



**THE TOHONO O'ODHAM NATION
RESPONSES TO QUESTIONS FOR THE RECORD
FOR
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
HEARING ON THE IMPACTS OF INTERNATIONAL CARTELS TARGETING
INDIAN COUNTRY (APRIL 10, 2024)**

Submitted April 29, 2024

The Tohono O'odham Nation thanks the Subcommittee for the opportunity to testify and to share our experience and concerns. We also appreciate the questions that were provided by the Subcommittee. Our answers are below.

- 1. If the Tohono O'odham Nation did not have to divert so many resources and time to dealing with cartel activity, drug trafficking, and increased illegal immigration, how else could that funding be utilized by the Nation?**

The Nation's efforts to help meet the United States' border security responsibilities have come at a significant cost, and have contributed to the resource strain on other basic government functions and programs. As detailed below, funding is critically needed for public safety (including law enforcement and infrastructure) and public health.

Public Safety

The Tohono O'odham Police Department (TOPD) polices a huge geographic area (2.8 million acres) – our Reservation is one of the largest in the United States, roughly the size of the State of Connecticut. In many isolated areas on the Nation's reservation, tribal law enforcement personnel are the first and only responders to criminal activity on tribal lands. Our tribal police already face a severe lack of resources and staffing; added border security responsibilities significantly exacerbate these deficits.

Funds currently dedicated to border security could be allocated to address, for example, critical infrastructure and technology needs of the Nation's police force and detention services. TOPD currently is housed in a converted 1950s-era Bureau of Indian Affairs (BIA) jail that is not equipped to handle modern law enforcement responsibilities. Further, the Nation's detention center is entirely inadequate to meet our public safety needs, forcing the Nation to house detainees in facilities out of state. Federal funds for correctional facilities are extremely limited – it takes years to advance on the BIA list of facilities scheduled to receive these funds. Making matters worse, TOPD has difficulty communicating effectively with other law enforcement because of a lack of interoperability throughout the Reservation. Upgraded information technology and equipment is desperately needed to improve collaboration among the Nation's emergency responders, and to facilitate coordinated provision of fire, law enforcement, and emergency response services.

Public Health

Because the Nation spends so much of its resources securing the border, we have been limited in our ability to address other pressing issues, including the epidemic of drug trafficking. As I noted in my testimony, the Nation has witnessed a steady rise in addiction and in drug-related deaths. Unfortunately, behavioral health, mental health, and substance abuse services through the Indian Health Service (IHS) are badly underfunded. Funding and resources currently dedicated to border security would be much better dedicated to the construction of a facility to address addiction recovery on the Nation. In addition, while there are three behavioral health outpatient operational sites on the Reservation that provide outpatient counseling/case management, psychiatry, and administration, the buildings are old and need to be updated and/or replaced to meet the needs of the clients and personnel. These buildings lack adequate space for client privacy, personnel, and storage.¹

2. In your opinion, how can the federal government stem the flow of fentanyl coming across the Southern Border and into Indian communities across the U.S.?

As I noted in my testimony, Customs and Border Patrol (CBP) data shows that most illegal drugs (including the vast majority – 90% – of illegal fentanyl) *are seized through ports of entry* – not along the border between them. It is also important to note that the fentanyl that ends up on the Nation is predominantly purchased elsewhere, such as in Phoenix and Tucson. To address this crisis, the federal government must increase border enforcement staffing at ports of entry *and* provide funding for the deployment of advanced technology to aid in drug interdiction.

Federal funding shortfalls have severely impacted not only the Nation's law enforcement efforts, but CBP as well. CBP officials continue to experience challenges in recruiting and retaining

¹ See National Tribal Budget Formulation Workgroup's Request for the Indian Health Service Fiscal Year 2025 Budget at 206 (April 2023)
<https://www.nihb.org/resources/FY2025%20IHS%20National%20Tribal%20Budget%20Formulation%20Workgroup%20Requests.pdf>.

law enforcement personnel.² In his FY 2025 budget the President has requested funding to hire an additional 150 CBP Officers and 250 Border Patrol Agents.³ We support this request, as it would help address this shortfall. Additional funding for advanced technology systems, such as robust investment in Non-Intrusive Inspection (NII) technologies like large-scale x-ray and gamma-ray imaging systems, radiation detection equipment, small-scale baggage x-ray systems, and portable hand-held devices, would also support the detection and interdiction of fentanyl and other opioids. Officers may perform manual inspections of vehicles when NII technology is not available, but it can be less effective.⁴ The President's FY 2025 budget request also calls for additional funding to build out and maintain existing and new Forward Operating Laboratories, which are permanent onsite labs co-located at ports of entry and Border Patrol stations.⁵ The labs provide support for presumptive field testing, and were created to assist with conducting confirmatory testing during the opioid crisis.

3. Given the Tohono O'odham Nation's location on both sides of the Southern Border, how have the cartels specifically targeted the Tohono O'odham Nation communities in Mexico? What has the impact been on these communities?

Unfortunately, on the Mexican side of the border there are few governmental entities advocating on behalf of the approximately 2,000 O'odham living there, leaving many of these communities vulnerable and without recourse when smugglers move into communities to use them as staging areas, or when armed conflict erupts between warring cartels. The response from local police authorities in Mexico has been limited and can take several days, with the only real relief coming from the military. When cartels move into these communities or when conflicts flare up, O'odham become casualties of these wars – victims of terrifying levels of violence that sometimes leave our members tortured and beaten. As a result, many O'odham flee their communities until the smuggling cycle is over (*i.e.* when shipments dry up).

This conflict also disrupts our traditional pilgrimages and hampers the ability of O'odham on both sides of the border to practice our shared culture with and among one another. This impacts all of our people, resulting in long-term and incalculable damage to our customs and traditions.

² See U.S. Government Accountability Office Report, GAO 21-356, Southwest Border Security: Actions Are Needed to Address the Cost and Readiness Implications of Continued DOD Support to U.S. Customs and Border Protection (Feb. 2021) at 41, <https://www.gao.gov/assets/d21356.pdf>.

³ U.S. Department of Homeland Security, FY 2025 Budget in Brief, at 30, https://www.dhs.gov/sites/default/files/2024-03/2024_0311_fy_2025_budget_in_brief.pdf

⁴ See U.S. Government Accountability Office Report, GAO-19-534, Border Infrastructure: Actions Needed to Improve Information on Facilities and Capital Planning at Land Border Crossings (July 2019) at 25-26, <https://www.gao.gov/assets/gao-19-534.pdf>.

⁵ FY 2025 Budget in Brief, *supra* n.4, at 32.

4. Your written testimony referenced a number of methods that the Tohono O’odham Nation is currently working with USCBP, ICE, and others to patrol the border, including the use of towers, special agents, and a road built on your tribal land. Please explain how you are able to utilize these resources while also respecting the cultural and environmental sensitivities of the Nation.

The Nation has entered into several cooperative agreements with CBP and Immigration and Customs Enforcement (ICE), and has authorized numerous border security measures on its sovereign lands to assist CBP.⁶ The success of these border security measures is the result of extensive education about the need to conduct government-to-government consultation before decisions are made that will impact the Nation’s cultural and environmental resources, the need to meaningfully consider information and recommendations provided by the Nation, and the need to recognize and consider the unique history and relationship that the Nation has with its sovereign lands.

Agency respect for tribal sovereignty allows for better coordination with our local districts and Tribal Historic Preservation Office, which in turn ensures that border security activities are carried out in a manner that minimizes impacts on sacred sites and other significant environmental and cultural resources. For example, after environmental study⁷ and extensive and meaningful engagement from CBP, the Nation consented to easements for rights-of-way over its lands to allow CBP to build an Integrated Fixed Tower (IFT) system that includes ten surveillance and sensor towers and associated roads on the Nation.⁸ The intent of utilizing the IFT system was to reduce the environmental footprint of CBP and the corresponding impact on the Nation’s resources, while simultaneously enhancing CBP surveillance capabilities. The IFT system has been largely successful

⁶ See generally 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 8, 2004) <https://www.tolc-nsn.gov/docs/Actions04/04095.pdf>; No. 07-679, Supporting the United States Department of Homeland Security, Customs and Border Protection to Gain Control of the International Border Within the Tohono O’odham Nation with a Trial Tactical Checkpoint (Oct. 17, 2007) <https://tolc-nsn.gov/docs/Actions07/07679.pdf>; No. 07-129, Supporting United States Department of Homeland Security, Customs and Border Protection Secure Border Initiative (March 14, 2007) <https://tolc-nsn.gov/docs/Actions07/07129.pdf>; No. 16-560, Approving the FY 2017 Department of Public Safety, Tohono O’odham Police Department, United States Immigration and Customs Enforcement, Homeland Security Investigations Budget (Nov. 21, 2016) <https://www.tolc-nsn.gov/docs/Actions16/16560.pdf>; No. 21-400, Approval of the Memorandum of Understanding between the Tohono O’odham Nation and the U.S. Immigration and Customs Enforcement Homeland Security Investigations (Oct. 18, 2021) <https://www.tolc-nsn.gov/docs/Actions21/21400.pdf>.

⁷ See U.S. Customs and Border Protection, Final Environmental Assessment for Integrated Fixed Towers on the Tohono O’odham Nation in the Ajo and Casa Grande Stations (March 2017) <https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/TON%20IFT%20FINAL%20EA%20FONSI%202017%2003%20Part%20I.pdf>.

⁸ Tohono O’odham Legislative Council Resolution No. 19-088, Consenting to Grants of Easement for Rights-of-Way across Nation’s lands for the United States Customs and Border Protection’s Integrated Fixed Tower Project (March 25, 2019) <https://www.tolc-nsn.gov/docs/Actions19/19088.pdf>.

in detecting and identifying items of interest and so has enabled Border Patrol agents to respond more efficiently and effectively to border incursions.

The installation of the IFT system, in combination with dedicated funding for road maintenance, also has reduced the negative environmental, cultural, and public safety impacts that border security imposes on the Nation and its members. The Nation, like most of Indian Country, faces overwhelming road maintenance and safety issues. BIA's FY 2025 budget justification acknowledges that there is a "rising deferred maintenance backlog" and that only 13 percent of BIA roads are in acceptable condition.⁹ CBP uses about 350 miles of the Nation's roads for their border-related activities, which has added significantly to the level of wear and disrepair. As a result, many of our roads have sink holes, potholes, broken and cracked pavement, and washed-out bridges, making these roads dangerous for our members and for tribal and federal law enforcement and agency personnel, including CBP. During monsoon season, flooding completely washes out roads, stranding our members, including children on school buses, preventing access for emergency vehicles and isolating communities. Tribal members have been killed by flooding while traveling on these roads. With the deployment of IFTs, CBP is able to be more deliberate in its deployment of patrols and the use of tribal roads. In addition, after consultation, and by agreement with BIA (which has legal responsibility for road maintenance) and the Nation's Chukot Kuk District (the tribal district with the majority of our borderland), CBP has dedicated resources to provide road maintenance and repair on the Reservation.¹⁰ We have been appreciative of Congress' provision of crucial legislative language that made this financial cooperation between CBP and BIA possible. In sum, this respect for and attention to the Nation's sovereignty and community is a win both for border security and environmental and cultural protection.

Conversely, there are numerous other examples where the federal government has not respected tribal sovereignty. The Nation repeatedly attempted to engage and consult with the prior Administration regarding border wall construction and potential damage to the Nation's sacred sites and other resources, but our efforts were generally rebuffed, met with extremely limited responses and no meaningful consultation. As a result, CBP rushed ahead with border wall construction in our ancestral homelands and proceeded to destroy the Nation's culturally significant sites and cultural resources, tribal archeological resources, sacred sites and even human remains. The construction also negatively impacted plants and animals of importance to the Nation including some endangered species like the jaguar that are sacred to American Indian tribes, preventing them from moving freely within their habitat and interfering in their migration patterns. The border wall construction was expedited by using authority under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act to waive laws that would otherwise have helped to protect sacred sites

⁹ BIA FY 2025 Budget Justifications and Performance Information at IA-TG-3 and IA-TG-7, available at https://www.bia.gov/sites/default/files/media_document/fy2025-508-bia-greenbook.pdf.

¹⁰ See Tohono O'odham Legislative Council Resolution No. 20-422, Approving the Bureau of Indian Affairs to Conduct Road Repairs of Specific Roads on the Tohono O'odham Nation Using Funding Transferred from the United States Department of Homeland Security Customs and Border Protection (Dec. 8, 2020) <https://www.tolcnsn.gov/docs/Actions20/20422.pdf>.

and culturally significant areas, the environment, and property rights. The Nation repeatedly expressed grave concerns about these harms,¹¹ requested meaningful dialogue,¹² and urged caution in testimony before Congress¹³ and in multiple letters¹⁴ and court filings.¹⁵ Unfortunately, these concerns were entirely ignored.

Conclusion

The Nation shares the federal government's dedication to border security. We believe that the measures we have taken to assist CBP and the conduct our own law enforcement efforts are necessary to protect the Nation specifically and the United States generally. We remain committed to border security and enforcement with the intent that the Nation's sovereignty be respected and preserved.

¹¹ See, e.g., Tohono O'odham Legislative Council Resolution No. 17-053, Border Security and Immigration Enforcement on the Tohono O'odham Nation (Feb. 7, 2017) <http://www.tonation-nsn.gov/wp-content/uploads/2017/02/17-053-Border-Security-and-Immigration-Enforcement-on-the-Tohono-Oodham-Nation.pdf>; No. 18-032, Opposing Federal Legislation that Promotes Construction of Border Wall, Waives Laws, and Undermines Tribal Jurisdiction (Jan. 2018) <https://tolc-nsn.gov/docs/actions18/18032.pdf>.

¹² See Tohono O'odham Comments on DHS Consultation Policy (May 25, 2021).

¹³ See Tohono O'odham Testimony, House Natural Resources Subcommittee for Indigenous Peoples Hearing on the border wall's impact on tribal sacred sites (Feb. 26, 2020) <https://www.congress.gov/116/meeting/house/110587/witnesses/HMTG-116-II24-Wstate-NorrisJrN-20200226.pdf>; Tohono O'odham Testimony, House Homeland Security Subcommittee on Border Security, Facilitation and Operations Hearing on the border wall's impact on tribal landowners (Feb. 27, 2020) <https://www.congress.gov/116/meeting/house/110571/witnesses/HHRG-116-HM11-Wstate-NorrisN-20200227.pdf>.

¹⁴ See Letter from BIA Regional Director Bryan Bowker to the Nation requesting information on the border wall's impacts (May 2021); Tohono O'odham Response to Regional Director Bowker's May 2021 letter (June 3, 2021)

¹⁵ 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).