partner, and this dramatic expansion of binational trade has been extraordinarily good for the United States, creating huge wealth and large numbers of jobs here. But in addition, it has been good for Mexico and its economy, and the broader North American economy (including the U.S., Mexico, and Canada) is now the most competitive, dynamic regional economy in the world. As a result, there are now good jobs for Mexicans in Mexico – and thus, many more reasons for Mexicans to stay with their families in Mexico. This was certainly true during our economic crisis of 2008-09, but it remains true today.

And, there are fewer Mexicans around to take those jobs – as Mexico is an aging society, with the number of senior citizens in Mexico now more than double what it was in the 1990s. Arguably, the huge explosion of Mexican migration to the U.S. in the 1990s was demographically based, with many young people without opportunities in Mexico seeking them in the U.S. This situation is now very different, with fewer Mexicans now available to take larger pool of jobs available in Mexico.

What's the result of all this? According to the Pew Research Center, more Mexicans now leave the U.S. than head north, and border apprehensions of Mexicans are the lowest in decades – with overall border apprehensions now 75% less than at the high-water mark of 2000, when 1.6 million people were apprehended by the Border Patrol. Moreover, the undocumented population in the United States has been stable at 11-12 million for a decade, with some studies showing it is actually declining – as fewer Mexicans are coming, and more are leaving. Current estimates indicate that up to 75% of the current undocumented population has been here for 10 years or more – in other words, they came to the United States a long time ago.

Simply put, fewer people – in particular, Mexicans – are coming across our border illegally than in decades, and our border authorities are catching and removing most who try. The immigration and border security “crisis” that was imagined and debated during the recent presidential campaign simply does not exist, and is a relic of the past – an old leftover “talking point” from the 1990s that does not reflect current reality. Of course, some Mexicans do still try to cross, and some do get past CBP – but this is not a sign of systemic border enforcement failure any more than does the continuing occurrence of robberies necessarily indicate the systemic failure of an urban police force. The reality is we do not have a border security crisis involving illegal migration from Mexico; nor do we have an uncontrolled flood of people from Mexico coming to take our jobs. That talking point is a relic of the past, and billions of taxpayer dollars should not be thrown at an old talking point that no longer reflects today's reality.

This is not to say there aren't pressing challenges at our border, however – the threat of terrorism, the flow of illegal drugs, transnational organized crime, and the Central American migration crisis. But as noted above, the Wall will not actually address any of these actual challenges.

Indeed, the Central American migration challenge illustrates the point. Rather than the imagined fictional crisis involving Mexican immigrants streaming across our border to take our jobs, the actual migration crisis involves thousands of migrants from Central America's "Northern Triangle" – El Salvador, Guatemala, and Honduras – who are fleeing brutal gang violence, extreme poverty, malnutrition, or environmental and agricultural catastrophe, and who are seeking asylum protection here. Roughly half of these migrants are women and young children escaping desperate circumstances, facing the real possibility of death or rape if they stay. Others are fleeing extreme poverty in remote regions where education ends at the sixth grade and families are limited to one meal a day.

America obviously cannot solve all the economic problems of Central America, but under U.S. and international law, all migrants are afforded the opportunity to apply for asylum protection if they make it to U.S. soil. If U.S. immigration officials make an initial determination that the migrants have a "credible fear" of harm back home, they are referred to U.S. immigration courts for a full hearing on their asylum claim. Unaccompanied children who reach the U.S. are quickly either placed in foster care or with U.S.-based relatives while their asylum claims are heard in court. Given the dangerous conditions in Central America, nearly half these asylum claims ultimately succeed in the immigration courts.

Far from evading authorities, most of these migrants from Central America want to be caught by the Border Patrol, so they can claim asylum. This is very different from the immigration crisis that President Trump seems to imagine, where undocumented Mexicans cross the border and go into hiding. As I stated earlier, this does of course happen, but fewer Mexicans are doing this than at any time in the last few decades. We do not have a border security crisis involving an uncontrolled flood of Mexicans trying to cross into the United States.

Instead, what we have is a humanitarian crisis involving kids and families fleeing violence, extreme poverty, and environmental crisis in Central America. And this humanitarian crisis is leading to a crisis of our immigration system, which is now bursting at the seams from processing this influx of people from Central America (as well as some people from other areas, such as Haiti and Cuba). Currently, there is a 500,000-case backlog in the immigration courts – with many cases pending for five years or more. This backlog ripples its way through the system because we can't send people back who have pending asylum claims, as that would violate U.S. and international law and endanger asylum seekers with legitimate fears of harm. Additionally, under relevant legal precedents, basic kindness, and ordinary common sense, we can't and shouldn't incarcerate these asylum seekers during these lengthy delays that often last many years.

So our immigration system has broken down. And the human smugglers in Central America know this, and they tell migrants if they get to the border, all they need to do is make a minimally credible claim for

asylum and they'll be allowed to stay for the many years it takes to fairly resolve it in court. The smugglers aren't wrong.

Spending billions of taxpayer dollars to build a "Wall" isn't going to solve this most pressing problem. Under U.S. and international law, migrants are entitled to have credible asylum claims heard, either by U.S. Citizenship and Immigration Service's (USCIS) asylum office or by U.S. immigration courts. Simply put, we cannot just bounce kids and families seeking humanitarian protection off a wall, and leave them to their fate on the other side. Not only would this be immoral – leaving kids and families to be harmed by the very people they are seeking to escape – it would be illegal: U.S. and international law mandate that we afford all seeking entry an ability to claim asylum if they have a credible fear of harm in their home country.

Moreover, as a practical matter, even if we were to spend billions of taxpayer dollars to build a Wall along the border, such a Wall wouldn't block these migrants seeking asylum because most now seek entry through our official Ports of Entry along the U.S.-Mexico border, such as San Ysidro, Laredo, or El Paso. You can't just build a wall across Interstate 5 at the border between San Diego and Tijuana – the busiest border crossing in the world. Nor can you build a wall across the Bridge of the Americas between El Paso and Juarez, or cut Laredo off from Nuevo Laredo – unless one wanted to completely cut the United States off from Mexico, our third largest trading partner. This is obviously not a realistic option, and it would be suicidal to the U.S. economy – let alone a draconian act, cutting the close family ties between Americans and Mexicans.

So, whether there's a Wall or not, Central American – and other – asylum seekers will still come, and given the ongoing humanitarian crisis in Central America, they will still be coming in large numbers. And the Wall won't stop it.

Nor will a Wall stop the flow of illegal drugs from Mexico. This is for the simple reason that the vast majority of the heroin, fentanyl, cocaine, and methamphetamine is smuggled through the official Ports of Entry – within the millions of privately owned vehicles (POVs) or commercial trucks that enter the U.S. from Mexico every year – or through the many tunnels that have been constructed by the Sinaloa Cartel or other criminal organizations. These illegal drugs are not generally transported in backpacks through the remote regions between the Ports of Entry. So, again, spending billions of taxpayer dollars to build the Wall also will not stem the flow of illegal drugs into our country.

Bottom line – building a Wall across the U.S.-Mexico border would serve no useful purpose, and it would be particularly useless in addressing the key challenges we are currently facing, including the large flow of migrants seeking protection from violence in Central America, and the ongoing flow of illegal drugs smuggled through our official Ports of Entry.

But continuing the effort to build a Wall – and continuing to demand that Mexico pay for it – will have dire costs. As discussed, it would be an irresponsible waste of billions of taxpayer dollars – diverting funds that could be spent actually addressing real, as opposed to fictional, border security issues. But in addition, as we have seen vividly over the last few months, the rhetoric over the Wall is needlessly poisoning the U.S. relationship with Mexico – one of our closest economic and security partners.

Indeed, Mexico plays an indispensable role in managing the northbound migration flows from Central America by apprehending hundreds of thousands of Central Americans and others at the Mexico-Guatemala border and sending home those who don't need humanitarian protection. In 2014, Mexico also largely shut down the "La Bestia" trains that brought thousands of Central Americans – including unaccompanied minors – to our border. Without Mexico doing this, those Central Americans would be at our doorstep, further adding to the strain on our immigration system. Mexico also regularly interdicts "special interest aliens" from the Eastern Hemisphere being smuggled to the U.S. border – some presenting terrorist risks – and works with U.S. authorities to keep them from our border. And, Mexico and the United States work closely together to identify and interdict known or suspected terrorists seeking to fly by air to North America – including through Mexican airports. Without this binational cooperation on fighting terrorism, the American people will be far less safe.

In addition, CBP works closely with Mexican authorities at the U.S.-Mexico border, managing the flow of people seeking to enter the United States through our already-busy official Ports of Entry. Indeed, for example, without Mexican help in Tijuana last year, CBP would have been overwhelmed with a flood of Haitian migrants seeking entry through the San Ysidro Port of Entry – threatening the effective shutdown of the busiest port of entry in the world. Without Mexico's help, we would have had a crisis. Moreover, ICE regularly runs joint investigations with Mexican law enforcement into human smuggling rings, as well as other transnational criminal organizations – and both ICE and DEA work with Mexican law enforcement, military, and intelligence officials within Mexico to dismantle criminal networks and take down cartel leaders.

This deep binational cooperation on managing Central American migration flows, on law enforcement, and on counterterrorism is at risk, given the recent rupture of U.S.-Mexico relations concerning President Trump's effort to build the "Wall" and his unrealistic insistence that Mexico will somehow pay for it. This is especially true, given the political dynamics within Mexico – as Mexico is gearing up for its presidential elections in 2018. If we push to build a Wall that the Mexican people view as insulting or somehow targeted at them, Mexican politicians gearing up for the 2018 elections may cease this close law enforcement cooperation with the United States.

This would not only make America less safe, but it would also result in allowing those hundreds of thousands of Central Americans whom the Mexicans currently intercept at their border to come to our border. Ironically, the misguided effort to keep Mexicans out by building a Wall would likely result only in Mexico allowing more Central Americans to come to our border. And, of course, the worst case scenario is that Mexico in 2018 – responding to the rhetoric about the "Wall" and NAFTA – elects an anti-American president, leading to long-lasting breach in U.S.-Mexico relations that, until very recently, have been extremely close and cooperative, to the benefit of both of our countries. This would be a disaster for U.S. foreign policy and the security of the American people.

So the stakes here are very high, and Congress should oppose the construction of this useless, expensive Wall that could do such long-term damage to U.S. interests. Instead, Congress should use taxpayer dollars more wisely, focusing them on addressing the problems that actually exist – terrorism, illegal

drug flows, transnational organized crime, and the Central American migration crisis – as opposed to the fantasy one that seems to be motivating the proposal to build a Wall.

For example, instead of building a useless “Wall,” we should instead focus our resources on re-establishing the rule of law with regard to migratory flows from Central America, while meeting our humanitarian obligations. Specifically, we should focus on the following key steps:

- 1.) We should spend resources on fixing our immigration system by providing more resources so that immigration courts can efficiently and fairly process asylum claims. This would resolve the huge backlogs that are at the root of our immigration system’s crisis and inability to meet the challenges presented by the Central American humanitarian crisis.
- 2.) We should work to strengthen our existing efforts aiming at cracking down on the smuggling gangs and financial facilitators who prey on vulnerable populations in Central America, as well as those organizations that move special interest aliens presenting a potential terrorist risk. The only way to do this is by deepening our law enforcement cooperation with Mexico, the Central American countries, and key transit countries further south, like Brazil, Panama, and Colombia.
- 3.) We should work closely with Mexico, the Northern Triangle countries, the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM) to establish a safe, credible, and efficient process for potential migrants to have their humanitarian claims adjudicated in their home countries or within the region. This could take the form of a robust refugee resettlement program for Central Americans or others that would evaluate claims within the region, protect people from harm while they wait, and then resettle those needing protection to other countries, including the United States, but also to Mexico, Chile, or other countries in the Western Hemisphere. This would give desperate people needing protection a legal way of escaping harm – and dry up the demand for the human smuggling organizations that abuse so many people in smuggling them to the U.S. border.
- 4.) Most importantly, the U.S. government should work with its hemispheric partners to help Central American countries build their institutions to fight corruption, defeat gangs, and develop their economies – in much the same way that the United States rescued Colombia from its crisis as part of Plan Colombia. Over the last few years, Congress has appropriated much to this end – as part of the Alliance for Prosperity – and these efforts should be continued and strengthened. Fundamentally, the only way to truly prevent people from migrating to escape harm or to find a better life for their children is to give them a reason to stay home. This is what happened with Mexican migration – as Mexico’s economy grew and provided people a reason to stay in Mexico, fewer Mexicans sought to illegally enter the United States. There is no substitute for this, and the Central American migration problem will continue until people in El Salvador, Guatemala, and Honduras feel safe to stay.

These are all real measures that could actually address the real migration problem – the one involving Central Americans.

Also instead of wasting billions on a useless “Wall,” we should also take further steps to deepen counterterrorism cooperation throughout the Hemisphere, fight transnational organized crime, and lessen the supply of and demand for illegal drugs.

Simply put, building this proposed “Wall” makes no sense. It would be a huge waste of taxpayer dollars – a “Golden Fleece” – that, in addition to being useless in addressing the most pressing border challenges, would result in a long-term breach with Mexico, harm America’s security against terrorism and organized crime, and result in more Central Americans coming to our border.

For these reasons, Congress should reject the Administration’s misguided and counterproductive proposal to build a Wall, and direct that scarce taxpayer dollars be spent in more useful ways more likely to actually address the real challenges we face at our border.

Thank you for the opportunity to testify, and I look forward to answering any questions you might have.

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Seth Stodder is a lawyer, writer, law professor, and frequent commentator on national security issues, borders and immigration, international trade, privacy, and constitutional law. Until recently, he served in the Obama Administration as Assistant Secretary of Homeland Security for Border, Immigration & Trade Policy and, prior to that, as Assistant Secretary of Homeland Security for Threat Prevention & Security Policy. In those roles, he led teams advising DHS leadership and developing policy on border security, immigration and visa policy, trade, screening and vetting of individuals for security purposes, law enforcement matters, and international information sharing. He oversaw the U.S. Visa Waiver Program, represented DHS on the Committee on Foreign Investments in the United States (CFIUS), and served as Co-Chair of the DHS Social Media Task Force, stood up in the wake of the San Bernardino terrorist attacks. He also oversaw all DHS international engagements with the countries of the Western Hemisphere, as well as other countries around the world.

Earlier in his career, he served in the Bush Administration as Director of Policy and Planning for U.S. Customs and Border Protection, in the immediate wake of the 9/11 attacks. He has worked in private law practice, taught national security and counterterrorism law at the University of Southern California Law School, was a German Marshall Memorial Fellow, and is a Member of the Pacific Council on International Policy and the U.S. Supreme Court Bar. He received his J.D. from the University of Southern California Law School, and his B.A. from Haverford College.