



WRITTEN STATEMENT OF
SOUTHERN BORDER COMMUNITIES COALITION

For a Hearing on

**“DESTROYING SACRED SITES AND ERASING TRIBAL CULTURE: THE TRUMP
ADMINISTRATION’S CONSTRUCTION OF THE BORDER WALL”**

**Submitted to the U.S. House of Representatives Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States (116th Congress)**

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Introduction

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

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

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

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

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

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

Status of Border Wall Construction, Transfers, Waivers and Costs

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

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

In Feb. 2019, following the longest government shutdown in history and Congress’s rejection of President Trump’s full funding request for more border wall in the Fiscal Year 2019 appropriations bill, the Administration brazenly declared in a press conference a dubious “national emergency” (and has blatantly admitted this as a mechanism to circumvent Congress) to divert \$3.6 billion from the Department of Defense’s (DoD’s) 10 U.S.C. § 2808 Military Construction funds (effectively [halting 127 military construction projects](#))² and \$2.5 billion from

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

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

10 U.S.C. § 284 Counter-Narcotics funding to construct another 304 miles of new or replacement barriers. The Administration also tapped into another \$600 million from the U.S. Treasury Forfeiture Fund. Both U.S. congressional chambers have voted and passed resolutions of disapproval against the Administration's declaration of a national emergency, but -- to date -- have failed to obtain a veto-proof majority.

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

The Administration [has also requested another \\$2 billion](#)^{3,4} to build another 82 miles of border wall in the Fiscal Year 2021 budget.

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

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

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

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

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

Ultimately the costs of building this wall will be exorbitant. In 2018, the Government Accountability Office issued [a report](#)⁶ that suggested that there is no way to verify wall construction costs because estimates do not not fully account for varied, and sometimes extreme, terrain along the borderlands, and how this could play a role in costs. A [minority report](#)⁷ by the Senate Committee on Homeland Security and Governmental Affairs suggested the costs of building Trump’s border wall could rise up to almost \$70 billion, or more than \$200 for every man, woman and child living in the United States.

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

To facilitate the construction of the wall at the expense of border community members, the environment and wildlife, the Administration continues to interpret the Real ID Act as giving the Department of Homeland Security complete and unhindered discretion in waiving any U.S. laws that might interfere with the construction of border wall. As a result, almost 50 laws that were passed by Congress to protect the public from government overreach and protect our water, air, environment and rights have been waived, including the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, the National Environmental Protection Act, the Endangered Species Act, the Clean Air Act and the Safe Drinking Water Act.

To further speed up the construction of the border wall in Arizona, California, New Mexico and Texas, the Administration recently [waived federal procurement statutes and regulations](#)^{8, 9}, including requirements for open competition and justifying selections.

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

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

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

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

Border Wall Harms

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

Border walls jeopardize tribal sovereignty. The Tohono O'odham Nation, whose ancestral lands straddle the U.S.-Mexico border, already have a physical barrier with a gate bisecting their nation. Most tribal members [oppose replacing this physical structure](#)¹⁰ with a wall, because it would interfere with their ability to cross into Mexico to connect with other tribal members for sacred ceremonies and visits.

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

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

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

¹¹ The Tohono O'odham Nation of Arizona Testimony of The Honorable Ned Norris, Jr., to the U.S. House Of Representatives Committee On Natural Resources, Subcommittee for Indigenous Peoples of the United States, Hearing On Destroying Sacred Sites And Erasing Tribal Culture: The Trump Administration's Construction of the Border Wall (Feb. 26, 2020) Available at: <https://naturalresources.house.gov/imo/media/doc/SCIP%2002.26%20-%20Chairman%20Norris.pdf>

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

Any kind of physical barrier at the U.S.-Mexico border also interferes with the migration patterns and access to food and water of wildlife -- many of which are endangered and protected species, like the Mexican grey wolf, ocelot, bighorn sheep and jaguar. More than 2,500 scientists from 43 countries signed on to a study that illustrates the [harm to wildlife](#)¹² and the environment that would be generated by this Administration’s border wall. Even birds will be affected, like the [cactus ferruginous pygmy owl](#)¹³ which cannot fly higher than 4.5 feet and would be unable to clear Trump’s proposed 18- to 30-foot wall. Every day now, we witness more miles of border walls built every day, laying waste to our environment and placing our endangered and protected species on a runaway train towards extinction.

Border walls and infrastructure have exacerbated flooding in Arizona and Texas, causing millions of dollars in damage to the environment and local businesses and [endangering the lives](#)¹⁴ of border residents and wildlife. In 2008, a year after a National Park Service report warned the DHS that the border wall would cause flooding, two people drowned in Nogales from flooding intensified by the wall along the Arizona/Sonora border.

Conclusion and Recommendations

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

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

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

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

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

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

It's time to rethink how we do border and push for a [new vision](#)¹⁵ that introduces a 21st century border governance model that expands public safety to all, creates a welcoming system for newcomers and residents, and protects human rights and life.

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

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

¹⁵ Southern Border Communities Coalition. "A New Border Vision" (May 2019) Available at: <http://d3n8a8pro7vhmx.cloudfront.net/themes/5c8a803c4764e89849b5753e/attachments/original/1557787799/SBCC-NBV-H.pdf?1557787799>