

## **Discounting the Value Of Federal Fencing and Minutemen watching Illegal Immigrants Crossing The U. S.–Mexican Border**

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### **Abstract**

Out of concern for the nation's safety after 9/11 and the flow of undocumented and clandestine migrants from south of the border, the U.S. Congress addressed these concerns by authorizing the Secretary of Homeland Security to construct physical barriers in the area by the end of 2008. These barriers include reinforced fencing, lighting, cameras and sensors from the Pacific Ocean to the Gulf of Mexico. Not all the approximate 2000 mile border from San Diego, California to Brownsville, Texas will have two layers of reinforced fencing. Only certain areas totaling about 700 miles will the border fence be installed. Also concerned with unauthorized border crossers are self-styled Minutemen, a group of civilian volunteers, sitting in their lawn chairs watching illegal entrants with their binoculars and reporting them to the Border Patrol. Some of them roam the desert terrain like soldiers patrolling a war zone, apprehending illegal entrants and turning them over to the Border Patrol. The fence and the Minutemen have been defended, applauded and glamorized by immigration restrictionists as the first line of defense against a Trojan Horse of invading illegal aliens. In this paper, the value of these physical structures and civilians patrolling the borderland will be discounted by a number of inconvenient truths about their negative effects on property, wildlife, law enforcement, and a friendly neighbor and trading partner.

### **Introduction**

Just as President George W. Bush, Jr. proclaimed “Mission Accomplished” in a large banner displayed behind him as he stood aboard a warship and announced that the Iraq war was over, so did he declare the success of border fencing and militarizing as he spoke in Yuma, Arizona in 2007 with stadium lights illuminating the fence constructed along the U.S.–Mexico border. The President said that tougher border enforcement including a fence with electronic sensing devices and militarization with the deployment of the National Guard had sharply reduced the flow of illegal immigrants. A reduction of apprehension of illegal immigrants in the Yuma sector by 65% from the previous year and 30% in the last six months in the same period last year were cited to support his declaration<sup>1</sup>. With these figures, the President assured the nation that the border is under control. The validity and significance of these figures confirmed a recent report of the Center of Immigration Studies attributing the decline of the illegal alien population as a result of tougher border enforcement measures.

Some immigration observers have challenged the veracity of these figures. Douglas Massey said it is all “smoke and mirrors” because it overlooks those who come legally and remain in the country after their visas expire.<sup>2</sup> Along the same line, Wayne Cornelius pointed out that in 1993, when stricter border enforcement was launched, there was a increase in the size of the illegal alien population. Joining the chorus of criticism, a

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<sup>1</sup> Robert Pear, “Bush Ties Drop In Illegal Immigration To His Policies,” *New York Times*, April 10, 2007, p. A16. The Center For Immigration Studies supported the President by stating that there is a decline in the illegal alien population due to stricter border control. See Steven A. Camarata and Karen Jensenius. *Homeward Bound: Recent Immigration Enforcement and the Decline in the Illegal Alien Population*. Center For Immigration Studies, July 31, 2008. [http://www.cis.org/trends\\_and\\_enforcement](http://www.cis.org/trends_and_enforcement).

<sup>2</sup> Douglas S. Massey, et. al., *Beyond Smoke And Mirrors: Mexican Immigration In An Era Of Economic Integration*. ( New York: Russell Sage Foundation, 2003)

reporter from the *Arizona Daily Star* wrote that the President's press conference in Yuma is a "dog and pony" show and doubted if the people will believe him<sup>3</sup>.

### **Border Fence, Native Americans, and Private Property**

The border fence required by Congress to be built by the end of 2008 will be in specific sections of the boundary between the United States and Mexico. It does not cover the entire length of the border. (See map on Figure I). The proposed fence will have a negative effect on four Native American lands: Tohono O'odham in southern Arizona, the Kickapoo in southern Texas, the Kumeyaay in southern California, and the Cocopah in the delta of the lower Colorado river. The Tohono O'odhams live on both sides of the U.S.-Mexico border—an area of 2.8 million acres of desert land, 75 miles of which lies in southern Arizona in the U.S. southwest and Sonora in northern Mexico. Most of the 25,000 Tohonos live in the American side and the rest in the Mexican side of the borderland. Members of the Tohono Nation on both sides cross the border to visit relatives. The Tohonos from Sonora, Mexico cross the border to go to their capital in Sells, Arizona for health services or participate religious ceremonies like the Saguaro Wine Feast, while those in the American side cross the border when they make a pilgrimage to celebrate the feast of St. Francis in Magdalena, Mexico. A border fence on their land will have a negative effect on their cultural, social and religious activities<sup>4</sup>.

Similarly, the Kickapoo Tribe in the Eagle Pass area in southern Texas will be affected by the fence. The border fence between Del Rio and Eagle Pass will divide the land where they live. It will separate their members and threaten their culture<sup>5</sup>. So does the border fence in the area of San Diego, California where the Kumeyaay Nation live in their land stretching from the San Diego and Imperial counties to 60 miles south of the border into Baja California.<sup>6</sup> So, too, will the Cocopah Tribe have their land divided by the fence. Their land is located in the southwestern end of Arizona along the Colorado river extending 13 miles south of Yuma, Arizona and 15 miles north of San Luis, Mexico. A fence between Calexico, California from the west and Douglas, Arizona to the east will divide their land which the Treaty of Guadalupe Hidalgo sliced in 1848. They resent the presence of civilian patrols like the Yuma Patriots when they tread on their land in search for unauthorized migrants<sup>7</sup>.

Farmers, ranchers and businessmen in the Rio Grande valley have expressed their support to the Texas Border Coalition which opposed the construction of the fence between Del Rio and Eagle Pass, Texas<sup>8</sup>. The farmers and ranchers feel that the fence will block their access to the waters of the Rio Grande. Likewise, businessmen and political leaders believe that the fence will hurt the regional economy which thrives on

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<sup>3</sup> Brady McCombs, "Bush: Border Security Working," *Arizona Daily Star*, April 10, 2007, pp. A1, A4.

<sup>4</sup> A leader of the Tohono Nation said there are 1500 Tribal Members south of the border who cross the border regularly. See *Arizona Daily Star*, June 22, 2008, p. B6; Randal C. Archibold, "Border Fence Must Skirt Objection From Arizona Tribe," *New York Times*, September 20, 2006, p.24 and John Pomfret, "As Border Crackdown Intensifies, A Tribe Is Caught In The Crossfire," *Washington Post*, September 15, 2006.

<sup>5</sup> "Border Fence To Divide Native American Nations," *News American Media*, [www.newsamericanmedia.org](http://www.newsamericanmedia.org)

<sup>6</sup> Brenda Norrell, "Unwanted Patrols Add To Uncertainty In Southwest," *Indian Country Today*, July 8, 2005.

<sup>7</sup> Ibid

<sup>8</sup> "The Not-So-Great Wall Of Mexico," *New York Times*, April 20, 2008, p. wk 9

cross-border commerce<sup>9</sup>. Mexicans cross the border daily to make bank deposits, buy real estate, shop at the stores and work in various establishments. The fence will generate ill-feelings by Mexicans and slow down economic activity<sup>10</sup>.

### **Border Fence and the UTB Campus**

Along the Rio Grande, a fence will be installed from Laredo to Brownsville. The fence that will be built in the Brownsville area will cut through the campus of the University of Texas. A special feature of the fence is that it will be built on top of the levee north of the International, Technology, Education and Commerce Campus (ITECC). As a result, this part of the university will be placed on the Mexican side of the fence. Moreover, the fence will also be built on top of the levee just south of the Scorpion baseball field and of the Education and Business Complex (EDC) parking lot. The golf course located south of these facilities will be virtually separated from the campus and placed on the Mexican side of the fence. There will be an opening provided in the fence designed to channel illegal entrants along the golf course, the baseball park and the new soccer field. The university feels that these features will compromise the safety of students and jeopardize the security of the campus. President Juliet V. Garcia of UTB, in her comments on the proposed fence, said that the proposed fence undermines the mission of the university “to convene the cultures of its community, foster an appreciation of the unique heritage of the Lower Rio Grande Valley, encourage the development and application of bilingual abilities in its students and provide academic leadership to the intellectual, cultural, social and economic life of the bi-national urban region it serves.”<sup>11</sup>

Furthermore, she said that the fence “would have environmental impact, disrupt the ecological system of our region and obstruct the ongoing development of bike trails, jogging paths and eco-trails characteristic of our campus culture.”<sup>12</sup> Furthermore, she pointed out that the “campus encompasses several...significant historical sites, including historical Fort Brown and Fort Texas. The proposed site of the fence would place the original earthworks of Fort Texas on the Mexican side of the fence.”<sup>13</sup>

To preserve the integrity and enhance the university’s mission without jeopardizing border security, the Board of Regents of the University of Texas System passed a resolution supporting the university position. The Regents proposed that alternative sites be evaluated to avoid cutting off several acres from the campus<sup>14</sup>. A similar resolution was adopted by the Board of Trustees of the Texas Southmost College District suggesting a different location to avoid dividing the campus and the community<sup>15</sup>. These alternative proposals received a sympathetic ear from the Federal Judge who heard the case of the university.

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<sup>9</sup> L. Brezosky, “Border Fence Not What We Were Told, Texans Say,” *USA Today*, May 2, 2007, p. 15A.

<sup>10</sup> A Mexican official said that the fence is a symbol of Mexican humiliation. Jorge G. Castaneda, *Ex Mex: From Migrants To Immigrants*. ( New York: The New Press, 2007 ), p. 166.

<sup>11</sup> Juliet V. Garcia, *President’s Comment: Proposal of The U.S. Department of Homeland Security to build a fence on the golf course of The University of Texas, Brownsville*, January 8, 2008.

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> The University Of Texas System Board Of Regents. Resolution . Adopted February 6, 2008. This resolution urged that a solution to this problem must “ensure border security and allow UTB to fulfill its educational mission.”

<sup>15</sup> Texas Southmost College District , *Resolution Urging Alternatives To The U.S./Mexico Pedestrian Border Fence*, October 25, 2007

The Judge agreed that there should be an alternative to the fence across the UTB campus. In his opinion, a suitable site would be one close to the Rio Grande<sup>16</sup>. Apparently, this alternative would reconcile the goal of border security with the mission of the university and its integrity. The court decision could have settled the controversy were it not for the boundary treaty between the United States and Mexico: it is a flood plain area protected by the treaty. In the words of the treaty, no infra-structure or physical barrier can be installed there because it would divert flood water to neighboring Matamoros, Mexico when a heavy torrential rain occurs.

### **Border Fence and Wildlife**

On both sides of the border is an ecosystem of immense diversity and a habitat of some endangered species of wildlife. Migratory corridors enable these wildlife species to cross the desert southwest or swim the Rio Grande river to socialize with their mating partners. The fence will limit their mobility, block their access to their feeding grounds, and disrupt their migratory routes. As they live together in this ecosystem, they go through the same corridor when they migrate in search of food to survive or find a mate to reproduce their species. Three of these wild-life species sharing a habitat along the international boundary are the Jaguar, the Pronghorn, and the Ocelot.

The Jaguar and the Ocelot have been spotted in the Sky Island Region in Arizona and New Mexico. This region extends south to northern Sonora and Chihuahua on the Mexican side. More than fifty years ago, the Jaguar was forced to leave its American habitat to its Mexican domain. Lately, some of them have returned to the Sky Island Region in Arizona and New Mexico after their extirpation from this area more than fifty years ago. They use the corridors connecting the ecosystem of the region and serve as migratory routes for their return trip. Conservation projects by the Arizona and New Mexico agencies have been developed to encourage, protect, and ensure that the Jaguar will remain in an environment conducive to their permanent resettlement<sup>17</sup>. When the fence will be completed, the prospects for success of these conservation efforts will be diminished and dampen the hopes of wildlife advocates.

The Pronghorn in the desert southwest illustrate similar impact of the fence on wildlife.<sup>18</sup> Like the Jaguar, the Pronghorn is an endangered species and live in a habitat in the Sonoran desert including the Cabeza Prieta National Wildlife Refuge and Sonora, Mexico. Although the border has crossed their habitat, they roam freely in their territorial range to find their mates. Their freedom to cross the border will be restricted by a virtual fence in the wildlife refuge. Electronic surveillance devices and sophisticated

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<sup>16</sup> Christopher Sherman, : "Judge Stalls Border Fence At UT Brownsville," *Dallas Morning News*, July 1, 2008. The Department of Homeland Security agreed to drop its plans to build the border fence that would have cut off part of the campus. The university and the federal government agreed to cooperate and share the cost of replacing the existing chain link fence along the southern border of the campus with a new fence equipped with electronic sensors and cameras. See Katherine Mangan, "Texas University Resolves Fence Dispute with Federal Government," *Chronicle of Higher Education*, August 1, 2008. <http://chronicle.com/daily/2008/08/4068mhtm>.

<sup>17</sup> Arizona Game & Fish Department and New Mexico Department of Game & Fish, *Jaguar Conservation Assessment And Framework For Arizona, New Mexico and Northern Mexico*. Public Review Draft, May 31, 2006. See also *Borderlands Conservation Strategy For the Northern Jaguar*. Developed cooperatively by: Jaguar Conservation Team. Draft – January 2006.

<sup>18</sup> Brian P. Segee and Jenny L. Neeley, *On The Line: The Impacts of Immigration Policy on Wildlife and Habitat in the Arizona Borderlands*. Defenders of Wildlife , 2006.

communication instruments on top of several towers installed inside the refuge will put the survival of the Pronghorn at stake. It will scare the Pronghorn fawns from Sonora, Mexico to cross the desert and increase their population with their mates in Cabeza Prieta.

The Ocelot in southern Texas and northern Mexico provides another example of the adverse impact of the fence on wildlife. This wildcat is popularly known as the painted leopard. It is a trans-boundary wildlife in the endangered list. Its territorial range stretches from South and Central America to northern Mexico and south Texas just across the Rio Grande. A few of these wildcats have been seen in four Texas counties in the river valley<sup>19</sup>. As a trans-boundary wildlife species, they satisfy their biological urge to find a mating partner to multiply their species by swimming across the Rio Grande to the Mexican habitat of their counterparts. The fence will cut off their access to the water and prevent them from reaching their destination.

### **Minutemen in the Border**

The National Guards and the Border Patrol Agents are not alone in playing the game of “cat and mouse”<sup>20</sup> with undocumented immigrants who sneak into the desert terrain with or without the help of travel specialists, labor brokers or human smugglers called “coyotes”.

A group of civilian volunteers, with the honorific title of Minutemen, joined the game in 2005 in the desert terrain of southern Arizona with Tombstone as their headquarters. As they hunt the open areas of the desert in search for clandestine crossers, they perform a quasi-law enforcement function. Some of them simply watch the desert sitting in their lawn chairs or stand in their four-wheelers with their binoculars, while others wander around with their firearms looking for border crossers who, in their view, have invaded the country and made the desert a war zone<sup>21</sup>. Supporters of this paramilitary band of civilians applaud their presence in the area because they raise the level of public awareness of illegal immigration and focus a spotlight on the need to put an end to the unauthorized flow of border crossings<sup>22</sup>. As amateur law enforcers, the role they play as immigrant hunters has generated problems and the law enforcement function they perform has raised issues as they roam around the desert terrain in search of their

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<sup>19</sup> “Border Fence Could Imperil Wildlife,” *New York Times*, May 22, 2007, p. A-20

<sup>20</sup> Sherrie A. Kossoudji, “Playing Cat and Mouse at the U.S.-Mexico Border,” *Demography*, 29 (2):159-180, May 1992. See also Karl Eschback, et. al. “Death at the Border,” *International Migration Review*, 33 (2): 430 – 2, Summer 1999; Audrey Singer and Douglas S. Massey, *The Social Process of Undocumented Border Crossing*. Lewis Center For Regional Policy Studies. Working Paper No. 27, December 1997.

<sup>21</sup> A former Congressman from Arizona said that “the border is a veritable war zone.” J. D. Hayworth, *Whatever It Takes: Illegal Immigration, Border Security And The War On Terror*. Washington, D.C.: Regnery Press, Inc., 2006, p. 33. In this war zone, the invading army comes from the Third World mostly from Mexico. See Patrick J. Buchanan, *State of Emergency: The Third World Invasion And Conquest Of America*. New York: St. Martin’s Press, 2006. Illegal border crossers are considered to pose a clear and present danger to the United States. See the following books: James Gilchrist and J. Corsi, *Minutement: The Battle To Secure America’s Border*. Los Angeles, Ca.: World Ahead Publishing, Inc., 2006 and Tom Tancredo, *In Mortal Danger: The Battle For America’s Border Security*. Nashville, TN.: Cumberland House Publishing, Inc. 2006.

<sup>22</sup> An article in the *USA Today* said that “They may have put a “spotlight” on immigration but the answer wont be found in the Arizona desert.” *USA Today*, April 14, 2005, p. 15A. A similar view was expressed by a columnist of the *Arizona Daily Star*. See Ernest Portillo, “Minutemen Picked The Wrong Target,” *Arizona Daily Star*, April 2, 2007, p. B 1.

prey. The operating procedures and practices of the Border Patrol Agents are disrupted when the Minutemen accidentally step on the sensors and detectors installed in strategic locations. When this happens, the sensors and detectors are activated and the Border Patrol Agents respond to check the veracity of the alarm. False alarms divert precious time, manpower and resources that could be allocated to more cost-effective activities. Although they simply report what they see and turn over their captives, the Minutemen interfere with and undermine the effectiveness of Border Patrol Agency law enforcement activities. The footprints they leave in the desert floor could mislead the Border Patrol Agents to follow the trail in pursuit of illegal immigrants<sup>23</sup>.

A study made by legal experts of the Congressional Research Service concluded that in performing their law enforcement role and function they may run afoul with the law. State tort law may make them liable for civil damages if they assault the illegal alien or inflict emotional distress on them. As private citizens, they have no authority to enforce the law and so they have no immunity from legal suits. Only government law enforcement authorities are entitled to immunity protection.<sup>24</sup> Furthermore, if they pursue the illegal entrant by following his trail into a federal land such as a wildlife refuge or national park they may be charged with trespassing or carrying firearms. Some private citizens have been arrested for these violations and a rancher in southern Arizona has been charged and convicted for inflicting emotional distress on a family suspected as illegal entrant trespassing on his property<sup>25</sup>.

## Conclusion

The Congressional Budget Office estimated that the cost of a mile of the border fence is around a million dollars (\$ 1 million) and the total cost could run to more than two billion dollars (\$2 billion) excluding maintenance and operational expenses.<sup>26</sup> If this is true, the question may be asked: is it worth the cost if property rights are infringed, wild life survival is threatened to the verge of extinction, coyotes out-smart the Border Patrol Agents in guiding migrants through unfenced areas to avoid apprehension, the number of illegal immigrants in the country increases as tourists and students with valid visas overstay when their visas expire, a friendly neighbor and trading partner is humiliated, and the economy suffers from a shortage of labor due to a lack of interest of native workers in the kind of work migrants do?

Simply stated, it would seem that the answer to this question is that the negative effects of the border fence on property and the environment discount its value as a barrier to stem the tide of illegal entrants from south of the border.

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<sup>23</sup> Stephen R. Vina and Blas Nunez-Neto, *Civilian Patrols Along The Border Legal And Policy Issues*. Congressional Research Service Report To Congress December 23, 2006. See also Jessica Conaway, “Comment: Reversion Back to a State of Nature in the United States Southern Borderlands: A Look at Potential Causes of Action to Curb Vigilante Activity on the United States/Mexico Border”, *Mercer Law Review*, 56: 1419-1458 (2005).

<sup>24</sup> Ibid

<sup>25</sup> Southern Poverty Law Center, *Border Vigilante Ordered To Pay In SPLC-Suit*. SPLC Report, December 2006. [www.splccenter.org](http://www.splccenter.org)

<sup>26</sup> Maintenance costs, according to CBO estimates, would amount to 15% of the initial cost of the fence or a bout \$260 million annually beginning in 2010. The total maintenance cost would be nearly over 2.3 billion over 2007 and 2011. See also the CRS Report to Congress by Blas Nunez-Neto and Stephen Vina, *Border Security: Barriers Along The U.S. International Border*. Congressional Research Service Report For Congress. December 12, 2006.

Fence or no fence, motion sensors or no motion sensors, Minutemen or no Minutemen, they will come because of the law of supply and demand and the push and pull of economic conditions<sup>27</sup>. The law of supply and demand is beyond the power of Congress to repeal. It is this law of economics that drives workers to come even if they have to swim across the river in the Rio Grande, walk through the Devil's Highway in the dangerous desert of Arizona, or ride in unventilated trailers. They will come despite the risk of apprehension by Border Patrol Agents and the danger of death in the desert. They will come because the jobs in American agri-business and industry act like magnets pulling workers from south of the border. On the other hand, poor economic conditions in Mexico including low wages, low crop prices, and high unemployment push workers to do whatever it takes to get to El Norte. Even if they do not have Machiavelli's fortune in their first attempt to cross, they do not give up by taking a second and a third try. Moving on from one failure to another, they find ways to avoid detection and apprehension, overcome obstacles in their way, cope with any situation that may arise, endure many difficulties, and adjust to the vicissitudes of travelling in rugged terrain. No wonder why the fence is an ineffective device to stem the tide of illegal immigration flow into the country. The magnet of jobs is too powerful to resist and the deterrence of the fence fails to deter.

Illegal immigrants follow a cyclical pattern of border crossing<sup>28</sup>. They cross the border and stay for a few months working as carpenters, cooks, waiters, fruit or vegetable pickers, gardeners, domestic servants, janitors, hotel helpers and other back breaking jobs. After saving some of their earnings, they re-cross the border through the legal port of entry to start a business at home, make improvements in their house-holds and support their families. When economic conditions push them again to re-cross the border, they seek the help of coyotes who charge them with exorbitant fees payable in cash or in installment. If they choose the installment plan, the interest added to their fee forces them to stay much longer before they go back to their homes again. Tough security measures and physical barriers installed in the border discourage them from making the return trip. As immigration experts put it<sup>29</sup>, the fence has walled them in and the cyclical route they used to take is not there anymore. It is now a unidirectional flow which the coyote express exploits to its advantage.

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<sup>27</sup> Daniel T. Griswold, *Willing Workers: Fixing The Problem Of Illegal Mexican Migration To The United States*. CATO Institute: Center For Trade Policy Studies. No. 19, December 15, 2002. See also Andres Rozental, "The Other Side Of Immigration," *Current History*, 106 ( 697 ): 89-90, ( 2007 ).

<sup>28</sup> Douglas S. Massey, "The Wall That Keeps Illegal Workers In", *New York Times*, April 4, 2006, p. A-23. See also Paul Ganster and David E. Lorey, *The U.S.-Mexico Border In The Twenty First Century*. Landham, MD.: Rowman and Littlefield Publishing, Inc., 2008

<sup>29</sup> Peter Andreas, *Border Games: Policing The U.S.-Mexico Divide*. Ithaca, N.Y.: Cornell University Press, 2000.

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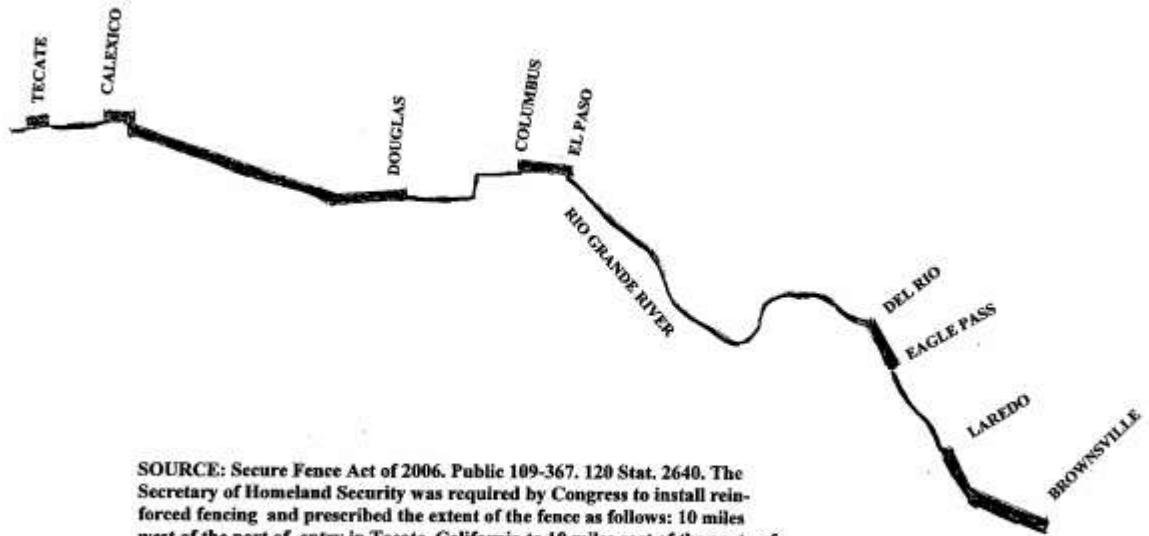
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**FIGURE 1 - LOCATION OF BORDER FENCE**



**SOURCE:** Secure Fence Act of 2006. Public 109-367. 120 Stat. 2640. The Secretary of Homeland Security was required by Congress to install reinforced fencing and prescribed the extent of the fence as follows: 10 miles west of the port of entry in Tecate, California to 10 miles east of the port of entry; 10 miles west of the port of entry in Calexico, California to 5 miles east of the port of entry in Douglas, Arizona; 5 miles west of the port of entry in Columbus, New Mexico to 10 miles east of El Paso port of entry; 5 miles northwest of the port of entry in Del Rio, Texas to 5 miles southeast of the port of entry in Eagle Pass, Texas; 15 miles northwest of the port of entry in Laredo, Texas to the port of entry in Brownsville, Texas.