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WALLS AND WAIVERS: EXPEDITED CONSTRUCTION OF THE SOUTHERN BORDER WALL AND COLLATERAL IMPACTS TO COMMUNITIES AND THE ENVIRONMENT

JOINT OVERSIGHT FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS

JOINT WITH THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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OVERSIGHT FIELD HEARING ON "WALLS AND WAIVERS: EXPEDITED CONSTRUCTION OF THE SOUTHERN BORDER WALL AND COLLATERAL IMPACTS TO COMMUNITIES AND THE ENVIRONMENT."

Monday, April 28, 2008
U.S. House of Representatives
Subcommittee on National Parks, Forests and Public Lands, joint with the Subcommittee on Fisheries, Wildlife and Oceans
Committee on Natural Resources
Brownsville, Texas

The Subcommittees met, pursuant to call, at 10:00 a.m., in Lecture Hall, Science, Engineering and Technology Building (SET-B), University of Texas—Brownsville, Brownsville, Texas, Hon. Raúl Grijalva [Chairman of the Subcommittee on National Parks] presiding.

Present: Representatives Grijalva, Bordallo, Faleomavaega, Ortiz, and Tancredo.

Also Present: Representatives Napolitano, Reyes, and Hunter.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. The meeting will come to order. If people will have their seats. I will appreciate that so we can begin this hearing. Let me at the outset thank everybody for their attendance, thank our distinguished panels, of which we'll have three today. And I will begin with an opening statement. But before I do that, because of the number of panels and the constricted time in terms of some of my colleagues on the panel who need to be sure they make their travel arrangements, we're going to ask that all the panelists try to keep to a five-minute oral presentation. Your full statements will be incorporated into the record, and any extraneous material you wish to include, the record will remain open for 10 days for that material.

And as much as I hate to say this, given the fact that we're all Members of Congress and time restrictions are of little effect on us, we will also insist that we keep our opening comments to five minutes and our questioning of the witnesses to five minutes so that all of us have an opportunity to hear the responses of our witnesses.

Let me begin by saying that this is a joint hearing of the Natural Resources Subcommittee on National Parks, Forests and Public Lands, and the Subcommittee on Fisheries, Wildlife and Oceans, and that this hearing come to order. I will ask that all the members present at the outset and those members that are not part of these Subcommittees or the Natural Resources Committee be permitted to sit on the dais. Hearing no objection, so ordered.

As I already thanked the witnesses, let me say that the issue before the Subcommittee today is a significant one, and the insight offered by our witnesses will be enormously helpful. Let me also thank all my colleagues for being here today. I would point out that on the dais we have a full Committee Chairman, five Subcommittee Chairs, a full Committee Ranking Member, and two former contenders for the Republican Presidential nomination. And——

Mr. HUNTER. We've got a quorum.

Mr. GRIJALVA. In particular, let me say a special word of thanks to Congressman Solomon Ortiz for hosting this meeting and for the courtesy and generosity of him and his staff to those of us that are not from the community and are here for this hearing.

The title of today's hearing is "Walls and Waivers: Expedited Construction of the Southern Border Wall and the Collateral Impacts on Communities and the Environment." It certainly is a mouthful. But it is a mouthful because the issue we are discussing today is enormously complex and it involves immigration policy, security policy, economics, culture, history, budget policy, natural resource protection, and much more. And it is that level of complexity that makes the current policy, and the waivers being used, so deeply disappointing.

To examine the history and the culture of the Southwest, to examine its fragile and unique ecosystem, to examine the economic and the social factors influencing immigration, and to examine the pressing need for our national security, and then to decide the only policy solution is a 700-mile fence and a wall is simply a failure of leadership.

The wall is not a solution. In my mind it's a surrender. This wall is an admission of defeat by this Administration and the Congress in the face of an important public policy challenge. Likewise, to examine the myriad of laws which protect the air we breathe, the water we drink, and the people's right to know and to participate in the policy process and then to decide that the only solution is to waive those laws completely is an abdication of our responsibility.

Some might argue that the simple solutions are often the best, and, generally, I would agree. But our current approach to this issue is not simple, it's simplistic. And, therefore, it is a disservice to the American people, who require, at this urgent time in our history, more than symbolic initiatives.

Today's hearing will focus not only on the negative collateral impact of the fragile southwestern environment but also the people and the economy in this area. However, because of the haste and the lack of foresight that has categorized this process so far, we will only scratch the surface of the real harms the proposed wall will cause.

It is my hope that today's discussion might be another step toward a more thoughtful, more comprehensive, and more effective approach to balancing our many, many competing goals along the border, which properly include the security and safety of our borderlands.

It is now my pleasure to recognize the Chairwoman of our Subcommittee on Fisheries, Wildlife and Oceans for any opening comments she may have. Ms. Bordallo.

[The prepared statement of Mr. Grijalva follows:]

Statement of The Honorable Raúl Grijalva, Chairman, Subcommittee on National Parks, Forests and Public Lands

Good morning. This joint hearing of the Natural Resources Subcommittee on National Parks, Forests and Public Lands and the Subcommittee on Fisheries, Wildlife and Oceans will come to order.

I ask unanimous consent that all Members of Congress in attendance here be allowed to join the Members of the Subcommittees on the dais. Hearing no objection, so ordered.

Let me begin by thanking the witnesses who will be testifying today. The issue before the Subcommittees today is a significant one and the insights offered by our witnesses will be enormously helpful.

Let me also thank my colleagues for being here today. I would point out that on the dais we have a Full Committee Chairman, five Subcommittee Chairs, a full Committee Ranking Member and two former contenders for the Republican Presidential nomination.

In particular, let me say a special word of thanks to Congressman Solomon Ortiz for hosting this meeting here in his Congressional District.

The title of today's hearing is: Walls and Waivers, Expedited Construction of the Southern Border Wall and Collateral Impacts to Communities and the Environment. That title is certainly a mouthful but that is because the issue we are discussing today is enormously complex—it involves immigration policy, security policy, economics, culture, history, budget policy, natural resource protection and more.

And it is that level of complexity that makes the current policy—and the waivers being used to pursue it—so deeply disappointing. To examine the history and culture of the Southwest, to examine its fragile and unique ecosystems, to examine the economic and social factors influencing immigration and to examine the pressing need for our national security, and to then decide that the only policy solution is a 700 mile long wall is simply a failure of leadership.

This wall is not a solution—it is surrender. This wall is an admission of defeat by this Administration and the Congress in the face of an important public policy challenge.

Likewise, to examine the myriad laws which protect the air we breathe, the water we drink, and the people's right to know and to participate in the policy process, and to then decide the only solution is to waive those laws completely, is simply an abdication of our responsibility.

Some might argue that simple solutions are often the best, and I would agree. But our current approach to this issue is not simple, it is simplistic—and therefore it is a disservice to the American people.

Today's hearing will focus not only on the negative, collateral impacts on the fragile southwestern environment, but also on the people and economy of this area. However, because of the haste and lack of foresight that has characterized this process so far, we will only scratch the surface of the real harms the proposed wall will cause.

It is my hope that today's discussion might be another step toward a more thoughtful, more comprehensive, and more effective approach to balancing our many competing goals along our borders.

STATEMENT OF THE HON. MADELEINE Z. BORDALLO, A DELEGATE IN CONGRESS FROM THE TERRITORY OF GUAM

Ms. BORDALLO. I thank you very much, Chairman Grijalva. I am pleased to join you this morning in co-chairing this important oversight field hearing on matters which generate sharply divergent

opinions among Members of Congress and within the American public. I would also like to thank the president of the University of Texas at Brownsville, Dr. Juliet Garcia, and her staff for their gracious hospitality and assistance in hosting and coordinating this joint field hearing. I also want to thank you, Chairman Grijalva, and our colleague, Congressman Solomon Ortiz, for their leadership on this issue. And I commend our other colleagues for their sincere interest in this matter and for their participation in today's hearing.

Few people would challenge the position that the Federal government has a fundamental responsibility to secure our nation's borders. However, the methods by which our borders are secured and the manner by which the Federal government implements this strategy are also fundamental to the public's acceptance and the government's success in meeting this responsibility. Our free and open system of representative government is built upon the tenets of public participation, robust debate, transparency, and public accountability in decision making.

Granted, abiding by these tenets often can mean delays, extra costs, and, at times, legal challenges. Nonetheless, I believe that the only way our government can succeed and endure is if the people themselves feel vested in the important decisions that must affect their daily lives.

Public involvement in government decision making is just as important on the Island of Guam, which I represent in the U.S. Congress, as it is here along the southern border of Texas. At present the Department of Defense is preparing to relocate 8,000 Marines and their families from their current base on Okinawa to Guam. This move would cost $14 billion. Constituents in my district desperately want to be kept informed of this major project that will affect their lives, yet their legitimate desire to be heard is no different than that of the people in the communities here in Texas, New Mexico, Arizona and California that will be affected by construction of a southern border wall.

We need to understand the practical implications of what it will mean to our communities and our environment to live on a daily basis with a border wall, to the extent that this hearing serves as a forum for people finally to be heard by their government, and I am honored to provide that opportunity and I look forward to hearing from our witnesses. I thank you, Mr. Chairman, and I do ask for unanimous consent to enter into the record a statement and additional materials submitted by The Honorable Eddie Lucio, Jr., a Senator in the Texas State Senate.

Mr. GRIJALVA. Without objection.

[NOTE: The statement submitted for the record by Senator Lucio has been retained in the Committee's official files.]

Mr. GRIJALVA. Let me now turn to the Ranking Member, a member of the full Natural Resources Committee, the gentleman from Colorado, Mr. Tancredo, for comments.

STATEMENT OF THE HON. THOMAS G. TANCREDO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. TANCREDO. Thank you, Mr. Chairman. I sincerely appreciate your holding this hearing for our Subcommittee today because border security, or lack thereof, is an issue that has far-reaching environmental impacts, and I am pleased that we are finally taking time to address it. The impact of mass illegal immigration on national security, on economic security, on cultural cohesiveness and the rule of law have tended to characterize the debate up to this point. On the other hand, environmental degradation, the safety of our national parks and natural resources, and the preservation of the wilderness areas rarely have been considered despite the fact that roughly 43 percent of the border with Mexico is Federal land.

In the 1990s we used fencing to secure the high-volume corridor in San Diego and El Paso, but we left the vast tracts of border vulnerable. The resulting shift in illegal alien activity in areas without fencing is now threatening to destroy Federal wildlife refuges and the treasured national monuments. Make no mistake, this damage continues today and will only worsen if we do not act to protect these areas with fencing and infrastructure.

Illegal aliens and smugglers have created hundreds of new trails and roads while crossing borderlands, and in doing so destroyed saguaro cactus and other sensitive vegetation that can take decades to recover, including habitat for endangered species. These roads and trails disturb wildlife, cause soil erosion and compaction, along with the hundreds of vehicles abandoned by smugglers which are found on Federal lands each year and are not only expensive to remove, but towing them from remote areas can result in additional damage.

Tons of trash and human waste are left behind each year, affecting wildlife, vegetation and water quality. I'm sure most of us on this panel, many of us in this room, have seen sites where after a period of time literally sometimes thousands of people have gathered and left tons of trash only to despoil the land and provide a danger to the wildlife in the area and to the cattle that are being raised in the area.

The risk of fires is increased from migrants' traffic as well. Illegal aliens start warming fires and cooking fires and then leave them unattended, and extinguishing those fires has added a degree of danger—as if that task needs to be even more hazardous. Just last week a fire started in the Coronado National Forest. Because of the established dangers and well-known routes for illegal immigration and drug-running through this area, a law enforcement presence was required to protect the firefighters. This is a common practice out there and an all-too-common activity.

The ecological impacts of uncontrolled illegal immigration on the national forests and parks along our southwest border are no secret. The GAO recently documented some of the challenges faced by Federal agencies tasked with managing our land. As a member of the Natural Resources Committee I helped commission the June 2000 report entitled "Border Security: Agencies Need To Better Coordinate Their Inner Strategies and Operations on Federal Land." The GAO found that illegal border activity, especially alien border

crossings and drug smuggling on Federal lands and private lands in the Southwest have risen sharply since the mid-1990s, creating previously unforeseen problems for land management agencies, posing new dangers to law enforcement officers, visitors, employees, and the environment.

I note with dismay that despite the broad public interest and 75 percent support for additional border fencing, the 2009 budget for the cost of the Border Patrol contains no new funding for border fences and barriers beyond the the Secure Border Initiative's dubious commitment to technological solutions. Only 168 miles of the 370 miles of planned construction of fencing has been completed through March of 2008, along with the 135 miles of the planned 300 miles of vehicle barriers. In 2008 we will have 370 miles of border fencing on a 1,950-mile Southwest border.

I hope we can continue to work together to expand our border security through fencing and infrastructure that has proven its effectiveness. Our Federal lands deserve this protection. Ultimately, both wilderness and property owners are only as secure as our weakest link. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you. And before Mr. Hunter speaks and—he asked for the privilege and we're happy to accommodate that. In my introductions I failed to include the committees that my colleagues chair. Obviously Congressman Reyes, Chairman of the full Select Committee on Intelligence; Ms. Grace Napolitano, who is with us today, from Natural Resources, our committee. She's the Chair of the Subcommittee on Water and Power. Mr. Ortiz, Armed Services Readiness and Military Construction Subcommittee Chair. And our good friend from American Samoa, Mr. Faleomavaega, who is the Chair of the Subcommittee on Asia, the Pacific, and the Global Environment under Foreign Affairs. And we're proud to have them with us today. And with that, let me turn to our colleague Mr. Hunter for any comments he may have. Sir.

STATEMENT OF THE HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUNTER. Well, thank you, Mr. Chairman. Thank you for inviting me to the hearing and letting me participate even though I'm not a member. And I want to—it's kind of neat to have such great colleagues here at this table along with you and Mr. Tancredo; my great colleague from the Armed Services Committee, Silvestre Reyes, who I regard as probably the greatest Border Patrol chief in history and a great Chairman of the Intelligence Committee in the House of Representatives; Mr. Faleomavaega, my good friend; and Grace Napolitano, my colleague from California; and, of course, Ms. Bordallo, who represents Guam so ably; and Solomon Ortiz, who has given so much to the Armed Services Committee in issues of security. So it's good to be with you.

And, you know, one reason I asked to be here is because I wrote the border fence law of 1986—or of 2006. It was signed I believe October 26 of 2006 by the President. And originally I wrote it to mandate almost 854 miles of double border fence across the smuggling corridors of the Southwest. And the reason I did that was simple. First, the fence was necessary. And I found that in my home district in San Diego—and I've got a couple of pictures up

there in front that show the San Diego—the smugglers' corridor between San Diego to Tijuana that existed before we built that fence, and then a picture after we built the fence. And that's a double fence with a high-speed road running between it.

And when we built that fence, we did it because the border was absolutely out of control. We had 300 drug trucks a month roaring across the border loaded with cocaine and marijuana for America's kids. We had massive smuggling of illegal aliens. We had massive crime. In fact, we had criminal gangs that roamed the border and went back and forth robbing and raping and murdering, an average of 10 to 11 murders a year in that deadly border area where nobody would go down from either side of the border as the night went down because of the gangs.

And it was so bad that we finally had to put a plainclothes police unit in who dressed like illegal aliens and waited for the border gangs to attack them so that they could protect the people who were coming across from being murdered or hurt.

When we built the double fence, we stopped all the drive-through drug smuggling cold. We stopped those 300 drug trucks a month. We put the border gangs out of business—and many of them were armed with automatic weapons—because they lost their ability to move back and forth and that's how they found their security. If they were pursued from the north by law enforcement, they would step south across the border. If they were pursued from the south by the Mexican law enforcement groups, they would step north across the border.

When we put up the double border fence, we took away their mobility and that put them out of business. The drive-through drug smuggling went down to zero. The murders on our sector of the border went down to zero. The smuggling of people and narcotics was reduced from over 202,000 arrests before we put the border fence in to less than 9,000. That's a reduction of more than 90 percent.

And when we built the fence in Yuma over the last couple of years, we've seen a reduction there from an astounding figure of 138,000 arrests to down to less than 4,000. That's a decrease of more than 95 percent.

So the first point I would make simply, Mr. Chairman, is we needed the fence. And, in fact, my great friend Silvestre Reyes was one guy who came before our committee as the Border Patrol chief and testified in favor of the fence when we were having such a tough time getting it through in the 1990s.

Now, the fence is necessary, and I think the statistics show very clearly that the fence works. And it's necessary for a couple of reasons beyond those we saw in San Diego. Since 9/11 we have to be worried about knowing who comes into this country and what they bring with them when they come in.

Now, we caught over 58,000 folks coming across from Mexico last year who were not citizens of Mexico. We caught over 800 people from Communist China. We caught 14 people from Iran, and we caught three people from North Korea. That means anybody in the world who has a television set knows that the way to get into the United States is no longer through the airports. You get to Mexico—if you have a few bucks you can do that—and you come across

that border into the United States. We have to know who is coming into this country and what they're bringing with them.

Now, the question comes up about the waivers. You know, I wrote the waiver language also that was inserted in the REAL ID Act. And I want to tell you, Mr. Chairman, why I did that. The last piece of fence that we tried to build in San Diego was Smugglers Gulch. That's a 4-mile stretch where cocaine and people continued to be smuggled after we built the rest of the double border fence. And we started to get sued by environmentalists.

We had one action by the environmentalists that required a year of study to see if the gnatcatcher would fly over. The gnatcatcher is a little bird. It lives on both sides of the border. But we had to delay the fence for one year to see if the gnatcatcher would fly over the 10-foot high fence. After we determined that, yes, indeed, the little critters could get airborne for 10 feet, we then had a series of stalling actions by the California Coastal Commission, by Fish and Wildlife and other regulatory agencies, and by groups suing. And it took us 12 years; 12 years to get that 4 miles of fence started at Smugglers Gulch. At that rate it would take us 2 or 300 years to get the Southwest border fence built.

And that, Mr. Chairman, is the reason why I wrote the waiver language that allows the Homeland Security Secretary, Mr. Chertoff, to make those waivers. Now, he's had—despite the fact that he has waived—he's invoked and triggered the waivers, he has had lots of mitigating actions that have been initiated for fish and wildlife. He's had hundreds of town meetings with people along the border, with groups, with office holders. I think he's done the right thing.

And, finally, I would say this. I think that every family in America who has been touched by the tragedy of illegal drugs has a stake in getting this border fence built and built very quickly. Thank you very much.

Mr. GRIJALVA. Thank you. And let me extend the privilege to my colleagues. Let me begin with the Chairman, Mr. Reyes, for any comments you might want to add as an opening statement, sir.

Mr. REYES. Well, thank you, Mr. Chairman. I have a full statement for the record.

Mr. GRIJALVA. No objection.

STATEMENT OF THE HON. SILVESTRE REYES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. REYES. Thank you. Mr. Chairman and Chairwoman Bordallo and my great friend Congressman Ortiz and also Dr. Garcia, good to see you again. Good to be back here. Across the way we have the sector chief, Chief Vitiello. Thanks for your work and please thank all the Border Patrol agents for the work that they do to keep us safe. I know how hard they work. I know how dangerous that job can be. And I know the circumstances in which you find yourself here before this hearing. So thank you for being here and thank you again for your leadership.

Mr. VITIELLO. Thank you.

Mr. REYES. And to my very good friend and someone that I first met right here in Brownsville, Congressman Hunter, who was my Chairman on the Armed Services Committee, and who is correct,

I did testify before one of the committees when I was chief in El Paso about the unique circumstances and why fencing was necessary out in Congressman Hunter's district at the time in California.

I've always said that it's important that we consider the tools that are necessary with which to keep our agents safe, with which to make their job much more effective. But fencing should be utilized where it makes sense. I've always been asked how much fencing do we need on the southern border. Because everybody always talks about the southern border and forgets that we have a border on the north as well. And I've always said probably 10 percent of the border needs to—we need to consider the potential for fencing.

I certainly don't think that we need 700 miles of border. I think it's ludicrous to even contemplate 2,000 miles of border. We're having many issues with the areas where we have installed border west of El Paso where the fence is so high and so heavy that it's now splitting apart and, literally, an individual can come through that fencing.

It's a separate issue when we talk about vehicles. It makes sense to put a system in that prevents vehicles from running through, trucks loaded with narcotics and other things.

I also believe very strongly that we're better off by working with the Mexican government and working toward a solution where we both co-manage the border. It makes—to me it makes better sense. I always prioritize. I was a chief here for nine years and three-and-a-half years in El Paso before retiring, and I've always believed that it's important to prioritize working with your counterparts across the border. I know that the chief, and really all chiefs along the nine sectors with Mexico, believe that that's also an essential priority that is important.

Right now we're working on what we are calling the Merida initiative. It's a window of opportunity to work with Mexico to help them with training and with equipment and also intelligence communications equipment so that they can work with our Border Patrol. And we're also looking at having them reinstate their own Border Patrol, which they had in place up until the early '60s.

So there are ways that we can work toward a better-managed border. But certainly 700 miles of border or 2,000 miles of fence to me is not the solution. We need to understand that there is a unique relationship between Mexico and the United States. We have the best law enforcement officers in the world wearing that green uniform, and they're the most capable.

The chief here and chiefs along the border should be consulted by DHS and by Congress about what works and what doesn't. If we were to do that, we wouldn't have to spend $50 billion on 700 miles of border. We wouldn't have to spend money that we're going to go back and reinvest in maintenance because it's too high, too heavy, and splitting apart under its own weight.

And the last thing I want to say is that communities like the one that we're in here—we just came from talking to the director of the Audubon, and he had some people there from Seattle who told us that they're able to see the area and they are able to enjoy a habitat that is better than even Central America. These are the things we're going to give up if we succumb to the fear that we need 700

or 2,000 miles of border. We need common sense is what we need. Thank you, Mr. Chairman.

[The prepared statement of Mr. Reyes follows:]

Statement of The Honorable Silvestre Reyes, a Representative in Congress from the State of Texas

Good morning. I want to begin by thanking Chairman Raúl Grijalva and Chairwoman Madeleine Bordallo for convening this important hearing. I also want to thank my good friend and colleague who represents the city of Brownsville, Congressman Solomon Ortiz.

Thank you for the opportunity to join you. Today's hearing is extremely important to those of us who represent border communities, and the issues we will discuss are especially important to the residents of these communities who will suffer the consequences of political games played by a Republican-led Congress.

Before coming to Congress, I served for 26 1/2 years as a Border Patrol agent, thirteen of which as a Sector Chief, first in McAllen, Texas and later in El Paso. On a daily basis, I was forced to deal with the realities of border enforcement and illegal immigration. Our mission was to protect America's 6,000 miles of international land border and 2,000 miles of coastal waterways and to detect and prevent people from entering the United States illegally.

During the course of my career, I patrolled the rough terrain of the United States-Mexico border region, supervised thousands of hard-working, dedicated Border Patrol agents, and did everything within my power to strengthen our borders and reduce illegal immigration. It was a responsibility that my Border Patrol colleagues and I took very seriously.

Nobody understands America's borders or has a greater interest in securing our nation's borders than those of us who live and work along them every day. That is why since coming to Congress, I have lobbied my colleagues for greater resources for border security, including additional Border Patrol agents, equipment, and technology.

As a Border Patrol chief, I supported strategic placement of fencing along the border to assist with operational control. However, I do not support fencing along the entire border or even 370 miles for that matter. I voted against the Secure Fence Act of 2006, which was a perfect example of political forces masquerading as security measures during Republican control of Congress.

I have always been a vocal advocate for local community concerns which must be taken into account before the Department of Homeland Security begins construction on new border fencing. On a number of occasions, I arranged Congressional briefings to ensure other Members of Congress received the proper information regarding the fence. Recently, however, the concerns of the border have been overlooked and often disregarded.

When border communities raised legitimate concerns about an issue of great local importance a few months ago, Department of Homeland Security Secretary Chertoff remarked that border communities ought to "grow up." This "grow up" comment was a disappointing message which suggests a lack of understanding of the dynamic nature of border communities. Most recently, the Secretary's blatant disregard of community concerns was once again demonstrated by his use of a waiver authority to set aside more than 30 laws in order to construct the barrier.

I recently joined 13 of my colleagues in submitting an amicus brief asking the Supreme Court to hear an appeal filed by the Sierra Club and the Defenders of the Wildlife. I firmly believe that the waiver authority was intended to be used as last resort. Instead, the Department has taken the easy way out and shirked its responsibility to faithfully execute the laws of the land.

With that, thank you again for allowing me to participate today. I look forward to hearing from the other Members of the panel and our witnesses.

Mr. GRIJALVA. Thank you. Thank you very much. Let me now turn to my colleague on the Natural Resources Committee, Congresswoman Grace Napolitano from California, for any comments she may have. Madam Chair.

STATEMENT OF THE HON. GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Thank you, Mr. Chair. I will submit some comments for the record. But, first of all, let me say I'm glad to be home. I was born and raised and attended Brownsville High School and in '54 graduated and I am partially a part of the Texas Southmost College as recognition mentor. So it's good to be home.

I do associate myself with the remarks of Congressman Reyes in regards to the words about the necessity of a fence and the protection of the men and women who work on our Border Patrol. And I've known this for many years—since I was in the California State House and conducted a three-year study on immigration—that we have a failed policy in immigration. So you will consider—you will—may as well get used to the fact that nothing is going to change until immigration policy is taken care of, because then we would be able to hold that flow. We should be going after people who pay these individuals under the table and are not honest with them.

The deportations, unless they're formal, we don't have enough jails to put people in, Federal jails. And it's unfortunate that we have the fence being considered in the south but not on the Canadian border. But where does the concern—the terrorists that supposedly came through the Canadian border and not through the Mexican border. And, unfortunately, we seem to take a very dim view of people that look like me and the rest of us up here, brown skin.

I am concerned because it is very hypocritical to say that we do not want that cheap labor that keeps our economy going in the U.S. And, unfortunately, we don't want to render services, we don't want to be able to take care of them, they should go home if they get sick. Unfortunately, our laws are not made to help those that help our economy and that help us in the United States.

So not only is the fence ludicrous—and I agree, we need to stop that ability for people to come across, especially when they're smugglers, when they're rapists, when they're people who break our laws. Those are the ones we do not want in the United States. But people who come and help our economy, pay their taxes, send their kids to school, and are law abiding, I have no problem with them continuing to be a part of the U.S. economy, which is what makes this country so great.

Mr. Chair, we ought to be open and transparent, have honest dialogue. And while I was reading some of these submissions, that some of the dialogue was only written, was not made public, was not open, was not transparent, I think that's wrong. I want to see that hopefully this committee will ask for copies of those submissions by the general public.

And we need to be able to, as Congressman Reyes did, work with our Mexican government to address some of these issues and be a little more perceptive of what really needs to be done in the border where the people who are suffering will be able to have input in the process. Thank you very much.

Mr. GRIJALVA. Thank you. Let me, if I may, to the people in the audience, I understand as much as anybody else the importance of

this issue and the level of emotion, concern and frustration that this issue brings to many of us. I would ask you if you could refrain—you should refrain from the applause or comments from the audience. The decorum of this hearing—it's an important hearing and I would hope that you will join with me in respecting that decorum, respecting the panelists. And as much as you agree or disagree with a comment that's made here, I would hope that you would refrain from expressing that publicly. Thank you.

Let me now turn to my colleague also from the Natural Resources Committee, Mr. Faleomavaega, for any comments, the gentleman from American Samoa. Sir.

STATEMENT OF THE HON. ENI F.H. FALEOMAVAEGA, A DELEGATE IN CONGRESS FROM THE TERRITORY OF AMERICAN SAMOA

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I also would like to submit for the record my opening statement, and I also want to commend you and our Madam Chair Bordallo for calling this joint hearing. I would be remiss if I would not also express my deepest appreciation to our colleague, Congressman Solomon Ortiz, whose district this is and for which hospitality and courtesy has been extended to us, I deeply appreciate; and Dr. Garcia, who's president of this great university, for all the goodness in allowing us to hold this hearing in this facility.

Mr. Chairman, also I want to note a special sense of appreciation of my colleagues Congressman Hunter and Congressman Tancredo. They will not be with us next Congress, of course, assuming that we get reelected, which we don't know. But I do want to commend them. Philosophically, we have very, very different ideas—I acknowledge these—in terms of what direction our country should go. But, nevertheless, I have the highest respect for them and they will be sorely missed and—serving as members of this great institution in the House of Congress.

Mr. Chairman, I would like to submit for the record with the members' consent the 37 Federal laws that Secretary Chertoff as of April 1 of this year has waived to allow him to conduct this border fencing construction project. We have an unwritten rule, Mr. Chairman, as I'm sure that all of our colleagues tend to agree—at least I certainly agree—that we should always respect the sentiments and the views of the member whose district he or she represents.

And we're here specifically to find out what the leaders and the citizens of this great city of Brownsville and within the district of the representation that Congressman Ortiz offers. I really think that our colleagues should pay close attention on the sense of the community. And I think we do have some very, very critical issues in the fact that we've got this 2,000-mile borderline between Mexico and the United States.

I, for one, as I'm sure my colleagues agree, that what Congressman Hunter has shared with us about the serious problems between California and Mexico with the drug trafficking and all the things that go on there, there should be some sense of—you know, of border fencing, if that's the purpose. But when it comes to the fact that this border fencing thing seems to have little cracks in be-

tween, that there seems to be some exceptions, that this is really not a fence for a 2,000-mile stretch, but little potholes that I would call it—why exceptions?

And I really—it's my intention, Mr. Chairman, in the course of this hearing that I want to look at closely also on the treaty relationship existing between Mexico and the United States on the borders. And if I'm reading this right about Secretary Chertoff given the right to waive even the borders existing under the treaty relationship between Mexico and the United States, we have some very serious problems here. And it will definitely be my intent to share this concern with the Chairman of the House Foreign Affairs Committee, to pursue this as to whether or not we're honoring our treaty relationship with Mexico when it comes to considering the borderline itself.

So with that, Mr. Chairman, I do want to commend you and Madam Chairman Bordallo for calling this hearing. I welcome our witnesses and look forward to hearing from them. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you. Last, but certainly not least, let me turn to my colleague in whose district we are having the privilege of holding this hearing. Mr. Ortiz, any comments? And thank you for your hospitality.

STATEMENT OF THE HON. SOLOMON P. ORTIZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ORTIZ. Thank you, Mr. Chairman. Before I open my statement I would like to have unanimous consent to enter into the record statements from our local community for the record.

Mr. GRIJALVA. Without objection, sir.

[NOTE: A list of documents retained in the Committee's official files can be found on the last page of this hearing.]

Mr. ORTIZ. And I'd like to thank all the members who are here with us today. Chairman Hunter, of course, was my Chairman for many years on the House Armed Services Committee. Tancredo and I serve on the Natural Resources Committee. And I'd like to thank Chairman Bordallo and Chairman Grijalva for blocking this time so that we could be here in Brownsville. Chairman Reyes and I have known each other for many years when he was the Border Patrol sector chief and I was sheriff in Corpus Christi. Mr. Faleomavaega and Grace—you know, I think that Brownsville is blessed to have two congressmen, Grace and I, to represent this area.

But let me say that every day in Congress we hold committee hearings and subcommittee hearings on different issues, topics and pieces of legislation. Today this hearing is addressing something that will directly impact the culture and the livelihood of our South Texas communities, the proposed building of the wall along the border.

The goal here is to give the public a voice and an avenue to discuss their concerns over the border wall and how this is going to impact our sensitive environmental lands. I am encouraged by all those in attendance today, which shows how important this issue is and the vast number of people who will be affected if this wall is built.

You know, securing our nations borders is one of Congress's main priorities. We need to address illegal immigration, drug trafficking, and the violence that happens on our communities, both on the border and everywhere else in the United States of America. This problem, however, would not be solved by constructing a wall that tears through our public and historical lands, forces our citizens to surrender their property, and reverses all the work and investment that Congress and the local community have done to protect the natural environment.

Now, take, for instance, the very property we're meeting on right now. Right behind this building we have the historic Ft. Brown. It served as an integral battleground of the Mexican-American War, and troops stationed there fought in the last Civil War battle. The proposed border wall would put Ft. Brown on the Mexican side. Would we put a wall to divide the battlefield at Gettysburg?

The Sabal Palm Audubon Center here in Brownsville, home to rare birds and endangered wildlife, may also end up on the Mexican side of a planned wall. It is also disturbing that the government is fooling citizens by not giving them a fair market value on the lands it intends to seize. Yet our communities are not even being given the opportunity to truly voice their concerns.

The people along the American borders are the most impacted by border security policy. We all support border security, but simply ask for smart policies. The funding for the wall and the process used to begin its construction is not—in my opinion and the opinion of many people, is not a smart policy.

By now we have all heard about the Department of Homeland Security's decision to waive 36 laws that protect our health, environment and quality of life with the stroke of a pen. These 36 laws, some of them were enacted back in 1918, and some of them eight, 10 years ago. If they're able to waive these 36 laws, what is next, that you won't be able to buy a diesel truck because it's too expensive to buy the gasoline? What is the next law that they're going to waive?

And I know that my Chairman controls the time very close to his heart, so my time is about to run out. I want to thank the panelists for joining us this morning. President Garcia, thank you for allowing us on this beautiful university, and I hope that it will remain intact. Thank you so much. Thank you.

[The prepared statement of Mr. Ortiz follows:]

Statement of The Honorable Solomon P. Ortiz, a Representative in Congress from the State of Texas

I'd like to thank all of my good friends and colleagues, especially Chairwoman Bordallo and Chairman Grijalva, for organizing and attending this hearing and taking time out of their busy schedules to visit South Texas.

Every day in Congress, we hold committee and subcommittee hearings on different issues, topics, and pieces of legislations.

Today, this hearing is addressing something that will directly impact the unique culture and livelihood of our South Texas communities—the proposed building of a wall along the border.

The goal here is to give the public a voice and an avenue to discuss their concerns over the border wall and how it will impact our sensitive environmental lands.

I am encouraged by all those in attendance today, which shows how important this issue is and the vast number of people who will be affected if this wall is built.

Securing our nation's borders is one of Congress' main priorities. We need to address illegal immigration, drug trafficking, and the violence that happens on our communities—both on the border and everywhere else in America.

These problems, however, will be not be solved by constructing a wall that tears through our public and historical lands, forces our citizens to surrender their property, and reverses all the work and investment the Congress and local community have done to protect the natural environment.

Take for instance the very property we are meeting on right now.

Right behind this building we have the Historic Fort Brown. It served as an integral battleground of the Mexican-American war and troops stationed there fought in the last Civil War battle.

The proposed border wall will put Fort Brown on the Mexican side.

Would we put up a wall to divide the battlefield at Gettysburg?

The Sabal Palm Audubon Center here in Brownsville, home to rare birds and endangered wildlife, may also end up on the Mexican side of a planned wall.

It is also disturbing that the government is bullying citizens by not even giving them a fair market value on the lands it intends to seize.

Yet, our communities aren't even being given the opportunity to truly voice these concerns.

The people along America's borders are the most impacted by border security policies. We all support border security, but simply ask for smart policies.

The funding for the wall, and the process used to begin its construction, is not smart policy.

By now, we have all heard about the Department of Homeland Security's decision to waive 36 laws that protect our health, environment, and quality of life with the stroke of a pen.

The National Environmental Policy Act. The Clean Air Act. The Federal Water Pollution Control Act. The Farmland Protection Policy Act. Are these laws, some that have been on the books since 1900, not important enough to consider when we talk about building a border wall?

In 2005, the Republican-controlled Congress granted DHS this power by including it into a bill that provided funding for our brave troops in Iraq/Afghanistan and relief to those suffering in the wake of Hurricanes Katrina and Rita.

Is that what our federal government is reduced to? Slipping in provisions granting them overreaching authority into legislation that is aimed to support our troops abroad and our citizens suffering from natural disasters?

This isn't the way the founders of our Constitution envisioned our government to be.

There are many opinions on the issue of the border wall, and I sincerely believe Congress abdicated some of its responsibilities by giving DHS this blanket waiver authority.

We live in a country ruled by checks and balances, and this decision by DHS will set a dangerous precedent.

I know DHS wants to construct the wall by the end of the year, but we should be more concerned with being good stewards of the taxpayers' dollars and doing it right not fast.

In neighboring Hidalgo County, DHS is working with the local officials to put together a plan that will fortify the deficient levees and fulfill the wall requirements.

The long-overdo refortification of our region's levees would prevent the potentially disastrous damage a flood in the Rio Grande Valley could do.

This is the type of coordination that needs to be ongoing with all groups, including those that are concerned about the environment.

I therefore fully support Chairman Grijalva's Borderlands bill, which remedies this problem and gives DHS the flexibility to decide what approach is best for border security and allow for land managers, local officials and communities to be a part of the border security discussion.

Again, I thank the Committee, my colleagues and all the witnesses for coming to South Texas to discuss this important issue.

Mr. GRIJALVA. Thank you, Mr. Ortiz. And let me welcome the panel finally. I was trying to avoid us all doing that, but, oh, well. Let me ask you—let me at the outset let you know that—all the panelists know that we'll be swearing in the witnesses today. So pursuant to Clause 2 of House Rule 11, I ask that the witnesses

on this panel please stand and raise your right hand and be sworn in. Please repeat after me.

[Witnesses sworn.]

Mr. GRIJALVA. Let the record indicate that the witnesses answered in the affirmative. You are now under oath and we can begin with the opening statements. Let me welcome all of you and begin the panel discussion with Mr. Rick Schultz, National Borderland Coordinator, Department of Interior. Welcome, sir. Your testimony.

STATEMENT OF RICK SCHULTZ, NATIONAL BORDERLAND COORDINATOR, DEPARTMENT OF THE INTERIOR

Mr. SCHULTZ. Thank you. Mr. Chairman, Madam Chairwoman and honorable members of the Subcommittees, I am Rick Schultz, the National Borderland Coordinator for the Department of the Interior. I appreciate the opportunity to provide the department's view on the construction of border security infrastructure along our nation's Southwest border.

Mr. GRIJALVA. If I may, Mr. Schultz, if you want to bring the microphone closer to yourself. OK. Thank you.

Mr. SCHULTZ. How does this sound?

Mr. GRIJALVA. Much better.

Mr. SCHULTZ. DOI and its agencies take very seriously the responsibilities to administer the uniquely beautiful and environmentally sensitive lands along the Southwest border. Recognizing their ecological and cultural value, we strive to maintain their character on behalf of the American people.

Unfortunately, the safety of our visitors and employees on DOI lands has been compromised by drug trafficking and illegal immigration. These unsafe conditions were markedly illustrated within DOI by the tragic death in 2002 of Mr. Kris Eggle, a National Park Service Ranger. In addition, natural and cultural resources have been adversely affected by the illegal activities. These impacts include destruction of wildlife habitats and the dumping of trash and vehicles along the border.

Due in part to our experiences, we recognize the need for our nation to enhance its border security. In this regard we acknowledge the border security issues facing the Department of Homeland Security, and believe they fulfill a critical mission for the nation.

We have made it a priority to work closely with DHS as they seek to construct 670 miles of border fence by December of 2008. In particular, we have strived to assist DHS in minimizing impacts on wildlife, ecosystems, and cultural resources.

Building border infrastructure, an undertaking with numerous players and many moving parts, would present significant challenges even under normal conditions. These challenges are heightened given the short time frame mandated by law for completing border fencing.

We have regular and open dialogue with DHS at several levels and have found them to be sensitive to DOI's mission. Where avoidance or minimization of impacts upon environmental and cultural resources was not possible, DHS has significantly mitigated these impacts.

Still, there have been some challenges related to DHS's extremely compressed time frame and the complexity of the issues. These factors have challenged our field managers as they strive to fulfill their missions and uphold their statutory responsibilities. We very much appreciate their hard work, their concerns and their dedication as they address these difficult border security issues.

When Secretary Chertoff recently invoked REAL ID Act waivers of certain environmental and DOI-administered statutes, he reaffirmed DHS's commitment to environmental stewardship. This commitment included mitigation funding up to $50 million for threatened and endangered species to offset impacts associated with pedestrian and vehicle fences. DHS also identified the need for wetland and cultural resource mitigation.

As requested, my written testimony contains several examples that illustrate our efforts. These include cooperative efforts to remove the invasive salt cedar on DOI lands and Cocopah tribal lands for security purposes. They include DHS mitigation funding for several endangered species, including the Sonoran pronghorn, and they include the remediation of inadvertently damaged cultural resource sites. Collectively these projects reflect the DHS and DOI commitment to minimize the impact of border infrastructure on these natural and cultural resources.

Without diminishing the value of the above efforts, the construction of border security infrastructure on DOI land results in a mixed bag of environmental benefits and adverse environmental effects. Although some of our ecological communities may recover, due to the infrastructure, the footprint of the fence and the associated access roads result in other adverse impacts. These impacts include inhibiting the movement of certain wildlife species, some of which are threatened or endangered species.

Within national wildlife refuges and wilderness areas, our governing statutes prohibit us from permitting the construction of certain border security infrastructure. When we informed DHS of these facts, they ultimately chose to exercise their waiver under the REAL ID Act.

Now, in an ideal world, the need would not exist to construct border fences to enhance our nation's security. In reality, however, Congress has directed DHS to construct this border security infrastructure. Our challenge has been achieving the above while maintaining the integrity of these ecologically and culturally sensitive lands. Although more needs to be done, we believe we're on the right track in developing open dialogue, tangible mitigation alternatives, and a strong relationship with our colleagues within DHS.

And this concludes my remarks. And thank you, Mr. Chairman and Madam Chairman, for the opportunity to express our views.

[The prepared statement of Mr. Schultz follows:]

Statement of Rick Schultz, National Borderland Coordinator, U.S. Department of the Interior

Mr. Chairman, Ms. Chairwoman, and Members of the Subcommittees, I am Rick Schultz, National Borderland Coordinator, Department of the Interior (DOI).

I appreciate the opportunity to provide the Interior Department's view on the construction of border security infrastructure along our Nation's southwest border. As manager of one in every five acres of the United States, the DOI's land managing agencies, the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Indian Affairs, take very seriously our re-

sponsibility to administer uniquely beautiful and environmentally sensitive lands along the southwest border. Recognizing the significant ecological and cultural values of extensive lands managed by Interior near this border, we strive to maintain their character and fulfill our mission to protect and preserve these assets on behalf of the American people.

The safety of both visitors and employees on DOI lands has been significantly compromised by drug trafficking and the illegal, cross-border flow of people. These unsafe conditions were markedly illustrated by the tragic deaths of Mr. Kris Eggle, a National Park Service Ranger, at Organ Pipe Cactus National Monument in 2002 and of Luis Aguilar, a senior U.S. Border Patrol agent, earlier this year at the BLM's Imperial Sand Dunes Recreation Area in California. Many of the natural and cultural resources under our responsibility have also been adversely affected by the illegal activities. These impacts include but are not limited to destruction of wildlife habitats; trampling of vegetation and increased soil erosion; and the deposition of human trash and vehicles along the border, including within wilderness areas.

We recognize the need for our Nation to enhance its border security. In this regard, we acknowledge the border security issues facing the Department of Homeland Security (DHS). DHS fulfills a critical mission for the Nation.

Several years ago, DOI, USDA, and DHS recognized the need to coordinate management of border security with the management of DOI and USDA managed lands near the border. Consequently, a Memorandum of Understanding (MOU) between DHS, the Department of Agriculture, and DOI was entered into in 2006. This MOU, which is focused on land management and law enforcement related issues, has served to set the tone for ongoing dialogue and a positive relationship between DHS and DOI.

Consultation with DHS

Due to our significant interests in the southwest border, Interior has made it a priority to work closely with DHS as DHS seeks to construct 670 miles of border fence by December 2008. In particular, Interior has strived to assist DHS in minimizing impacts on wildlife, ecosystems, and cultural resources. Building border infrastructure, an undertaking with numerous players and many moving parts, would present significant challenges even under normal conditions. These challenges are heightened given the short timeframe mandated by law for completing border fencing. Despite these circumstances, DHS has included Interior in discussions focused on constructing border security infrastructure in a manner that minimizes its impact upon environmental and cultural resources.

Consultation between DHS and DOI on border environmental and cultural resource issues occurs both at the national and field levels. We have regular and open dialogue with DHS concerning a variety of issues. Recently, DOI established the position of National Borderland Coordinator, the position I currently occupy. My primary responsibilities are to work with DHS to address environmental and cultural resource issues that otherwise could not be resolved at the field level. My presence and involvement in border security activities have been well-received within DHS. This connection has helped strengthen the working relationship between our respective agencies.

I have found both leadership and staff in DHS headquarters to be sensitive to DOI's mission, responsibilities, and related concerns. Where avoidance or minimization of impact upon environmental and cultural resources was not possible, DHS has demonstrated its commitment to mitigating these impacts. Several examples within this testimony illustrate this commitment.

Still, there have been some challenges related to DHS's extremely compressed time frame, their use of several contractors and subcontractors, and the complexity of issues. These factors have challenged our managers as they strive to fulfill their missions and uphold their statutory responsibilities. In many cases, including the construction of the border fence within the Lower Rio Grande Valley, the infrastructure was modified to accommodate DOI concerns.

We appreciate the hard work and dedication of our field managers as they have strived to address border security issues affecting their units. Our managers operate in often risky circumstances along the border. They share the Nation's desire for a secure and safe border. At the same time, they are dedicated to fulfilling this Department's mission and upholding our statutory and regulatory responsibilities.

Working with DHS remains a priority, one that continues following Secretary Michael Chertoff's decision to invoke Real ID Act waivers of certain environmental, DOI-administered, and other statutes in April of 2008. DHS remains committed to working with DOI to address complex border issues, including environmental issues. We see the continuing need for a long and productive relationship between our re-

spective agencies that extends far beyond the construction of border security infrastructure.

When DHS Secretary Chertoff invoked two Real ID Act waivers for the expedited construction of border security infrastructure, he reaffirmed DHS's commitment to environmental stewardship. This commitment, as it applies to DOI-administered lands and programs, included mitigation funding up to $50 million for threatened and endangered species. Projects to be funded are conservation measures previously identified by Fish and Wildlife Service (Service) field biologists in cooperation with others. DHS also identified the need for wetland and cultural resource mitigation. In addition to these funding provisions, Secretary Chertoff has also reaffirmed DHS's commitment to solicit and respond to the needs of State, local, and tribal governments, other agencies of the federal government, and local residents. Overall, these measures represent a very positive commitment by DHS in recognizing its environmental stewardship responsibilities for endangered species, wetlands, and cultural resources.

Securing our Nation's border is our collective challenge. How do we best enhance our Nation's border security while maintaining the integrity of these ecologically and culturally sensitive lands? Although we have yet to fully address all of these issues, we believe we are on the right track in developing open dialogue, tangible mitigation alternatives, and a strong relationship with our colleagues within DHS.

DOI Experiences

As you requested, I would like to provide several examples that illustrate our collective efforts at the border.

- **Example 1.** U.S. Fish and Wildlife Service IPaC System. The Service is currently working with DHS on ways to streamline and enhance the endangered species consultation process. As part of this effort, the Information Planning and Consultation (IPaC) system is being developed, with some funding provided by DHS. This online system will result in timely input and faster decisions associated with threatened and endangered species. In addition, the preparation of biological assessments and associated biological opinions for future border security activities will be streamlined.
- **Example 2.** Sonoran Pronghorn Mitigation. As mitigation for construction of a hybrid pedestrian fence on the Barry M. Goldwater Range and for a vehicle fence on Cabeza Prieta National Wildlife Refuge, the Service and DHS reached agreement in 2006 on conservation measures for the Sonoran pronghorn that inhabits the area. More specifically, $811,980 will be provided to the Service for development of three wells, three forage enhancement plots, and associated water supplies. DOI is currently working with DHS on the potential impacts to the pronghorn in other areas. For example, we are currently in discussions with DHS regarding the significant adverse effects that towers proposed on the Cabeza Prieta National Wildlife Refuge would have on the Sonoran pronghorn. We have provided DHS with options for relocating these towers to an area that would minimize their effects, but still address border security concerns.
- **Example 3.** San Pedro National Riparian Conservation Area. The Real ID Act waiver of certain Federal environmental laws and select DOI-administered statutes in October 2007 allowed construction of a pedestrian fence on this Bureau of Land Management (BLM) unit to move forward on schedule. The Secretary invoked his waiver authority to ensure the expeditious construction of the fencing in light of a lawsuit filed by the Defenders of Wildlife alleging the inadequacy of the National Environmental Policy Act review of this project. Despite the waiver and as a result of close coordination with DOI, a historic corral and one prehistoric Native American village and burial site located within the footprint of the fence construction activities were not disturbed during construction because DHS developed and implemented a data recovery plan that was completed at a cost of over $800,000. Currently, the BLM, which is responsible for administering the Native American Graves Protection and Repatriation Act in this area, is properly caring for the remains from the disturbed grave sites. We believe this experience highlights the benefits of effective field level coordination between DHS and DOI for projects of this nature.
- **Example 4.** Buenos Aires National Wildlife Refuge. In 2007, DHS proposed to construct 0.8 miles of pedestrian fence across Buenos Aires National Wildlife Refuge in Arizona. Its footprint, including the access road, was located outside the Roosevelt Reservation and comprised approximately 5.8 acres. Since the construction of the fence would be inconsistent with the National Wildlife Refuge System Administration Act, the Service and DHS reached agreement to execute a land exchange for the property in question. Currently, potential lands for this exchange have been identified and appraisals of these properties are in

process. The benefit to the Service was an agreement with DHS to replace adversely affected acreage with land of equal monetary value and possibly higher quality habitat.

- **Example 5.** Remediation of Cultural Resource Sites. A cultural resource site located near Columbus, New Mexico, was inadvertently damaged by a National Guard unit working on behalf of DHS in the fall of 2006. DHS reached an agreement with the BLM under which DHS committed to paying the full cost of restoring this site. Funds amounting to approximately $250,000 from DHS have been made available for this remediation.

  Inadvertent damage to a second cultural resource site was also discovered in southeastern Arizona on BLM lands. Work is proceeding in cooperation with DHS to fully remediate this site as well.
- **Example 6.** Lower Rio Grande National Wildlife Refuge. The Service has been working very closely with DHS to minimize impacts to threatened and endangered species from the proposed pedestrian fence on the Lower Rio Grande National Wildlife Refuge. Several field meetings were held and, initially, fence design and locations were modified to either avoid or minimize impacts particularly as they related to the wildlife corridor. Where avoidance or minimization was not achieved, the Service proposed the acquisition of an additional 1,700 acres of land to offset the impacts of the proposed pedestrian fence. The cost of these lands is estimated at $7 million which DHS has committed to providing as part of the $50 million set aside for threatened and endangered species mitigation projects.
- **Example 7.** Organ Pipe Cactus National Monument. The southeastern portion of this unit of the National Park Service (NPS) was identified for pedestrian fence near the Lukeville, Arizona, Port of Entry. Of particular concern to NPS was the impact of this proposed fence and its access road on ecological communities located on Monument Hill. From the DHS security perspective, control of illegal entry within this area using pedestrian fence was very important. After extended negotiations at the field level, DHS was permitted to construct the fence in exchange for mitigation. To offset the environmental impacts of this infrastructure, DHS committed to funding conservation measures amounting to $964,000 (as part of their commitment to fund up to $50 million for threatened and endangered species). These conservation measures were largely determined by Service biologists in consultation with the NPS and DHS engineers.
- **Example 8.** Lower Colorado River Limitrophe. High numbers of rapes, robberies, and assaults on immigrants and border patrol agents were occurring on BLM and Bureau of Reclamation-managed lands located in the Lower Colorado River Limitrophe in Arizona (on the border by Baja, California, Mexico). Heavy vegetation provided cover to drug traffickers and other criminals. In April 2007, BLM led a cooperative effort to begin expeditious removal of invasive salt cedar that was providing cover for this criminal activity. The multi-agency team, including the BLM, Reclamation, DHS, the Fish and Wildlife Service, the State of Arizona, Yuma County, and the Cocopah Tribe, are continuing this effort to treat the remaining 1,895 acres of DOI-managed lands, 3,020 acres of Cocopah tribal land, and 337 acres of private land.

Impacts upon National Wildlife Refuges and Federal Treaty Obligations

As indicated above, the construction of border security infrastructure on public lands, national parks, national wildlife refuges, and tribal lands results in a mixed bag of environmental benefits and adverse environmental effects. On one hand, valuable wildlife habitats and ecological communities may benefit from the infrastructure by reducing illegal, cross-border immigration. On the other hand, the construction of pedestrian barriers also inhibits the movement of large mammals, some of which are threatened or endangered species. To a certain degree, DOI-recommended modifications to fence designs or fence locations have minimized the adverse effects of the fence on these species. In other cases, offsetting mitigation measures are required to reduce the overall impact of the border security infrastructure.

Within national wildlife refuges and wilderness areas, our governing statutes prohibit us from permitting the construction of certain border security infrastructure as proposed by DHS. In light of this, we informed DHS of these facts as they were preparing to construct infrastructure on these lands. Ultimately, DHS chose to exercise its authority under the Real ID Act to waive these and other statutes associated with the administration of DOI lands.

During our discussions, DHS was made aware of our responsibilities for migratory bird species under the Migratory Bird Treaty Act. Although additional work needs to be completed in this area, several best management practices developed in cooperation with DHS for threatened and endangered species also apply to migratory

birds. At a minimum, use of these best management practices will reduce the impact of the border infrastructure on these species.

Closing Comments

In an ideal world and under differing circumstances, the need would not exist to construct border fences and related infrastructure to enhance our Nation's security or reduce the influx of drug trafficking. In reality, however, Congress has directed DHS to construct border security infrastructure. A project of this scope cannot be accomplished without affecting both environmental and cultural resources. The challenges for DOI and DHS are complex. On the negative side, we have some adverse environmental impacts. On the positive side, border infrastructure, including pedestrian and vehicle fences, is expected to increase our visitor and employee safety, reduce drug trafficking, reduce the deposition of human trash, and in some cases lessen adverse environmental effects to wildlife habitats and related ecological communities. We also appreciate DHS's commitment to provide funding for mitigation activities, and pledge to use those funds to implement critical measures that will help minimize possible adverse impacts to natural and cultural resources.

In closing, I want to thank you, Mr. Chairman, and you, Ms. Chairwoman, for the opportunity to express our views. As stated above, both DHS and DOI have faced some complex challenges in balancing our Nation's security with maintaining the quality of our environment. We do not expect these challenges to diminish, which means that our close working relationships will continue to be crucial to our effectiveness far into the future.

Mr. GRIJALVA. Thank you, sir. Let me now turn to Chief Ronald Vitiello, Chief Patrol Agent, Rio Grande Valley Sector, Office of Border Patrol, United States Customs and Border Patrol, United States Department of Homeland Security. Thank you, sir, for being here, Chief, and we appreciate and look forward to your testimony.

STATEMENT OF RONALD D. VITIELLO, CHIEF PATROL AGENT, RIO GRANDE VALLEY SECTOR, OFFICE OF BORDER PATROL, CUSTOMS AND BORDER PATROL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. VITIELLO. Thank you, Chairwoman Bordallo, Chairman Grijalva and distinguished members. My name is Ronald Vitiello. I'm the Chief Patrol Agent of the Border Patrol's Rio Grande Valley Sector. I am honored to appear on behalf of the U.S. Border Patrol to discuss our duties, responsibilities, operations, and national strategy.

U.S. Customs and Border Protection is responsible for protecting more than 4,000 miles of border with Canada, 1,900 miles of border with Mexico, and about 2,600 miles of coastal border to include the island of Puerto Rico.

The U.S. Border Patrol is the sole entity responsible for securing our nation's borders between the official ports of entry and bases its operations on the national Border Patrol strategy. To that end our objectives are to apprehend terrorists and terrorist weapons illegally entering the United States; to deter entries through improved enforcement; detect, apprehend and deter smugglers of humans, drugs and other contraband; and to improve the quality of life of border communities by reducing crime and the economic vitality—and enhancing economic vitality in these areas.

The Border Patrol uses a combination of efforts in achieving our goals. The Border Patrol depends on a defense in depth posture utilizing agents in the field, interior immigration checkpoints, and coordinating enforcement operations, as well as partnerships with other Federal, tribal and state law enforcement agencies.

During Fiscal Year 2007 alone, the Border Patrol apprehended nearly 877,000 persons attempting to enter the United States illegally, including human smugglers, drug traffickers and illegal aliens, and seized over 1.8 million pounds of marijuana and more than 14,000 pounds of cocaine. As of April 20th, 2008, this Fiscal Year 2008, the Border Patrol has arrested 422,000 illegal aliens, seized 952,847 pounds of marijuana and over 6,600 pounds of cocaine. In this area of responsibility, my area, the Rio Grande Valley Sector, in 2008 we have apprehended just over 42,000 illegal aliens and seized 189,377 pounds of marijuana and 3,461 pounds of cocaine.

Securing our nation's diverse border terrain is an important and complex task that cannot be resolved by a single solution alone. To secure each unique mile of border requires a balance of personnel, technology and tactical infrastructure that is tailored to each specific environment. The installation of fencing has proved to be an effective tool to slow, redirect and deter illegal entries, especially in certain areas where personnel and technology alone cannot sufficiently secure the border.

It is important to note that the flow of illegal traffic not only jeopardizes our ability to secure our borders, but it has also caused severe and profound impacts to the environment. For example, illegal roads divert the normal flow of water and rob native plant cover of the moisture it depends on to survive. Illegal entrants also leave trash and high concentrations of human waste, which impact wildlife, vegetation and water quality. Numerous wildfires caused by campfires of illegal entrants have caused a significant threat to human safety and the lands along the border, as well as impacts—increased impacts to soil, vegetation, cultural sites and other sensitive resources.

We believe the efforts to stem illegal border—cross border activity in certain areas of high traffic will result in an improvement to the environment and increase the public's ability to enjoy it as a resource.

In addition to our commitment to responsible environmental stewardship, CBP continues to solicit and respond to the needs of state, local and tribal governments, other agencies of the Federal government, and local residents.

CBP has gone to great lengths to obtain public input throughout our planning efforts regarding the construction of fence along the Southwest border. As a result of these outreach efforts, there were many instances where we were able to make modifications to our original plans to accommodate landowner/community concerns while still meeting our operational needs.

One of the best examples of our cooperation efforts can be seen in the levee barrier project in Hidalgo County, Texas. Hidalgo County had plans to use local funds to raise levees along the Rio Grande River to address flood protection concerns. The county and other local officials proposed integrating a concrete retaining wall into the levee improvement project along the 22 miles of the southern side of the levee and committed to completing the project within CBP's planned cost.

Within the Rio Grande Valley we have also made numerous alignment changes to the proposed fence segments to limit impacts

to the U.S. Fish and Wildlife National Wildlife Refuge areas, a bird watching observation facility in the city of Roma, and negate the need to relocate approximately 30 residents.

The Border Patrol's objective is nothing less than securing operation control of the border. We recognize the challenges of doing so and we have done so for many years. Our national strategy gives us the means by which to achieve our ambitious goal. We face these challenges every day with vigilance, dedication to service, and integrity, as we work to strengthen and protect America and its citizens.

In closing, let me add some important points to assist in understanding our operations. Those of us pursuing operational control of the border recognize that fencing alone will not solve our problems. It is not a solution. We have always planned to supplement tactical infrastructure and mix it properly with significant technology enhancements, along with a well-informed and equipped Border Patrol agent deployment.

Despite predicted changes in traffic patterns once the fencing is installed, we will continue to deploy much as today. Here in the Rio Grande Valley we will be present along the border on both sides of any fence. We will be in the river, at the water's edge, and on the patrol roads used currently and those constructed with fencing. No land will be ceded to Mexico.

I would like to thank you for the opportunity to present this testimony today and for your support of the CBP and DHS missions. I will be pleased to respond to your questions, and I would also like to thank Dr. Garcia for her continued hospitality to the Border Patrol and for allowing this hearing today.

[The prepared statement of Mr. Vitiello follows:]

Statement of Ronald D. Vitiello, Chief Patrol Agent, Rio Grande Valley Sector, Office of Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security

CHAIRWOMAN BORDALLO, CHAIRMAN GRIJALVA, AND DISTINGUISHED MEMBERS: My name is Ronald Vitiello, and I am the Chief Patrol Agent of the Border Patrol's Rio Grande Valley Sector. I am honored to appear on behalf of the U.S. Border Patrol to discuss our responsibilities, operations, and National Strategy.

U.S. Customs and Border Protection (CBP) is responsible for protecting more than 4,000 miles of border with Canada, 1,900 miles of border with Mexico, and 2,627 miles of coastal border to include the island of Puerto Rico. The U.S. Border Patrol is the sole entity responsible for securing our Nation's borders between the official ports of entry and bases its operation on the Border Patrol National Strategy. To that end, our objectives are to apprehend terrorists, and terrorist weapons illegally entering the United States; to deter entries through improved enforcement; detect, apprehend and deter smugglers of humans, drugs, and other contraband; and to improve the quality of life in border communities. The Border Patrol uses a combination of efforts in achieving our goal. The Border Patrol depends on a "defense in depth" posture, utilizing agents in the field, interior immigration checkpoints, and coordinated enforcement operations, as well as partnerships with other federal and state law enforcement agencies.

During Fiscal Year (FY) 2007 alone, Border Patrol agents apprehended 876,704 persons (858,638 on the southwest border) attempting to enter the United States illegally, including human smugglers, drug traffickers, and illegal aliens, and seized 1,859,299 pounds of marijuana and 14,242 pounds of cocaine. As of April 20, 2008, in FY2008, the Border Patrol has arrested 422,433 illegal aliens (411,329 on the southwest border) and seized 952,847 pounds of marijuana and 6,625 pounds of cocaine. In my area of responsibility, the Rio Grande Valley Sector, in FY2008 alone we have apprehended 42,004 illegal aliens and seized 189,377 pounds of marijuana and 3,461 pounds of cocaine.

Securing our Nation's diverse border terrain is an important and complex task that cannot be resolved by a single solution alone. To secure each unique mile of the border requires a balance of personnel, technology, and tactical infrastructure (such as roads, pedestrian and vehicle fencing, and lights) that is tailored to each specific environment. The installation of fencing has proven to be an effective tool to slow, redirect, and deter illegal entries, especially in certain areas where personnel and technology alone cannot sufficiently secure the border.

For example, in an urban environment, an illegal entrant can be across the border and into the community in a matter of minutes, sometimes seconds. In this environment, fencing provides a critical barrier. In a rural environment agents have more time to bring an illegal incursion to the proper resolution, making it more likely that vehicles will be used as a conveyance for getting from the point of entry to staging areas and community infrastructure that supports them. In this environment, vehicle fence can be utilized to prevent vehicles from entering and limit the speed and carrying capability of illegal entrants, along with sensor and surveillance technology to detect and track illegal entrants on foot. Remote areas may be completely uninhabited with no roads at or near the border. It could take someone hours or even days to be able to cross the border and get to a road or community infrastructure. Vehicle fence could be applied to remote areas where a vehicle could travel cross-country.

The effectiveness of tactical infrastructure can be seen in the 14-mile congressionally mandated fence in San Diego, California, which, in combination with increased personnel and technology, has proved effective in reducing the number of apprehensions made in the San Diego Sector. Over a 12 year period between 1992 and 2004, overall apprehensions made in the San Diego Sector declined by 76 percent. The Imperial Beach and Chula Vista Stations, whose areas of responsibilities fall within the 14-mile project area, combined for 361,125 apprehensions in 1992. By 2004, total apprehensions in these two stations dropped to 19,038 as a result of the increase in fencing, manpower, and technology.

In the Yuma Sector during the same 12 year period, apprehensions increased by 591 percent. More recently, however, no sector has seen a bigger decrease in apprehensions and vehicle drive-throughs. With the addition of tactical infrastructure and increased staffing over the past two years, apprehensions in the Yuma Sector in FY2007 decreased by 68 percent and are down 76 percent to date in FY2008. Vehicle drive-through traffic within the Barry M. Goldwater Range (BMGR) decreased from 694 in FY2006 to 251 in FY2007 and 150 in FY2008 (all statistics covering only the timeframe between October 1 and April 3 of the given fiscal year). Vehicle drive-through activity elsewhere within the Yuma Sector during the same time period decreased from 423 in FY2006 to 145 in FY2007 and 0 in FY2008.

In fact, Congress recognized that tactical infrastructure is critical to securing the Nation's borders by mandating that the Department of Homeland Security (DHS) "achieve and maintain" operational control of the border and requiring DHS to construct—in the most expeditious manner possible—the infrastructure necessary to deter and prevent illegal entry. DHS is responding to this mandate and installing fencing, barriers, roads, lighting, cameras, and sensors on hundreds of miles of the southwest border. DHS will have 670 miles of pedestrian and vehicle fencing completed by the end of December 2008. These priority miles of fencing are to be constructed in areas where fencing would be most practical and effective in deterring smugglers and aliens attempting to gain illegal entry into the United States.

Operational assessments by the local Border Patrol agents and Chiefs—based on illegal cross-border activity and the Border Patrol's extensive field experience—identified multiple locations where fencing would most effectively enhance border security. These operational assessments identified approximately 370 miles of pedestrian fencing. In Rio Grande Valley Sector, I identified approximately 70 miles of border on which pedestrian fencing is operationally necessary to gain effective control of the border, and my fellow Sector Chiefs performed these same assessments in their areas of operation.

In addition to the Border Patrol's operational assessments, several other factors contribute to decisions to construct tactical infrastructure in certain locations, including engineering assessments, which include the cost to construct; environmental assessments; and input from state and local stakeholders, including landowners. Each of these steps is a standard element of the planning process that enables us to make informed decisions in deploying the right mix of tactical infrastructure.

As noted earlier, to meet our operational goals, DHS is committed to building a total of 370 miles of pedestrian fence and 300 miles of vehicle fence along the southwest border by the end of December 2008. In a letter to Secretary Chertoff on March 20, 2008, Associate Deputy Secretary of the Interior James Cason informed him that while Department of the Interior (DOI) managers were attempting to facilitate the

construction of border infrastructure on federal land, they had come to realize DOI could not accommodate approval of some tactical infrastructure projects based on legal obligations.

Given these obstacles and the ambitious timeline for a project of this scope and scale, on April 1, 2008, Secretary Chertoff determined that it was necessary to utilize the authority given to him by Congress to waive any legal requirements he determined necessary to ensure the expeditious construction of infrastructure needed to secure the border. Absent the Secretary's use of the waiver authority, it would not be possible to achieve the objectives set forth. The first waiver applies to certain environmental and land management laws for various project areas along the southwest border, encompassing roughly 470 total miles. The waiver will facilitate additional pedestrian and vehicle fence construction, towers, sensors, cameras, detection equipment, and roads in the vicinity of the border. The second waiver was signed for the levee-border barrier project in Hidalgo County, Texas. This roughly 22-mile project will strengthen flood protection in the area while providing the Border Patrol with important tactical infrastructure. In addition to environmental and land management laws, this waiver addresses other legal and administrative impediments to completing this project by the end of the calendar year.

In planning for a project of this magnitude, DHS cannot anticipate every potential legal impediment that may arise during construction. Accordingly, each law listed in the waivers was either an immediate impediment to expeditious construction or was determined to be a potential source of administrative delay or litigation. As Secretary Chertoff stated in his April 1, 2008, press release concerning the waiver, "criminal activity at the border does not stop for endless debate or protracted litigation."

However, the Secretary's decision to invoke his waiver authority does not mean that CBP has turned its back on environmental stewardship or continued consultation with stakeholders who will be directly affected by the construction of new border infrastructure. We will continue to coordinate closely with the federal land managers to ensure impacts to the environment, wildlife, and cultural and historic artifacts are minimized to the fullest extent practicable.

As an example of our commitment to the environment, U.S. Fish and Wildlife Service (USFWS) representatives participated in the first comprehensive review of the proposed fence alignment in the Rio Grande Valley in September 2007. USFWS provided comments on each fence section and made suggestions, where necessary, relative to fence realignments that would substantially reduce potential impacts to threatened and endangered species, or would impact components of the Lower Rio Grande Valley National Wildlife Refuge and nature reserves in the region. Throughout the planning process, the USFWS has continued to provide advice on the fence types and alignment of the fence project segments, including input regarding incorporating cat passages into the fence in specific areas that have the potential to serve as movement corridors for the ocelot and jaguarondi.

It is important to note that the flow of illegal pedestrian and vehicle traffic across the border not only jeopardizes our ability to secure our borders, but it has also caused severe and profound impacts to the environment. For example, illegal roads divert the normal flow of water and rob native plant cover of the moisture it depends on to survive. Illegal entrants also leave trash and high concentrations of human waste, which impact wildlife, vegetation, and water quality. Numerous wildfires caused by campfires of illegal entrants have caused a significant threat to human safety and the lands along the border, as well as increased impacts to soil, vegetation, cultural sites, and other sensitive resources. We believe that efforts to stem illegal cross border activity in certain areas of high traffic will result in an improvement to the environment and increase the public's ability to enjoy it as a resource.

In addition to our commitment to responsible environmental stewardship, CBP continues to solicit and respond to the needs of state, local, and tribal governments, other agencies of the federal government, and local residents. CBP has gone to great lengths to obtain public input throughout our planning efforts regarding the construction of fence along the southwest border. CBP has engaged in extensive discussions about the placement of fencing with state and local stakeholders, including repeated consultations with landowners. CBP has contacted more than 600 different landowners, hosted 11 public open houses, held 15 publicly-advertised town hall meetings, and conducted 84 meetings with state and local officials and public groups.

As a result of these outreach efforts, there are many instances where we were able to make modifications to our original plans to accommodate landowner/community concerns while still meeting our operational needs. For example, we made numerous alignment changes to the Rio Grande Valley segments to limit impacts to

the USFWS National Wildlife Refuge areas, a bird watching observation facility in the City of Roma, and negate the need to relocate approximately 30 residences. The fence alignment at the Roma Port of Entry (POE) was initially proposed to be on top of a 30-foot bluff. During our site visit in September, it was determined that placing the fence at the top of the bluff would impact historical buildings and bring about constructability issues. Based on these findings, Border Patrol, U.S. Army Corps of Engineers, and USFWS came to a compromise to construct the fence at the bottom of the bluff, where it would still provide operational utility. We will continue to consult with our state and local stakeholders, including landowners, to ensure that our investments effectively balance border security with the diverse needs of those that live in border communities.

The Border Patrol's objective is nothing less than securing operational control of the border. We recognize the challenges of doing so, as we have dealt with them for many years. Challenges continue to lie ahead and the need for a comprehensive enforcement approach remains. Our national strategy gives us the means by which to achieve our ambitious goal. We face these challenges every day with vigilance, dedication to service, and integrity as we work to strengthen national security and protect America and its citizens. I would like to thank you for the opportunity to present this testimony today and for your support of CBP and DHS. I would be pleased to respond to any questions that you might have at this time.

Mr. GRIJALVA. Thank you, Chief. Let me now ask The Honorable Chad Foster, Mayor, City of Eagle Pass, for your comments. Welcome, Mayor. Thank you.

STATEMENT OF THE HON. CHAD FOSTER, MAYOR, CITY OF EAGLE PASS, TEXAS

Mr. FOSTER. Thank you, sir. Chairman Grijalva, Chairwoman Bordallo, and Subcommittee members. I'm Chad Foster, mayor of the City of Eagle Pass and Chairman of the Texas Border Coalition. I'm speaking today on behalf of 2.1 million Americans in 14 border counties on the 1,250-mile Texas-Mexico border. Our region is a region of contrast, tradition and culture. The multinational, multicultural nature of our community on both sides of the international boundary gives our region a distinct sense of place.

You are in a place today where the blending of cultures is unique, where Brownsville and Matamoros played central roles in shaping the history of our continent. Two civil wars occurred simultaneously right here and created such a cross-cultural alliance that we could spend days rediscovering it. Welcome to our home.

The Texas Border Coalition thanks you for your leadership in exploring the issues related to the border wall and the waivers of the Federal law executed by the Department of Homeland Security—Michael Chertoff, Secretary—to expedite the construction.

The proposed fencing of the Texas-Mexico border has been built on a false premise that one size fits all. The reality is that Texas is the only southern state with a natural international boundary in the majestic Rio Grande River.

Farmers irrigate from the river, ranchers water their herds from the river, and children are baptized in the river. It truly is a river of life. That's why any physical barrier must first take into consideration how to minimize the impact on private landowners as well as the many municipalities that hug the banks of the river. To this day, this has not been the case.

The Texas Border Coalition supports smart and effective measures that will achieve true border security, such as the Vega Project in Webb County, the Eagle Pass Park project, the Brownsville Weir and Reservoir project, and clearing the banks of the Rio

Grande, north and south, of vegetation such as carrizo cane and salt cedar that provide hiding places for illegal border crossers.

We support physical barriers in areas where they make sense and are agreed to by elected county and municipal officials. We support smarter, more effective solutions where fences won't work, that include radar, cameras, sensors, and more effective deployment of Border Patrol personnel.

The Texas Border Coalition believes that Congress committed a strategic error in the approval the Secure Fence Act and then compounded that error in providing the Secretary of Homeland Security with the unilateral authority to waive—in effect repeal—all Federal laws to expedite the construction of the wall. We support repeal of the unconstitutional waiver-repeal authority and urge the repeal of the Secure Fence Act in favor of measures that will provide our region with real security.

Illegal border crossing arrests at the Texas-Mexico border have been falling for more than two years without a wall, a great tribute to the deterrence of our Border Patrol and Border Protection agents. Arrests this year along the southern border are likely to—are roughly going to be half of the nearly 1.6 million we saw during the peak of the year 2000.

We are winning control of the border between the ports of entry, and that puts our ports under greater stress. According to the Government Accountability Office, we need 4,000 new officers to secure the ports of entry. We need $4 billion in infrastructure and technology. If the goal is security, and that is one of the main concerns of the Texas Border Coalition, we need your help to fund these priorities that are ignored by President Bush's budget.

Let me remind you the 9-11 terrorists entered the United States through ports of entry. Most undocumented aliens enter the United States through ports of entry. Most illegal drugs enter the United States through ports of entry. No border wall will solve those problems.

It is in this context that we question whether DHS commitment to secure the border is no more than a hollow promise that depends on ineffective measures. We have recommended alternative measures at both ports of entry and between them that will provide for a safer border region and a safer America. We need more boots on the ground with the equipment required to provide for commerce and security.

The Administration has developed a pattern of rejecting these practical ideas and effective solutions in order to pursue a misguided policy. That pattern has reached a logical, ridiculous extreme with the waivers executed by Secretary Chertoff.

We've met with Secretary Chertoff to share our concerns, which he's acknowledged, but said Congress tied his hands. He told us to change the law. Our delegation did just that, repealing restrictive portions of the Secure Fence Act and authorizing him flexibility, all in the Fiscal 2008 Comprehensive Appropriations Act. He has chosen to ignore the new law in pursuit of the strategy he devised to accomplish the old statute.

In their headlong rush to achieve an arbitrary deadline to erect an ineffective wall, the Administration has chosen to abandon our

nation's laws that commit us to preserving our environment, our culture, our history and our religious liberties.

These waivers will affect the natural movement of animal species, including large mammal species that are on the threatened or endangered species lists and cause irreparable harm to the unique ecosystems and biosystems located along the Rio Grande River.

Mr. GRIJALVA. If we could wrap it up now, I would appreciate it. Are you about to wrap it up?

Mr. FOSTER. Can I have just two minutes—30 seconds and I'll wrap it up.

They will provide carte blanche for the destruction of our cultural and religious artifacts that are irreplaceable to our heritage. The avoidance and mitigation of these damages is not an inconvenience to the government. They are essential elements of our national fabric guaranteed to the people of the United States under Articles I and II of the Constitution. We don't demand the enactment of new law. We have already achieved that. We demand that Congress require the enforcement of our commitment to being a nation of laws.

The Texas Border Coalition believes we can do better. Based on our experience, the only way to restore the rule of law is to repeal the Secretary's waiver authority. We need change. To achieve it, we also urge your Subcommittees to support the repeal of the Secure Fence Act in favor of measures—of measures that will provide more security for our region.

[The prepared statement of Mr. Foster follows:]

Statement of The Honorable Chad Foster, Mayor of Eagle Pass, Texas, and Chairman of the Texas Border Coalition

Chairman Grijalva, Chairwoman Bordallo and subcommittee members, I am Chad Foster, mayor of Eagle Pass, Texas and Chairman of the Texas Border Coalition. I am speaking today on behalf of 2.1 million Americans in 14 border counties of the 1,250-mile Texas-Mexico border. Ours is a region of contrasts, exhibiting differences and similarities of language, culture, tradition, and economy. The multi-national, multi-cultural nature of our communities on both sides of the international boundary gives our region a distinct sense of place.

You are in a place today where the blending of cultures is unique, where Brownsville and Matamoros played central roles in shaping the history of our continent. Two civil wars occurred simultaneously right here, and created such cross-cultural alliances and enmities that we could spend days rediscovering them. Welcome to our home.

The Texas Border Coalition thanks you for your leadership in exploring the issues related to the border wall and the waivers of federal law executed by Department of Homeland Security Secretary Michael Chertoff to expedite the wall's construction.

The proposed fencing for the Texas-Mexico border has been built on a false premise that one-size fits all. The reality is that Texas is the only southern state with a natural international boundary in the Rio Grande.

Farmers irrigate from the river, ranchers water their herd in the river, and children are baptized in the river. It truly is a river of life. That's why any physical barriers must first take into consideration how to minimize impact on private landowners as well as the many municipalities that hug the banks of the river. To this date, this has not been the case.

The Texas Border Coalition supports smart and effective measures that will achieve true border security, such as the Vega Project in Webb County, the Eagle Pass Park project, the Brownsville Weir and Reservoir project, and the clearing of the banks of the Rio Grande—north and south—of vegetation such as carrizo cane and salt cedar that provide hiding places for illegal border-crossers. We support physical barriers in areas where they make sense and are agreed to by elected county and municipal officials. We support smarter, more effective solutions where fences won't work that include radar, cameras, sensors and more effective deployment of Border Patrol personnel.

The Texas Border Coalition believes that Congress committed a strategic error in the approval of the Secure Fence Act and then compounded that error in providing the Secretary of Homeland Security with the unilateral authority to waive—in effect repeal—all federal laws to expedite construction of the wall. We support repeal of the unconstitutional waiver-repeal authority and urge the repeal of the Secure Fence Act in favor of measures that will provide our region with real security.

Illegal border crossing arrests at the Texas-Mexico border have been falling for more than two years, without a wall, a great tribute to the deterrence of our Border Patrol and Border Protection agents. Arrests this year along the southern border are likely to be roughly half the nearly 1.6 million during the peak in 2000.

We are winning control of the border between the ports of entry, and that puts our ports under greater stress. According to the Government Accountability Office, we need 4,000 new officers to secure the ports of entry. We need $4 billion in infrastructure and technology. If the goal is security, and that is the one of the main concerns of the Texas Border Coalition, we need your help to fund these priorities that are ignored by the president's budget.

Let me remind you that the 9-11 terrorists entered the United States through ports of entry. Most undocumented aliens enter the United States through ports of entry. Most of the illegal drugs entering the United States come through ports of entry. No border wall will solve those problems.

It is that context that we question whether the DHS commitment to secure the border is no more than hollow promise that depends on ineffective measures. We have recommended alternatives both at the ports of entry and between them that will provide for a safer border region, a safer America. We need more boots on the ground with the equipment required to provide for commerce and security. The Administration has developed a pattern of rejecting these practical, effective solutions in order to pursue a misguided policy. That pattern has reached a logical, ridiculous extreme with the waivers executed by Secretary Chertoff.

We've met with Secretary Chertoff to share our concerns, which he acknowledged but said Congress tied his hands. He told us to change the law. Our delegation did just that, repealing restrictive portions of the Security Fence Act and authorizing him flexibility, all in the fiscal 2008 Comprehensive Appropriations Act. He has chosen to ignore the new law in pursuit of the strategy he devised to accomplish the old statute.

In their headlong rush to achieve an arbitrary deadline to erect an ineffective wall, the Administration has chosen to abandon our nation's laws that commit us to preserving our environment, our culture, our history and our religious liberties.

These waivers will affect the natural movement of animal species, including the larger mammal species that are on the threatened or endangered species lists and cause irreparable harm to the unique eco-systems and bio-systems located along the Rio Grande River. They will provide carte blanche for the destruction of cultural and religious artifacts that are irreplaceable to our heritage. The avoidance and mitigation of these damages is not an inconvenience to the government. They are essential elements of our national fabric, guaranteed to the people of the United States under Articles I and II of the Constitution. We don't demand the enactment of new law. We've already achieved that. We demand that Congress require the enforcement of our commitment to being a nation of laws.

The Texas Border Coalition believes we can do better. Based on our experience, the only way to restore the rule of law is to repeal the Secretary's waiver authority. We need change and to achieve it we also urge your subcommittees to support the repeal the Secure Fence Act in favor of measures that will provide our region with real security.

Mr. GRIJALVA. Thank you, Mr. Mayor. Let me now turn to a good friend from my part of the world, the Chairman of the Tohono O'odham Nation, Mr. Ned Norris. Your comments are welcome, sir. Good to see you.

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

Mr. NORRIS. (Speaking in O'odham language)—Ned Norris, Jr. Good morning, Mr. Chairman, Chairwoman Bordallo, and distinguished Subcommittee members. My name is Ned Norris, Jr., and I am the Chairman of the Tohono O'odham Nation. Thank you for

the opportunity to testify today. In the words of the United States Supreme Court, Indian tribes predate the United States. We are older than the international boundary with Mexico, but our land is now cut in half, with O'odham sacred sites, salt pilgrimage routes, and families divided. We did not cross the 75 miles of border within our reservations. The border crossed us. And the border comes at a price.

According to the United—according to Customs Border Protection estimates, there were 15,500 illegal entries on Tohono O'odham Nation lands just last month. The O'odham suffer from break-ins and other crimes committed by border crossers, coastal resources destruction, increased demands on tribal law enforcement and health services, migrant waste, and environmental degradation from CBP and its contractors.

Each year $3 million of the Nation's limited law enforcement funds are spent on our unfunded mandate to secure the border, which we all know is a Federal, not a tribal obligation.

In response to the border crossing crisis, the Nation has repeatedly partnered with CBP and actively supported alternatives to walls, including vehicle barriers, towers, checkpoints and other measures that reduce negative impacts on tribal lands. Despite the Nation's cooperation, DHS's inflexible desire to move forward with an unreasonable time frame continues to damage the environment and cultural resources.

When the Nation objected to construction methods within a known jaguar habitat near the reservation's eastern boundary, the CBP told us during an August 2007 meeting that the project could be postponed for two weeks for further review, and then proceeded as planned a few days later.

After the Nation approved the use of barriers to block illegal vehicle traffic, CBP contractors failed to cap bollards used in construction. The resulting bird kills are being investigated as violations of the Migratory Bird Treaty Act. When environmental assessments were conducted on ancestral O'odham lands between Naco and Douglas, numerous archaeological sites were identified in the construction zone. During an October 2007 field visit, fragments of human remains were found in heavy equipment tracks on the Christian Ranch archaeological site, a site now crossed by barriers and the border road. Imagine a bulldozer in your family graveyard turning up bones.

As Secretary Chertoff has issued more waivers, the destruction has increased. After the 2007 waiver within traditional Hia Ced O'odham lands on the Barry M. Goldwater Range, a Boeing subcontractor widened 15 miles of the El Camino del Diablo, a desert crossing route listed on the National Register of Historic Places, without first performing an archaeological clearance. Two known Hohokam archaeological sites were damaged from the blading.

Today, it is as if Congress never passed NEPA or acted to protect lands within waiver zones. The Department of Homeland Security is, of course, not the only Federal agency on the border. The Department of the Interior's mission is to protect our natural and cultural heritage on nearly 800 border miles, and is mandated by Executive Order 13175 to recognize tribes' inherent sovereign powers over their territory.

Interior has, however, abandoned its mission. In a March 20, 2008 letter, the Department of the Interior acknowledged that its statutory obligations prevented it from approving DHS's proposed border security infrastructure. But Interior supported the DHS waiver of these very laws. Twelve days later, Secretary Chertoff issued a waiver covering 470 border miles, including 55 miles on our reservation. Interior never consulted us before turning its back—before turning its back on the Nation or the land it is sworn to protect, nor did DHS consult with the Nation before issuing that waiver. In doing so, the DHS undermined our partnership and the Nation's resolution supporting vehicle barriers, which expressly required Federal officers to perform cultural resource clearances and fully comply with the National Environmental Policy Act.

For all these reasons, the Nation and the National Congress of American Indians support 2593 and the repeal of the DHS Secretary's Section 102 waiver authority.

Mr. Chairman and Chairwoman Bordallo, I am here to urge you to restore the rule of law. We support border security, but not at the price that is now being paid. Thank you. I will be happy to answer any questions you might have.

[The prepared statement of Mr. Norris follows:]

Statement of The Honorable Ned Norris, Jr., Chairman, Tohono O'odham Nation

INTRODUCTION

S-ke:g si'alim. Bañ ce:gig Ned Norris, Jr. Good morning Chairman Grijalva, Chairwoman Bordallo, and distinguished subcommittee members. My name is Ned Norris, Jr. and I am the Chairman of the Tohono O'odham Nation. Thank you for the opportunity to testify today.

I. The Tohono O'odham Nation is negatively impacted by the border and has worked closely with Customs and Border Protection to find appropriate alternatives that will improve border security.

In the words of the United States Supreme Court, Indian tribes "predate" the United States. We are older than the international boundary with Mexico and had no role in creating the border. But our land is now cut in half, with O'odham communities, sacred sites, salt pilgrimage routes, and families divided. We did not cross the 75 miles of border within our reservation lands. The border crossed us.

And the border comes at a price.

According to Customs Border Protection ("CBP") estimates, there were 15,500 illegal entries on the Tohono O'odham Nation in March alone. The O'odham suffer from break-ins and other crimes committed by undocumented aliens and drug traffickers, damage to our cultural resources, increased demands on tribal law enforcement and health services, migrant waste, stolen vehicles that are abandoned by smugglers and often disabled by federal agents, and environmental degradation from vehicles driven by smugglers and CBP agents alike.

Each year, $3 million of the Nation's limited law enforcement funds are spent on our unfunded mandate to secure the border, which we all know is a federal, not a tribal, obligation.

In response to the border crisis, the Nation has repeatedly partnered with CBP and actively supported alternative strategies to walls, including vehicle barriers, towers, checkpoints, integrated camera-radar systems, and other measures that reduce negative impacts on tribal lands while still achieving the overarching goal of increased border security.

II. The Department of Homeland Security's rush to install border security infrastructure and waive critical laws has seriously damaged environmental and archeological resources.

Despite the Nation's willingness to work cooperatively, DHS's inflexible desire to move forward within an unreasonable timeframe has unnecessarily damaged the environment and cultural resources.

When the Nation objected to construction methods within a known jaguar habitat near the reservation's eastern boundary, the CBP told Nation's officials during an August 2007 meeting that the project could be postponed for two weeks for further review, and then proceeded as planned a few days later.

After the Nation approved the construction of barriers to block illegal vehicle traffic but allow animal migration, CBP contractors failed to cap bollards at border construction sites, resulting in bird kills in violation of the Migratory Bird Treaty Act and the project's Final Environmental Assessment.

When Environmental Assessments were conducted on ancestral O'odham lands between Naco and Douglas, archeological sites were identified within the border construction zone. During an October 2007 field visit to the Christiansen Ranch site, Site AZ FF:9:10, fragments of human remains were observed in the tire tracks of the heavy construction equipment. Barriers and the border road now cross the site.

Imagine a bulldozer parking in your family graveyard, turning up bones. This is our reality.

As Secretary Chertoff has increasingly exercised his Section 102 waiver authority the destruction on federal lands has likewise increased. After the 2007 waiver was applied to traditional Hia Ced O'odham lands on the Barry M. Goldwater Range, a Boeing Company subcontractor widened 15 miles of the El Camino del Diablo, a desert crossing route listed on the National Register of Historic Places, without first performing an archaeological clearance. Two known Hohokam archaeological sites were damaged from the blading.

Today, it is as if the Congress never passed NEPA or acted to protect lands within the waiver zones, and as if the numerous agreements between the Nation and the CBP never existed.

III. The Department of the Interior violated its duty to Indian tribes and the lands under its jurisdiction by supporting Section 102 waivers.

The Department of Homeland Security is, of course, not the only federal agency on the border. The Department of the Interior has jurisdiction over nearly 800 miles of the border. Interior's mission is to protect our common natural and cultural heritage, and it is mandated by Executive Order 13175 to recognize tribes' "inherent sovereign powers over their members and territory."

Interior has, however, abandoned its mission.

In a March 20, 2008 letter, the Department of the Interior acknowledged that its legal obligations under the Wilderness Act and other statutes prevented it from approving DHS's proposed border security infrastructure. But Interior supported the DHS waiver of these very laws. Twelve days later, Secretary Chertoff issued a waiver that is applicable on 470 miles of the border, including 55 miles on our reservation. Interior never consulted us before turning its back on the Nation or the land it is sworn to protect.

Nor did DHS consult with the Nation before issuing that waiver. In doing so, the DHS undermined our partnership and the Nation's resolution supporting vehicle barriers, which expressly required federal officers to "perform cultural resource clearance and fully comply with the National Environmental Policy Act." (Tohono O'odham Legislative Council Resolution No. 04-095.) Has the Nation's sovereign power to make laws also been waived?

IV. Indian tribes across the United States support legislation to repeal the Secretary of Homeland Security's Section 102 waiver authority, mandate consultation, and restore the rule of law.

For all these reasons, the Nation, the Inter Tribal Council of Arizona, and the National Congress of American Indians support H.R. 2593, the Borderlands Conservation and Security Act of 2007, and other legislation that would repeal the DHS Secretary's Section 102 waiver authority, require consultation with tribes and border communities, and otherwise respect existing laws and citizens' rights in the effort to secure the border.

We know from our own experience living on the border that security can be improved while respecting the rights of tribes and border communities, while fulfilling our duty to the environment and to our ancestors, and without granting any person the power to ignore the law.

CONCLUSION

Chairman Grijalva and Chairwoman Bordallo, I am here to provide the Nation's unqualified support for H.R. 2593 and to urge you to restore the rule of law on the border. We support border security but not at the price that is now being paid.

Thank you.

Attachments

- Tohono O'odham Legislative Council Resolution No. 04-095, "Supporting Vehicle Barriers and All-Weather Road Project Along the International Boundary Within the Tohono O'odham Nation"
- March 20, 2008 Letter from Associate Deputy Secretary James E. Cason to Homeland Security Secretary Michael Chertoff
- National Congress of American Indians' Resolution # ECWS-08-001, "Supporting Amending Secure Fence Act and Requiring DHS Secretary to Consult and Coordinate with Tribes in Jointly Developing a Border Strategy for Tribal Lands along the Unites States' International Borders"

[NOTE: Attachments have been retained in the Committee's official files.]

Mr. GRIJALVA. Let me join with my other colleagues, Dr. Garcia, in thanking you and this wonderful institution for their hospitality and for helping arrange not only this hearing room but all the other work that had to go along for this—for this hearing to occur. Thank you. And with that let me introduce Dr. Garcia, President, University of Texas Brownsville and Southmost College. Thank you.

STATEMENT OF JULIET V. GARCIA, PH.D., PRESIDENT, UNIVERSITY OF TEXAS AT BROWNSVILLE AND SOUTHMOST COLLEGE

Ms. GARCIA. Good morning, Chairman Grijalva and Madam Chair Bordallo, Congressman Solomon Ortiz. Grace Napolitano, we're glad to have you back on our campus. And, of course, Congressman Silvestre Reyes and all of our new friends that come to understand, from the very community that might be so affected, the important issues that we face.

Early last summer we were notified of plans by the Department of Homeland Security to build a fence 18 feet high on top of the levee on the university's—the levee north of the university's ITEC campus—ITEC campus is the campus where we teach international technology and educational center—essentially placing all of the ITEC on the Mexican side of the fence. In addition, the plans would also build a fence 18 feet high on top of the levee just south of the Scorpion baseball field and of our parking lot, essentially placing our entire golf course on the Mexican side of the fence.

In October we received a letter from U.S. Customs and Border Protection asking for a right of entry onto university property. The request sought access to university land for possible construction of a fence. The same document informed us that there was some question if they would be responsible for any damage done during this time of their activities.

I did not sign the document that would have granted access for several reasons. It is my responsibility as president to be a good steward of the resources that have been entrusted to my care. To have signed this request, this right of entry would have violated that public trust. There was first a risk to property investment because the government sought access to lands from the levee to the building in the very heart of our campus adjacent to the student union, very close to where we sit in this building and the life and health sciences building.

Our campus is one of the fastest growing in the UT system with an enrollment of 17,000 students and expected to grow to 20,000 within five years. The campus currently has eight construction

projects in different stages of development for a total investment by the taxpayers of this community and in the State of Texas of over $140 million in new construction alone. Allowing the Department of Homeland Security unlimited access to a large portion of the campus had the potential of jeopardizing a significant public investment that it was our duty to protect.

It is also my responsibility as president to guard the safety of our students. If I am aware of potential danger to them, I am required to take necessary action to ensure their safety. The right of entry was refused because it was meant to support preparations for the building of a fence that would jeopardize campus security.

DHS has repeatedly reported to us that they plan to build a fence on the levee for the purposes of channeling illegal entrance to a point presumably for easy apprehension. That point is the same opening in the fence that would also be used for entry and exit to the golf course—the headquarters of our golf team—and directly behind the baseball park and the recreation center.

I could not sign the original right of entry because having an opening in an 18-foot high fence for the purpose of channeling all illegal entrance, including criminals, in the heart of our campus right next to classroom buildings, the library and the recreation center, the baseball park and the soccer field, would gravely endanger, not protect, our students and jeopardize campus security and safety.

I could not sign the original right of entry because there had been a lack of opportunity for genuine public input. When congressmen call town meetings, it goes to gather its citizens engaged in civil discourse. In contrast, here the only public hearing that we were afforded was held on December 12 at the Brownsville Events Center, where we were required to submit feedback through a computer terminal or through a court reporter surrounded by armed agents. For those of us who chose to participate through verbal input, it was necessary to meet in an open field across from the Events Center while being photographed.

I could not sign the original ROE because the university has become a key player in the promotion of the ecotourism industry and the reclamation of important wildlife areas inclusive of thousands of acres of the Bahia Grande area. Many have worked for decades to design a campus that is respectful of the natural and rich environment of this very special ecological zone. Signing the right of entry would have jeopardized ecological systems of our region and obstructed the development of the campus environment.

Finally, I was unable to sign the ROE because it jeopardized the historical nature of the campus as you've already heard. What was being demanded of us under threat of legal action was unimpeded access by military and civilian agencies to a UT system campus in state and locally financed buildings for an extended period of time for purposes of determining that the land and the buildings could be condemned and seized.

In January we were notified that a suit had been filed in Federal court because of our refusal to sign, yet we continued to meet with various representatives from the Federal government at the same time that they were filing the suit. After days of intense negotiations between the university and the U.S. Department of Justice,

an agreed settlement was reached just hours before we went to Federal court. The order—not our request, but the court order by a Federal judge, now requires consultation with the university before accessing the property, and they must take care to minimize and jointly study environmental impact, environmental problems and impact on the culture of the campus and on the historical nature of the campus. Judge Andrew Hanen stated that the agreed settlement could be used as a template for working with other landowners.

I thank you for the time you have spent on our campus. There are many of us in Brownsville who did not have the honor of being able to address you. But just so you know, there are many voices that have similar feelings to what you have heard from the mayor and from others on this podium today. Thank you so much. I appreciate it.

[The prepared statement of Ms. Garcia follows:]

Statement of Juliet V. Garcia, Ph.D., President, University of Texas at Brownsville, and Southmost College

Good Morning Chairman Grijalva and Madam Chair Bordallo and members of the joint oversight committee. Thank you for this invitation to testify before you on this very important issue.

The first topic you have asked me to address was the level of consultation between the Department of Homeland Security and our university to review and revise project segments slated to cross our campus and the surrounding community.

As background, I will provide a quick timeline of the events that have transpired over the last year.

Early last summer, we were notified of plans by the Department of Homeland Security to build a fence 18 feet high on top of the levee north of the university's International Technology Education and Commerce campus (ITEC), essentially placing ITEC on the Mexican side of the fence. In addition, the plans would also build a fence 18 feet high on top of the levee just south of the University baseball field and of the Education and Business Complex parking lot, essentially placing our golf course on the Mexican side of the fence, literally dividing our campus.

In October, we received a letter from U.S. Customs and Border Protection asking for the right of entry onto University property. The request sought access to survey University land for the possible construction of the fence, to store equipment and supplies, take samples and to do any other work they found necessary for the proposed construction of the fence.

The same document informed us that there was some question as to whether they would be responsible for any damage done during this time by their activities. Finally, the letter stated that should they determine a need for any University land, the University would be paid market value for the land.

I did not sign the document that would have granted access for several reasons. I felt the action posed serious harm to the University on many fronts, including risk to property investment, student safety, execution of our mission, disruption of the university ecosystem and the region's ecotourism industry, as well as damage to the historical nature of the campus.

Because we could not in good conscience sign the document granting right of entry, the Department of the Army Corps of Engineers notified us in December 2007 of potential litigation to gain entry to the campus.

What was being demanded, under threat of legal action, was unimpeded access by military and civilian agencies to a UT System campus and its state and locally financed buildings for an extended period of time for purposes of determining if land and buildings would be condemned and seized.

The only public hearing we were afforded was held on December 12 at the Brownsville Events Center where we were required to submit our feedback through a computer terminal or through a court reporter surrounded by armed agents.

In January, despite requests from our attorney for extensions of time to engage in discussions of alternatives, we were notified that a suit had been filed in federal court because of our failure to sign the original Right of Entry request (ROE). This heavy handedness and unwillingness to genuinely discuss alternatives to the ROE's conditions was sufficient cause for serious concern.

Yet we continued to meet with various representatives from the federal government including the local Border Patrol officials, the Department of Homeland Security, and the Army Corps of Engineers. While it was frustrating at times, when the various federal agencies did not have knowledge of the others' activities, we persisted, believing that a compromise could be reached that would allow the Department of Homeland Security to proceed with its goal of better securing the border, while at the same time allowing the university to preserve the integrity of our region and our educational mission and moreover, protect the safety and welfare of our students, faculty and staff. However, we feel that the purpose of meetings from the government's standpoint was simply another opportunity for them to tell us of their intention to build a fence, rather than to explore alternatives.

After days of intense negotiations between the University and United States Department of Justice attorneys, an agreed settlement was reached on March 19th, just hours before the federal hearing was to take place.

Federal Judge Andrew S. Hanen approved the agreement, which states the following:

- The University has agreed to a limited right of entry to DHS for six months for the purpose of studying the implementation of security measures on the border in the campus area.
- DHS will work with the University to jointly assess alternatives to a physical barrier.
- DHS has been authorized to conduct such studies, including environmental assessments, as required to consult with the University regarding alternatives to a physical barrier.
- DHS will consider the University's unique status as an institution of higher education and will take care to minimize impact on its environment and culture.
- DHS will conduct investigations to minimize the impact of any tactical infrastructure on commerce and the quality of life for the communities and residents located near the University.
- DHS will take all reasonable action to promote safety and minimize any impact on the University's educational activities.
- DHS will coordinate all entry to the campus and give prior notice of all activities on campus to Campus Police.
- DHS has agreed that should damage to University property occur they will repair or make an appropriate fair market value settlement.
- DHS has agreed to hire contractors that carry sufficient liability insurance.
- DHS has agreed to not clear land, mow grass or otherwise alter the physical landscape of University property without the University's consent.
- The University retains the right to assert statutory and/or constitutional challenges to future government actions affecting University property.

During the hearing, Judge Hanen thanked both the University and the federal government for working hard to reach an equitable solution. He felt that the dialogue between the two sides would hopefully lead to a better resolution regarding this temporary easement, as well as any potential future barrier. Judge Hanen also stated that the agreed settlement could, perhaps, be used as a template for working with other landowners involved.

While we have often felt during this process that the Department of Homeland Security was unwilling to openly and legitimately consult with local communities regarding the effects an 18-foot high wall would have on our region, we are pleased that the court system fulfilled the purpose our forefathers had planned. It brought together two parties to be fairly represented and heard.

Since the hearing the Department of Homeland Security, through the U.S. Border Patrol, has notified the University of various archeological and environmental surveys and/or assessments that have taken place. While we have received notification from the federal government that they are conducting surveys and/or assessments on IBWC and University property we have not been provided the opportunity to jointly participate in assessing alternatives to a physical barrier. There is a meeting between representatives of the University and DHS scheduled for tomorrow, and we are hopeful that will be the beginning of the joint assessment, and not simply a repeat of the previous unproductive one-way communications.

Potential Impact on property investment and safety

As a native of this community, I can speak to the fact that every piece of infrastructure you see in the Rio Grande Valley today was hard fought. We didn't have a university in the Lower Rio Grande Valley until 1991 when UT Brownsville was established. We still do not have a veteran's hospital closer than San Antonio. The

lack of infrastructure is compounded by our rapidly growing population, and the need for expanded trade and commerce.

Seizing land for a border fence poses a great risk to our property investment. In the case of our university, our campus is one of the fastest growing in the UT System with an enrollment of 17,000 and expected to grow to 20,000 within five years. The campus currently has 8 construction projects in different stages of development for a total investment by the taxpayers of the local community and of the state of more than $140 million dollars in new construction alone. Allowing the DHS unlimited access to a large portion of the campus has the potential of jeopardizing a significant public investment that it is our duty as stewards to protect.

It is also my responsibility as President to guard and protect the safety of our students. If I am aware of a potential danger to them, I am required to take necessary action to ensure their safety.

DHS had repeatedly reported to us that the plan to build a fence on the levee was for the purpose of channeling illegal activity to a point presumably for easy apprehension. That point in the proposed fence, is the same opening used for entry and exit to the golf course. The golf course is home not only to our Scorpion golf team, but also to members of the community including other school children. This site serves as a laboratory for learning in our community, just as any other facility on our campus.

The current plans call for an opening in the 18-foot high fence for the purpose of channeling all illegal activity, into the heart of our campus right next to classroom buildings, the library, the Recreation, Education and Kinesiology Center, the baseball park, and the new soccer field would greatly endanger our students and jeopardize campus security and safety.

Potential Impact on the Academic Environment

In addition, the building of a fence on this campus or adjacent to the campus runs counter to our mission, which is in part to convene the cultures of its community, foster an appreciation of the unique heritage of the Lower Rio Grande Valley, encourage the development and application of bilingual abilities in its students and provide academic leadership to the intellectual, cultural, social and economic life of the bi-national urban region it serves.

To support a plan that would build an 18-foot-high steel barrier between two friendly countries would be to directly contravene our mission and destroy the campus climate that has been so painstakingly and carefully created.

Potential Impact on the Environmental and Historic Environment

The University has become a key player in the promotion of the ecotourism industry and in the reclamation of important wildlife areas inclusive of the thousands of acres of the Bahia Grande area. Many have worked for decades to design a campus that is respectful of the natural and rich environment of this special ecological zone. We also strive for the development of a campus environment that fosters the physical and mental well-being of our students. To create this environment we are designing and constructing bike trails, jogging paths and eco-trails.

In our master plan, which was created four years ago, we defined our core values which include:

- Respecting the Educational Nature of the Campus
- Providing a Safe and Secure Environment
- Encouraging Community Involvement
- Providing Accessibility
- Creating Harmony in Design
- Planning for Openness in Design and Space
- Creating Intimate Gathering Areas
- Providing an Inviting Ambiance
- Respecting the Historical Nature of the Campus
- Being sensitive to the Ecology
- Incorporating the Region's Unique Cultural Character

Clearly, an 18-foot high wall running through our campus would negate all that we have worked so hard to create.

UTB/TSC has a unique cultural nature. The campus encompasses several significant historical sites, including historic Fort Brown and Fort Texas.

Of course, we believe in protecting our borders.

Of course, we believe in strong immigration policy.

But we also understand that a process of intended or unintended intimidation is no substitute for either.

Every attempt we have made up until this week has proved fruitless in discovering common ground for a solution.

I love our country and the best that it represents of an experiment to govern a free people. My life's work has been spent trying to guarantee that the next generation has access to an education and becomes vested in protecting, participating in and defending this democracy. It has been my duty to be a good steward not only of the resources entrusted to me, but also of the values and principles of our democracy.

I remain hopeful that we can make genuine progress toward a meaningful, consultative conversation and that the Agreed Order with the conditions specified has for the first time, the potential to discover an innovative and effective manner to achieve the mutual goals of the DHS and of the University.

Mr. GRIJALVA. Thank you very much. And, Doctor, I had the privilege and the pleasure of meeting with community members yesterday most of the day from Veteran organizations to religious groups to people that work here at this institution. And your comments and I think the mayor's comments were repeated time and time again. And so I appreciated that opportunity to do that.

Let me begin with a couple of quick questions and then move along and allow my colleagues the same opportunity. Let me direct us to Mr. Schultz and the Chief. If you could briefly explain to me this inconsistency that we have. If we are believing that the premise for the wall and the fence barrier is the uniformity of security across the southern border, then this begs the question—this is where I have the—I can't explain it to myself.

We had to have a court order in order for the university here to participate in consultation and planning because the fence is going—the wall is going through that property. Yet we have properties that perhaps are less security needed, such as the Hunt property, such as the property at the River Bend. And yet we have single property owners that their property is—their security there is high end. And I'm assuming the security in the Hunt property, which is 5 to 6,000 acres, and at the River Bend, then that must not be—there must not be a security need because those have been exempt. Am I correct in that assessment?

Mr. VITIELLO. It's important, Congressman, to understand that what I've done since my assignment here in July and when this project started within the sector confines is for us to go out and look at current activity levels, look at the kind of access that was available and is required to secure particular parts of the border.

I'm not familiar with us having particular land that they own along the border. I'm familiar with the River Bend requirement. And what we did is we looked at the kind of access we had. We looked at the kind of activity that was occurring in those locations, and then made an assessment about where—if the terrain was enhanced, if the features—the terrain features were enhanced with fencing, would that assist us in being more efficient and being more effective in those particular locations. And where that was the case, where we believed that this fencing gave us some an additional advantage, then we've made that a part of the plan, the proposal that we'd like to go forward and have the installation occur in those locations.

Mr. GRIJALVA. And Interior's discussion with Homeland Security, so I'm assuming these two exempted area are of higher environmental quality, therefore an exception is something that was worked out?

Mr. SCHULTZ. I don't understand the question, Chairman.

Mr. GRIJALVA. If Interior is working with Homeland Security as we go along, according to your testimony——

Mr. SCHULTZ. That's right.

Mr. GRIJALVA [continuing]. And we have two major exemptions as other property owners are having to litigate in order to get the consultation, I'm assuming in your consultations those exceptions were something that you felt were environmentally high enough to be exempt.

Mr. SCHULTZ. I'm not sure what you mean. Do you mean exempt from the——

Mr. GRIJALVA. Fence, wall.

Mr. SCHULTZ. From the fence. I don't know what the answer is to that question. I don't think, at least at the headquarters level, we had that type of detailed discussions about those sections of fence. They could have been discussed at the local level in consultation with local officials.

Mr. GRIJALVA. So as we go through this process, would it not be good to quantify and qualify the exemptions that occur in this whole fence-building, why, whether it's environmental, whether it's not pertinent to operational control, whether it is some other reason. Don't you think that kind of inventory would be important.

Mr. SCHULTZ. It would be helpful, I guess. We have relied on the Border Patrol for their decisions on where they believe they need the fence. And once they decide where they need the fence, we will work with them as much as possible to try to minimize the impact on the infrastructure on DOI interest.

Mr. GRIJALVA. Mr. Chairman, and perhaps for my renewed edification and the edification of my colleagues that probably don't need it—I'm probably the one that does—briefly, the government-to-government meaningful consultation and relationship between the Nation and the Federal government and its impact on what is occurring on your Nation right now given the waiver and how—did that consultation occur at all prior to that?

Mr. NORRIS. No. I can't honestly sit here and tell you, Mr. Chairman and members of the committee, that that consultation did, in fact, occur. There are many things that are occurring on our Nation's lands that are done without consultation. In fact, as recent as four, almost five years ago, we had to bring in the representatives from the Tucson Sector into a meeting at our offices and discuss with the Border Patrol why they were doing some—conducting some of the activities they were doing on our Nation's lands.

And it became apparent that we were talking to the wrong people because their continued comments to us, "Well, we're just following orders. We get our orders from Washington, D.C., and that's what we're following." And so we immediately let them know that we're talking to the wrong people, that we need to deal with Washington, D.C.

We have continuously made efforts to consult with and have continuously numerous times invited Secretary Chertoff to the Tohono O'odham Nation's lands so that way we can have a face-to-face contact with him and express our concerns about what's been going on on our Nation's lands. And we have not been honored any invitation that we have extended to him.

Secretary Chertoff finds the opportunity to visit border areas to the east of the Tohono O'odham Nation's lands and to the west of the Tohono O'odham Nation's lands, but has never made—acknowledged our request to come visit us and discuss these issues that are critically important to us on the Nation.

Mr. GRIJALVA. Thank you, and my time is up. Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I have a couple of questions for this round. In your statement, Chief Vitiello, you reference as a reason for Secretary Chertoff to use his authority to issue a blanket waiver of over 30 environmental statutes as a response to the Department of Interior's inability to accommodate approval of some tactical infrastructure projects. And this raises the question of why did the Secretary issue a blanket waiver when it was known that Interior only objected to a portion of the projects on Federal lands? Can you give me an answer on how many project segments did Interior say they could not accommodate and what percentage of the total does this represent?

Mr. VITIELLO. I'm happy to get back to the committee about specific technical details of which parts that you refer to within the Department of Interior's and our consultations. I can only tell you that in our particular area, there are approximately 70 miles of fence that we have established locations along the border where we feel that fencing would assist us in our—in our work. And we also know, based on the time lines authorized in appropriation, that the waiver makes sense in order for us to complete under the time line outline.

Ms. BORDALLO. I guess that's really not my question. I just wondered what percentage. Because Interior had said that they only object to some, not all.

Mr. VITIELLO. I don't have that technical knowledge about that.

Ms. BORDALLO. All right.

Mr. Vitiello: I would be happy to get back to you.

Ms. BORDALLO. The other one, Chief, was—I was really very impressed with how you informed 600 different landowners, hosted 11 public open houses, held 15 publicly advertised town hall meetings, and conducted 84 meetings with state and local officials and public groups. It seems to me you covered everything. But you discussed your agency's activities, as I have just repeated—the other Federal agencies and local residents, including uncounted numbers of meetings, open houses, town hall meetings—while it is somewhat reassuring to know that your agency can at least demonstrate that it has conducted public outreach, your statement provides no reassurance about the quality of the consultation.

So I would like you to explain or describe the kind of information that is provided during public outreach sessions, what kind of information is solicited, and then describe the process the agency uses to incorporate this information into your decision making. And after listening to Chairman Norris, his Nation was never informed.

Mr. VITIELLO. Typically these meetings, in our experience here, would have been a scenario where we have identified particular parcel landowners. In some cases we went to county commissions, local leadership, mayors and such, and informed them about what we knew of the state of the situation; about where we were requesting fencing; what we felt our operational requirement is;

where we thought fencing made sense in particular locations. Some was an edification for why given the activity level.

The quality—and I'll give you an assessment here locally. There are about 400 different people who are impacted directly, as in they own land right along the border here in the Rio Grande Valley. We've talked to each and every one of them, both through my office, the Army Corps of Engineers, the people at SBI and at CBP and the totality of the people that would necessarily need to be involved in an operation or in a construction project like that. And with about 400 landowners in this area, we're in a situation where just over 270 or so were ready to proceed. We are in a dialogue and continue to be in discussions with them, and the balance are in varying forms of ongoing consultation, or, in some cases, the litigation aspect.

Ms. BORDALLO. Well, Chief, I don't know what the outcome was after all of this interaction with the landowners and so forth, but it seems that we have a roomful of people here that don't agree that they were even informed. Chairman Norris, would you like to comment on the exchange you had.

Mr. NORRIS. Yes, I would. And thank you, Chairwoman, for the opportunity. It seems to me that our experience has been that the attitude with the Department of Homeland Security has been that it's pretty much the attitude that, "Well, we're the Federal government. We're the United States government and you're a Federal reserve, and so we're going to go and come in and do whatever the hell we want to do within the Federal Indian reservation," which is an unfortunate situation because that is definite ignorance of the tribal sovereignty authority that we have in the tribal government.

And that's all we ask. We want to be at the table with the United States government. We want to be able to discuss with them—and, you know, it's not the say that the Nation itself has not extended itself to the effort to secure the border. We have allowed various vehicle barriers. We have allowed SBI in. We have allowed the establishment of law enforcement centers. We have allowed the increase of border presence on our Nation's lands. So we are working with them.

But with regards to the long-term, the impact of a wall on our Nation's lands, the Tohono O'odham Nation will never agree to a wall fence. And the primary reason for that, Congresswoman, is the fact that we have 1,500 enrolled tribal members that live south of the international border. We have nine tribal communities that exist. We have about almost 5,000 people that are eligible for membership in the Tohono O'odham Nation's lands.

Ms. BORDALLO. Thank you very much, Chairman Norris. My time is up.

Mr. NORRIS. Thank you, Chairwoman.

Mr. GRIJALVA. Let me now turn to our Ranking Member, Mr. Tancredo.

Mr. TANCREDO. Thank you, Mr. Chairman, and thank you all for your testimony. One of the things that I think I heard more often than anything else that seemed I think inaccurate in terms of describing the project that we are to focus on today is the implication that the wall is a singular solution to a problem. I do not know of anyone, either Border Patrol or the Administration—certainly I

have never thought of a barrier along the southern border, no matter how long, as the solution—as the solution to the problem with illegal entry into this country. It is just simply part of a solution. It just helps us begin to control parts of the border where we presently do not have that control.

And so I just wanted to emphasize, at least from my point of view and my observation of this issue, that the thing we're arguing about today is not the simplistic application of some sort of barrier that will then solve all of our immigration policies—problems. That is certainly not the case. I understand that.

I also believe that there may certainly have been problems with the kind of communication that should go on and is necessary to go on in order to obtain the support of the local community for an ongoing effort of this nature. And I turn to the Chairman in particular because I have visited the Nation on more than one occasion.

I remember several years ago when I was there and there was an—a concern expressed to me by almost every single person, every single member of the tribe, that the present situation was untenable; that the amount of drug trafficking through the area was—certainly that it could not be dealt with by the local law enforcement activity or agency that was involved, the number of people that you had on the force; that the effect of the drug activity wasn't just simply the passage of drugs through the tribal lands, it was what was happening on the tribal lands, the number of children who had become addicted.

And I remember a long litany of concerns. And I also remember at the time that one of the things that was described as a potential solution was some sort of barrier. I also remember the discussion about the need to have this kind of transportation—open transportation—for the people who live on both sides of that border today and who are also part of the Tohono O'odham tribe.

Do you not think—and I totally believe and understand the frustration that you expressed, the kind of—the way that this thing has unfolded on the land. But do you not believe that there is a need for something there that will restrict that movement and allow people, allow members of the tribe to actually get back and forth for various purposes and just visiting, but at the same time try to restrict the ability of people coming through there who are doing such great damage to the tribe? And do you not think that if a—some sort of barrier is constructed that comes up let's say to tribal lands and ends there, that that does create even a greater threat to the environment and to the tribe itself? Because, of course, it becomes a funnel. And that's the whole purpose of what we're trying to do here, is actually funnel people into areas where we can stop them with human resources. But it seems like—that unless we can progress with some sort of barrier there, that we are—potentially the tribe is open to far more danger and far more destructive elements than it is without something.

Now, I guarantee you I would work with you—and to the extent that I have time to do so in the Congress that I'm in and will be in my term sometime—but the time I'm there, I commit to you my efforts to try to bring together some degree of cooperation, if that is your desire. But I just need to know specifically what it is you

believe would protect both the sovereignty of your Nation and the security of our borders.

Mr. NORRIS. Mr. Chairman—Mr. Chairman, Madam Chairwoman, members of the committee, all those situations that you described, sir, are—continue to be concerns of the Tohono O'odham Nation and its people. Those situations do exist. We're a little bit tired of being tour guides. We've had a number of people from Congress come out and visit our Nation and see what's going on on our Nation's lands and see the increased border issues that are impacting our Nation, but we don't see any result of that. We continue to expend tribal dollars, to the tune of $3 million a year, on the United States government's immigration problem. And we need to take the situation to the next level.

Definitely we are concerned about the influx of human cargo. We are concerned about the influx of drug trafficking. We are concerned about the fact that too many of our tribal members are being bought into that business. And, yes, definitely we want to be able to see what we can do together. Not imposed on, but together in working with the Department of Homeland Security, allowing us to be at the table to discuss these issues with them, allowing us to share with them what impacts their activity is going to have on our Nation's lands, allowing us to be able to share with them what sovereignty issues we are concerned about when it comes to dealing with us on a government-to-government level.

So, definitely, sir, we welcome and continue to offer the opportunity to sit at the table with the United States government, and would like to be able to do that with the Department of Homeland Security. We continue to invite Secretary Chertoff. We want him out here. We want him out to our Nation's lands. He's probably one of the only visitors we—that we haven't had the opportunity to tour on our Nation's borders and express our concerns. We want that opportunity, but we want some action. We want some active—opportunity to actively participate in the decisions that are being made in Washington, D.C., that are negatively impacting our people and our land.

Ms. BORDALLO. I thank the gentleman, and now I'd like to recognize the gentlelady from the State of California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Madam Chair. OK. I am on. In all this process, I don't see the Department of Homeland Security represented here. And I'm not sure why. But that should be one of the things——

[Applause.]

Mrs. NAPOLITANO. Please. It takes my time. Please.

That—in order to be able to get answers from some of the agencies, we need to have them present, or at least it goes on the record. Dr. Garcia, those words that you talked about, have them submitted for the record for this hearing, because it will be open for 10 days. Anybody can submit for the record. That is law.

Now, one of the other things that we have heard repeatedly is it's a tough process. We all agree with you. We have not been able to get that done for a number of reasons because there's people in Congress stymieing the process that we try to put through.

And, Mr. Schultz, on your second paragraph you indicate this impact by this illegal migration. But the fences and the roads don't damage that environment?

Mr. SCHULTZ. Congressman——

Mrs. NAPOLITANO. Congresswoman, sir.

Mr. SCHULTZ. Congresswoman. Pardon me.

Mrs. NAPOLITANO. I'm a woman.

Mr. SCHULTZ. The roads and the fences do damage the public land as well, which is why we need to work with them to try to minimize the impacts of the roads and fences on those natural and cultural resources.

Mrs. NAPOLITANO. Because of what I'm reading from some of the testimony that was provided to us prior to today, there are a lot of this—and Mr. Chairman Norris indicates that there was no consultation with them as to how to minimize or what their ability is to be able to have input, to be able to do that. Dr. Garcia is saying the same thing in essence.

Mr. SCHULTZ. Congresswoman, there has been significant discussion between Fish and Wildlife Service folks, folks that work with the Bureau of Land Management and Park Service folks to try to minimize the impact.

Mrs. NAPOLITANO. OK. But that's only between the agencies. What about the people who are affected, the farmers? And my understanding is that this was taken into a computer or sent to a separate room to put in their input without public opinion being open. I mean, we're—if people want to accept the dialogue, the plans that you have, you have to be transparent. And if you are not, then you're going to have people sit up and say, "Hey, wait a minute. This is the United States." We don't follow that anymore.

We don't—you know, building a wall—we're tearing down China—the Berlin Wall. And so other areas that we are seeing we do not need walls. We need more security for the people that work the borders, more technology, more funding. But we end up taking those funds away. And I know Interior could use the funds. In my Subcommittee, I can tell you I go through that all the time.

And to Mr. Norris, were you included at all in any of the planning? I think you said, but I want it for the record specifically. Were you included? Were you asked to be at the table? Were you asked for input about how it would impact your tribal lands?

Mr. NORRIS. Initially we were not. After we had raised the concern of not being at the table, after we—and I'm talking about previous administrations to mine continuously asking that we need to be at the table, continuously pressuring the local sectors of the Border Patrol at our office and being told, "Well, these decisions are made in Washington, D.C." And that we need to be at the table in Washington, D.C., we have had some impact and some ability to share our thoughts and our positions.

One of the things that we did find out is that the Department of Homeland Security was consulting with the Bureau of Indian Affairs. And what we found out was that once we had seen an increase in border presence on our Nation's lands, we understood that they got the approval and the permission from the Bureau of Indian Affairs to be increasing their presence on these lands.

Mrs. NAPOLITANO. Did the BIA——

Mr. SCHULTZ. We weren't involved in that process.

Mrs. NAPOLITANO. Did the BIA ever consult you?

Mr. NORRIS. No.

Mrs. NAPOLITANO. Did any other agency consult you?

Mr. NORRIS. Well, not at the Federal level. But at the local level we have been knocking on their doors and they have opened those doors.

Mrs. NAPOLITANO. You have been knocking. They have not—as part of the landowners—been asked to participate.

Mr. NORRIS. We have not.

Mrs. NAPOLITANO. Thank you, Mr. Chair. I won't take any more time, but I do have some questions for the record.

Mr. GRIJALVA. Thank you very much. And let me now turn to our colleague, Mr. Hunter, for any questions you might have, sir.

Mr. HUNTER. Thank you, Mr. Chairman. And, again—and, incidentally, I didn't realize this is Solomon Ortiz's district. And I just would be remiss if I didn't say as a fellow member of the Armed Services Committee what a great job he's done on that committee. We've flown on a lot of choppers together—from down in Central America with the 82nd Airborne, in the DMZ in Korea—on lots of those trips accompanied by the—Mr. Reyes, a very articulate gentleman. And I appreciate you letting us be here, Solomon——

Mr. ORTIZ. You're quite welcome.

Mr. HUNTER [continuing]. To have this hearing. You know, folks, we're all in this together. And what I've gotten from your testimony is a couple of things. One thing is that we all acknowledge you've got to control the border. The second thing is that there's lots of custom making to be done along this—along this border to ensure that controlling the border is consistent with local communities.

Now, Chairman Norris, you started out by showing your—showing the damage that's being done by the smugglers moving massive numbers of people and narcotics through the reservation, right? And you'd like it to stop. But you haven't—you haven't come up with a solution. And, you know, I've looked at this for a long time and we tried to do the same thing in San Diego. We tried lots of stuff, and we also tried to do it at one time just by amassing Border Patrol. In fact, we had a third of all the Border Patrol for the entire U.S.-Mexico and U.S.-Canada border all together. We had about a third of that Border Patrol just in San Diego. And we still couldn't stop that flow with people alone.

And one of our institutions said, "You have to have something that slows folks down. You've got to have a fence." They recommended a triple fence. And I will get my friend, Silvestre Reyes, in trouble by reminding him that he helped me get the first triple fence in. I'm sure he's going to remind me that that's not in good taste after this hearing is over. But hopefully we're friends so we'll get past that.

But, you know, I've looked at all the things we've tried to use as a substitute. We just tried one of the substitutes in Arizona, a so-called virtual fence. I told the Department of Homeland Security it wasn't going to work. I said, "You're going to spend a ton of money on the problem. You're going to have guys with alligator shoes selling you this radar stuff. They're going to be late. They're going to be way over budget, and in the end it's going to be a mess." And

it ends up with guys in a radar tower trying to vector guys in off-road vehicles down through gullies and through brushland after a moving target once these folks come into the U.S.

Whereas if you have the double fence and it's not a wall, it's two fences with a high-speed road in between, the Border Patrol can move 60 miles an hour on that road. That means in one minute a Border Patrolman who is a mile away, once he's alerted, can be at the scene of entrance by smugglers coming into the United States.

Now, Chairman Norris, my first question to you would simply be wouldn't that be desirable for the Nation if you also had several ports of entry where members of the tribe, legitimate members of the Nation could come through and where they would monitor that border to make sure that people who are not members of the Nation did not come through without U.S. clearance? Would a fence with ports of entry make sense to you?

Mr. NORRIS. Mr. Chairman, members of the committee, Congressman Hunter, I don't necessarily agree that the answer is a port of entry. When you look at the Nation—and as I described in my testimony, we didn't cross the border, the border crossed us. You know, we have had traditional passage of what is now the international border since time immemorial. We have enjoyed the opportunity to live as a people since time immemorial, well before the United States was even here, well before this international border was established.

You asked me that we haven't come up with any solutions. We may not have come up with any solutions, but we have also allowed the establishment of vehicle barriers; we have allowed the establishment of the virtual fence; we have allowed the establishment of law enforcement centers; we have allowed the establishment of beacon lights; we have allowed the establishment of many more activities that the Border Patrol has wanted to establish within our Nation's lands, all in the interest of assisting and securing the—securing the United States border. We have done that as a people. We have allowed that as a people.

We don't believe that the full-fledged wall is the answer along the international border. We have too many people that we have to be concerned about as far as tribal members of the Nation is concerned. We have too much interest in Mexico as a people—both historically, both culturally, both spiritually—that we have to be able to traverse back and forth in and outside of Mexico into the United States.

And so the answer isn't a wall. The answer isn't a wall to continue to divide our people from what has been traditionally their opportunity to come in and outside of the United States and participate in cultural, participate in spiritual, participate in traditional activities of our people. So, you know, in answer to your question, you know, we have done—we believe that we have done what we have allowed you—for the United States government to allow to establish that.

We want a place at the table. If you're planning to build a wall along our international—75 miles of international border, we want to know about it. We want to know today and we want to know what opportunities we have to have some discussions with you about that type of activity.

Mr. HUNTER. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you. Mr. Reyes, any questions?

Mr. REYES. Thank you, Mr. Chairman. I am proud to call my friend—Duncan Hunter a friend and certainly a colleague. And where—I think I said on this 2,000-mile border with Mexico, about 10 percent is—in my opinion, based on 26 and a half years of working as a Border Patrol agent—is about what I think we would need. In the area that Chairman Hunter was talking about in San Diego, that was certainly a huge challenge because it was known as a soccer field and you had these huge waves of undocumented people coming through and we just did not have enough Border Patrol agents at that time.

Now, we're on our way to hiring 18,000 Border Patrol agents. I think when you talk about the investment—foolish investment, in my opinion—of $50 billion on a fence or a wall, it doesn't make sense. I'd rather invest that in Border Patrol agents. These guys are trained, they're dedicated, they're professional. And I just can't say enough about the difference between hiring agents and putting up these kinds of barriers.

If you go back and you look at any area—and you saw when Dr. Garcia put up the areas here at the university. You saw how that border zigzags here in this particular area. There is no way that you can, I think, engineer a fence or a wall—and correct me if I'm wrong, Chief—that would go through like a Chinese snake around the border area. To me it makes sense—this is a perfect example of where we would use technology, we would use personnel, we would go to the community and say, "This is what—this is the challenge that we're facing. This is what we need to do. This is how we intend to do it. Give us your feedback and let's come up with an agreed-upon strategy."

That's—I've had many conversations with Secretary Chertoff and raised with him about consulting the local communities. I mean, making local communities partners because that's—I think—I believe that's the right way to do it. When I put in "Hold the Line" in El Paso, I was told, "It will never work," you know. "None of that will be possible." Well, we proved people wrong.

I think if you give the Chief an opportunity, if you give him the resources, the personnel—don't hang a fence around his neck. And, of course, he's sitting here. I've been in his position before. He's sitting here toeing the party line. He's got to if he wants to remain chief of this sector.

Mr. VITIELLO. And I do.

Mr. REYES. But I can tell you, these guys are the professionals. I've been out of that line of work for 12 years now in Congress, and I would put my—I would stake my credibility, my reputation, on these guys right here. Because they will tell you what to do. They will get together with the other chiefs there and say, "Look, how do you think we need to do this thing? Let's work this as partners."

But, Chairman Hunter, we need to—instead of forcing 700 miles of fence, as you and I have discussed many times, let's give them the resources, let's hire the agents, let's get the technology in place. I know that the mayor—because I've had many conversations with Mayor Foster and the mayors of the coalition—there are ways that we can address it.

And the other part, by the way, is let's make Mexico a partner in this thing. We are wasting billions of dollars in the Middle East on a weekly basis. It seems to me like we ought to be able to invest a couple or $3 billion with a partner like Mexico to help manage this border. I think there is that solution.

Now, I just wanted to ask one question. Mayor, in the context of your issue in Eagle Pass, we have been told that there are multiple strategies with multiple types of fencing that—that could be considered for an area like Eagle Pass. Could you tell this committee the consultations that you've had, the options that you've been provided, the—perhaps the opinions that have been sought?

Mr. FOSTER. I want a fresh clock. Yes, sir. We've worked with DHS—I'm going to say '06 after the Secure Fence Act came out—but we've been working with them. Our municipal golf course goes up to the river between our two international bridges and continues to our golf course north of Bridge 1 in the city park. They want to eradicate 1.25 miles of carrizo cane, which is a wonderful idea. It would open up the golf course, the city park. It would open up the Cedar River. They wanted to overlay a structure to support Border Patrol vehicles on top of the existing cart path. Great idea. They wanted to continue that road along the banks of the river into our city park. Wonderful idea. They wanted to put 15 stadium light towers about a quarter of a mile off the river to illuminate our golf course and our city park at night. Wonderful idea. Then they wanted to put a decorative fence along that same alignment. Well, we, like most Texas border communities, have a resolution against any fences or any form of physical fiscal barrier within the city limits. And we tabled the item.

I was approached by DHS late December of '06 and they made me aware, "Washington has allowed us to take the fence facet off of that project."

"Let me get you on a council meeting." They were on our first council meeting of '07, January 9. They made the same presentation, but with the deletion of the fence facet. To me, it's a park improvement project. We're a five-member council. We approved that project on a 3-2 vote. After the council meeting I asked the two dissenting council members, "What is your issue with this project?"

"We do not trust them." That was on January 9th. Later that January, the Texas Border Coalition had the opportunity to meet with Secretary Chertoff in Washington, and I used that as an example of how border communities can work with DHS and everybody walk off with a win-win. He said, "My hands are tied by the Secure Fence Act, and in my comments, that's been changed."

As the President's signature hit the paper on December 26th of 2007, we're no longer bound by the Secure Fence Act. In the State of Texas where you have such a magnificent natural boundary as the Rio Grande River, we continue to advocate eradicating the carrizo cane, the salt cedar that facilitates line-of-sight to the Border Patrol agents to the physical banks of the river. Let's upgrade our technology, our sensors that are embedded in the banks of the river. And let's get more boots on the ground. Because these gentleman have a tireless job, but they are so very successful.

In our Texas border I think statistically speaking apprehensions are down somewhere in the neighborhood of 78 percent. Conversely, on the California border, where you do have physical barriers, apprehensions are up somewhere in the neighborhood of 10 percent. So I think we can—we have control of our Texas border. The statistics speak for themselves. But the analogy is we've got a kitchen sink with a broken pipe. Instead of sending in a plumber to fix the pipe, which is immigration reform, we keep sending in more money. And when we fix the sink, we're going to get the neighbors off, get them off the river, and we're going to put them on the bridge as a guest worker. Canada, as we speak, is flying guest workers from Monterrey and Mexico City to Canada. And we can do the same. But we lack immigration reform.

Mr. REYES. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you. Now let's turn to the gentleman from American Samoa for any questions you might have, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I've been listening very attentively at some of the questions and—not wanting to be repetitious of some of the questions that were raised by members of the panel. Mr. Schultz, I have read I think there are approximately 30 Federal laws that come under the jurisdiction of the Department of Interior that have been waived by Secretary Chertoff. And I just wanted to ask you, in your capacity as a National Borderland Coordinator, do you work directly under the Secretary of the Interior.

Mr. SCHULTZ. I work—Mr. Congressman, I work for the Deputy Secretary of the Interior.

Mr. FALEOMAVAEGA. With the Deputy Secretary of the Interior. So we have the Under Secretary of the Interior, the Deputy Under Secretary, then the Assistant Secretary of the Interior, then the Deputy Assistant Secretary of the Interior. So you are under the Deputy Under Secretary of the Interior?

Mr. SCHULTZ. I'm under Deputy Secretary of the Interior Lynn Scarlett. That's who I work for.

Mr. FALEOMAVAEGA. And in the process of screening and approving these 30 Federal laws that Chertoff decided to waive, what was your procedure in waiving these Federal laws? Was it extensive, or just DHS says, "We want to waive these laws whether you like it or not".

Mr. SCHULTZ. Congressman, over the past nine months or so we've been working with Homeland Security on a variety of issues, including statutes that we deal with, and also the relatively compressed time frame under which DHS is required to build a fence.

Mr. FALEOMAVAEGA. You mentioned—in your testimony you said you're under extremely compressed time. Are you saying that come December 2008, if the border fence does not appear between Brownsville and Matamoros, is all hell going to break loose.

Mr. SCHULTZ. Congressman, that's not my decision. What we're trying to do is respond to requests in a timely fashion that we have received from Homeland Security for access to our lands and for permits.

Mr. FALEOMAVAEGA. How many illegal aliens have been monitored in this borderline you have between Matamoros and Brownsville as an example.

Mr. SCHULTZ. Honestly, Congressman, I don't have the answer.

Mr. FALEOMAVAEGA. Maybe we should have checked it out.

Mr. VITIELLO. So far for the fiscal year, Congressman, the Rio Grande Valley Sector has apprehended just over 42,000 illegal aliens in this particular area, and that includes folks that are smuggling drugs and human smugglers as well.

Mr. FALEOMAVAEGA. Mr. Vitiello, you said that no land will be ceded to Mexico. And after listening to Dr. Garcia's testimony, the whole golf course is going to be ceded over there—am I correct—in the way the fence is being proposed now.

Mr. VITIELLO. As currently proposed, the fence will be north of what is the golf course now. But our activity with regard to enforcement—the enforcement footprint, if you will, that is exercised by the Border Patrol—will remain as it is today. We'll be patrolling the river by boat as we do now. Agents will be on the river's edge and using the levee roads and the roads that are constructed along with this fence to patrol the border much in the same manner that we are now.

Mr. FALEOMAVAEGA. So, the good citizens of Brownsville have to get permission to go over and play golf.

Mr. VITIELLO. That's not correct. We're going to be present on both sides of that fence.

Mr. FALEOMAVAEGA. And how many Border Patrol people are going to be involved in the security and the monitoring and all.

Mr. VITIELLO. Between Brownsville and Ft. Brown there is approximately—there's well over 600 agents that are on duty in this area, that are assigned to these regions.

Mr. FALEOMAVAEGA. Just between the borderline between Mexico and the U.S. now, speaking just to Congressman Ortiz's district, what's the total mileage that we're talking about in the borderline between Mexico and the U.S.

Mr. VITIELLO. I'm not sure about the jurisdiction of the district. My area, the Rio Grande Valley sector, is 316 miles U.S.-Mexico border, and it's like 380 miles up along the Texas Gulf Coast.

Mr. FALEOMAVAEGA. That 300-some miles, can you just wing it? About how many is involved in Congressman Ortiz's district?

Mr. VITIELLO. I'm going to be—it's going to be in the neighborhood of 60, 70.

Mr. FALEOMAVAEGA. And there's going to be fences in that whole 300-mile stretch.

Mr. VITIELLO. No, that's not correct. What we've got—I don't know how many segments, but if you add up the segments that we've requested, it's just under 70 miles.

Mr. FALEOMAVAEGA. So there are some exceptions.

Mr. VITIELLO. They're not exceptions. What we looked at were the activity levels and made an assessment where fencing would assist us in the work that we do. Typically in this area the fencing is dedicated to locations where there's an urban interface where both cities in Mexico and the U.S. are close to the border or are built up close to the border. That fencing in those areas assists us in being more efficient and more effective.

Mr. FALEOMAVAEGA. I just want to say to Chairman Norris it was my privilege a couple of years ago to visit your Nation. And hopefully a couple of my relatives playing for the Arizona Wildcats will come and help your football team. Chairman Norris, one thing you mentioned about being at the table. If you're not at the table, you're going to be on the menu. And please stay the course and continue your efforts in making sure that the people and your Nation's needs and interests are protected.

And, Mayor Foster, you know, as someone once said, unjust laws are no laws at all. And would you consider these waivers of these 37 laws just an effort on the part of the Federal government to do this?

Mr. FOSTER. Yes, sir, absolutely. We—our country is based on law. We are based on and we operate by law. I mean, that would be lawless if we had—again, for that reason, we're asking to have the Secretary's waiver authority repealed. I mean, where does it end?

Mr. FALEOMAVAEGA. Is this proposed fence construction, is it going to have any impact on economics between Matamoros and Brownsville as an example?

Mr. FOSTER. Yes. In the Valley, there's 69.9 miles of fencing scheduled that would be within 1 to 3 mile slips. It will have an economic impact. I mean, we have—one of the issues with the Texas border, of the 2,000 miles of southern border, Texas enjoys approximately 1,250 miles. We're the most populated border. We have the most relations with sister cities. That's not to say that we don't have issues on those borders.

Mr. FALEOMAVAEGA. I'm sorry, Mr. Foster. The Chairman is going to kill me if I continue with the questioning.

Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you, sir. Mr. Ortiz.

Mr. ORTIZ. Thank you so much. You know, we are talking about and I've talked to some people here about creating funnels. They would call it a certain way, but we have created a funnel. Because when we have a 2,000-mile border and only 700 miles of fences, they don't think they can go around those 700 miles and go to those 1,300 miles? And one of the things that we haven't touched on today is the Canadian border. What have we done—Chief, maybe you can help me. Are we doing anything on the Canadian border?

Mr. VITIELLO. I'm not aware of any specific projects that are ongoing with the Canadian border in regards to fencing as a separate infrastructure. I can tell you that in my previous assignment in Vermont on the Canadian border, the only particular areas of that border where we knew that infrastructure to block the paved roads and unpaved roads that crossed the border—we looked for tactical infrastructure to stop that traffic, that traffic that we knew was putting us all in jeopardy. So there may not be the same kind of tactical infrastructure contemplated for the northern border, but it will be part of a complete solution.

But let's not forget that the fence that we're requesting here is not an ultimate solution. We recognize that people can defeat physical infrastructure. We're asking for fencing. We're doing very well in improving the level of staff, Border Patrol agents and mission

support folks in every sector. And then we're looking on top of all, where there will be fence and where there won't be fence, a technological solution that cues the activity and increases our efficiency. So it's not just walls or fences. It's part of a complete solution that includes all three elements.

Mr. ORTIZ. Am I correct that the border, the length of the border in Canada is twice as long as the Mexico side?

Mr. VITIELLO. Yes.

Mr. ORTIZ. OK. Are you familiar—and I know you are—with the OTMs?

Mr. VITIELLO. Yes.

Mr. ORTIZ. Have you heard of that?

Mr. VITIELLO. It's the agency vernacular for folks that we arrest that are not from Mexico.

Mr. ORTIZ. And I can remember, you know, and I think I brought that to the forefront, that the—if you were coming across, you know, and if you were a Mexican, those were the only ones that were apprehended. Am I correct?

Mr. VITIELLO. Well, there was and there is a difference in sort of the options available for folks that are not from Mexico that are arrested here. Since Mexico is our neighbor, the people that are apprehended here from Mexico are treated in a separate way under the administrative process.

Mr. ORTIZ. But the thing is this. Now, I remember going to some of the checkpoints here. People would come in and say, "I'm not Mexican. Arrest me. Arrest me. I'm not Mexican." They had no identification whatsoever. And they were given a piece of paper with no picture, no fingerprints, no nothing, and they were told to report to an immigration law office within 45 days.

Mr. VITIELLO. Previously we did not have the detention space or funding available to hold folks that were arrested here that weren't from Mexico to allow them to have their due process right. Under the administrative proceeding, they were given a notice to appear. That policy has ended.

Mr. ORTIZ. But it lasted for about two or three years.

Mr. VITIELLO. I'm sorry.

Mr. ORTIZ. Or maybe longer than that. The OTMs, how long was it being done?

Mr. VITIELLO. It was for many years. But I can tell you that in 2006 in this sector and all the others in the south along the border, those folks are now detained and held in custody until their administrative process is completed. So that the policy of catch and release—called catch and release—has been ended. With the great support from Congress and the leadership shown by the Department of Homeland Security, we are now able to detain everyone who is amenable to deportation proceedings within the United States.

Mr. ORTIZ. And I know we have numbers. We have two more panels. But it looks to me like all of a sudden we saw the light. The fence—the fence, you know, that's what we need to do after we let thousands and thousands and thousands, maybe millions of people come in, not only from Mexico—most of the people from Mexico come here looking for jobs. People from all over the world came through because they were not Mexicans. And all of a sudden we've

seen the light and the answer is a fence, a 700-mile fence—and let me—and I want to be real quick now. Are we having any damages done to the fencing that is being built now?

Mr. VITIELLO. I'm aware that once infrastructure is in place on the border, if it's not protected and patrolled adequately, smugglers will try to defeat any physical infrastructure. That's part of our charge when we're trying to take operational control of the border, we're aware of when that activity occurs and do our best to stop it.

Mr. ORTIZ. Can you give us an estimate as to how much it costs to repair?

Mr. VITIELLO. I'm happy to go back to the agency and get this sort of nationwide wrap-up on these types of things but I don't have it today.

Mr. ORTIZ. And we appreciate the work that you do and I know that sometimes you're mandated by higher-ups and we understand that.

Mr. VITIELLO. We appreciate the support. And let me be clear that the 69.6 miles that we've requested for the Rio Grande Valley is something that I've been able to validate since my assignment began in July. And I would not be asking the taxpayers or the Congress or the department, the CBP, to support that if I didn't believe it was necessary.

Mr. ORTIZ. We can't afford to be spending another $20 million like we did on technology in Arizona when our people are having to pay $4 a gallon on gasoline. And that's, to me, you know, taxpayers' money. That's the taxpayers' money. I appreciate the work you've done. And, again, we have two other panels. I think—go ahead.

Mr. FOSTER. Maybe the Secretary could get Boeing to waive that fee.

Mr. GRIJALVA. Thank you, Mr. Vitiello. Anyway, let me—I have—in lieu of follow-up questions, I would encourage my colleagues at the dais here to forward written questions. I certainly had a couple of rounds, but I think that for the sake of time and for the sake of our other panelists that have patiently been waiting, I will submit those for the record. And with that, let me thank this panel very much for your testimony today. It's much appreciated and invite the next panel up. Thank you.

[Brief recess.]

Mr. GRIJALVA. Thank you very much. Pursuant to Clause 2 of House Rule 11, I ask that the witnesses please stand and raise their right hand to be sworn in.

[Witnesses sworn.]

Mr. GRIJALVA. Let the record indicate that the witnesses answered in the affirmative. You're now under oath and we'll begin to hear your testimony. And we'll begin with The Most Reverend Raymundo Peña, Bishop of Brownsville. And, Bishop, with all due respect, you don't know how uncomfortable I was swearing you in right now. That's another story for another time. Welcome, sir. Thank you, Father, for your time, and we look forward to your testimony.

STATEMENT OF THE MOST REV. RAYMUNDO J. PEÑA, BISHOP OF BROWNSVILLE

Bishop PEÑA. Thank you. Good afternoon, Mr. Chairman, Madam Chair, and members of the Subcommittee on Fisheries, Wildlife and Oceans. I thank you for this opportunity to speak to you regarding this very important issue. As I begin my testimony, let me offer a few observations that will allow for a substantive and truthful discussion on the proposed topic of this hearing. As a man dedicated to pastoral ministry, let me remind everyone here that the issues before this Subcommittee should not be used for partisan advantage. We have to guard against policy disputes that encourage or excuse ethnic hostility or discrimination. We must continue to seriously discuss legitimate concerns regarding the protection of our borders, curbing the flow of unlawful immigration, the potential displacement of native workers and the possibility of exploitation with guest worker programs.

These issues are not to be ignored, exaggerated, dismissed or used as political weapons. The Church calls for charity and justice at all times and especially in a public forum such as this.

The wall has been discussed very frequently and thoroughly in this part of Texas because our community is a border community. For many Americans the emphasis is on the word border, but for us who have lived in this area for generations, the reality is that community comes first, and our community has existed long before the border was ever drawn.

This wall, built on U.S. soil, will not only move the U.S. border inward from the Rio Grande River, but will also alienate people and businesses who live and work between the wall and the border, in effect creating a zone where U.S. citizens and businesses exist south of the border.

In addition to the existing human community, which has thrived in this land for hundreds of years, the Rio Grande Valley houses several wildlife refuges and parks that preserve God's creation. Therefore, let me humbly advise the Subcommittee that the word "expedite" should not be part of the dialogue. For a great many people living in the Rio Grande Valley, building a wall along the border would not mean protection from the outside world, but the building of a barrier between families, friends and businesses.

I am very concerned as well about the wall's proposed location and the possibility that it might be a barrier that may prevent us from fulfilling our pastoral mission in parts of this diocese. It would be wrong to discuss this in terms of expecting—of expediting construction before our community has had a chance to voice its opinion on the merits of why we oppose the wall.

We oppose the construction of the wall because one-dimensional solutions may be simple, but they are often illusions and can make things worse. No fence we can build will be long enough or high enough to wall out the human and economic forces that drive undocumented immigrants into our country. We oppose the wall because immigration policies that begin and end at our borders will not be successful. We oppose the wall because residents of the Valley and visitors from across the country stand to lose the opportunity to visit and enjoy the vibrant wildlife areas unique to our

Valley, places where all can discover and connect with God's creations and with one another.

I have, therefore, supported Valley Interfaith's petition against the border wall and have invited our parishioners to support it as well. To date over 10,000 registered voters have signed this petition. Instead of a wall, we need Congress to pass comprehensive immigration reform. Instead of a wall, we need national policies that help overcome the pervasive poverty and deprivation, violence and oppression that push people to leave their own homes. We need policies that promote family unity, debt reduction, economic development, foreign aid and fair global trade. These are essential elements that the Church recommends for effective comprehensive immigration reform.

Let me say again that rather than debating the impacts of a wall, what we need is a constructive discussion that neither diminishes our nation nor divides our communities, but instead achieves realistic, practical and principled steps toward solving the challenges that face our nation. I thank you for this opportunity. I thank you for your attention and I will welcome your questions.

[The prepared statement of Bishop Peña follows:]

Statement of The Most Reverend Raymundo J. Peña, Bishop of the Diocese of Brownsville

Good Morning Mr. Chairman and good morning to all the members of the Subcommittee on Fisheries, Wildlife and Oceans. I thank you for this opportunity to speak to you regarding this very important issue and I welcome you to our beautiful State of Texas and our home in the Rio Grande Valley. My name is Raymundo J. Peña and I am the Bishop of the Roman Catholic Diocese of Brownsville. Our diocese operates one hundred and seven parishes and missions for the approximately eight hundred thousand Catholics who live in the Valley and we also serve the greater population of nine hundred and forty thousand through a shrine and retreat center, twelve parochial schools, five centers for social services, three homes for the aged, and religious education programs at all parishes and missions.

As I begin my testimony, let me offer a few observations that will allow for a substantive and fruitful discussion on the proposed topic of this hearing, "Walls and Waivers: Expedited Construction of the Southern Border Wall and Collateral Impacts to Communities and the Environment."

This title sounds imposing and, indeed, the topic of building a wall between the United States and Mexico has generated a lot of controversy in our community. Passion and strong convictions can be good ingredients for an informative civic discourse, however, anger is no substitute for wisdom, attacks are no substitute for dialogue, and feeding fears will not help us find solutions to the challenges that lie before us.

As a man dedicated to pastoral ministry, let me remind everyone here that the issues before this Subcommittee should not be used for partisan advantage. We have to guard against policy disputes that encourage or excuse ethnic hostility or discrimination. We must continue to seriously discuss legitimate concerns regarding the protection of our borders, curbing the flow of unlawful immigration, the potential displacement of native workers, and the possibility of exploitation within guest worker programs. These issues are not to be ignored, exaggerated, dismissed, or used as political weapons. The Church calls for charity and justice at all times, and especially in a public forum such as this.

The "Wall" has been discussed very frequently and thoroughly in this part of Texas, because our community is a border community. For many Americans the emphasis is on the word "border" but for those families that have lived in this area for generations, the reality is that the community comes first and our community has existed long before the border was ever drawn. This Wall, built on U.S. Soil, will not only move the U.S. border inward from the Rio Grande River, but will also alienate people and businesses who live and work between the Wall and the border, in effect creating a zone where U.S. citizens and businesses exist "south of the border." This is problematic not only for the movement of people and goods between

the U.S. area north and south of the wall, but also because it creates a new mentality of who is and who is not a U.S. citizen.

In addition to the existing human community, which has thrived in this land for hundreds of years, the Rio Grande Valley houses several wildlife refuges and parks that preserve God's creation. Wildlife areas including the International Falcon Reservoir, Bentsen-Rio Grande Valley State Park, Santa Ana National Wildlife Refuge, Lower Rio Grande Valley National Wildlife Refuge, Nature Conservancy's Southmost Preserve and Texas Sabal Palm Sanctuary would be threatened by such a wall. These parks enhance family life in our community.

Therefore, let me humbly advise the Subcommittee that the word "expedite" should not be a part of this dialogue. For a great many people living in the Rio Grande Valley building a wall along the border would not mean protection from the outside world, but instead, the collateral impact of building a wall would mean building a barrier between families, friends, and businesses. The wall would mean physically living, on a daily basis, with a massive edifice that almost no one here wants. There is a great deal of confusion in our community about the location of the wall and which properties and communities would be directly impacted. I am very concerned about the wall's proposed location and the possibility that it might be a barrier that may prevent us from fulfilling our pastoral mission in parts of this diocese. It is not clear to me if our historic church properties and missions might be impacted. It would be wrong to discuss this in terms of expediting construction before our community has had a chance to voice its opinion on the merits of why we oppose the wall.

We oppose the construction of the wall because one-dimensional solutions may be simple, but they are often illusions and can make things worse. No fence we can build will be long enough or high enough to wall out the human and economic forces that drive undocumented immigrants into our country. We oppose the wall because immigration policies that begin and end at our borders will not be successful. We oppose the wall because it poses a serious threat of increased flooding in our region in the event of a hurricane, which on this coast is not a possibility, but a reality. We oppose this wall because residents of the Valley—and visitors from across the country—stand to lose the opportunity to visit the vibrant wildlife areas unique to our Valley, places where all can discover and connect with God's creation and with one another. I have, therefore, supported Valley Interfaith's petition against the Border Wall and have invited parishes in the diocese to support it, as well. To date over 10,000 registered voters have signed this petition.

Instead of a wall, we need Congress to pass comprehensive immigration reform. Instead of a wall, we need national policies that help overcome the pervasive poverty and deprivation, violence and oppression that push people to leave their own homes. We need policies that promote family unity, debt reduction, economic development, foreign aid and fair global trade. These are essential elements that the Church recommends for effective comprehensive immigration reform.

I should also add that a collateral consequence from Congress not passing any comprehensive immigration reform has been the flood of local and state proposals in Texas to deal with this federal issue. In our most recent session of the state legislature, more than sixty bills were introduced that attempted, among other things, to fund local law enforcement agencies to act as federal border agents, bar the undocumented from access to any public education or emergency healthcare, and deny citizenship to any child born in Texas to undocumented parents. Fortunately, nearly all of these punitive measures were defeated, last year. Our next legislative session is scheduled to begin in January and we are bracing for all these bills to be re-introduced.

Let me say again, that rather than debating the impacts of a wall, what we need is a different type of debate. We need a constructive discussion that neither diminishes our nation nor divides our communities, but instead achieves realistic, practical, and principled steps towards solving the challenges that face our nation.

Thank you again for your attention, I look forward to any questions that you might have for me at this time.

Mr. GRIJALVA. Thank you. Let me now call upon Ms. Betty Pérez, local private landowner active in this community. Looking forward to your testimony.

STATEMENT OF BETTY PÉREZ, LOCAL PRIVATE LANDOWNER

Ms. PÉREZ. Thank you. My name is Betty Pérez. I am with No Border Wall, a grassroots coalition of people coming from many different perspectives to oppose the wall. We thank you, Chairman Grijalva and Chairwoman Bordallo, for having this field hearing here in the Valley, and we thank you all for coming down to the border to hear from the community that will suffer most of the consequences of the border wall.

Members of the coalition, of the No Border Wall Coalition, may differ as to the solution of the immigration problems and the security problems the U.S. suffers, but we are all united in one aspect, we don't believe this wall is the answer. Our diverse group consists of people who really care about the Rio Grande Valley's environment and who don't want to see it scarred, social activists and clergy who believe that we are treating desperate Mexican people inhumanely, farmers and ranchers who mostly want to get water to their crops and their cattle and easily access their land, business professionals worried about the effects a wall will have on the economy of an already impoverished area, and historians and archaeologists who are afraid we'll lose some of our rich history. There are people in this group that think this wall is plain and blatant racism, those that are afraid the border is becoming more and more militarized, and those who are dismayed at the way the government is trampling upon our Constitutional rights.

We don't want a war zone in the Valley. We don't want to make enemies of our Mexican friends and neighbors, and we fear that the United States is trending toward isolating itself from the rest of the world when we wall ourselves off.

We know that Secretary Michael Chertoff and the DHS mislead the Nation by saying that residents along the border have had an opportunity to make their views heard numerous times. In fact, the handful of open house meetings the DHS held left people frustrated and angry that their questions were not answered and that their opinions could only be written or given to a stenographer. Now even that input will not be released because of Mr. Chertoff's waivers. Where did those comments go?

Other than this hat I wear called No Border Wall activist, I wear a few others in giving my testimony today. I'm a landowner, a native plant grower, and I manage my family's cattle ranch and dryland farm. Thankfully, it's not right on the border. I helped organize a nonprofit canoe touring enterprise in the Rio Grande, which caters to ecotourists, and I can proudly say I'm a paddler. I'm a Valley native of Mexican descent and have roots here that go back centuries. There are a lot of people like me in the Valley who can talk long and proudly of our family history. My family's ranch was bought in the '30s, but my roots in the Valley go back into Mexico and to the Texas land grants of the 1700s. There are Valley people along the river who still own land first granted by the king of Spain.

We know how hard it is to hold on to land through the years, through hard times, high taxes, drought and eminent domain, but the longer you do hold on to that land, the more the land becomes part of who you are.

As a rancher and farmer, I also understand how important access to water is. The Valley is still in its worst recorded drought in history. You brought rain. We thank you. It didn't stop the drought, however. We measure rainfall by the hundredths of an inch. The ranch got 1.01 inches last night. The wall will diminish essential access to water for farmers and ranchers along the river.

The hat that I wear that has led me to actively work against the wall is that of environmentalist. Because of the Valley's location on a major flyway for migratory birds in an area that includes coastal, riverine, semi-arid and semi-tropical habitats, we have one of the nation's richest collections of birds, butterflies and plants. We have rare species of cats that most of us only dream of seeing. We have a beautiful river, a getaway, a recreational relief from the heat, the dust and the busy metropolis that most of the Valley has become.

It is this river that brings birders and butterfliers and an estimated $125 million a year from ecotourism, this river that we will lose access to because of the wall.

And the Rio Grande is the basis of a fantastic dream for many of us, the completion of 275 miles of an international greenbelt running alongside it and across it from the Gulf of Mexico to Falcon Dam. This wildlife corridor extends down the Gulf Coast into Mexico's wetlands and would have the potential to expand to the nearby mountains of Mexico, even down into Central America.

In many places along the river the corridor of wild habitat extends north over the levee, so the proposed levee wall would cut off the habitat to the north from access to the river and the corridor. Congress has supported the wildlife corridor with funding for over 20 years. The wall and levee wall will devastate it. It is a crime to take down 100-year-old trees lining the river in Starr County necessary for rare birds like the red-billed pigeon and the gray hawk for a wall that most of us believe won't work.

It is wrong to wall off our Sabal Palm Grove, the nation's pristine Southmost Preserve and the refuge tract at the Lower Rio Grande Valley National Wildlife Refuge. It is wrong to cut off access to water to terrestrial animals north of the levee wall.

Today the coalition is submitting a letter to Congress asking for a moratorium on the construction of the wall. Quote, "A moratorium will allow time to assess the value of border walls in the overall national security strategy and ensure that we do not needlessly sacrifice the social, economic, and environmental health of our border region." It has been signed by environmental, religious, social justice and business groups from all over the country. Our list of signatories grows by the day. I have submitted it in my written testimony and I'd like to personally present it to each of you today.

We in No Border Wall have been concerned enough to do something about the wall, to call and write letters to you, our representatives, to organize rallies against it and get the word out to the rest of the Nation that something awful is happening down on the Rio Grande. We're still trying to do that, and thank you for giving us this opportunity.

[The prepared statement of Ms. Pérez follows:]

Statement of Betty Pérez, No Border Wall Coalition

My name is Betty Pérez. I am an active member of the coalition, No Border Wall. Thank you Chairman Grijalva and Chairwoman Bordallo for organizing this field hearing, and thank you all for actually coming down to the border to listen to what our community has to say about the border wall.

Secretary Michael Chertoff and the DHS are either out of touch or misleading the nation in saying that residents along the border have had this opportunity to be heard many times before. The handful of open house meeting they held, left people frustrated and angry that their questions were not answered and that their opinions could only be written or given to a stenographer. These meetings were not opportunities for public input or dialogue; they were rigid forums where DHS did not listen or respond to legitimate concerns. Now even that input we are told will not be gathered and released because of Mr. Chertoff's abuse of the REAL-ID Act waivers.

I'll venture to say that if you get out and actually talk to the 3 million people who live along the Texas border and who are being directly affected by this intrusive wall, you will find that overwhelmingly, they are against it. Those who are for it have loud, angry voices, and those are the ones being heard in Washington. Mostly folks down here will say that the wall is a big waste of money, there's serious doubt we can stop the Bush Administration from rolling over our wishes to stop it, and that someone's getting richer because of it.

I'll sum up who the No Border Wall group is with words written by one of the No Border Wall founders, Scott Nicol: "NO BORDER WALL is a grassroots coalition of groups and individuals united in our belief that a border wall will not stop illegal immigration or smuggling and will not make the United States any safer. A border wall tells the world that we are a fearful nation, not a strong and confident nation, and that we are unable to address difficult issues in an intelligent and meaningful way. It will do irreparable harm to our borderlands and our country as a whole."

The coalition consists of people coming from a lot of different perspectives and backgrounds. There are people who really care about the Rio Grande Valley's environment and who don't want to see it scarred; there are social activists and clergy who believe that we are treating desperate Mexican people inhumanely; there are farmers and ranchers who mostly want to get water to their crops and their cattle and easily access their land; there are business professionals worried about the affects a wall will have on the economy of an already impoverished area. There are people in this group that think this wall is plain and blatant racism; those that just love this area and don't want to see our unique culture ruined by a wall; those that are afraid the border is becoming more and more militarized; and those that are dismayed at the way the government is trampling upon our Constitutional rights.

I should tell you now why we use the word wall. When I hear the word fence I think of the barbed wire fences that separate properties and pastures. Even the cows can get through those if the grass is a lot greener on the other side. Or I think of the cedar fence around my mother's yard. It's easy to get past a fence, not so easy to get past a wall. And that's what has been proposed here by the Bush Administration—a wall that illegal immigrants and terrorists can get through by going over it or under it or around it—but that terrestrial wildlife will not be able to pass. You can't change what a bad thing inherently is by giving it a sweeter name. It's not a fence and it's not just a levee with its river side made of 2' thick and 18' high cement. It's a wall. Why is Secretary Chertoff building it? The appropriations bill passed last December removed the requirement that Mr. Chertoff build walls in our area. But he's doing it anyway.

When I think of a wall, I think of the one being built between Israel and Palestine, and of the ongoing violence on the border between those warring countries. Or I think of the wall between East and West Berlin, and how that monstrosity once separated the German people. Or I think of the Wall of China that isolated that country from the rest of the world for centuries. We don't want a war zone here in the Valley. We don't want to make enemies of our Mexican friends and neighbors, and we don't think the United States should isolate itself from the rest of the world.

Other than this new hat I wear called activist, I wear a few other hats in giving my testimony today—I'm a landowner and manage my family's cattle ranch and dry land farm, which thankfully is fourteen miles north of the border and not directly affected by the wall. I helped organize a canoe touring enterprise on the Rio Grande when I was director of the Friends of the Wildlife Corridor, and can proudly wear the hat of a paddler now. I'm a Valley native of Mexican descent and have roots in the Rio Grande Valley that go back centuries on both my parents' sides

As a rancher, farm owner and native plants grower, I strongly relate to those who are in danger of being cut off from their water source by a wall. I worry about our cattle and crops, because it has been 6 months since we've had a decent rain. Much

of the water that our cattle and the wildlife drink on our land is drawn up by windmills. Our farm land is at the mercy of rain; we don't have irrigation. The native plants we grow are watered from rain water that we collect off our roofs. To put it another way, water is not taken for granted in these parts. We measure rainfall by the hundredth of an inch after all. So if farmers and ranchers along the river have a difficult time getting to their water in 100-degree heat, you know why most of them are against the construction of this wall.

There are a lot of people like me in the Valley who can talk long and proudly about their deep roots here. Although the ranch my family owns now was bought in the 30's by my maternal grandfather, my roots in the Valley go back into Mexico and to the Texas land grants of the 1700's on both my maternal and paternal sides. There are Valley people who still own family land going back centuries. All of you have no doubt heard about Dr. Eloise Tamez' struggle to keep what family land she has in El Calaboz or of the citizens of Granjeno, who have already lost some of their land to the levee system. It's hard to hold onto land through hard times, high taxes, drought, and eminent domain. But the longer you do, the more the land becomes part of who you are. It is wrong for our government to seize it and tear it in two for a wall that won't work.

At heart though, and maybe partly because of these other hats I wear, I'm an environmentalist. I got involved in actively protesting the wall, because I am an environmentalist. We have something quite unique here in the Valley that I strongly feel needs to be protected and enhanced. Because of our location on the Central Flyway for migratory birds, in an area that includes coastal habitats, riparian habitats, semi-arid and semi-tropical habitats, we have an incredible biodiversity of birds, butterflies and plants. We have rare species of cats that most of us dream of seeing. We have a beautiful river, a getaway, a recreational relief from the heat, the dust and the busy metropolis that most of the Valley has become. The river should be promoted for its recreational and health benefits and not made inaccessible. This is an area that has few such recreational opportunities and a population that has a large incidence of diabetes, due to poor eating habits and little exercise.

And the river is the basis of a wonderful dream for many of us—the completion of 275 miles of greenbelt running along the Rio Grande, on the Mexican side too, from the Gulf of Mexico to Falcon Reservoir. This wildlife corridor would extend across the river, and down the wetlands of the Gulf Coast. It wouldn't stop at Falcon either, this corridor for wildlife has the potential to expand into the nearby mountains of Mexico, and even down into Central America, keeping endangered and non-endangered species alive and healthy. It wouldn't stop at our flood control levees, which were not intended to stop wildlife, or illegal immigrants and terrorists for that matter, but would reach into the tiny islands of brush on the north side of the levees that need to be connected to the river system.

The levee-wall being proposed by some local representatives is a bad idea. It will be just as bad for the environment as the original fence proposals. It is absolutely impenetrable to terrestrial animals—a true wall even though local representatives have characterized it by saying we will no longer have the wall in some areas due to get it. Furthermore, with Chertoff's latest waivers, specifically for the levee-wall, no environmental impact studies will have to be made for it. The idea is being rushed along with no proper studies of its safety. And it is bound to insure that the Mexican side of the river with levees two-feet high in some places is what ends up getting potential flood waters from a hurricane.

When I had the time to volunteer for the Friends of the Wildlife Corridor, I lobbied in DC two times to get Congress to appropriate money so that land along the river, mostly farmland, could be bought at good prices from willing sellers and turned into the corridor. We were relatively successful. Nearly $90 million dollars into the project, the Lower Rio Grande Valley National Wildlife Refuge is over half-completed. And now Congress has voted to bulldoze through hundreds of those hard-earned acres. When 95% of native brush is already gone in the Lower Rio Grande Valley, then each acre cleared is significant.

Ecotourists from all over the world generate more than $125 million dollars for local economies, which is very significant for counties with an average annual median household income of $15,000. Birders come here to see birds reaching their northern limits here in the Valley; that are found nowhere else in the U.S. They come to see "million dollar birds" like the brown jay, the green kingfisher, the great kiskadee and the green jay. They come to get rare glimpses of the red-billed pigeon and gray hawk, two birds that need the large trees that grow along the river to roost and nest in. In Starr County these trees, some of them hundreds of years old, will be bulldozed right next to the river.

How will these tourists access the best birding areas? Will refuge managers let staff or work and fire crews go between the walls and the river? Probably not; it

won't be safe. How will the 300 fires that start in the wildlife corridor every year be brought under control? Will Sabal Palm Grove and Southmost Preserve have to be closed because they are on the river side of the levees? Probably; it won't be safe.

No Border Wall is asking Congress for a moratorium on the border wall. I quote from our moratorium letter: "We are deeply troubled by the headlong rush to build walls along the United States' southern border without meaningful consideration of the walls' negative impacts on border communities and the environment, and without evidence that such walls will enhance national security or curtail illegal immigration and smuggling. The border wall is a monumental project that will severely impact the entire 1,954-mile southern border and the 11 million U.S. citizens who live along it. A moratorium will allow time to assess the value of border walls in the overall national security strategy, and ensure that we do not needlessly sacrifice the social, economic and environmental health of our border region." I am including our moratorium letter at the end of this written testimony.

We in No Border Wall have been concerned enough about the building of this wall to try and do something about it, to exercise our democratic rights, to call and write letters to our representatives, organize rallies against it, and try to get the word out to the rest of the nation that something awful is happening down on the Rio Grande. Thank you again for this opportunity to hear our voices.

Call for a Moratorium

Dear Representative,

We urge you to enact an immediate moratorium on border wall construction. We are deeply troubled by the headlong rush to build walls along the United States' southern border without meaningful consideration of the walls' negative impacts on border communities and the environment, and without evidence that such walls will enhance national security or curtail illegal immigration and smuggling. The border wall is a monumental project that will severely impact the entire 1,954-mile southern border and the 11 million U.S. citizens who live along it. A moratorium will allow time to assess the value of border walls in the overall national security strategy, and ensure that we do not needlessly sacrifice the social, economic and environmental health of our border region.

There are numerous problems with the border wall project and the way it has been implemented thus far:

The Department of Homeland Security has yet to develop a coherent border strategy: Rather than evaluating the relative effectiveness of a border wall versus other security measures such as more boots on the ground, DHS begins with the conclusion that border walls must be built. Even though construction is due to begin immediately, DHS still claims that they have not yet determined the border walls' final route. The Draft Environmental Impact Statements and Environmental Assessments written for the border wall lack key information that is required by federal law, including final maps and design specifications. In addition, alternatives that were rejected outright in the draft environmental studies, such as building the walls into the flood control levee system, are being hastily revived and pursued. Critical questions regarding the levee-walls' impacts on public safety, on private and public property, and on wildlife remain unanswered.

The border wall does not appear to be based on operational needs: According to the Border Patrol's own statistics, illegal crossing of the southern border decreased significantly between 2006 and 2007, including a 34% decrease in the Rio Grande Valley Sector and a 46% decrease in the Del Rio Sector. Both Texas sectors are slated to get walls despite this reduction and in spite of intense local opposition. By contrast, the heavily fortified San Diego Sector, where a triple-layer wall divides the border, saw a 7% increase in illegal crossing, suggesting that walls are not a meaningful deterrent for undocumented crossers. Indeed, a June 2007 Congressional Research Service report concluded that the walls in San Diego had "no discernible impact" on the number of people entering the U.S. illegally. The Border Patrol has also stated repeatedly that a wall only slows crossers down by a few minutes, rather than stopping them.

According to Secretary Chertoff, there is no imminent threat along the southern border: While DHS has frequently referred to the threat of "terrorists and terrorist weapons" crossing the southern border in order to justify the breakneck speed of border wall construction, Secretary Chertoff has admitted that no potential terrorists have ever been apprehended on the southern border. In February he told the New York Daily News, "I don't see any imminent threat" of terrorists infiltrating from Mexico. Yet DHS has fast-tracked the border wall project and expects to complete 370 miles by December of this year. In the absence of an imminent threat this deadline appears to be an arbitrary and politically-motivated date timed to coincide with the end of the Bush Administration's period in office.

Border residents are not protected by the rule of law: Section 102 of the Real ID Act of 2005 gives Secretary Chertoff the power to waive all laws in order to build border walls. Such power concentrated in the hands of a single unelected official undermines democratic processes and places border residents under an undue burden, denying them the same legal protections guaranteed to all other United States citizens. Secretary Chertoff has issued 5 Real ID Act waivers to date, the most recent one setting aside 36 federal laws along the entire southern border. Secretary Chertoff can, and has, used waivers as trump cards in the face of legal challenges, waiving the very laws that were the basis of successful lawsuits. This has had a chilling effect on those individuals and entities that have legitimate cases against DHS and has permitted the agency to disregard public safety, environmental protection, and humanitarian concerns. The only conceivable reason for DHS to waive laws is because they know that their actions will break them.

The wall could have permanent adverse impacts on border communities: When the border wall project is complete, walls will slice through municipal and private property, federally protected natural areas, state parks, and even a university campus. Homes will be bulldozed, and farmers and ranchers may be unable to access portions of their property. Along the Rio Grande, access to the river for municipal, agricultural, and recreational uses will be disrupted. In the hurricane-prone Lower Rio Grande Valley of South Texas, the border wall is planned to be constructed on or near the flood control levees that parallel the river. A similar levee-wall is also planned for Presidio, Texas near Big Bend National Park. No studies have yet been published that describe what impact the wall would have on flooding or on the integrity of these levee systems, and DHS has announced that in order to speed construction no further studies will be done.

The negative impacts of the border wall will fall disproportionately on poor and minority citizens: Although there are many vibrant local economies along the border, approximately one-quarter of the population in the counties along the border live at or below the poverty line. This is more than double the national poverty rate. In addition, most of the counties in the border region have majority-minority populations. Given these demographics, the potential social, economic, and environmental damage caused by border walls could be magnified and will certainly affect poor and minority communities disproportionately. Nevertheless, DHS has failed to adequately examine environmental justice issues.

Existing walls have created a humanitarian crisis in the Southwestern desert: DHS has continued to operate under the false assumption that the harsh conditions of the desert are a deterrent for people seeking entry into the U.S. The reality is that as DHS builds walls in populated areas, desperation drives more people into remote desert areas where hundreds die from dehydration and exposure. The General Accounting Office found that as walls went up between 1995 and 2005, the number of people who died attempting to enter the U.S. doubled.

Border walls threaten protected natural lands and already endangered species: Nearly one-third of the 1,954 mile U.S.-Mexico border lies within public and tribal lands, including hundreds of miles within the National Park system. Spectacular wildlife, including both terrestrial species and resident and migratory birds, rely upon protected public lands along the border. Many endangered species including the jaguar, ocelot and the jaguarundi are dependent on border habitats for survival. Border walls will fragment habitat and isolate species currently at risk, undermining decades of conservation efforts. Walls between Mexico and Arizona will end the hope that the jaguar, which has only recently returned to the U.S., will reestablish itself.

Constructing border walls damages our relationship with Mexico: Mexico is our neighbor and our largest trading partner, but Mexicans, from the president on down, see the border wall as an unprovoked insult. Building walls on the Mexican border, while leaving the Canadian border wide open, is interpreted by many as racist. In addition, the wall may also be in violation of a number of treaties with Mexico, including a 1970 treaty which stipulates that neither the U.S. nor Mexico can erect any structure that would result in a shift in the Rio Grande and therefore change the international boundary between the two countries.

It is irresponsible to erect more walls without a complete understanding of what the long-term consequences will be. A moratorium will allow time for a non-partisan organization such as the General Accounting Office to review both the impacts of the walls that have already been built and the foreseeable impacts of proposed walls. The information gleaned from such a careful examination will allow our nation to better evaluate whether building walls is in fact the best way to address the complex issues of immigration and national security. DHS's blind rush to break ground and build fences, without regard for impacts or likelihood of success makes a Congressional moratorium on border wall construction imperative.

Mr. GRIJALVA. I would now like to call on our next witness, Ms. Rosemary Jenks, Director of Government Relations, NumbersUSA. Welcome. We look forward to your testimony.

STATEMENT OF ROSEMARY JENKS, DIRECTOR, GOVERNMENT RELATIONS, NUMBERSUSA

Ms. JENKS. Thank you very much. Good morning. Chairwoman Bordallo, Chairman Grijalva, Ranking Member Tancredo, Congressman Hunter, members of the various Subcommittees and Committees, thanks for the opportunity to come here today and discuss the environmental impact of illegal immigration and the border fence.

My organization, NumbersUSA, represents more than 600,000 Americans and legal residents from every congressional district in America. They have joined NumbersUSA because they agree on one thing, we need to set immigration laws in our national interest and they need to be fairly and effectively enforced.

As this map shows, much of the border land in Arizona is administered by the Federal government. I have traveled extensively through this area and spoken with refuge managers, park service, forest service and field rangers and members of the Tohono O'odham Nation. Most of the slides in my presentation are from photos I took during those travels in Arizona.

The Cabeza Prieta National Wildlife Refuge and Wilderness is one of the most beautiful and one of the most embattled lands in our country. This map of Cabeza Prieta from 1998 shows the historical condition of the refuge. There is one major road, Camino del Diablo, running through it and then a handful of administrative roads. Over the next five years, this is the impact of illegal immigration on the refuge. There, the dark blue is abandoned cars, the turquoise is abandoned bicycles, the red is new roads, illegal roads and trails created through this pristine wilderness. The green is where fences have been cut and cattle have been allowed onto the refuge. There is a yellow line along the border on this very southern tip where the entire fence was stolen. And, of course, it was a three-strand barbed wire fence. It was not the kind of fence we're talking about today.

Essentially over a period of only five years, illegal immigration has turned a unique and pristine refuge into a trash-strewn war zone. Deaths are reported there every year. During the summer there are weekly search and rescue operations that the refuge has to pay for. Their Fish and Wildlife Service law enforcement has to go out and find and save lives, mostly due to exposure.

These are examples of some of the vehicles that are abandoned by—usually by smugglers in the refuge, have to be towed out, often are full of drugs. And this is just a sampling of the weapons, ammunition, night-vision equipment, communications equipment that is confiscated from smugglers on the refuge on a regular basis now.

Between 1999 and 2006 the typical group of illegal aliens moving across the refuge grew from small groups of five to 10 to large groups of 50 or more. The roads they have carved through the land are essentially permanent. Because of the soil composition, the larger ones like this will still be visible 200 years from now even if you manage to stop new illegal immigration flows along them.

And the thousands of tons of trash will continue to threaten wildlife and water sources for generations.

There is good news on the refuge. The lesser long-nosed bat, which was listed as endangered in 1988, is found only in Arizona, New Mexico and Mexico. There are only four known maternity roosts in the United States where these bats reproduce. One is an old mine shaft on the Cabeza Prieta Wildlife Refuge. The bats abandoned the maternity roost in 2002 and 2003 after drug smugglers began to use the cave to hole up during the day. Luckily, a common-sense solution has sent the smugglers packing. A fence was all it look. The bats are back.

Organ Pipe Cactus National Monument is also on the front lines of the battle against illegal immigration. This is the Organ Pipe for which the monument is named. Saguaro cactus, which can live for hundreds of years, are being cut down by illegal aliens desperate for water and hoping to find it stored inside these plants. Since the water is stored in the plant tissues, they soon realize there is no available source of water, but the damage is already done.

Just as in Cabeza Prieta, trails are being carved across the land at Organ Pipe. Judging by this trail, the posted sign acts more as a marker than a warning. The southern portion of Organ Pipe is closed to the public because it is too dangerous for either visitors or park employees due to smuggling activity. And, again, trash is everywhere.

This memorial stands in front of the Kris Eggle Visitors Center at Organ Pipe. On August 9th, 2002, Kris, a park ranger, was gunned down in cold blood by a drug smuggler who drove into the park from Mexico while being pursued by Mexican authorities. Having abandoned his vehicle, he ambushed Kris after Kris responded to calls for assistance from the Border Patrol. Kris was 28 years old.

This is Kris's dad, Bob Eggle, at the memorial on the spot where Kris was murdered. Bob sacrificed his eye for his country while serving in the Army in Vietnam. In 2002 he sacrificed his only son in another war. Had the vehicle barrier now in place along the border between Organ Pipe and Mexico been in place in 2002, Kris would be alive today.

East of Organ Pipe is the Tohono O'odham Nation. There, too, illegal immigration is scarring the land with footpaths, evidence of smugglers transporting drugs on horseback, and trash. The Sonoran Desert National Monument is north of the Tohono O'odham Nation and is administered by the Bureau of Land Management. Extending well over 100 miles north of the border, it too is littered with evidence of illegal immigration.

But perhaps the most frightening thing impacting illegal immigration on our public lands is the presence of what the military calls LPOPs, or listening posts/observation posts, essentially machine gun nests on U.S. soil. Mexican cartels send aliens illegally into the U.S. to take up positions on hilltops overlooking smuggling transportation routes. They generally take up positions in pairs. Most are police- or military-trained and they're armed, often with AK-47s. Their job is to watch the Border Patrol and other law enforcement and guide smuggling vehicles around them. These LPOPs are located on BLM land about 70 miles north of the border

between Tucson and Phoenix, and these are the views they see from the top of the hillside as they're watching for U.S. law enforcement.

Mr. GRIJALVA. Ms. Jenks, I extended the courtesy as much as I did for Ms. Pérez, but——

Ms. JENKS. I appreciate that. I will wrap it up right now. The point of this is that every single law enforcement from all of our public agencies and Federal agencies walk out of their home every day, go to work, and know they could be in a gun sight of one of these spotters. And that is not something we should ask of them.

The invitation to this hearing asked what message the border fence would send. My answer is exactly the right message, that you come legally or you don't come at all because cheap labor and cheap votes come at an unacceptably high price.

[The prepared statement of Ms. Jenks follows:]

Statement of Rosemary Jenks, Director of Government Relations, NumbersUSA

Chairwoman Bordallo, Chairman Grijalva, and Members of the Subcommittees, thank you for the opportunity to appear before you today to discuss the environmental impacts of the southern border fence. My organization, NumbersUSA, is a nonprofit, nonpartisan immigration-reduction organization representing more than 600,000 Americans and legal residents from every congressional district across this country. They come from every socio-economic background and they span the political spectrum from liberal to conservative. They have joined NumbersUSA because there is one thing on which they all agree: U.S. immigration law should be set in the national interest and it should be enforced effectively and humanely throughout the nation.

Our mission reflects the conclusions of the bipartisan U.S. Commission chaired by the late Barbara Jordan, a dedicated civil rights leader and Democratic Representative from the state of Texas, in which we have gathered for this hearing. After studying every aspect of our immigration system, she concluded in 1994 that:

> *The credibility of immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave.* [1]

This hearing focuses on the middle part of that equation—keeping out those who should not get in. As demonstrated by the estimated 12 to 20 million illegal aliens currently residing in the United States, and the estimated million or so new illegal aliens who enter the country each year, our efforts to date at keeping out those who should not get in have failed dramatically.

Instead of the credible immigration policy Barbara Jordan recommended, we have a policy that says, in effect, "if you can successfully evade the Border Patrol or overstay a lawful visa, we will give you a job and let you stay." The result, not surprisingly, has been continued mass illegal immigration.

The chart in Appendix A shows the average net annual growth of the illegally resident population in the United States. Net annual illegal immigration has more than quadrupled since the 1980s, when Congress passed the "one-time only" [2] amnesty in the Immigration Reform and Control Act of 1986.

As the numbers began to skyrocket in the early 1990s, most illegal entries were occurring in urban areas along the U.S.-Mexico border, particularly in the San Diego area. Increasing incidents of aliens being hit by cars as they ran across major highways, high-speed vehicular chases resulting in crashes, and foot chases through residential areas, and even into apartment complexes made it clear to all that illegal immigration in urban corridors presented an unacceptable threat to human lives—the lives of the aliens, of the Border Patrol agents whose job was to chase them down, and of the American citizens and legal residents who happened to get in the way. Moreover, it was clear to law enforcement that illegal entry in urban corridors improved the aliens' chances of disappearing into the community before they could

[1] U.S. Commission on Immigration Reform, U.S. Immigration Policy: Restoring Credibility. 1994. p. 3.

[2] In fact, Congress has passed six additional amnesties since 1986. See http://www.numbersusa.com/interests/amnesty.html

be apprehended, and resulted in increases in criminal activity, including vandalism, theft, and the violent crimes associated with human and narcotics trafficking.

Beginning in 1993 with the incredibly successful Operation Hold the Line, created and implemented by Congressman Silvestre Reyes, when he was Border Patrol Chief in the El Paso Sector, the Border Patrol began focusing on closing off the urban corridors and thus reducing the associated risks. It was hoped that forcing illegal aliens and smugglers into more remote areas would deter some of them from even attempting illegal entry, but it was also believed that it would be easier to catch those who did make the crossing because the Border Patrol would have more time to apprehend them before they could make it to an urban area and disappear.

This effort to close off illegal immigration in urban corridors was undertaken with the explicit support of Congress. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)—the original version of which was designed specifically to implement the immigration policy recommended by the Jordan Commission. Thanks largely to the efforts of Congressman Duncan Hunter, this law included a provision that requires the administration to "take such actions as may be necessary to install additional physical barriers and roads in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry [most of which were in urban corridors at that time] into the United States," including the construction of 14 miles of triple fencing along the U.S.-Mexico border south of San Diego. To accomplish this, it authorized the administration to waive the requirements of the Endangered Species Act and the National Environmental Policy Act.[3]

Apprehension statistics show that the effort to control illegal immigration through urban corridors has been relatively successful. As the table in Appendix B indicates, apprehensions of illegal aliens in the San Diego, El Centro, and Laredo sectors, for example, dropped by 50 percent or more between 1997 and 2006. At the same time, however, apprehensions in the Yuma sector quadrupled and apprehensions in the Tucson sector rose by almost 50 percent.

The result is hundreds of thousands of illegal aliens walking, bicycling, and driving across some of the most fragile, protected ecosystems in the United States. The impact has been particularly devastating in southern Arizona, where a significant share of the land is administered by the Federal Government. The most heavily impacted lands include the Cabeza Prieta National Wildlife Refuge and Wilderness, Organ Pipe Cactus National Monument, Buenos Aires National Wildlife Refuge and the Coronado National Memorial.

Among a long list of the devastating environmental impacts of illegal immigration through these protected areas are the following:

- Trash
  - The Bureau of Land Management (BLM) estimates that illegal aliens dumped more than 25 million pounds of trash in the Arizona desert between 1999 and 2005—that is almost 2,100 tons of trash each year.
  - The accumulation of disintegrating toilet paper, human feces, and rotting food has become a health and safety issue for residents of and visitors to some of these areas, and is threatening water supplies in some areas.
  - Birds and mammals, some endangered, die when they eat or become entangled in the trash.
- Illegal Roads and Abandoned Vehicles
  - By early 2004, the Chief Ranger at Organ Pipe estimated that illegal aliens and smugglers had created 300 miles of illegal roads and "thousands of miles of illegal trails."
  - More than 30 abandoned vehicles are removed from Organ Pipe alone each year.
  - Since its creation in 2000, more than 50 illegal roads have been created in the Ironwood Forest National Monument, and more than 600 vehicles are abandoned there each year.

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[3] Nearly a decade after enactment of IIRIRA, the administration still had not completed the original 14 miles of fencing near San Diego because of challenges by the California Coastal Commission that the proposed fencing violated state environmental laws. In 2005, Congress responded by including a provision in the REAL ID Act authorizing the Secretary of Homeland Security to waive "all legal requirements" that the Secretary determines are necessary to ensure the construction of the San Diego fence and other necessary border barriers. The Secretary is required to notify the public of the decision to waive legal requirements by publishing it in the Federal Register, and any such decision may be challenged in Federal court on constitutional grounds. So, while the breadth of this waiver authority is unprecedented, Congress appropriately ensured that it could not be used without public notice, and that it could not be used in a way that violates the Constitution.

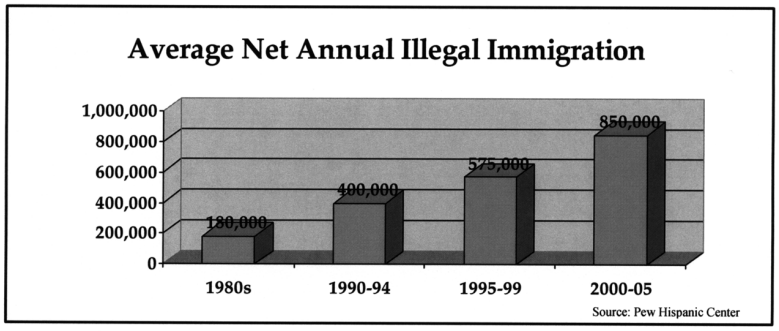
- ○ There are an estimated 20-25 abandoned vehicles in the Cabeza Prieta NWR at any given time.
- ○ An estimated 180 miles of illegal roads were created in Cabeza Prieta between 2002 and 2006.

- Fires
  - ○ In 2002 in southern Arizona, illegal aliens were suspected of having caused at least eight major wildfires that burned 68,413 acres.
  - ○ In May of 2007, illegal aliens set at least five fires in the Coronado National Forest over a 10-day period in an effort to burn out Border Patrol agents conducting a law enforcement operation in the area.
- Declining Wildlife Populations
  - ○ According to the Fish and Wildlife Service, mass illegal immigration "is a likely contributing factor in the dramatic 79 percent decline in the U.S. Sonoran pronghorn population between 2000 and 2002.

These are just a few examples of the massive environmental destruction being caused by rampant illegal immigration in southern Arizona. Similar damage is being done to remote, fragile lands in California, New Mexico, and Texas.

There is only one acceptable solution to this environmental crisis: stop the illegal traffic at the border. That means we must build a combination of physical barriers and technological barriers that will effectively ensure that, in the words of the late Barbara Jordan, "people who should not get in are kept out."

APPENDIX A



APPENDIX B

Apprehensions of Deportable Aliens by Border Patrol Sector: 1997 – 2006

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
BORDER PATROL SECTOR										
Total	1,412,953	1,555,776	1,579,010	1,676,438	1,266,214	955,310	931,557	1,160,395	1,189,108	1,089,136
Southwest sectors	1,368,707	1,516,680	1,537,000	1,643,679	1,235,718	929,809	905,065	1,139,282	1,171,428	1,072,018
San Diego, CA	283,889	248,992	182,267	151,681	110,075	100,681	111,515	138,608	126,909	142,122
El Centro, CA	146,210	226,695	225,279	238,128	172,852	108,273	92,099	74,487	55,726	61,489
Yuma, AZ	30,177	76,195	93,388	108,747	78,385	42,654	56,638	98,060	138,438	118,537
Tucson, AZ	272,397	387,406	470,449	616,346	449,675	333,648	347,263	491,771	439,090	392,104
El Paso, TX	124,376	125,035	110,857	115,696	112,857	94,154	88,816	104,399	122,689	122,261
Marfa, TX	12,592	14,509	14,952	13,689	12,087	11,392	10,319	10,530	10,536	7,517
Del Rio, TX	113,280	131,058	156,853	157,178	104,875	66,985	50,145	53,794	68,510	42,634
Laredo, TX	141,893	103,433	114,004	108,973	87,068	82,095	70,521	74,706	75,342	74,843
Rio Grande Valley, TX	243,793	204,257	189,151	133,243	107,844	89,927	77,749	92,947	134,188	110,531
Other sectors	44,246	39,096	42,010	32,759	30,496	25,501	26,492	21,113	17,680	17,118
Blaine, WA	2,684	2,403	2,421	2,581	2,089	1,732	1,380	1,354	1,001	809
Buffalo, NY	2,065	1,640	1,666	1,570	1,434	1,102	564	671	400	1,517
Detroit, MI	1,500	1,768	1,838	2,067	2,106	1,511	2,345	1,912	1,792	1,282
Grand Forks, ND	1,978	905	656	562	921	1,369	1,223	1,225	754	517
Havre, MT	2,813	1,145	1,448	1,568	1,305	1,463	1,408	985	949	567
Houlton, ME	309	307	461	489	685	432	292	263	233	175
Livermore, CA[2]	10,607	11,633	11,198	6,205	5,211	4,371	3,565	1,850	117	-
Miami, FL	8,305	6,065	6,961	6,237	5,962	5,143	5,931	4,602	7,243	6,032
New Orleans, LA	9,094	8,008	10,777	6,478	5,033	4,665	5,151	2,889	1,358	3,054
Ramey, PR	896	1,244	1,405	1,731	1,952	835	1,688	1,813	1,619	1,436
Spokane, WA	2,331	2,176	1,308	1,324	1,335	1,142	992	847	279	185
Swanton, VT	1,664	1,802	1,871	1,967	2,463	1,736	1,955	2,701	1,935	1,544

Source: 2006 Yearbook of Immigration Statistics, DHS

Mr. GRIJALVA. Thank you very much. Let me now turn to Joan Neuhaus Schaan, Executive Director, Houston-Harris County Regional Homeland Security Advisory Council. Your testimony, please.

STATEMENT OF JOAN NEUHAUS SCHAAN, EXECUTIVE DIRECTOR, HOUSTON-HARRIS COUNTY REGIONAL HOMELAND SECURITY ADVISORY COUNCIL

Ms. SCHAAN. Thank you. Good afternoon. As the committee is well aware, security is a critical issue on the Texas-Mexican border, and increasingly in the metropolitan areas. First let me comment on the smuggling organizations themselves. Mexico is struggling to maintain civil authority against a potent adversary, and if it's not successful, the consequences could be dire. According to studies conducted in Mexico, alien smuggling profits are now approaching drug smuggling profits. And according to other studies, of the $16 billion in cash flow from the United States to Mexico, 10 billion cannot be accounted for by legal activity.

The increased profitability has resulted in more professional and ruthless smuggling organizations that now resemble drug smuggling organizations and/or include the drug smuggling organizations. As the more ruthless organizations take over increasing portions of the smuggling trade, anecdotal evidence indicates prices are rising and operations are increasingly sophisticated. Currently the flow of illegal immigrants into the United States is of such proportions that it overwhelms immigration, law enforcement and the criminal justice systems of the border states and their communities.

There have been estimates that there are 12 million illegal aliens in the United States, but given the fact that approximately 1.2 million are apprehended annually, usually coming in from the border, and assuming that 10 to 20 percent of those that come in are apprehended, that means we have 6 to 12 million coming in on an annual basis.

From the point of view of civil authorities, the criminal organizations outman and outgun law enforcement and they have extremely effective intelligence-gathering, brutal intimidation tactics, including beheadings, torture, burnings and threatened decapitation of children, and they also have very deep pockets for bribery.

Allow me to offer the opportunity to describe for you the cycle of violence as experienced in other countries and appears to be experienced at the beginning stages in Mexico. As civil authorities struggle to maintain control and are approaching the tipping point of control, law enforcement officials, elected officials and judges are assassinated, police stations are attacked, organized crime influences and then controls elected officials, and the press is silenced. Once past the tipping point, the organizations control a community, and those that do not acquiesce to their activities must leave or face the consequences.

In its most extreme form, civil authorities cede entire geographic regions and the lawless organizations develop enclaves of autonomy, as such has been the case in Colombia and Lebanon. In recognizing the severity of the situation, President Calderon is taking unprecedented measures to combat organized crime.

As Mexico is in the throes of this struggle, in no place is it more evident than in Nuevo Laredo. The criminal organizations control the streets after midnight. Judges, police chiefs and city councilmen have been assassinated. Executions and firefights occur on a regular basis and have forced the American Consulate to close for as much as weeks at a time. Seventy percent of the businesses in Nuevo Laredo have closed in the past few years, though some of the shop space has been reoccupied. Mexican businessmen are desperate to live on the Texas side of the border due to the multiple kidnappings a week. The local press has stopped reporting on crime after multiple attacks on their personnel and their offices, and the San Antonio Express-News and the Dallas Morning Herald have pulled their Laredo reporters due to concerns for their safety. In fact, Reporters Without Borders lists Mexico as the most dangerous country in the world, except for Iraq, for journalists.

In January military elements arrived in Nuevo Laredo to take charge of security in the area due to lost confidence in the public safety officials. And also in January the Texas Department of Public Safety issued a warning against crossing the Mexican border. And then on April 14th the State Department issued a travel alert for Mexico.

The struggles the Mexican authorities are facing are not dissimilar to what our counties and state are confronting as the phenomenon spills across the border. The menace of organized crime's violence and corruption must vigilantly be guarded against all levels of civil authorities as evidenced by multiple arrests in Texas in the last year or two. Our law enforcement agencies are outmanned and outgunned. As I said before, the criminal organizations are not only armed with advanced weaponry, including assault rifles, grenades and grenade launchers, but with rocket launchers capable of bringing down aircraft, machine guns and explosives, such as Tovex, which is a highly explosive hydrogel. There are even suspicions the cartels assisted a Mexican militant group in the bombing of the energy infrastructure.

The organized criminal activity involves Texas and Texans. And you may have noticed on her slides of the vehicles that were caught smuggling back in, most of them appeared to have United States license plates. Arrests in Mexico regularly involve U.S. persons and U.S. vehicles, and students are being approached as they cross from Juarez into El Paso.

The result of this has been very difficult for the ranch owners. They have difficulty leaving their homes unattended. When they return, often there is someone in the yard. Speaking with one ranch manager, he personally in a period of 12 months had over 300 illegal aliens in his front yard, called Border Patrol, and had to release many of them because Border Patrol was not able to come in time.

Mr. GRIJALVA. If I may, the courtesy has been extended as well. If you can wrap up.

Ms. SCHAAN. Well, the other issues have to do with——

Mr. GRIJALVA. The whole testimony will be part of the record.

Ms. SCHAAN. OK.

[The prepared statement of Ms. Schaan follows:]

Statement of Joan Neuhaus Schaan, Executive Director, Houston-Harris County Regional Homeland Security Advisory Council

Please allow me this opportunity to first introduce myself. My name is Joan Neuhaus Schaan. I am the as the Fellow for Homeland Security and Terrorism Programs at the Baker Institute for Public Policy at Rice University, and I am also the Executive Director of the Houston-Harris County Regional Homeland Security Advisory Council. The Advisory Council serves as an independent third party on homeland security matters and advises the Mayor of Houston, the County Judge, City Council and Commissioners Court.

Per the request of the staff of Joint Subcommittee staff, I am offering my comments with regards to Texas Border security. As the committee is well aware, security is a critical issue on the Texas-Mexican border, and increasing in the metropolitan areas.

On the border there are several levels of crime—the crime associated with drug and human smuggling organizations; general crime outside of the smuggling operations in the form of kidnapping, burglary and theft; and national security threats posed by elements that choose to exploit the unique characteristics of our border.

First, let me comment on the smuggling organizations. Mexico is struggling to maintain civil authority against a potent adversary, and if not successful, the consequences will be dire. According to studies conducted in Mexico, alien smuggling profits are now approaching drug smuggling profits. The increased profitability has resulted in more professional and ruthless smuggling organizations that now resemble drug smuggling organizations and/or include drug smuggling organizations. As the more ruthless organizations take over increasing portions of the smuggling trade, anecdotal evidence indicates the prices are rising and operations are increasingly sophisticated. Currently the flow of illegal immigrants is of such proportions that it overwhelms immigration, law enforcement and the criminal justice systems of border states and their communities. Houston alone has an estimated 400,000 to 450,000 illegal immigrants. This is only an estimate, as it is illegal to ask an individual about their immigration status in many instances.

From the point of view of civil authorities, the criminal organizations outman and out gun law enforcement, they have extremely effective intelligence gathering, brutal intimidation tactics (including beheadings, torture, burnings, and threatened decapitation of children) and deep pockets for bribery. Allow me the opportunity to describe to you a phenomenon in the cycle of violence as experienced in other countries. As civil authorities struggle to maintain control and are approaching the tipping point of control, law enforcement officials, elected officials, and judges are assassinated; police stations are attacked; organized crime influences and then controls elected officials; and the press is silenced. Once past the tipping point, the organizations control a community, and those that do not acquiesce to their activities must leave or face the consequences. In its most extreme form, civil authorities cede entire geographic regions, and the lawless organizations develop enclaves of autonomy, as has been the case in Colombia and Lebanon. In recognizing the severity of the situation in Mexico, President Calderon is taking unprecedented measures to combat organized crime.

Mexico is in the throws of this struggle as we speak, and in no place is it more evident than in Nuevo Laredo. The criminal organizations control the streets after midnight. Judges, police chiefs and city councilmen have been assassinated. Executions and firefights occur on a regular basis and have forced the American Consulate to close for as much as weeks at a time. Seventy percent of the businesses in Nuevo Laredo have closed in the last few years, though some of the shop space has been reoccupied. Mexican businessmen are desperate to live on the Texas side of the border, due to the multiple kidnappings a week. The local press has stopped reporting on crime after multiple attacks on their personnel and offices, and the San Antonio Express News and the Dallas Morning Herald have pulled their Laredo reporters due to concerns for their safety. In fact, Reporters Without Borders lists Mexico as the most dangerous country in the world—except for Iraq—for journalists. Last week, military elements arrived in Nuevo Laredo to take charge of security in the area, due to lost confidence in the Public Security officials in the area. In January, the Texas Department of Public Safety issued a warning against crossing the Mexican border, and on April 14th the State Department issued a Travel Alert for Mexico.

The struggles Mexican authorities are facing are not dissimilar to what our counties and state are confronting as the phenomenon spills across the border. The menace of organized crime's violence and corruption must be vigilantly guarded against at all levels of civil authority, as evidenced by multiple arrests in Texas the last year or two. Our law enforcement agencies are out manned and out gunned. The

criminal organizations are not only armed with advanced weaponry including assault rifles, grenades, and grenade launchers, but with rocket launchers capable of bringing down an airplane, machine guns, and explosives, such as Tovex, a highly explosive hydro gel. There are even suspicions the cartels assisted a Mexican militant group in the bombing of energy infrastructure. The organized criminal activity involves Texas and Texans. Arrests in Mexico regularly involve U.S. persons and U.S. vehicles. Students crossing from Juarez to El Paso are being targeted by drug traffickers. Recently, Mexican cartel members have order hits on persons in Texas.

As David V. Aguilar, chief of the U.S. Border Patrol has said "The American public must understand that this situation is no longer about illegal immigration or narcotics trafficking. It is about criminals and smuggling organizations fighting our agents with lethal force to take over a part of American territory so they can conduct criminal activity."

As the volume of smuggling has increased, so have the incidents in the next level of crime—kidnapping, burglary and theft. Most kidnappings go unreported, even those involving American citizens, for fear of retribution. But the crime is not just occurring along the border. The City of Houston has seen an increase in kidnapping in the immigrant community, whether legal or illegal. At least one kidnapping ring was disrupted last year that preyed upon Hispanic immigrants. This may not be an unusual phenomenon along the border, but it is relatively new to Houston. One can easily envision the organizations moving beyond the immigrant population to more lucrative targets.

Burglary and theft has increased with the general level of smuggling in border communities. I have spoken with many Texans from rural communities that are fearful in their own homes and who do not leave their home unattended, because when they return there are strangers in their home. This is particularly difficult on couples living alone, because they no longer can leave their home together or at the same time, even to go to the grocery store, for fear their home will be burglarized or occupied when they return. In one specific case, an older rancher, who operated a ranch on the Rio Grande that had been in his family for generations, made the difficult decision to sell the ranch, but he is having difficulty finding a buyer that is not associated with organized crime. The effects of this crime also are felt in Houston. For example thousands of trucks in Houston were stolen last year, many of which were later found to be involved in smuggling operations along the border. Reportedly F-250 and F-350 trucks are preferred, and at least 1250 Ford F-250 and F-350 trucks were stolen last year.

The threat resulting from criminal smuggling increasingly looms over Texas communities, but the violence is not the only threat to landowners. Landowners are threatened by the lawsuits brought by those involved, and they need protection from lawsuits when they assist law enforcement. Currently, landowners that allow law enforcement officers on to their property are being sued by those involved in the criminal activity that claim injuries occurred while on the property. This is particularly true when law enforcement was involved/present during a pursuit or arrest. While Customs and Border Patrol have statutory authority to enter property within predefined distances of the border, the same is not true for other law enforcement agencies and greater distances from the border. Lawsuits in the last few years have been brought against landowners in rural areas, for injuries to illegal immigrants and/or trespassers in the presence of law enforcement, because the landowner allowed the law enforcement agency on to the private property. Although the legal application has been in rural communities, the same legal theory, if left unchecked, could apply to law enforcement in metropolitan areas as well.

Landowners' livelihood also is threatened by damaged fences and lost livestock. As smuggling operations cross private property, the smugglers open and close gates and/or cut fences. These activities result in livestock being cut off from water or straying onto road ways. If the livestock is hit by a vehicle, the landowner becomes liable. In many remote areas, ranch workers cannot leave a vehicle running while opening a gate, because persons emerge from the brush and drive off in the vehicle. Long time ranchers now feel more imperiled when riding the fences alone.

Turning to the national security implications of the border environment, extremists are well aware of the United States' inability to control its borders, and use of the border is mentioned not infrequently in extremist chat rooms in the context of discussing tactics and logistics. Extremists have had their own smuggling operations in Mexico, and unaffiliated smuggling organizations have expressed a willingness to assist extremists willing to pay the price. A 2005 DEA report outlines an ongoing scheme in which multiple Middle Eastern drug-trafficking and terrorist cells operating in the U.S. fund terror networks overseas, aided by established Mexican cartels with highly sophisticated trafficking routes.

This is of particular concern to the metropolitan areas, such as Houston. From an illegal activity perspective, the nature of the city provides a great operating environment for criminals and terrorists—anonymity, ease of entry and exit, readily available resources, robust commercial trade. From a terrorist perspective, Houston provides not only a good operating environment, but it is considered one of the top five economic targets in the United States. Terrorist associates and sympathizers are known to have been active in the Houston area and are believed to have well established networks. Their organizations have shown the means, knowledge, capabilities, and motivation to carry out terrorist operations.

Securing the border is of paramount importance. Only when the border is secure can American citizens engage in a thoughtful debate on immigration policy for the future, rather than engaging in reactionary measures. The flow of illegal immigrants is of such proportions currently that all available tools should be employed. Once the border is secure and proactive policy has been determined, then appropriate changes can be made.

Thank you for allowing me the opportunity to submit this testimony to your committee.

Appendix
Travel Alert 14 April 2008

On 14 April 2008 the U.S. Department of State issued the following Travel Alert:

"This Travel Alert updates information for U.S. citizens on security situations in Mexico that may affect their activities while in that country. This supersedes the Travel Alert for Mexico dated 24 October 2007, and expires on 15 October 2008.

"Violence Along The U.S.-Mexico Border—Violent criminal activity fueled by a war between criminal organizations struggling for control of the lucrative narcotics trade continues along the U.S.-Mexico border. Attacks are aimed primarily at members of drug trafficking organizations, Mexican police forces, criminal justice officials, and journalists. However, foreign visitors and residents, including Americans, have been among the victims of homicides and kidnappings in the border region. In its effort to combat violence, the government of Mexico has deployed military troops in various parts of the country. U.S. citizens are urged to cooperate with official checkpoints when traveling on Mexican highways.

"Recent Mexican army and police force conflicts with heavily-armed narcotics cartels have escalated to levels equivalent to military small-unit combat and have included use of machine guns and fragmentation grenades. Confrontations have taken place in numerous towns and cities in northern Mexico, including Tijuana in the Mexican state of Baja California, and Chihuahua City and Ciudad Juarez in the state of Chihuahua. The situation in northern Mexico remains very fluid; the location and timing of future armed engagements there cannot be predicted.

"Armed robberies and carjackings, apparently unconnected to the narcotics-related violence, have increased in Tijuana and Ciudad Juarez. Dozens of U.S. citizens were kidnapped and/or murdered in Tijuana in 2007. Public shootouts have occurred during daylight hours near shopping areas.

"Criminals are armed with a wide array of sophisticated weapons. In some cases, assailants have worn full or partial police or military uniforms and have used vehicles that resemble police vehicles.

"U.S. citizens are urged to be especially alert to safety and security concerns when visiting the border region. While Mexican citizens overwhelmingly are the victims of these crimes, this uncertain security situation poses risks for U.S. citizens as well. Thousands of U.S. citizens cross the border safely each day, exercising common-sense precautions such as visiting only legitimate business and tourist areas of border towns during daylight hours. It is strongly recommended that travelers avoid areas where prostitution and drug dealing occur.

"Criminals have followed and harassed U.S. citizens traveling in their vehicles, particularly in border areas including Nuevo Laredo, Matamoros, and Tijuana. There is no evidence, however, that U.S. citizens are targeted because of their nationality.

"U.S. citizen victims of crime in Mexico are urged to contact the consular section of the nearest U.S. consulate or Embassy for advice and assistance.

"Crime and Violence in Mexico—U.S. citizens residing and traveling in Mexico should exercise caution when in unfamiliar areas and be aware of their surroundings at all times. Violence by criminal elements affects many parts of the country, urban and rural, including border areas. Though there is no evidence that U.S. citizens are specifically targeted, Mexican and foreign bystanders have been injured or killed in some violent attacks, demonstrating the heightened risk in public

places. In recent years, dozens of U.S. citizens have been kidnapped in Mexico and many cases remain unresolved. Moreover, new cases of disappearances and kidnap-for-ransom continue to be reported. No one can be considered immune from kidnapping on the basis of occupation, nationality, or other factors. U.S. citizens who believe they are being followed should notify Mexican officials as soon as possible. U.S. citizens should make every attempt to travel on main roads during daylight hours, particularly the toll ('cuota') roads, which are generally more secure. It is preferable for U.S. citizens to stay in well-known tourist destinations and tourist areas of the cities with more adequate security, and provide an itinerary to a friend or family member not traveling with them. U.S. citizens should avoid traveling alone as a means to better ensure their safety. Refrain from displaying expensive-looking jewelry, large amounts of money, or other valuable items.

"Demonstrations occur frequently throughout Mexico and usually are peaceful. However, even demonstrations intended to be peaceful can turn confrontational and escalate into violence unexpectedly. Some deaths occurred during violent demonstrations, including an American citizen who died in the 2006 violence in Oaxaca. During demonstrations or law enforcement operations, U.S. citizens are advised to remain in their homes or hotels, avoid large crowds, and avoid the downtown and surrounding areas. Since the timing and routes of scheduled marches and demonstrations are always subject to change, U.S. citizens should monitor local media sources for new developments and exercise extreme caution while within the vicinity of protests. The Mexican Constitution prohibits political activities by foreigners, and such actions may result in detention and/or deportation. Therefore, U.S. citizens are advised to avoid participating in demonstrations or other activities that might be deemed political by Mexican authorities."

Mr. GRIJALVA. Thank you. Let me just very quickly—Ms. Jenks, the questions I prepared for was really your testimony, but that's not the testimony you gave. So it's kind of——

Ms. JENKS. I wrote it. So I know what's in it.

Mr. GRIJALVA. No, no. I mean, the testimony you submitted is different from the testimony you gave.

Ms. JENKS. Yes.

Mr. GRIJALVA. So I went off the one you submitted.

Ms. JENKS. OK.

Mr. GRIJALVA. I couldn't—I couldn't read your mind. The—but—so I'll forward those in writing.

OK. Bishop, if I may—and I really appreciate the comments that you made about as difficult as it is with this issue to maintain the level of civility and dialogue in the discussion of the issue of the border wall and everything attendant to the issue of immigration. I think your comments are very important, to keep those in mind.

And one of the things I—you know, having grown up on the border in Arizona, let me—just to get your perspective on that, do you think people who don't live along the border with Mexico perhaps have some stereotype wrong impression about what these border communities are?

Bishop PEÑA. Well, I think—I guess you get a picture of what the border communities are. I've lived on the border all my life as well, and all my ministry has been on the border. I think that the sister cities that exist along the border in many respects are one city. People go back and forth, most of them legally, some illegally, to visit grandparents, to visit family. And I think barriers like that would be very much—very similar to doing what the Nation in Arizona is talking about, dividing families, dividing relationships, friendships and even businesses. And I think to create a new barrier besides the river that would now divide American citizens from one side or the other would be very disruptive to our families and to our businesses.

Mr. GRIJALVA. Thank you. Ms. Pérez, would you like to comment on the same question about the impression that people have on this region?

Ms. PÉREZ. Well, His Excellency answered it wonderfully. There really isn't a border for most of us that live down here. You know, we just—we go back and forth, you know, relatives. I was on somebody's land last week who, you know, pointed across the river, he had land on the river, and said, "That's my cousin over there that farms that."

So, you know, the ranch is only 14 miles from the river. You know, we see illegal visitors all—immigrants all the time, and we've never had a problem. We did have a bottle of wine stolen from the refrigerator once. But I don't think largely the Valley people are frightened of these people. I do understand the people that are right on the river. I know that they're having problems and that they're afraid, some of them are afraid.

Mr. GRIJALVA. I really don't have any questions. I did—I did go on the NumbersUSA website, Ms. Jenks, and maybe you can help me define this. There was a reference to the organization's support for preserving America for real Americans, and——

Ms. JENKS. I don't think that's——

Mr. GRIJALVA. And it listed on the website that that definition dealing with the issue of population and immigration had to do with pre-1970 stock Americans. Is that correct?

Ms. JENKS. No, we don't talk about real Americans meaning—every American citizen is a real American in our view. So I don't know quite what you're referring to. What we do talk about is that if U.S. immigration numbers had been brought to zero net in 1970, the U.S. population would be stabilized. And that is not a judgment call on whether we needed to stick with the stock population of 1970. That is simply a fact that the Census Bureau published.

Mr. GRIJALVA. That's the date that's picked?

Ms. JENKS. It's based on Census Bureau statistics. So, yeah, that's what that is all about. But, no, we don't judge—make any judgments on any Americans.

Mr. GRIJALVA. Without sounding totally facetious, which I'm about to do, I wonder why you didn't choose an earlier date, like, let's say, pre-1492 stock.

AUDIENCE MEMBER. That's when the real war in America started, 1492.

Mr. GRIJALVA. You need to chill a little bit.

Ms. JENKS. You know, this is a serious policy issue in our view.

Mr. GRIJALVA. I know. I know. Excuse my facetiousness, but it's like setting arbitrary lines of 1970 stock, 1980 stock, that is—you know, if the issue of population growth is the end-all be-all for the reasons that we have the environmental issues that we have in this country, I would suspect and I would hope that NumbersUSA would also be equally controlled—concerned with climate change, the effect that's having on our ecosystems across the world and across this nation. Population growth is part of it, the human—the human print on our environment, but part of that human print is the kind of damage that we've done with regard to climate change and regarding other issues. But I didn't find those on the website, and if I missed them, I'll go back and look again.

Ms. JENKS. You should go back and look again. Essentially, we are an immigration organization, which is why we're not focused entirely on all of the environmental issues. What we are focused on is the impact that immigration policy has on the United States of America.

Mr. GRIJALVA. Well, thank you.

Ms. JENKS. That is our job and that is our organization.

Mr. GRIJALVA. Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. It was mentioned that millions of dollars have been invested by the Federal, state and local governments and by nongovernmental organizations to protect the environment and conserve wildlife habitat. This is one portion of my Subcommittee that I deal with in the lower Rio Grande Valley. Now, it has been noted that the border wall will have serious negative impacts to the environment. This circumstance again raises the situation where the Federal government will end up having to go back in and spend more funds to correct or address the impacts caused by the wall construction. This just seems to be setting up another instance of the Federal government throwing good money after bad.

So to you, Ms. Jenks, do you have any idea what the cost estimates will be for the Federal government to mitigate the environmental impacts caused by the construction of the southern border security infrastructure?

Ms. JENKS. I don't know the dollar figure.

Ms. BORDALLO. Don't you agree with me that there will be an impact?

Ms. JENKS. There will be an—certainly there will be an impact for building the fence. It will be dramatically less than the impact of allowing hundreds of thousands of people and vehicles and smugglers and guns and, you know, all the attendant effects of illegal immigration through pristine areas. I mean, yes, we will be tearing up, you know, a certain width of land along the border, presumably along the border.

And, by the way, I'm not here to justify DHS's specific plans to, you know, move the fence to this side and cut off parts of the U.S. But, I mean, yes, we would tear up a portion of land to create the fence and have a road along it, but that is going to save hundreds and hundreds of acres from the damage that is being done every day.

Ms. BORDALLO. Well, this is why we're here, and I certainly would like to see what the cost will be to the taxpayers' pocketbook on both sides of the fence. And, you know, we were elated when the wall was torn down in Berlin, and here we are in our own country building walls. When you travel around in Washington, D.C., it's sad to see all the barricades in front of all of our public buildings. I hope that we're not going to continue to go in this direction.

The other question I have very quickly, Mr. Chairman, is His Excellence, the Bishop, noted that the Diocese of Brownsville opposes the border wall in part because it is a simplified, one-dimensional solution to a complex problem. Now, in fact, to illustrate this point, Bishop Peña noted that a collateral consequence of Congress not passing comprehensive immigration reform legislation is that it has

created a flood of state and local proposals in Texas to address inadequate border security by the Federal government.

So this raises a dilemma. In our rush to implement a solution, we may, in fact, be encouraging just the opposite. We may be creating circumstances on the state and local level where there is no coordinated response to illegal immigration. Is this outcome a real possibility? I'd like to ask Ms. Pérez.

Ms. PÉREZ. I'm sorry. Would you please run the last part of that.

Ms. BORDALLO. Yes. Well, in other words, in our race, in our rush to implement a solution, we may be encouraging just the opposite. We may be creating circumstances on the state and the local level where there is no coordinated response to illegal immigration. So do you feel that that outcome is a real possibility?

Ms. PÉREZ. I can't answer that. I'm not understanding the question, I don't think. I—what comes to mind is the levee wall fence and how expensive that thing is going to be.

Ms. BORDALLO. Well, maybe His Excellency can—you were the one that brought it up in the testimony.

Bishop PEÑA. Yes. I think there is real possibility. If you see what happened in the state legislature during the last session, they introduced legislation that would empower the local sheriff to act as a Border Patrol agent, they introduced legislation that would deny health care and education to any illegal immigrant, they introduced legislation that would deny citizenship to infants born to undocumented citizens or residents, and I think worse things could be proposed in the next legislature. And actually, then, who is responsible for the border? Is the government responsible or is the state responsible? And what we need to do is pass Federal legislation that will truly control our borders in a humane and Christian way.

Ms. BORDALLO. Thank you. Thank you very much, Your Excellency.

Mr. GRIJALVA. Mr. Tancredo, your questions.

Mr. TANCREDO. Thank you, Mr. Chairman.

Mr. GRIJALVA. If I may—I'm sorry, Mr. Tancredo. Let me acknowledge, Bishop, that you'll be submitting for the record 10,000 signatures of registered voters that have—here in the general Brownsville area and the region as a whole in opposition——

Audience member. Yes, we have 10,000 signatures.

Mr. GRIJALVA [continuing]. In opposition to the wall. Thank you very much. Sorry, Mr. Tancredo.

Mr. TANCREDO. Thank you, Mr. Chairman. Your Excellency and also Ms. Pérez—well, Ms. Pérez, in particular, you stated something that I think was quite interesting. You said that for you and many other people here the border really does not exist. That's an interesting observation, and I just wondered if, Your Excellency, if you believe in your heart of hearts that a border should exist, if there is such a thing as a meaningful border and should it exist between Mexico and the United States.

Bishop PEÑA. It exists and should exist.

Mr. TANCREDO. Should we have a border?

Bishop PEÑA. Well, let me answer. It exists and it should exist. However, we cannot prevent families that are divided by the border, because they happen to be citizens of different countries, to

have the freedom of access to one another, to have barriers that separate them.

Mr. TANCREDO. Then, Your Excellency, what is the purpose of the border if it is not to actually distinguish one country from another? And should the United States be able, as Mexico is and every other country, should we be able to determine who comes across those borders, for what purpose, and for how long? Do you think that's a legitimate policy goal of our government, essentially anybody?

Bishop PEÑA. Yes, certainly that should be the goal of any government. Every government has a right to protect its borders, but we oppose protecting our borders by means of a wall that would not realistically protect the border.

Mr. TANCREDO. The question about realistically protecting the border, may I suggest that there is a possibility that there is such strong opposition to some sort of barrier—I know that the use of the word wall is used mostly to denote something like the Berlin wall that's been referred to here before, certainly inaccurately, as that particular wall was built to keep people in; this particular structure, whether it is a fence, a double fence, or even a vehicle barrier, is meant to keep people out who should not be coming in without our permission.

It is a significant difference in connotation, by the way, of the use of the word wall and/or barrier. But I do suggest to you that that is, in fact, a logical and effective approach, as has been determined by its use in other places; that it is perhaps the most humane way to address this issue, as it does discourage—as it does discourage the kind of activity that we have seen up there that ends up with people being murdered, being raped, having the drugs that are brought into this country through those particular avenues. It does, in a way—and it's only a small way—I again state, this is no way a complete solution to the problem. Nobody suggests that. No one I have ever heard of thinks that a fence is the only solution. It's just part so that we can use other assets to actually plug the gaps that occur. That's all there is to it.

And in terms of the environmental degradation, the birds that won't fly, the butterflies that won't be able to traverse this area and the like, if you weigh that against the environmental degradation that is going on every single day on this border, I cannot understand, Ms. Pérez, that your concern wouldn't be as great for us in order to try and stop that degradation, which we have seen plenty of evidence of. And yet our attempts to do so are seen as anti-environmental.

On the other hand, I suggest to you that they are exactly that, that they are meant exactly to do—at least a portion of what the solution is for that is some sort of structure, some sort of physical barrier that would ease the flow across those areas that now does, indeed, do great damage to the environment. So I would hope that your organizations would at least take into consideration the two sides of this, how much is being done as opposed to what environmental damage may be done by the construction of the fence.

And, finally, the question I have for Ms. Neuhaus, that you did not get a chance to get to in your own testimony, is the impact—

the impact of illegal immigration is having on ranchers here in Texas, and if you would explain the legal problems they're facing.

Ms. SCHAAN. One of the significant legal issues that the ranchers are facing, particularly if they're removed from the border itself and its approximately 40 miles in part inland, is that Customs and Border Patrol have the authority to go onto private property in pursuit of smugglers, whatever it is that they're smuggling, in their law enforcement pursuit. Farther inland than that, they do not have that statutory authority.

One of the issues that they are dealing with up closer to Kingsville and Falfurrias is that if they authorize law enforcement to come onto their premises to pursue illegal activity and someone involved in the activity is harmed, the ranch owner, the landowner is being sued because they gave permission to the law enforcement agency to come onto their property.

Mr. TANCREDO. Thank you.

Ms. BORDALLO. Thank you. Thank you, gentlemen. Before I recognize our next member, the 10,000 signed petitions of U.S. citizens will be entered into the record by the committee. Hearing no objection, so ordered.

[The information has been retained in the Committee's official files.]

Ms. BORDALLO. And now I'd like to recognize the gentlelady from California, Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Madam Chair. I just—Bishop, thank you so very much for all your testimony and for getting sure that people have a voice through those petitions. Why is it that we call these undocumented aliens? They're human beings that come for a better life, and yet we continue to label them, not knowing—not realizing that they are part of our economy that, yes, they are here illegally. What we should be doing is going after the smugglers and rapists and the real lawbreakers.

Do you have a comment on that, Bishop?

Bishop PEÑA. I agree with you totally. What I said was undocumented residents.

Mrs. NAPOLITANO. I know that you did, yes, sir.

Bishop PEÑA. Now, why they choose illegal aliens, I couldn't answer, but I think it is important that we go against all the criminals, regardless of what the nature of their crime may be. And, by the same token, we need to respect all those who contribute to our economy, who help us harvest our crops, who clean our houses. An interesting thing when I was in El Paso and that operation went into effect, people were joking that now the Border Patrol agents were coming with their shirts not neatly pressed.

Mrs. NAPOLITANO. Thank you, Bishop, and I agree. Now, unfortunately, we seem to forget that they are not the undocumented in this country, because this country used to be Mexico. Now, that aside, I know the treaties, I know everything else. But we supposedly are treading on those treaties of the Native Americans and others. So we apparently honor only those treaties we like. One of the things that you mentioned in your testimony is the government trampling on the constitutional rights of the farmers of being able to have that ability to have redress if they are sued; am I correct, Ms. Neuhaus?

Ms. SCHAAN. Can you hear me?

Mrs. NAPOLITANO. Yes.

Ms. SCHAAN. The landowners, it has to do with the liability laws, but, yes, they—it's a fact that in the State of Texas, law enforcement is not allowed on private premises without authorization. So if the—if whoever—and this could apply to the cities as well. Say you have——

Mrs. NAPOLITANO. I'm sorry. I don't mean to—but wouldn't you think there would be some provision in having those waivers by Mr. Chertoff be able to have a waiver so that those ranchers then have the ability not to get sued?

Ms. SCHAAN. Oh, that's one of the things they would just really appreciate having.

Mrs. NAPOLITANO. Well, why would that not be part of sitting down with you, the farmers and others, to figure out a way how to protect our U.S. properties and our owners?

Ms. SCHAAN. I think that that is a wonderful idea and it's not just in the pursuit, but there are other issues that have to do with the aliens cutting the fences and livestock being on the roads and then the rancher being sued because the car hit the cow and—you know, it's a whole host of issues, and also very high——

Mrs. NAPOLITANO. Which was my point in asking the individual from the agency is did they sit with the folks and hammer out small details they cannot think because they don't live there? They don't see the impact. Am I correct?

Ms. SCHAAN. Yes, you are, but I'm not with the Department of Homeland Security.

Mrs. NAPOLITANO. No, I know that. But that's what I was saying, that they needed to have people at the table to discuss the unintended consequences that there may be.

Ms. SCHAAN. Yes, in my case the consequences that I'm talking about are what is happening to the degradation of the life in the rural communities where people are not allowed to leave their homes unattended. I know one grandmother, her grandson came walking back to the house from a pasture and there were 20 men dressed all in black with advanced weaponry under the trees in the front yard, and they're somewhere between 5 to 10 miles from the nearest highway. And that's the sort of life that they're having to endure.

Mrs. NAPOLITANO. But, to any of you, real quickly, because I'm out of time, don't you think that a good immigration reform would help?

Ms. SCHAAN. Clearly, and I think it needs to—if you're asking me from a policy perspective, I tend to focus on the security element. I think that everything needs to be tried in order for us to get control of the situation so that thoughtful immigration policy can be pursued. Because part of this security element is that there are so many people who are frightened that it's causing a lot of reactionary measures being taken rather than thoughtful proactive measures.

Mrs. NAPOLITANO. Thank you. But that was my point, is that we do need good immigration reform. We agree safety has to be paramount, of our country, of our land, and of our people. Thank you, Madam Chair.

Ms. BORDALLO. I thank the gentlelady from California, and I now recognize the gentleman from California, Mr. Hunter.

Mr. HUNTER. Thank you very much, Madam Chairwoman, and, again, thanks—I want to thank our host for holding this hearing. Bishop Peña, I would hope that you would talk with some of the bishops in the San Diego area, because you said very clearly we need to go against criminals. And let me tell you, when we built the double border fence in San Diego, by FBI statistics—because we had the border gangs and we had people moving narcotics on a large scale going back and forth, people coming over on a nightly basis hurting Americans and going back to the refuge at the end of the day, and we had a no man's land, which was the subject of novels, best-selling novels, because it was so desperate and so violent, with hundreds of rapes every night, with dozens of murders on the borders, with beatings, with great brutality. And when we built the double fence, the crime rate by FBI statistics in the County of San Diego, California dropped 56 percent. So if you truly believe that we need to do something that is going to keep people safe, that double border fence worked in San Diego.

And, let me tell you, you've got a bigger problem, simply the idea of people moving back and forth in a community. Because people that come through that border are moving massive tonnages of cocaine that's going into the veins of American children throughout this country, some 24 metric tons last year, some 386 metric tons of marijuana, most of it coming through Texas. So when we allow a situation to exist—and it continues to exist despite the added resources—where massive tonnages of cocaine and marijuana are smuggled in that end up in the veins of America's children, then we aren't serving this nation well.

And to the gentlelady who is the rancher and landowner, let me just say that I've read some of the accounts of other ranchers. I've read the accounts of John Wooders, who wrote a very poignant article entitled Good-bye to My Ranch. And he told about going out to his ranch that he and his wife loved and had for years and being faced with people with Members Only jackets and automatic weapons coming through their land stealing everything that wasn't nailed down and providing so much—such a threat to them that they felt compelled to sell the ranch and leave the area. That is a story that is not uncommon. So I know you said you had one bottle of wine stolen and that was the extent of your damage. I think that there is lots of other Texas ranchers who would have a very different concern.

And, last, to all of you, this has a humanitarian aspect. Over 400 people came through last year who died in the desert heat, mainly in Arizona. And, Bishop Peña, you know, my brother puts out water. In fact, he's the only guy that's done it year after year of all the people in the United States to save people in the desert. He puts out water stations to save their lives and he's saved hundreds of lives. Let me tell you, those coyotes take the people to the border, they tell them that the road is a mile to the north after they get their money. In some cases they're 20 miles to the north. And about 11:00 o'clock the next day, they're out there in 110-degree heat and they're dying of sun stroke and heat stroke.

Now, if you had 400 high school students drowning in a canal every year, what's the first thing that you would direct them to do as a leader in this community? You'd say "fence the canal." So if we have 400 people dying in the border region, mainly in this 110-, 115-degree heat that we see in the low desert, places like Arizona and some in Texas and some in California, the first thing you would do is fence that border. That would have a humanitarian aspect.

And, last, the confrontation between the Border Patrol and the smugglers, like Compian and Ramos, who were sent to prison for wounding a drug dealer who was bringing across 700 pounds of drugs, that was an area where a fence built on that road would have covered the border, and that van load of 700 pounds of marijuana would have never made it across, there never would have been the confrontation, there never would have been the shooting.

What we found in San Diego is the double fence separating the smugglers and the Border Patrol has a salutary effect on the safebeing and the well-being of the Border Patrol. They can't be rocked, they can't be shot through that fence, they can't be beaten, and it's a margin of separation which gives a lot of safety for the Border Patrol.

So I know that your 10,000 signatures are well-meaning, but I wish those people would look at those considerations, the vast amount of drugs coming through, the fact that we have 250,000 criminal aliens in Federal, state and local penitentiaries and jails. And those people didn't come across for a job or to see their relatives. They came across to hurt Americans. They did hurt Americans. And they cost this country about 3 billion a year to incarcerate. That $3 billion would pay for 1,000 miles of border fence.

And, last, my friend the mayor stated that this sector has had fewer apprehensions than the San Diego sector. The San Diego sector went from 202,000 apprehensions, the fenced sector, to 9,000. That's more than a 90 percent decrease. The Yuma sector, which was just fenced, went from an astounding 138,437 to 3,869. That's a 95 percent decrease. That's one third—those two sectors combined that are fenced is one third the number of illegal aliens who were apprehended this year in this sector. So the fence works.

And, you know, I've come to the conclusion after 28 years—we've all talked about other solutions. None of the other solutions have worked. The virtual fence hasn't worked. You can't get enough Border Patrolmen to hold hands across this border. The fence has worked, and in the end they will save lives on both sides of the border.

Mr. GRIJALVA. Thank you, Mr. Hunter, let me turn to the gentleman from American Samoa, Mr. Faleomavaega. Sir.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I do want to thank members of the panel for their testimony this afternoon. I just wanted to ask Bishop Peña a question that these 10,000 signatures, in contrast to the alleged claim by Mr. Schultz earlier in the hearing that there was consultation by the Department of Homeland Security, was this ever brought to your attention, the way the DHS had proceeded in supposedly holding a public hearing about this same issue? The fact that you've got 10,000 signatures in opposition to building a fence, I'm curious if you're aware or has

the Department of Homeland Security ever contacted your office, and did you participate in the hearings that they have taken here sometime back?

Bishop PEÑA. The Department of Homeland Security has never contacted our office for anything. We own land along the river. We have not been consulted, we have not been asked, we have not been told. We called to ask "Is our land covered?" and they said, "Well, if it is, we will let you know." We haven't been advised anything. So, no, there is no communication. Any communication that has taken place has been on our side and we have not received answers.

Mr. FALEOMAVAEGA. So to this day the community here in Brownsville has never heard since at the time what was the sentiment and what was the consensus among the community people at the time that DHS conducted that so-called hearing.

Bishop PEÑA. No, we have heard nothing.

Mr. FALEOMAVAEGA. OK. Ms. Jenks, I've listened to your testimony very closely and it seems—and the point is well-taken—you're talking about security, security, security, especially to the many families and people living along the border. And I suspect there is a lack of effort on the part of the Federal government, other than lately they're beginning to do something about it. I remember meeting with families living along the Arizona border and the same complaints, the slowness of the Federal government to respond to the problems about destruction of private property. I thought, Ms. Schaan, that the law here in Texas is shoot first and ask questions later. Is that still in place?

Ms. SCHAAN. If you are protecting your property, you are, under certain circumstances—particularly if it's a home invasion, if you shoot a trespasser, then, generally speaking, the grand jury will not bring an indictment against you.

Mr. FALEOMAVAEGA. Is this also true in Arizona?

Ms. JENKS. Yes, it is. If it's self-defense in your home, you can shoot.

Mrs. NAPOLITANO. Inside?

Mr. FALEOMAVAEGA. But in a yard, you cannot shoot.

Ms. JENKS. You can't defend—in most states you can't defend your property with lethal force, but you can defend yourself and your family with lethal force.

Mr. FALEOMAVAEGA. I just wanted to express a sense of concern that for years the issue of immigration has really torn our country apart to the extent that with all good intention of what we're trying to do to protect our borders. The so-called 20 million illegal aliens that supposedly come from the Mexican border are not all Mexicans. I believe only about 5 million are Mexicans. The rest come from Central and South American and other foreign countries. You might also note as a matter of statistics that illegal aliens provide some $52 billion they send back home by Western Union to help their families, especially most of these families from poor areas in not only Mexico but other areas in Central and South America.

So I don't want to say that it's OK to come here illegally so that way you can provide the needs of the family, but, as you mentioned earlier, Bishop Peña, there are positive aspects of many of our aliens who do work, who do provide a very valuable service to the

American community. Without them—and maybe my good friend from California, Mr. Hunter, can help me with this—without illegal immigrants conducting the work in farms and throughout the State of California, the farm produce industry would go to pot. And I don't know if I'm accurate on that description, Mr. Hunter.

Mr. HUNTER. No, I think, my good friend—and indeed you are a very good friend—I think the idea that we—that the economy would collapse without the help or the work of people who are here illegally is wrong. And what I'm reminded when they had the packing plant closed and the Swift packing plants closed down, and they took 800 people that were there illegally from those jobs. The next day American citizens were lined up, from what was reported, to get their old jobs back at 18 bucks an hour. So I don't agree with the theme that we're desperate to have folks come in illegally.

Mr. FALEOMAVAEGA. I just want to say——

Mr. HUNTER. But thanks for letting me have a word in here.

Mr. FALEOMAVAEGA. I want to say to my good friend from California that his points are well-taken about the serious drug trafficking and issues of the coyotes and the cartels. I recall a leader from Latin America once making a comment that if there wasn't so much demand for illegal drugs here in America, maybe they wouldn't supply so much of it.

But here is the question, and, philosophically, you can take it any way you want. We are really under a somewhat of a double standard. We always point the finger that Mexico is the culprit, we've got all these problems, but it's OK to have a free borderline between Canada and the U.S. And I just want to see if there is equity and fairness in the process, and I'm sure that is the intent and exchange of Ms. Schaan, that some form of protection, the Federal government has that responsibility but it has failed.

And so I do appreciate Mr. Tancredo's comments that the fence is only part of the solution. And, unfortunately, this has not exactly been agreed upon by communities who live along the border, which includes the citizens of Brownsville and I suspect the people living in Matamoros, which is almost a million people, and many companies, American companies doing business and American workers also working in Matamoros. I notice my time is over, Mr. Chairman.

Mr. GRIJALVA. Thank you very much, sir.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. GRIJALVA. As I understand it, Mr. Reyes, you have no questions from this panel.

Mr. REYES. No.

Mr. GRIJALVA. Mr. Ortiz.

Mr. ORTIZ. I just wanted to welcome my bishop. We come from the same hometown, the biggest little town in Texas, which is Robstown, and our families grew up together. And I think the testimony has been very eloquently spoken today and I just want to say thank you for joining us today. Thank you so much.

Mr. GRIJALVA. Let me thank this panel, and if there are follow-up questions on the part of my colleagues, they will be forwarded to you for comment in writing. Thank you very much for your time and your courtesy and your testimony.

[Brief recess.]

Mr. GRIJALVA. Thank you. Let me welcome the next panel pursuant to Clause 2 of House Rule 11. I ask that the witnesses please stand and raise their right hand to be sworn in. Thank you.

[Witnesses sworn.]

Mr. GRIJALVA. Let the record indicate the witnesses have answered in the affirmative and we will begin with the opening statements. Let me welcome Mr. John McClung, president and CEO, Texas Produce Association. And he already has ingratiated himself with this Congressman by being a graduate of the University of Arizona and a Tucsonian. So, welcome, sir. Good to see you. And look forward to your testimony.

STATEMENT OF JOHN McCLUNG, PRESIDENT AND CEO, TEXAS PRODUCE ASSOCIATION

Mr. MCCLUNG. Thank you, Madam Chairman, Mr. Chairman, Members of Congress. My name is John McClung. I'm the president of the Texas Produce Association headquartered in Mission, which is 50 or 60 miles west of here. The association represents the interests of farmers, growers, shippers, importers, processors and marketers of fresh produce in Texas. I want to thank you for giving me the opportunity to testify today on a matter that's of enormous concern to the area farmers and agricultural interests. And, frankly, that's a component that hasn't gotten a lot of attention up to this point.

It may be most useful I think to begin where we, obviously—where almost all of the segments have—seem to be in agreement, and that is we all want border security, we all want to return rule of law to the border, we all want to make certain that people who are intending to come here illegally are not able to do so, that those who do come are coming for—mean us no harm. That's really not the issue here at all, never has been. The issue is doing it intelligently, doing it cost-effectively, and doing it in a humane fashion. The—and, by the way, that whole—that whole formula may, in fact, involve some fencing or some walls in certain very limited, very precise places.

That said, the individuals that I've talked to that are involved in agriculture in South Texas, by and large—not exclusively, but for the most part—are strenuously opposed to a fence or a wall as it has been detailed to us. There are several reasons for that. And let me say here that we have not been much consulted by the Department of Homeland Security about any kind of a—any kind of construction. There has been a lot made today of the issue of consultation. I think you all I hope recognize that in no small part this business of consultation has to do with the definition of consultation. When you are talking across the hood of a pickup truck to a member of the Border Patrol, that's not a consultation in any meaningful way.

The Department of Homeland Security has had no problem saying that the Border Patrol is consulting for them with many people in the Rio Grande Valley. The Border Patrol has no authority to consult. The Border Patrol only has authority to tell us what Washington is intending for us subchapter and verse, but that's not a consultation in any constructive fashion.

And so many, many landowners along the river, along the three south counties of the Rio Grande Valley, have never been approached by anybody from the Federal government on this issue. And many times when we go to talk to them, when we initiate that conversation, we're told, "Look, your land is not where we are planning to survey or where we're planning to build a wall. We don't have any need to talk to you. Relax. Don't worry about it."

The problem with that is there—there are several problems with farmers in the Valley. The first is that we have to have access to our land. We're not really talking about a border wall here, you know. We're talking about north of the border wall. In some cases you're within a very short distance of the river where the levee runs. In some cases you're a couple of miles from the river. There are thousands of acres south of the levee up north of the river. We've just simply not been told how we are going to have access to the land south of that levee. There have been some maps and proposals, but nothing has been definitive, nor have we been told how we're going to access river water.

We irrigate entirely out of the Rio Grande River. Without that river, we can't successfully farm for the most part down here. So we have to have access and we have to have access 24/7 because the pumps, the water pumps get clogged up, vegetation grows in them. It's a very—a very practical kind of a problem.

The other issue, and the one that I particularly want to emphasize, is that nothing much has been said about the value of land south of the levee if there is a wall constructed. At the risk of some melodrama, there is a lot of talk about turning that land into a no man's land. I'm not sure that is altogether accurate. We're not ceding anything to Mexico that I'm aware of in a legal sense, but we are creating a boundary here between that levee and the river.

And land values in that boundary area cannot help but go down if farmers cannot get access to it, yet people don't want to get access to it. And that is something that has been virtually unaddressed to my knowledge.

The—I want to make sure that I cover this thoroughly here. Many farmers in Cameron, Hidalgo and Starr Counties have been approached by—have never been approached by the DHS, as I said before. And others have been told that DHS has no interest in—in their—in building along those sections where these people operate.

You know, many of the landowners that you've heard about along the Rio Grande are small landowners, a few acres, and they're in the vicinity of Brownsville or Hidalgo or other little towns along the border. The big commercial agricultural operations are not in those areas, for the most part. They're in areas very often where there is no intention of building a wall at this point, and so they weren't—they aren't factored in. But their land values are going to deteriorate.

Well, I have a written testimony. Obviously, I would appreciate having it go into the record.

Mr. GRIJALVA. It's part of the record, sir.

Mr. MCCLUNG. Thank you.

[The prepared statement of Mr. McClung follows:]

Statement of John McClung, President and CEO, Texas Produce Association

Mr. Chairman. Members of the committee. My name is John McClung. I am President of the Texas Produce Association, headquartered in Mission, some 60 miles west of here. The association represents the interests of growers, shippers, importers, processors and marketers of fresh produce from Texas.

I want to thank you for giving me an opportunity to testify today on a matter that is of real and immediate concern to the fruit and vegetable industry of Texas. It may be most useful to begin where there appears to be agreement among all parties that have taken an interest in the construction of a wall along the southern levy in the three southmost counties of the Rio Grande Valley. Nobody I have talked to opposes reestablishment of the rule of law at our southern—and northern—borders. Thoughtful observers all recognize the need to secure the borders, prevent the entry of undocumented aliens, and ensure that those who enter mean us no harm and are here for legitimate purposes, including labor in our farm fields.

However, most of the individuals I have talked to want this goal achieved in as intelligent and cost effective a fashion as possible. And with few exceptions, they oppose the wall as an inefficient tool in curtailing or even significantly slowing illegal immigration.

The farmers, packers, processors, importers and marketers of fruits and vegetables take particular exception with their virtual exclusion from the Department of Homeland Security's planning process, and vigorously deny claims by that agency that they, as impacted landowners, have been consulted in any meaningful way. I want to emphasize that some of them have talked with Border Patrol agents about the construction of a fence or wall, but in most of those instances, the field level agents they conversed with knew little more, if as much, as they did.

Farmers in the Valley have several practical concerns about the wall, even in areas where no construction is contemplated.

—First, we must have access without artificial impediments to our fields. Every day, farmers and their employees work the land, including the thousands of acres of highly productive delta south of the levy. In places, the levy is a few yards north of the River, but in others it is a mile or two. Under the federal government's plan, as we understand it, that land could be accessed only through gates or other points of entry widely spaced along the wall. Such a scheme is wholly inadequate.

—Second, we must have access to the river for irrigation water. In the three lower counties of the Valley, we irrigate virtually exclusively from the River, using pumps along the edge of the river. Those pumps are subject to breakdown frequently, and to clogging from river vegetation. We must be able to approach and repair them day or night.

—Third, should DHS's ill-conceived wall plan come to pass, farmland south of the levy would become what many refer to as a "no man's land." Obviously, this land would not be officially ceded to Mexico, but land values below the wall would certainly plummet, even in those long stretches where there would be no physical barrier along the levy. Farm families that have owned and worked that land for generations would see its worth implode. This is a point that seemingly has escaped many analysts, and I want to make certain I cover it thoroughly here. Many farmers in Cameron, Hidalgo and Starr Counties have never been approached by DHS at any time, while others have been told DHS has no interest in meeting with them because there are no plans in the agency to survey for or build a wall on their property. But if the levy becomes the second southern border, their land will likely not retain its value, and the hard work and pride of generations will be squandered.

—Finally, farmers are practical people of necessity, depending on a good deal of seat-of-the-pants engineering to do their jobs successfully. They look at the tentative wall plans—all tentative wall plans—and conclude the obvious: It won't work. In terms of prohibiting illegal immigration, it isn't even a good joke. What it will do—all it will do—is allow a small number of misguided ideologues in the U.S. Congress to tell their extremists supporters that they "did something." And that is an absurd reason to spend give-or-take $5 million a mile in South Texas.

Of late, there has been a good deal of discussion about a "two-for-one" deal in which a wall would be constructed in Hidalgo and possibly Cameron Counties with the paired objectives of preventing illegal immigration and rehabilitating our ailing levies. I want to make the point here that the levy problem is very real, and must be addressed. Further, the levy is owned and operated by the federal government, and should be maintained with federal dollars. But to try to pay for levy rehabilitation with border security dollars is, in my opinion, a deeply troubling way to try to solve unrelated problems. Ironically, this hybrid approach might meet the levy repair requirement, albeit at a ghastly price, but it would no more solve the security

problem than any other wall or fence scheme. I asked one of the key engineers working on the design for the combined levy/wall plan how access to land and water would be afforded to farmers, and his response was that they were most likely to build in gates where there are dirt roads crossing the levy. These would have to be extremely large and heavy gates—and therefore very expensive—to accommodate large farm equipment. The farmers would be issued electronic remote controls to open and close the gates.

What a hopeless mess that would be. In the first place, each farmer would require multiple "clickers" to enable his crews to get through the gates. How long does anyone think it would be before a few of them disappeared? Or before the coyotes figured out the frequencies? While it is not my intention to discuss implications for wildlife, I want to add that this same engineer told me the likely plan would include "ports" to allow small animals to pass through. Swell idea. Doggie doors in the security gates. Interesting to see how many skinny illegal immigrants we would catch in the first year.

In my opinion, these are the kinds of unworkable solutions tortured engineers dream up when they have their backs against the wall, literally in this case, and there are no good solutions.

The real fix, as Commerce Secretary Carlos Gutierrez said most recently, and many others have pointed out in the past two years, is comprehensive immigration reform. It is in my belief shameful that the U.S. Congress, when presented with legislation last year that would have intelligently and effectively dealt with the key needs of genuine reform, was incapable of acting and so fell back on the most foolish, least efficacious arrow in the quiver—a border fence. It is beyond shameful that the Department of Homeland Security and its boss, Secretary Michael Chertoff, have mindlessly waived the environmental and related laws of the land and pushed ahead with a wall when the Hutchison-Rodriguez amendment to the omnibus funding bill for FY 08 gave them every opportunity to act constructively by setting aside the prescriptive language of the Secure Fence Act of 2006.

At this point in time, the battle lines are dug so deep, perhaps the best we can hope for is that no substantive construction take place in Texas until we have a new Administration and a new Congress, hopefully with new courage to confront the immigration issue. The farmers and other agricultural interests I represent are a conservative, profoundly patriotic lot by-and-large. They want what is best for this country. Most of them believe a border wall isn't it.

Thank you very much for permitting me to testify here today.

Mr. GRIJALVA. Mr. Merritt, sir, your comments.

STATEMENT OF KEN MERRITT, PRIVATE CITIZEN

Mr. MERRITT. Thank you, Chairman and Chairwoman, as well as Members of Congress. I appreciate this opportunity. Up until January of this year I was employed by the U.S. Fish and Wildlife Service as refuge manager for the three national wildlife refuges we have down here in South Texas, the Santa Ana, Lower Rio Grande Valley, and Laguna Atascosa National Wildlife Refuges. And I was pleased to have this invitation and also feel somewhat liberated in terms of my comments, I suppose, now that I'm not an agency staff person, but I'm not too liberated probably.

I would like to start basically with giving a little background of myself without going—I'll stay within my time limit, I'm sure. I have 30 years in with the U.S. Fish and Wildlife Service as a wildlife biologist and a refuge manager, and the last 11 years I was in charge of the refuges here in the Valley. And when you're talking about the border fence, you really are talking about all the Rio Grande Valley National Wildlife Refuge. That's one of the points I'm going to try to make here.

And I think it's useful to go back and look at what the Fish and Wildlife Service went through most recently here. I was in charge of basically leading the effort in terms of the Fish and Wildlife Service for Texas refuges. And, you know, April of 2007 we saw a

news article in one of the Roma papers that said Border Patrol agents were contacting private landowners to determine whether they would be able to get access to their lands for the border fence. And that was a surprise to the Fish and Wildlife Service, at least locally. I would imagine upper levels as well. And subsequent to that we made concerted efforts to contact the Border Patrol and finally got a meeting with the Border Patrol and it was confirmed that, yes, indeed, Texas' border was going to be part of the picture and also that a lot of the fence was going to occur on U.S. Fish and Wildlife Service property.

The interesting thing about that was that the U.S. Fish and Wildlife Service property was thought of somewhat like low-hanging fruit. Because it was already Federal land, it was thought it would be much easier to access those lands and build a fence on those properties. So months go by and very little contact between U.S. Fish and Wildlife Service and refuges and Border Patrol.

And you get to October and I go to a meeting in Harlingen with my staff and find out that, indeed, we're going through with this. And, of course, we were provided with maps at the first meeting about where these fences were going to be, which was really nice. Those were maps that we could not share with anyone, and yet what we heard was that no decisions had been made on locations on where these fences were going to be. But we were looking at it but held it as asked.

So in October we go to a meeting and we're basically asked about access to the refuge, which we dutifully tried to make happen. And here we are in December and we grant the consultants who work for DHS an opportunity to do that. And at about the same time we're having public hearings.

So you can imagine—my point is really that you could imagine that the level of surveys needed for a DEIS were really not given the sufficient time to figure out exactly what we have on the refuges and what the impacts of the border fence would be. I really think it's an unrealistic schedule that DHS has and I would believe a lack of concern about national wildlife refuges, which are special places to the American public. There is a long history of the Lower Rio Grande National Wildlife Refuge as a wildlife corridor which couldn't be interchanged very easily.

In fact, before 1980 many people got together and looked at this and decided this was indeed a place for a national wildlife refuge. The Valley needed a place for a national wildlife refuge since 95 percent of the native habitat in the Valley, in the U.S. Valley has been cleared off, and so we have a very narrow strip where habitat remains and 18 species of threatened or endangered species, a wonderful place for migratory birds. But yet a narrow place.

When you look at the border fence impasse, I think you have to look at, yes, there is going to be a small area that would be cleared. That area being cleared, how important is that? Well, I think you can do an analogy basically when you look at the river and the little strip that's remaining of native habitat. And then you consider taking more habitat away, it is devastating to our national wildlife along the border and it's a national and international resource.

An analogy in Canada is that if you took a strip out there, there are millions of miles of uninterrupted habitat. Here we have frag-

mented habitat that might be a quarter mile or less from the river at any particular point. Very little habitat remaining. So the impact will be barriers to wildlife, ability of wildlife to get the water. You also have jaguarundi, which needs to be able to travel, an endangered species—there is only about 70 to 100 left in the U.S.—very much impacted by border walls as prescribed currently.

I think the operational part of this for the U.S. Fish and Wildlife Service is that how do we operate in what we'll call no man's land? The Border Patrol has indicated they'll continue to go south of those fences where there is distance between the river and the levees, for example, but what happens when we have fires? We have over 300 fires on U.S. Fish and Wildlife Service property every year and those properties are endangered, yet where are those escape areas?

I'll summarize. The waiver invoked by Secretary Chertoff on April 1st basically included well over 30 Acts, but in particular the National Environmental Policy Act and the Endangered Species Act were of great concern to a lot of folks in this area, including the Fish and Wildlife Service. I think really the point I want to make is that thoughtfulness, logic and really listening to the public really hasn't been served in this case. The schedule just wouldn't allow it in my estimation. Thank you.

[The prepared statement of Mr. Merritt follows:]

Statement of Kenneth L. Merritt, Occupation:
Retired from U.S. Fish and Wildlife Service (30 years)

My testimony is based on my knowledge and experience as a wildlife biologist and refuge manager with the U.S. Fish and Wildlife Service during the last 30 years as well as my B.S. degree in wildlife management from Humboldt State University. Specifically, I held positions of Deputy Project Leader (4 years) and Project Leader (7 years) for the South Texas Refuge Complex. As Project Leader I oversaw the operations and management of Santa Ana, Lower Rio Grande Valley, and Laguna Atascosa National Wildlife Refuges. My duties during my 11 years in the Lower Rio Grande Valley included close coordination with Border Patrol and the Department of Homeland Security and more recently I took the lead for National Wildlife Refuges in Texas in U.S. Fish and Wildlife Service in negotiations with DHS on the construction of the Border Fence.

The U.S. Fish and Wildlife Service was first made aware of permanent border fencing in the Valley in April of 2007 when newspaper articles appeared chronicling the contacts local border patrol agents were making in and around Roma, Texas. This was followed by contacts made by FWS to the Rio Grande Headquarters for information on this potential fence. As a result of this inquiry carried out by FWS, a meeting was held at Santa Ana National Wildlife Refuge with Border Patrol and Army Corps of Engineers representatives. During this meeting the plans for a border fence were confirmed and the Lower Rio Grande Valley National Wildlife Refuge was put on notice that DHS intended to build miles of fence on the Refuge. Further, DHS indicated that the refuge was targeted because it was thought that it would be easier to build the fence on property already owned by the Federal Government. During this meeting, preliminary maps were provided to the FWS which could not be shared with outsiders. Though at the time, and continuing for many months, it was DHS's official position that no decisions had been made regarding fence locations.

Many months passed with few (largely unproductive and uninformative) meetings between FWS and DHS and ACOE until September when the FWS was invited to a meeting at the Harlingen Border Patrol Headquarters to meet with DHS and their consultants (E2M) who were tasked with conducting biological, cultural, and engineering surveys on private land and refuge lands to gather information for the DEIS for the border fence. This marked the first time that FWS Refuges were informed that surveys would be requested on refuge lands. Surveys were conducted on private lands beginning in October 2007 and Refuge lands in December 2007. Public meet-

ings aimed at gathering public comments on the DEIS were conducted at various locations in the Valley in December 2007.

The narrative and chronology of events described above aptly illustrates the DHS's unrealistic schedule and concern for carrying out a proper evaluation of the environmental effects of the proposed border wall. Without proactive efforts on the part of FWS it is unclear whether the FWS would have been notified of this pending action until well into the summer months. This is ironic since DHS apparently put many of its "eggs" in the refuge basket counting on the ease of accessing and constructing a border fence on a National Wildlife Refuge. The content and tone of DHS throughout this process could only be described as having no special consideration for the fact that a major action (permanent fence) was proposed to be place on one of this nation's most "special places". Further, the DEIS prepared for DHS is founded on very superficial biological surveys of private and Refuge lands which constitute a totally inadequate "gathering of the facts" to evaluate such a major construction project.

The Lower Rio Grande Valley National Wildlife Refuge was established in 1980 after extensive investigations and research and was promoted by a large and very diverse public who recognized the importance of the Refuge, both nationally and internationally. Also known as the "wildlife corridor", the Refuge was established and designed to perform in concert with hundreds of private landowners, conservation organizations, and municipalities as well as Mexico to create a viable migration corridor for south Texas wildlife. So far, over 70 million dollars of Land and Water Conservation Funds (Federal) has been expended to acquire lands within the Refuge. Millions have also been spent to restore native habitat along the river. A major reason for the establishment of the refuge and corridor was to serve as habitat and a migration corridor for the endangered ocelot and jaguarondi (cats). Within the south Texas Refuges and adjacent private lands are a total of 18 endangered or threatened plant and animal species. Largely confined to the wildlife corridor in south Texas, this area is home to over 500 species of birds, 300 species of butterflies, and 1,200 species of plants. It is one of the most biologically diverse regions of the U.S.

A driving force for scientists and the public alike in the establishment of the Lower Rio Grande Valley National Wildlife Refuge was the historical loss of native habitat. Over 95 percent of the native brush in the Valley has been cleared and over 98 percent of the river edge forest has been cleared. This leaves a very narrow ribbon of wildlife habitat that is critical to thousands of wildlife species. Though the footprint of a border fence is somewhat unclear at this time, it is clear that significant wildlife habitat will be cleared to construct and maintain the fence. Further clearing of wildlife habitat further jeopardizes the existence of south Texas wildlife populations that are already "on the brink" due to historical land clearing. Clearing of additional wildlife habitat on the refuge and private lands adjacent to the Rio Grande is not analogous to clearing habitat on the border with Canada. Thousands of square miles of uninterrupted wildlife habitat remain on our northern border.

The narrow wildlife corridor that currently exists along the river serves as a critical stopover for millions of migrating birds traveling from North America to South America. Situated between the Gulf of Mexico in the east and the deserts of the west, this narrow strip of habitat serves migrating birds from two flyways which funnel through the Rio Grande Valley. A real life example of this is the spring migration of broad-winged hawks. In April of each year, tens of thousands of hawks and falcons settle in on the nearby Santa Ana National Wildlife Refuge for nightly rests before rising on thermals to travel thousands of non-stop miles to northern breeding areas. Satellite maps confirm that vast areas north of the wildlife corridor in the U.S. and south into Mexico have been cleared for agriculture, business and municipalities. There is no visible alternative for millions of migrating birds seeking rest and food. Additional habitat losses through the construction of a border fence will likely result in further losses of a declining migratory bird population.

The proposed fence will also impact endangered species like the ocelot and jaguarondi by serving as a barrier to travel for these endangered cats. Current estimates range from 70-100 ocelots remaining in the U.S. Barriers to travel will impact the ocelot's ability to travel from Mexico into the U.S. and within the U.S. An important factor in the health of the ocelot population is its genetic viability. Due to low numbers and current restrictions to movement, the ocelot population is showing signs of genetic inbreeding. Inbreeding often affects the health of individual cats by increasing their susceptibility to disease. Border fencing constructed as part of the International Boundary and Water Commission Levees would not allow any passage for terrestrial wildlife like the ocelot and jaguarondi. Northern movement from the wildlife corridor to areas such as Laguna Atascosa National Wildlife Refuge and

southern movement from Laguna Atascosa through the wildlife corridor into Mexico are critical to the continued existence of these cats.

Proposed fences placed adjacent to the Rio Grande on private lands and federal lands will impact a wide variety of terrestrial wildlife in Starr County. Starr County is located on the west side of the wildlife corridor/refuge and is characterized by almost desert conditions. Many of these species including white-tailed deer and javelina are dependent on the river for water and would be effectively blocked or would have to expend additional energy to reach the river or alternative water sources.

The Lower Rio Grande Valley is unique in many ways and a major geographic feature is the Rio Grande. From the Falcon Reservoir in the west to the Gulf of Mexico the river and adjacent Lower Rio Grande Valley National Wildlife Refuge/wildlife corridor is a convoluted river course cover 275 river miles. Due to the nature of the river, it is possible to enter the U.S. from Mexico from the north. Flood control treaties with Mexico require that much of the proposed border fence be place on or north of the IBWC levees. This creates an area of "no man's land" between the fence and the international border. Thus, the areas south of the fence will still have to be patrolled as usual by Border Patrol since leaving these areas unattended will result in a virtual "take" by criminals from Mexico. Subsequently, the fence provides little or no relief in manpower requirements for security purposes.

Because of the fence placement along IBWC levees which leave vast areas of the U.S. behind the fence, the Lower Rio Grande Valley National Wildlife Refuge is faced with new concerns related to safety and security. Significant questions remain for refuge managers under this scenario. It is unlikely that the refuge can continue to operate safely south of the fence to carry-out its responsibilities for protection, operations and management. The Refuge's fire division will not be able to safely respond to wildfires south of the fence on refuge and private lands to extinguish hundreds of wildfires each year due to limited escape routes. Without additional refuge law enforcement capacity, it is likely that these areas will turn into "no management" zones and significant damage will occur to wildlife and wildlife habitat.

The waiver invoked by Secretary Chertoff on April 1, 2008 waiving 28 Federal Acts including the National Environmental Policy Act and the Endangered Species Act is additional evidence of an agency in crisis. Thoughtfulness, logic, and (really) listening to the public it serves have given way to the overpowering mandate of building hundreds of miles of fence by a legislative deadline. The National Environmental Policy Act was intended used to fully evaluate the impacts of a project to the environment and provide the best course of action for all (including national security). Instead, unneeded and unwarranted impacts will be borne by communities and the environment at a heavy cost (fiscal). Eleven years of managing thousands of acres of land within the Lower Rio Grande Valley National Wildlife Refuge and coordinating Border Patrol activities on those lands lead me to believe that there are viable alternatives to the border fence as proposed by DHS that would eliminate or lessen the impacts to special places like the Lower Rio Grande Valley National Wildlife Refuge, wildlife corridor and communities in the Valley.

Mr. GRIJALVA. Thank you, sir. Let me now turn to Ms. Laura Peterson, Taxpayers for Common Sense, senior policy advisor. Thank you.

STATEMENT OF LAURA PETERSON, SENIOR POLICY ADVISOR, TAXPAYERS FOR COMMON SENSE

Ms. PETERSON. Good morning, Chairman Grijalva, Chairwoman Bordallo, distinguished Members of Congress, and thank you for inviting me to testify today about the border wall. As you said, I'm a senior policy analyst at Taxpayers for Common Sense, a nonprofit, nonpartisan budget watchdog that serves as an independent voice for American taxpayers. Our mission is to expose and end wasteful and harmful spending and subsidies in order to achieve a more responsible and efficient government that operates within its means.

TCS supports the Federal government working with local landowners and border communities to achieve sound, cost-effective border control solutions that protect our nation. Unfortunately, pre-

vious evidence shows that building a wall across hundreds of miles of diverse borderland is not a good investment for taxpayers.

The border wall as currently envisioned will cost billions of dollars in construction and maintenance alone while failing to adequately block the illegal entry of people and contraband into the United States and exposing taxpayers to future liabilities in the bargain.

We simply cannot afford to waste money on feel-good, ineffective measures, in Homeland Security or anywhere else. Our nation is in the midst of a financial crises, facing economic recession, a $400 billion budget deficit, and $9 trillion in national debt, to name just a few of the challenges. Yet the procedural shortcuts the border wall is taking in the name of expediency virtually guarantees poor spending decisions. High national security priorities do not make less truth of the adage that "haste makes waste."

U.S. border control initiatives do not have a history of cost effectiveness. For example, while the cost of arrests by Border Patrol officers reportedly jumped from $300 in 1992 to $1,700 in 2002, Department of Homeland Security statistics show that the number of apprehensions during that time across the border remained largely flat. Spending on border infrastructure has jumped up dramatically in the past six years, from $6 million in 2002 to $647 million in 2007. Yet apprehensions continue to hover around 100,000 per year.

Border Patrol officers have told Congress that while fencing is most effective in urban areas, fencing in open areas obstructs vision and consumes valuable manpower for maintenance and repair. They also say these urban fences are only effective when part of the mix that includes manpower, technology and other resources.

The first fence built south of San Diego did little to stop the flow of illegal border crossings until Operation Gatekeeper increased the number of Border Patrol officers and other resources, according to the Congressional Research Service. Even so, that decrease is accompanied by the corresponding increase in apprehensions in Arizona as migrants moved east.

The cost of building the fence rose from $12 million at its inception to more than $127 million, or $10 million per mile, at its projected completion. These costs cover construction only, not acquisitions or maintenance. Maintenance is a significant and frequently underestimated cost because these fences are under constant attack. A four-man maintenance crew is reportedly required to work full-time repairing the 15 to 20 holes ripped through the El Paso fence each day.

Attempts to create a high-tech virtual fence have also consumed billions of taxpayer dollars in failed investment. The U.S. Government spent nearly 3 billion on two failed virtual fences between 1997 and 2006 before awarding a six-year contract to Boeing to develop a national program called SBInet. SBInet immediately became the focus of Congressional scrutiny because of its reliance on contracting practices that have led to severe cost and schedule overruns in previous contracts.

SBInet lived up to expectations. Shortly after the contract was awarded, the DHS inspector general raised its project cost estimate from 2 billion to nearly 30 billion. After several missed deadlines

DHS in February accepted completion of the program's initial deployment along 28 miles of Arizona border, paying over $20 million for this work, only to announce earlier this month that it would scrap the effort and start over.

If these are the kinds of problems that arise in projects planned and implemented over several years, think of the waste that could result from rushing a project as costly and complicated as the border wall. Yet that's exactly what waiving these numerous laws under the REAL ID Act will do. Many of the laws, especially the National Environmental Policy Act, require an environmental review process which can protect taxpayers from potentially serious and costly future liabilities. The procedure is inherent and vital to the review process, providing an important set of checks and balances on Federal agencies and private actions without which the risk of waste, fraud and abuse increases.

Waiving hazardous and waste laws such as the Resource Conservation and Recovery Act does nothing to prevent environmental contamination that may result from wall construction, but simply guarantees that the cost of cleanup will be left to taxpayers.

Similarly, waiving wildlife protection laws does not minimize potential harm to protected species, it just transfers the cost to other private and public landowners. Landowners and other residents along the border are violently opposed to the current set of strategy. In the 2008 appropriations bill passed earlier this year, Congress told DHS to submit an analysis for each 15-mile segment of the border that compares approaches based on factors such as cost and possible unintended effects on communities. Though DHS has reportedly submitted the analysis, the document has not been made public, nor has any other document of what type of fence DHS plans to install at specific locations. Support and intelligence from others is valuable input and support crucial to any effective border strategy.

We agree with lawmakers and the American public that securing our border is a top national security priority. However, the current border wall plan is more likely to siphon precious resources away from that goal and pump money into an expedient but ineffective, expensive and potentially damaging project. This decision will affect every taxpayer from the border of Minnesota to the border of Texas for years in the future. Thank you again for allowing me to testify today.

[The prepared statement of Ms. Peterson follows:]

Statement of Laura Peterson, Senior Policy Analyst, Taxpayers for Common Sense

Good morning, and thank you for inviting me to testify today on the proposed southern border wall. I am a senior policy analyst at Taxpayers for Common Sense, a non-partisan budget watchdog that serves as an independent voice for American taxpayers. Our mission is to expose and end wasteful and harmful spending and subsidies in order to achieve a more responsible and efficient government that operates within its means.

TCS supports the federal government working with local landowners and border communities to achieve sound, cost-effective border control solutions that protect our nation. Unfortunately, evidence indicates that building a wall across hundreds of miles of diverse borderland is not a good investment for taxpayers. The border wall as currently envisioned by the Department of Homeland Security will cost billions of dollars in construction and maintenance alone while failing to adequately block

the illegal entry of people and contraband into the United States and exposing taxpayers to future liabilities in the bargain.

We simply cannot afford to waste money on feel-good, ineffective measures—in homeland security or anywhere else. Our overall budgetary challenges are immense. Our nation is in the midst of fiscal crisis: the economy is in a tailspin, we have a budget deficit of more than $400 billion and our national debt tops $9 trillion. We spend hundreds of billions each year just on interest payments to service that debt. And that doesn't even consider the looming financial challenges of Social Security and Medicare. We cannot afford to waste a dime, much less billions of dollars. Yet the procedural shortcuts the border wall strategy is taking in the name of speedy deployment virtually guarantees poor spending decisions.

Border security is unquestionably a high national priority, but that doesn't make Mother's adage that "haste makes waste" any less true.

Big Bucks, Little Bang

U.S. border control initiatives have historically been exercises in high expense and low effectiveness. The federal government has appropriated $3.7 billion for border patrol construction since 1996 and more than $1 billion on fence construction alone, according to the Congressional Research Service.[1] The cost of making an illegal-entry arrest jumped from $300 in 1992 to $1,700 in 2002, according to one economist.[2] While the number of illegal immigrants entering the United States is notoriously difficult to quantify, border patrol statistics show that the number of apprehensions remained relatively flat during the same period.[3] Investment in border infrastructure has increased by a factor of 100 in the past six years from $6 million in 2002 to $647 million in 2007: Apprehensions, however, hovered around 100,000 per year.[4]

The fence constructed along 14 miles of the San Diego border over the past twenty years is often portrayed as proof of wall effectiveness, but evidence for that claim is inconclusive at best. The initial fence, constructed of 10-foot steel landing mats welded together, did little to stanch the illegal flow of people across the border: It was only the increase of border patrol manpower and resources under Operation Gatekeeper in 1994 that made an impact, as the Congressional Research Service notes.[5] And though apprehensions in San Diego continued to decline over the next decade, the decline was mirrored by a dramatic increase in illegal crossings in Arizona as migrants moved further east.[6]

Moreover, the San Diego project exposes the potentially budget-busting pitfalls of fencing solutions. To increase its effectiveness, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) authorized another two layers of fence construction in San Diego at a total cost of $12 million. However, DHS now says the fence will cost $127 million by the time it is completed—more than 10 times the initial estimate.[7] In the final analysis, the San Diego fence will cost more than $10 million per mile when maintenance costs are included. Yet the fence was breached almost immediately: CBP officers have found numerous tunnels—some fortified with concrete flooring and electricity—running underneath the fence to San Diego county that have consumed significant financial and labor resources to seal.[8] Maintenance costs have also far exceeded estimates for the San Diego fence as well as installations in Nogales, Arizona and El Paso, Texas. In El Paso, a four-main maintenance crew is required to weld and fill the 15-20 holes ripped through the fence each day.[9]

The 2006 Secure Fence Act directed DHS to construct 850 miles of fencing along the 2,000 miles of the southwestern U.S. border, which Congress reduced to 700 by language in the 2008 consolidated appropriations bill. The 2008 bill also gave the Secretary of Homeland Security wide latitude in determining the type of fencing to

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[1] "Border Security: Barriers Along the U.S. International Border," Congressional Research Service, January 8, 2008

[2] Douglas Massey, "Backfire at the Border: Why Enforcement Without Legalization Cannot Stop Migration," CATO Institute Center for Trade Policy Studies, June 13, 2005

[3] Department of Homeland Security 2006 Yearbook of Immigration Statistics

[4] "Border Security: Barriers Along the U.S. International Border," Congressional Research Service, January 8, 2008; Department of Homeland Security 2006 Yearbook of Immigration Statistics

[5] "Border Security: Barriers Along the U.S. International Border," Congressional Research Service, January 8, 2008

[6] "Border Security: Barriers Along the U.S. International Border," Congressional Research Service, January 8, 2008

[7] DHS FY2006 and 2007 budget justifications, as cited by CRS

[8] http://www.globalsecurity.org/security/systems/mexico-wall.htm

[9] Alicia A. Caldwell, "Fixing Holes in the Border Fence is a Never Ending Task for U.S. Agents," Associated Press, August 8, 2007

install along various portions of the border, stating that he does not have to use any particular deterrent if he decides it isn't optimal for gaining "operational control."[10] Further, Congress withheld border security funding until DHS submitted an expenditure plan and an analysis of each 15-mile border segment that compares approaches based on factors such as cost and "possible unintended effects on communities."[11] Though DHS has reportedly submitted the analysis, the document has not been made public.

In fact, DHS has not presented taxpayers with any cost estimates to date. Some baseline costs can be estimated using the price of fencing materials. Three types of fencing are currently under consideration: landing mat fencing, which utilizes steel airplane landing mats welded together; bollard fencing, consisting of concrete-filled metal tubes; and Sandia fencing, a 10-foot steel mesh fence topped with an angled panel. Landing mat fencing costs around $400,000 per mile to install and $15,000 per mile to maintain; Sandia fencing, $800,000 per mile to install and $7,000 to maintain; and bollard fencing, $2 to $4 million per mile to install and $1,000 to $15,000 to maintain (depending on style). Sandia fencing has so far only been used to backstop primary fencing on 10 miles of the San Diego border, so would likely be an additional rather than primary fencing cost.

Other costs include funding for the Army Corps of Engineers, which provides engineering expertise, construction management and machinery under a memorandum of understanding with DHS Customs and Border Protection (CBP). The Corps of Engineers received roughly $40 million from the Department of Defense for this purpose over the past decade.[12] Though some fence installation labor has been provided by state National Guard troops at no expense to CBP, labor has also been provided by the military, the U.S. Border Patrol, and private contractors, as was the case with the San Diego border fence.

Using the cost of the San Diego fence as a baseline, simple multiplication produces the oft-cited price of $7 billion for the 700 miles required under the Secure Fence Act. The Corps of Engineers has estimated that maintaining the fence over 25 years would range from $16.4 million to $70 million per mile, though that figure would be increased by breaches such as tunneling. The Corps estimate also does not include the costs of acquiring land or labor, which could be substantial if private contractors are retained. The Congressional Budget Office has estimated border fencing at $3 million per mile for construction and an additional 15 percent, or $450,000, for maintenance per year.[13]

These figures only address the costs of physical fencing, however, not the fiscal sinkhole that is the "virtual fence." Previous DHS attempts to establish high-tech virtual fences have been fraught with problems. In 1997, the Immigration and Naturalization Service deployed more than 10,000 sensors and 200 camera towers along the northern and southern borders under a program called the Integrated Surveillance Intelligence System (ISIS). Unfortunately, the databases installed to analyze information from the cameras and sensors were never integrated, meaning they couldn't share information. Further, the cameras broke down in bad weather and were difficult and expensive to maintain.[14] These problems were not helped by the fact that the General Services Administration, tasked with managing the camera component, conducted "inadequate contractor oversight, insufficient competition, and incorrect contracting actions."[15] ISIS moved to DHS after its creation in 2002 and was incorporated two years later into America's Shield Program (ASI) after an investment of more than $340 million.[16] ASI also suffered from poor management and integration with DHS, costing taxpayers $2.5 billion before it was absorbed by the Secure Border Initiative in 2006.

That year, the Secure Border Initiative launched the operational successor to ISIS and ASI, another networked system of cameras, sensors and unmanned vehicles called SBInet. SBInet became the subject of Congressional scrutiny from the moment the six-year contract was awarded to Boeing in September 2006 because of its reliance on contracting practices that have led to severe cost and schedule overruns

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[10] PL 110-161, sec. 564, Div E, Title II

[11] PL 110-161, sec. 564, Div E, Title V

[12] "Border Security: Barriers Along the U.S. International Border," Congressional Research Service, January 8, 2008

[13] "Border Security: Barriers Along the U.S. International Border," Congressional Research Service, January 8, 2008

[14] "Border Security: Key Unresolved Issues Justify Reevaluation of Border Surveillance Technology Program," GAO report 06-295, February 22, 2006 pg 29

[15] "Border Security: Key Unresolved Issues Justify Reevaluation of Border Surveillance Technology Program," GAO report 06-295, February 22, 2006

[16] "Border Security: Key Unresolved Issues Justify Reevaluation of Border Surveillance Technology Program," GAO report 06-295, February 22, 2006 pg 18

in other DHS and DoD contracts. Representative Henry Waxman (D-CA) held a hearing on SBInet in February of this year at which he revealed that two-thirds of the individuals that designed the SBInet acquisition plan were contractors, and that the parties evaluating the bids were outsourced as well. DHS blamed chronic shortfalls in procurement personnel as justification for contracting out acquisition and oversight capacities.

SBInet lived up to expectations: Shortly after the contract was awarded, the DHS inspector general raised its estimate for the project's cost from $2 billion to as high as $30 billion. Boeing missed its June 2007 deadline to deliver the contract's first task order to secure 28 miles of the Arizona border, saying coordination of the numerous technologies was proving more difficult than anticipated. Though DHS accepted the "Project 28" task order in February, paying Boeing its $20 million fee, it announced just last week that it will scrap the SBInet installation there and start over.

Cut Corners Now, Increase Costs Later

The REAL-ID Act in 2005 authorized the DHS Secretary to waive any federal law in order to expedite border fence construction. Since then, DHS has waived more than 30 laws to proceed with construction in San Diego, Arizona and southern Texas. Laws waived include the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, along with several laws protecting historic monuments, antiquities and Native American lands.

Many of these laws—specifically NEPA—require an environmental review process which, in both intent and practice, can protect taxpayers from potentially serious and costly future liabilities. By identifying environmental impacts and assessing reasonable alternatives, NEPA's process brings potential project costs to light and explores potential solutions. Waiving hazardous waste management and cleanup laws like RCRA and CERCLA does nothing to prevent possible environmental contamination that may take place (or be discovered) in the course of construction. Rather, waiving hazardous waste laws simply guarantees that the costs of any clean-up would be left to the taxpayers, letting the responsible private parties off the hook.

Similarly, waiving wildlife management laws does not minimize potential harms to habitat or protected species. There may be a short-term savings in the form of deferred mitigation costs, but those burdens would simply be transferred to other public and private land owners. And in the absence of a NEPA environmental assessment, those costs will be hidden. Waivers also devalue the millions of dollars the federal government has invested in wildlife refuges. Finally, with their inherent review procedures, environmental laws provide an important set of checks and balances to federal agency and private action. Doing away with those review processes in their entirety increases the chances of waste, fraud and abuse.

Smart Solutions

CBP officers have told Congress that fences are only effective as part of a "mix" that includes manpower, technology and other resources.[17] In fact, patrolmen have testified that while fencing is most effective in urban areas, it is actually counterproductive in open borderlands because it obstructs vision and requires significant maintenance and repair.[18] They also noted that a cogent immigration policy should be part of this mix: A border patrol chief told the House Homeland Security Committee in 2006 that he was "frustrated by the fact that we look to border security (for solutions) when there is, in fact, a deeper issue at hand."[19]

Support and intelligence from local residents is another valuable resource, one that the current wall proposal does not adequately develop. Here in Texas, owners of land gained through Spanish land grants and handed down over generations reportedly face the possibility of walls in their backyard, while golf courses and luxury housing developments just miles away remain untouched.[20] It's hard to know just what the DHS approach to fencing options is since the agency has not made its analysis for each segment of the border public, which would allow residents to see plans for their neighborhoods and contribute potentially valuable input.

American voters and lawmakers clearly agree that preventing potentially harmful people and contraband from entering America's borders is a top national security priority. However, the current border fence plan is more likely to siphon precious

[17] "Fencing the Border" hearing before the House Homeland Security Committee, July 20 2006
[18] "Fencing the Border" hearing before the House Homeland Security Committee, July 20 2006
[19] "Fencing the Border" hearing before the House Homeland Security Committee, July 20 2006
[20] http://www.texasobserver.org/article.php?aid=2688&print=true

resources away from that goal and pump money into an expedient but ineffective, expensive and potentially damaging project. The stakes are too high to line our border with expensive sugar pills.

Mr. GRIJALVA. Thank you very much. And let me now ask Mr. Zack Taylor, supervisory Border Patrol agent, retired, for his testimony, sir.

STATEMENT OF ZACK TAYLOR, SUPERVISORY BORDER PATROL AGENT (RETIRED)

Mr. TAYLOR. Thank you, Chairmen Grijalva, Bordallo, Ranking Member Tancredo, Members of Congress. My name is George Zachary Taylor and I graduated from the University of Florida with a degree in wildlife ecology. I consider myself to be a natural resources conservationist. I'm a charter member of the National Association of Former Border Patrol Officers. My association speaks for laws, rules and regulations that will benefit America, and we speak against any law, rule or legislation that is contrary to the interest of all Americans. In this case, specifically House of Representatives 2593.

I was a Border Patrol agent for 26 years in the United States Border Patrol from 1976 to 2003, the first 12 years as a field agent along the Rio Grande River at Brownsville and McAllen, Texas. I worked at the Santa Ana refuges, the Bentsen State Park in South Texas. My principal duties were the detection and apprehension of drug and alien smugglers and training new agents to do that. I spent 14 years as a field supervisor and Border Patrol agent at the Nogales Border Patrol station. The Tucson sector Nogales Border Patrol station was and still is the most active drug and alien smuggling corridor into the United States.

My principal duties were the detection and apprehension of drug and alien smugglers. Almost all of my patrol time there was on public land along the U.S. and Mexican border.

From my present home in Rio Rico, Arizona, I look south into Sonora, Mexico; southwest into the Pajarita Wilderness and the proposed Pajarita Wilderness Extension; west and northwest to the proposed Tumacacori Highlands Wilderness; and north into the Santa Rita Mountains Wilderness. I am bound on all sides by public land or Mexico. I worked all of these places in the United States for 14 years until I retired in 2003.

The National Association of Former Border Patrol Officers strongly urge all Americans to come together as a country, a nation and as one people to fully understand and effectively deal with the serious threat to our public safety and national security from our southern border. We must protect America first.

In Arizona we have seen wilderness areas and proposed wilderness areas turned into killing grounds as well as major drug and alien smuggling routes. Public land adjacent to these wilderness are trashed by illegal aliens to the extent they resemble landfills. The evidence of multiple robberies and rapes are commonplace. Local law enforcement is virtually powerless against the gangs that freely roam these public lands.

Aliens infected with highly contagious diseases enter the United States across our southern border daily and are not screened for

those diseases even if they are apprehended. Organized gangs such as MS-13 are now common in the United States. The violence of such gangs and their drug—their drug trade bring with them is causing gang-related violence and suffering in every corner of America. It threatens the very fabric of our society. At present drug-related violence is destroying Mexico as we speak.

It is along our southern border that terrorists have entered the United States and have been apprehended. We do not know who, how many, or where they are from because we only apprehend a relatively small fraction of all persons that cross our borders illegally. A large percentage of the wildfires along the Arizona-Mexican border are human caused. Some are intentionally set as diversions for other illegal activities. Firefighters have been shot at while responding to fighting fires along these trafficking corridors.

Arizona has experienced the positive effects of fencing parts of the Arizona border. Law enforcement officers have been shot and killed by smugglers and narcotraffickers in national monuments and proposed wilderness areas. Agents that I had trained and supervised have been shot at, shot and killed in the Nogales area.

No, one type of fence does not fit all terrains and situations. However, we have seen dramatic reductions in crime and violence on the United States side where the appropriate fence has been erected, maintained and patrolled. I'm here to warn the wonderful people of Texas that there are some among us that want to make it easier for the terrorists, narcotraffickers, gang members, and the disease-ridden to come into the United States illegally. Please see this wolf in sheep's clothing for what it is, a horrendous threat to our public safety and national security. Thank you.

[The prepared statement of Mr. Taylor follows:]

Statement of George Zachary Taylor,
National Association of Former Border Patrol Officers

Public and private lands along the United States-Mexico Border, between the ports of entry, have been a point of entry and exit for criminals since the Official Border was laid out over one hundred years ago. If everyone in the world did not engage in criminal activity and respected our laws, a secure border would not be absolutely necessary. Such is not the case and we live in an increasingly dangerous world.

We are a nation of free people. We are daily engaged in our own pursuit of happiness and therefore we do not keep up with the constant changes that are taking place along our land borders or the legislation that affects them. The urgent need to secure our borders as soon as possible has never been so clear. Proof that many among us do not respect and understand this present need is as close as your local newspaper or news outlet.

I must point out that all of the information in this report is available to anyone that reads the newspapers, listens to the current news and pays attention to current events. The failure of the media to accurately report these facts appears to be an intentional failure to report the truth.

Congress authorized the Department of Homeland Security to build a border fence along America's southern border. Intermittent sections of this fence have been erected in various places on the border. Where this fencing is designed to conform to the terrain and natural land features for the purpose of stopping or severely deterring people and vehicles to enter the United States illegally, it has been very successful. If the fence is carelessly constructed or a purpose other than maximum effectiveness is followed, the fencing will be less effective. We do not represent that any fence will completely stop all illegal traffic. No fence will make the United States totally secure. However, without a maximum efficiency fence erected and maintained where practical we are at greater risk.

Congress is considering several Legislative Bills affecting the U.S. Mexico border that will certainly make America less safe. These two Bills are H.R. 3287, The

Tumacacori Highlands Wilderness Act, and H.R. 2593, The Border Conservation and Security Act of 2007. A third action is the current movement to nullify the previously authorized waivers for Homeland Security to build the border fence. Congressmen that claim to protect America and then turn around and knowingly support official action and legislation that will make America less safe should not be in office. We must have elected officials that place American security first.

The National Association of Former Border Patrol Officers is calling upon all Americans in every state, territory and outlying possession to come together and demand that Congress secure our land borders and make our country a safer place for us to live and raise our families. In the following pages we will lay out the facts as they presently are and ask you to consider the facts in making your future decisions concerning the fence and legislation that would make America less safe.

The primary duty of today's Border Patrol is to detect and apprehend terrorists. The ideal is to stop them at the border, before they come into the United States. We know that terrorists enter the United States across the Mexican border. Located at Sierra Vista, Arizona, is a Top Secret U.S. Army Intelligence School called Fort Huachuca. On February 12, 2008, two persons living in Sierra Vista, were stopped at Patagonia, Arizona, by the local Constable. Both were determined to be of middle eastern descent and both were on the National Terrorist Watch List. They were driving to Nogales, Arizona, to bond out their associate that had crossed illegally into the United States the night before and was apprehended by the Border Patrol. (http://nogalesinternational.com/articles/2008/02/26/news/news8.prt)

I personally interviewed three Syrian Citizens that had entered the United States illegally and one subsequently claimed to me that he was a terrorist who was coming to the United States to engage in terrorism. These persons entered the United States illegally from Mexico near Nogales, Arizona, and were apprehended by Nogales Border Patrol Agents.

In 2006 approximately 10% of the illegal aliens apprehended by the U.S. Border Patrol had criminal records. In 2007 the U.S. Border Patrol apprehended 876,700 illegal aliens, 144,000, or 16.4% had criminal records. Of the 144,000 that had criminal histories, 11,706 were for Dangerous Drugs. Ninety-nine percent of the meth produced in Mexico crosses the Mexican border into the United States. Ninety percent of the cocaine consumed in the United States crosses the Mexican border. Mexico is the largest supplier of marijuana to the United States and the bulk of this marijuana crosses the Mexican border into the United States. No one knows for certain how many illegal aliens or terrorists successfully enter the United States that are not detected or apprehended. We must conclude that we do not come any where near catching them all under the conditions that presently exist at the border. During my tenure as a Field Supervisory Border Patrol Agent at Nogales, Arizona, 1988-2003, I studied this aspect of the Immigration problem. My evaluation of the situation indicated that we were indeed fortunate to apprehend as much as 10% of the total traffic on any given day. On some days we would apprehend over 3,000 at Nogales. I continue to live in the Nogales area and I am certain that a very significant percentage is still making it into the interior of the United States, undetected. Arizona in particular needs all of the tools available to stem this flow. An effective Border Fence is one of those tools.

Organized illegal alien Gangs trafficking in illegal drugs are a significant percentage of the violent crime associated with the selling of dangerous drugs in the United States. The exact extent of the problem is unknown. In March 2008, Mexico estimates that the MS-13 Gang in Central America number 100,000 members, 63% of whom are Mexican citizens. The United States estimates for the MS-13 Gang, mostly in Los Angeles County, California, at 30,000 members, 56% of them are Mexican Citizens. These MS-13 gang members, and members of several other gangs, likely cross the Mexican border illegally without interruption to their enterprise. These combined numbers are roughly the number of U.S. troops currently deployed to Iraq. This is according to an Associated Press Article in the Arizona Daily Star April 3, 2008. I have recently received yet unconfirmed information that MS13 is setting up shop on Mount Vernon Avenue in Pentagon City and that they have taken over the gang turf in Santa Barbara, California. We will have to wait and see what develops because no one seems to be working to effectively prevent the expansion and replication of their influence in the United States.

The Arizona Daily Star reports that for the first three months of 2008, homicides are up approximately 100% in the City of Tucson, which does not include greater Pima County.

Organized Gangs, believed to be predominately illegal aliens, operate out of the Tucson and Phoenix, Arizona, areas. These gangs stage kidnappings of illegal alien smuggling loads from alien smugglers. They have engaged in running gun battles on back roads and on the Interstate Highways. They also wait for drug mules and

alien smuggling loads on the mountain trails of the proposed Tumacacori Wilderness Area and in the Santa Rita Mountains Wilderness areas. Their method of operation is extremely violent. Tiny Santa Cruz County Arizona alone has had 30 such shooting incidents in the past two years. Numerous illegal aliens have been shot and killed and many illegal aliens have been shot and wounded by these heavily armed gangs operating up to 60 or more miles inside the United States.

(http://nogalesinternational.com/articles/2008/01/22/news/news12.prt)

(http://www.gvnews.com/articles/2007/04/19/news/news02.prt)

Congressmen that seek to pass legislation to confer Wilderness status on the Tumacacori Highlands and on other public lands on or near the Mexican border are not acting in America's best interest. Only the terrorist and smuggler will significantly benefit from the passage of H.R. 2593 and H.R. 3287. This legislation is an impediment to Law Enforcement efforts at the border.

Illegal aliens shot by bandits and illegal aliens injured in vehicle accidents incur significant unrecoverable expense to local Arizona hospitals and overload the capacity of the hospitals to treat patients. The return from the United States government on this Federally mandated care is reported to be fifteen cents on the dollar. Therefore, the costs must be passed on to U.S. Citizens in increased costs when they visit these hospitals. This practice has caused hospitals to close their doors completely.

(http://azstarnet.com/sn/printDS/230998)

(http://.kold.com/global/story.asp?s=8131193&ClientType=Printable)

(http://azstarnet.com/sn/printDS/233584)

There is also the increasing incidence of contagious diseases brought into the United States by illegal aliens that sneak across the Mexican border daily. To name a few, hepatitis, measles, cholera, tuberculosis, drug resistant tuberculosis, and various STD's. What is disturbing is that a significant number of infected illegal aliens work in food processing centers in the U.S. (http://www.judicialwatch.org/blog/another-illegal-immigrant-spreads-tuberculosis)

Numerous reported Rape Trees have been identified in and near the current Pajarita Wilderness and the proposed Pajarita Wilderness Extension near the U.S. Mexico border. Rape Trees mark the location where drug and alien smugglers habitually sexually assault and rape illegal alien females that are being brought into the United States across the Mexican border. These locations are marked by the perpetrators who prominently display and hang the brassiers and underwear of their victims on a particular tree. I visited one such reported tree on March 27, 2008, and noticed 30 sets of women's panties and 11 brassiers near the location of the suspect tree. A local rancher near Arivaca, Arizona, reports 14 rape trees on his ranch and he estimates that 7 are currently active. These Rape Tree trails begin at the Mexican border and many travel through the Pajarita Wilderness and the proposed Pajarita Wilderness Expansion (H.R. 2593) before entering the proposed Tumacacori Wilderness area, outlined in H.R. 3287.

Law Enforcement Officers are killed by illegal aliens who are engaging in criminal activities after they have crossed the Mexican border illegally. Border Patrol Agent Alexander Kirpnick was shot and killed by a drug smuggler in Potrero Canyon west of the Meadow Hills Golf Course in June 1998. Two Border Patrol Agents were shot and wounded by smugglers east of Nogales, Arizona, in June 2005. Last year Phoenix Police Officer Nick Erfle was shot and killed by an illegal alien gang member. In August 2002 at Organ Pipe Cactus National Monument in Arizona, Park Ranger Kris Eggle was shot and killed by narco traffickers. (http://www.nps.gov/orpi/historyculture/kris.htm) This was after environmental groups insisted that Border Patrol Agents stay out of the area because of damage they were doing to the environment. The illegal alien traffic habitat damage that followed the Border Patrol's departure was far more severe than that caused by Law Enforcement Patrols.

I worked the Rio Grande River area near McAllen, Texas, from 1979-1988. I saw first hand in the Santa Ana Refuges and in Bentsen State Park the way illegal aliens and smugglers defile Parks and Refuges. I heard testimony by Mark South on November 17, 2007, at a Congressional Hearing in Washington, D.C., concerning H.R. 2593 and H.R. 3287, where he described having worked for the Forest Service to establish hiking trails in the Santa Rita Mountains and those Wilderness designated areas, only to return as a Wildland firefighter later to view the trashing and destruction wrought by illegal aliens and smugglers on those trails, and to fight the fires they had caused. Such has been my experience. When a Wilderness or Refuge area is established near the border, the criminal element moves in and trashes it because the restrictive Wilderness or Refuge status accorded to these lands effectively prevents all law enforcement from effectively working the area. In other words, the Refuge or Wilderness designation actually serves to put the environment at greater risk of being seriously damaged and defaced. Law Enforcement must have common, unrestricted, free access to all lands near the U.S. Border. By near

I mean at least 50 miles because that is ordinary walking distance for illegal aliens and drug smugglers traveling on foot. I have seen and heard evidence or aliens who walked from the Mexican border north bound to pick up locations that are north of Interstate 8 and Interstate 10 in Southern Arizona.

Organized Mexican Drug Traffickers from Mexico are sent throughout the world to engage in the illegal drug trade. Major cartels operating in Mexico are presently challenging the government of Mexico and the Mexican Army for control of Mexico. There have been over 4,000 drug related assassinations reported in Mexico for 2006-2007. This number is under reported, by how much we do not know. Estimates run at least 25% of these crimes are never reported. Why? The mortality rate for Mexican Journalists is extremely high. Therefore they are loathe to report anything they are "advised" not to report.

In fact the Gulf Drug Cartel recently recruited their Narco Terrorists, called Zetas, by placing a banner near a Mexican Army post in Tamaulipas, Mexico. The accompanying Newspaper Article said they were particularly interested in Merida trained soldiers and policemen. The Merida Initiative is a 1.4 billion dollar program financed by the United States Government to train Mexican Soldiers and Police by U.S. Special Forces and other U.S. Agencies in our latest border security and protection techniques. The Drug Cartels then seek to hire these U.S. trained personnel to ply the drug trade would wide. These Zetas then become American Law Enforcements adversaries at the border and in the interior of the United States. Take a look at the job benefits offered to these trained soldiers and policemen. The Gulf Cartel is right up there with General Motors in benefits provided. (http://www.tamaulipasenlinea.com/)

It is no wonder that in April 2008, the United Nations found that Mexico ranked number one in the category of "violent crime" in the use of firearms and excessive violence. Mexico was so designated this over less developed countries such as Brazil, Colombia and Venezuela. (El Imparcial, Hermosillo, Sonora, Mexico, 04/23/08.) This finding by the United Nations may explain the belated response by the United States Department of State which issued a Travelers Warning Mexico, on April 14, 2008. Belated because this current level of violence has been ongoing for several years, apparently unnoticed by the Department of State until the United Nations called their attention to the problem.

http://travel.state.gov/travel/cis__pa__tw/pa/pa__3028.html

In southern Arizona we are experiencing increased incidences of wildfire from two primary sources. The first source is illegal aliens that cross into the United States illegally and start fires through carelessness. The second source is from illegal aliens engaged in other criminal enterprises that start wildfires to create a diversion so they can smuggle things into or out of the United States. Wildland Firefighters have encountered gun fire on several occasions when going out on a wildfire along the Mexican border. The fire approach rule now includes a mandatory armed escort before going out on a wildfire along the Mexican border and in the proposed Tumacacori Highlands Wilderness area. As a matter of fact, on 04/20/08 as I sit here typing this report I can see and smell the smoke from a wildfire that is presently burning in the Pajarita Wilderness area, southwest of and in sight of my home. (http://www.azstarnet.com/sn/mailstory-clickthru/235272.php) This fire is human caused and began in a very remote canyon near the Mexican border and quite distant from any road. The fire is in the Pajarita Wilderness Area. The firefighters on the fire line report extensive illegal alien and drug smuggling trails throughout the area. Today, 04/23/08, I see another Wildfire burning on the highest reaches of the Tumacacori Mountains, north of Hells Gate, which is in the proposed Tumacacori Highlands Wilderness Area proposed by H.R. 3287. This is near the location that the armed bandits operate out of when preying on illegal aliens and drug smugglers, especially in the Aliso Springs Area near Tubac, Arizona.

As I travel around the United States I talk to Americans about the Mexican Border situation. The subject simply comes up when they find out I am retired from the Border Patrol. In particular I talk with people that visit the Mexican Border here near Nogales and friends that live away from the border keep me up to speed on their thinking on border issues. This information really became clarified and focused during the debate about the McCain-Kennedy Comprehensive Immigration Reform Bill proposed by Congress last year. From nearly every state in the Union I have heard about the negative personal experiences that American Citizens have had with illegal aliens. If the citizen has not personally had a negative experience, then they know someone that has and they do not want to become victims themselves. A somewhat humorous example that comes to mind was related by a family from Maine that owns blueberry ground. They said that they hired illegal aliens to harvest the blueberries on their land. After a few days they noticed that in the surrounding towns illegal aliens were selling blueberries door to door and set up blue-

berry stands at prominent road intersections. Quite by accident they discovered that the illegal aliens that they had hired to harvest their blueberries were skimming and hiding blueberries on their ground, then coming back at night and retrieving those blueberries for their families to sell during the day while they were harvesting their blueberries for pay. They fired the illegal aliens and hired high school students to finish picking their blueberries.

Even tiny Rhode Island, thousands of miles from the Mexican Border is taking steps to curtain their illegal Immigration problems.

http://www.projo.com/news/pdf/2008/0327_immigrationorder.pdf

Most illegal alien stories usually are much more serious. I read about a serial rapist in Phoenix, Arizona, that specialized in young school girls on their way to morning school bus stops. I am sure we all read about the Railroad Rapist that terrorized the Southwest for months. Stories of illegal aliens involved in home invasion robberies and in fatal vehicle accidents that frequently involve other illegal activity including drugs and alcohol are common. No person or family in the United States is safe from the potential harm caused by illegal aliens.

http://www.ojjpac.org/memorial.asp

http://www.gopusa.com/news/2007/february/0222_illegals_report.shtml

Americans know this, particularly Americans that live away from the immediate border area. They are angry and they are focusing their anger on the politicians both local and national that have sat by and not demanded that our Immigration laws be enforced. They view these politicians as to source of the problem, not the illegal alien.

Mr. GRIJALVA. Thank you. Let me begin—and hopefully some quick responses so that all the members have an opportunity. Mr. McClung, you know, I guess some people would argue that because your organization opposes the wall, that somehow you're one of these open border kind of organizations that doesn't care about enforcing those laws and don't care about—that all you care about is a secure work force for the people that you represent. And that's—some people might categorize that that way. And your opposition to the wall is based on.

Mr. MCCLUNG. Well, if we're categorized that way, it's by people who don't understand either agriculture or farmers. For the most part, farmers are a conservative political bloc. They are very patriotic but they also are intent on having things done well and done economically when possible. So let me make it very clear, no farmer that I know of or have talked to is opposed to border security. We all want border security, it's just doing it is—in as smart a fashion as possible.

And then let me—I'm glad you asked about the desire for cheap labor because that always comes up in this sort of thing. There is no question that if you're an unskilled farm laborer from Mexico or anyplace else, you're probably not going to get rich in this country harvesting lettuce or whatever it is, but you are going to be paid the minimum wage or well better.

The national average for farm labor that I saw the other day is about 9.50 an hour. It's different from place to place, but that's the national average. That's not a great deal of money. We all know that. But it is a lot more than a lot of people are able to make elsewhere in the world.

Mr. GRIJALVA. Thank you. Mr. Merritt, we've got this either/or proposition, and maybe you can help answer that. The either/or proposition is, you know, destroying the habitat is—impacting negatively a habitat or wildlife corridor, et cetera, that's a bad thing. But stopping illegal entrants is just a much more important issue.

So that must have the priority. And how do you see this either/or proposition? Do you have to give up one to get the other or——

Mr. MERRITT. You know, this is based on 11 years in the Valley working with Border Patrol agents and supervising on a daily basis that I believe and I think a lot of my colleagues believe that there are alternatives. And I think, you know, the major point that we have as Fish and Wildlife Service employees or land managers is that some of the fencing placement just made no sense to us in terms of its effectiveness.

Now, I'm not a border security expert, but I've been there 11 years and worked with these people and talked to the field agents, and some of the fence placements were—disallows movement of wildlife—and I'm not talking about urban areas, urban—wildlife moving past urban areas, rural areas is just nonsensical to us and probably not a good expenditure of money either, as was alluded to by my colleague here.

Mr. GRIJALVA. Thank you. Ms. Peterson, explain a little bit more how you've—how the compliance with laws such as NEPA that you mentioned can actually result in cost savings, you mentioned that, in the long-term.

Ms. PETERSON. Well, NEPA and several of the other laws that I mentioned have an environmental impact process and that process involves examination of alternatives and—which often include cost estimates and can also bring up potential impacts that the costs can then be mapped out too. And it also helps give sort of an indication of——

Mr. GRIJALVA. Thank you. Mr. Taylor—let me extend my time just a little bit. Mr. Taylor, from your experience as a Border Patrol agent—and I think you kind of mentioned bits of this in your testimony—do all people who come across illegally do so because they either have a contagious disease or have a criminal record, therefore, they can't obtain a visa legally? And can anybody with a clean record who pays 100 bucks get a visa to enter the U.S. within three years?

Mr. TAYLOR. They can apply for a nonimmigrant visa, and most of the people that do apply get a hearing with a consulate officer, which is actually outside of what Immigration does.

Mr. GRIJALVA. And I assume by your answer that it is contagious-disease carrying people and criminals that are the primary focus that are coming across, right?

Mr. TAYLOR. That is what is the current concern, Congressman. In Tucson, there have been outbreaks, two recently, as you know, in Tucson with measles, one with an alien from Switzerland. And there has been another outbreak or rather a reported incident of tuberculosis.

Mr. GRIJALVA. You mention, sir, your extensive experience. You were here in the Rio Grande Valley, part of this sector, then you went to the Tucson sector. Can you explain the circumstances on how and why you moved?

Mr. TAYLOR. Promotion.

Mr. GRIJALVA. Straight promotion? OK. Let me now turn to the Chairwoman Bordallo for any questions she may have.

Ms. BORDALLO. Thank you. Thank you very much, Mr. Chairman. I have a question here for Mr. Merritt. There is wide con-

sensus within the scientific community that preserving the functions of key wildlife migration corridors across the U.S.-Mexico border is critical to the future ecological health of the borderlands, especially in light of the need to ensure that species can adapt to climate change. Now, in your opinion, has the Department of Homeland Security done an adequate job of identifying these key wildlife corridors? And, second, can you describe how, if at all, DHS has worked with you and other Fish and Wildlife Service biologists to redesign project segments crossing refuge system lands to protect functioning migratory corridors?

Mr. MERRITT. I'll try to answer the first one. This particular area wildlife corridor which includes the refuge and private lands and nongovernment agency owned lands is of particular value because so much of the property—as I said, 95 percent of the habitat has been lost on the north side, and if you look at satellite maps in Mexico, it's probably up to 98 percent. There is very little habitat left. It's a natural funnel for migratory birds to come from North America and South America and all sorts—and this area is a major stopover for millions of migratory birds.

An example would be probably hawks that come in during the summertime. In Santa Ana it's not uncommon to have 80,000 broad-winged hawks lighting within the Santa Ana National Wildlife Refuge as a rest stop. There are no other habitat areas around.

Ms. BORDALLO. And in your professional opinion, are there ways to ensure border security without compromising those lands set aside for wildlife?

Mr. MERRITT. I believe that there are ways to do this if we went through the NEPA process like we ought to do in a thoughtful way and looked at the alternatives, that a good decision would be made. Unfortunately, the schedule did not permit a good decision in my opinion.

Ms. BORDALLO. I just want to say, Mr. Chairman, thank all three panels. This is our final panel and some of us are leaving here to go back to Washington, but I just want to thank all the participants on the panel and also to let you know that it is a very, very important issue to members of the U.S. Congress. Otherwise, you wouldn't see eight Members of Congress here at a field hearing. So, again, thank you very much and to the University here also for their hospitality.

Mr. GRIJALVA. Thank you, Madam Chair. Let me turn to our Ranking Member, Mr. Tancredo.

Mr. TANCREDO. Thank you, Mr. Chairman.

Mr. Taylor, has it been your experience that the preservation of wildlife habitat is endangered by the actions taken by people coming across the border at areas where they, of course, have less to worry about in terms of border protection, border security? Would that not be—I'll put it this way. Would wildlife areas, national wildlife areas, be more or less alluring to the person who's coming across the border who does not want to get caught? If you're looking at that border, where would that path be for you?

Mr. TAYLOR. It's been my experience—and, Mr. Tancredo, thank you for the question—that they're going to go where they're going to be most successful, and where they'll be most successful is where

the terrain permits them to evade detection and where the border patrol presence would be diminished.

Mr. TANCREDO. And would that Border Patrol presence be diminished in a wildlife—in a wilderness area, in particular, wildlife?

Mr. TAYLOR. By definition of the '64 Act, it would greatly diminish access.

Mr. TANCREDO. So if we are truly concerned about the protection of the wildlife and the wilderness areas, would we not—is it not logical for us to then try to do something to prevent entrance into that area by people who are going to spoil it?

Mr. TAYLOR. Yes, both from the destruction—actual destruction of habitat and the spoiling of the area visually both.

Mr. TANCREDO. I recall it was part of the report I remember sometime ago about the difficulty that the Border Patrol was having getting into the wildlife or wilderness areas because, of course, they were protected, and the fact is that illegal aliens do not care about that protection. Therefore, they seek those places out. But we were—it's very difficult for the Border Patrol to actually patrol the area. They have to either use—go in by horseback—by that time, of course, people are gone—or they are sometimes parachuted in, if I'm not mistaken. But the other problem with using horses is that the horses have to be quarantined for two weeks so that they make sure that nothing they ate would eventually go through them and end up hurting the grass or something of that nature.

Mr. TAYLOR. There are all types of restrictions on wilderness areas. And depending on the sensitivity of the habitat in a particular area, it has things that people are specifically interested in preventing. And if it is a plant that is transmitted by a seed—which certain grasses in the cactus monuments, they actually pay people to go out and take these plants out before they bloom each year. And a horse, of course, eating grass will transmit that particular seed.

Mr. TANCREDO. Thank you. Ms. Peterson, has your organization done any work at all trying to estimate the cost to the American taxpayer of maintaining the illegal alien community in this country? Has it looked at that at all?

Ms. PETERSON. No, it has not.

Mr. TANCREDO. A number of organizations have, a number of reports are out there which specifically indicate that it runs into the hundreds of billions. One I saw was a trillion dollars over 10 years that are potential costs that we incur—taxpayers of this country incur—as a result of the infrastructural cost for the illegal immigrant population in this country, both certainly health care, educational expenses, and the like. So it's everything has to be gauged in on that basis as to exactly what it is that—I mean, the amount of money that it would cost us to try and prevent the action in the first place as opposed to what it costs if we do nothing at all.

Now, everybody has said today, you know—I think almost everyone on the panel, with rare exceptions, has agreed that borders are important. There are a couple of people who suggested—or at least one—who said that to her and many of her friends they were not, that it didn't matter, borders didn't really exist for them. I would suggest that that's not a unique impression for a lot of people in and around this area, that borders don't matter.

But let me just suggest to us all that this is not a problem that is faced only by the people in this particular area. They are impacted dramatically by it, undeniably, but so is the rest of the United States of America, and as Members of Congress we have a responsibility and we have a duty to do what we can to protect and defend the Nation as a whole.

And so it extends to looking at the borders and seeing what we can do, even though, you know, there are people in the area that may disagree with the implementation, you have to—as I say, our responsibility is something else. It's broader than that. And we have to come to the realization, the understanding, that there are people here who really don't believe borders are important, especially the border between Mexico and the United States. They wish it didn't exist, and in their minds it really doesn't. But for the rest of us and for the security of the Nation as a whole, we have to take into consideration the fact that there are much bigger issues at play here than someone's multicultural attitude toward borders. And that's all that I suggest that we all do when we look at this.

This is a very serious issue, and if you don't like a fence between Mexico—if you don't want a fence between the city and Mexico, I suggest that you build this fence around the northern part of your city.

Ms. BORDALLO. I thank the gentleman, and now I'd like to recognize the gentlelady from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Madam Chair. I appreciate your allowing us to participate and thank the witnesses, and I agree with my colleagues in thanking the university and everybody for their time. There are certain things that kind of stand out in my mind and I may ask some of these answers to be given to us in writing for the record because of time constraints, because I have several of them. But to Mr. Merritt, in your testimony you alluded to the fact that the general public was being advised that no decisions were being made yet about the areas—I'm sorry, the areas where the fence was going to be established, yet the consultants were already hired, there were maps already drawn, locales identified, and if I'm correct on my assumption, you found out about it through the newspaper?

Mr. MERRITT. What we did find out about was that there was fencing planned for Texas through the newspaper, and we tried to follow up on that on our own in terms of contacting DHS locally to confirm.

Mrs. NAPOLITANO. But was the public advised after the fact?

Mr. MERRITT. It's really hard for me to say in terms of the public. You know, it first came out in the Roma newspaper, which doesn't have a lot of distribution, and I think that from then on the papers really jumped on that and there was a lot of discussion in terms of what is really happening. And really the Border Patrol answer that I recall is that "We haven't made any decisions yet," and that's what we went through for months as Fish and Wildlife Service employees.

Mrs. NAPOLITANO. But was it evident that the plans had already been drawn, consultants hired and things were on the way?

Mr. MERRITT. I'm not absolutely sure when consultants were hired, but we were provided maps right away after we had the first meeting.

Mrs. NAPOLITANO. Thank you. To Mr. McClung, how severe do you think the economic impact might be to the—might be of the decision to cut local farmers off from their water source?

Mr. MCCLUNG. Well, if, in fact, we're cut off from water and land, it's going to be extremely severe. It's difficult to tell because we're not sure where they're going to build those structures and we don't—more importantly, we don't know exactly what kind of access will be provided in those structures. And so it's hard to give you an accurate answer. I will say this. Increasingly the produce industry in Texas is moving to Mexico and part of it is labor. And if we are impacted in terms of labor, then that trend will continue and will amplify.

Mrs. NAPOLITANO. Mr. Taylor, you were stating about being able to apply for a visa to be able to cross the border legally. I can assure you that—and I don't speak for the rest of my colleagues, but my biggest case load is immigration, caseload on people whose visas are not—that they applied for years are still waiting for them or that they have problems trying to be able to effectively be able to cross the border.

FBI's known priority has been terrorism, not immigration assistance. So that to me is unfortunate that you do say that because that has not been the case, at least from the vantage point of my case workers.

Ms. Peterson, were you asked to be part of the dialogue on being able to have input as to the fence, or any of you, Mr. McClung, and you, Ms. Peterson?

Ms. PETERSON. No, although we don't have—our organization has membership down here in this region, but we're Washington-based, but, no, we were not asked.

Mr. MCCLUNG. Not only were we not asked for the most part, but when we tried to contact the Border Patrol, go in and talk to the Border Patrol, they turned us down. They didn't know what to say and were afraid to say much of anything.

Mrs. NAPOLITANO. And, Mr. Merritt, in case of fire—and you did allude to the fact that it would be hard to get through to be able to fight fires—were a majority of those fires caused by illegal immigrants, or were they naturally occurring fires.

Mr. MERRITT. Generally those fires are not naturally occurring in the area. We don't have much lightning strikes here. It's really hard to say. We have had a variety of reasons for the 300 or so fires that we have on the refuge every year. Some of them are man-caused, some of them are embers from across Mexico blowing over, sometimes it's people burning garbage. It just seems a variety of reasons, no real primary reason for those fires.

As far as the Fish and Wildlife Service goes, it has the biggest firefighting capability in the Valley and helps out all the communities. And being behind a fence in terms of trying to fight a fire is a safety matter that we are concerned about.

Mrs. NAPOLITANO. Then we shouldn't be blaming it all on undocumented immigrants.

Mr. MERRITT. I would not say so, in my experience.

Mrs. NAPOLITANO. THANK YOU, SIR. THANK YOU, PANEL. THANK YOU AGAIN AND THAT'S IT FOR ME.

Mr. GRIJALVA. Thank you. Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman. Again, thanks for this hearing, and I want to thank our guests. We've had three panels, and I think we've had—one thing about it, for you folks that think you didn't get your day in court, you certainly had it today with lots of coverage and you've had a chance to talk about your issues.

Let me go over a couple of things that I think are important. First, Ms. Peterson, I was—I wrote the law that mandated the double border fence—actually, triple border fence for that smugglers' corridor in San Diego. And I—you know, facts are stubborn things. I've got to keep bringing them back to you.

We had 202,000 arrests before we built that fence. We had 300 drug drive-throughs a month on average. We had an average of 12 murders on the border a year, hundreds of rapes, hundreds of assaults. It was so bad that we had a plainclothes police unit from San Diego City who would go down dressed as illegal aliens and wait to be attacked by the border gangs, many of whom were armed with automatic weapons.

Fact for you: When we built it, we went down from 202,000 arrests to 9,000, more than a 90 percent decrease. We eliminated all 300 drug drive-throughs per month. We took the average murder rate from 12 a year, all by border gangs, down to zero. And by FBI statistics, the crime rate in the county of San Diego after we built the border fence went down by 56 percent. And the cost of building the border fence, the hard cost of actually putting in the cement and the fence posts and the panels and building the fence—in fact, the double fence, because we only needed to build two. I met with the Clinton administration and said, "We don't want to build all three. We don't think we need it." I said, "I'll tell you what, we'll leave it on the books, and if we don't need the third layer, we won't build it." We never needed it because it worked very effectively.

The price we got—and it's still a cost that's quoted by contractors because we had the Association of General Contractors meet and testify in Congress as to what they would charge—was about $3 million a mile for those 9 miles of border fence that we built. Now, you said it's actually been 100 million. It hasn't been $100 million to build the border fence. Now, we delayed building the fence—and in a way you've made my case. We delayed building the fence across the Smugglers Gulch for 12 years because of lawsuits, because of a concern that the gnatcatcher would not fly over a 10-foot high fence. And if you take that and extrapolate that across the Southwest, it's easy to understand why the Department of Homeland Security said, "We'll never build this fence if we don't have a waiver process that's available to us." And that's why Congress overwhelmingly approved the waiver.

And the second fact that you've got—that you've erred on here is this. You said that Operation Gatekeeper is what brought down the smuggling. The border fence was a part and parcel of Operation Gatekeeper. That was the fence that we attached the gate to. And we actually were able to reduce the number of Border Patrolmen—and if you'll go back and check your numbers, you'll see that we have fewer Border Patrolmen attached to the fence sector today

than we had before we built the fence because the fence leverages your personnel. Because when you put in a high-speed road where a Border Patrolman can be there in 60 seconds from a mile away upon notice, then you don't need as many people on that border.

So in terms of human suffering, in terms of bringing down the crime rate, in terms of having an environment where the average person can go down sometime just before dark and not be afraid for their safety, we've made—we've made great advances.

And I want to give you the statistics for Yuma, because we may have another hearing and you may want to bring up these numbers again: 138,000 arrests in the sector that we fenced before we fenced it; 3,800 after we fenced it. That's a decline of more than 95 percent. So, you know what, Mr. Chairman, this has been a good hearing because the theme has been we all agree we need to have a controlled border. The problem is that nobody has brought up a better alternative than the fence and the fence has been proven to work very well, we've established, in San Diego and the Yuma sector.

And there is a very strong humanitarian segment to this. Because as I mentioned, my brother puts out water for the folks that would otherwise die of thirst in the desert. And 400 people a year die of dehydration and thirst who are allowed to go across that open border, pushed across by the coyotes and by the guides who tell them that the road is a mile to the north and in many cases it's 20 miles to the north. And those people expire in the desert sands of Arizona, New Mexico, California and Texas. Their lives are worth something more than the statistics that the so-called Taxpayers for Common Sense have leaked out.

Along with another cost, the cost of the 250,000 criminal aliens who are presently incarcerated in Federal, state and local penitentiaries and jails is $3 billion a year. According to the costs submitted by the contractors, that would pay for a thousand miles of border fence if you eliminated that incarceration cost for one year. That's another cost that has to be balanced against the cost of not having any border fence.

Mr. Chairman, I think we've had an excellent discussion, but I think it's clear that we all agree as Americans that we have to control our border, we have to know who is coming in. And I think one of the points we haven't brought in is that we have the biggest front door in the world where people knock on that door and come in by the millions every year. And what the border fence will do is require people who want to come into this country to knock on the front door.

And the last point that I need to make to our friends concerned about wildlife, there is not a single water fowl species that can't negotiate that border fence. There is no acclaimed biologist who says that somehow you're going to interrupt migration patterns by building the border fence.

The major game species in Texas is white-tail deer, and all biologists say that most white-tail deer live in an area for their entire life of about 1 or 2 square miles. They're not migratory and they're not crossing that river on a rapid basis. And, you know, Texas ranchers have thousands of miles of high-fenced areas to keep their

game in. That has not kept Texas from being a great state for wildlife.

So I think there is a compelling reason to build this border fence, for humanitarian reasons, for natural security reasons, and criminal justice reasons. And, Mr. Chairman, I think it's time to get on with it.

Mr. GRIJALVA. Ms. Peterson, I'll give you a chance to respond.

Ms. PETERSON. Yes, it's very quick. I just wanted to address Congressman Hunter. Clearly there are many different ways to measure effectiveness. Immigration statistics are notoriously hard to quantify. I just wanted to point out that the numbers we used were DHS annual immigration statistics that showed apprehensions across the entire border, not one particular sector such as San Diego, et cetera.

Obviously, often there are locations where the numbers do decrease when infrastructure is put in place, but then they can increase in other areas, which is the point I made. That said, we do not dispute the fact that certain types of fencing may be effective in certain contexts, as with the presence of Border Patrol, as other people have pointed out here today. But that is all the more reason to ensure that the location and the deployment of tactical infrastructure follows a conscientious, fair and transparent process that allows the most cost-effective choices to be made in the best ways.

Mr. GRIJALVA. Thank you. Mr. Reyes.

Mr. REYES. Thank you, Mr. Chairman. Once again, with all due respect to my colleague from California, I did say that there is a better alternative to the fence. Let's invest that money in hiring Border Patrol agents, Border Patrol agents that can be professional, be well-trained, be responsive and work within the community that they live in. Now, I think that's a much better alternative than to just blindly put up 1,000 miles or 2,000 miles of fence or wall, whichever way you describe it. I was interested—I think it was Mr. Tancredo that talked about—talked to Mr. Taylor about the issue of a fence in the wildlife area. He did—am I to interpret that wildlife thrives—would thrive if we put that fence in the wildlife area of the border?

Mr. TAYLOR. Excuse me, Congressman Reyes. I think his question was about in the wilderness areas.

Mr. REYES. Yeah, in the wilderness area.

Mr. TAYLOR. OK. What we've seen is that in particular in the Pajarita Wilderness that now exists in Arizona, is that when we excluded—closed the roads and excluded people from going in and having common access, we also kept the Border Patrol from going in. And as the absence of the Border Patrol became more known, then the criminal element moved in and started focusing their operations out of that area.

Mr. REYES. But, then again, for the record, the fence does not necessarily preserve the wildlife area any better than no fence.

Mr. TAYLOR. Well, there literally is very little or no fence there now. What exists is a three-strand barbed wire.

Mr. REYES. And, Ms. Peterson, just, again, for the record, there are a number of studies, some of which prove that aliens do benefit our economy, that aliens that are here in an undocumented status

do pay taxes, and they certainly pay sales taxes and things like that. So it's not all a one-sided issue.

And certainly we know that—it's been documented that in the construction industry where undocumented aliens build these—what they call McMansions that some people live in, that they benefit the—that particular industry. And in Arizona where they passed some laws last year that were very anti-immigrant, now they're screaming to allow—for the Federal government to allow the state to be able to administer a guest worker program. So some people want cheap labor, but they want fencing and all these other things.

I wanted to—Mr. Chairman, I wanted to talk a little bit about—because I'm assuming that the written statements are inserted in the record?

Mr. GRIJALVA. Yes, they are.

Mr. REYES. I wanted to talk to Mr. Taylor, and in the interest of full disclosure, Mr. Taylor worked for me when I was chief here in this sector and he filed a number of complaints against me. But I was interested—I was interested in knowing——

Mr. HUNTER. That shows good judgment.

Mr. REYES. Pardon me.

Mr. HUNTER. I said that shows good judgment.

Mr. REYES. Well, we'll see. You say, Mr. Taylor, that we know that terrorists came to the United States across the Mexican border. How do we know that?

Mr. TAYLOR. In my testimony that I submitted, there is a newspaper article from the Nogales International. I believe it's dated this year. And the situation in that case was there were two Middle Eastern aliens living in Sierra Vista. Sierra Vista is——

Mr. REYES. They were undocumented.

Mr. TAYLOR. We don't know. I'll get to the point.

Mr. REYES. If you're of Middle Eastern descent, you're a terrorist.

Mr. TAYLOR. And these people were traveling from Sierra Vista to Nogales. And what the newspaper article said was that they were coming to pick up one of their associates who had crossed the border illegally.

Mr. REYES. Well, let me—because my time is almost up here. You said—you also say in your written statement that you personally interviewed three Syrian citizens that had entered the United States illegally and one subsequently claimed to you that he was a terrorist and was coming to the United States to engage in terrorism. When did that happen.

Mr. TAYLOR. I don't remember the exact date. It was around 2000, 2001.

Mr. REYES. 2000? And what happened to those three individuals.

Mr. TAYLOR. The two were I think given hearings as a female and a minor female child, and the male who made the terrorists declarations turned over to the FBI in Tucson.

Mr. REYES. And I find that interesting, Mr. Chairman, because in talking to the head of the DHS intelligence, there is no such case that's been recorded on the southern border. And, by the way, all of the documented cases of terrorists have come through the Canadian border. I know this because I sit as the Chairman of the Intelligence Committee.

So I think particularly in Mr. Taylor's written testimony, there are a lot of areas that we need to do some more work in and do some follow-up in lieu of the fact that this is all testimony under oath. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you. The gentleman from American Samoa. Sir.

Mr. FALEOMAVAEGA. Mr. Chairman, I gather that you must have extended an invitation for an official from DHS to testify at this hearing. But, apparently, either they're unwilling or they never got the invitation or whatever.

Mr. GRIJALVA. We did.

Mr. FALEOMAVAEGA. But I would respectfully request that we continue this line, the two Subcommittees doing this, and I would respectfully request that we do continue this hearing with officials from the Department of Homeland Security when we get back to Washington. Second, I just wanted a couple of questions of Mr. McClung.

As the CEO of the Texas Produce Association for the record, how many farmers and ranchers do you have as members of this association.

Mr. MCCLUNG. Well, we're all—we're all farmers and shippers because its no ranchers.

Mr. FALEOMAVAEGA. Is it just in Brownsville or the whole State of Texas.

Mr. MCCLUNG. The State of Texas, and it is primarily the shippers that I represent and there are about 350 of them.

Mr. FALEOMAVAEGA. You're talking about—what is the approximate dollar value of the members of the Texas Produce Association economically? What does this bring into the treasury of the State of Texas in terms of your participation.

Mr. MCCLUNG. Well, not—I can try and find you more comprehensive numbers, but it's not an easy question to answer. The citrus industry alone is generally considered about 150 million a year in the Rio Grande Valley. The vegetable industry is something larger than that, but it is very difficult—if you want any more——

Mr. FALEOMAVAEGA. And the cattle industry, is that also part of the——

Mr. MCCLUNG. The cattle industry, no, sir. That's the cattlemen. But we do cover—over half the imports are from Mexico these days, and those numbers aren't included.

Mr. FALEOMAVAEGA. One of the sore points of the whole thing about immigration reform, Mr. McClung, is the whole question of employers taking up undocumented workers. And another line of questioning to you, sir, about how many documented workers are involved in the State of Texas that help farmers in this produce industry here.

Mr. MCCLUNG. We know—have been very public that on a national level, about 70 percent of our field labor is undocumented. That's not just Texas, but I think Texas is pretty representative in those numbers. I do want to emphasize, however, that under U.S. law, if a potential employee comes to you as an employer and has papers—he may have bought them down the street—but you can't question those papers without violating his civil rights. So I won't

pretend that there are not times when that's a convenient access to labor.

Mr. FALEOMAVAEGA. My point I wanted to share with you, Mr. McClung, is here is a major organization of—a composite of all the produce farmers that are involved in this industry and yet the Department of Homeland Security has never saw fit to even conduct any consultation with an important organization such as yours.

Mr. MCCLUNG. Deny us access, in fact.

Mr. FALEOMAVAEGA. So not even discuss any questions of water rights, questions of ownership of private property. None of these issues were ever discussed by way of consultation with your office.

Mr. MCCLUNG. I can't tell you that DHS may or may not have talked to individual landowners that I'm not aware of, but beyond that, no.

Mr. FALEOMAVAEGA. I wanted to ask Mr. Merritt just one question. In terms of the 37—I keep going back to these 37 Federal statutes, some 50 years old, a couple 100 years old, and yet we just turn around and give Mr. Chertoff, a nonelected official, the absolute right to waive these laws so that these fences can be built. Do you consider that, in your capacity as a former senior employee of the Fish and Wildlife Service—there are at least four or five Federal statutes involved here that deal with the Fish and Wildlife Service, and you're saying that you were never given any consultations in terms of what Mr. Schultz has shared with us earlier. It took nine months for the Department of Interior just to give agreement to some 30 Federal statutes the Department of Interior has jurisdiction over and just waive it and just say that it was OK.

Mr. MERRITT. Well, I think I would like to answer that in a——

Mr. FALEOMAVAEGA. Positive way.

Mr. MERRITT. Well, I'd like to reduce it down to a situation that I dealt with and that had to do with the Refuge Administration Act, which is a problem, the problem being that we had a law that said—I mean, as a refuge manager of 30 years, I knew the border fence wasn't going to be appropriate nor compatible on a national wildlife refuge. And it took that long for the agency finally to send a letter—decide to send a letter to DHS saying we would like to have a waiver.

Mr. FALEOMAVAEGA. My time is up. I'm sorry, Ms. Peterson and Mr. Taylor. But, Mr. Chairman, I do want to thank members of the panel for their excellent presentations, and, again, to thank our good colleague Mr. Ortiz and Dr. Garcia for allowing us to come and visit this beautiful town of Brownsville. Thank you again.

Mr. GRIJALVA. Thank you, sir. Let me now turn to the gentleman from the district we're in, Mr. Ortiz.

Mr. ORTIZ. Thank you, Mr. Chairman. I would like for us to—my question is for Mr. McClung. Now, for years, you know that when we go through a drought we're very dependent on the treaty that we've had with Mexico, the Treaty of Guadalupe. And sometimes it causes problems because they don't pay their water bill. Now, what's going to happen when we build that wall and we give the river and the water to the Mexicans? Has the Department of Homeland Security told you that you will continue to be able to get some water from the river, or are we going to have to go back and consult to see where we stand on the Guadalupe Treaty? Have they

talked to you about this, or maybe you, Mr. Merritt? Where do we stand.

Mr. MCCLUNG. Sir, they have never talked—come to us or directly talked to us about it. There have been some things said by Mr. Chertoff and others about the fact that they don't intend to make it difficult for us to get the water or the land access, but, frankly, we can't see how you can have both. It just isn't possible in our minds.

Mr. ORTIZ. And that's of deep concern to me because, you know, it will have a tremendous impact on our economy. Now, we've heard that if they do build the wall, that they're going to provide a gate so that those people who have many amounts of acre land can use the gate to go and farm on the other side of the gate which would happen to be now on the Mexican side. Have they told you if they do that who is going to have the key to open that gate?

Mr. MCCLUNG. Well, actually, the most recent version is—and these gates, by the way, will have to be very large because some farm equipment is big. The—what they are saying they're going to do is put these gates in and then they're going to issue remote controls, garage door openers essentially. And one can imagine how long it will be before some of those remote controls go missing or the guys on the other side figure out the frequencies.

Then they also, because of wildlife, are going to put ports in the gates, doggy doors in the gates, and—ocelot doors.

It is frankly, Mr. Ortiz, it is some poor engineer's solution whose back is against the wall literally in this case when there is no good solution.

Mr. ORTIZ. You know, and I have received information from landowners that the Department of Homeland Security is offering well-below-market-price value for their land. And I even had a farmer who's got a small plot, who has a waterfront river, who was offered something like 36 cents per square foot. And I think they finally settled for a dollar a square foot. Now, these are some of the people that have talked to us. Are you familiar with this talk going on?

Mr. MCCLUNG. I am familiar with farmers selling their land along the river to the Federal government for various purposes, and there is always a dispute about fair market value. The government's version and the private landowner's version are not necessarily the same, and, to be honest about it, probably the answer is in between.

Mr. ORTIZ. And when they do that, there's farmers who have hundreds of acres of lands, there's others who have 3 or 4 acres of land, and when you put a gate or you put a wall, you know, that diminishes the market value of that 3- or 4-acre farm.

Mr. MCCLUNG. That is the primary concern that I have, is what happens to the value of the thousands of acres that lie between the river and the—and where they plan to put the gate.

Mr. ORTIZ. You know, and my good friend Mr. Hunter was describing a few moments ago that we need to know who is coming into this country. And this is why we have been pushing for a comprehensive immigration bill, because we have been told that we have 12 million undocumented workers or undocumented or illegal, whatever you want to call them, in the United States. We already

know that under the Other Than Mexican policy that we had, thousands and thousands of them came into our country.

One thing that the comprehensive immigration bill does is that there is some steps before you can qualify to become a American citizen or to be here legally. You have to follow those steps and you cannot be a criminal, you have to pay your taxes, and you have to be a citizen and so on and so forth. But this will allow these people to come out from the shadows and say "I've been here 10, 15 years and I want to become a citizen." Those that mean to harm our country would not come out.

Mr. MCCLUNG. The national agricultural community—not just fruits and vegetables but across the board in this country—has said repeatedly and for a long while that there is a much better answer than a wall. It is comprehensive immigration reform. That is it.

Mr. ORTIZ. Thank you so much. Not only are we—we won't be able to get water, but even the little animals won't be able to get water if we build that fence, so we're in a hell of a shape, my friends. But I think what we're trying to do here is to put a bandage tape on a serious wound, and I don't think that talking about building this wall is going to answer the problems. It's going to be very costly. We are involved in two wars right now. We're spending $13 billion a month and, you know, when we spend taxpayers' money, this is very, very sacred money that we spend.

Mr. Chairman, I want to thank you and Chairman Bordallo and all my good friends and my colleagues here. I think this has been a very, very good hearing. I think that we understand at least better the problem that we have and we know that the wall is not going to answer this problem. So, Mr. Chairman, thank you for the time. Thank you so much.

Mr. GRIJALVA. Thank you. And let me before we adjourn this meeting thank all the witnesses—very much appreciate it—and all our panels, and in following the admonishment of the good bishop, that this discussion that we're having has to be a dialogue about solutions, not a diatribe about political grandstanding. It has to be—it's difficult work, it's complex work, and we're not going to accomplish it by demonizing or dehumanizing people. We're not going to accomplish it by marginalizing these communities.

And the waiver impacts that we talked about today are serious issues. We have environmental impact, social impact, security impact, economic impact, cultural and historic impact. And the reality is that these waivers above that are a very, very dangerous precedent for the American people.

We're talking about the rule of law; we're talking about 36 laws being waived; we're talking about—37—thank you—civil liberties, private property protection; and we're talking about promoting—profiling was part of this discussion; we're talking about second-class communities that we are having to deal with.

What community—when you waive the Clean Water Act, is there a community out there that—whose residents deserve less than clean water for their consumption? Of course not. So as we go forward on this issue—and we will—it is not about how we are going to allow a free flow of unauthorized people into this country. We all on this panel understand that we are a sovereign nation and we need to protect that nation. But we also have to understand

that we're on the border. We are part of a unique, different and entirely—an entire community that is very much part of this country. And being part of this country, it deserves to be treated with respect, with consultation, and with process. In going forward with the legislation in repealing that waiver, we hope that we will follow the gentleman's advice, bring DHS to the table, have them explain many of the questions that couldn't be answered today. Let me thank all of you and let me adjourn the meeting. Thank you very much.

[Whereupon, the Subcommittees were adjourned.]

[Additional material submitted for the record follows:]

[A statement submitted for the record by John S.C. Herron, Director of Conservation Programs, The Nature Conservancy of Texas, follows:]

Statement of John S. C. Herron, Director of Conservation Programs, The Nature Conservancy of Texas

I am writing on behalf of the Texas Chapter of the Nature Conservancy to comment on the proposal by Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) and U.S. Border Patrol to construct fence and wall segments along the Texas—Mexico border. Our organization is opposed to the proposed border wall as outlined for the Lower Rio Grande Valley. We are opposed to the wall both as a conservation organization that has worked in creating the wildlife corridor and as a private landowner of over 1,300 acres of native habitat in the Lower Rio Grande Valley (LRGV) that will be directly impacted by the proposed border wall. We believe there are alternatives to a border fence that are not receiving adequate consideration; alternatives that will provide increased border security while also protecting the critical remaining native habitat in the Lower Rio Grande Valley.

The Nature Conservancy shares the public concerns about border security, illegal immigration, and contraband smuggling, but the installation of the wall segments in the Lower Rio Grande Valley will begin the unraveling of a unique wildlife corridor found nowhere else in North America. We feel the National Environmental Protection Act (NEPA) process was an opportunity to have fully explored alternatives to the fence as proposed, and would have considered minimizing the associated impacts to the environment and endangered species. Building fences and walls through preserves and wildlife refuges in rural areas seems inconsistent to the stated needs for a fence or wall and therefore appears to be an unnecessary expense as well as an avoidable destruction of habitat.

We also want to express our concern that the border fence initiative has put local Border Patrol agents in a very difficult position that has undermined the excellent relations they've had with local residents. For many months, agents were sent out to talk with landowners, but were not given or allowed to convey the proper information or to answer many questions. Meanwhile, these same agents are trying to do their job and keep up their relationships with local landowners. The "consultation" process was frustrating and was not a two-way exchange. There was no indication that our input or questions from the ground had any bearing as to what type or the placement of the wall to be constructed. And it is clear that the proposed levee walls and fences will have significant adverse impact on wildlife, rare species, and the environment in the region, with no guarantees that these impacts will be minimized or mitigated.

Details of The Nature Conservancy's contact and communication with Border Patrol and Department of Homeland Security follows.

The Conservancy first learned about the proposed construction of a border fence along the U.S. Mexico border in the LRGV through a small article in a local newspaper in April 2007. Our staff in South Texas called the Fort Brown Station in Brownsville, TX to inquire about the fence and if it would affect our two preserves in the LRGV. No one at the station could give us any information in regards to the fence. In subsequent months, we kept hearing more and more about the proposed border fence and again our staff contacted the Fort Brown Station.

In June 2007, local Border Patrol agents visited staff living at Southmost Preserve in Cameron County and came to the office to hear any concerns we may have about the proposed wall. Our questions spanned from will the wall affect our prop-

erty; will we have access to our property and the river; will the wall cut off our water supply from the canal draining south; what mitigation will be allowed for wildlife to pass through the fence, how will the wall affect our property value, etc. We also asked what alternatives to the wall had been discussed or reviewed. Border Patrol agents did not answer our questions but wrote down our concerns and told us they would be compiled and sent up to DHS in Washington, DC. We were told that they would let us know as they were told from headquarters. Border Patrol agents indicated they were in the dark as much as we were, as this was an initiative from headquarters in D.C.

By late summer 2007 the rumors of the border wall had been in various articles in the newspapers and a map showing the wall segment locations was published. Border Patrol agents called us to tell us not to believe what was printed in the paper that there were no official maps as to where the border wall was to be constructed. In August we received an official request for right-of-entry survey to our Chihuahua Woods Preserve in Hidalgo County. The request asked for unfettered access to the preserve to conduct installation of border security infrastructure. This was the first notification we had that the border wall may affect Chihuahua Woods Preserve. We respectfully declined the request under the terms proposed by CBP. A Border Patrol Agent told me that they figured we would not allow access to do surveys for the wall, and therefore had not sent us an official letter requesting access.

In September 2007, a Border Patrol Agent called to request access to our Southmost Preserve to show their engineers the "lay of the land." When we requested a seat on the tour we were told that there was no room and that the tour was only for DHS, their contractors and USACOE. We granted access to the levee road, but not the rest of the preserve.

The Environmental Impact Statement (EIS) for the border wall was released in October 2007. The EIS showed the layout of the all the segments of the border wall and this was the first official notification that our property would be directly impacted by the wall and that the wall would be located north of the levee and not along the Rio Grande. In December 2007, CBP officially sent the Conservancy a letter requesting right-of-entry or face condemnation to survey the property.

During fall and winter, we had been requesting a meeting with the agents or engineers who could actually discuss with the Conservancy the plans for the border wall, its location, if any alternatives had been discussed, where wildlife portals could be developed, and discuss how irrigation or drainage canals would be affected. We were requesting this locally and through our Government Relations staff in Arlington, VA at DHS level.

In January 2008, we were finally granted a meeting at Southmost Preserve where several local high ranking Border Patrol agents attended. However, they were unable to provide any details that addressed our questions. They told us they had noted our concerns before and that the engineers were looking into suggestions we made.

In late April 2008, high ranking DHS personnel visited the property and informed us that USCAOE will be contacting us to request to conduct an appraisal and an offer will be forthcoming. We asked if they could answer questions in regards to access, irrigation and drainage issues, safety concerns and habitat protection. They mentioned they were still being reviewed. This past week, we have received some indication that the engineers and DHS are considering our suggestions concerning gates and access openings in the fence, but we remain uncertain what the final completed project will look like. We remain uncertain what impacts construction and potential condemnation will have on our ability to manage and conserve our lands and preserve.

[A statement submitted for the record by Sandra Purohit, Government Relations, Defenders of Wildlife, follows:]

Comments submitted for the record by Sandra Purohit, Government Relations, Defenders of Wildlife

Introduction

Thank you for the opportunity to submit testimony for the record on this important issue. Founded in 1947, Defenders of Wildlife is a national not-for-profit conservation organization that has over 1 million members and supporters across the nation and is dedicated to the protection and restoration of native animals and plants in their natural communities. With offices throughout the United States as well as in Canada and Mexico, we work to protect and restore North America's na-

tive wildlife, safeguard habitat, resolve conflicts, work across international borders and educate and mobilize the public.

We are gravely concerned about the impacts that border walls are having and will continue to have on wildlife, including threatened and endangered species, and on protected habitats and public lands along the border. We are also dismayed and deeply concerned at how construction has moved forward.

Defenders has a long history of proactive work on public lands and wildlife conservation in the U.S.-Mexico borderlands region, and has led the conservation community's efforts to promote alternatives to border wall construction that will better ensure border security while also protecting our irreplaceable natural and cultural resources. For example, Defenders' 2005 report On the Line: The Impacts of Immigration Policy on Wildlife and Habitat in the Arizona Borderlands, was the first to comprehensively address the environmental consequences of our nation's failed border security and immigration policies. Several of that report's recommendations, including a call for increased funding for borderland environmental programs and mitigation and early coordination with affected communities, have been included in recent federal legislation. In addition, Defenders has co-sponsored two major symposiums to bring together a broad range of stakeholders, including agency wildlife experts and managers, academic experts, policymakers, scientists, and Department of Homeland Security (DHS) officials in an attempt to identify and address the most critical ecological issues arising from the intensive effects of undocumented immigration and associated enforcement efforts. Throughout our history of advocacy on this complex and important issue, our bottom-line message has been clear: border security and environmental protection are complementary goals that can and must be much better integrated than they are today.

To achieve these goals, however, requires the leadership of Congress. Unfortunately, as exemplified by laws such as the Secure Fence Act and the unprecedented waiver provisions of section 102 of the REAL ID Act, Congress has pursued a politically-motivated and ineffectual "border security only" legislative strategy rather than comprehensively addressing the underlying forces driving undocumented immigration. Indeed, levels of undocumented immigration have consistently risen during the past 15 years, despite a massive expenditure of public funds, the addition of thousands of Border Patrol agents and deployment of associated off-road vehicles, helicopters, and other vehicles, and the construction of border walls, roads, and barriers. Despite this failure, many Members of Congress continue to resist attempts to meaningfully address the issues of border security and immigration, or to rethink the proposed massive construction of border walls across much of the southern border. Ultimately, it is the residents and businesses of borderlands communities, the irreplaceable tapestry of protected federal, state, and private lands, and the unique and magnificent wildlife of the borderlands region that will pay the price for this collective failure of leadership and vision.

But Congress is not solely to blame. The Bush administration and DHS Secretary Michael Chertoff have a tremendous amount of discretion and have chosen of their own volition to dismiss both direct and indirect impacts of "walls and waivers" at a regional scale. And, by and large, the agency has chosen not to consult with and heed the advice of those who know the area the best and will be impacted the most. The agency has chosen not to consider and analyze viable alternatives to walls (e.g. increased Border Patrol agents, remote surveillance, removal of concealing invasive vegetation, etc.). Instead, on five occasions in less than three years, Secretary Chertoff has needlessly invoked the REAL ID to waive numerous laws intended to protect wildlife and protected lands, clean air and water, historic and cultural sites, Native American sacred sites and burial grounds, and public health and safety, in order to "expedite" border wall construction. The result has been poor public process, unanticipated problems, disgruntled communities, lawsuits, escalating financial and ecological costs and unnecessary impacts to vital habitat.

We appreciate that the Subcommittee on National Parks, Forests, and Public Lands of the House Natural Resources Committee has held a field hearing on this important topic and hope that our testimony will detail the specific impacts from border wall construction under DHS as well as the basis for our concerns regarding the REAL ID waiver and its use.

PART I: IMPACTS OF BORDER WALLS

Impacts to Threatened and Endangered Fish, Wildlife, and Plants

Defenders of Wildlife, in conjunction with a broad cross-section of stakeholders including FWS, NPS, Department of Defense, Department of Homeland Security (DHS), and scientists with the University of Arizona, Arizona State University, Conservation Biology Institute and other institutions, have recently identified some of the most critical wildlife migration routes, including those utilized by the only

known jaguars in the United States, and compiled the results into a publication entitled Stakeholder Recommendations. Four out of five of these corridors would be blocked and permanently fragmented if DHS proceeds with construction of border walls along areas previously outlined in the Secure Fence Act (see Figure 1).

More generally, much of the borderlands area is situated in ecologically-complex areas at the intersection of major ecosystems. For example, in the "sky islands" region of southern Arizona and New Mexico, subtropical ecosystems predominant in Mexico and Central America overlaps with temperate ecosystems characteristic of the U.S. Rocky Mountains region, resulting in high concentrations of endemic species (species found only in this region) and important north/south trending wildlife corridors. In addition, DOI lands in the borderland region provide critical habitat to large numbers of imperiled wildlife, fish, and plants. According to FWS, the Arizona borderlands region alone contains nearly 40 threatened, endangered, and other special status species. The imperiled species along the borderlands region range from tiny fish, such as the beautiful shiner and Sonoran chub, to large, wide-ranging mammals such as desert bighorn sheep, ocelot, Sonoran pronghorn and jaguar (see Table 1). Significant disruptions to this habitat could quickly result in the extirpation of certain species from the United States. There is also concern such extensive ground disturbance will provide footholds for exotic and invasive plants to establish and spread, negatively affecting native flora and fauna and requiring costly efforts to attempt to control their spread.

Impacts to Protected Federal Lands

From the Tijuana Slough National Wildlife Refuge in San Diego, California, to the Lower Rio Grande National Wildlife Refuge in southern Texas, the borderlands region encompasses numerous protected federal lands administered by the Department of the Interior (DOI). In all, approximately a quarter of our nation's nearly 2,000 mile long border with Mexico is comprised of federal lands, including National Parks and Monuments, National Wildlife Refuges, and other protected areas. The total rises to nearly a third of the southern border when tribal lands, administered in trust for Indian Nations by DOI, are included (See Figure 2). The direct and indirect impacts border walls and other security infrastructure raise major concerns for these protected lands.

Border Walls Have Direct and Lasting Impacts on Protected Lands

Border Walls and the patrol roads that accompany them dramatically alter the landscape. They also physically fragment once-contiguous wildlife habitat (see Figures 3 and 4). The deleterious impacts of anthropogenic habitat fragmentation upon biodiversity is well-documented in the scientific literature, especially from the burgeoning fields of Wildlife Biology, Conservation Biology and Landscape Ecology. In addition to habitat fragmentation, building border patrol roads and walls will result in clearing extensive acreages of native vegetation, disturbed and compacted soils, accelerated erosion and disrupted hydrologic function.

As Refuge Manager Mitch Ellis stated in his formal determination that the border wall was not an appropriate use for the wildlife refuge: "It is now clear that the barrier proposed by CBP is inconsistent with Service policy and is likely detrimental to the refuge's natural and cultural resources." (emphasis added)

Border Walls Negatively Impact Protected Land Management and Tourism

In some circumstances, the construction of border fences and walls will inhibit access to, and thus the management of, protected public lands and private nature preserves. Numerous tracts of the Lower Rio Grande Wildlife Refuge would be located south of the proposed levee-wall, limiting managerial access for important resource management activities. The Sabal Palm Nature Reserve, managed by the Audubon Society, would be located entirely south of the proposed levee-wall, raising questions regarding manager access, public safety, perception and education (See Figures 6 and 7). As a result, managers anticipate if wall construction proceeds as proposed, the operations of the Sabal Palm Sanctuary will likely be closed down. Serious concerns have been raised by land managers regarding the wall restricting their ability to safely respond to and manage important ecological processes such as fire. In addition, there are concerns walls will have a negative impact upon the ecotourism industry, which is driven in large part by the existence of, and accessibility to, numerous wildlife refuges and nature preserves.

Border Walls Funnel Activity and Additional Impacts to Remote Wildland Areas:

Pedestrian fences are not impermeable barriers for humans. While disturbances from illegal border activity may be lessened in the area immediately next to the north side of a border wall, we anticipate this "benefit" will drop off quickly further to the north and may in fact be worsened in areas to the east and west of the wall

segments. Wildlands will still be impacted by people who have climbed over, tunneled under, or walked around the wall. The impacts from this funneling-effect are well documented.

Increased border infrastructure in urban areas within California and Texas, for example, have driven illegal activity and associated impacts into the remote and largely unpopulated desert areas of the border. Buenos Aires National Wildlife Refuge, Organ Pipe Cactus National Monument, and even protected areas far from the immediate border area, such as Ironwood Forest National Monument, are all currently experiencing unprecedented resource damage to soils, vegetation, waters, and wildlife. Similarly, while border walls in Arizona went up, levels of undocumented immigration and drug smuggling have skyrocketed in the "boot heel" area of New Mexico's borderlands, threatening several unique Wilderness Study Areas administered by the Bureau of Land Management.

Wildlife Managers are raising concerns about this effect. The effects of the newly constructed wall on patterns of illegal entry across Buenos Aires National Wildlife Refuge have not yet been documented. However, the Final Environmental Assessment, the Section 7 Consultation (for jaguar, lesser long-nosed bat and Kearny's Blue Star), and the Buenos Aires National Wildlife Refuge Manager's Appropriate Use Determination all note the potential for illegal foot traffic, trash and concomitant problems to be re-routed around the fence into adjacent mountain ranges and sensitive habitats.

The Buenos Aires National Wildlife Refuge Manager, Mitch Ellis, publicly expressed his concern about this type of impact, stating: "The refuge is also concerned with potential impacts to the Arivaca Creek Management Unit should smuggling traffic to the east of the barrier escalate. The riparian habitat in Arivaca Creek is extremely valuable for migratory birds and other wildlife". Based in part on this impact, Mitch Ellis also made a formal determination that the border wall was "incompatible" with the wildlife refuge.

Border walls funnel additional illegal traffic and enforcement activities into remote sensitive areas where sharp increases of human-induced disturbance is impacting important wildlife habitat. Where border walls are crossing protected areas, they do not prevent people from impacting protected lands once they have walked around, climbed over or tunneled under the wall.

A number of border wall proponents suggest that border walls are a good option because they might address the negative environmental impacts currently associated with illegal border activity. The impacts of illegal border crossings are substantive and legitimate concerns, however, responding to one set of impacts by creating a new set is not problem solving, it's problem shifting. At a regional scale, walls are adding dramatic ecological disturbances to already injured ecosystems; they are also failing to address the root of the problems at hand and in some situations are making existing impacts worse.

Impacts to Cooperative Bi-national Conservation Efforts and Treaty Obligations

We are deeply concerned that border security infrastructure will have long-term negative implications for numerous bi-national conservation planning, restoration and wildlife management efforts as well as international treaties and our neighborly relations with Mexico.

In recognition of our shared natural resources, land managers and others within DOI have led efforts to engage Mexico in cooperative management of protected lands, as well as the wildlife that utilizes habitat on both sides of the border. For example, under the U.S.-Mexico Sister Park Partnership, NPS and Mexico's National Commission on Natural and Protected Areas have designated seven "sister parks" along and in the vicinity of the southern borderland region. As stated by NPS, such collaboration "is necessary to address many domestic conservation issues, including migratory, shared, and invasive species, border park operations and security, shared cultural resources, and trans-boundary pollution." Border Walls are a symbolic and practical obstruction to such constructive and cooperative efforts.

The proposed border wall threatens to slice through multiple sections of a major multi-million dollar effort by the FWS to protect and restore a continuous wildlife corridor astride the Lower Rio Grande Valley. FWS has spent decades and upwards of $90million dollars piecing together 115 parcels of land in an effort to develop this wildlife corridor to connect wildlife populations in Mexico and the US. It is estimated that the border wall will divide this corridor in 11 different places.

Similarly, a fence along the border in southern Arizona and New Mexico threatens to undermine long-standing bi-national efforts to conserve and maintain habitat connectivity for wide ranging species such as jaguar, cougar, ocelot, black bear, Mexican wolf, desert bighorn sheep, pygmy owls, mule deer, white-tailed deer and numerous others.

For some of these species the majority of the surviving population lives in Mexico. The viability of threatened species in the U.S. is strengthened by dispersal from source populations south of the border. Such critical dispersal events are not possible through a border wall.

In addition, the U.S. has important treaty obligations with Mexico. The federal government has a responsibility to ensure that border infrastructure projects do not violate these important international agreements.

- The Migratory Bird Treaty Act. The Migratory Bird Treaty with Mexico and Canada prohibits anyone from pursuing, hunting, taking, capturing, or killing of identified bird species, or attempting to do so. Several borderland areas administered by DOI, including Tijuana Slough and Lower Rio Grande National Wildlife Refuge, contain unparalleled habitat for hundreds of migratory bird species. Again, such species may be threatened by border security infrastructure and operations. To our knowledge, there has been no oversight of this issue.
- The 1970 Boundary Treaty. The Treaty of November 23, 1970 resolved boundary differences between Mexico and the United States, and provided for maintaining the Rio Grande and the Colorado River as the international boundary. Activities in one country which impact water flows on other are also covered by the treaty. This is significant because the levee-wall proposal put forth by DHS for Hidalgo County may have international implications under this treaty. Again, to our knowledge there has been no oversight of this issue.

Border security infrastructure will have long-term negative implications for wildlife, protected lands, numerous bi-national conservation planning, restoration and wildlife management efforts and international treaties.

PART II: Impacts Of The Real ID Act Waiver and Secretary Chertoff's Authority.

The REAL ID Act and the Impact of a Government Above the Law:

The United States of America is a nation of laws. By and large, these laws have been crafted by the government to protect the fundamental rights, safety and environment of its citizens. Many of these laws recognize the importance of due process; they allow for public involvement in government decision making to ensure that those impacted by decisions will have a voice in how those decisions are made. This ensures that government has the information it needs, and has carefully evaluated multiple alternatives in order to make informed, rational decisions before it drastically impinges on private rights, public safety, and natural resources. But, under section 102 of Real ID Act, the DHS Secretary can waive any and all laws in the construction of border infrastructure. Below is a description of the imperfect process by which REAL ID Act waiver came about and an explanation of why the authority is unconstitutional

The Background and Unconstitutional Nature of the Real Id Act Waiver

Introduced in the House of Representatives by former Judiciary Chairman James Sensenbrenner on January 26, 2005, the REAL ID Act of 2005 (H.R. 418) was signed into law by President Bush on May 11, 2005. Section 102 of the REAL ID Act amended section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to provide the Department of Homeland Security ("DHS") Secretary authority to "waive all legal requirements" that he determines, in his "sole discretion," are "necessary to ensure expeditious construction" of the barriers and roads authorized under the IIRIRA. See § 102(c)(1) of Pub. L. No. 109-13; 8 U.S.C. § 1103 Note.

Despite significant controversy associated with the section 102 waiver provisions and other aspects of the legislation relating to immigration and asylum, the REAL ID Act was passed without any Committee consideration or hearings in either Chamber of Congress, and without having ever been introduced, considered, or debated by the Senate. In the limited floor debate on the REAL ID Act in the House of Representatives, one member noted the breathtaking scope of the waiver authority provided to the DHS Secretary, and the lack of meaningful Congressional consideration of that provision:

> The REAL ID Act contains a provision that would provide the Secretary of Homeland Security with authority to waive all laws he deems necessary for the expeditious construction of the barriers authorized to be constructed by section 102 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, IIRIRA. **To my knowledge, a waiver this broad is unprecedented.** It would waive all laws, including laws protecting civil rights; laws protecting the health and safety of workers; laws, such as the Davis-Bacon Act, which are intended to ensure that construction workers

on federally-funded projects are paid the prevailing wage; environmental laws; and laws respecting sacred burial grounds.

151 Cong. Rec. H459 (daily ed. Feb. 9. 2005) (statement of Rep. Jackson-Lee) (emphasis added).

Subsequent to its passage in the House as a stand-alone bill, and before any Senate Committees had considered or held hearings on its provisions, the House added H.R. 418 as an unrelated legislative "rider" to H.R. 1268, an emergency supplemental appropriations bill allocating $82 billion to the wars in Iraq and Afghanistan, tsunami relief in southeast Asia, and other purposes. P.L. No. 109-13. By attaching the REAL ID Act to H.R. 1268, the House leadership successfully gambled that even if Senate members were troubled by their lack of opportunity to consider the legislation, they would not let those concerns derail the Senate's approval of H.R. 1268, which as an emergency funding bill for war and humanitarian relief efforts, was considered a "must-pass" piece of legislation. See Congressional Quarterly, Senator Feinstein Expresses Concern About REAL ID Act in Supplemental Appropriations Bill. On May 10, 2005 the Senate cleared H.R. 1268 by a vote of 100-0.

Despite the lack of close Congressional consideration or meaningful debate, the scope of the REAL ID Act's waiver provision is unprecedented in our Nation's history. See Congressional Research Service ("CRS") Congressional Dist. Memo., Sec. 102 of H.R. 418, Waiver of Laws Necessary for Improvement of Barriers at Borders, Stephen R. Viña and Todd Tatelman (Feb. 9, 2005). Previous statutory waivers have almost without exception involved Congress directly waiving laws itself, or instructing the President or another officer to waive particular provisions (usually provisions of the same law containing the waiver) if certain circumstances occur. Congress has thus itself made the determination to waive the application of particular provisions of law in these instances.

In contrast, section 102 of the REAL ID Act provides the DHS Secretary with a roving commission to repeal, in his sole discretion, laws that would otherwise regulate and restrain his own conduct. Section 102 is thus not a mere delegation of broad policy responsibility that can be defended by pointing to some "intelligible principle" guiding the Executive Branch in its implementation. Rather, it is the transfer of an inherently legislative power to the DHS Secretary—the power to repeal standing laws in his sole discretion. In addition, the waiver provision departs from past Congressional practice and Constitutional constraints in its elimination of any judicial review with the exception of Constitutional challenges, thus precluding any independent review of whether the DHS Secretary has only waived thus laws "necessary" for the expeditious construction of border walls.

Compounding this absence of meaningful review, the REAL ID Act also eliminates the right to appeal decisions to the Federal Court of Appeals, providing a discretionary writ of certiorari as the only possible avenue for review of District Court decisions. This unrestricted and unprecedented grant of legislative authority, combined with the absence of meaningful judicial review and oversight, is an inescapable violation of both Article I and Article II of the Constitution.

Secretary Chertoff's Misuse of Authority

Under the Secure Fence Act, Congress has mandated the construction of some 700 miles of border fencing. But how, where and when it chooses to build those miles are now within the agencies' discretion.

DHS has always had discretion as to which laws it waives and which it chooses to comply with and of course the agency has the authority to abide by the law if it so chooses. Recent changes in the Consolidated Appropriations Act of 2008, (PL 110-161,Sec 546) have provided DHS with additional flexibility as to where and when to build. No longer required to build in specific locations, DHS must focus construction "where fencing would be most practical and effective" (PL 110-161,Sec 546). Congress also gave the Secretary the authority to change the number of miles that need to be built by the end of the year. Specifically, the current language calls for construction by December 31, 2008 of "370 miles, or other mileage determined by the Secretary..." (emphasis added) (PL 110-161,Sec 546).

With these changes, DHS has the authority, the flexibility and the time to consider viable alternatives and to fully inform his decision making by complying with study requirements under the law. In addition, the Consolidated Appropriations Act explicitly directs that DHS does not have discretion to bypass consultation. In fact, the language states "the Secretary of Homeland Security shall consult with "local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed." (PL 110-161,Sec 546). As local government officials, Native American

tribal leaders, and property owners all attested to during oral testimony before the committee on April 28, 2008, DHS has moved full steam ahead with discretionary construction but has failed to meet its obligation to consult.

The following is a timeline of DHS activities since the passage of the REAL ID Act of 2005 and Secure Fence Act of 2007. This timeline includes just a handful of "collateral impacts" on communities and the environment that have occurred as a result of DHS's rush to waive laws, and its failure to consult and consider alternatives.

January, 2007—DHS discards National Environmental Policy Act (NEPA)

- After NEPA analysis finds a vehicle barrier is the preferred border infrastructure for the Barry M. Goldwater Range in Arizona, DHS ignores the findings and waives NEPA, the Endangered Species Act, Migratory Bird Treaty Act, Clean Water Act, and others laws to move ahead with building the wall.

July-August, 2007—DHS Denies Public Participation

- DHS's Environmental Assessments of the impact of the border wall on San Pedro Riparian National Conservation Area and Buenos Aires National Wildlife Refuge are completed with no public comment period.
- DHS ignores Tohono O'odham Nation concerns about five cultural sites in the path of the proposed wall and issues a finding of "no significant impact" despite threats to protected lands, endangered species, historical and cultural resources.

October, 2007—DHS Bulldozes Protected Area After Request to Stay Construction is Filed

- Environmental groups file a request to stay construction of the border wall within San Pedro Riparian National Conservation Area until an adequate Environmental Impact Statement can be completed pursuant to NEPA.
- Bulldozing starts the very next day, a Saturday. (See Figure 2)

September-October, 2007—DHS Dismisses Environmental Impacts and Waives 19 Laws to Push Construction.

- Two citizen groups sue DHS for violating NEPA at San Pedro Riparian National Conservation Area in Arizona.
- A federal judge grants a temporary restraining order which confirms the government had rushed its decision and failed to meet its legal obligations under NEPA.
- DHS waives NEPA and 18 other laws, construction resumes immediately.

September-November 2007—DHS Forces Construction of Wall Determined to be Incompatible with Wildlife Refuge.

- The Fish and Wildlife Service (FWS) manager of Buenos Aires National Wildlife Refuge in Arizona determines the border wall is "inconsistent with Service policy and is likely detrimental to the refuge's natural and cultural resources."
- FWS is forced to decide between yielding ownership of Refuge land DHS wants for its walls, in exchange for an as-yet unidentified small land parcel, or facing the REAL-ID waiver and getting the wall but nothing else. FWS agrees to the land transfer.
- Before the land transfer is complete, DHS begins wall construction (See Figure 3).

April-December, 2007—DHS Ignores Citizens Concerns in Texas and Threatens Refuge Habitat and Tourism.

- Texans raise strong concerns about the elimination of access to their irrigation source, the Rio Grande, the taking of private property, environmental and economic damage, and DHS's refusal to consider alternatives to border wall construction
- Tourism and wildlife are threatened on three national wildlife refuges in Texas, where the border wall will slice through at least 14 refuge tracts, fragmenting or eliminating habitat for numerous endangered or threatened species.

January, 2008—DHS Delivers Ultimatum to Citizens in Texas

- DHS brings ex parte (i.e. without the owners of the property present) condemnation actions against Texas landowners who do not cooperate with agency surveys.

February, 2008—DHS Ignores National Park Service Request

- DHS denies requests by the National Park Service to shorten a proposed border wall on the Organ Pipe Cactus National Monument by 90 feet to spare important columnar cacti and Sonoran desert tortoise habitat on Monument Hill.

April, 2008—DHS Announces Border-wide Waiver

- DHS Waives 35 Environmental, Health and Safety Laws across nearly 500 Miles of the border to avoid legal compliance and expedite fence and levee-wall construction projects (See Figure 1).
- DHS claims that it intends to comply with the intent of environmental laws it waived. DHS then proceeds to brush aside ongoing public processes and evaluation of alternatives required by the National Environmental Policy Act.
- DHS fails to appear before a congressional hearing regarding the impacts of border walls and waivers.

In less than three years, Secretary Chertoff has invoked the REAL ID waiver authority on five occasions, to waive a broad variety of laws intended to protect wildlife and endangered species, clean air and water, historic and cultural sites, Native American sacred sites and burial grounds, and public health and safety. With each successive waiver, Secretary Chertoff has targeted more laws—many with no clear relation to proposed border wall construction. The most recent waiver signed by Secretary Chertoff on April 1st, 2008 waived 35 different federal laws across 470 miles—nearly a quarter of the U.S. southern border area. The laws waived included the Safe Drinking Water Act, Native American Graves Protection and Repatriation Act, the Religious Freedom Restoration Act, the National Environmental Policy Act, Endangered Species Act and the National Historic Preservation Act. No explanation was provided as to how these laws were chosen or why DHS needed to waive such fundamental protections for the construction of the border wall.

There are significant and substantive effects to waiving laws and bypassing process and forcing construction without adequate consultation. In addition to the specific impacts to wildlife and public lands outlined in Part I of this testimony, there is also the opportunity cost of win-win solutions never developed or implemented.

Conclusion

In its current rush to bypass the law in pursuit of arbitrary deadlines DHS has failed to properly analyze both direct and indirect impacts of "walls and waivers" at a regional scale. It has not adequately considered viable alternatives and they have failed to consult with those who know the most about the area and those who will be bear the brunt of the impacts of DHS decisions. The result of this type of uniformed and rash decision making has and will continue to result in greater environmental impacts, unanticipated problems, disgruntled communities and escalating financial and ecological costs. Unfortunately, we fear we are only beginning to understand the far-reaching collateral impacts from walls and waivers upon our communities, precious natural areas and wildlife. As a country, we can and must to better.

Defenders of Wildlife is doing what it can. We currently have a petition for certiorari pending before the Supreme Court to challenge the unchecked and unreviewable authority to waive any law as provided for under REAL ID. But much of the devastation from construction will already have happened by the time the Supreme Court is able to respond. It is incumbent on Congress to remedy its error in passing this dangerous and plainly unconstitutional provision in the first instance.

The Congressional mandate for consultation needs to be enforced and DHS needs to be explicitly directed to consider viable alternatives to border infrastructure. In addition, the rule of law needs to be returned to the U.S. Citizens along the border in the form of a Repeal of the REAL ID waiver; Defenders of Wildlife supports Rep. Grijalva's proposal in H.R. 2593 to address this issue and we urge this Committee to take every action in its power to repeal section 102 of the REAL ID Act.

Table 1: Threatened and Endangered Species Impacted by Border Security

Species (common name)	Status	State(s)
Ashy dogweed	Endangered	TX
Huachuca Water Umbel	Endangered	AZ
Jaguar	Endangered	AZ, NM, TX
Jaguarundi	Endangered	AZ, TX
Johnston's frankenia	Endangered	TX
Kearny's blue star	Endangered	AZ
Least tern	Endangered	TX
Lesser long-nosed bat	Endangered	AZ, NM
Masked bobwhite	Endangered	AZ
Mexican gray wolf	Endangered	AZ, NM
Mexican long-nosed bat	Endangered	TX
Northern plomado falcon	Endangered	NM, TX
Ocelot	Endangered	AZ, TX
Pima pineapple cactus	Endangered	AZ
Quino Checkerspot butterfly	Endangered	CA
Sonoran pronghorn	Endangered	AZ
South Texas ambrosia	Endangered	TX
Southwestern willow flycatcher	Endangered	AZ, CA, NM
Star cactus	Endangered	TX
Texas ayenia	Endangered	TX
Walker's manioc	Endangered	TX
Whooping crane	Endangered	TX
Zapata bladderpod	Endangered	TX
California gnatcatcher	Threatened	CA
Chiricahua leopard frog	Threatened	AZ, NM
Loach minnow	Threatened	AZ, NM
Mexican spotted owl	Threatened	AZ, NM
Peirson's milkvetch	Threatened	CA, AZ
Piping plover	Threatened	TX
Sonora chub	Threatened	AZ
Sonoran desert tortoise	Threatened	AZ, CA
Cactus ferruginous pygmy owl	Petitioned for re-listing	AZ
Flat-tailed horned lizard	Proposed for federal listing	CA, AZ

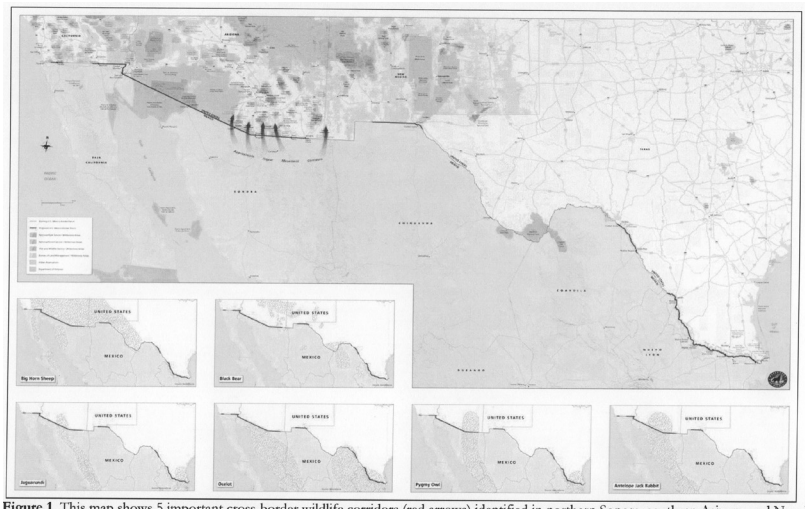

Figure 1. This map shows 5 important cross-border wildlife corridors (red arrows) identified in northern Sonora, southern Arizona and New Mexico. The series of smaller maps show the relationship between these corridors and a sample of species' ranges in relation to the locations of border security infrastructure identified in the Secure Fence Act. Note: numerous wildlife corridors along the entire border exist that are not illustrated here.

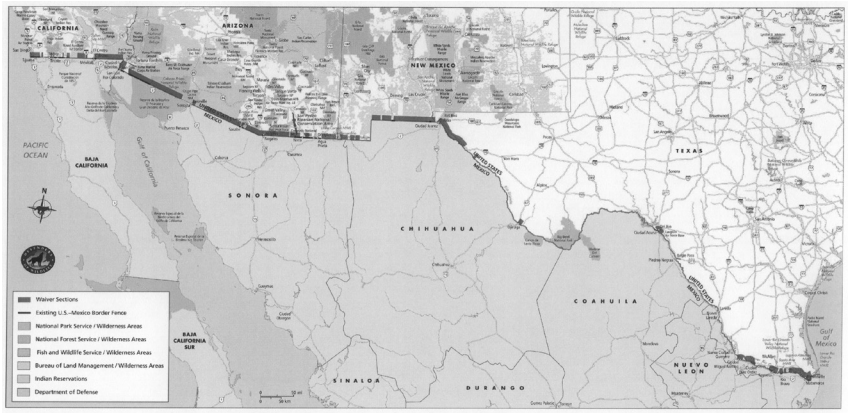

Figure 2. This map of the United States/Mexico border region illustrates the large amount of US Federally-protected land along the border, as well as designated Mexican reserves. In addition, this map depicts the approximate locations of the five Real ID Act waivers signed by DHS Secretary Michael Chertoff to expedite border infrastructure. The Waiver Sections line includes all five waivers 1. San Diego, California (signed 09/22/05); Barry M Goldwater Range, Arizona (signed 01/19/07); 2. San Pedro Riparian National Conservation Area, Arizona; (signed 10/19/07), 470-mile border-wide waiver across CA, AZ, NM, TX (singed 04/01/08) and; 5. Hidalgo County, TX (signed 04/01/08).

Figure 3. This picture surfaced from anonymous person. It shows two does and a buck approaching the newly-constructed border wall. We estimate image was taken sometime during the fall of 2007, somewhere between the San Pedro River and Naco, Arizona. This image demonstrates that the wall is preventing wildlife from crossing back and forth across the border to access once-contiguous habitat.

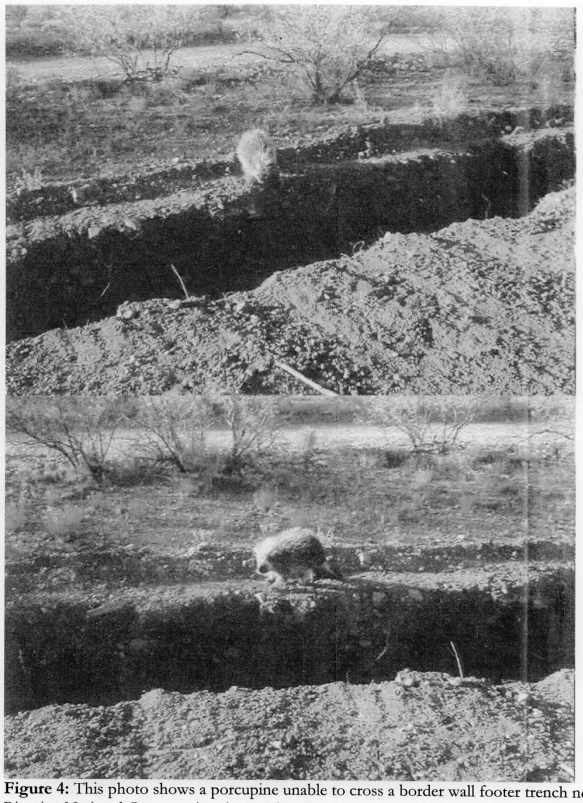

Figure 4: This photo shows a porcupine unable to cross a border wall footer trench near the San Pedro Riparian National Conservation Area. The photo was taken by a local land owner, who witnessed this animal unsuccessfully attempting to find a way around the trench during the construction phase in the fall of 2007.

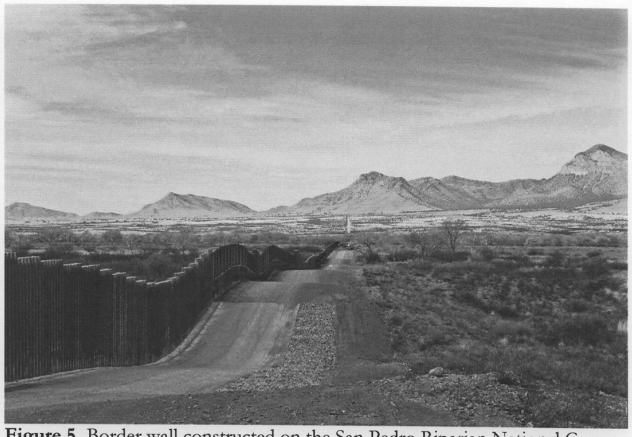

Figure 5. Border wall constructed on the San Pedro Riparian National Conservation Area (Taken on 3/17/08)

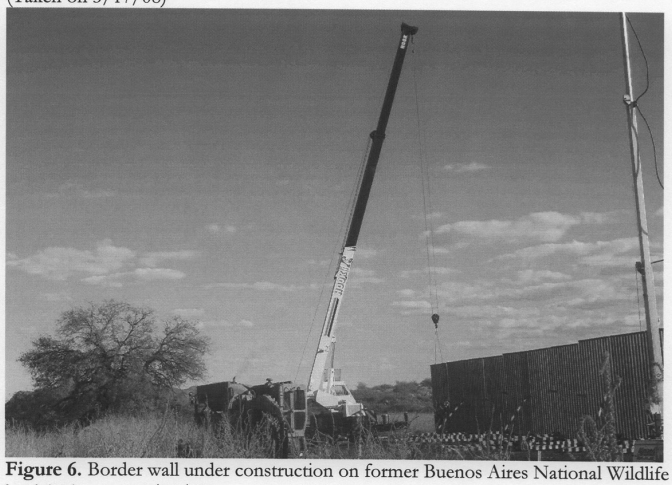

Figure 6. Border wall under construction on former Buenos Aires National Wildlife Refuge land (Taken on 11/14/07)

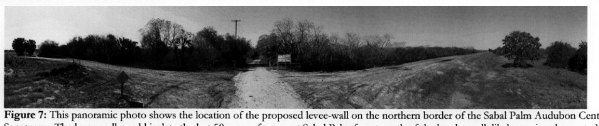

Figure 7: This panoramic photo shows the location of the proposed levee-wall on the northern border of the Sabal Palm Audubon Center and Sanctuary. The levee-wall would isolate the last 50 acres of remnant Sabal Palm forest south of the border wall, likely causing the center's closure and impeding active management of this biologically diverse and popular nature preserve (Taken on 04/29/08).

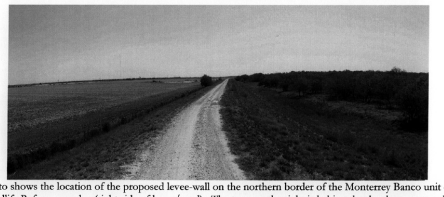

Figure 8: This photo shows the location of the proposed levee-wall on the northern border of the Monterrey Banco unit of the Lower Rio Grande Valley National Wildlife Refuge complex (right side of levee/road). The tract on the right is habitat that has been restored at great expense by the US Fi Wildlife Service – transforming it from farmland into healthy, native vegetation. This tract will also be isolated south of the levee-wall, which will make management and research significantly more challenging and expensive (Taken on 04/29/08).

[A List of documents retained in the Committee's official files follows:]

- Abolt, Steve, President, 7th U.S. Infantry Living History Association, Letter submitted for the record
- Alamo Inn, American Birding Association, Audubon Society of Western Pennsylvania, Coastal
- Habitat Alliance, Defenders of Wildlife, et al., Statement submitted for the record
- Bartholomew, Wayne, Executive director, Frontera Audubon Society, Letter submitted for the record
- Chapman, Karen, Water & Wildlife Analyst, Environmental Defense Fund, Statement submitted for the record
- Dewar, Ruth F., Ed.D., Pacific Palisades, California, Letter submitted for the record
- Irwin, Dorothy N., Nye Plantation, Brownsville, Texas, Letter submitted for the record
- Lopez, Genaro, Ph.D., Professor of Biology, University of Texas at Brownsville, Letter submitted for the record
- Lucio, Robert and Lucio, Diana, Ft. Brown Memorial Golf Course, Letter submitted for the record
- Madrid, Ruby and Enrique, Redford, Texas, Letter submitted for the record
- McKnight, Barbara, Austin, Texas, Letter submitted for the record
- Melton, Mary Ann, Mary Ann's View Nature Photography, Statement submitted for the record
- Merrill, Sarah Bishop, M.S., Ph.D., Recording Clerk, Rio Grande Valley Friends Meeting (Quakers). Also member, Sierra Club, National Energy Committee, and Lone Star Chapter, Letter submitted for the record
- Millard, Ann V., Edinburg, Texas, Letter submitted for the record
- Moore, Wayne, Brownsville, Texas, Letter submitted for the record
- Nicol, Scott, No Border Wall Coalition, Statement submitted for the record
- Payne, Richard H., Ph.D., President and CEO, American Birding Association, Letter submitted for the record
- Payne, Richard H., Ph.D., President & CEO, American Birding Association, Letter submitted for the record
- Pérez, Betty, Brownsville, Texas, Letter submitted for the record
- Platt, Kamala, M.F.A., Ph.D., Edinburg, Texas, Letter submitted for the record
- Plitt, Walter E., III, Chairman, Palo Alto National Park Committee, Letter submitted for the record
- Roberts, S. Gary, President, Concerned Citizens Against the Border Wall, Letter submitted for the record
- Schwarz, Kurt R., Conservation Chair, Howard County Bird Club, Letter submitted for the record
- Schwarz, Kurt R., Conservation Chair, Howard County (Maryland) Bird Club, Letter submitted for the record
- Tamez, Eloisa G., RN, Ph.D., FAAN, San Benito, Texas, Letter submitted for the record
- Thompson, Susan, Penitas, Texas, Letter submitted for the record
- Whittle, John A., Secretary, Golden Triangle Audubon Society, Letter submitted for the record

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