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APPEALS
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No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

2007 APR 23 PM 4:07

SIERRA CLUB; PUBLIC CITIZEN;)
ENVIRONMENTAL LAW FOUNDATION;)
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS; BROTHERHOOD OF)
TEAMSTERS, AUTO AND TRUCK DRIVERS,)
LOCAL 70; and OWNER-OPERATOR)
INDEPENDENT DRIVERS ASSOCIATION,)

Petitioners,)

vs.)

UNITED STATES DEPARTMENT OF)
TRANSPORTATION; FEDERAL MOTOR)
CARRIER SAFETY ADMINISTRATION; MARY)
E. PETERS, Secretary of the U.S. Department of)
Transportation; JOHN H. HILL, Administrator of)
the Federal Motor Carrier Safety Administration;)
and THE UNITED STATES,)

Respondents.)

FILED
DATE INITIAL

PETITION FOR REVIEW

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Petitioners Sierra Club, Public Citizen, Environmental Law Foundation, International Brotherhood of Teamsters, Brotherhood of Teamsters, Auto and Truck Drivers, Local 70, and Owner-Operator Independent Drivers Association (“Petitioners”), pursuant to Federal Rule of Appellate Procedure 15(a) and 28 U.S.C. §§2342, 2344, hereby petition this Court for review of the Secretary of the United States Department of Transportation’s adoption of a pilot program that would authorize up to 100 trucking companies based in Mexico to perform long-haul operations within the United States, beyond the current commercial zone at the border. This pilot program violates 49 U.S.C. §31315, which requires, *inter alia*, that notice of such a pilot program be published in the Federal Register, that an opportunity for comment be provided before the pilot program’s effective date, and that the pilot program meet specified substantive requirements. No notice of the pilot program has been provided, and there has been no opportunity for public comment before the pilot program’s effective date.

Because notice of the pilot program has not been published in the Federal Register, there is no formal agency order or decision to attach to this Petition. Petitioners are attaching as evidence of the agency’s decision a copy of the official Department of Transportation announcement of the pilot program, along with the announcement made by the Secretary of the Department of Transportation, both on February 23, 2007.

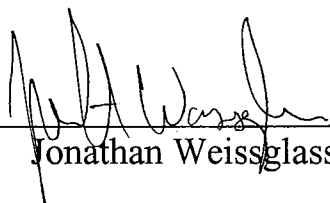
Venue is proper in this Court pursuant to 28 U.S.C. §2343 because some
Petitioners reside or have their principal offices in this Circuit.

Dated: April 23, 2007

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Last updated February 23, 2007

Cross Border Truck Safety Inspection Program

News

DOT 21-07

Friday, February 23, 2007

Contact: Sarah Echols

Tel.: (202) 366-4570

New Program to Allow U.S. Trucks into Mexico for the First Time Ever, Change Way Some Mexican Trucks Operate Within the United States

El Paso, Texas – U.S. trucks will for the first time be allowed to make deliveries in Mexico under a year-long pilot program that expands cross border trucking operations with Mexico, U.S. Transportation Secretary Mary E. Peters announced today during a visit to truck inspection facilities in El Paso, Texas.

U.S. trucks will get to make deliveries into Mexico while a select group of Mexican trucking companies will be allowed to make deliveries beyond the 20-25 mile commercial zones currently in place along the Southwest border.

Secretary Peters said the new demonstration program was designed to simplify a process that currently requires Mexican truckers to stop and wait for U.S. trucks to arrive and transfer cargo. She said this process wastes money, drives up the cost of goods, and leaves trucks loaded with cargo idling inside U.S. borders. The Secretary added that under current rules, U.S. trucks are not allowed into Mexico because the United States refused to implement provisions of the North American Free Trade Agreement that would have permitted safe cross-border trucking.

"The United States has never shied away from opportunities to compete, to open new markets and to trade with the world. Now that safety and security programs are in place, the time has come for us to move forward on this longstanding promise with Mexico," **Secretary Peters** said.

"We are committed to retaining a high level of security and safety standards under this program," said **Homeland Security Secretary Michael Chertoff**. "The tough security measures we already have in place will remain unchanged, resulting in a smart and secure approach to safeguarding the border, while allowing for American and Mexican carriers to deliver cargo outside of arbitrary commercial zones."

"Today's announcement is another sign of the strength of the U.S.-Mexico relationship and a further step towards making our economies globally competitive, promoting mutual economic growth and prosperity while continuing to protect the safety of our borders," said **Commerce Secretary Carlos M. Gutierrez**.

"Safety is the number one priority and strict U.S. safety standards won't change," **Secretary Gutierrez** continued. "We will continue to work closely with President Calderon and his administration on ways we can further enhance the commerce of our countries and the competitiveness of our hemisphere without sacrificing safety or security."

Secretary Peters noted that the Department of Transportation has put in place a rigorous inspection program to ensure the safe operation of Mexican trucks crossing the border. Yesterday, Peters and Mexican Secretary of Communications and Transportation Luis Téllez announced a program to have U.S.

inspectors conduct in-person safety audits to make sure that participating Mexican companies comply with U.S. safety regulations. The regulations require all Mexican truck drivers to hold a valid commercial drivers license, carry proof they are medically fit, comply with all U.S. hours-of-service rules and be able to understand questions and directions in English.

Secretary Peters said those Mexican truck companies that may be allowed to participate in the one-year program will all be required to have insurance with a U.S. licensed firm and meet all U.S. safety standards. Companies that meet these standards will be allowed to make international pick up and deliveries only and will not be able to move goods from one U.S. city for delivery to another, haul hazardous materials or transport passengers.

The first Mexican trucks to be authorized under the program will begin traveling beyond U.S. border areas once the initial in-person safety inspections are done and proof-of-insurance verified. Secretary Peters noted that with the announcement of the program, Mexico will begin to consider applications from U.S. trucking firms for licensing rights to operate within Mexico. Approximately 100 U.S. operators would be licensed by Mexico for cross-border operations.

In 2001, Congress authorized the cross border inspection program and listed 22 safety requirements that had to be in place before other steps were implemented. The Secretary noted that the Department's independent Inspector General's reports have confirmed success in meeting the congressional requirements. In addition, Secretary Peters said the Department has invested \$500 million since 1995 to modernize border safety facilities and hire and train the over 500 federal and state inspectors who inspect trucks crossing the border every day.

"We have years of experience, we have a rigorous safety inspection plan in place and we have the facilities and the trained professionals to carry it out," Secretary Peters said. "Through this new pilot program, we are finding a better way to do business with one of this nation's largest trading partners, and in doing so, bringing U.S. drivers more opportunity, U.S. consumers more buying power and the U.S. economy even more momentum," she added.

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Last updated 3/1/2007

Cross Border Truck Safety Inspection Program

Speech

**REMARKS FOR
THE HONORABLE MARY E. PETERS
SECRETARY OF TRANSPORTATION**

**MEXICAN TRUCKS NEWS CONFERENCE
EL PASO, TX**

**FEBRUARY 23, 2007
9:30 AM**

Good morning, everyone.

We are here today to announce that the United States and Mexico are beginning a cross-border trucking pilot program that will build on our nation's legacy of seizing opportunity, embracing trade, and leading the world as an economic superpower, while protecting safety, security, and the environment.

As President Bush made clear earlier this month in his *State of the Economy* address, the United States is the envy of the world when it comes to job growth, economic expansion, and quality of life.

Our country has never shied away from opportunities to compete, to open new markets, and to trade with the world.

Our ancestors fought and died to keep the world's trade free. Our forefathers saw the value in dropping tariffs and opening the flow of capital across our borders. And during the dark days of the Cold War, our parents held firm in the belief that free markets and free trade would win over command and control economies every time. And they were right.

If we are to continue to thrive, we must continue to embrace economic opportunity. This is especially true here at the border, where trade is an essential part of economic life.

New Mexico's Governor, Bill Richardson, has talked about "the need for more border trade and more border contact," noting "we're so close to Mexico here, it's almost as if there's an intermingling of countries." And Texas Governor Rick Perry has observed, "When we allow for the free flow of commerce, energy, and ideas, jobs and opportunity are created on both sides of our shared border."

That is why I am here today. Now that safety and security programs are in place, the time has come for us to move forward on a long-standing promise with Mexico by taking the trucking provision of the North American Free Trade Agreement off hold.

Having Mexican trucks cross the United States border is nothing new. In fact, until 1982, trucks from Mexico could drive anywhere in the country. Since that time, Mexican trucks have been restricted to the border commercial zones in California, Arizona, New Mexico, and Texas.

As a result, every day thousands of Mexican trucks must drive across our border, through cities like El

Paso, and then come to a stop at an imaginary line. There, these trucks must sit idle until a U.S. truck arrives and the cargo is switched from one to the other.

Even worse, U.S. trucks cannot even go into Mexico. It is a process that wastes precious time, energy, and money.

But that is about to change. Today, I am announcing a limited, year-long demonstration program that will permit up to 100 Mexican trucking companies to make deliveries beyond the commercial zones. An equal number of U.S. trucking companies will be able to cross the border and compete in the Mexican marketplace for the first time ever.

While seizing commercial opportunities is important, doing it safely is vital. That is why I traveled to Monterrey, Mexico, yesterday to announce that U.S. inspectors will conduct in-person safety audits to make sure that participating Mexican companies meet every United States safety regulation on the books.

The inspection program is tough, and it is meant to ensure safe operation of trucks crossing our border. Drivers must have a valid commercial driver's license, carry proof that they are medically fit, and comply with United States hours-of-service rules. And they must be able to understand and respond in English to questions and directions from inspectors.

The trucks must be insured by a U.S.-licensed firm. And from hood to tail-lamps, they must meet United States safety standards, including brakes, turn signals, and cargo-securing equipment.

Companies that satisfy these safety standards and are accepted into the demonstration program will be allowed to operate beyond the border areas to make international deliveries and pick-ups only. Mexican trucks will not be able to pick up goods in one U.S. city for delivery to another. And no trucks hauling hazardous materials or buses carrying passengers will be involved.

In about 60 days, when the initial safety audits are done and proof-of-insurance verified, the first Mexican trucks to be authorized under the pilot program will begin traveling beyond the border areas.

As we move forward with this test program, let me assure you – safety will be the top priority.

In 2001, the Congress approved and President Bush signed legislation spelling out 22 safety requirements that had to be met before putting this program in operation. They are comprehensive. And I can tell you today that the Department's independent Inspector General has confirmed our success in meeting the congressional requirements.

We are ready with modern inspection facilities, and we have hired and trained hundreds of inspectors. All told, 540 federal and state inspectors are already on the job, standing by to screen trucks coming across the border from Mexico to ensure that both the drivers and their vehicles are safe to make deliveries in the United States.

And under our safety inspection plan, each and every truck in the demonstration program will be checked, and any unsafe vehicle or unfit driver will be taken off the road.

Our records show that Mexican trucks currently operating in the commercial zone are as safe as the trucks operated by companies here in the United States. We know this because federal and state inspectors are already screening the trucks crossing into our country from Mexico.

We have years of experience, we have a rigorous safety inspection plan in place, and we have the facilities and the trained professionals to carry it out.

Through this new pilot program, we are finding a better way to do business with one of this nation's largest trading partners, and in doing so, bringing U.S. drivers more opportunity, U.S. consumers more buying power, and the U.S. economy even more momentum.

We will take your questions about this demonstration program in just a few minutes.

But first, I have invited Mexican Secretary of Communications and Transportation Luis Tellez, Deputy Secretary of Homeland Security Michael Jackson, and Deputy Secretary of Commerce Dr. David Sampson to address the important security, commerce, and trade issues associated with this trucking demonstration program.

Secretary Tellez ...

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