

**EXAMINING THE EFFECT OF THE BORDER WALL
ON PRIVATE AND TRIBAL LANDOWNERS**

HEARING

BEFORE THE

**SUBCOMMITTEE ON
BORDER SECURITY, FACILITATION,
AND OPERATIONS**

OF THE

**COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES**

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EXAMINING THE EFFECT OF THE BORDER WALL ON PRIVATE AND TRIBAL LAND- OWNERS

Thursday, February 27, 2020

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER SECURITY,
FACILITATION, AND OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:06 a.m., in Room 310, Cannon House Office Building, Hon. Kathleen M. Rice [Chairwoman of the subcommittee] presiding.

Present: Representatives Rice, Payne, Correa, Torres Small, Thompson (ex officio), Higgins, Lesko, Joyce, and Guest.

Miss RICE. The Subcommittee on Border Security, Facility, and Operations will come to order.

The subcommittee is meeting today to receive testimony on examining the effect of the border wall on private and Tribal landowners. Without objection, the Chair is authorized to declare the subcommittee in recess at any point.

I want to thank you all for joining us this morning, and thank you to our witnesses especially. Your unique perspectives on the Southern Border are critical to our understanding of this issue, and we appreciate you sharing your important insight with us.

Over the past year, this subcommittee has sought to bring attention to the administration's misguided and dangerous border wall policy. We know the construction of a border wall will not stop the influx of drugs into our country, will be an unnecessary cost to taxpayers, and as we will discuss today, will have an irreversible impact on the rights of U.S. citizens and Native Americans.

For those of us who do not live in Texas, New Mexico, Arizona, or California, it can be easy to forget that. The policy decisions we make in Washington have a tremendous impact on the everyday lives of those who live along the Southern Border. Two-thirds of the land along the Southern Border is owned by private citizens or the border States. In order to construct barriers across this land, the administration has used eminent domain, a process by which the Government can forcibly seize privately-owned land for public use in exchange for compensation. Often this compensation is minimal, and landowners are left to fight the Government in court for years. Under this administration, eminent domain will be used at a historically high level to strip landowners of their property and, in many cases, cause damage to their livelihoods.

In addition to this land seizure, the administration has doubled down on its use of the Department of Homeland Security's waiver authority, waiving important environmental and preservation laws for border wall construction. No Secretary, no matter the purpose or intent, should have the ability to waive every law in their entirety with the stroke of a pen.

In the past 3 years, the Trump administration has used this waiver authority 16 times to ignore laws designed to protect the environmental and cultural integrity of these communities. For comparison, the Bush administration, George W. Bush administration, used this waiver authority only 5 times over the course of his entire Presidency. But this should not come as a surprise. President Trump has shown that he will stop at nothing to deliver on his campaign promise to build a wall. The Trump administration does not listen to the experts, they don't pay attention to border residents or local officials, and they ignore the consequences that come along with abusing the waiver authority.

The administration has waived critical public health and safety laws, including the Endangered Species Act, the National Environmental Policy Act, the Safe Drinking Water Act, and the Clean Water Act, for wall construction. These laws ensure that border communities have the same rights and protections as any other community in the United States.

The Tohono O'odham Nation, whose lands across the Southern Border, have faced particularly harmful consequences as a result of these laws being waived. The administration's decision to repeatedly use this waiver authority puts the lives of the members of the nation at risk, destroys habitats for numerous at-risk species, and undermines trust in our Government.

Earlier this Congress, this committee recognized the damage that the administration could do with its use of waivers and responded by passing H.R. 1232, the Rescinding DHS' Waiver Authority for Border Wall Act, which would strike the law that granted the Secretary of Homeland Security with this unchecked waiver authority.

This bill, should it become law, would not prohibit DHS from constructing or repairing border barriers. It would simply require the Department to follow any and all applicable local, State, and Federal laws before beginning construction. The reckless waiving of crucial Federal laws puts the people who live along our Southern Border at unnecessary risk and does not enhance our border security.

The witnesses who have joined us today will speak to this issue from personal experience, and I am proud today's hearing will help provide a platform for them to make their voices heard.

I now recognize the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, for an opening statement.

[The statement of Chairwoman Rice follows:]

STATEMENT OF CHAIRWOMAN KATHLEEN M. RICE

FEBRUARY 27, 2020

To our witnesses, your unique perspectives on the Southern Border are critical to our understanding of this issue, and we appreciate you sharing your important insight with us. Over the past year, this subcommittee has sought to bring attention to the administration's misguided and dangerous border wall policy.

We know the construction of a border wall will not stop the influx of drugs into our country, will be an unnecessary cost to taxpayers, and—as we will discuss today—will have an irreversible impact on the rights of U.S. citizens and Native Americans.

For those of us who do not live in Texas, New Mexico, Arizona, or California, it can be easy to forget that the policy decisions we make in Washington have a tremendous impact on the everyday lives of those who live along the Southern Border.

Two-thirds of the land along the Southern Border is owned by private citizens or the border States. In order to construct barriers across this land, the administration has used eminent domain, a process by which the Government can forcibly seize privately-owned land for public use in exchange for compensation. Often, this compensation is minimal, and landowners are left to fight the Government in court for years. And under this administration, eminent domain will be used at a historically high level to strip landowners of their property, and in many cases, cause damage to their livelihoods.

In addition to this land seizure, the administration has doubled down on its use of the Department of Homeland Security's waiver authority—waiving important environmental and preservation laws—for border wall construction. No Secretary, no matter the purpose or intent, should have the ability to waive every law “in their entirety” with the stroke of a pen.

In the past 3 years, the Trump administration has used this waiver authority 16 times to ignore laws designed to protect the environmental and cultural integrity of communities. For comparison, the Bush administration used this waiver authority only 5 times over the course of his entire presidency.

But this should not come as a surprise. President Trump has shown that he will stop at nothing to deliver on his campaign promise to build a wall. The Trump administration does not listen to the experts, they don't pay attention to border residents or local officials, and they ignore the consequences that come along with abusing the waiver authority.

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The witnesses who have joined us today will speak to this issue from personal experience, and I am proud today's hearing will help provide a platform for them to make their voices heard.

Mr. HIGGINS. Thank you, Madam Chair.

I thank our witnesses who traveled from the border to be here today to provide an on-the-ground perspective. It is very important, this narrative across the country, and we should hear from Americans that know what it is to live on the border.

First, I would like to point out the long history of bipartisan Congressional interest in securing the border using enhanced physical barriers such as fencing, as it has evolved through the years, innovative technologies as they have emerged, access roads and lighting, and more boots on the ground. That is what we refer to in totality as a wall system or a barrier system today.

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorized the construction of border barriers for the first time in statute and gave the Federal Government the authority to waive certain environmental laws. Madam Speaker Pelosi and many of my colleagues across the aisle, the Democratic Party, some on this committee, voted for that bill. This waiver authority was a deliberate act by Congress to avoid endless years of litigation that would make construction impossible.

For example, in the '90s when this authority was being considered, construction of a wall in a section of California that was referred to as Smuggler's Gulch, a known drug-trafficking route, was delayed by environmental studies regarding the access of birds crossing the border. Meanwhile, the cartels were driving vehicles loaded with drugs across the border into American communities.

Since fencing construction began in the '90s, enhanced physical barriers have forced cartels to adapt their smuggling routes to areas along the border without infrastructure, through ports of entry, and through tunnels. The wall system makes it more difficult to conduct illegal crossings, to organize those crossings, and, of course, it gives border enforcement agents additional response time.

In 2005, Congress expanded the waiver authority to include all laws the Secretary determines necessary to ensure expeditious construction of barriers and roads. This was in 2005. Madam Speaker Pelosi and many of my colleagues across the aisle, including on this committee, voted for that bill as well.

The Secure Fence Act of 2006 directed the Department of Homeland Security to achieve and maintain operational control of the international land borders of the United States by preventing all unlawful entries using physical barriers, technology, access roads, and personnel. That bill received positive votes, yes votes, from Senator Schumer and then-Senators Obama, Biden, and Clinton.

Border Patrol analysis and plans across Republican and Democrat administrations have indicated that enhanced physical barriers are an effective solution, 21st Century technology-enhanced physical barriers. For years now, Washington has heeded the request of our boots on the ground, and yet in the last 3 years, we have taken a different path in Washington, DC.

I was encouraged recently to see the Department use its waiver authority this month to reduce the length of time between awarding construction of prequalified contracts using vetted companies already building other sections of the enhanced physical barrier system. Some of these projects have already come in under budget, and the Army Corps of Engineers has told committee staff that these projects include small businesses.

Prior to 1992, parts of the San Diego Border Patrol Sector were not patrollable and essentially ceded to the cartels because of access. After a wall was built in San Diego in 1992, illegal traffic dropped 92 percent. In 1993, El Paso saw a 72 percent drop in illegal traffic in 1 year alone. Since Tucson's wall went up in 2000, there was a 90 percent drop in illegal traffic. Finally, in Yuma, since 2005, a 95 percent drop in illegal traffic was realized once enhanced physical barriers were installed.

These facts speak for themselves. If you install enhanced physical barriers, 21st Century smart physical barriers, crime and criminal crossings will fall. Walls work. Walls don't mean don't come in. Walls mean come in through the gate.

The continued exploitation of our Southwest Border is an assault on our National security and our Nation's sovereignty, and enriches criminal organizations who profit from trafficking drugs and people, including children, and incredibly deadly opioids. In fiscal year 2019, CBP seized nearly 750,000 pounds of drugs at the border. That includes approximately 2,135 pounds of fentanyl, which represents a lethal dose for more people than the entire population of the United States.

Mr. Chilton before us today from Arizona has shown us video footage of drug smugglers carrying backpacks packed with drugs across his property along the border because there are no enhanced physical barriers to delay that crossing. It is an easy target for the cartels.

At this hearing, we will discuss the effects of these barriers on private citizens who live and work along the border. The Federal Government has an obligation to secure the homeland and protect the United States and its citizens from those who seek to do us harm. The Federal Government also has a responsibility to ensure just compensation is provided if there is a circumstance where private land is needed to carry out that duty of securing our sovereign border, as the Fifth Amendment to the Constitution requires.

Current law requires consultation with the Secretaries of Agriculture and the Interior, States, local governments, Native American Tribes, and property owners along the border to minimize the impact of enhanced physical barriers. These safeguards are in place for a reason. They should be observed.

I thank the Madam Chairwoman for holding this hearing. I look forward to hearing more.

I yield back, Madam Chair.

[The statement of Ranking Member Higgins follows:]

STATEMENT OF RANKING MEMBER CLAY HIGGINS

FEB. 27, 2020

Thank you, Madam Chair and thank you to our witnesses who traveled from the border to be here today to provide an on-the-ground perspective.

First, I would like to point out the long history of bipartisan Congressional interest in securing the border using enhanced physical barriers such as bollard-style fencing, innovative technologies, access roads and lighting, and more boots on the ground. What we refer to today as a wall system.

The passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorized the construction of border barriers for the first time in statute and gave the Federal Government the authority to waive certain environmental laws.

Speaker Pelosi and some Democrats on this committee voted for that bill.

This waiver authority was a deliberate act by the Congress to avoid endless years of litigation that would make construction impossible.

Back in the 1990's when this authority was being considered, construction was stalled for years in California on a stretch of land referred to as "Smuggler's Gulch"—a known drug-trafficking route—because environmental groups wanted to test that a bird could fly over the fence. A bird that is native to both Mexico and the United States. Meanwhile, cartels were driving vehicles loaded with drugs across the border into American communities.

Since fencing construction began in the 1990's, enhanced physical barriers have forced cartels to adapt their smuggling routes to areas along the border without infrastructure, through the ports of entry, and through million-dollar tunnels.

The wall system makes it more difficult to conduct their illicit business.

In 2005, Congress expanded the waiver authority to include all laws the Secretary determines necessary to ensure expeditious construction of barriers and roads.

Speaker Pelosi and some Democrats on this committee voted for that bill too.

The Secure Fence Act of 2006 directed the Department of Homeland Security to achieve and maintain operational control of the international land borders of the United States by preventing all unlawful entries using physical barriers, technology, access roads, and personnel.

That bill received yes votes from Senator Schumer and then-Senators Obama, Biden, and Clinton.

Though because the wall system is now a priority for the President, many Democrats are changing their tune.

Border Patrol analyses and plans, across Republican and Democrat administrations keep pointing to enhanced physical barriers as an effective solution.

I was encouraged to see the Department use its waiver authority this month to reduce the length of time between award and construction of pre-qualified contracts using vetted companies already building other sections of the wall system. Some of these projects have already come in under budget, and the Army Corps has told committee staff that these projects include small businesses.

Prior to 1992, parts of the San Diego Border Patrol Sector were not patrollable and essentially ceded to the cartels.

After a wall was built in San Diego in 1992, illegal traffic dropped 92 percent. In 1993, El Paso saw 72 percent drop in illegal traffic in 1 year alone. Since Tucson's wall went up in 2000, there was a 90 percent drop. And finally, in Yuma since 2005, a 95 percent drop in illegal traffic was realized.

These facts speak for themselves. Build a wall and crime will fall.

The continued exploitation of our Southwest Border is an assault on our National security and our Nation's sovereignty that enriches criminal organizations who profit from addicting our friends, neighbors, colleagues, and even children to drugs and opioids.

In fiscal year 2019, CBP seized nearly 750,000 pounds of drugs at the border. That includes approximately 2,135 pounds of fentanyl, which represents a lethal dose for more people than the entire population of the United States.

Mr. Chilton, before us today from Arizona, has shown us video footage of drug smugglers carrying backpacks packed with drugs across his property along the border, because there are no enhanced physical barriers to prevent that.

At this hearing we will discuss the effects of these barriers on private citizens who live and work along the border. The Federal Government has an obligation to secure the homeland and protect the United States and its citizens from those who seek to do us harm.

The Federal Government also has the responsibility to ensure just compensation is provided if there is a circumstance where private land is needed to carry out that duty, as the fifth amendment to the Constitution requires. Current law requires consultation with the Secretaries of Agriculture and the Interior, States, local governments, Native American tribes, and property owners along the border to minimize the impact of enhanced physical barriers. These safeguards are in place for a reason.

I look forward to hearing more about how we can secure the border, while at the same time, respecting the rights of Americans who live along it.

Thank you and I yield back.

Miss RICE. Thank you.

The Chair now recognizes the Chairman of the full committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Thank you very much, Chairwoman Rice. Thank you for holding today's hearing.

It is no secret that I am concerned with President Trump's border security policies. One of the most wasteful of these policies is fixation on a boondoggle border wall. The President promised time and again that Mexico would pay for the wall. Instead, he has left American taxpayers to foot the bill. Worse still, hundreds of border

residents will have their private land seized by the administration in order to build Trump's wall.

I would like to remind Members that the Federal Government owns only roughly 35 percent at the U.S.-Mexican border. To construct hundreds of miles of new wall along the Southwest Border, the Federal Government will have to take privately-owned land one way or another. Often, this private property provides for someone's livelihood or has been owned by families for generations. Takings on such a large and historic level as we are starting to see in south Texas are no small issues.

I would also remind Members that this administration has taken advantage of its authority to waive all legal requirements to build border barriers. Each of the Trump administration's Secretaries or Acting Secretaries of Homeland Security have allowed the Department and CBP to deliberately bypass dozens of laws in order to complete this partisan campaign promise faster.

Before the Trump administration, this authority had only been used a total of 5 times during the Bush administration. Since 2017, the Trump administration has exercised this authority 16 times. Most recently, Acting Secretary Wolf took the highly unprecedented approach of waiving procurement laws, further demonstrating the Executive overreach by the Trump administration to deliver on the President's dream of a border wall paid for by American taxpayers along the Southwest Border.

However, the American public will not be fooled by this President's authoritarian action and word games intended to hide the bad behavior of his administration. We will never really know, if anything, a border wall will do to secure our borders, but we do know and have seen that it will irreparably harm real people and the land they live on.

I am eager to hear from today's witnesses who have first-hand experience with the consequences border communities face due to the hasty construction of a border wall.

In addition, I believe the committee should learn more about the impacts that communities are anticipating as the President diverts additional funding from the military to the border and begins the biggest seizure of private land in the history of this Nation for a wall. Again, as a Nation of laws, we should follow the law.

I thank the witnesses for appearing here today to inform the committee of the real-life impacts of a border wall. I hope what we can discuss here will help the full committee address the challenges facing border communities in a meaningful manner.

With that, Madam Chair, I yield back.

[The statement of Chairman Thompson follows:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

FEBRUARY 27, 2020

It is no secret that I am concerned with President Trump's border security policies. One of the most wasteful of these policies is his fixation on a boondoggle border wall. The President promised that Mexico would pay for the wall. Instead, he has left American taxpayers to foot the bill.

Worse still, hundreds of border residents will have their private land seized by the administration in order to build Trump's wall. I would like to remind Members that the Federal Government only owns roughly 35 percent of land at the U.S.-Mex-

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Most recently, Acting Secretary Wolf took the highly unprecedented approach of waiving procurement laws—further demonstrating the Executive overreach by the Trump administration to deliver on the President's dream of a border wall along the Southwest Border.

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Miss RICE. Thank you, Mr. Chairman.

Other Members of the committee are reminded that under the committee rules, opening statements may be submitted for the record.

Without objection, Members not sitting on the subcommittee will be permitted to participate in today's hearing.

I now welcome our panel of witnesses. Our first witness, Mr. Reynaldo Anzaldúa, is a private landowner from Granjeno, Texas. He and his family currently own 60 acres of land within the Rio Grande Valley. Mr. Anzaldúa is a Vietnam War veteran, and also served for 30 years in the U.S. Customs Service.

Our second witness is Ms. Nayda Alvarez. She is a teacher, a mother, a grandmother, and a private landowner from La Rosita, Texas. Ms. Alvarez' family has lived in Starr County for at least 5 generations.

Next, we have Dr. Ned Norris, Jr., who is the current chairman of the Tohono O'odham Nation. In May 2019, Dr. Norris was elected to serve a 4-year term as chairman. Dr. Norris has served the people of the Tohono O'odham Nation for over 4 decades in various capacities, and from 2015 to 2017 served on the Homeland Security Advisory Council.

Our final witness this morning is Mr. Jim Chilton, a fifth-generation Arizona rancher. In 1979, Mr. Chilton and his brother formed Chilton Ranch & Cattle Company, a cow-calf ranching business. In 1987, Mr. Chilton, his wife, and his 2 sons purchased a 50,000-acre ranch south of Arivaca, Arizona.

Without objection, the witnesses' full statements will be inserted in the record. I now ask each witness to summarize his statement for 5 minutes, beginning with Mr. Anzaldúa.

STATEMENT OF REYNALDO ANZALDUA, PRIVATE CITIZEN

Mr. ANZALDUA. It is an honor to testify before this distinguished subcommittee about the harms President Trump's border wall would have on my family's land, my community, and my country.

My name is Reynaldo Anzaldua. My family owns land in Mission, Texas, along the U.S.-Mexican border. I am 75 years old, a Vietnam War veteran, and a 30-year veteran of the former United States Customs Service of the United States Department of the Treasury, where I worked to inspect goods entering the United States at designated ports of entry along the border. I am also a native of the Rio Grande Valley of southern Texas, and I am here to share with you today what a new border wall would do to my home.

My family owns over 60 acres of land in the path of Trump's border wall. This land near the Rio Grande River has been in my family for generations. On these acres my family ranches and leases the land to several dozen tenants who enjoy the riverfront by fishing and jet skiing. We like to spend time with family there, holding barbecues and relaxing near the Rio Grande. This is a peaceful place, and our neighbors are local institutions like La Lomita Chapel, a historic Catholic church from the 1800's; a small restaurant with a riverside patio; and Chimney Park, an RV community popular with retirees to the area.

Right now, my family is fighting to defend our land in the path of the border wall. Because we did not allow the Government access to our property to survey, the Government sued us. These lawsuits and the dozens of others like them across the Southwest Border in Texas are, unfortunately, nothing new to my family and are part of a long and tragic history of Mexican Americans in the border region losing the lands.

My family, many families like mine, lost their lands through intimidation, fraud, and even violence. For over 60 years, I have witnessed to loss of lands through eminent domain.

For me, the border wall is just another example of the lack of respect for land rights and will only waste taxpayers' money for a vanity project that will lead to more deaths. It is expected to have 100-foot surveillance towers, 24/7 lighting, and a 150-foot enforcement zone complete with fleets of military-grade vehicles.

Because the Trump administration hopes to build along the path of an already existing levee system, the border wall also will not be directly along the Rio Grande at all. The wall can lie over a mile inland, leaving an area about the size of Washington, DC, between the river and the wall in U.S. territory in what will become a no man's land. It will be effectively inaccessible.

The Border Patrol says some landowners will have gates. But who will know the codes to the gates, and who do we call if there are problems? What happens to the power—if the power goes out? What good is owning land if I have to ask the Government permission to access it? This is un-American.

The wall is also causing collateral damage because private groups with no oversight are emboldened by the Government. A private group called We Build the Wall affiliated with Steve Bannon, Kris Kobach, and others, and other Trump supporters, have built a private wall next to my family's property. This group

has no ties to or knowledge of my community. The private wall was built on the riverbank. By clearing vegetation, they have speeded up erosion. We will lose land in the next flood, and erosion would even change the international boundary, which is the river.

Because of this, there are two lawsuits filed against it, but so far have failed to stop it. These cases, the court respected the rights of the landowner, and that is the border wall's landowner, a right that is being denied to my family.

Finally, the Rio Grande Valley would not exist without the river that gives its name. Our water supply comes from the river. Building a wall cuts off the Valley from its lifeline. The border wall goes against everything that makes my home what it is, and most Rio Grande Valley residents oppose it. Today, the Rio Grande Valley is now home to over a million people, and our economy is fueled by trade, immigration, and travel to and from Mexico.

Ultimately, I would like to point out to this subcommittee that the negative effects of the border wall are not hypothetical. People today are living with the effects of President Bush's failed border fence, and Trump's border wall will be worse.

I would like to thank the—thank you for the—thank the committee for inviting me to testify today, and I hope the subcommittee does all within its power to be a check on this administration and its total abuse of border landowners' rights. Thank you.

[The prepared statement of Mr. Anzaldúa follows:]

PREPARED STATEMENT OF REYNALDO ANZALDUA

FEBRUARY 27, 2020

It is an honor to testify before this distinguished subcommittee about the severe harms President Trump's border wall would have on my family's land, my community, and my country.

My name is Reynaldo Anzaldúa and my family owns land in Mission, Texas, a city along the U.S.-Mexican border in the Rio Grande Valley. I am 75 years old, a Vietnam War Veteran, and a 30-year veteran of the former United States Customs Service of the U.S. Department of the Treasury, where I worked to inspect goods entering the United States at designated Ports of Entry along the border. I am also a native of the Rio Grande Valley of southern Texas, and I am here to share with you today what a new border wall would do to my home.

My family owns over 60 acres of land in the path of Trump's border wall. This land near the Rio Grande River has been in my family for generations. On these acres, my family ranches and leases the land to several dozen tenants, who enjoy the riverfront by fishing and jet skiing, among other activities. We like to spend time with family there, holding barbeques and relaxing near the Rio Grande. This is a peaceful place, and our neighbors are local institutions like La Lomita Chapel, a historic Catholic church from the 1800's, a small restaurant with a riverside patio, and Chimney Park, an RV community popular with retirees to the area.

There are so many ways the border wall will harm me and my family, but today I would like to focus on three. These include several issues with which you may not be familiar: (1) The long pattern of land divestment of low- and middle-income Mexican-Americans along the border like my family, (2) the tens of thousands of acres that will be left between the border wall and the Rio Grande in a "no man's land" cutoff from the world, and (3) the symbolic meaning of the border wall to the Rio Grande Valley, which would not exist without a vibrant and thriving border culture where goods and people move daily in both directions.

LONG PATTERN OF LAND DIVESTMENT OF MEXICAN-AMERICAN LANDOWNERS

Right now, my family and I are engaged in a fight to defend our land in the path of the border wall. Because we did not allow the Government to enter our land to conduct surveying for purposes of measuring the land to build the border wall, President Trump's Department of Justice sued me and my family. The Government only entered the land after a court-ordered access.

We received an offer to sell letter from the Government for the land, and my family is attempting to negotiate with them over how the Government will pay us for the taking of our land. If we cannot agree, this could lead to the Government suing the family again.

These lawsuits and and the dozens of others like them across the Southwest Border in Texas are unfortunately nothing new for my family, and fit within a long and tragic history of land divestment of Mexican-Americans in the border region. Through intimidation, fraud, and even violence, many Mexican-American families like mine lost their land sometimes dating all the way from Spanish land grants from the 1700's to today.

For over 60 years, I have borne witness to loss of land through eminent domain. It has been slow and steady, but always ends in the Government winning and my family being left with little to show for it.

Over 10 years ago, the Federal Government during the Bush administration tried to take my family's land in Granjeno, TX to build what was then called the "border fence" after the Secure Fence Act of 2006 was passed. Although they called it a fence in 2006 and call it a border wall today, its impact is the same.

Even before that, the Government took land from a family member to build a new Port of Entry in Mission, TX, in the early 1990's. Before that still my family lost land for the development of a flood-control zone.

For me, President Trump's latest border wall project is just one more example of the lack of respect for land rights in the region I call home. This border wall will only waste the taxpayers' money for a vanity project that will lead to more deaths.

67 SQUARE MILES OF "NO MAN'S LAND" BETWEEN THE RIVER AND THE WALL

Additionally, the path of the border wall is not directly along the Rio Grande at all. Because the Trump administration has decided to build its latest border walls along the path of an already-existing levee system in Hidalgo and Cameron Counties, the wall can lie over a mile inland in some areas. This leaves tens of thousands of acres of U.S. territory in what will become a "no man's land" cutoff from the United States and the rest of the world. This land will be effectively inaccessible to property owners with land left on the wrong side of the wall.

In South Texas alone, if Trump's plans come to pass, about 67 square miles will lie between the river and the wall. That's about the size of Washington, DC.

This land is important and is made up of homes, wildlife preserves, ranchland, and sites that host many endangered species, such as the rare ocelot.

The border wall would orphan these massive parts of the Rio Grande Valley and lock them into an even more militarized zone. The Border Patrol says some owners will have gates to farm or visit their property behind the wall, but there are a lot of details that make this complicated. Who will know the codes to the gate, and who do we call if there are problems? What happens if the power goes out? What good is owning land if I have to be at the mercy of the Government and ask their permission to access it? This is un-American.

PRIVATE BORDER WALL IMPACT

The border wall is also causing collateral damage through the actions of private groups emboldened by this Government assault on our community.

A private group called "We Build the Wall" has built a private wall with no oversight. This group has no ties to or knowledge of my community, and is affiliated with Steve Bannon, Kris Kobach, and other Trump supporters.

Late last year, I began seeing construction of this private wall right next to my family's property, right on the banks of the river. There are international treaties the United States has with Mexico that protect the river from damage by either country. By clearing vegetation from the riverbank, they have speeded up the erosion process and in the next flood, we will lose part of our land. Erosion caused by this new wall could even change the international boundary, which is defined as the river.

Because of this, there were 2 lawsuits filed against the private border wall, but both so far have failed to stop it. In these cases, the courts respected the rights of the landowner—a right that is being denied to my family.

Whether a wall is built far from the river or right on its banks, there is no way that this project can avoid environmental devastation and destruction of the community.

IMPACT ON THE RIO GRANDE VALLEY

Finally, I would like to emphasize that the Rio Grande Valley would not exist without the river that gives it its name, and that border walls go against everything

that makes my home what it is. Three in 4 Rio Grande Valley residents oppose the border wall.

Today, the Rio Grande Valley is now home to over a million people on the U.S. side of the border, and our economy is fueled by trade, immigration, and travel to and from Mexico. Without it, it would simply not be the same place.

Our water supply comes from the river. Building a wall both symbolically and physically cuts off the Valley from its lifeline.

As a retired official of the former U.S. Customs Service, I understand the importance of legitimate trade to both the Rio Grande Valley region and the rest of the United States. Without a vibrant culture of goods and people moving back and forth between Mexico and the United States, the society we take for granted could not exist.

This vibrant culture is threatened today by the border wall, which is expected to have 100-foot surveillance towers, 24/7 lighting, and a 150-foot enforcement zone complete with fleets of military-grade vehicles.

CONCLUSION

Ultimately, I would like to point out to this subcommittee that the negative effects of the border wall are not hypothetical. There are a million real people in the Rio Grande Valley living with the effects of President Bush's failed border fence project today, and Trump's border wall will be no different.

While some landowners may be facing the threat of eminent domain for the first time, this man-made crisis is nothing new for me.

My family's property will become one of the many stuck in "no man's land" between the river and the wall, an area as large as our Nation's capital city. All of this is in service of a project that most people in the Rio Grande Valley completely reject, and that is an insult to our American values.

Thank you to the subcommittee for inviting me to testify today, and I hope the subcommittee does all within its power to be a check on this administration and its total abuse of border landowners' rights.

Miss RICE. Thank you, Mr. Anzaldua.

I now recognize Ms. Alvarez to summarize her statement for 5 minutes.

STATEMENT OF NAYDA ALVAREZ, PRIVATE CITIZEN

Ms. ALVAREZ. It is an honor to testify before this distinguished subcommittee about the severe harms Trump's border wall would have on my family's land, my community, and my country.

My name is Nayda Alvarez, and I live in a small community called La Rosita in Starr County along the U.S.-Mexico border. I own and live on the land that has been passed down within my family for 5 generations. Thanks to the President's campaign promise to build a wall across the entire Texas border, my home is now in its path. I have been living with the threat for more than a year now. The Federal Government has sued me to get access to my land through eminent domain. I was able to testify before Congress a year ago about the border wall. Unfortunately, since then, we have already begun to see the devastation as Trump's border wall has begun to go up in south Texas.

My family peacefully lives and works in Starr County, and my family has a long history of working in law enforcement. I have lived on this land for more than 40 years with my family, alongside where my grandfather lived. I worry about my father's health once our land, our home is taken. This land was also my mother's home where she raised a family, where she lived her last days, and where she took her last breath. This land is where my daughters were raised and where I see my grandchildren play. This is not only my home but it is a place of gathering for my family. It is part

of my family history and the inheritance passed down to me from my ancestors, a tradition I intend to continue.

However, this ancestral home will be destroyed by the construction of the border wall. The Government has already sued me so they can survey and decide how much of my land they will take through eminent domain, and we call this the land of the free. This access would give the Government the right to come onto my land and tear things apart, making borings, cutting vegetation, and do whatever else they want on my home and property without me being able to do anything about it. The Government has offered me just a hundred dollars for this access, which is what they think is fair price for giving up so much, and this is the land of prosperity.

As a lifetime border resident, I have never felt unsafe in my own community, having grown up with a father and brother who served in law enforcement for decades. Despite living in a community, one of the safest in America, helicopters frequently fly overhead. Local police, sheriffs, State troopers, and Border Patrol are a constant presence in my peaceful home. This makes our home, our country look like a war zone.

In more than 40 years of living on the border, I cannot say that I have ever seen migrants crossing into the United States across my family's property. There is already a natural barrier created by a tall bluff from the river. No explanation was ever given to me as to why the Government plans to spend billions to construct an artificial one, except for an expensive, needless campaign promise.

There has been no transparency, and we have been intimidated by the Government to sign over rights to our land. We have been talked down to by Government officials who think we are not aware of our rights, who have no respect for excruciating life events that we were experiencing.

When my mother was on her death bed, Government officials continued to call and were still asking for our family that we sign over our—sign over to the Government our rights to the land. I had to remind these individuals my mother was dying of cancer in order to stop the calls.

Furthermore, the Government is hastily rushing through the process as the 2020 elections approach. It is waiving all laws without any real concern for landowners, the land, or wildlife. I cannot compete with the Government's ability to waive laws and rush through this process without consideration. It is not fully assessing the land's ability to withstand a monstrous construction project. The border wall that already fell down in California in late January is evidence of that. My home is just 200 feet from the river. The wall will not fit there. When I asked the Government officials how the wall would fit, they said they would squeeze it in.

Will I still have a home at the end of this? I will lose my way of life, my privacy, my access to a beautiful river. My plans for the future are now filled with uncertainty. I have been a teacher for 22 years and anticipated retiring soon. However, I can no longer make plans because I do not know what will happen in the future.

The Rio Grande Valley is very prone to dangerous flooding, but the Government has shown no concern for our safety. My home could easily be washed away. All the hard work and lifetime of

building my dreams are thwarted in this border wall, as those of so many others in my community.

Thank you for granting me this opportunity to testify, and I am ready to address any questions you may have.

[The prepared statement of Ms. Alvarez follows:]

PREPARED STATEMENT OF NAYDA ALVAREZ

FEBRUARY 27, 2020

It is an honor to testify before this distinguished subcommittee about the severe harms Trump's border wall would have on my family's land, my community, and my country.

My name is Nayda Alvarez and I live in the Rio Grande Valley of South Texas in a small community called La Rosita in Starr County, along the U.S.-Mexico border. I own and live on land that has been passed down within my family for 5 generations.

Thanks to the President's campaign promise to build a wall across the entire border in Texas, my home is now in the path of the border wall, and the Federal Government has sued me to get access to my land through eminent domain. I have been living with the threat of the border wall for more than a year. I had the opportunity to testify before the House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties Hearing on the National Emergencies Act on February 28, 2019. Unfortunately, since then we have already begun to see the devastation as Trump's border wall has begun to go up in South Texas.

My family has peacefully lived and worked in Starr County and my family has a long history of working in law enforcement. I have lived on this land for more than 40 years with my family, alongside where my grandfather lived. I worry about my father's health once our land, our home, is taken. This land was also my mother's home, where she raised a family, where she lived her last days, and where she took her last breath this past March.

This land is where my daughters were raised and where I see my grandchildren play. This land is not only my home, but it is a place of gathering for my family, it is part of my family history, and the inheritance passed down to me from my ancestors—a tradition I intend to continue. However, this ancestral home will be destroyed by the construction of the border wall.

With the construction of the border wall, my plans for the future are filled with uncertainty now. I have been a teacher for 22 years, and anticipated retiring in a few years. However, I can no longer plan for tomorrow because I do not know what will happen tomorrow, much less in the future.

The Government has already sued me, wanting access to my land for an entire year—so they can survey and decide how much of my land they will take through eminent domain. This access would give the Government the right to come onto my land and tear things apart—make borings, cut vegetation, and do whatever else they want on my home and property without me being able to do anything about it. The Government has offered me just \$100 for this access—which is what they think is a fair price for giving up so much.

There is no reason for my home to be sacrificed to simply fulfill an expensive and needless campaign promise. As a lifetime resident of the Rio Grande Valley, I know there is no emergency in my home. There is no "invasion." I have never felt unsafe in my own community, having grown up with a father who served in law enforcement for over 40 years and a brother who has been in law enforcement in Starr County for more than 20 years. On the contrary, Starr County is one of the safest places to live in America—and yet it is already one of the most over-policed areas of our country. Despite living in a quiet community with very little crime, helicopters frequently fly overhead, local police, sheriffs, and State troopers, along with Federal agencies like the Border Patrol are a constant unwelcome presence in my peaceful home. This over-policing is what unnecessarily makes our home and our county look like a warzone.

In more than 40 years of living on the border, I cannot say that I have ever seen migrants crossing into the United States across my family's property. To do so, they would have to cross the river, and then they would have to climb up a bluff that runs alongside the river at the end of my property. The river and the bluff create a natural barrier on my family's property, a natural barrier that already exists between Mexico and my land in the United States. No explanation was ever given to me as to why the U.S. Government plans to spend billions to construct an artificial one.

There has been no transparency in this process and we have been intimidated by Government officials to sign over rights to our land. We have been talked down to by Government representatives who think we are not aware of our rights. With no respect for the excruciating life events we were experiencing, when my mother was on her deathbed, Government officials continued to call and were still asking our family that we sign over to the Government our rights to the land. I had to remind these individuals that my mother was dying of cancer in order to stop the calls.

Furthermore, the Government is hastily rushing through construction processes in anticipation of the 2020 elections. It is waiving all laws, without any real concern for the landowners, the land, and wildlife. I cannot compete with the Government's ability to waive laws and rush through this process without consideration. I have seen maps that are incomplete at best, showing that the Government is not fully documenting the land and taking into account the geography or topography of it, and its ability to withstand such a monstrous construction project. The border wall that already fell down in California in late January is evidence of that.

The Government plans to build a wall and a maintenance road just feet from my house. They describe a 150-foot wide "enforcement zone" between my house and the river—but my home is just 200 feet from the Rio Grande River and the land closest to the river is unstable and subject to erosion. When I asked Government officials how they will fit the wall between my home and the river, they simply said they would "squeeze it in."

At the end of all this—will my home be south of the wall? Will it be torn down? Will I still have a home? My land? If I am able to keep my home, how can I live on my land with the border wall looming over it? I will lose my privacy and our way of life.

The Rio Grande Valley is very prone to flooding, having already experienced dangerous floods, but the Government has shown no concern for our safety and the increased risks posed by the border wall. If there is another flood, my home could easily be washed away. All the hard work and a lifetime of building my dreams are thwarted by this border wall, as are those of so many other residents of the Rio Grande Valley.

Thank you again for granting me this opportunity to testify. I am ready to address any questions you may have.

Miss RICE. Thank you, Ms. Alvarez.

I now recognize Chairman Norris to summarize his statement for 5 minutes.

STATEMENT OF NED NORRIS, JR., CHAIRMAN, THE TOHONO O'ODHAM NATION

Mr. NORRIS. Good morning, Chairwoman Rice, Ranking Member Higgins, and distinguished Members of the subcommittee. I am Ned Norris, Jr., and I am the chairman of the Tohono O'odham Nation of Arizona. It is an honor to testify before you today on behalf of my Nation. I also want to recognize Representative Lesko, whom the district of it is in the northern most part of our reservation is located.

The Tohono O'odham Nation is a Federally-recognized Tribe with more than 34,000 enrolled Tribal citizens. Our ancestors have lived in what is now Arizona and northern Mexico since time immemorial. Without consideration for our sovereign rights or what was best for our people, the international border was drawn through our ancestral territory in 1854, separating our people and our lands. As a result, today, our reservation shares a 62-mile border with Mexico, the longest of any Tribe's reservation on the Southern Border. Seventeen O'odham communities with approximately 2,000 Tribal citizens are still located in our historical homelands in Mexico.

O'odham on both sides of the border share the same language, culture, religion, and history. Our citizens cross to participate in pilgrimages and ceremonies at important religious and cultural

sites on both sides of the border, to visit family and friends, and to pay respects to loved ones buried in cemeteries on either side.

Today, only a portion of our ancestral territory is encompassed within the boundaries of our current reservation. Our original homelands ranged well beyond boundaries and include—well beyond these boundaries and include what is now Organ Pipe National—Organ Pipe Cactus National Monument, Cabeza Prieta National Wildlife Refuge, and the San Bernardino National Wildlife Refuge.

The Nation has significant and well-documented connections to these lands and the religious and cultural and natural resources located within them, including at Quitobaquito Springs and Monument Hill.

The Nation shares the Federal Government's concerns about border security, and we believe the border-related law enforcement measures we have taken in—have taken in coordination with CBP are necessary to protect the Nation, specifically, and the United States generally.

Over the past decade, the Nation has spent an annual average of \$3 million in Tribal funds to help meet the United States' border security responsibilities. We participate in Tribally-led high-intensity drug trafficking task forces and in a Shadow Wolves Native ICE unit, and we have authorized vehicle barriers and ICE office, CBP forward operating bases, CBP checkpoints, and integrated fixed towers on our Tribal lands.

But the Nation strongly opposes the construction of a border wall in our historical territory. Such a wall comes at great cost to the American taxpayer. It also is in ineffective and remote geographic areas like ours, and it is needlessly destructive when there are more efficient technologies that can control the border without damaging the religious, cultural, and environmental resources on which our members rely.

We only are deeply—we are also deeply concerned about the authority that allows Homeland Security to waive all statutory protections in the name of expediting border wall construction. Section 102 of the Illegal Immigration Reform and Immigration Responsibility Act allows DHS to trample over rights of the Tohono O'odham Nation and other border communities in a way that would never have been tolerated in other parts of the United States.

And while IIRIRA requires DHS to consult with Tribal, State, and local government and property owners, consultation either has not occurred or has been woefully inadequate, resulting in no real mitigation measures. Recent border wall construction activities already have damaged areas of cultural significance to the Nation, including the bulldozing of an area near Quitobaquito Springs, which destroyed burial grounds, and the blasting of Monument Hill, a ceremonial site that is a final resting place for Tribal ancestors.

CBP commenced these activities despite our Tribal historic preservation staff raising concerns. To add insult to injury, yesterday, CBP invited the press to witness more blasting at Monument Hill immediately before I testified in the House Natural Resources Committee about this very subject. The disrespect for our cultural

resources is painful for us and a symptom of the dangerous way in which IIRIRA has been implemented.

We thank the committee for its efforts to address this serious problem through its vote on legislation which would rescind DHS's dictatorial waiver authority and that would help protect our religious and cultural heritage, our way of life, and our environment.

I am happy to answer any questions.

[The prepared statement of Mr. Norris follows:]

PREPARED STATEMENT OF NED NORRIS, JR.

FEBRUARY 27, 2020

INTRODUCTION & HISTORICAL BACKGROUND

Good afternoon, Chairwoman Rice, Ranking Member Higgins, and distinguished Members of the subcommittee. I am Ned Norris, Jr. and I am the chairman of the Tohono O'odham Nation of Arizona. It is an honor to have the opportunity to testify before you today on behalf of my Nation. I also want to pay our respects to Representative Lesko, in whose district the northern-most portion of our Reservation is located.

For the reasons that will be obvious from my testimony today, the Nation is deeply appreciative of the attention that this subcommittee, and its parent full committee, is paying to the serious issues that surround the frighteningly broad authority that the Secretary of Homeland Security has been given to ignore all manner of statutory rights in connection with border wall construction. The waiver authority granted the Secretary in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) allows the Secretary to take liberties with the law in a way more reminiscent of a totalitarian state than a democracy in which all citizens are equally protected by the laws of the land. We support the committee's efforts, and hope that the full House will take up the noble cause of H.R. 1232, The Rescinding DHS' Waiver Authority for Border Wall Act, and return this authority to Congress, where it belongs.

The Tohono O'odham Nation is a Federally-recognized Tribe with more than 34,000 enrolled Tribal citizens. Our ancestors have lived in what is now Arizona and northern Mexico since time immemorial. Without consideration for our people's sovereign and historical rights, in 1854 the international boundary was drawn through our ancestral territory, separating our people and our lands. As a result, today the main body of our Reservation shares a 62-mile border with Mexico—the second-longest international border of any tribe in the United States, and the longest on the Southern Border. On the other side of the border in Mexico, 17 O'odham communities with approximately 2,000 members are still located in our historical homelands. O'odham on both sides of the border share the same language, culture, religion, and history. Our Tribal members regularly engage in border crossings for pilgrimages and ceremonies at important religious and cultural sites on both sides of the border. We also cross the border to visit family and friends.

Today only a portion of our ancestral territory is encompassed within the boundaries of our current U.S. Reservation. Our original homelands ranged well beyond these boundaries, and included what is now the Organ Pipe Cactus National Monument (adjacent to the western boundary of the Nation's Reservation), the Cabeza Prieta National Wildlife Refuge, and the San Bernardino National Wildlife Refuge to the east. The Nation has significant and well-documented connections to these lands and the religious, cultural, and natural resources located there.



Map of Tohono O'odham Ancestral Territory

THE NATION SUPPORTS AND IS ACTIVELY ENGAGED IN BORDER SECURITY EFFORTS

The Nation has long been at the front lines of securing the border. Over the past decade the Nation has spent an annual average of \$3 million of our own Tribal funds on border security and enforcement to help meet the United States' border security responsibilities. The Nation's police force typically spends more than a third of its time on border issues, including the investigation of immigrant deaths, illegal drug seizures, and human smuggling.

The Nation also has long-standing, positive working relationships with Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and other Federal law enforcement agencies. The Nation has entered into several cooperative agreements with CBP and ICE, and pursuant to numerous Tohono O'odham Legislative Council resolutions has authorized a number of border security measures on its sovereign lands to help CBP. Some examples include:

- *High Intensity Drug Trafficking (HIDTA) Task Force.*—The Nation leads a multi-agency anti-drug smuggling task force staffed by Tohono O'odham Police Department detectives, ICE special agents, Border Patrol agents, and the FBI. This is the only Tribally-led High Intensity Drug Trafficking (HIDTA) Task Force in the United States. In 2018, the Nation's Task Force Commander W. Rodney Irby received an award recognizing him as the HIDTA National Outstanding Task Force Commander.
- *ICE office and CBP forward operating bases.*—Since 1974, the Nation has authorized a long-term lease for an on-reservation ICE office. The Nation also approved leases for 2 CBP forward operating bases that operate on the Nation's lands 24 hours, 7 days a week.
- *Vehicle barriers on our lands.*—CBP constructed extensive vehicle barriers that run the entire length of the Tribal border and a patrol road that parallels it.
- *CBP checkpoints on our lands.*—The Nation has authorized CBP checkpoints on the Nation's major east-west highway to Tucson and the northern highway to Casa Grande.
- *Integrated Fixed Towers.*—The Nation approved a lease of its lands to allow CBP to build an Integrated Fixed Tower (IFT) system that will include surveillance and sensor towers with associated access roads on the Nation's southern and eastern boundaries to detect and help interdict illegal entries.
- *Shadow Wolves, an ICE tactical patrol unit.*—The Nation also has officers that are part of the Shadow Wolves, an ICE tactical patrol unit based on our Reservation which the Nation played a role in creating. The Shadow Wolves are

the only Native American tracking unit in the country, and its officers are known for their ability to track and apprehend immigrants and drug smugglers, using traditional tracking methods. The Shadow Wolves have apprehended countless smugglers and seized thousands of pounds of illegal drugs.

BORDER “WALL” CONSTRUCTION IN REMOTE AREAS LIKE OURS IS DEEPLY HARMFUL TO THE NATION—AS WELL AS INEFFECTIVE AND A WASTE OF TAXPAYER DOLLARS

The Nation shares the Federal Government’s concerns about border security, and we believe that the measures we have taken to assist CBP and conduct our own law enforcement efforts are necessary to protect the Nation specifically and the United States generally. But we strongly oppose the construction of a border wall on our southern boundary. Such a wall comes at great cost to the American taxpayer in this era of a skyrocketing Federal deficit. It is ineffective in remote geographic areas like ours where it can easily be circumvented by climbing over, tunneling under, or sawing through it. And it is needlessly destructive when there are more efficient ways to control the border without damaging the religious, cultural, and environmental resources on which our members rely and which make our ancestral land sacred to our people.

Damage Already Done by Construction Outside Our Reservation.—In several amicus briefs filed in litigation in 2019 challenging construction of the border wall,¹ the Nation detailed the negative impacts it knew would be caused by border wall construction in Tucson Sector Projects 1, 2, and 3 and Yuma Sector 3. Today, some of that construction is fully under way and the anticipated damage is now occurring. Tucson Sector Projects 1 and 2 involve construction of a 43-mile long, 30-foot high concrete-filled steel bollard fence (pedestrian barrier or wall) to replace existing vehicle barriers and pedestrian fencing near the Lukeville Port of Entry. The Yuma Sector Project contemplates over 30 additional miles of wall construction, connecting with these projects, extending through Cabeza Prieta National Wildlife Refuge and Organ Pipe Cactus National Monument, and ending less than 2 miles from the western boundary of the Nation’s Reservation. Similar construction is on-going in Tucson Sector Project 3 to the east of the Tribe’s reservation, including the San Bernardino National Wildlife Refuge. These projects already have caused significant and irreparable harm to cultural and natural resources of great importance to the Nation.

The Federal Government itself acknowledged the significance of the Nation’s interest in the areas that are being impacted by the on-going and contemplated construction in the Tucson and Yuma Sector projects. For example, the National Park Service in its General Management Plan for the Organ Pipe Cactus National Monument (a UNESCO biosphere reserve)² acknowledged the importance of Quitobaquito Spring, which is located 200 yards from the border:

“There are 11 springs in the monument, eight of which are located at Quitobaquito, by far the largest source of water. The pond and dam at Quitobaquito were constructed in 1860, and the resulting body of water is one of the largest oases in the Sonoran Desert. The site is also sacred to the O’odham, who have used the water from this spring for all of their residence in the area . . .

“There still exist sites within the monument which are sacred to the O’odham, including Quitobaquito Springs . . . Even to the present day, the O’odham continue to visit the monument to collect sacred water from the Springs, to gather medicinal plants, and to harvest the fruit of the organ pipe and saguaro cactus.”³

The Park Service also has recognized that there are O’odham burial sites within Quitobaquito.⁴ In a more recent study, the National Park Service identified 5 new

¹See, e.g., *Sierra Club and Southern Border Communities Coalition v. Donald J. Trump*, No. 4:19-cv-00892-HSG, Amicus Curiae Brief of Tohono O’odham Nation in Support of Plaintiff’s Motion for Supplemental Preliminary Injunction (June 18, 2019, N.D. Ca.) (Dkt. No. 172); Amicus Curiae Brief of Tohono O’odham Nation in Support of Plaintiff’s Motion for Partial Summary Judgment (October 18, 2019) (Dkt. No. 215).

²Biosphere reserves are areas with unique ecosystems recognized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as special places for testing interdisciplinary approaches to managing social and ecological systems. Each reserve promotes solutions reconciling the conservation of biodiversity and sustainable use. <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/>.

³U.S. National Park Service, Organ Pipe Cactus National Monument, Final General Management Plan, Development Concept Plans, Environmental Impact Statement (Feb. 1997), at 30, 33, available at <https://www.nps.gov/orpi/learn/management/upload/fingmp.pdf>.

⁴Id. at 158, citing Anderson, Keith M., Bell, Fillman and Stewart, Yvonne G., *Quitobaquito: A Sand Papago Cemetery*, Kiva, 47, no 4 (Summer, 1982) at 221–22; see also Bell, Fillman, An-

archeological sites (of pre-contact Native American artifacts) and additional archeological resources within a 60-foot-wide Federal easement that runs along the border in Organ Pipe, noting that many existing archeological sites will be impacted or destroyed by the border wall construction, and that many areas along the Organ Pipe border have not yet been surveyed to identify archeological and culturally-sensitive sites.⁵ Indeed, recent construction activities already have resulted in damage to areas of significance to the Nation within Organ Pipe, including the blading of an area near Quitobaquito Springs and blasting in an area called Monument Hill, which we believe has disturbed human remains.⁶

Similar expert reports show archeological sites of significance to the Nation in the immediate vicinity of Tucson Project 3 in the San Bernardino Valley, as well as the Cabeza Prieta National Wildlife Refuge, although these areas are less well-surveyed so the extent of cultural and natural resources potentially affected by construction of a border wall is even less well-known.⁷ But there is little question that the ongoing construction of 43 miles of 30-foot high steel bollard wall will have serious negative impacts on trees, cacti, and other plants of documented significance to the Nation, on archeological and burial sites of O’odham ancestors, on wildlife migration, and on access to vitally important sources of water, and that it will cause flooding in those areas where construction occurs.⁸

The Nation Is Deeply Concerned that DHS Will Next Extend Construction Onto The Nation’s Reservation.—If the wall is extended onto our Reservation, it will divide our lands and our people, creating a barrier between families and communities who share the same language and culture. It will interfere with our members’ traditional crossings for domestic, religious ceremonial and cultural purposes. A wall will impede the natural flow of water and prevent it from reaching our Reservation, including the man-made watering holes used by our livestock and by wild animals. A wall built across natural washes also will have a damming effect (as it already has done near Lukeville), and exacerbate the flooding that already occurs on our roads and in our communities during monsoon season. Construction of the wall near the outskirts of our reservation already is disturbing and destroying culturally significant sites and cultural resources, Tribal archeological resources, and sacred sites and human remains, and already impacting our wildlife, including some endangered species like the jaguar that are sacred to American Indian tribes, preventing them from moving freely within their habitat and interfering with their natural migration patterns. Construction of the wall near our reservation also already is interfering with the flow and use of scarce and vital water resources, including seasonal washes, on which plants, wildlife, and livestock depend. The plants are food sources for animals and are used by Tribal members for food, medicine, and cultural purposes.

THE IIRIRA WAIVER AUTHORITY IS INCONSISTENT WITH AMERICAN VALUES

The Nation is deeply troubled by the Federal statute that gives the Department of Homeland Security (DHS) nearly dictatorial power to issue to itself a “waiver” to circumvent any law with which it does not wish to comply. DHS has used this self-waiver authority to avoid more than 42 laws that otherwise would protect the rights of individuals and local governments, private property rights, water rights,

derson, Keith M. and Stewart, Yvonne G., *The Quitobaquito Cemetery and Its History*, U.S. National Park Service, Western Archeological Center (Dec. 1980), available at <http://npshistory.com/series/anthropology/wacc/quitobaquito/report.pdf>.

⁵ Veech, Andrew S., *Archeological Survey of 18.2 Kilometers (11.3 Miles) of the U.S.-Mexico International Border*, Organ Pipe Cactus National Monument, Pima County, Arizona, U.S. National Park Service, Intermountain Region Archeology Program (July 2019), available at <https://games-cdn.washingtonpost.com/notes/prod/default/documents/cbd7ef6a-3b5b-4608-9913-4d488464823b/note/7a429f63-9e46-41fa-afeb-c8e238fcd8bb.pdf> (discovery of 5 new archeological sites and 55 isolated finds; recommending additional evaluation of sites, noting that 17 identified archeological sites will be destroyed by the border wall construction, and that many areas along the border within the Monument remain unsurveyed).

⁶ See Firozi, Paulina, *The Washington Post*, *Sacred Native American burial sites are being blown up for Trump’s border wall, lawmaker says* (Feb. 9, 2020) <https://www.washingtonpost.com/immigration/2020/02/09/border-wall-native-american-burial-sites/>.

⁷ Fish, Paul R.; Fish, Suzanne K.; Madsen, John H., *Prehistory and early history of the Malpai Borderlands: Archaeological synthesis and recommendations*, U.S. Department of Agriculture, Forest Service (2006) at 29–30, available at https://www.fs.fed.us/rm/pubs/rmrs_gtr176.pdf; U.S. Fish and Wildlife Service, *Cabeza Prieta National Wildlife Refuge: Comprehensive Conservation Plan, Wilderness Stewardship Plan and Environmental Impact Statement* (Aug. 2006) at 172, 586, available at <https://www.fws.gov/uploadedFiles/CPNWREIS.pdf>; U.S. Fish and Wildlife Service, *Environmental Assessment of the Malpai Borderlands Habitat Conservation Plan* (July 26, 2008) at 17, available at <https://www.fws.gov/southwest/es/arizona/Documents/HCPs/Malpai/MBHCP%20EA%20w%20FONSI.pdf>.

⁸ See Sierra Club, *Amicus Curiae Brief of Tohono O’odham Nation at 7–8*.

religious practices and culturally sensitive sites, the environment, endangered species, and a host of other rights and resources that Americans—and the Tohono O’odham Nation—hold dear.

As you know, the culprit is Section 102(c) of IIRIRA, as modified by the Real ID Act of 2005. IIRIRA authorizes the Secretary of DHS to install additional physical barriers and roads near the border to deter illegal crossings into the United States, but allows the Secretary to do this without taking into consideration whether the measures are cost-effective, how well they actually work, or how much damage they may do to the communities and environment impacted by the measures. IIRIRA Section 102(a). Section 102(c) provides:

“Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section. Any such decision by the Secretary shall be effective upon being published in the *Federal Register*.”

8 U.S.C. § 1701 note. The language is so broad that the DHS Secretary has claimed he has the authority to waive any law—including State and other laws—if he deems it necessary for expeditious construction of border barriers. In 2008, DHS issued a waiver that covers a large portion of the Southern Border in California, New Mexico, Texas, and Arizona, including the Tohono O’odham Nation’s border with Mexico. See 73 Fed. Reg. 19078 (April 8, 2008) (correction). The notice waives the application of virtually all potentially applicable Federal environmental, cultural, and religious protection laws, and all Federal, State, or other laws, regulations, and legal requirements deriving from or related to the subject of those Federal laws. *Id.* at 19080. Since then, DHS has issued a series of additional waivers to allow construction of the border wall, see, e.g., 84 Fed. Reg. 21798 (May 15, 2019), and just last week issued yet another waiver that allows the administration to ignore Federal procurement and contracting laws (in addition to all environmental laws) where it is currently constructing the border wall in California, Arizona, and Texas. See 85 Fed. Reg. 9794 (Feb. 20, 2020).

The extraordinary latitude of DHS’s authority to waive any and all laws is exacerbated by IIRIRA’s severe limitation on citizens’ rights to challenge those waivers. Any claim must be filed within 60 days after the date of the action or decision made by the DHS Secretary (see Section 102(c)(B)), an extraordinarily short time period in which to become aware of the waiver, to determine what DHS construction actions are planned under the waiver, and to prepare a claim in connection with the waiver. Further, the only cause of action that the statute purports to allow is in Federal district court for a claim “alleging a violation of the Constitution,” Section 102(c)(A)—a draconian limitation that prevents Americans from being able to challenge the impact of DHS’s actions on their rights under any statutory laws. Further impeding citizens’ right to challenge is IIRIRA’s requirement that appeals from a decision of a district court may only be had by filing a petition for certiorari with the U.S. Supreme Court—and as is well-known, each year the Supreme Court grants very, very few petitions for certiorari (e.g., only 1.2 percent of petitions filed in 2017 were granted according to the Harvard Law Review).⁹

As a practical matter, what this means is that a wall may very well be built without any consideration of the laws that protect the interests of American citizens generally, and the Tohono O’odham Nation in particular, in our natural or cultural resources, archeological or sacred sites, economic resources, or the people and communities that live on the border. And while IIRIRA provides that DHS shall consult with Interior, Indian tribes, State and local governments, and property owners to minimize impacts on the environment, culture, commerce, and quality of life for those living near the border (see Section 102(b)(1)(C)), the Federal Government appears to believe it need not comply with these directives, and accordingly such consultation either has not occurred or has been inadequate. Nevertheless, DHS’s failure to engage in formal consultation with Tribes violates not just IIRIRA, but Executive Order No. 13175, “Consultation and Coordination with Indian Tribal Governments” (Nov. 6, 2000), and the DHS Tribal Consultation Policy (Sections II.B. and III.A), as well as the Federal Government’s general trust obligation to respect Tribal sovereignty and engage with Tribes on a government-to-government basis.

More than that, the manner in which IIRIRA is being implemented has stripped our Tribal government, other governments, and private citizens in border communities of significant Federal protections (as well as protections under State and other laws), and has militarized the border near our communities. No other segment of

⁹<https://harvardlawreview.org/2017/11/supreme-court-2016-term-statistics/>.

the United States population has been forced to surrender these legal rights and protections or live under these circumstances. The Tohono O’odham Nation strongly urges that it and its fellow border communities should be entitled to the same rights and protections as other United States citizens.

For all these reasons, the Nation opposes the application of Section 102(c) waivers on its lands, and objects to the waiver authority in general as unacceptably broad and draconian.¹⁰ Indian Country stands with us—the National Congress of American Indians has adopted several resolutions that similarly oppose the waiver of Federal, State, and other laws under Section 102(c) of IIRIRA as “unnecessary, destructive, and in violation of the Federal obligation to consult with Indian Tribes on a government-to-government basis and to respect Tribal sovereignty and self-determination.” NCAI Resolution ECWS 08–001; REN–08–002; ECWS 17–002; NCAI Resolution ECWS 18–001.

The Nation’s concerns have been heightened as DHS moves forward full steam ahead in constructing a border wall, despite the absence of Federal appropriations, circumventing the will of Congress by reprogramming billions of dollars appropriated for the Department of Defense without any evidence that such a wall will improve border security. IIRIRA is effectively facilitating the use of billions of taxpayer dollars appropriated for other purposes to be spent on a border wall that has not been adequately studied and that already is having significant, deleterious effects on the Nation’s Reservation and our members, our cultural and natural resources, our archeological and sacred sites, and our economic interests.

Litigation challenging DHS’s waiver authority has to date been unsuccessful.¹¹ Litigation challenging the reprogramming of funds is proceeding, but destruction of sacred sites and important habitat is continuing as that litigation winds its way through the process. For these reasons, we urge Congress to reconsider whether the IIRIRA waiver provision should remain in place, or whether additional safeguards are necessary to protect border Tribes like the Nation and other border communities whose rights and interests are being trampled by its application. We reiterate our support for legislation like H.R. 1232, which would retain IIRIRA’s directive to construct border barriers but strike the waiver provision, as one appropriate response to the over breadth of the current waiver provision.

We ask that at a minimum, Congress consider requiring DHS to engage in a more thorough and substantive consultation and review process that is respectful of our government-to-government relationship, which recognizes the Tohono O’odham Nation’s unique history and relationship to these lands, and which requires DHS to consider the information provided by the Nation before making any decision about what type of border security measures are most appropriate for our ancestral homelands. Although DHS has committed to “formal, government-to-government consultation with the Tohono O’odham Nation prior to taking actions that may impact the Tribe and its members in Arizona”¹² as required by the law and its Tribal consultation policy, DHS currently is giving little more than lip service to consultation. In recent communications with the Nation relating to construction in the Nation’s ancestral territory just outside of the Reservation, DHS has made clear that it will not actually consider any alternative type of border security measures or technology other than construction of a border wall, nor will it slow down its efforts to construct the wall to consider whether there are alternatives or mitigation measures.¹³ DHS should be required to consider and study the information provided by the Nation before imposing a “one size fits all” approach that is not cost-effective, not substantively effective, and causes real harm to our people.

¹⁰ See, e.g., Tohono O’odham Legislative Council Resolution No. 17–053 (Feb. 7, 2017), No. 18–032 (Jan. 2018).

¹¹ See *Center for Biological Diversity, et al. v. McAleenan, et al.*, Nos. 18–cv–0655–KBJ, Dkt. No. 37 (Sep. 4, 2019), 19–cv–2085–KBJ, Dkt. No. 21 (Sep. 13, 2019), cert. filed sub nom. *Center for Biological Diversity et al. v. Wolf*, No. 19–975; *In re Border Infrastructure Evtl. Litig.*, 284 F. Supp. 3d 1092, 1103 (S.D. Cal.), cert. denied sub nom. *Animal Legal Def. Fund v. Dep’t of Homeland Sec.*, 139 S. Ct. 594 (2018), aff’d, 915 F.3d 1213 (9th Cir. 2019); *Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119 (D.D.C. 2007), cert. denied, 554 U.S. 918 (2008); *Cty. of El Paso v. Chertoff*, No. EP–08–CA–196–FM, 2008 WL 4372693, at *1 (W.D. Tex. Aug. 29, 2008) (case challenging the 2008 waiver that applies to the Nation’s reservation).

¹² Letter from Acting CBP Commissioner Kevin K. McAleenan to Chairman Edward D. Manuel, Tohono O’odham Nation (Aug. 18, 2017) (attached).

¹³ See, e.g., Letter from Chairman Ned Norris, Jr., Tohono O’odham Nation to Roy Villareal, Chief Patrol Agent, U.S. Border Patrol Tucson Sector Chief (Nov. 13, 2019); Letter from Roy Villareal, Chief Patrol Agent, U.S. Border Patrol Tucson Sector Chief to Chairman Ned Norris, Jr., Tohono O’odham Nation (Jan. 10, 2020) (attached).

CONCLUSION

We urge Congress to withdraw or at least better limit DHS's authority to unilaterally give itself waivers to circumvent every statute on the books. Its current waiver authority is dangerously broad, and has allowed DHS nearly unchallengeable, dictatorial-authority to run roughshod over the rights of the Tohono O'odham Nation and every other border community in the United States. This kind of non-challengeable power is more appropriate to a totalitarian state, and does not belong among the statutes that are supposed to protect our freedoms—including from an over-reaching, intrusive Federal Government, making decisions in which we have no say and have no right to challenge.

The Nation is deeply appreciative of the subcommittee's interest in our concerns about the IIRIRA waiver, and about the impact its application is having on our ability to protect our religious and cultural heritage, our way of life, and our environment. We welcome a continued dialog with you on these issues.

Miss RICE. Thank you, Chairman Norris.

I now recognize Mr. Chilton to summarize his statement for 5 minutes.

STATEMENT OF JIM CHILTON, PRIVATE CITIZEN

Mr. CHILTON. Thank you, Chairman Rice, and recognize Chairman Thompson, and the noble, honorable Congress people from the Republican side.

My name is Jim Chilton. I am a fifth-generation rancher from Arivaca, Arizona. Arivaca is a small town approximately 55 miles southwest of Tucson, Arizona. The ranch includes private property, State school trust lands, and Federal grazing permits. My pioneering ancestors drove cattle from Texas to Arizona territory in about 130 years ago.

Can I have the photo?

This photo is a map of our family ranch. Please notice that the southern end of the ranch is the international boundary, about—that is about 5 miles of the ranch.

Next photo. This photo shows the international boundary, what the international boundary looks like on my ranch. It consists of a four-strand barbed wire fence. That is the photo on the bottom right.

The next photo is, on the bottom left, is the wall where it ends 2½ miles west of Nogales, Arizona.

The one on the right is me. Half of me is in Mexico and half of me is in Arizona. Even an 80-year-old rancher can crawl through, under, or over the border.

The 25-mile open gap between the west end of the current wall near Nogales and the east end of the Buenos Aires National Wildlife Refuge wall is a major route for cartel drug and people smuggling.

The following photograph, that is the one on the upper left. The photograph shows the United States Fish and Wildlife Service bollard-style wall at the Buenos Aires National Refuge. The service consistently advocates for wildlife connectivity with Mexico, except when they wanted one.

The last—the long-outdated Border Patrol strategy is to focus on attempts of interdiction 10, 20, and over 100 miles inside the United States, rather than at the international boundary. The video that you see has been taken very recently on my ranch. We have some motion-activated cameras. Keep in mind, over 200 trails come through our ranch, and it is very hard to detect people.

These people obviously have backpacks. Look at the big bales of what might be marijuana. They are coming through our ranch. The Tucson Station Border Patrol, with approximately 650 agents and 27 agents per mile, is located 80 miles from the ranch border. Would a football team ever win a game if on defense the team lined up 10 yards behind the line of scrimmage?

I thank you, and I will conclude with a passionate plea for the need for a border wall, fence, barrier, what all, whatever you call it. We must stop opioids coming into the Nation. We must have a border wall. It requires forward operation bases. Eighty miles from Tucson? No, we need forward operation bases on my ranch. So I advocate seriously that we need to secure the international boundary at the border.

Thank you.

[The prepared statement of Mr. Chilton follows:]

PREPARED STATEMENT OF JIM CHILTON

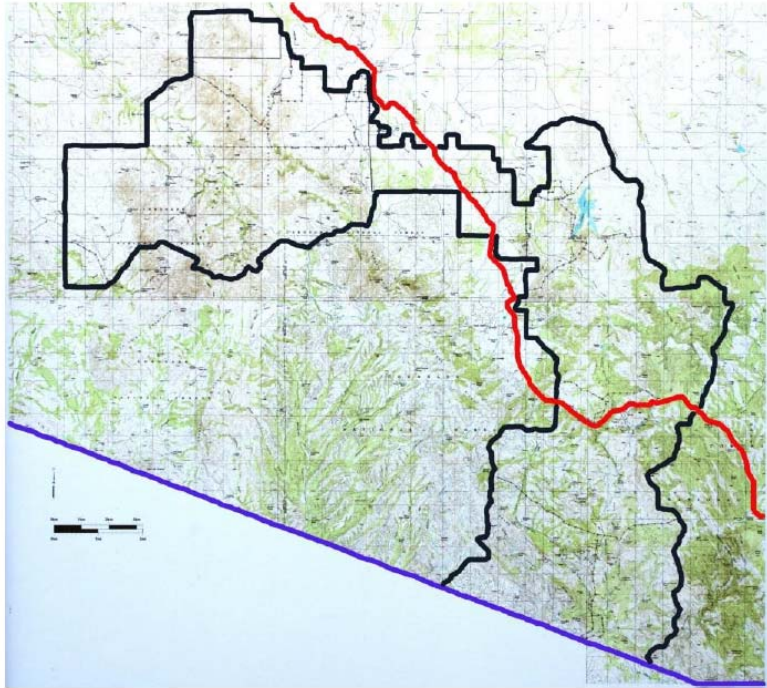
FEBRUARY 27, 2020

My name is Jim Chilton. I am a 5th generation rancher from Arivaca, Arizona. Arivaca is a small rural town approximately 55 miles southwest of Tucson, Arizona. Our ranch is adjacent to the town and extends south to the international border with Mexico. The ranch includes private property, State School Trust lands and 3 Federal grazing permits in the Coronado National Forest. Our entire family, my wife of 56 years, our 2 sons and their children, my brother and his wonderful family, are blessed to be able to preserve our western ranching customs, culture, and heritage dating back to our pioneering ancestors who drove cattle from Texas to Arizona Territory in the late 1800's. Our family has been in the cattle business in Arizona for about 130 years. We have a long-term view of the necessity to be excellent stewards of the grasslands we carefully manage. We are honored to have received various valued awards for resource conservation and wildlife stewardship.

CHILTON RANCH AND THE INTERNATIONAL BORDER

Our family ranch is located adjacent to the United States-Mexico boundary in a corridor identified as among the most active for drug smuggling and human trafficking in the Nation. My comments generally relate specifically to the portion of the border south of our ranch extending from Nogales, AZ to Sasabe, AZ.

The following is a map of our beef-producing family ranch. Please notice that the southern end of the eastern part of the ranch is the international boundary for about 5 miles. Mexico is just across the fence. Our ranch boundary goes north and west bordering 3 other ranches. Crossers on the western side go through our neighbors' grazing lands and then through our pastures.



The following photo shows what the international boundary looks like on the southern end of our ranch. It is not signed or marked and mainly consists of a four-strand barbed wire cattle fence. Obviously, there is no wall and you would never know it was the international border by viewing it.



This is the U.S.-Mexico border. For approximately 25 miles, this is typical until it reaches the east end of the bollard-style modern wall built to protect the Buenos Aires National Wildlife Refuge. It is well-known that the Mexican cartels use this 25-mile open door of rarely-patrolled land with no border-paralleling road for their drug and people smuggling business.

The following photo shows the end of the wall about 2.5 miles west of Nogales Arizona and the point where the wall becomes an old pasture fence.



Jim Chilton: half in the United States and half in Mexico! Even an 80-year-old rancher can crawl under the current international border. As you can see, building an appropriate international border fence and road would be no challenge for American civil engineers. We laugh when we hear former officials say it's such difficult terrain that, "no one in his right mind" would try it.

BORDER PATROL STRATEGY

The long-out-dated Border Patrol strategy is to focus on attempts at interdiction of rural area crossers 10, 20, and over 100 miles inside the United States rather than at the international boundary. As a consequence, the Federal Government has de facto ceded hundreds of square miles of Arizona to the cartels. My neighbors and I strongly believe the Border Patrol must SECURE THE BORDER AT THE INTERNATIONAL BOUNDARY. The fact that drug packers, MS-13 gang members, and deported criminals desiring to re-enter the Nation walk through our neighbors' ranches and our ranch is dangerous for us and for our neighbors. We believe every nation has the sovereign right to secure and control its border and our Nation is not succeeding in exercising that right.

We want to emphasize that we support and deeply appreciate the Border Patrol. The agents are polite, well-trained, and there is a sincere effort by the Sector Commander, his top officials, and Tucson Station Patrol Agent in Charge to listen to and try to address ranchers' border issues. We also appreciate many of the current Border Patrol efforts, including checkpoints, drug-sniffing dogs, and other strategies which certainly interdict highway traffic. We believe, however, these tactics are woefully insufficient to actually stem the tide of cartel operations flooding cross-country routes through border ranchlands of Arizona like ours.

Why is the entire Tucson Station of the Border Patrol with approximately 650 officers operating from a location 80 miles and about 3 hours from the international boundary at the southern end of our ranch? The Tucson Station has about 24 miles of the international boundary to secure, or 27 agents per mile. Currently, the Tucson Sector personnel report to work in downtown Tucson, check out weapons and vehicles and then drive approximately 3 hours to reach the border on our ranch. The waste of time and the high cost of each officer traveling to and from the border in his or her individual Border Patrol vehicle are outrageous.

National security demands that drug traffickers, terrorists, and previously-deported people be prevented from entering the United States at the border. Asylum seekers and work seekers need to cross at the legal Ports of Entry. Currently, on our ranch all of the above often travel cross-country 10 to 20 miles before the Border Patrol even attempts to apprehend them. Why? Because the Border Patrol is not based at the border; old, slow, dirt roads have not been improved to the ranchland borders, and communications fail in the borderlands. We can work all day on the ranch and not encounter Border Patrol anywhere near the border.

Why is there a huge Border Patrol station located in Casa Grande when the city is located approximately 130 miles from the international boundary? Certainly we are pleased that thousands of cartel drug packers and cartel-led border crossers are arrested in Pinal County every year. However, we question the current strategy that lets these undocumented persons walk through our ranch or through the Tohono O'odham Reservation to the west of us to disperse so far into Arizona. This strategy allows, we believe, more than half of the crossers to escape detection. This capture percent is even deemed too generous by Border Patrol officers with whom we speak "off the record." Would a football team ever win a game if, on defense, the team lined up 10 yards behind the line of scrimmage?

NEED TO SECURE THE BORDER AT THE BORDER

Wouldn't it make sense to have a wall TO SECURE THE BORDER AT THE BORDER where linear miles can be effectively patrolled rather than leaving hundreds of square miles of southern Arizona crossed by a web of cartel trails and routes? Of course, square miles are more difficult and costly to patrol than linear miles!! Wouldn't it be enormously more effective to have patrolled roads along a bollard-style wall (deemed most appropriate by the Border Patrol) together with 21st Century communications, cameras, and sensors plus 24/7 actual presence of the Border Patrol? Isn't it called the "Border Patrol" and not the "Interior Patrol"? Wouldn't their presence at the border be a much greater deterrent to cartel offensives than the current backfield game plan?

There are tremendous advantages to closing the gap in the wall between Nogales and Sasabe and then continuing construction to the east end of the wall at Yuma. To achieve reasonable border control, and ensure that rural Arizona is not the "sacrificed route," effective structures and strategies must also be implemented all the way across Arizona's borderlands. Most importantly, the bollard-style fence must be conscientiously patrolled and must include forward operation bases, roads paralleling the boundary and surveillance technology. Congress needs to appropriate necessary funds to allow for the completion of the wall, roads, and forward operation bases.

A retiring high-level Border Patrol official sat in our living room with all our neighbor ranchers and stated that “electronic surveillance alone only tells me what I missed.” He added, “. . . we cannot respond in actionable time.” Any policy of reliance upon information on which no effective deterrent action can be taken is virtually useless. That perspective allows—even encourages and abets—the current abuse, abandonment, rape, mutilation, and murder of would-be workers who are told by cartel operatives that this is the best route. They pay, suffer, and are often used as decoys while the drug loads are routed around a different canyon or trail.

ADVANTAGES OF SECURING THE BORDER AT THE BORDER

The following are some of the advantages to completing an effective, bollard-style fence with adequate patrolling and appropriate technology and forward operating bases:

First, U.S. Government Accountability Office and Judicial Watch have reported that people crossing the open border sections have been arrested from terrorist-sponsoring countries. How many crossers from terrorist nations actually got through and where are they now? How many successful crossers from the Middle East are connected to ISIS?

Second, it is outrageous that Mexican cartel scouts with satellite phones and other military-grade equipment are free to occupy strategically-selected hilltops for dozens of miles inside Arizona including on our ranch. As a consequence, the cartel scouts know where the Border Patrol is at all times so they can carefully guide drug packers—and people whom know they are not eligible for asylum—through the wooded canyons and along hundreds of smuggler trails on our ranches. Border Patrol officers apprehend fewer than half of the foreign migrants and smugglers according to national Border Patrol Council Vice President, Art del Cueto. Interdiction at the border would stop the occupation of Arizona border ranchlands by these cartel operatives.

Third, environmental costs of the current failure to effectively stop the flood of crossers are well-documented. Much of the unfenced minimally-patrolled Arizona border area includes National forests, conservation areas, monuments, and wildernesses. These are exactly the open routes most used by the cartel-led operations. The Border Patrol reported at a meeting we attended that undocumented crossers have left a reported average of 8.5 pounds of trash apiece on these lands. It is estimated that over 25,000 tons of garbage have been dropped by crossers in the Tucson Sector alone since 1992. Just since June 2007 until March 2019 another 463,000 pounds of trash was collected along the Arizona border according to the Arizona Department of Environmental Quality’s Border Trash report. Additionally, just as of 2010, the Organ Pipe Cactus National Monument documented approximately 2,553 miles of wildcat roads and trails just on their portion of the border with Mexico.

Fourth, there are intolerable human tragedies and abuses faced by work-seeking border crossers, especially women. Work-seekers currently have no feasible option but to cross in the hands of the cartel. It is reported that over 2,500 border crossers have died just in the Tucson Border Patrol Sector since 1990. Horrific human tragedies could be avoided by securing the border at the border and implementing a feasible, simplified, e-verifiable worker documentation program to provide a legal and safe alternative for needed workers.

Fifth, we have been burglarized twice by south-bound drug packers who, after depositing their drug load at GPS sites or safe houses, stole laptops, cameras, firearms, including historic pieces, and other valuable items on their return to Mexico. This is a typical situation for those of us near the border. Ranchers in the border area cannot leave their houses unguarded even for a few hours since their homes and ranch buildings are often broken into if someone is not on guard duty. It can be hours before law enforcement can respond to rural calls.

Sixth, Arizona borderland residents, ranchers, and farmers have suffered hundreds of millions of dollars in property damage and personal loss due to major forest fires set intentionally or accidentally by illegal crossers. The human and property costs of these fires, like the Monument Fire, the Murphy Complex Fire, Chiricahua Fire, and the Horseshoe Fires must also be figured into the cost of NOT securing the border at the border. We have estimated that U.S. Forest Service costs in 1 year to fight fires caused by border crossers just in Arizona borderlands were about \$600 million.

Seventh, another cost of inaction never calculated by those who decry the “expense” of effective wall and border protection, is the financial and emotional burden placed on ranchers living in Arizona border counties. In addition to suffering losses from home invasions and burglaries, we shell out thousands of dollars each year in constant fence and water line repair and we and our cowboys all work armed. The

additional, unquantifiable emotional cost to our families is summarized by noting we are all very much aware of what happened to Sue Krentz's husband Rob when he went out to check his ranch waters and was killed (including his dog) by a drug packer who then escaped into Mexico.

Eighth, we have heard just this week that the Border Patrol has picked up Chinese crossers coming through our area. The possibility of increasing numbers of undocumented persons, specifically escaping areas where they may have been exposed to coronavirus, is a new concern.

Finally, what percent of the opioids flooding this country comes through rural trails? We know from our hidden cameras that marijuana packs were the dominant VISIBLE drug in prior years, but we have heard that much higher-value, lighter-to-pack fentanyl, heroin, cocaine, and other drugs are showing up in rural apprehensions now that high-tech surveillance is more effective at the Ports of Entry. What is the cost to America of increases in cartel use of open routes like the ones in our area for hard drug importation?

To effectively secure the border, the Border Patrol needs to build the wall and be able to construct or improve roads, build helicopter pads and place forward operating bases at or very near to the border. Construction needs to be freed of the impediments created by Federal environmental laws which chiefly benefit the cartels, not the wildlife, in Arizona borderlands. Every day that the U.S. border remains unsecured is another opportunity to allow all of the negative consequences that are so real to borderland ranchers and to this Nation at the present.

THE WALL, HUMANS, AND WILDLIFE

In spite of the environmental, financial, and security impacts on our ranch, we have taken action to help prevent deaths of any of the crossers. I have installed safe-water drinking fountains on 29 sites where I have my 22 wells and water lines. We don't want anyone to die of thirst.

Wildlife genetic diversity on both sides of the border can be achieved along with border security by legally transporting animals as scientifically deemed essential. Large mammals can be transported with safe capture to promote genetic diversity while birds can fly over and small animals and reptiles can easily slip through the bollard-style wall. In addition, American engineers can create wildlife-friendly, effectively-managed passages at some parts of the wall to facilitate wildlife connectivity with Mexico. Keep in mind the irony that the Buenos Aires National Wildlife Refuge sought and obtained a bollard-style border fence and border-parallel road because they did not want the danger, the wildcat roads, the trash, and the fires nor "Wild Life Connectivity" on their border!! We neighbor them and we get all of the above re-routed onto our ranches! First, tear down the bollard-style wall with its patrol road on our Refuge neighbor—then talk to us about "connectivity."

The following photograph shows the U.S. Fish and Wildlife Service bollard-style wall and adjacent patrol road at the Buenos Aires National Wildlife Refuge along its border with Mexico—it adjoins the old 4-strand wire fence on our neighbor's ranch. The refuge did not prioritize a concern for wildlife connectivity.



How can it be acceptable that residents of rural southern Arizona are not accorded the same protections provided to residents of the rest of the country? Our homes and ranches and our daily environment is treated as a no-man's land exposed, by strategic Federal choice, to armed foreign trespassers. The current strategy of minimal Border Patrol presence along large segments of the rural Arizona border leaves us unprotected and assures the continued flow of drugs, the abuse of migrants, and the trashing of border lands. None of this, including wildcat roads, trash, wild fires, human trampling, conflicts between drug packers and gang rip crews, could possibly be deemed favorable for wildlife. Persons opposing interdiction of drugs and undocumented crossers loudly cite the costs of securing the border and omit all mention of the human, environmental, and security costs of NOT securing it.

All citizens have the right to petition their Government regarding their grievances. Attached are petitions by all of the Arivaca area ranchers and by the Pima Natural Resource Conservation District advocating the need to replace the Tucson Station 14-mile 4-strand barbed wire cattle fence with the construction of a wall, forward operation bases, and technology to secure the international border at the border in our area.

ATTACHMENT.—BORDER RANCHERS—TUCSON STATION

Box 423, 17691 W. Chilton Ranch Road, Arivaca, AZ 85601

520-398-9194

Whereas, a one of the most active drug smuggling and human trafficking corridors in the United States is the international boundary between Nogales and Sasabe, Arizona;

Whereas, 25 miles along the border area south of Arivaca is only marked by an old four-strand barbed wire cattle fence;

Whereas, the Sinaloa Cartel has control of this 25-mile international boundary and of the thousands of square miles of minimally-patrolled ranchland adjacent to it inside the United States, due to lack of adequate border infrastructure, the Border Patrol has been largely restricted to a "Defense-in-Depth" strategy which is inefficient due to rough terrain and inadequate access and allows the presence of well-equipped cartel scouts on top of our mountains to successfully direct drug and human trafficking;

Whereas, although the Tucson Station Patrol Agent-in-Charge and Border Patrol agents try their best to do their job, the lack of access and infrastructure, cartel scout presence, and rough terrain and inefficient "Defense-in-Depth" strategy creates a de facto "no man's land" in which border ranchers live and work;

Whereas, the national Border Patrol Council Vice President, Art del Cueto, has asserted on national television that under the present situation, no more than 50 percent of illegal crossers are apprehended;

Whereas, Border Patrol agents are headquartered in Tucson, 80 miles and 3 hours from the border on our ranches and there are no roads paralleling the border and no efficient north-south access for the Border Patrol to respond to incursions; and

Whereas, current "defense-in-depth" strategy means the Tucson Station Border Patrol agents are dispersed across the 4,000 square miles of area of responsibility and are operating in the "backfield" instead of operating on the 25 linear miles of the actual border;

Therefore be it resolved, Border ranchers petition our government to construct an adequate security barrier such as a Bollard-style fence at the border, good all-weather, well-maintained roads leading to the border and along it, adequate, modern flood gates at water crossings, appropriate surveillance technology to monitor Border Patrol personnel and border status, air mobile support, and reliable communications for Border Patrol agents to call for back-up, and forward operations bases near the border barrier to effectively secure the international boundary between Nogales and Sasabe, Arizona.

JIM CHILTON,
Chilton Ranch.

TOM KAY,
Jarillas Ranch.

JOHN R. SMITH,
Arivaca Ranch.

TED NOON,
Oro Blanco Ranch.

LOWELL ROBINSON,
Tres Bellotas Ranch.

ATTACHMENT.—PIMA NATURAL RESOURCE CONSERVATION DISTRICT

Pima Center for Conservation Education, Inc., NRCS Plant Materials Center, 3241 N. Romero Road, Tucson, AZ 85705

RESOLUTION BY THE BOARD OF SUPERVISORS OF THE PIMA NATURAL RESOURCE CONSERVATION DISTRICT (PNRCD)

The Pima Natural Resource Conservation District (PNRCD, Pima County, Arizona) petitions Arizona Governor Douglas Ducey and President Donald Trump to take action according to your responsibilities to enable completion of a fence/wall and accompanying essential infrastructure, as described below, along the section of the international boundary which is the responsibility of the Tucson Station of the United States Border Patrol.

Whereas, one of the major current drug smuggling and human trafficking corridors in the Nation is the international boundary south of Arivaca in the Tucson Station of the Border Patrol, and whereas, this portion of the international boundary is only marked by an old 4-strand barbed wire cattle fence;

Whereas, the Sinaloa Cartel has well-equipped cartel scouts on top of mountains on or near PNRCD cooperators' farms and ranches to successfully direct drug and human trafficking and evade interdiction;

Whereas, the national Border Patrol Council Vice President, Art del Cueto, has asserted on national television that under the present situation, no more than 50 percent of illegal crossers are apprehended;

Whereas, Border Patrol agents are headquartered in Tucson, 80 miles and 3 hours from major cartel border incursion routes; and, whereas there are no roads paralleling the border in this area and there is no efficient north-south access for the Border Patrol to respond to incursions;

Therefore be it resolved, that we, the Conservation District Supervisors, out of heightened concern for the impact of the current border situation on the natural resources of our county, petition the State and Federal Government to build proper and essential roads along the international boundary and to improve and complete needed north-south border access roads to wrest control of these lands from the Sinaloa and other cartels whose actions are creating wildcat roads, mountains of discarded trash, and dangerous situations for legal resource users.

Therefore be it further resolved, Pima Natural Resource Conservation District petitions our Government to prioritize construction of an adequate security fence/wall

at the border, good all-weather roads as described above, and forward operations bases near the border barrier to effectively secure the portion of the international boundary which is the responsibility of the Tucson Station of the United States Border Patrol.

Miss RICE. Thank you, Mr. Chilton.

I thank all the witnesses for their testimony.

I will remind each Member that he or she will have 5 minutes to question the panel. I will now recognize myself for questions.

If I can start with you, Mr. Anzaldua. So a lot of Americans have never been down to the border. They don't know exactly what the geography is, what the distance is between the river and, you know, what the situation is. So if you could just explain more, like, where the wall is proposed to go. Would it actually prevent people who are trying to come to the United States from touching down on American soil? What effect would it have on your ability to continue to be able to have—to rely on the river and—as a water supply, et cetera?

Mr. ANZALDUA. Well, for one thing—

Miss RICE. Turn your microphone on.

Mr. ANZALDUA. For one thing, the river where we have our land is over 200 yards wide. So if the Border Patrol cannot catch somebody in that 200-yard-wide area, they have a problem. Besides that, we have—on the river we have patrols, patrols from the Border Patrol on the river, the Department of Public Safety. Texas Department of Public Safety has a gunboat. I say gunboat because they got machine guns in the front and machine guns in the back. You have the Coast Guard patrolling and sometimes the Mexican Navy. Then you have air patrols, which is the National Guard. You have the Border Patrol. You have the Coast Guard. You have the Texas Department of Public Safety. You have the Homeland Security.

On the ground, we have the local sheriff, the local constables, the local city police, the Border Patrol, the Department of Public Safety. We have game wardens from the State, game wardens—they are falling all over—game wardens from the Federal Government. They are falling all over themselves. If they can't catch anybody coming in a 200-yard wide river, they got a problem, I would say.

One thing I might also add. I believe, this is my personal feeling, because I worked for the Government and I have been a supervisor. In my opinion, the Border Patrol has a problem with field supervision. They need to supervise their agents on the field better, because we see a lot of them on texting or we see a lot of them asleep in their cars. You know, we see all this stuff.

So there is actually no need for a border wall, because the wall is not going to solve the problem that we really have, and the problem that we really have is demand for drugs in the United States and demand for illegal immigration.

What is happening in Mexico is the Mexican cartels are fighting over the money that comes from the United States and goes over there. It is no different than what we had here in the 1930's with Al Capone. They were doing the same thing. They were killing each other over the money, and this is exactly what is happening in the Southern Border.

So the real problem is here in the United States, and this is what needs to be addressed. The real problem needs to be addressed, and the border wall doesn't solve that problem.

Miss RICE. Sir, thank you.

I also want to thank for your service to our country, both as a veteran and as a former Customs officer. Given your background and your experience on the border, you know better than most that border security is a nuanced issue, which you just laid out.

If I could ask Chairman Norris, in May 2019, DHS announced it was waiving Federal laws such as the Archeological Resources Protection Act and the National Historic Preservation Act to construct part of the border wall through Organ Pipe Cactus National Monument and numerous other protected areas. Each time DHS uses this waiver authority, they state that it coordinates and consults with interested stakeholders to ensure that potential impacts to the cultural and historic resources are analyzed and minimized.

As an archeological environmental stakeholder to these various areas, what has been the extent of DHS's coordination and/or consultation with you or representatives from the Nation on potential impacts that border barrier construction will have?

Mr. NORRIS. Chairwoman Rice, thank you for the question. I will say that I have 2 of my 22 legislative council members with me today. I will say that there has been a development of a history of working relationships between my Tribal leadership and the local Border Patrol office.

More specifically with respect to the ancestral sacred sites, lands of my people, there has been little to none consultation from a government-to-government level with the Tribal Nation's leadership. There may have been meetings. There may have been conversations, but, in our opinion, when you look at the requirement for consult—government-to-government consultation, that pretty much does not exist and has never occurred.

Miss RICE. OK. Ms. Alvarez, very quickly, your testimony was very emotional. I mean, when you—it is so important for the American people to hear someone like you who has lived where you have lived for generations. Your family, your children are there, your grandchildren are there. To have the Government come in and trivialize that history is just really unbelievable.

So if you could just expound a little bit more on what it is like. I mean, I don't know if anyone on this panel can possibly understand what it is like to have the Government come in and say, we are taking what is yours and we are going to give you \$100 for it.

Ms. ALVAREZ. That really infuriates me. It makes me upset because here is somebody who has never been to my property, that more than likely has never been to the Rio Grande Valley, come and say you need a wall in back of your house, over a so-called invasion or drugs that were coming in 20 years ago that are not coming in now, because the biggest drug busts that have happened have happened in our ports of entry, not by the Rio Grande River.

You know, the Government really needs to analyze the situation. You know, this is somebody's campaign promise. I am not willing to sacrifice my home over a campaign promise which, by the way, is getting very close, and that is why all these laws have been

waived and so. But this upsets me, because I have no power. How can I compete with somebody that has the right to waive all these laws that have been waived? It just—my hands are tied right now.

Miss RICE. Yes, it is—that is very powerful. Thank you all for your testimony.

I now recognize the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, for questions.

Mr. HIGGINS. Thank you, Madam Chair.

Let me say it is just—it is just so significant that we are meeting today in this hearing, and this is a serious topic, man. There is no American here on either side that wants to, you know, wants to interfere with the lives of American citizens. In fact, that is why we are meeting and why we are having deep debate and consultation with each other about securing our border, because you've seen the videos. The cartels are running serious poison into our country. They are killing many Americans. They are certainly interfering with the lives of Americans across the country from sea to shining sea.

Yet the Honorable Mr. Norris, let me say I support deep consultation with Tribal lands. I have studied maps of your Nation, sir, and I recognize that it, for many, many generations, crossed the border, and so your Nation exists on both sides of the border. This should be of particular concern for the U.S. Government, and I support very deep consultations with you.

My heart is touched by the story of our panelists regarding the personal impact. I also see as a—I was a cop for 12 years. I worked a lot of drug cases, man. I worked many, many deaths, and it has gotten worse, much worse over the last decade.

Mr. Chilton, my understanding is your home is 9½ miles inside the border. Is that correct, sir?

Mr. CHILTON. Nine-and-a-half miles from one end of the ranch to the other, over very miserable roads.

Mr. HIGGINS. At your home, have you ever seen gang members at your home, come to your house?

Mr. CHILTON. Yes. We are able to recognize gang members by their tattoos. In fact, MS-13 gang members have showed up at our house and, thankfully, another group of MS-13 gang members are—have been apprehended near our house.

Mr. HIGGINS. Your wife, sir, does she—you know, we are talking about the feelings of Americans. Is your wife frightened when she is alone at home?

Mr. CHILTON. My wife is seriously concerned. She knows how to use a gun, and we have guns everywhere to protect ourselves. She—

Mr. HIGGINS. In the remote location of your particular ranch, what you are advocating for is a construction of, essentially, 25 miles of enhanced physical barrier. Am I correct in assessing your—

Mr. CHILTON. You are absolutely correct. We need to fill the gap, the 25-mile gap.

Mr. HIGGINS. In this gap, in this gap, would you describe, based upon your own observations—as my understanding is you are a fifth-generation resident there, so you watch things change. There was a time when we wouldn't have called for enhanced physical

barrier there, but things have changed with the cartels over the decades.

Would you describe the methods of operation that the cartels are using that you have observed regarding asylum seekers and drug runners coordinating their crossings? Will you share that with America, please?

Mr. CHILTON. We have never seen on our ranch asylum seekers. The people coming across our ranch are either drug packers or they are MS-13s or people who have been deported, coming back through the ranch and being led by cartel scouts on our mountains. These are foreigners sitting on our mountains with high grade—

Mr. HIGGINS. Where—when these crossings, these drug crossings, these cartel crossings coming through the gap, the 25-mile gap, where is Border Patrol commonly at that time? What are they busy doing?

Mr. CHILTON. Border Patrol is in Tucson. So they come out about halfway, and so most of my ranch is in a no-man's-land controlled by the Sinaloa Cartel scouts on the mountains.

Mr. HIGGINS. Yes, sir. I have one question about the environment, if the Chairwoman will indulge. Have you seen environmental impacts on your ranch by illegal crossings and drug smugglers crossing through?

Mr. CHILTON. Very definitely. I have calculated that there has been over 25,000 tons of garbage dropped by crossers in the Tucson sector and on our ranch, not—I don't know how many tons have been dropped—

Mr. HIGGINS. What about fires?

Mr. CHILTON. Fires are the big, big problem. I have estimated that in 2011, the Government spent over \$600 million putting out fires, started either accidentally or on purpose by cartel border crossers.

Mr. HIGGINS. I thank you for the response.

Madam Chair, I yield back my time.

Miss RICE. Thank you.

The Chair will now recognize other Members for questions they may wish to ask the witnesses. In accordance with our committee rules, I will recognize Members who were present at the start of the hearing based on seniority on the subcommittee, alternating between Majority and Minority. Those Members coming in later will be recognized in the order of their arrival.

OK. The Chair will now recognize the gentle—what?

OK. Sorry for the delay there.

The Chair now recognizes for 5 minutes the gentlewoman from New Mexico, Ms. Torres Small.

Ms. TORRES SMALL. Thank you, Chairwoman Rice. Thank you all for being here to discuss this important issue.

I represent a district that covers about 180 miles of U.S.-Mexico border. Unfortunately, the DHS has fast-tracked expensive border wall construction projects in rural and remote areas in my district which would be much more efficiently and effectively secured through investments to fix Border Patrol's attrition challenges and to enhance our agents' detection and surveillance technology. However, the Department continues to prioritize fast-tracking border

wall construction projects through its waiver authority that allows it to waive dozens of local, State, and Federal laws.

I am concerned that expediting border barrier projects by circumventing dozens of laws that we carefully crafted and have enacted for decades will have unintended consequences at our border and especially on border communities, such as lasting infrastructure damage due to flooding. For this reason, I support and voted in favor of Chairwoman Rice's legislation to repeal the Department's waiver authority.

Chairman Norris, in your testimony, you noted that the Tohono O'odham Nation spends, on average, \$3 million of its own Tribal funds each year on border security and enforcement. I think folks at the table and here at the dais share a goal for border security. Rather than investing in miles of wall on the Tohono O'odham Nation land, can you provide alternatives to what the DHS could do to enhance border security along the Southern Border?

Mr. NORRIS. Thank you, Congresswoman, for that question. As I mentioned earlier, we have established a long working relationship with the Border Patrol. My Nation has, in addition to the areas that I identified, have allowed the Border Patrol to establish resources within our Tribal Nation to address this issue. We continue to discuss other options that might be available for that purpose. So without trying to get into every single area that we have allowed the Border Patrol to enforce its presence and security, we have also allowed our law enforcement officers to have provided assistance to Border Patrol whenever assistance is necessary.

So it is that time when resources that normally would be utilized for the enforcement of law enforcement on our Nation's members are now used to assist the United States' efforts to secure the border along with the Border Patrol.

In addition to that, the—whenever there is a migrant that has succumbed by exposure, the person or persons are taken to the Tribal hospital, to the Indian Health Service Hospital on our Tribal land and are seen by the doctors there and provided medical care, medical attention.

Ms. TORRES SMALL. Thank you, Chairman Norris.

Mr. Anzaldua, in 2008, a barrier that DHS built pursuant to waiver authority resulted in flooding damages of up to \$8 million in Nogales, Arizona. Are any of you, and specifically you, worried that by circumventing long-standing environmental laws, your communities and private properties will be impacted by unintended flooding?

Mr. ANZALDUA. Right now, yes. With that new wall that was built on the riverbank by the private group, if you have been around the Rio Grande River, you know that there is a lot of debris floating down the river during a major flood. Eventually, the debris will cling to that wall, and it will be on both sides of the wall, because there will be water on both sides of the wall. It will be a problem for our property because since it is in the bend of the river, it is going to—and already they have cleared the banks. So erosion is a real threat there. It is going to cut into our property. I would say that that is probably going to cost us several acres of land, in addition to the Government wall.

Ms. TORRES SMALL. Thank you, Mr. Anzaldua.

Last, I am a hunter, and I know that some of the best conservationists are hunters, because we pay attention to migration patterns, we pay attention to herd health. So going back to you Chairman Norris, can you please explain how the waiving of environmental laws may impact wildlife that live on your Tribe's land?

Mr. NORRIS. There are a significant number of wildlife that enjoy the ability to enter and exit what is now the international border. The longhorn sheep, the deer, the bobcats, you know, the animals, the wildlife that is from there. A wall, a 30-foot wall makes it impossible for that to be able to continue for the wildlife, would be able to continue to transfer or to travel in between the international border and the United States. So that would have a negative impact on their ability to continue what has been historically their area to migrate.

Ms. TORRES SMALL. Thank you, Chairman Norris. My time has expired.

Miss RICE. Thank you, Ms. Torres Small.

The Chair now recognizes the gentlewoman from Arizona, Mrs. Lesko.

Mrs. LESKO. Thank you, Madam Chairman.

Thank you to all of you for coming here today from Texas and Arizona. I am happy to have 2 Arizona witnesses here today.

As the Arizonians know, and probably the Texans know, in Arizona, this is a huge issue. It has been for years. Securing the border—you know, when I run for office or other people run for office, we do polling, right? In Arizona, this is by far the most important issue to Arizona is securing the border, because it impacts us.

I am also a huge proponent of private property rights, though, as well. So I—this interests me a lot because it is a conflict, right? You are trying to secure the border, but you also want to protect private property. Of course, Native American Indian or Tribe land is important, especially if you have members on both sides of the border and you want to go back and forth.

So I have talked—I heard Mr. Chilton talk about the—what is happening on his land, and he has lots of land, and he has been there a long time and his family has been there a long time. I think in your testimony, your written testimony, you said you put out water for the immigrants as well so that they don't die on your property. So I am sure you care. You care about humans. But we also—you care about securing our border.

So I guess we have to have a balanced approach. Can you tell me, Mr. Chilton, more about these scouts? Because when I went down to the border, I saw this barbed wire fence like you have on your ranch. I mean, I could climb over it. Anybody could climb over it, under it, whatever. You could just cut right through it. It is not much of a fence at all. What the Border Protection Officer said to me was that they have these scouts, like you said, in the mountains and they help the cartels. They say, OK, you know, they are over here. The Border Protection Officers are over here, so they tell them to go a different route. Or they say, oh, they are busy over here. Actually, they have people that they send over there so that the Border Protection is busy over here so they could bring over drugs over here.

What has the Border Protection Officer said to you? Can they do anything about these scouts? Because they told me they need some legislation. They can't do anything about these cartel scouts. What have you heard?

Mr. CHILTON. I have heard exactly the same thing. There is no law that the Federal Government can use to apprehend and persecute—prosecute a cartel scout sitting on the mountain, even though he has a satellite phone, night vision binoculars, and a rolled-down solar pack. The only way for the Government to get rid of the cartel scouts who can see for 5 or 10 miles is to bring in 2 helicopters; 1 to pin the scout down on top of the mountain, and the other 1 to repel officers to try to apprehend. It is a real serious problem. Foreigners sitting on our mountains guiding the drugs through. It is awful.

Mrs. LESKO. This whole thing is awful. You had a friend, Robert Krentz, who was killed by a drug smuggler. You know, this—I just feel bad for you having to have all this protection on your property.

I do have a question for Chairman Norris as well. Chairman Norris, have you talked—has the Federal Government talked to you at all about coming up with some kind of solution to perhaps build the fence, wall, whatever you want to call it, but also have a way for your members to expediently go back and forth between Mexico and Arizona? Has that come up? Is there any discussion on that?

Mr. NORRIS. Congresswoman, much of the activity for building the wall has been to the east and to the west of the 62 miles of international border. We have continuously asked what are the plans for the building of the wall on our Members, I am hoping that we truly can—my Democratic colleagues and Republican members—can try to come up with a balanced approach here. I know this has been asked for for years. But this really is a problem. When we are talking about—I know some people say, well, this is just a campaign promise. Well, the reason it is a campaign promise is because people care about it. I mean, in Arizona, it is the No. 1 top polling thing. So the Governor of Arizona talked about border security. You know, of course, the President, the President got elected, and one of his big issues was border security, because people care about border security. They want the Nation protected. So it is not just some mere campaign promise. Campaign promises are made because of what people want. So we really have to balance this.

I think we need to work on legislation to get the root of the problem, you know, because that would solve a lot of this problem. So we have talked about this before. I hope some day that we can work together to get to the root of the problem, which is stop incentivizing people to come into, you know, these loose laws that we have. I have 6 bills that I have introduced to try to mitigate some of the people crossing our border, and unfortunately, Democratic Chairman Nadler have not heard one of them. It is unfortunate.

Thank you. I yield back.

Miss RICE. Thank you, Mrs. Lesko.

The Chair now recognizes for 5 minutes the gentleman from Mississippi, Chairman Thompson.

Mr. THOMPSON. Thank you very much, Madam Chair.

It never ceases to amaze me how I hear my colleagues talk about how they are for something, but they are against it, because you got to stand for something. If we can fly people to the Moon and back, surely we can see people trying to cross the border. We can move assets to that area. We can do a lot of things other than build a \$20-million-a-mile wall that all I need is a fence, a ladder a foot taller than that wall and I am over the wall. It is a symbol.

Our current President was very clear. Sure, he wanted a wall, but he said Mexico was going to pay for it. Well, the American taxpayers are paying for it. If the American taxpayers are paying for a political statement, then we have the right to review it. In paying for it, we are cutting out significant opportunities in other areas. Technology is a way forward.

If it is a scout, Mr. Chilton, he has to be talking to somebody. We can monitor that satellite phone, who he is talking to, telling them where to go. We have assets, and we can move those assets in those directions. There are a lot of things we can do other than to disturb Tribal lands and areas just because we are the U.S. Government. We have to respect our laws as a Nation and respect the people who live in this country.

So I am concerned that the application of technology is not being used to the extent that it could be to protect us. If we can see individuals hundreds and hundreds of miles away, walking or traveling to the border, and we have assets, whether they are motorized or air, to be there when they get there, then that is what we need to do. There is no documented proof that that wall will reduce immigration.

Again, my ancestors came to this country in the belly of a ship, but I'm here now. But I respect other oppressed people who want to come to the United States for a better way of life. I think we are obligated fundamentally to make sure that we don't in the eyes of trying to, "protect our country," do away with the fundamental principles by which we were established as a Nation. I'm concerned about it. We have spent billions of dollars.

Mr. Anzaldua—I hope I get it right—I am going to look and see how a private wall can be built on land beyond your land and whether or not all the requirements are being met. I am just not certain those kind of things are bad. I appreciate your tenure working for the Patrol. You have first-hand knowledge.

Most of the people that I talk to who live along the Southern Border have a relationship with Mexico and its people. The majority of those relationships are positive. Now, we all—I have issues with people I live in my little small town with, but I don't build a wall; I engage them.

So I would like for Chief Norris to explain how as chief what is being proposed in coming through your land is doing for the people you represent.

Mr. NORRIS. Mr. Chairman, thank you for that question. What it is doing is it is having—definitely going to have a negative impact on the ability for my people to be able to assume—to deliver the resources that my Tribe offers to its Tribal citizens. It is also going to be difficult for my people to be able to do, as you said, just as you explained, communicate and visit and participate in familial

activities on both sides of the border where most of our families reside.

So it is going to really serve as a—this wall will really serve as a detriment to our livelihood in many ways, not only just the detriment to our ability to access services that we deliver to members of our citizens, but also for the ability for our people to participate in ceremonial activities, to be able to visit their families that are in Mexico and vice versa, to be able to participate in and visit families that are buried on both sides of the border.

So this is going to be a detriment in their ability to be able to do that, that part of their livelihood for as long as this border wall exists. It is going to require most of our families, if they are going to come into the United States, or if we are going to Mexico to provide these services, to have to be—use one of the ports of entries to be able to do that. Many of our people do not have the ability, do not have the resource, do not have the vehicles necessary to travel to take themselves to these different areas to be able to come in or to be able to get back into Mexico.

Right now, we have that ability to do that. This wall will make it very difficult, if impossible, for us to be able to do that.

Mr. THOMPSON. So my understanding is that there has been no substantive conversation with Federal authorities about the adverse impact of what the wall would do for the people you represent?

Mr. NORRIS. Mr. Chairman, we have raised these concerns numerous times, numerous times to Federal folks on the impacts that this border wall will have on our people. We have asked for consultation, true government-to-government consultation on this issue. We have not been given that opportunity to sit as a Tribal government with the U.S. Government to have this conversation and to be able to offer some resolution to some of these concerns that we have.

We have offered some alternatives with respect to our sacred sites, with respect to our religious rites that are being desecrated as we speak today. We have offered some alternatives to be able to avoid those areas to protect our ancestors, to protect the ancestral graves that we know exist today in those areas. Those requests, those alternatives, those issues that we offered as an alternative have been totally ignored.

We have put these recommendations in a letter form to the Department of Homeland Security back in November. I received a response in January, early January to that letter. They totally ignored, totally just set aside all the recommendations that we offered to protect our ancestral lands, to protect our ancestors, the graves that we know are within the footprint of the building of this wall.

Mr. THOMPSON. Thank you very much, Chief.

You know, private property rights are one of those real sacred rights that as Americans, historically, we have cherished. The notion that if through the sweat of my brow, I am able to acquire property, that within reason there is no way I should fear my Government from taking my property. The facts about it, I have heard my Republican colleagues make that argument for private property

rights more so than I have heard Democrats. But all those laws have been on the books for quite a while.

I guess, Mr. Chilton, you have had a significant investment in property. The area you showed on the map about the trail and the other thing, was that on your property?

Mr. CHILTON. I have Federal leases from the Forest Service, and the southern border of my ranch, 5 miles is owned by the Federal Government.

Mr. THOMPSON. So—and that is the point I am trying to make. You showed us some pictures of an area, which obviously is of concern. But in terms of the focus of this hearing, would the fact that unless that was brought out, the assumption was that that was your land. I am just, I want to make sure that the record reflects that the pictures included in this hearing was of land that you leased/owned by the Federal Government, which means they can do anything they want with it because they are the Federal Government.

I want us to—if we are going to talk about private property rights, let's keep it in the private property rights arena. But we want to secure our Southern Border. I am just not sure that securing with a fence gets us what we want by doing away with all property rights.

From my own standpoint again, Madam Chair, your own indulgence, your family has done well. But I think if somebody came to take your property and said, take it or leave it, you are going to fight them. I mean, I just—and you should. I am saying that by the fact that our Government waives all the rights and said, I am here to take your land, you can't do anything about it, you know, I am sure your relatives would turn over in their grave if that was the case. I hear this from the other witnesses that they want an opportunity to defend their property from—taken from the Federal Government. I think that is a fundamental principal of democracy in America that we should never take from anyone.

Mr. CHILTON. You are fundamentally right, except the Constitution allows for taking of property for public purposes. I think a wall is a public purpose. In terms of property rights on my land, my ranch, I have private land too. If the Government secured the border at the border, I wouldn't have these crossers packing drugs, these bad guys coming through my private land.

Mr. THOMPSON. I don't have any question about that. But you would have your day in court, you would make sure that whatever the Government wanted to do, it had to follow the environmental standards, they would have to do environmental impact analysis to prove that what they are doing wouldn't substantially harm the land that they are taking. There is just some fundamental things that I know you would want assurance before that. I am saying by doing, the taking this program of private property rights from individuals, we have just walked away from all of that. I am just convinced that as Americans we are better than that.

Thank you, Madam Chair.

Miss RICE. Thank you, Mr. Chairman.

The Chair now recognizes for 5 minutes the gentleman from Mississippi, Mr. Guest.

Mr. GUEST. Thank you, Madam Chairman.

Mr. Chilton, I see that you are a fifth-generation rancher, that your family has been in the cattle business for 130 years.

Mr. CHILTON. In Arizona, yes.

Mr. GUEST. In Arizona. That the land that you currently own and in some cases lease sits on the international border with the United States and Mexico. On page 3 of the written documents you provided, at the top is a photograph. The photo which you referenced earlier shows the international boundary and what it looks like on the southern end of your ranch.

Could you please explain the structure that separates the United States from Mexico there on the property that you work each and every day?

Mr. CHILTON. Yes. Bottom line, it is a four-strand barbed wire cattle fence.

Mr. GUEST. How difficult is it to cross the border along that portion of our Southwest Border?

Mr. CHILTON. Anyone can crawl under it, go through it, or climb over it.

Mr. GUEST. A matter of fact, you demonstrated that by a photograph on page 4 that actually shows you being able to crawl under it. So there really is no deterrent. Is that correct?

Mr. CHILTON. That is correct. The Border Patrol is 20 miles inside the United States. They are not there. I took Senator McSally from my ranch down to the border and back, and we never saw a single Border Patrol agent.

Mr. GUEST. So would you agree with my statement that at least along your section of the Southwest Border, that our current structure offers, No. 1, no protection, and No. 2, that our current border structure where your property butts into Mexico is not an obstacle at all to illegal entry?

Mr. CHILTON. I didn't quite hear the last part of your question.

Mr. GUEST. Does our current border structure along your property, does that offer you or your family any protection against illegal immigrants coming into our country?

Mr. CHILTON. Absolutely no.

Mr. GUEST. Does our current border structure, again, along your property, does it offer any obstacles to people who want to come into our country?

Mr. CHILTON. None whatsoever.

Mr. GUEST. Then there were some videos that we saw earlier in your testimony. There were actually numerous videos, and in those videos we saw large groups of individuals. Those individuals were coming across your property, were they not?

Mr. CHILTON. They are. I have over a thousand images of people coming across our property. They are mainly drug packers or people trying to get into the United States who can't go through the asylum process.

Mr. GUEST. I believe you testified earlier that those were drug smugglers. Many of those were gang members, including MS-13. Many of those were people who had previously been deported and were making illegal reentry back into the country. Is that right?

Mr. CHILTON. It is absolutely true.

Mr. GUEST. Now, let me ask you, Mr. Chilton, what impact has our inability to secure the border with this very ineffective 4

strands of barbed wire, what impact has that had on you financially or emotionally?

Mr. CHILTON. Emotionally, it is particularly significant for my wife and others. Financially, it means that instead of 1 cowboy going out to check our cattle or fence, we have to have 2 cowboys go, because it is just unsafe with foreigners coming through our ranch and cutting our fences. They cut our fences and our cattle get out into other pastures, and it takes me 2 days, maybe 3, just to find them and get them back in the correct pasture.

We have had water systems drained. Financially, it is a huge impact that other ranchers don't have to face.

Mr. GUEST. The illegal crossing across your property, would that be events that occur on a daily basis?

Mr. CHILTON. Since the property is so large, I can't say it is on a daily basis. However, an acquaintance of mine flew a drone over into Mexico and found a huge layup site on the other side of a mountain, and he dropped a note saying he would offer a beer if they came down. Well, the next day, I was down there, and here comes guys with masks and camouflage and they wanted beer. I only had Cokes. I told this acquaintance and he rushed out there the next day and gave them beer, and he got interesting intelligence information. They said that they worked for the cartel, that the cartel was running two groups through one major canyon on my ranch a day.

Mr. GUEST. Mr. Chilton, let me ask you one question, and my time will have expired. Was there an incident on your property where there was a Border Patrol agent who was shot by an illegal immigrant?

Mr. CHILTON. There was, about a year ago, a Border Patrol agent shot. I am just glad it wasn't me.

Mr. GUEST. Thank you, Madam Chairman. I yield back.

Miss RICE. Thank you, Mr. Guest.

The Chair now recognizes for 5 minutes the gentleman from Pennsylvania, Mr. Joyce.

Mr. JOYCE. Thank you, Madam Chair. Thank you for having this hearing today.

Mr. Chilton, thank you for coming before this committee and sharing your story, your personal story and experience along the border. I was part of a Congressional delegation on a trip to Yuma, Arizona. I must say, I couldn't agree with you more on what your assessment of the crisis is.

You started, in your testimony, by making a very interesting analogy. You said, would a football team ever win if the team lined up 10 yards behind the line of scrimmage? I am going to continue with that analogy in this line of questioning.

While I witnessed first-hand the lack of a secure border in areas along the Colorado River which allows the cartels to smuggle drugs into our country, cartel members who you personally have witnessed crossing your land, it is so critical that we must act decisively to address this crisis. Could you please elaborate on what steps we must take, in your opinion, to secure our border, to protect our citizens like you, and your neighbors, to stop lining up 10 yards behind the line of scrimmage?

Mr. CHILTON. It is really very simple. I am just a cowboy. But you have a fence, you have roads, forward operation bases, and 24/7 visual observation of the border. Anybody climbs over the fence, I don't care how high it is, you apprehend them as they are coming down. It is a very simple solution. We need the personnel at the border, a wall, and roads.

Mr. JOYCE. Mr. Chilton, you described for us, and I am going to ask you to repeat the description of what type of barrier exists on the ranch that you currently use on the cattle that are protected. Would you please describe for me what that security exists between Mexico and United States today?

Mr. CHILTON. It is just simply a four-strand barbed wire cattle fence, and it isn't maintained by the Federal Government. I have to maintain it.

Mr. JOYCE. How easy is it to go over, to go under, or to go through that 4 simple lines of barbed wire?

Mr. CHILTON. I am 80 years old, and I can climb over it, I can go under it, and I can go through it. Anybody can.

Mr. JOYCE. Mr. Chilton, as a citizen who lives on the United States-Mexico border, do you personally support building a wall?

Mr. CHILTON. I absolutely support it because it is a very simple solution, and the Federal Government is supposed to protect me from foreign people coming through my ranch. We have seen groups with armed people coming through with what appears to be AK-47s.

Mr. JOYCE. Mr. Chilton, do you as a citizen believe that Congress should appropriate funds to build this wall?

Mr. CHILTON. I agree they should. Senator Schumer, Congresswoman Pelosi all voted to do this under the secure voters—Secure Border Act. It needs to be done, and it shouldn't be a partisan issue. This should be, what does it take to secure America and prevent people coming in unlawfully?

Mr. JOYCE. Mr. Chilton, you personally have witnessed gang members carrying what are assumed to be large amount of drugs that come into our country that affect every community throughout the United States. Do you feel that the drug crisis that we face and that we see in our districts, not just in Arizona, but in every district in America can be substantially impacted with the construction of a border wall?

Mr. CHILTON. Yes, I do. The opioid crisis is really an emergency facing America, all across America. If they could just limit the drugs coming through my ranch, that would help. We need to secure the border at the border, and that includes the drugs coming across.

Mr. JOYCE. Mr. Chilton, thank you for being here today. Thank you for your expert testimony in what we need to understand and how a border wall will protect America. Thank you.

I yield back my time.

Miss RICE. Thank you, Mr. Joyce.

Ms. Alvarez, I have a quick question for you. Have you had more negative encounters with bad actors crossing the border or with Government officials?

Ms. ALVAREZ. I have had more encounters with Government officials, with archaeological surveyors, regular surveyors. I go to work and these people jump my fences and go in without permission.

Going back to Government workers, I don't need a fence behind my backyard. At night, what do I get? I get Border Patrol jumping fences in full gear with AR-15s, night vision, walking all over the property. So what do I need a fence for if I have these people going all over my property protecting me? As it is, there is a natural barrier in back of my home, which is a river. I don't need no wall. If somebody wants a wall, I am willing to give up my part of the wall and it can be built somewhere else, but I don't want it. We do not need this wall.

Miss RICE. Thank you.

I now recognize for 5 minutes the gentleman from Mississippi, Chairman Thompson.

Mr. THOMPSON. Thank you very much, Madam Chair.

I want our witnesses to understand we all want to be safe, but you can be safe by being smart. If we are the most technologically-advanced country in the world, but we are going to go back to the most primitive method of protection, which is a fence, that is saying that we need to change our modus of operation on a lot of things.

I am absolutely convinced that if we can see people coming to the border, we have enough air assets, we have enough ground assets, we can move to those areas. We can see people at night. We can hear them talking. We have all the sophisticated technology we need. A fence is not going to stop them. So—but in the pursuit of this fence, I am concerned that we are taking private property from individuals who, at a minimum, ought to have the full faith and credit of Congress who established the laws by which you take. Just because you are the Government is no reason for me to say I can take your land because I want to build a wall. You have to prove that this is the only way you can protect my land and me.

For the arguments that I hear from my colleagues who are gone at this hearing, I am absolutely blown away. We are a Nation of laws. To try to take somebody's land under the guise at first that you said Mexico was going to pay for it and now our hardworking taxpayers are going to have to pay for it is not where we need to be.

Again, now they are saying, after we take your land and build a wall, we are going to put cameras and lights on top of the fence. Well, you can put cameras and lights on a pole, and you don't have to build a fence and you are going to see the same thing. So the notion that we are, as a Government, promoting a flawed security apparatus at the expense of taxpayers is something that is absolutely not in our best interest.

But, Madam Chair, let me thank you for having the witnesses. Let me thank the witnesses for their testimony. All of us want to keep our country safe.

You know, we are a Nation of immigrants. You know, this notion that somehow foreigners are trying to invade our country, I personally have a problem with the statement. Most of the people who come here are just, based on the documents that we are provided by Homeland Security, are just trying to find a better way of life.

Most of them who come and work here send most of their money back home to family and others just for survival. So—and most of the people we catch who come here illegally come through our ports of entry. They don't walk through the desert. They come through our ports of entry.

So if we look at the facts and run the numbers, the border wall and the taking of private property is not the best way to go.

With that, Madam Chair, I yield back.

Miss RICE. Thank you, Mr. Chairman.

I thank the witnesses for their valuable testimony and the Members for their questions.

I ask unanimous consent to enter 2 statements into the record. The first is a statement signed by 21 national faith-based organizations offering their support for this hearing, as well as H.R. 1232, the Rescinding DHS' Waiver Authority for Border Wall Act, and other similar legislation intended to protect landowner and border communities' rights. The second is a statement from the Southern Border Communities Coalition describing the negative impact border wall construction is having on communities along the U.S.-Mexico border, and how almost 60 percent of registered voters in California, Arizona, New Mexico, and Texas oppose any additional funding for border wall.

[The information follows:]

LETTER FROM MISCELLANEOUS FATH-BASED ORGANIZATIONS

FEBRUARY 27, 2020

The undersigned faith organizations appreciate the opportunity to submit a statement for today's hearing.

Our faith communities have ministries and relationships deeply rooted in border communities. We have witnessed how current border enforcement policies have torn families and communities apart, contributed to the deaths of thousands of migrants, harmed wildlife and border ecosystems, and violated the rights and humanity of U.S. citizens and immigrants alike. Border walls and other forms of excessive militarization are inconsistent with the faith principles of compassion, stewardship, and justice. The rampant use of waivers and eminent domain to further border wall construction harms human communities and wildlife, and interferes with the sovereignty of indigenous communities in the border region.

Sacred sites at Organ Pipe Cactus National Monument are already being destroyed. Earlier this month, blasting began at Monument Hill, an area once used for Tribal ceremonies and where the bodies of Apache and other indigenous peoples are buried. Human remains have been found at Monument Hill and near Quitobaquito Springs, another sacred area. "Look at the reaction when Notre Dame burned down," said Chairman Ned Norris Jr. of the Tohono O'odham nation. "You feel an emotional connection to that, even if you're not Catholic. That kind of emotional connection is abundant in the case of the border issues for the Tohono O'odham."¹ We stand with our sisters and brothers of the Tohono O'odham nation in lamenting and condemning the indiscriminate destruction of their sacred sites and burial grounds.

Border wall construction in the southwest desert will require millions of gallons of precious groundwater for concrete footings. Quitobaquito Springs is the only reliable source of surface water for 50 miles in any direction and home to endangered species that are found nowhere else on Earth. Near the San Bernardino National Wildlife Refuge in Arizona, a restored wetlands that depends on artisan springs of ancient fossil water dating back 5,000 to 40,000 years, an aquifer is being pumped at a rate of hundreds of thousands of gallons per day for border wall construction.

¹Native American tribe says Pentagon failed to consult on border wall construction, NBC News, [nbcnews.com/news/us-news/native-american-tribe-says-pentagon-failed-consult-border-wall-construction-n1137771](https://www.nbcnews.com/news/us-news/native-american-tribe-says-pentagon-failed-consult-border-wall-construction-n1137771), (February 17, 2020).

Four of the refuge wetlands are drying up. Due to the ancient nature of this water, rainfall will not recharge the aquifer.²

Due to their long-lasting negative impact on communities and wildlife in the border region, like in the examples above, faith communities have deep concerns regarding the use of the waiver authority and eminent domain.

We ask Congress to support three bills that would restore the rule of law and mitigate the profound harms of border wall construction on border communities, sacred lands, groundwater depletion, property owners, the environment and wildlife:

- H.R. 1232, the “Rescinding DHS’ Waiver Authority for Border Wall Act”
- H.R. 1233, the “Borderlands Taking Defense Fund Act”
- H.R. 1234, the “Preventing the Taking of Americans’ Land to Build Trump’s Wall Act”.

The “Rescinding DHS’ Waiver Authority for Border Wall Act,” H.R. 1232, would preserve bedrock protections such as the Religious Freedom Restoration Act, American Indian Religious Freedom Act, Clean Air Act, Safe Drinking Water Act, and the Endangered Species Act. Currently, dozens of important laws that represent years of responsible lawmaking are being waived by the Secretary of the Department of Homeland Security in order to speed construction of roads and barriers along the U.S.-Mexico border. This waiver authority has been characterized by the Congressional Research Service as “the largest waiver of law in American history.”³ H.R. 1232 would ensure that construction of border walls, fences, and other structures would abide by laws that protect religious freedom, human health, indigenous communities, and the environment.

The “Borderlands Takings Defense Fund Act”, H.R. 1233, would establish a fund to assist low-income property owners who are at risk of losing homes, ranches, and farms due to border wall construction. Funds could be used to educate property owners about the eminent domain process, including their rights to legal support, and to assist those facing condemnation.

The “Preventing the Taking of Americans’ Land to Build Trump’s Wall Act”, H.R. 1234, would prevent the Federal Government from taking property before landowners are fairly compensated. Presently, the Federal Government can seize land along the border, erect barriers immediately, and then take years to properly compensate land owners. The common-sense approach in H.R. 1234 would ensure that property owners are paid before land is taken.

Government policies should uphold the dignity and worth of every person, protect creation, and advance the common good. Allowing DHS to waive dozens of bedrock protections and to trample on the rights of landowners falls far short of these values. We urge you to support and cosponsor H.R. 1232, H.R. 1233, and H.R. 1234.

Sincerely,

AFRICAN AMERICAN MINISTERS IN ACTION
 CHURCH WORLD SERVICE
 COLUMBAN CENTER FOR ADVOCACY AND OUTREACH
 CONFERENCE OF MAJOR SUPERIORS OF MEN
 CONGREGATION OF OUR LADY CHARITY OF THE GOOD SHEPHERD, U.S.
 PROVINCES
 CREATION JUSTICE MINISTRIES
 FAITHFUL AMERICA
 FRANCISCAN ACTION NETWORK
 FRIENDS COMMITTEE ON NATIONAL LEGISLATION
 LEADERSHIP CONFERENCE OF WOMEN RELIGIOUS
 LUTHERAN IMMIGRATION AND REFUGEE SERVICE
 MARYKNOLL OFFICE FOR GLOBAL CONCERNS
 MENNONITE CENTRAL COMMITTEE U.S. WASHINGTON OFFICE
 NATIONAL ADVOCACY CENTER OF THE SISTERS OF THE GOOD SHEPHERD
 NATIONAL COUNCIL OF JEWISH WOMEN
 NETWORK LOBBY FOR CATHOLIC SOCIAL JUSTICE
 SISTERS OF MERCY OF THE AMERICAS—INSTITUTE JUSTICE TEAM
 TRUAH: THE RABBINIC CALL FOR HUMAN RIGHTS
 THE UNITED METHODIST CHURCH—GENERAL BOARD OF CHURCH AND SOCIETY
 UNITARIAN UNIVERSALIST MINISTRY FOR EARTH
 UNITARIAN UNIVERSALISTS FOR SOCIAL JUSTICE

²Border Wall Construction Advancing at Peril of the Southwest, Sierra Club, sierraclub.org/press-releases/2020/01/memo-new-border-wall-construction-advancing-peril-southwest, (January 29, 2020).

³Memorandum from Stephen R. Viña & Todd Tatelman, Legislative Attorneys, Am. Law Division, Cong. Research Serv., on Section 102 of H.R. 418, Waiver of Laws Necessary for Improvement of Barriers at Borders, (Feb. 9, 2005).

STATEMENT OF VICKI B. GAUBECA, DIRECTOR, AND JENNIFER JOHNSON, BORDER
POLICY ADVISOR, SOUTHERN BORDER COMMUNITIES COALITION

FEB. 27, 2020

INTRODUCTION

Formed in 2011, the Southern Border Communities Coalition (SBCC), a project of Alliance San Diego, brings together networks from San Diego, California, to Brownsville, Texas, to ensure that border enforcement policies and practices are accountable and fair, respect human dignity and human rights, and prevent the loss of life in the region.

As the administration continues to deploy a record level of enforcement resources to the Southern Border region, including unaccountable agents, active-duty military troops and National Guard, surveillance and military technologies befitting theaters of war, border communities suffer as these deployments and programs jeopardize their human and civil rights, cause irreparable harm to the surrounding environment and wildlife, and erode quality of life and public safety. This escalated militarization comes with little to no accountability and oversight, which leads to increased abuse and impunity at Customs and Border Protection (CBP), ultimately undermining the safety of border communities and the Nation.

The administration has also developed and implemented increasingly reckless and harmful policies that have intensified the suffering experienced by refugees at our Southern Border. Asylum seekers are returned to often dangerous and untenable situations in Mexico to await their immigration hearings or are subjected to an intensely rushed process where they are denied meaningful access to protection. Other cruel deterrence practices include blocking entry at southern ports of entry by engaging in “metering” or “wait-listing” for people seeking safety; ripping children away from the arms of parents so parents can be prosecuted; holding refugees in unsanitary, overcrowded holding cages that are more akin to dog kennels; and threatening to deport millions of people without regard to the harm it will cause to families and entire communities.

Of deep concern to border communities is the administration’s persistent and dangerous obsession with building a border wall by any means possible and with complete disregard to the profound and irreparable harms of the border wall on the borderlands, in part demonstrated by the administration’s repeated waiver of bedrock laws established by Congress to protect public health, the environment, wildlife, cultural/religious landmarks, and the U.S. taxpayer to expedite wall construction.

While the subcommittee is carrying out this important hearing, the administration is actively causing devastation to the borderlands and Southern Border communities—blasting away sacred burial sites, bulldozing precious natural resources, and tearing land away from private landowners and ranchers to build an ineffective and lethal border wall.

SBCC submits this statement to provide the subcommittee with an analysis that includes the perspectives of borderland residents on how the administration policies and practices have damaged the quality of life and eroded the civil rights of the more than 15 million people who call the Southern Border region home.

STATUS OF BORDER WALL CONSTRUCTION, TRANSFERS, WAIVERS, AND COSTS

According to U.S. Customs and Border Protection (CBP),¹ as of Jan. 24, 2019, there were 655 miles of primary barriers on the Southwest Border, which included about 301 miles of pedestrian fencing and about 254 miles of vehicle barriers built before January 2017. About 99 miles of these primary barriers are new barriers built in place of dilapidated ones (i.e., replacement walls) and approximately 1 mile of new border wall built in locations where no barriers previously existed. An additional 10 miles of new “secondary” border wall system have also been built since January 2017, bringing the total to 110 miles.

The 115th and 116th Congress have appropriated a total of nearly \$5.1 billion in fiscal years 2017, 2018, 2019, and 2020 to fund the construction of approximately 272 miles of new and replacement barriers along the Southern Border. In addition to these funds appropriated by Congress, the administration has gone to unprecedented lengths to unlawfully raid other agencies to access billions beyond what Congress has appropriated for the construction of more border wall.

¹ Customs and Border Protection. “CBP/USACE Border Wall Status” (Jan. 24, 2020). Available at: <https://cdn.factcheck.org/UploadedFiles/CBP-Border-Wall-Status-Paper-as-of-01242020-FINAL.pdf>.

In Feb. 2019, following the longest Government shutdown in history and Congress's rejection of President Trump's full funding request for more border wall in the fiscal year 2019 appropriations bill, the administration brazenly declared in a press conference a dubious "National emergency" (and has blatantly admitted this as a mechanism to circumvent Congress) to divert \$3.6 billion from the Department of Defense's (DoD's) 10 U.S.C. § 2808 Military Construction funds (effectively halting 127 military construction projects)² and \$2.5 billion from 10 U.S.C. § 284 Counter-Narcotics funding to construct another 304 miles of new or replacement barriers. The administration also tapped into another \$600 million from the U.S. Treasury Forfeiture Fund. Both U.S. Congressional chambers have voted and passed resolutions of disapproval against the administration's declaration of a National emergency, but—to date—have failed to obtain a veto-proof majority.

In mid-January 2020, the administration indicated its intent to circumvent Congress again and transfer \$7.2 billion from DoD funding, including \$3.7 billion from military construction and \$3.5 billion from counter-narcotics funding, to build more border wall. On Feb. 13, 2020, the administration notified Congress that it intends to transfer \$3.8 billion of DoD funds to erect another 177 miles of border barriers. These funds were originally appropriated by Congress in the fiscal year 2020 budget to purchase new military aircraft, vehicles, and weapons.

The administration has also requested another \$2 billion^{3 4} to build another 82 miles of border wall in the fiscal year 2021 budget.

Influenced by Presidential election year politics, the administration is eager and determined to fulfill an uninformed and costly campaign promise to build a border wall. Of course, we must recall that candidate Trump promised that Mexico would pay for the cost of its construction, not the U.S. taxpayer. Instead, he is devastating the border region by constructing a harmful, vanity wall bankrolled by the American taxpayer and circumventing Congress by seizing funds outside the appropriations process.

Thus far, the price tag for this administration's border wall is more than \$11 billion—or nearly \$20 million a mile—and growing. It is the most expensive wall of its kind anywhere in the world.⁵

Ultimately the costs of building this wall will be exorbitant. In 2018, the Government Accountability Office issued a report⁶ that suggested that there is no way to verify wall construction costs because estimates do not fully account for varied, and sometimes extreme, terrain along the borderlands, and how this could play a role in costs. A minority report⁷ by the Senate Committee on Homeland Security and Governmental Affairs suggested the costs of building Trump's border wall could rise up to almost \$70 billion, or more than \$200 for every man, woman, and child living in the United States.

Walls also cost billions of taxpayer dollars to maintain. No physical structure is immune to natural wear and tear caused by exposure to the elements over the years. The same minority report referred to above also estimated that maintenance costs, based on current costs of maintaining the wall, could reach \$150 million a year—that's billions of more dollars needed that our children will have to pay for. This figure does not include the costs for repairing walls that have been breached or damaged by other causes.

To facilitate the construction of the wall at the expense of border community members, the environment, and wildlife, the administration continues to interpret the Real ID Act as giving the Department of Homeland Security complete and

²Sisk, Richard. "Pentagon Releases List of Military Construction Projects Paused to Fund Border Wall", Military.com (Sept. 4, 2019) Available at: <https://www.military.com/daily-news/2019/09/04/pentagon-releases-list-military-construction-projects-paused-fund-border-wall.html>.

³Kanno-Youngs, Zolan. "What's in President Trump's Fiscal 2021 Budget? Steep cuts to domestic programs and more resources for the military and policing the border with Mexico." New York Times (Feb. 10, 2020) Available at: <https://www.nytimes.com/2020/02/10/business/economy/trump-budget-explained-facts.html>.

⁴DHS Fiscal Year 2021 Budget in Brief. Available here: https://www.dhs.gov/sites/default/files/publications/fy_2021_dhs_bib_web_version.pdf.

⁵Burnett, John. "\$11 Billion And Counting: Trump's Border Wall Would Be The World's Most Costly." NPR (Jan. 19, 2020) Available at: <https://www.npr.org/2020/01/19/797319968/-11-billion-and-counting-trumps-border-wall-would-be-the-world-s-most-costly>.

⁶GAO. "SOUTHWEST BORDER SECURITY. CBP Is Evaluating Designs and Locations for Border Barriers but Is Proceeding Without Key Information" July 2018 Highlights of GAO-18-614, a report to Congressional requesters. Available at: <https://www.gao.gov/assets/700/693488.pdf>.

⁷HSGAC Minority Report. "Southern Border Wall: Soaring Cost Estimates and Lack of Planning Raise Fundamental Questions About Administration's Key Domestic Priority." (April 18, 2017). Available at: <https://www.hsgac.senate.gov/imo/media/doc/Southern%20Border%20Wall%20%20HSGAC%20Minority%20Report.pdf>.

unhindered discretion in waiving any U.S. laws that might interfere with the construction of border wall. As a result, almost 50 laws that were passed by Congress to protect the public from Government overreach and protect our water, air, environment and rights have been waived, including the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, the National Environmental Protection Act, the Endangered Species Act, the Clean Air Act, and the Safe Drinking Water Act.

To further speed up the construction of the border wall in Arizona, California, New Mexico, and Texas, the administration recently waived Federal procurement statutes and regulations,⁸ including requirements for open competition and justifying selections.⁹

BORDER WALL HARMS

The consequences and harms of building border walls have been profound to border communities, the environment and wildlife. Since 1994, when the first wall was built near San Diego under Border Patrol's Operation Gatekeeper, the remains of more than 7,800 migrants have been found in remote areas of the Southern Border, including on the Tohono O'odham Nation and in rural areas near Falfurrias, Texas. However, not all remains are found, and experts estimate that this number reflects only a third of the estimated migrants who lost their lives attempting to cross the border.

Border walls jeopardize Tribal sovereignty. The Tohono O'odham Nation, whose ancestral lands straddle the U.S.-Mexico border, already have a physical barrier with a gate bisecting their nation. Most Tribal members oppose replacing this physical structure¹⁰ with a wall, because it would interfere with their ability to cross into Mexico to connect with other Tribal members for sacred ceremonies and visits.

As noted by Ned Norris, Jr., Chairman of the Tohono O'odham Nation, "A wall is extremely expensive for the American taxpayer, is ineffective in remote geographic areas like ours, and is highly destructive to the religious, cultural, and environmental resources on which our members rely and which make our ancestral lands sacred to our people. On-going construction of the wall already has and will continue to disturb and destroy culturally significant sites and cultural resources, Tribal archeological resources, and sacred sites and desecrate human remains."¹¹

Current and proposed land seizures for border wall construction have deeply harmed property owners on the U.S. side of the border. In Texas, the vast majority of land adjacent to the border is privately-owned, so the administration has resorted to condemnation lawsuits against private landowners in many of the poorest communities in the United States to take land for the border wall by force. Hundreds of private property owners have been forced to give up their homes, businesses, farms, and ranches—some of whom have held these lands in their families for generations—through eminent domain seizures.

In some cases, DHS has used 'quick take' condemnations to take possession of private property and start wall construction even before just compensation has been determined and the property owner paid. In case after case, DHS has completely discounted the hardships that the border wall will bring to these landowners, to include: (1) The devaluation of contiguous property and land left after the taking, (2) problems accessing land and homes behind a 30-foot wall built on top of a levee, and (3) the effects on livelihood as the result of a wall interfering with farming, ranching, and maintaining renters.

Any kind of physical barrier at the U.S.-Mexico border also interferes with the migration patterns and access to food and water of wildlife—many of which are endangered and protected species, like the Mexican grey wolf, ocelot, bighorn sheep, and jaguar. More than 2,500 scientists from 43 countries signed on to a study that

⁸ Spagat, Elliot. "Homeland Security waives contracting laws for border wall." Associated Press (Feb. 18, 2020). Available at: <https://apnews.com/1689fa48a2e177d1f397b95ff0cb97db>.

⁹ Statutes and regulations include: 10 U.S.C. § 2304; 10 U.S.C. § 2304c; 10 U.S.C. § 2306a; 10 U.S.C. § 2305(a)–(c), (e)–(f); Section 813 of Public Law 114–328, as amended by Section 822 of Public Law 115–91; 15 U.S.C. § 657q; 48 C.F.R. § 17.205; 48 C.F.R. § 17.207; 10 U.S.C. § 2305a(b)–(e); 48 C.F.R. § 22.404–5; and 48 C.F.R. § 28.102–1(c).

¹⁰ Nañez, Dianna M. "The Wall: A border tribe, and the wall that will divide it", USA Today. Available at: <https://www.usatoday.com/story/border-wall/story/tohono-oodham-nation-arizona-tribe/582487001/>.

¹¹ The Tohono O'odham Nation of Arizona Testimony of The Honorable Ned Norris, Jr., to the U.S. House of Representatives Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States, *Hearing on Destroying Sacred Sites and Erasing Tribal Culture: The Trump Administration's Construction of the Border Wall* (Feb. 26, 2020) Available at: <https://naturalresources.house.gov/imo/media/doc/SCIP%202022.26%20%20Chairman%20Norris.pdf>.

illustrates the harm to wildlife¹² and the environment that would be generated by this administration's border wall. Even birds will be affected, like the cactus ferruginous pygmy owl¹³ which cannot fly higher than 4.5 feet and would be unable to clear Trump's proposed 18- to 30-foot wall. Every day now, we witness more miles of border walls built every day, laying waste to our environment and placing our endangered and protected species on a runaway train toward extinction.

Border walls and infrastructure have exacerbated flooding in Arizona and Texas, causing millions of dollars in damage to the environment and local businesses and endangering the lives¹⁴ of border residents and wildlife. In 2008, a year after a National Park Service report warned the DHS that the border wall would cause flooding, 2 people drowned in Nogales from flooding intensified by the wall along the Arizona/Sonora border.

CONCLUSION AND RECOMMENDATIONS

Not only is the construction of a border wall costly and harmful, it is also not supported by a majority of voters, including communities directly impacted by the wall. A recent survey by the University of California Immigration Policy Center showed almost 60 percent of registered voters in California, Arizona, New Mexico, and Texas oppose any additional funding for border wall.

The Southern Border region—home to about 15 million people—is a place of hope, encounter, and opportunity. It is one of the most vibrant and diverse places in the country with deep cross-border ties from San Diego, CA to Brownsville, Texas.

But instead of embracing our dynamic communities, for decades our border policies have cast aside human rights, criminalized migrants, and engaged in deadly and unaccountable border enforcement, undermining public safety for all.

It's time to rethink how we do border and push for a new vision¹⁵ that introduces a 21st Century border governance model that expands public safety to all, creates a welcoming system for newcomers and residents, and protects human rights and life.

We urge this subcommittee to consider introducing a legislative initiative that would:

- Rescind the vast and arbitrary powers seemingly granted to the Department of Homeland Security to waive all legal requirements to construct the border wall and related infrastructure at the Southern Border.
- Prohibit the administration's ability to transfer funds or access resources for border wall construction in violation of the appropriations process or Congressional intent.
- Halt existing wall construction and terminate contracts funded by illegally transferred and seized funds.
- Hold this administration accountable for its failure to comply with consultation requirements in border wall construction efforts, including government-to-government consultation with Tribal governments, and strengthen consultation mechanisms.
- Prohibit DHS from taking physical possession of any acquired land unless and until all persons entitled to compensation for such acquisition have been compensated in full, and the court proceedings described in 40 U.S.C. Sec. 3114(a) have concluded and the case terminated.
- Identify and fund programs to address harms and provide reparations for landowners, communities, and public and private lands harmed by border wall construction.

Miss RICE. Members of the subcommittee may have additional questions for the witnesses, and we ask that you respond expeditiously in writing to those questions.

¹²Javorsky, Nicole. "Scientists Decry the Border Wall's Harm to Wildlife," City Lab (July 24, 2018). Available at: <https://www.citylab.com/environment/2018/07/scientists-decry-the-border-walls-harm-to-wildlife/565913/>.

¹³Knowles, Cybele. "5 Animals Threatened by the Border Wall." Medium (Feb. 22, 2017). Available at: <https://medium.com/center-for-biological-diversity/5-animals-threatened-by-the-border-wall-3160a6bbfd85>.

¹⁴Sadasivam, Naveena. "The U.S.-Mexico border wall's dangerous, costly side-effect: enormous floods," Quartz, (Aug. 17, 2018). Available at: <https://qz.com/1353798/the-us-mexico-border-walls-dangerous-costly-side-effect-enormous-floods/>.

¹⁵Southern Border Communities Coalition. "A New Border Vision" (May 2019) Available at: <http://d3n8a8pro7vnm.cloudfront.net/themes/5c8a803c4764e89849b5753e/attachments/original/1557787799/SBCC-NBV-H.pdf?1557787799>.

Without objection, the subcommittee record shall be kept open for 10 days.

Again, I thank all the witnesses for coming here today.

Hearing no further business, the subcommittee stands adjourned.
[Whereupon, at 12:40 p.m., the subcommittee was adjourned.]

