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Committee on Natural Resources
U.S. House of Representatives

On H.R. 1505
The National Security and Federal Lands Protection Act

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Thank you for the opportunity to appear before the Subcommittee on this important matter. I am testifying on my own behalf, at the invitation of the Subcommittee, and not in any way representing my employer, U.C. Hastings College of the Law.

By way of background, I have worked on public lands policy and law for almost forty years, including service on the staff of this Committee and twice in the Solicitor's Office of the Department of the Interior -- as Associate Solicitor for Energy and Resources from 1977 to 1980, and as Solicitor from 1993 until early 2001. I have taught various natural resources, public lands and environmental law courses many times stretching back to 1980. I am co-author of the standard law text on federal public land and resources law, now in its sixth edition. Also relevant to my testimony here today is that I have also taught constitutional law, particularly separation of powers and federalism, many times.

H.R. 1505 would do three things:

(1) It provides that the Secretaries of the Interior and Agriculture "shall not impede, prohibit, or restrict," on lands under their jurisdiction, "activities of the Secretary of Homeland Security" (hereafter, DHS Secretary) to "achieve operational control" over the international land and maritime borders of the United States. It defines "operational control" as "the prevention of all unlawful entries" into the United States.

(2) It gives the DHS Secretary "immediate access to any public land" managed by any agency of the Federal Government for "conducting activities that assist in securing the border (including access to maintain and construct roads, construct a fence, use vehicles to patrol, and set up monitoring equipment)."

(3) It cements into statute, and vastly expands, a waiver of all requirements of thirty-six separate federal statutes that was issued by the DHS Secretary on April 1, 2008. The legal effect is to remove from the DHS *all constraints* imposed by *any of these laws* with respect to *any activities* he or she may conduct *on any lands "within 100 miles of the international land and maritime borders of the United States*" to achieve "operational control" over U.S. borders. This exemption would become permanent and absolute, as it

is "[n]otwithstanding any other provision of law (including any termination date relating to the waiver)."

I do not underestimate the importance, or the challenges, of securing the nation's borders from illegal entry. But this is the most breathtakingly extreme legislative proposal of its kind I have ever seen. I have grave concerns not only about its wisdom as a matter of policy, but also its constitutionality as a matter of law. I do not reach this conclusion lightly, but I firmly believe this legislation goes way, way beyond what is necessary and proper, in our constitutional system, to enforce the immigration laws.

Let me briefly describe the reasons for my opinion.

H.R. 1505's exemption from thirty-six federal statutes

The thirty-six separate federal statutes from which DHS, with its 200,000 employees and 55 billion dollar budget, would be exempt are our Nation's bedrock environmental laws – the safety net that protects the environment and natural resources with which our country has been blessed. They include the Clean Water Act, the Clean Air Act, the Administrative Procedure Act (providing for judicial review of actions by administrative agencies to ensure they are not arbitrary or capricious) and many other laws.

These statutes date back to 1899, and include statutes enacted in almost every decade since. They became law under more than a dozen different Presidents, of both parties. Collectively, they are the product of many thousands of hours of deliberation and discussion and compromise by many thousands of elected members of Congress. In nearly all cases, they became law with strong bi-partisan, near-unanimous support.

The statutes DHS would be exempt from collectively aim to protect clean air and water (including safe drinking water), safe disposal of toxic and solid waste, farmlands, forests, fish and wildlife (including migratory birds and endangered species), lands in the coastal zones, wild and scenic rivers, national parks, national forests, wilderness areas, and other natural resources.

H.R. 1505 would also exempt DHS from laws that protect the Nation's symbol, the American eagle; religious freedom and exercise; graves and sacred sites of Native Americans; and archeological and historic sites and resources. (These laws -- the Eagle Protection Act, the Religious Freedom Restoration Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archaeological and Historic Preservation Act, the Historic Sites, Buildings and Antiquities Act -- are identified by legal citation, although their titles are, inexplicably, not included in the bill's text.)

Collectively, these laws have been genuine success stories. They have worked effectively to improve the quality of life for all Americans, and to protect values Americans have traditionally held dear. Opinion polls have consistently demonstrated sustained, strong public support for them.

H.R. 1505's possible broader exemption from related laws and regulations, including those of state and local government

Although its text is far from transparent, H.R. 1505 may enlarge DHS's exemption beyond the specific requirements of the listed federal laws. Its subsection 2(c)(1) specifically ratifies (and makes permanent) the waiver issued by then-DHS Secretary Chertoff on April 1, 2008, "of the laws described in paragraph (2)." The waiver issued by Secretary Chertoff that day provided as follows: *"I hereby waive in their entirety, . . . all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended,"* and then proceeded to list the same laws identified in H.R. 1505. 73 Fed. Reg. 18293, 18294 (April 3, 2008) (emphasis added).

It is not clear whether H.R. 1505 would cement into federal law only a waiver of the specific requirements of the listed federal statutes, or instead Secretary Chertoff's much broader waiver of state and local laws and regulations "deriving from, or related to the subject of," these listed federal laws.

It is entirely possible that, if H.R. 1505 became law, DHS would interpret H.R. 1505 to be consistent with Secretary Chertoff's approach. The DHS interpretation would probably not, as I discuss further below, be subject to review by the federal courts.

It is possible, then, that H.R. 1505 would also exempt DHS from any state or local law or regulation that in any way may be said to derive from, or relate to the subject of, the laws expressly named in H.R. 1505. This is a good reason for state and local governments to be gravely concerned by H.R. 1505. For example, many state environmental laws derive from or are responsive to invitations in federal laws like the Clean Air and Clean Water Acts for the states to assume regulatory control over such matters.

Geographic reach of H.R. 1505's exemption and authority

Section 2(c) of H.R. 1505 immunizes DHS activities from legal constraints over a large part of the territory of the United States – namely, all land within 100 miles of any border of the United States, whether it is the border between the U.S. and Mexico or Canada, or the maritime border along the coasts. Lands in the National Park System, the National Forest System, the National Wildlife Refuge System, the National Landscape Conservation System, and other areas of protected public lands -- open to enjoyment by all Americans -- comprise a substantial portion of the lands in this 100-mile belt.

It bears emphasis, however, that the DHS exemption extends not just to federally-owned land, but to *all* land in this vast area -- including state and privately-owned land. The area encompasses ten whole states, including Florida and Hawaii, and a sizeable proportion of many others. Nearly two-thirds of the American people live and work in this 100-mile belt.

Sections 2(a) and (b) of H.R. 1505 apply nationwide, and not just in the 100-mile belt along the borders. Thus the Interior and Agriculture Secretaries would have no right, on any federal land

they manage anywhere in the country, to "impede, prohibit, or restrict" DHS activities to prevent illegal entry in the United States.
And the DHS Secretary shall have "immediate access to any public land" anywhere in the country managed by any agency of the federal government -- including the Nuclear Regulatory Commission, the Army Corps of Engineers and other units of the Defense Department, and all the myriad of other agencies that manage federal land.

The federal lands found across the nation comprise our crown jewels –our most iconic, culturally and biologically rich landscapes, including forested watersheds that supply most of our drinking water – and are the scene of many activities essential to our national and economic security. All are put at risk by this legislation.

Activities covered by H.R. 1505

Moreover, while H.R. 1505 applies to and exempts only the activities of the DHS, this is not very limiting. It covers *any kind of activity* that any of DHS's 200,000 employees and myriad contractors may undertake that relates, in the eyes of DHS, to deterring or preventing anyone from crossing any U.S. border illegally. H.R. 1505 expressly includes, in this range of activities, constructing and maintaining roads and fences and monitoring equipment. But H.R. 1505 is not limited to these activities, as extensive as they may be. It also would cover such things as constructing barracks and other support facilities for personnel and equipment, "back office" kinds of operations, surveillance activities, and many other things.

H.R. 1505 compared to waivers in existing law

It is worth comparing the exemptions and authority H.R. 1505 would give to DHS to the much more limited authority Congress has, on four occasions in the last sixteen years, given the DHS Secretary to waive federal environmental and related laws. This waiver authority, though subject to serious criticism by many commentators, has been circumscribed in several ways.

The first waiver authority was enacted in 1996, when Congress authorized the Attorney General to waive the requirements of two federal statutes, the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), only to the extent "necessary to ensure expeditious construction of the barriers and roads" "in the "vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States." Pub. L. No. 104-208, div. C, Sec. 102; 110 Stat. 3009-554-55 (1996). This authority was never exercised. It was transferred along with other functions to the DHS when it was created in 2002.

Nine years later, in 2005, Congress enacted the REAL ID Act. It gave DHS authority to "waive all legal requirements" that the DHS, in its "sole discretion, determines necessary to ensure expeditious construction of the barriers and roads," in the vicinity of the border in areas of high illegal entry. (No hearings were held on this waiver in either House of Congress. It was attached as a rider to an Emergency Supplemental Appropriations Act.)

The Secure Fence Act of 2006, 120 Stat. 2638, 2638-39, mandated construction of a fence along a much longer area of the border with Mexico, but did not otherwise affect the waiver authority.

Finally, in the Department of Homeland Security Appropriations Act of 2008, 121 Stat. 2042, 2090-91, Congress mandated construction of fencing along not less than 700 miles of the border with Mexico, and installation of additional physical barriers, roads, lighting, cameras, and sensors "to gain operational control of the southwest border." It did not further address the waiver authority, but provided that in carrying out this section, the DHS Secretary should consult with other federal agencies, state and local governments, Indian tribes, and property owners "to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed."

Because the commands of H.R. 1505 apply "[n]otwithstanding any other provision of law," it would sweep aside all previously expressed limitations. It makes Secretary Chertoff's waiver of April 1, 2008, which it expressly references, applicable to all DHS activities over a huge area. The waiver is made permanent and uniform and absolute in a 100-mile wide swath of land along all the Nation's borders. It is not limited to matters necessary to ensure expeditious construction of barriers and roads. It contains no requirement that DHS consult with anyone or provide any sort of notice before taking any actions that are exempt from these laws. (It is not clear whether the consultation requirement contained in the 2008 Appropriations Act would survive enactment of H.R. 1505 in its current form, but that requirement by its own terms applies only to those who are "near the sites" of the 700 miles of fencing Congress mandated in that Act be constructed.)

Summary of the effect of H.R. 1505

The net effect is to give DHS practically unlimited authority to do anything that it wants to do to prevent any kind of illegal entry into the United States

(a) Over a vast geographic area encompassing public and private lands within 100 miles of the Nation's borders, exempt from any need to comply with thirty-six federal statutes (and possibly, as I noted earlier, without being subject to other federal, state or local laws or regulations that in any way relate to those laws);

(b) Over all federally-managed land found throughout the United States, overriding the authority of federal land managers; and

(c) All without the courts having the ability to review DHS actions and judgments, except on constitutional grounds, as I discuss further below.

The mischief this extreme concentration of authority in the DHS would create beggars the imagination. H.R. 1505 would effectively arm 200,000 DHS employees and their contractors with unilateral power to do what they want, without any advance notice, check, or process, over vast areas of federal land. It would put a cloud over every action every federal land manager might think proper to carry out his or her responsibilities under federal law to protect the lands and fish and wildlife and other resources.

It would immunize DHS personnel from regulation and liability for cleanup and restoration if their actions on federal lands polluted Salt Lake City's drinking water, or destroyed prime elk

hunting habitat in Wyoming or prime fish habitat in Idaho, or interfered with ranching activities on public lands in Montana, and so forth, practically *ad infinitum*.

It would give DHS unilateral, unconstrained and unreviewable power to exclude all Americans from, and restrict all kinds of activities on, federal land anywhere in the country – livestock grazing, timber harvesting, mining, hunting, fishing, hiking, snowmobiling, camping, skiing, rafting, and so forth. All DHS would need to do is assert that such an exclusion would facilitate prevention or deterrence of illegal entry in the United States – and no one could review or question its assertion.

It would license and immunize from objection all manner of interferences by DHS personnel with otherwise lawful activities of all kinds of users of federal land – ranchers, utilities, timber and oil and gas companies, hunters, anglers, hikers, off-road vehicle users. For the millions of Americans who depend upon federal lands for a livelihood, or who enjoy their amenities, it is difficult to imagine a measure more likely to create opportunity for conflict and harm.

It would license DHS to ignore protections in existing laws for Indian tribes to protect graves and sacred sites and cultural objects.

It would threaten the rights and prerogatives of private property owners. Some of the federal laws from which DHS would be exempt under H.R. 1505 protect private property owners from activities that contaminate their land, or pollute the air over and water on their lands, and otherwise interfere with their own uses of their land.

As I noted earlier, H.R. 1505 might also strip states and local governments of the power they possess to enforce their laws and regulations over a vast area, to the extent their laws and regulations "related to the subject of" the federal laws being waived. If DHS decides that these words of Secretary Chertoff's waiver are incorporated into H.R. 1505, and reads them broadly, then any state or local law that relates to the environment, natural resources, or cultural or religious freedom, could be rendered inapplicable to DHS activities.

DHS would be largely exempt from judicial review in carrying out H.R. 1505

DHS's actions in carrying out the awesome authority H.R. 1505 vests in it would be immune from review by the courts, except for constitutional claims, and then only in federal district court, with possible review by the U.S. Supreme Court if it chose to provide it.

This exclusion of judicial review has two sources. First, one of the thirty-six federal statutes expressly waived in H.R. 1505 is the Administrative Procedure Act (APA). This is the basic law providing for court review of actions by all administrative agencies in the executive branch, including the DHS. On the books for seventy-five years, the APA is a basic part of modern government, and a fundamental check against arbitrary and capricious actions by these agencies. Right now it applies to a broad array of DHS actions. H.R. 1505 would change that, and exempt DHS from it in connection with any of its activities in this huge swath of the Nation's land. This would free DHS to be arbitrary and capricious in its actions without fear of judicial review (at least to the extent no constitutional rights are implicated), and also to ignore the other obligations

the APA puts on federal agencies, such as the obligation to provide for notice and comment in formulating rules and policies.

Second, H.R. 1505 enlarges the provision of the 2005 Real ID Act that prevents federal courts from reviewing DHS actions, except for constitutional claims. The 2005 Act covers actions that DHS deems necessary to ensure expeditious construction of barriers and roads along the border with Mexico. H.R. 1505 would extend this immunity to all DHS activities on all the U.S. borders. While judicial review of constitutional claims survives, it is only possible in federal trial courts, with only possible discretionary review by the U.S. Supreme Court (eliminating review by the federal courts of appeals). See Sec. 102(c)(2)(A), (C), REAL ID Act of 2005, reprinted in 8 USC 1103 note (2006).

DHS decision-making would be largely unchecked and unreviewable

In sum, H.R. 1505 allows unelected executive branch personnel -- the DHS Secretary and all persons under him or her -- to make decisions and exercise power virtually without any check. Because judicial review is precluded except for constitutional claims, and because H.R. 1505 lacks any limiting definitions of any of its key concepts, it is entirely up to DHS to decide how to interpret and apply the broad provisions of H.R. 1505. Neither the courts nor anyone else would be able to question effectively whether DHS has properly determined, for example, that (a) "activities" it wants to carry out without interference will actually "assist" in "securing the border," or (b) Interior Department officials are "imped[ing]" DHS efforts to "achieve operational control" over the border.

The DHS Secretary, generally speaking, has no expertise in environmental or natural resource matters, nor with land management in general. This is worth emphasizing because some U.S. environmental laws give officials charged with implementing them some limited power to make exceptions, or to adjust their requirements in particular circumstances. The ESA, for example, contains processes for exemption or adjustment in areas like emergencies, disasters, and national security. 16 U.S.C. 1536 (g), (j), (p). This kind of flexibility has been justified on the ground that these officials have knowledge and expertise to make judgments about when flexibility in these laws is appropriate. H.R. 1505 does not rest on such reasoning. It simply, and crudely, elevates the goal of preventing all illegal entry into the United States above every other competing consideration, including otherwise applicable legal requirements and responsibilities.

It is no answer to this dire picture of unchecked absolute power to say that DHS would be unlikely ever to exercise the authority H.R. 1505 would give it to the ultimate, extreme lengths I have suggested here. Once such a blanket exemption is written into law, the hydraulic pressure on DHS will be enormous to exercise its power to the fullest extent. Lord Acton, a British politician and historian and great admirer of the American governmental structure, once cautioned not to give people in positions of power "a favourable presumption that they [can do] no wrong. If there is any presumption, it is the other way, against the holders of power, increasing as the power increases. … All power tends to corrupt; absolute power corrupts absolutely."

For a demonstration of the wisdom of Lord Acton's dictum, one need only look at DHS's exercise of the limited waiver authority Congress has already given it. This authority was optional – DHS could have chosen not to exercise it at all. Instead, DHS repeatedly exercised it, with ever-widening scope and effect. What began as a limited waiver for a handful of federal laws in certain small areas ended up as a blanket waiver of many laws along a large swath of the border with Mexico. Moreover, as I noted earlier, Secretary Chertoff's last waiver – the one specifically referenced in H.R. 1505, also "*waive[d] … in their entirety, . . . all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of,"* the listed federal statutes.

H.R. 1505 would create confusion, uncertainty, and conflict

A report prepared by Dr. Kirk Emerson on Interagency Cooperation on U.S.-Mexico Border Wilderness Issues (dated September 3, 2010) states at page 7 that while the Chertoff waivers did expedite construction of the border fence, they created opposition, frustration, and strained relations, and left "municipalities, land managers, and other entities confused as to what laws DHS is and is not accountable to on the border and under what circumstances."

H.R. 1505, which vastly expands the geographic scope and subject-matter coverage of the DHS exemption, and which contains some serious ambiguities, could only multiply such confusion many times over.

Congress should consider scaling back, not expanding, DHS's authority

I do not believe that Congress needs to expand the exemptions authorized by existing law, and certainly not on the Draconian scale of H.R. 1505. If anything, Congress should be considering eliminating or scaling them back. For one thing, illegal immigration across the border with Mexico has "sputtered to a trickle," as the New York Times reported in its lead story two days ago.

For another, most existing environmental and resource management and protection laws contain a good deal of flexibility. Many of them have faced various kinds of challenges in implementation over the years, and have found ways to meet those challenges. A number of them have explicit provisions to address emergencies and problems of national security or law enforcement. All this makes a powerful case that the limited waivers provided for in existing law were neither necessary nor wise.

I know that there have been sporadic, relatively isolated instances where DHS has complained about restrictions imposed by other federal agencies on its efforts to safeguard the Nation's borders, and particularly its efforts to build a fence along parts of the border with Mexico. I am also aware that DHS and other federal agencies, particularly the land management agencies at Interior and Agriculture, have made many efforts to address these concerns in a collaborative way. When I was co-chairing the Obama-Biden transition at the Interior Department in late 2008, I was briefed by then–Deputy Secretary Lynn Scarlett about these efforts. She reported that much progress had been made in this regard.

I know that a recent GAO report (GAO-11-77, November 2010) made several useful recommendations for closer cooperation, and with which the relevant agencies concurred. In her testimony to this Subcommittee and a subcommittee of the Committee on Oversight and Government Reform on April 15 of this year, former Deputy Secretary Scarlett gave numerous examples of how, in her words, "[c]ollaboration by [federal] land managers with border security agencies improves border security and can save taxpayer dollars while also achieving other land management goals." "Curtailing that interaction," she said, will reduce effectiveness, increase costs, and reduce operational capacity. I agree with her.

All this suggests strongly to me that, to the extent there are site-specific problems with environmental laws, federal land management, and border security, they can be successfully addressed without resort to waiver or exemption.

To the extent any problems remain or arise that might require the attention of the Congress, the appropriate response, at most, is very careful wielding of a surgical scalpel on specific laws or provisions that have been clearly shown to cause problems that cannot be remedied by agency collaboration. The approach of H.R. 1505, by contrast, is to address these issues by detonating the legal equivalent of a nuclear weapon, altogether wiping out many decades of carefully constructed and balanced laws and immunizing DHS from effective review and control.

H.R. 1505 is fundamentally at odds with the Founding Fathers' vision of American government

The authority found in existing law for DHS to exempt itself from various federal laws is, as I have noted, much more narrowly circumscribed than that contained in H.R. 1505. Yet these provisions in existing law have attracted many critics, and almost no defenders, in the legal community, both as to their wisdom and their constitutionality. See, e.g., Kate R. Bowers, Saying What the Law Isn't: Legislative Delegations of Waiver Authority in Environmental Laws, 34 Harvard Envt'l. L. Rev. 257 (2010). Federal district judges have rejected constitutional challenges to the DHS waivers, but only after emphasizing their limited application to specific DHS activities regarding fence construction in specifically identified geographic areas. For this reason, these court decisions can hardly be construed as an endorsement of the vastly expanded exemptions H.R. 1505 would provide. The Supreme Court declined to review the decisions, without stating any reason for its action. See, e.g., County of El Paso v. Chertoff, 2008 U.S. Dist. LEXIS 83045 (W.D. Tex. 2008), cert. den. 129 S. Ct. 2789 (2009). Defenders of Wildlife v. Chertoff, 527 F. Supp. 2d 119 (D.D.C. 2007), cert. den. 128 S. Ct. 2962 (2008).

Four days ago, the Nation celebrated Independence Day, commemorating the 235th anniversary of the Declaration of American Independence to escape what the colonists regarded as the tyranny of George III. The Declaration recounted numerous instances of arbitrary and offensive action by that distant, unelected monarch. Among the examples it cited of his oppressive, unreviewable power over the colonists was this one: "He has refused [to consent to the laws the colonists had adopted, which laws were] the most wholesome and necessary for the public good."

Memories of George III's capacity for unaccountable tyranny were still fresh when the Founding Fathers met in Philadelphia 224 years ago to draft the Constitution of the United States. In recent months we have heard much about the Constitution and the need for faithfulness to its principles. As a teacher of constitutional law, I heartily welcome giving attention to our fundamental charter.

In a famous passage, James Madison, a principal author of the Constitution, wrote that the "accumulation of all powers, legislative, executive, and judiciary, in the same hands … may justly be pronounced the very definition of tyranny." Federalist No. 47. This concern inspired the constitutional framers to create a system that a leading constitutional scholar has described as "deliberately fragmented centers of countervailing power, in a vision almost Newtonian in its inspiration." Tribe, American Constitutional Law (3d ed. 2000, p. 7). As Madison put the matter in Federalist # 51, the Framers' method was to "so contriv[e] the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places." On the importance of judicial involvement, Alexander Hamilton, in Federalist # 78, quoted the French philosopher Montesquieu: "[T]here is no liberty, if the power of judging be not separated from the legislative and executive powers." Hamilton went on to describe an independent judiciary "the citadel of the public justice and the public security," and emphasized its importance in checking the "effects of those ill humors, which … sometimes… have a tendency … to occasion dangerous innovations in the government…."

The checks and balances the Founding Fathers put into our fundamental charter have provided stability and guarded against arbitrary exercise of power. As Chief Justice Burger wrote for the Court in INS v. Chadha, 462 U.S. 919, 959 (1983):

> The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. … With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution."

The result of our grand constitutional experiment has been freedom and economic vitality that have made the United States the envy of the world.

Justice Scalia has observed that our governmental system must continually wrestle with how to allocate power

> in such fashion as to preserve the equilibrium the Constitution sought to establish---so that "a gradual concentration of the several powers in the same department," Federalist No. 51, p. 321 (J. Madison), can effectively be resisted. Frequently an issue of this sort will come before the Court clad, so to speak, in sheep's clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis.

Morrison v. Olson, 487 U.S. 654, 699 (1988) (dissenting opinion).

A careful analysis of H.R. 1505 shows that it is fundamentally inconsistent with the Framers' vision. Linda Greenhouse, a distinguished legal commentator, recently called the limited waiver DHS has from existing laws "a deeply disquieting distortion of how the American system of government is supposed to work." Legacy of a Fence, New York Times, Jan. 22, 2011.

H.R. 1505 would magnify that distortion many-fold. If by some miracle of time travel it could be put before those who framed and supported the Declaration of Independence and the Constitution for approval, I am confident it would be soundly defeated.

I urge the subcommittee to abandon any such effort along this line, to reconsider the mischievous waivers and exemptions in existing law, and to remain faithful to the carefully constructed system of checks and balances our Nation's founders bequeathed to us.