



THE TOHONO O'ODHAM NATION OF ARIZONA
TESTIMONY OF THE HONORABLE VERLON JOSE, CHAIRMAN

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS: SECURING OUR BORDERS, SAVING
OUR NATIONAL PARKS

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INTRODUCTION & HISTORICAL BACKGROUND

Good afternoon Chairman Gosar, Ranking Member Stansbury and distinguished Members of the Subcommittee. I am Verlon Jose, the Chairman of the Tohono O'odham Nation of Arizona. It is an honor to have the opportunity to testify before you today on behalf of my Nation and our more than 36,000 enrolled Tribal citizens.

The Tohono O'odham Nation shares a 62-mile border with Mexico -- the second-longest international border of any tribe in the United States, and the longest on the southern border. The Nation has long been at the forefront on border issues. Over the years we have developed a long-standing cooperative relationship with U.S. Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and other federal law enforcement agencies. Working in concert with CBP, our own Tohono O'odham law enforcement officers are regularly involved in drug interdiction and immigrant apprehension actions. Every year, the Tohono O'odham Nation spends its own funds to help meet the federal government's border security responsibilities. We have supported CBP efforts on our Reservation by providing lands for a checkpoint, forward operating bases, and integrated fixed towers to facilitate critical electronic surveillance efforts.

That being said, the O’odham have lived in what is now Arizona and northern Mexico since time immemorial. In 1854, the international boundary between the United States and Mexico was drawn through the middle of our ancestral territory without any consideration for our people’s sovereign and historical rights, or the impact it would have on traditional and sacred practices. Today, the international border continues to separate our people and our traditional lands. Seventeen O’odham communities with approximately 2,000 members are still located in our historical homelands in Mexico. O’odham on both sides of the border share the same language, culture, religion and history, and we continue to cross the border for sacred pilgrimages and ceremonies at important religious and cultural sites.



Map of Tohono O’odham Ancestral Territory

Our Reservation today includes only a small portion of our ancestral territory. Our original homelands ranged well beyond these boundaries and included what the federal government later made into the Organ Pipe Cactus National Monument and Cabeza Prieta National Wildlife Refuge to the west of our Reservation, and the San Bernardino National Wildlife Refuge and the Coronado National Forest to the east. The Nation’s ongoing significant connections to these lands and the religious, cultural and natural resources located there are well-documented.

THE NATION IS ACTIVELY ENGAGED IN BORDER SECURITY EFFORTS

Over the past decade the Nation has spent an *annual* average of **\$3 million of our own tribal funds** on border security and enforcement to help meet the United States' border security obligations. Further, the Nation is responsible for the recovery and disposition of immigrants who have perished on our Reservation. Since 2003, our Nation's law enforcement has spent nearly \$6 million dollars on over 1,500 *migrant death investigations and recoveries* without any federal financial assistance. The Nation's police force typically spends more than a third of its time on border issues, including the investigation of immigrant deaths, illegal drug seizures, and human smuggling.

The Nation also has entered into several cooperative agreements with CBP and ICE, and pursuant to numerous Tohono O'odham Legislative Council resolutions has authorized a number of border security measures on its sovereign lands to help CBP. Some examples include:

- **High Intensity Drug Trafficking (HIDTA) Task Force:** The Nation leads a multi-agency anti-drug smuggling task force staffed by Tohono O'odham Police Department detectives, ICE special agents, Border Patrol agents, and the FBI. This is the only tribally-led High Intensity Drug Trafficking (HIDTA) Task Force in the United States. In 2018, the Nation's Task Force Commander W. Rodney Irby received an award recognizing him as the National Outstanding HIDTA Task Force Commander.
- **ICE office and CBP forward operating bases:** Since 1974, the Nation has authorized a long-term lease for an on-reservation ICE office. The Nation also approved leases for two CBP forward operating bases that operate on the Nation's lands 24 hours, 7 days a week. One of these forward operating bases (at Papago Farms) was recently renovated and upgraded with state-of-the-art improvements and technology, including an expanded perimeter fence, helipad, and new officer living quarters and administrative facilities.
- **Shadow Wolves, an ICE tactical patrol unit:** The Nation has officers that are part of the Shadow Wolves, a tactical patrol unit based on our Reservation which the Nation played a role in creating. Thanks to recent bipartisan legislation championed by Representative John Katko in the House and enacted in the 117th Congress, the Shadow Wolves are now reclassified as ICE Special Agents. The Shadow Wolves are the only Native American tracking unit in the country, and its officers are known for their ability to track and apprehend immigrants and drug smugglers using traditional tracking methods. The Shadow Wolves have apprehended countless smugglers and seized thousands of pounds of illegal drugs.
- **Vehicle barriers on our lands:** CBP has constructed extensive vehicle barriers that run the entire length of the Tribal border and a patrol road that parallels it.

- **CBP checkpoint on our lands:** The Nation has authorized a CBP checkpoint on the major highway that runs through the Nation.
- **Integrated Fixed Towers:** The Nation approved a lease of its lands to allow CBP to build an Integrated Fixed Tower (IFT) system that includes surveillance and sensor towers with associated access roads on the Nation’s southern and eastern boundaries to detect and help interdict illegal entries.

BORDER WALL CONSTRUCTION IN REMOTE AREAS LIKE OURS IS INEFFECTIVE AND WASTES TAXPAYER DOLLARS – AND HAS BEEN DEEPLY HARMFUL TO THE NATION

The Nation shares the federal government’s concerns about border security, and we believe that the measures we have taken to assist CBP and our own law enforcement efforts are necessary to protect the Nation’s members specifically and the United States generally. Respectfully, however, we have serious concerns about the cost and ineffectiveness of a border wall. Most importantly the Nation is deeply concerned about the severe impact the border wall has had/will have on wildlife corridors, culturally sensitive/sacred areas, and on our ability to freely practice our customs and religion.

Constructing the Border Wall was Wasteful and Ineffective. Border wall construction came at great cost to the American taxpayer in this era of a skyrocketing federal deficit. Thanks to the no-bid contracts, diversion of badly needed drug interdiction and defense resources, and the massive environmental mitigation efforts required to address construction damage, we may never know the true cost. The Government Accountability Office found that by the end of 2020, the Army Corps of Engineers had obligated more than \$10 billion to border wall construction alone.¹ Billions more have and will continue to be needed to mitigate the environmental and cultural harms caused by construction. Worse yet, this wall has been an absolute failure in terms of deterring illegal immigration and drug trafficking. As reported by the Cato Institute, following a lull in illegal entries during the early part of the Covid-19 Pandemic, *illegal entries actually increased as border wall construction increased.*²

As the Nation and others have warned for years, the border wall is ineffective in remote geographic areas like our homelands (including neighboring wildlife refuges) where the wall can easily be circumvented by climbing over, tunneling under, or sawing through it. And that is precisely what has taken place. Again, the Cato Institute found:

¹ Government Accountability Office, Southwest Border: Award and Management of Border Barrier Construction Contracts, GAO-23-106893, at 6 (July 23, 2023).

² David J. Bier, “The Border Wall Didn’t Work,” Cato Institute (February 10, 2022), available at <https://www.cato.org/blog/border-wall-didnt-work>.

The Trump border wall failed for all the predictable reasons. Immigrants used cheap ladders to climb over it, or they free climb it. They used cheap power tools to cut through it. They cut through small pieces and squeezed through, and they cut through big sections and drove through. In one small section in 2020, they sawed through at least 18 times that Border Patrol knew about in a month. They also made tunnels. Some tunnels were long, including the longest one ever discovered, but some were short enough just to get past the barrier.³

CBP records have revealed that the border wall is breached with staggering (but unsurprising) regularity – between more than 2,000 times and more than 4,000 times per year between 2017 and 2022.⁴ These breaches typically are performed with “inexpensive power tools widely available at retail hardware stores,”⁵ or with \$5 ladders.⁶

Damage Already Done to Our Ancestral Lands by Construction. Of paramount importance to the Nation is the damage that wall construction has caused to the religious, cultural and environmental resources on which our members rely and which make our ancestral land sacred to our people. In several amicus briefs filed in litigation in 2019 challenging construction of the wall,⁷ the Nation detailed the negative impacts it knew would be caused by the prior Administration’s use of diverted federal funds to construct the border wall in Tucson Sector Projects 1, 2 and 3 and Yuma Sector 3, extending through Cabeza Prieta National Wildlife Refuge and Organ Pipe Cactus National Monument (ending less than two miles from the western boundary of the Nation’s Reservation) and through the San Bernardino National Wildlife Refuge (to the east of the Reservation). These projects have caused significant and irreparable harm to religious, cultural, and natural resources of great importance to the Nation.

³ *Id.*

⁴ David J. Bier, “Border Wall Was Breached 11 Times Per Day in 2022,” Cato Institute (December 30, 2022), available at <https://www.cato.org/blog/border-wall-was-breached-11-times-day-2022-2>.

⁵ Nick Miroff, “Trump’s border wall has been breached more than 3,000 times by smugglers, CBP records show,” The Washington Post (March, 2, 2022), available at <https://www.washingtonpost.com/national-security/2022/03/02/trump-border-wall-breached/>.

⁶ Jenna Romaine, “Trump’s \$15 billion border wall is being easily defeated by \$5 ladders,” The Hill, April 22, 2021), available at <https://thehill.com/changing-america/resilience/refugees/549758-trumps-15-billion-border-wall-is-being-easily-defeated/>.

⁷ *See, e.g., Sierra Club and Southern Border Communities Coalition v. Donald J. Trump*, No. 4:19-cv-00892-HSG, Amicus Curiae Brief of Tohono O’odham Nation in Support of Plaintiff’s Motion for Supplemental Preliminary Injunction (June 18, 2019, N.D. Ca.) (Dkt. No. 172); Amicus Curiae Brief of Tohono O’odham Nation in Support of Plaintiff’s Motion for Partial Summary Judgment (October 18, 2019) (Dkt. No. 215).

The federal government itself repeatedly has acknowledged the significance of the Nation's interest in the areas that are being impacted by the ongoing and contemplated construction in the Tucson and Yuma Sector projects. For example, the National Park Service (NPS) in its General Management Plan for the Organ Pipe Cactus National Monument (a UNESCO biosphere reserve)⁸ acknowledged the importance of Quitobaquito Spring, which is located 200 yards from the border:

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

...

There still exist sites within the monument which are sacred to the O'odham, including Quitobaquito Springs ... *Even to the present day, the O'odham continue to visit the monument to collect sacred water from the Springs, to gather medicinal plants, and to harvest the fruit of the organ pipe and saguaro cactus.*⁹

NPS also has recognized that there are O'odham burial sites within Quitobaquito.¹⁰

In a 2019 study, published shortly before construction was to begin, NPS identified five new archeological sites (of pre-contact Native American artifacts) and additional archeological resources within a 60-foot wide federal easement that runs along the border in Organ Pipe, noting that many existing archeological sites would be impacted or destroyed by the border wall construction, and that many areas along the Organ Pipe border have not yet been surveyed to identify archeological and culturally sensitive sites.¹¹

⁸ Biosphere reserves are areas with unique ecosystems recognized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as special places for testing interdisciplinary approaches to managing social and ecological systems. Each reserve promotes solutions reconciling the conservation of biodiversity and sustainable use. <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/>.

⁹ U.S. National Park Service, *Organ Pipe Cactus National Monument, Final General Management Plan, Development Concept Plans, Environmental Impact Statement* (Feb. 1997), at 30, 33, available at <https://www.nps.gov/orpi/learn/management/upload/fingmp.pdf>.

¹⁰ *Id.* at 158, citing Anderson, Keith M., Bell, Fillman and Stewart, Yvonne G., *Quitobaquito: A Sand Papago Cemetery*, *Kiva*, 47, no 4 (Summer, 1982) at 221-22; *see also* Bell, Fillman, Anderson, Keith M. and Stewart, Yvonne G., *The Quitobaquito Cemetery and Its History*, U.S. National Park Service, Western Archeological Center (Dec. 1980), available at <http://nps.history.com/series/anthropology/wacc/quitobaquito/report.pdf>.

¹¹ Veech, Andrew S., *Archeological Survey of 18.2 Kilometers (11.3 Miles) of the U.S.-Mexico International Border, Organ Pipe Cactus National Monument, Pima County, Arizona*, U.S. National Park Service,

Similar expert reports show archeological sites of significance to the Nation in the immediate vicinity of Tucson Project 3 in the San Bernardino Valley, as well as the Cabeza Prieta National Wildlife Refuge, although these areas are less well surveyed so the extent of cultural and natural resources potentially affected by construction of a border wall is even less well known.¹²

As border wall construction progressed, construction activities resulted in immeasurable damage to areas of significance to the Nation within Organ Pipe, including the blading of an area near Quitobaquito Springs and blasting in an area called Monument Hill, which has disturbed human remains.¹³ In its aftermath, federal officials documented significant damage to environmental and water sources in the Arizona borderland area. According to a U.S. Fish and Wildlife study, “water from an artesian well in the San Bernardino National Wildlife Refuge in Arizona no longer naturally flows to the surface, in part, as a result of barrier construction.”¹⁴ In 2019, the Nation warned that border barrier construction would exacerbate flooding in these areas, irreparably altering an ecosystem that depends on annual monsoon rain flows.¹⁵ As the GAO found, these concerns proved correct: border wall road construction in Organ Pipe National Monument has in effect created a “natural dam by impeding water flow during rain events.”¹⁶

GAO confirmed also that the damage has been exacerbated by the failure of federal agencies to adequately coordinate on border wall mitigation efforts. The Nation wholeheartedly agrees with the GAO’s conclusion that:

Intermountain Region Archeology Program (July 2019), available at <https://games-cdn.washingtonpost.com/notes/prod/default/documents/cbd7ef6a-3b5b-4608-9913-4d488464823b/note/7a429f63-9e46-41fa-afeb-c8e238fcd8bb.pdf> (discovery of five new archeological sites and 55 isolated finds; recommending additional evaluation of sites, noting that 17 identified archeological sites will be destroyed by the border wall construction, and that many areas along the border within the Monument remain unsurveyed).

¹² Fish, Paul R.; Fish, Suzanne K.; Madsen, John H., *Prehistory and early history of the Malpai Borderlands: Archaeological synthesis and recommendations*, U.S. Department of Agriculture, Forest Service (2006) at 29-30, available at https://www.fs.fed.us/rm/pubs/rmrs_gtr176.pdf; U.S. Fish and Wildlife Service, *Cabeza Prieta National Wildlife Refuge: Comprehensive Conservation Plan, Wilderness Stewardship Plan and Environmental Impact Statement* (Aug. 2006) at 172, 586, available at <https://www.fws.gov/uploadedFiles/CPNWREIS.pdf>; U.S. Fish and Wildlife Service, *Environmental Assessment of the Malpai Borderlands Habitat Conservation Plan* (July 26, 2008) at 17, available at <https://www.fws.gov/southwest/es/arizona/Documents/HCPs/Malpai/MBHCP%20EA%20w%20FONSI.pdf>.

¹³ See Firozi, Paulina, The Washington Post, *Sacred Native American burial sites are being blown up for Trump’s border wall, lawmaker says* (Feb. 9, 2020) <https://www.washingtonpost.com/immigration/2020/02/09/border-wall-native-american-burial-sites/>.

¹⁴ GAO, *supra* n. 1, at 23.

¹⁵ *Sierra Club*, Amicus Curiae Brief of Tohono O’odham Nation at 7-8.

¹⁶ GAO, *supra* n. 1, at 23-24.

The Secretary of the Interior should document, jointly with CBP, a strategy to mitigate cultural and natural resource impacts from border barrier construction that defines agency roles and responsibilities for undertaking specific mitigation actions; identifies the costs, associated funding sources, and time frames necessary to implement them; and specifies when agencies are to consult with Tribes.¹⁷

CONCLUSION

Construction of the wall on federal lands to the east and west of our Reservation already has disturbed and even destroyed human remains, sacred sites, religious and culturally significant sites and cultural resources, and tribal archeological resources, *and there is no way to repair or restore this damage to us*. Wall construction also adversely impacted our wildlife, including endangered species like the jaguar that are sacred to American Indian tribes. Construction of the wall near our Reservation is interfering with the flow and use of scarce and vital water resources, including seasonal washes, on which plants and wildlife depend. The plants adversely impacted are relied on by tribal members for food, medicine, and cultural purposes, as well as being critical food sources for animals.

The Nation genuinely appreciates the Subcommittee's interest in the impact of border wall construction on federal lands, and appreciates the opportunity to share with you our deep concerns about the damage that the wall has caused to the Nation's religious and cultural heritage, our way of life, and our environment. We welcome a continued dialogue with you on these issues.

¹⁷ *Id.* at 52.