



March 15, 2021

U.S. Customs and Border Protection
c/o Parsons Corporation
3577 Parkway Lane, Suite 100
Peachtree Corners, GA 30092
CBPSwantonSectorEA_RVSS@parsons.com

Re: Joint Comments Submitted by the American Civil Liberties Union of Vermont (ACLU of Vermont) and the New York Civil Liberties Union (NYCLU) in opposition to the Draft Environmental Assessment Finding of No Significant Impact for the Northern Border Remote Video Surveillance System Project (February 2021)

To U.S. Customs & Border Protection c/o the Parsons Corporation:

The ACLU of Vermont¹ and NYCLU² submit these joint comments in strong opposition to Environmental Assessment findings that no significant impact exists from its proposal for Northern Border Remote Video Surveillance System (RVSS) Project. This finding ignores significant impacts to human health, character of communities, and socioeconomic conditions in the affected region.

The ACLU of Vermont and the NYCLU are important stakeholders in this issue because of our advocacy to protect the civil liberties and civil rights of our respective states' residents, guard against invasive and unwarranted surveillance, and to defend and advance immigrants' rights.

¹ The ACLU of Vermont is a statewide membership organization devoted to advancing and defending the civil rights and civil liberties of all Vermonters. Founded in 1967, the ACLU works in the courts, the legislature, and in communities statewide to ensure the freedoms and liberties guaranteed by the U.S. and Vermont Constitutions are afforded to all.

² The New York Civil Liberties Union (NYCLU) was founded in 1951 as the New York affiliate of the American Civil Liberties Union. We are a not-for-profit, nonpartisan organization with eight chapters and regional offices and more than 160,000 members across the state. The NYCLU's mission is to defend and promote the fundamental principles embodied in the Bill of Rights and the U.S. Constitution. This includes work to identify and challenge the ideologies and impacts of racism, including environmental injustices, and their impact on low-income communities and communities of color.

The National Environmental Protection Agency requires every federal agency to prepare a detailed statement regarding a proposed need for the project and the project's environmental impacts, so that agencies will make fully informed and well-considered choices, before resources are committed.³ Through this mechanism, Congress intended NEPA to serve as “an environmental full disclosure law” that enables the public to weigh a project's benefits against its environmental costs.”⁴ Environmental cost have long been understood to include, socioeconomic impacts and the character and well-being of communities. NEPA declares the federal government is to take all “practicable means” “assure . . . safe, healthful, productive, and esthetically and culturally pleasing surroundings,”⁵

Congress also intended NEPA to ensure the integrity of the agency process, forcing agencies to face rather than ignore difficult-to-answer objections.⁶ And although NEPA does not require particular substantive outcomes, it does require federal agencies to “take a ‘hard look’ at the environmental effects against the need of their planned actions before approving them.”⁷

CBP has failed to justify the immediate need for the proposal or consider how the CBP surveillance towers, like other “smart” border militarization strategies and tactics, pose a grave threat to the lives and liberties of local communities and countless people.⁸ The finding of no significant impact should be rejected for the reasons enumerated below.

I. There is no “immediate need” for the proposed surveillance system.

CBP's stated justifications for these surveillance towers are baseless, particularly in light of the relatively few unauthorized border crossings in Swanton Sector and the comparably extensive harms the surveillance towers would do to the region, its visitors, and its residents.

CBP's Swanton Sector spans the entirety of Vermont's northern border, and portions of New York and New Hampshire.⁹ CBP recorded 1,056 Swanton Sector

³ National Environmental Protection Act of 1969 42 U.S.C. § 4332(2)(C) et al § 4332(2)(C)(i).

⁴ *Sierra Club v. U.S. Army Corps of Eng'rs*, 772 F.2d 1043, 1049 (2d Cir. 1985).

⁵ 42 U.S.C. § 4331.

⁶ Id at FN 4 *Sierra Club v. U.S. Army Corps of Eng'rs*,

⁷ *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989).

⁸ Shirin Ghaffary, *The “smarter” wall: How drones, sensors, and AI are patrolling the border*, The VOX, Feb 7, 2020.

<https://www.vox.com/recode/2019/5/16/18511583/smart-border-wall-drones-sensors-ai>;

⁹ Dept. of Homeland Security, U.S Customs and Border Protections <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/swanton-sector-vermont>

apprehensions in 2019 – a small fraction of the nearly 860,000 nationwide total.¹⁰ CBP refers to an “increasing frequency” of border crossing activity to justify its proposal, but offers no data for that characterization.¹¹

Despite these relatively small numbers, CBP offers no analysis to support its assertion that there is an “immediate need” or that without these surveillance towers “there is the probability” that border crossings will increase. No reasoning or evidence is given for why existing surveillance infrastructure does not meet existing needs beyond conclusory statements about the nature of border-crossing activity.

Moreover, CBP’s hypothetical increase is vastly outweighed by the extensive environmental, cultural, socioeconomic, civil liberties, and human rights harms the proposed surveillance towers would cause, as detailed below.

II. The proposed surveillance system would increase the likelihood of crossing-related deaths and suffering along our northern border, violate local resident’s privacy and civil liberties, and result in additional civil rights violations by CBP agents.

The proposed surveillance towers would contribute to death and suffering by funneling border crossers into more remote and dangerous regions of the vast northern border wilderness. That has been the reality on our southern border for years.¹² There, militarization and “deterrence” strategies – including “smart” border technologies such as surveillance towers – have contributed to more than 8,000 deaths (likely a significant undercount) over the past two decades.¹³ CBP’s proposed surveillance towers would contribute to a predictable increase in suffering and death on the northern border as well.

The proposed surveillance towers also threaten the liberties, privacy, and civil rights of local residents, in the form of warrantless and broad surveillance, constant video monitoring, and potential biometric collection. We have seen that surveillance technology, frequently spreads from the border itself across entire border communities, degrading privacy rights of all residents.¹⁴ We have also seen CBP’s

¹⁰ United States Border Patrol, Sector Profile - Fiscal Year 2019, https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Fiscal%20Year%202019%20Sector%20Profile_0.pdf

¹¹American Civil Liberties Union, *The Constitution in the 100-Mile Border Zone*, <https://www.aclu.org/other/constitution-100-mile-border-zone>

¹² Natascha Elena Uhlmann, *The US government deliberately made the desert deadly for migrants*, The Guardian Dec. 2018 <https://www.theguardian.com/commentisfree/2018/dec/29/the-us-government-deliberately-made-the-desert-deadly-for-migrants>

¹³ James Verini, *How U.S. Policy Turned the Sonoran Desert Into a Graveyard for Migrants*, The New York Times, August 2018 <https://www.nytimes.com/2020/08/18/magazine/border-crossing.html>

¹⁴ Sidney Fussell, *The Endless Aerial Surveillance of the Border*, The Atlantic October 2019, <https://www.theatlantic.com/technology/archive/2019/10/increase-drones-used-border-surveillance/599077/>

use of these technologies has extended even further away from the physical border, and for purposes that have nothing to do with the border – as evident from CBP’s use of drones¹⁵ at Black Lives Matter protests and the burial of George Floyd.¹⁶

Where CBP has deployed similar border militarization technologies, those systems have gone hand in hand with increased presence of poorly trained, violent, and unaccountable Border Patrol agents, predictably resulting in widespread violations of civil liberties and civil rights.¹⁷ In Swanton Sector, the ACLU has litigated multiple cases of Border Patrol overreach and abuse in recent months.¹⁸ Those are in addition to countless other examples from other northern¹⁹ and southern²⁰ border regions, and throughout the interior of the country.

CBP’s egregious track record of civil liberties and civil rights violations is too extensive to document here, but raises serious concerns about the direct and indirect impacts of the proposed surveillance towers on those who live and travel through the targeted communities.

¹⁵ Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, The New York Times, June 2020 <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>

¹⁶ American Civil Liberties Union, *Documents Obtained by ACLU Reveal Border Patrol Agents Were Authorized To Use Deadly Force At George Floyd’s Burial*, The ACLU, October 2020 <https://www.aclu.org/press-releases/documents-obtained-aclu-reveal-border-patrol-agents-were-authorized-use-deadly-force>

¹⁷ Will Parrish, *The U.S Border Patrol and an Israeli Military Contractor Are Putting A Native American Reservation Under “Persistent Surveillance”*, The Intercept, August 2019 <https://theintercept.com/2019/08/25/border-patrol-israel-elbit-surveillance/>

¹⁸ The ACLU of Vermont, *Migrant Justice v. Wolf*, The ACLU of Vermont, with the Center for Constitutional Rights, the National Center for Law and Economic Justice, the National Immigration Law Center, and Gibson, Dunn & Crutcher LLP, won settlements against the Vermont DMV as well as ICE and DHS to prevent the surveillance, detention, and deportation of immigrants’ rights activists in retaliation for their constitutionally protected activities; The ACLU of Vermont, *State v. Walker-Brazie and Lena-Butterfield*, The ACLU has appealed to the Vermont Supreme Court on behalf of a Vermont couple who were prosecuted following an August 2018 “roving patrol” stop by a U.S. Border Patrol agent in Jay, Vermont; et al, The ACLU of Vermont, *Drewniak v. CBP* the ACLU affiliates in New Hampshire, Maine, and Vermont today filed a federal lawsuit challenging the use of unconstitutional border patrol checkpoints that frequently occur on I-93 in Woodstock, New Hampshire and elsewhere in northern New England; *ACLU-ME, ACLU-NH, ACLU-VT v. DHS*, Three ACLU affiliates filed suit to require government agencies to turn over records concerning interior enforcement operations including Border Patrol checkpoints and bus raids, ICE arrests at courthouses, and the targeted arrests of immigrants’ rights activists.

¹⁹ The New York Civil Liberties Union, *Report Reveals Troubling Border Patrol Tactics in Upstate New York*, November 2011, <https://www.nyclu.org/en/press-releases/report-reveals-troubling-border-patrol-tactics-upstate-new-york>

²⁰ ACLU of Arizona, *Record of Abuse; The lawlessness and Impunity in Border Patrol’s Interior Enforcement Operations*, October 2015 https://www.acluaz.org/sites/default/files/documents/Record_of_Abuse_101515_0.pdf

III. The proposed surveillance system would cause significant environmental, cultural, and socioeconomic harm to the region and its people.

CBP proposes the construction and operation of ten 199-foot surveillance towers, including overhead and/or buried power lines and access roads. Construction would require the use of heavy construction equipment and the towers would be adjoined by a mix of residential, agricultural, and industrial properties, some of which include forest, wetlands, tributaries, and streams. According to CBP, “All of the proposed sites are near human development.”

The short- and long-term impacts of the proposed surveillance towers on the region’s natural and built environments are significant and would contribute to the transformation of these small, remote, and economically fragile border communities – permanently altering their rural, small-town character through increasingly visible militarization of the border region. Likely harms include:

- Short- and long-term environmental damage impacting the region’s waters and land use, vegetation, and wildlife, including potential impacts on native, migratory, and/or endangered species (including the Northern Long-eared bat and Canada lynx);
- Disruption of local and regional aesthetics and visual resources, and rural, small-town character of the targeted communities posed by situating and operating 199-foot metal surveillance towers in and around rural areas and small towns (CBP’s proposal erroneously concludes such impacts are “negligible”); and
- Short- and long-term damage to local and regional economies, including reduction in tourism, adverse impacts on utilities and infrastructure, increased taxpayer costs, and lowered property values, among other harms.
- Possible destruction of Native American resources on land with cultural and historical connections to local tribes (which appears to have been underexplored).

None of these effects are adequately considered in CBP’s proposal. CBP’s proposal acknowledges, for example, “potential adverse effects of nighttime lighting on migratory bird and nocturnal flying species,” yet concludes without analysis that such effects would be “minor.”

CBP’s environmental assessment eliminates entirely from further discussion the socioeconomic impact of its proposal by embracing an overly narrow framing of that impact topic. The social harms of the proposed project cannot be measured only by the immediate effects of the tower construction on housing or social services, but by the impact the ballooning surveillance state has on the social fabric of surrounding communities. The proposed project reflects an expansion of electronic surveillance

in a region already subject to checkpoints, roving patrols, and other invasive tools of border policing, undermining any sense of normalcy in surrounding communities.

CBP also does not appear to have adequately explored the possible impact on Native American tribes who have ties to the affected areas. CBP acknowledges that the federally recognized St. Regis Mohawk Tribe has ties to the project location, yet has consulted the tribe on only two occasions more than a year and half prior to the publication of its Environmental Assessment.

The assessment makes no mention of any outreach to the Abenaki Nation at Missisquoi, the Koasek Band of the Koas Abenaki Nation, the Elnu Abenaki Tribe, or the Nulhegan Abenaki Tribe, which have been formally recognized by the state of Vermont²¹ and also have strong ties to the region.

In light of all the foregoing, CBP's conclusion that an Environmental Impact Statement is not required is incorrect. The northern border region is already impacted negatively by an increased, militarized Border Patrol presence. The addition of surveillance towers would continue that trend in small, tightknit, rural communities that – like southwest border communities – remain among the safest in the nation.²²

IV. CBP failed to adequately involve the public in the decision-making process.

CBP failed to adequately involve the public in preparing the environmental assessment. CBP's Swanton Sector spans the entirety of Vermont's northern border, and portions of New York and New Hampshire. However, the CBP failed to speak to local town boards about the impacts or benefits of the project. The town of Troy, Vermont, Selectboard Chair Robert Langlands said federal officials haven't talked to his town.²³ Additionally, State Rep. Brian Smith, of Derby, Vermont, who is also vice chair of the Derby selectboard stated "he wants to know more about what exactly the cameras will be pointed at and wishes federal officials would meet more with the local selectboard."²⁴ Rep. Brian Smith stated, the board hasn't yet been approached about the tower proposal.²⁵

²¹ Vermont Commission on Native American Affairs, *State Recognized Tribes*, <https://vcnaa.vermont.gov/recognition/recognized-tribes>.

²² Russell Contreras, *FBI stats show border cities are among the safest*, The AXIOS, "The latest crime data collected by the FBI from 2019 contradicts the narrative by President Trump and others that the U.S.-Mexico border is a 'lawless' region suffering from violence and mayhem" December 2020 <https://www.axios.com/border-cities-safest-fbi-data-4133476d-5056-477e-9194-a091692045a9.html>

²³ Justin Trombly, *Feds propose video surveillance towers along Canadian border*, The VTdigger, February 2021 <https://vtdigger.org/2021/02/18/feds-propose-video-surveillance-towers-along-canadian-border/>

²⁴ Id

²⁵ Id

The Council on Environmental Regulations provides specific mandates to Agencies for public involvement. Agencies are required to “make diligent efforts to involve the public in preparing and implementing their NEPA procedures”.²⁶ These efforts include providing notice of public hearings, public meetings and providing NEPA-related documents to those interested or potentially affected by the proposed Federal action.²⁷ Early coordination with the public is essential for developing the project's purpose, identifying issues of concern, the scope of the environmental resources and possible mitigation measures. The failure to include vital public partners in the decision-making process contributes to the faulty findings of no significant impact. For those reasons we are recommend the public comment period be extended by another forty-five days.

V. CBP and its parent agency DHS cannot be trusted to adopt appropriate safeguards to prevent rights violations.

As noted, CBP’s documented record of brutality, racism, and impunity is too extensive to recount here.²⁸ Whether looking to the agency’s role in separating young children from their parents²⁹ or abducting peaceful protesters off of American streets,³⁰ CBP is not a credible actor that can be entrusted with responsible operation of surveillance technologies in general, much less a program with all of the problems detailed herein. The fact the CBP does not appear to have adequately notified and involved each of the impacted communities about its proposal – while claiming to have done so – is also telling.³¹

²⁶ 40 CFR § 1506.6 - Public involvement: (B) (1) In all cases, the agency shall notify those who have requested notice on an individual action.

²⁷ Id

²⁸ Katy Murdza and Walter Ewing, Ph.D, *The Legacy of Racism within the U.S. Border Patrol*, The American Immigration Council, <https://www.americanimmigrationcouncil.org/research/legacy-racism-within-us-border-patrol/>; Garrett M. Graff, *The Border Patrol Hits a Breaking Point: Behind this week’s migrant-center horrors lies an agency plagued by years of dysfunction—and Trump is only its latest problem*, Politico Magazine, July 15, 2019.

<https://www.politico.com/magazine/story/2019/07/15/border-patrol-trump-administration-227357/>;

Garrett M. Graff, *The Green Monster: How the Border Patrol became America’s most out-of-control law enforcement agency*, Politico Magazine, Nov./Dec. 2014.

<https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220/>

²⁹ Ginger Thompson, *Listen to Children Who’ve Just Been Separated From Their Parents at the Border*, Pro Publica, June 2018. <https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy>

³⁰ Office of Inspector General, *Management Alert - FPS Did Not Properly Designate DHS Employees Deployed to Protect Federal Properties under 40 U.S.C. § 1315(b)(1)*, U.S Office of Homeland Security, November 2020. <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2020/oig-21-05-nov20-mgmtalert.pdf>

³¹ Justin Trombly, *Feds propose video surveillance towers along Canadian border*, The VTDigger, February 2021 <https://vtdigger.org/2021/02/18/feds-propose-video-surveillance-towers-along-canadian-border/>

DHS received \$26 billion for immigration enforcement in fiscal year 2020³² – 33 percent more than all criminal law enforcement agencies combined. In the past four years, ICE and CBP’s budgets have increased by \$6 billion. The number of Border Patrol agents has quadrupled over the past three decades to nearly 20,000 agents.³³ Given its egregious record of abuses and toxic internal culture, CBP should be losing funding, not receive additional funding for invasive border surveillance technologies that will do lasting damage to American communities.³⁴

Conclusion

CBP proposes to build and operate ten surveillance towers across six northern border communities in order “to provide long-term, permanent surveillance.” CBP has shown no immediate need or other valid justification for this project, and the agency’s proposal does not adequately account for the extensive environmental, cultural, and socioeconomic impacts that would result, including the privacy and civil liberties interests of the countless individuals who live, work, and travel through our northern border region. Border Patrol operates more as a rogue paramilitary force than as a federal law enforcement agency, and cannot be entrusted with the health, safety, and well-being of border communities.

If you have any questions, please contact the ACLU of Vermont at jlyall@acluvt.org or the NYCLU at zahmad@nyclu.org.

Sincerely,



James Lyall
Executive Director
ACLU of Vermont



Zachary Ahmad
Policy Counsel
New York Civil Liberties Union

³² Muzaffar Chishti and Jessica Bolter, *As #DefundThePolice Movement Gains Steam, Immigration Enforcement Spending and Practices Attract Scrutiny*, Migration Policy Institute, June 2020 <https://www.migrationpolicy.org/article/defundthepolice-movement-gains-steam-immigration-enforcement-spending-and-practices-attract>

³³ United States Border Patrol, *Border Patrol Agent Nationwide Staffing by Fiscal Year*: https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202019%29_0.pdf

³⁴ Ferchil Ramos, *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection*, The ACLU, May 2018 https://www.dropbox.com/s/lplnnufjwci0xn/CBP%20Report%20ACLU_IHRC%205.23%20FINAL.pdf?dl=0; <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/america-doesnt-need-more-border-patrol-agents/>