

A Global Call for
Divestment: Indigenous
Front-line Report Regarding
Adverse Impacts of Elbit
System's Integrated Fixed
Towers on the U.S./Mexico
Border

August 2021

O'odham VOICE Against the WALL

Table of Contents

Executive Summary 1

Historical Perspective 2

U.S./ Mexico Border Wall Infrastructure 4

Elbit Systems 6

United States Executive Shortfalls and the Biden Administration 9

United States Domestic Law and Failure to Align with Indigenous Human Rights Standards .. 10

Elbit and the Human Rights Implications of Their Actions 13

 1. United Nations Declaration on the Rights of Indigenous Peoples and the U.S./ Mexico
 Border 13

 2. Violation of Indigenous Peoples Right to Privacy..... 15

 3. Inter-American Commission on Human Rights 16

Organisation for Economic Co-operation and Development (OECD) 17

Case Law in Canada Regarding Indigenous Peoples’ Rights on an International Border..... 19

Financing of the Border 20

 Other Technologies and Finance 21

Requests of the United States 23

Conclusion and Requests of Elbit Systems..... 23

Appendix 25

 1. Map of Elbit IFT Towers Digital Footprint Along Border Provided by Nina Valeri
 Kolowratnik 26

 2. Picture of Elbit IFT Tower in Tohono O’odham Community Provided by Ophelia Rivas
 27

 3. Picture of Elbit IFT Tower in Tohono O’odham Community Provided by Ophelia Rivas
 28

4. Picture of Towers in Tohono O’odham Community Provided by Ophelia Rivas29

5. Picture of Excavator in Tohono O’odham Community Provided by Ophelia Rivas.....30

6. Picture of Mountain Destruction in Tohono O’odham Community Provided by Ophelia Rivas31

7. Construction Ongoing as of Jan. 25, 202132

8. Statement to CBP by West Cocopah Reservation33

9. Statement of Tohono O’odham Nation to U.S. House of Representatives Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States34

10. PowerPoint Presentation at Investor Alliance for Human Rights Provided by Aaron Lackowski, Empower, LLC, July 27, 202135

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Executive Summary

As Indigenous women of Turtle Island, mothers, sisters, wives, daughters, we call upon the world to stop the Indigenous human rights abuses, inherent cultural rights abuses and adverse impacts including but not limited to environmental degradation, violations of privacy, and violations of Indigenous human rights caused by, directly linked to, or contributed to through business activities, relating to the construction of wall infrastructure and securitization by companies like Elbit System's¹ Integrated Fixed Towers (IFTs) along the United States-Mexico International border.²

With outrage overflowing at Trump's policy of family separation of migrant children from their parents after crossing the border to escape horrific violence, poverty, and harms caused by climate change in their countries of origin, and recent revelations that the parents of 545 of those children have been deported and cannot be found, the attention of justice-minded people has finally turned to the United States-Mexico border (U.S./Mexico border).³

Indigenous peoples, for time immemorial, have practiced their traditional ways of life along the now U.S./ Mexico border. The O'odham (peoples) have persisted despite colonial powers on their ancestral homelands. The U.S./ Mexico border wall transverses and divides the O'odham (people) and their lands.

Tohono O'odham Nation, formally the Papago Indian Tribe, a federally recognized reservation established in 1917, is the second largest Indian reservation in the United States, the size of the state of Connecticut. It was established by Executive Order upon the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848 and ended the war between the United States and Mexico.⁴ The Gadsden Purchase, or Treaty, was an agreement between the United States and Mexico, finalized in 1854, in which the United States agreed to pay Mexico \$10 million for 29,670 square miles.⁵

¹ "Elbit Systems Ltd is the largest Israeli weapons company. It is one of the primary suppliers of the Israeli military and a world leader in drone and military surveillance technologies. As of 2017, Elbit is the 28th largest arms-producing company in the world, with \$3.38 billion in total revenue, 95 percent of which are from weapon sales. Elbit has manufacturing facilities in the U.S. [], Brazil, India, and more." ELBIT SYSTEMS, <https://elbitsystems.com/> (last visited Feb. 5, 2021). *See also* ELBIT SYSTEMS LTD AFSC INVESTIGATE, <https://investigate.afsc.org/company/elbit-systems> (last visited Feb. 5, 2021).

² *Border Surveillance and Monitoring*, AMERICAN FRIENDS SERVICE COMMITTEE (Sept. 25, 2018), <https://investigate.afsc.org/tags/border-surveillance-and-monitoring>.

³ Caitlin Dickerson, *Parents of 545 Children Separated at the Border Cannot Be Found*, NEW YORK TIMES (Oct. 21, 2020), <https://www.nytimes.com/2020/10/21/us/migrant-children-separated.html>.

⁴ *Tohono O'odham History*, Tohono O'odham Nation, <http://www.tonation-nsn.gov/tohono-oodham-history/> (last visited June 16, 2021).

⁵ *Tohono O'odham History*, Tohono O'odham Nation, <http://www.tonation-nsn.gov/tohono-oodham-history/> (last visited June 16, 2021).

Increased militarization at the U.S./ Mexico border has and continues to inhibit the free movement of Indigenous peoples and in turn endangers the survival of traditional knowledge and cultural practices. Traditional crossings routes that connect the O’odham (peoples) in today’s United States and Mexico are hindered by U.S. Customs and Border Protection (border patrol or CBP) agents. Traditional crossings are now closed or heavily monitored. Heightened presence of border patrol creates a scenario in which O’odham (peoples) are effectively occupied by a paramilitary force. In that scenario, the very way of life of the O’odham (people) is endangered and at great risk.

The construction of the border wall and integrated fixed towers (IFTs or towers) have destroyed culturally significant areas, damaging cultural and historical sites of significance and inherent cultural properties such as sacred sites, burial grounds, and landscapes that contain sacred plants and medicines. Further construction will only exacerbate the environmental harm currently underway as a result of unauthorized road making and border patrol’s excessive and unmonitored usage of trucks, quad-runners, motorbikes, horseback as well as aerial impacts through airplanes, helicopters and drones.

The activities at the U.S./Mexico border are violating the rights of Indigenous peoples. The right to cultural protection and inherent cultural rights, rights of mobility and the right to privacy are of particular concern; however, there are numerous other rights that are being infringed upon.

This report focuses on the actions of Elbit Systems (Elbit) and the integrated fixed towers they have constructed and will operate. Elbit has a poor track record concerning human rights. That record has not changed for the U.S./Mexico border. Although the Tohono O’odham Nation governing body agreed to a “smart border,” many community members are still gravely concerned with the activity and opine that consultation provided insufficient information and was not meaningful regarding issues such as long-term radiation emissions from surveillance technology and impacts on human, plant, and animal life.

Currently, there are international calls for divestment and defunding of companies and financiers that engage and finance border infrastructure and security. This report highlights the largest investors in Elbit Systems and some of the adverse impacts to Indigenous peoples on the U.S. Mexico Border.

Historical Perspective

Former President Trump is responsible for violations of human rights and human decency at the border. However, human rights violations and increased militarization have been a reality at the U.S./Mexico border for over 150 years and Indigenous peoples⁶ and their free movement⁷ have

⁶ Eileen M. Luna-Firebaugh, *The Border Crossed Us: Border Crossing Issues of the Indigenous Peoples of the Americas*, 17(1) *Sovereignty and Governance*, I, Wicazo Sa Rev., 159 (Spring 2002), <https://www.jstor.org/stable/1409565>.

⁷ “The Indigenous peoples of the lands impacted by [] international agreements were neither consulted nor adequately considered in the negotiations between Mexico and the United States that would ultimately establish the current U.S.-Mexico international boundary.” Indigenous Alliance Without Borders & Christina Leza, *Handbook on*

been the target of this militarization.⁸ Increasingly harmful policies have been instituted in the past 30 years. Since the 1990s, policies have pushed migrants into more dangerous crossings,⁹ and 9/11 fueled policies and myths that continue to endanger migrant and Indigenous peoples' lives at and near the border daily. "After 9-11, the Border Patrol invaded our lands," said Tohono O'odham elder Ofelia Rivas.¹⁰ Rivas lives in the reservation community of Ali Jégk, on the U.S. side of the border.¹¹

Her father's village, Cu:Wi l-gersk is located on the Mexican side of the border, a 15 mile drive from where Rivas now lives.¹² When she was younger, Rivas reports, "I didn't know that there was an international border there."¹³ But in 2006, Border Patrol met with her community and told them that if they didn't build vehicle barriers, a 9/11 like attack would happen there in their homelands. Since the erection of the vehicle barriers, community members must drive three and a half hours to Cu:Wi l-gersk. Community members and residents have left the village of Cu:Wi l-gersk as it has become inaccessible as a result of the border.¹⁴

The U.S.-Mexico border was militarized a century and a half ago, as the result of the Treaty of Guadalupe Hidalgo of 1848 and the Gadsden Purchase of 1854, in an explicit attempt to police the movement of Indigenous peoples whose homelands lie in what is now the American Southwest and Northern Mexico.¹⁵ As a result, approximately seven federally recognized Indigenous peoples and their homelands were divided by the historical establishment of the U.S.-Mexico international border—the Yaqui / Yoeme, original homelands in southern Mexico, the O'odham, the Cocopah / Cucapá, the Kumeyaay / Kumiai, the Pai, the Apaches, and the

Indigenous Peoples' Border Crossing Rights Between the United States and Mexico, 2, <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Call/IndigenousAllianceWithoutBorders.pdf> (last visited Feb. 5, 2021).

⁸ Ariel Dulitzky, *Requested Follow Up Letter to CERD*, UNIVERSITY OF TEXAS (Feb. 21, 2017), https://law.utexas.edu/wp-content/uploads/sites/11/2015/04/2017-HRC-USA-BorderWall-Request-for-Follow-Up_letter-to-CERD.pdf; Comm. on the Elimination of Racial Discrimination, Rep. on the Work of Its Eighty-Second Session, ¶ 34, U.N. Doc. A/68/18 (2013).

⁹William L. Painter & Audrey Singer, *DHS Border Barrier Funding*, CONGRESSIONAL RESEARCH SERVICE, at 2 (Jan. 29, 2020), <https://crsreports.congress.gov/product/pdf/R/R45888>; *Disappeared: How US Border Enforcement Agencies Are Fueling a Missing Persons Crisis*, COALITION DE DERECHOS HUMANOS AND NO MORE DEATHS, <http://www.thedisappearedreport.org/uploads/8/3/5/1/83515082/disappeared--introduction.pdf> (last visited Feb. 5, 2021).

¹⁰ BORDER NATION (Splitframe Media), <https://emergencemagazine.org/story/border-nation/>.

¹¹ BORDER NATION (Splitframe Media), <https://emergencemagazine.org/story/border-nation/>.

¹² BORDER NATION (Splitframe Media), <https://emergencemagazine.org/story/border-nation/>.

¹³ BORDER NATION (Splitframe Media), <https://emergencemagazine.org/story/border-nation/>.

¹⁴ BORDER NATION (Splitframe Media), <https://emergencemagazine.org/story/border-nation/>.

¹⁵ SHELLEY BOWEN HATFIELD, *CHASING SHADOWS: APACHES AND YAQUIS ALONG THE UNITED STATES-MEXICO BORDER 1876-1911* 4-21 (1998).

Kickapoo / Kikapú¹⁶ and Indigenous peoples yet to be recognized under the US federal recognition system.¹⁷

These groups of Indigenous peoples are heavily monitored, are subject to arrest, and deportation.¹⁸ In 2018, members of the Tohono O’odham Nation used the Wo’osan, a traditional route (San Miguel Gate), a crossing over the border for the O’odham (peoples) to cross freely so that they are not kept from their kin and traditions, they were arrested and deported.¹⁹ Tribal members are supposed to be able to use this and other crossings with tribal IDs, freely, as a result of the Treaty of Guadalupe Hidalgo.²⁰ However, increased militarization and increased presence of border patrol and surveillance have impeded the daily lives of Indigenous peoples and their mobility.

A century and a half ago, the United States and Mexico established military collaboration to remove, control, or exterminate the peoples of this area.²¹ This earlier period of militarization drew a template for the current militarization of the border. The difference is that now new technologies like Integrated Fixed Towers have changed the destructive capabilities of the States who employ them, and also their ability to impinge on Indigenous peoples’ privacy, collective and individual rights, as well as Indigenous human rights.²²

U.S./Mexico Border Wall Infrastructure

Walls are, and have been, part of empire building for centuries and for generations Indigenous peoples have challenged the impacts of the U.S./Mexico border on their rights.²³ U.S. Customs

¹⁶Indigenous Alliance Without Borders & Christina Leza, *Handbook on Indigenous Peoples’ Border Crossing Rights Between the United States and Mexico*, 2, <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Call/IndigenousAllianceWithoutBorders.pdf> (last visited Feb. 5, 2021).

¹⁷ *In hostile Terrain: Human Rights Violations in Immigration Enforcement in the American Southwest*, Amnesty International USA (2012), https://www.amnestyusa.org/wp-content/uploads/2017/04/ai_inhostileterrain_032312_singles.pdf.

¹⁸ Alden Woods, *Story spreads of Tohono O’odham brothers’ arrest, deportation after using tribal border gate*, AZ CENTRAL (Aug. 2, 2018), <https://www.azcentral.com/story/news/politics/border-issues/2018/08/02/oodham-brothers-arrested-deported-after-using-tribal-border-gate/798715002/>.

¹⁹ Tay Wiles, *A Closed Border Gate Has Cut Off Three Tohono O’odham Villages From Their Closest Food Supply*, PACIFIC STANDARD (Feb. 7, 2019), <https://psmag.com/social-justice/a-closed-border-gate-has-cut-off-three-tohono-oodham-villages>.

²⁰ Tay Wiles, *A Closed Border Gate Has Cut Off Three Tohono O’odham Villages From Their Closest Food Supply*, PACIFIC STANDARD (Feb. 7, 2019), <https://psmag.com/social-justice/a-closed-border-gate-has-cut-off-three-tohono-oodham-villages>. See also Michel Marizco, *Tohono O’odham’s San Miguel Border Gate May Be Closing*, Arizona Public Media (Dec. 9, 2016), <https://www.azpm.org/s/38099-native-american-mexico-border-crossing-threatened/>.

²¹ SHELLEY BOWEN HATFIELD, *CHASING SHADOWS: APACHES AND YAQUIS ALONG THE UNITED STATES-MEXICO BORDER 1876-1911* 40 (1998).

²² Geoff Boyce, et. al, *Facing Down Settler Colonialism: O’odham-Palestinian Struggles*, ARIZONA PALESTINE SOLIDARITY ALLIANCE, <https://www.arizonapalestine.org/uploads/2/2/5/2/22521248/apsareportjuly2020.pdf> (last visited Feb. 5, 2021).

²³ Resistance by the Cocopah and partner organizations has succeeded in at least temporarily defunding part of the border wall. Following a letter to CBP, combined with legal action the Trump administration chose to withdraw funding for part of the wall. Additionally, courageous direct actions by the Carrizo/Comecrudo, the Kumeyaay, and other indigenous peoples have saved cemeteries and other burial grounds from destruction. U.S. Customs and

and Border Protection estimates that well over a quarter million tons of steel and almost half a million tons of concrete have been used in construction. In addition to the wall's direct impacts on habitats across the Southwest, the sourcing of materials for the wall itself has a potentially staggering environmental cost.²⁴

As of October 2020, the border wall construction has completed 386 miles, while 195 miles are currently under construction, and 157 miles are in the pre-construction phase.²⁵ In the prototype, U.S. Department of Homeland Security (DHS) stated that the wall would be “physically imposing” between 18-30 feet in height and “able to withstand tunneling six feet deep, impervious for at least a half-hour to attack by sledgehammer, pickax, blowtorch or other tools.”²⁶ Further, the wall is up to a mile away from the political border and has seized land of Indigenous peoples, some of whom have yet to be federally recognized by the U.S. government.²⁷ Additionally, portions of the border wall have been poorly constructed and have even fallen over due to weather – showing that the wall is wasting money and resources.²⁸

The entire length of the U.S.-Mexico border is monitored by the U.S. Border Patrol, using a host of border security technologies, including 32 permanent checkpoints and 182 tactical deployable checkpoints, about 8,000 cameras, 12,000 underground sensors, fixed towers, mobile surveillance systems, remote video surveillance systems, thermal imaging systems, radiation portal

Border Protection, Comments Regarding “Yuma Border Barrier Projects March 2020” and the Area on and near the West Cocopah Reservation (May 14, 2020), <https://media.azpm.org/master/document/2020/6/11/pdf/cocopah-procopio-letter-to-us-customs-and-border-protection-final.pdf>; Sierra Club v. Trump, 379 F. Supp. 3d 883 (N.D.Cal. 2019); Frank Hopper, *Carrizo/Comecrudo save cemetery from border wall, but the war against it goes on*, INDIAN COUNTRY TODAY (July 19, 2019), <https://indiancountrytoday.com/news/carrizo-comecrudo-save-cemetery-from-border-wall-but-the-war-against-it-goes-on-B-OqJDbprEqi-mgyB5KEZA>. See also Wendy Fry, *Kumeyaay tribe blocks border wall construction on native burial grounds*, L.A. TIMES (July 1, 2020), <https://www.latimes.com/california/story/2020-07-01/kumeyaay-tribe-blocks-border-wall-construction-on-native-burial-grounds>. Landowners like Eloisa Tamez and the University of Texas Human Rights Clinic have also won notable court victories against land seizure and the wall. John Burnett, *Landowners Likely To Bring More Lawsuits As Trump Moves On Border Wall*, NPR (Feb. 23, 2017), <https://www.npr.org/2017/02/23/516895052/landowners-likely-to-bring-more-lawsuits-as-trump-moves-on-border-wall>. See also *The Texas-Mexico Border Wall: Working Group Briefing Papers on Human Rights Impact*, University of Texas at Austin School of Law, <https://law.utexas.edu/humanrights/borderwall/analysis/briefing-papers.html> (last visited Feb. 5, 2021).

²⁴ *Border Wall System*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 25, 2021), <https://www.cbp.gov/border-security/along-us-borders/border-wall-system>.

²⁵ *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, U.S. CUSTOMS AND BORDER PROTECTION (Oct. 29, 2020), <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers>. Additionally, all but 47 miles was re-construction – meaning that most of the wall was being torn down and rebuilt. See Jasmine Aguilera, *At President Trump's Last Visit to the Border Wall, Here's What to Know About Its Legacy*, YAHOO!NEWS (Jan. 12, 2021), <https://news.yahoo.com/president-trumps-last-visit-border-203741402.html>.

²⁶ Todd J. Gillman, *Trump's new border wall specs: See-through, skip the river, and he'll pick the design himself*, The Dallas Morning News (Sept. 23, 2017), <https://www.dallasnews.com/news/politics/2017/09/23/trump-s-new-border-wall-specs-see-through-skip-the-river-and-he-ll-pick-the-design-himself/>.

²⁷ John C. Moritz, Aileen B. Flores, Brandon Loomis, Daniel González & Gustavo Solis, *The Wall*, USA Today, <https://www.usatoday.com/border-wall/>.

²⁸ Andy Rose, *Portion of US border wall in California falls over in high winds and lands on Mexican side*, CNN (Jan. 29, 2020), <https://www.cnn.com/2020/01/29/politics/us-border-wall-falls-over-high-winds/index.html>.

monitors, ground sensors and license plate readers. Beyond fixed surveillance systems, U.S. Customs and Border Protection [] deploys a fleet of about 260 surveillance vehicles, 300 vessels, 240 aircraft, including 9 Predator B unmanned aerial drones.²⁹

According to the American Friends Service Committee, the main companies involved in border surveillance and monitoring are:

Accenture plc (NYSE: ACN)
Boeing Co., of Chicago, IL (NYSE: BA)
Elbit Systems Ltd., of Haifa, Israel (NASDAQ: ESLT)
FLIR Systems Inc., of Wilsonville, OR (NASDAQ: FLIR)
General Dynamics, of West Falls Church, VA (NYSE: GD)
Griffon Corporation, of New York City, NY (NYSE: GFF)
L3Harris Technologies, of Melbourne, FL (NYSE: LHX)
Leidos Holdings Inc., of Reston, VA (NYSE: LDOS)
Lockheed Martin, of Bethesda, MD (NYSE: LMT)
Northrop Grumman, of Falls Church, VA (NYSE: NOC)
OSI Systems, of Hawthorne, CA (NASDAQ: OSIS)
Raytheon Company, of Waltham, MA (NYSE: RTN)
Smiths Group plc, of London, UK (LON: SMIN)
Unisys Corporation, of Blue Bell, PA (NYSE: UIS)
AeroVironment Inc., of Monrovia, CA
General Atomics, of San Diego, CA
Physical Sciences Inc., of Andover, MA³⁰

Elbit Systems

Elbit Systems will complete ten Integrated Fixed Towers on the Tohono O’odham Nation along the US-Mexico International border by March 2021.³¹ These towers are equipped with a suite of surveillance technologies that disrupt O’odham traditional and ceremonial practices and invades the privacy of individuals who live within their range. Ofelia Rivas, Tohono O’odham elder recounts:

In Pisinemo—the district next to us—when they were doing their ceremony hunt, the border patrol surrounded them, tied their hands behind their back, and made them sit there until someone came and

²⁹ *Border Surveillance and Monitoring*, AMERICAN FRIENDS SERVICE COMMITTEE (Sept. 25, 2018), <https://investigate.afsc.org/tags/border-surveillance-and-monitoring>.

³⁰ *Border Surveillance and Monitoring*, AMERICAN FRIENDS SERVICE COMMITTEE (Sept. 25, 2018), <https://investigate.afsc.org/tags/border-surveillance-and-monitoring>.

³¹ Elbit Systems of America, *U.S. Customs and Border Protection, Tohono O’odham Nation Agree On Border Security Solution by Elbit Systems of America*, ASDNEWS (June 26, 2019), <https://www.asdnews.com/news/defense/2019/06/26/us-cbp-tohono-oodham-nation-agree-border-security-solution-elbit-systems-america>; Amy Schlatter, *International Towers Enters Final Deployment Stage of Border Security Integrated Fixed Tower Program*, S&K TECHNOLOGIES, INC. (Apr. 2, 2020), <https://www.sktcorp.com/international-towers-enters-final-deployment-stage-of-border-security-integrated-fixed-tower-program/>.

verified that they're hunters on a ceremony hunt. That disturbs everybody. The people involved in the hunt, the women that are home praying for them and the deer, praying it will go well. It disturbs everything [in the Ali Jelk community]. For six years [the hunters] didn't get a deer because the border patrol was disrupting [the hunt]. Typically we go to ceremony, and after ceremony is over, they come around with the big baskets with deer meat and hand out deer meat for our blessings. It's our spiritual food, our kind of energy food for the whole year, and for six years we didn't have that, if you can imagine.³²

The surveillance equipment is mounted on towers and comprises a long range 360-degree radio-frequency radar and multiple long range cameras (electro-optical /infrared sensors, video camera) that detect a walking person at a range of 7.5 miles, as well as microwave communication receivers, spotlights, laser range finders, and infrared illuminators for night operations.³³ The reach of these technologies extends far into the Tohono O'odham Nation and beyond the border into O'odham lands in Mexico, violating the rights of these Indigenous people, some of whom are Mexican citizens who have no recourse to protest them.³⁴ In addition, these towers, both in their physical footprint and through the technologies they are comprised of, disturb the habitat of animals such as the prong horned sheep, white-tailed deer, and javelina.³⁵ Disturbing the natural habitat is not all. There are over 100 protected species that are adversely

³² Caitlin Blanchfield and Nina Valerie, "Persistent Surveillance": Militarized Infrastructure on the Tohono O'odham Nation, THE AVERY REVIEW (May 2019), <https://averyreview.com/issues/40/persistent-surveillance>.

³³ *Securing the Southern Border*, ELBIT SYSTEMS OF AMERICA, <https://www.nextgenborder.com/> (last visited Jan. 30, 2021); Amy Schlatter, *International Towers Enters Final Deployment Stage of Border Security Integrated Fixed Tower Program*, S&K TECHNOLOGIES, INC. (Apr. 2, 2020), <https://www.sktcorp.com/international-towers-enters-final-deployment-stage-of-border-security-integrated-fixed-tower-program/>; Elbit Systems of America, *Elbit Systems of America Achieves Significant Milestones for the Nogales Integrated Fixed Towers System*, CISION PR NEWSWIRE (Sept. 10, 2015), <https://www.prnewswire.com/news-releases/elbit-systems-of-america-achieves-significant-milestones-for-the-nogales-integrated-fixed-towers-system-526200971.html>. *Final Environmental for Integrated Fixed Towers on the Tohono O'odham Nation in the Ajo and Casa Grande Stations' Areas of Responsibility*, U.S. DEP'T OF HOMELAND SECURITY, 2-11(March 2017), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/TON%20IFT%20FINAL%20EA%20FONSI%202017%2003%20Part%20I.pdf>.

³⁴ Caitlin Blanchfield & Nina Valeri Kolowratnik, *Significant Impact*, E-Flux Architecture, <https://www.e-flux.com/architecture/at-the-border/325749/significant-impact/> (last visited Feb. 27, 2021); Caitlin Blanchfield and Nina Valerie, "Persistent Surveillance": Militarized Infrastructure on the Tohono O'odham Nation, THE AVERY REVIEW (May 2019), <http://averyreview.com/content/3-issues/40-40/1-persistent-surveillance/blanchfield-kolowratnik-persistent-surveillance.pdf>.

³⁵ According to an Environmental Assessment for the towers issued by the Department of Homelands Security, IFTs "may affect" pronghorned sheep, lesser long nosed bats, and jaguar. However, residents have already seen disruptions in the migrations and habitats of many animals. See *Final Environmental for Integrated Fixed Towers on the Tohono O'odham Nation in the Ajo and Casa Grande Stations' Areas of Responsibility*, U.S. DEP'T OF HOMELAND SECURITY, 2-11(March 2017), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/TON%20IFT%20FINAL%20EA%20FONSI%202017%2003%20Part%20I.pdf>. See also Caitlin Blanchfield & Nina Valeri Kolowratnik, *Significant Impact*, E-Flux Architecture, <https://www.e-flux.com/architecture/at-the-border/325749/significant-impact/> (last visited Feb. 27, 2021).

affected by the construction and operation.³⁶ Additionally, ancient burial grounds and sacred sites have been disturbed.³⁷

While the argument has been made that building IFTs is a lesser evil than the wall, many local grass-roots community members disagree. The towers are large-scale, invasive constructions. They stand up to 180 feet high and their perimeter footprint is up to 160 x 160 feet; they are visible from a far distance and affect communities that are not along the border.³⁸ Further, the towers require that 85 miles of new roads be built, and that existing roadways are widened.³⁹ In the short term this creates construction sites and brings heavy construction equipment into fragile ecosystems. In the long term it brings more border patrol agents into communities where they have already harassed both Indigenous and non-Indigenous community members.

Furthermore, IFTs will be placed within communities and will be accompanied by additional Elbit Systems surveillance technologies: the TORCH ground sensors and trailer mounted surveillance towers. Given that these technologies record video and detect motion, all residents in their vicinity will be heavily surveilled, even in their own backyards.⁴⁰ This is a substantive violation of privacy for Indigenous peoples who live near the border. The right to privacy is central to the practice of Indigenous peoples' cultural survival.

Additionally, Elbit Systems' investment in Artificial Intelligence (AI) and surveillance technology is also an urgent human rights concern. Multiple studies have shown that AI - especially in surveillance applications can be biased against people of color causing mistakes and errors including identification.⁴¹ In response to the recent Black Lives Matter protests following the death of George Floyd, IBM and other companies disavowed putting similar surveillance

³⁶ Brenda Norrel, *United States Destroying O'odham Graves for Arizona Border Wall*, INDYBAY (Jan. 26, 2020), <https://www.indybay.org/newsitems/2020/01/26/18830105.php>. See also Garet Bleir, *Endangered Species Are Casualties of Trump's Border Wall*, Sierra Club (Feb. 18, 2020), <https://www.sierraclub.org/sierra/endangered-species-are-casualties-trump-s-border-wall>.

³⁷ Will Parrish, *The U.S. Border Patrol and an Israeli Military Contractor are Putting a Native American Reservation under "Persistent Surveillance,"* The Intercept (Aug. 25, 2019), <https://theintercept.com/2019/08/25/border-patrol-israel-elbit-surveillance/>.

³⁸ Caitlin Blanchfield & Nina Valerie Kolowratnick, *Assessing Surveillance: Infrastructures of Security in the Tohono O'odham Nation*, ARCHINECT (Feb. 13, 2018), <https://archinect.com/features/article/150049769/assessing-surveillance-infrastructures-of-security-in-the-tohono-o-odham-nation>.

³⁹ *Final Environmental for Integrated Fixed Towers on the Tohono O'odham Nation in the Ajo and Casa Grande Stations' Areas of Responsibility*, U.S. DEP'T OF HOMELAND SECURITY, 14 (March 2017), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/TON%20IFT%20FINAL%20EA%20FONSI%202017%2003%20Part%20I.pdf>.

⁴⁰ Elbit Systems of America, *Elbit Systems of America integrates Linear Ground Detection System into TORCH™ Command & Control Center for border security*, CISION PR NEWSWIRE (Aug. 24, 2020), <https://ir.elbitsystems.com/news-releases/news-release-details/elbit-systems-america-integrates-linear-ground-detection-system>; Elbit Systems of America, *Elbit Systems of America's intelligent autonomous trailer-mounted surveillance towers selected by CTTSO, CBP*, CISION PR NEWSWIRE (Aug. 27, 2020), <https://ir.elbitsystems.com/news-releases/news-release-details/elbit-systems-americas-intelligent-autonomous-trailer-mounted>.

⁴¹ Stephen Buranyi, *Rise of the racist robots – how AI is learning all our worst impulses*, THE GUARDIAN (Aug. 8, 2017), <https://www.theguardian.com/inequality/2017/aug/08/rise-of-the-racist-robots-how-ai-is-learning-all-our-worst-impulses>.

technologies in the hands of police.⁴² Elbit Systems seems to be moving in the opposite direction, and has for years increased the level of surveillance along the border, potentially putting people of color in border communities at risk.⁴³

Further, the correspondences revolving around the environmental impact assessment, which found no significant impact for the Elbit towers, demonstrates that the assessment is inadequate and does not adequately address the potential risk of varying radio waves and electromagnetic radiation on plants, animals, and people in the area⁴⁴ It is likely that these waves are harmful; however, the research is lacking and CBP has determined that 17 feet is a safe operating distance and it is unlikely *many* animals or humans will come into that operating zone.⁴⁵

The activities at the U.S./ Mexico border, including, the Elbit System towers, are subject to both human rights principles in international law, U.S. environmental protection laws, and U.S. federal Indian law.

United States Executive Shortfalls and the Biden Administration

The Biden Administration is not effectively addressing the ongoing adverse impacts and human rights violations occurring at and near the border. While the Biden Administration has issued several executive orders, presidential proclamations, and plans to roll back some of the Trump Administration's agenda, these executive orders have gaps, loopholes, and are inadequate. In the *Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction* the designation of "emergency" regarding the border wall was revoked.⁴⁶ However, the contracts at the border are

⁴² Simon Sharwood, *IBM quits facial recognition because Black Lives Matter*, THE REGISTER (Jun. 9, 2020), https://www.theregister.com/2020/06/09/ibm_quits_facial_recognition_tech/.

⁴³ Jill Aitoro, *Elbit Systems of America, CBP in talks for expanded surveillance along US-Mexico border*, DEFENSE NEWS (Oct. 11, 2017), <https://www.defensenews.com/digital-show-dailies/ausa/2017/10/11/elbit-systems-of-america-cbp-in-talks-for-expanded-surveillance-along-us-mexico-border/>. See also Elbit Systems of America, LLC, *Elbit Systems of America Adding Sensor and AI Technology to the Border Wall to Enable Autonomous Operations*, OFFICER (Aug. 24, 2020), <https://www.officer.com/command-hq/technology/security-surveillance/access-control/press-release/21151893/elbit-systems-of-america-llc-elbit-systems-of-america-adding-sensor-and-ai-technology-to-the-border-wall-to-enable-autonomous-operations>; Caitlin Blanchfield & Nina Valeri Kolowratnik, *Significant Impact*, E-FLUX ARCHITECTURE, <https://www.e-flux.com/architecture/at-the-border/325749/significant-impact/> (last visited Feb. 27, 2021).

⁴⁴ See generally, Summary of Agency Correspondence and Public Involvement for the Environmental Assessment for Integrated Fixed Towers on the Tohono O'odham Nation Ajo and Casa Grande Stations' Areas of Responsibility, U.S. CUSTOMS & BORDER PROTECTION 28 (Apr. 2017), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/TON%20IFT%20EA%20FINAL%20PART%20II%2003%2028%202017%20add.pdf>.

⁴⁵ See generally, Summary of Agency Correspondence and Public Involvement for the Environmental Assessment for Integrated Fixed Towers on the Tohono O'odham Nation Ajo and Casa Grande Stations' Areas of Responsibility, U.S. CUSTOMS & BORDER PROTECTION 28 (Apr. 2017), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/TON%20IFT%20EA%20FINAL%20PART%20II%2003%2028%202017%20add.pdf>.

⁴⁶ Proclamation No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.federalregister.gov/documents/2021/01/27/2021-01922/termination-of-emergency-with-respect-to-the-southern-border-of-the-united-states-and-redirection-of>.

not being terminated; rather, there is a pause⁴⁷ on construction for 60 days while varying agencies determine how to repurpose standing contracts if appropriate.⁴⁸ As a result, construction on the border wall was ongoing in January and later.⁴⁹ Now, construction has halted, but equipment has been abandoned, along with building materials, and has left the land scarred – it is unclear how the land can be repaired, if it can be repaired.⁵⁰

Although the Biden Administration is successfully rolling back several of the Trump Administration's policies and agenda items, the Biden Administration is not effectively addressing the ongoing human rights violations occurring at and near the border; and is now complicit and a perpetrator of those violations.⁵¹

United States Domestic Law and Failure to Align with Indigenous Human Rights Standards

The Trump administration waived or attempted to waive dozens of laws while building the wall and Elbit System towers including, at least twenty-eight laws in Texas,⁵² roughly thirty in New

⁴⁷ This pause only refers to funds that were already redirected under the Trump Administration and does not include traditionally allocated funds. Proclamation No. 10142, 86 Fed. Reg. 7225, Sec. 1(b), (Jan. 20, 2021), <https://www.federalregister.gov/documents/2021/01/27/2021-01922/termination-of-emergency-with-respect-to-the-southern-border-of-the-united-states-and-redirecting-of>.

⁴⁸ Proclamation No. 10142, 86 Fed. Reg. 7225, Sec. 2, (Jan. 20, 2021), <https://www.federalregister.gov/documents/2021/01/27/2021-01922/termination-of-emergency-with-respect-to-the-southern-border-of-the-united-states-and-redirecting-of>.

⁴⁹ Brenda Norrell, *Border Wall construction continuing defying Biden's executive order*, CENSORED NEWS (Jan. 23, 2021), <https://bsnorrell.blogspot.com/2021/01/border-wall-construction-continuing.html>

⁵⁰ Ed Lavandera, Ashley Killough, & Catherine E. Shoichet, *Biden stopped building Trump's wall. Here's what it looks like now*, CNN (Apr. 30, 2021), <https://www.cnn.com/2021/04/30/us/border-wall-construction-stopped/index.html>. Alisa Reznick, *Border wall scars: 'It feels like if someone got a knife and dragged it across my heart.'*, Arizona Public Media (Feb. 4, 2021), <https://news.azpm.org/p/news-splash/2021/2/4/188649-border-wall-scars-it-feels-like-if-someone-got-a-knife-and-dragged-it-across-my-heart/>.

⁵¹ See generally, *Q&A: US Title 42 Policy to Expel Migrants at the Border*, Human Rights Watch (Apr. 8, 2021), <https://www.hrw.org/news/2021/04/08/qa-us-title-42-policy-expel-migrants-border#>.

⁵² Laiken Jordahl, *Trump Administration Waives Environmental Laws for Texas Border Wall*, CENTER FOR BIOLOGICAL DIVERSITY (Oct. 9, 2018), https://www.biologicaldiversity.org/news/press_releases/2018/border-wall-10-09-2018.php; *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 83 FR 50949 (Oct. 2, 2018), <https://www.federalregister.gov/documents/2018/10/10/2018-21930/determination-pursuant-to-section-102-of-the-illegal-immigration-reform-and-immigrant-responsibility>.

Mexico,⁵³ roughly forty in Arizona, and⁵⁴ over twenty-five statutes and regulations in California.⁵⁵ Although some laws are state-specific, such as the California Desert Protection Act,⁵⁶ these attempted waivers broadly overlap between states. Additionally, more than one notice attempts to waive the Administrative Procedure Act, a statute foundational to administrative law in the United States.⁵⁷ Such waivers typically fall under the authority of the Real ID Act of 2005⁵⁸ and the Secure Fence Act of 2006⁵⁹ - both granting broader discretion around border barriers and immigration issues. Notably, any list of laws waived may not be fully comprehensive, since it may not include other laws that have been violated incidentally during construction.

Further, the Trump Administration attempted to waive the Native American Graves Protection and Repatriation Act (NAGPRA),⁶⁰ the American Indian Religious Freedom Act (AIRFA),⁶¹ the Archeological Resources Protection Act (ARPA),⁶² the Antiquities Act (AA),⁶³ and National Historic Preservation Act (NHPA).⁶⁴

⁵³ Laiken Jordahl, *Trump Administration Waives Environmental Laws to Build Border Walls in New Mexico, Arizona*, CENTER FOR BIOLOGICAL DIVERSITY (Apr. 23, 2019), https://www.biologicaldiversity.org/news/press_releases/2019/border-wall-environmental-laws-04-23-2019.php. See also *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 83 FR 50949 (Oct. 2, 2018), <https://www.federalregister.gov/documents/2018/10/10/2018-21930/determination-pursuant-to-section-102-of-the-illegal-immigration-reform-and-immigrant-responsibility>; *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 85 FR 14963 (Mar. 16, 2020), <https://www.federalregister.gov/documents/2020/03/16/2020-05348/determination-pursuant-to-section-102-of-the-illegal-immigration-reform-and-immigrant-responsibility>.

⁵⁴ Laiken Jordahl, *Trump Administration Waives Laws to Build 100 Miles of Border Wall Across Arizona National Monument, Wildlife Refuges*, CENTER FOR BIOLOGICAL DIVERSITY (May 14, 2019), <https://biologicaldiversity.org/w/news/press-releases/trump-administration-waives-laws-to-build-100-miles-border-wall-across-arizona-national-monument-and-refuges-2019-05-14/>. See also *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 84 FR 21800 (May 15, 2019), <https://www.federalregister.gov/documents/2019/05/15/2019-10079/determination-pursuant-to-section-102-of-the-illegal-immigration-reform-and-immigrant-responsibility>.

⁵⁵ *Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended*, 84 FR 21800 (May 15, 2019), <https://www.federalregister.gov/documents/2019/05/15/2019-10080/determination-pursuant-to-section-102-of-the-illegal-immigration-reform-and-immigrant-responsibility>.

⁵⁶ Pub. L. 103-433, 108 Stat. 4471 (Oct. 31, 1994).

⁵⁷ 5 U.S.C. § 551. The APA has served as a possible basis for standing in at least one lawsuit against the border wall. See *Sierra Club v. Trump*, 963 F.3d 874 (9th Cir. 2020).

⁵⁸ Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, section 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, section 564, 121 Stat. 2090 (Dec. 26, 2007).

⁵⁹ Public Law 109-367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note).

⁶⁰ 25 U.S.C. §§ 3001-3013.

⁶¹ 42 U.S.C. § 1996.

⁶² Pub. L. 96-95, 93 Stat. 721.

⁶³ 16 U.S.C. § 431 formerly; now codified at 54 U.S.C. § 320301.

⁶⁴ 16 U.S.C. § 470 formerly; now codified at 54 U.S.C. § 100101 and 54 U.S.C. § 300101.

Under international law, the U.S. government has a duty to protect individuals and groups against human rights abuses and must take positive action to facilitate the enjoyment of basic human rights. Moreover, the U.S. government must engage in consultation proceedings with federally recognized tribes. Waiving such laws violates the rights of Indigenous peoples. Under the National Historic Preservation Act, Section 106 states that the process of consultation with Indian tribes comprises an exchange of ideas rather than providing information.⁶⁵ Land that is subject to this exchange of ideas includes places of religious and cultural significance and can be located on ancestral, aboriginal, or ceded lands.⁶⁶ Further, Executive Orders (EO) 13175, *Consultation and Coordination with Indian Tribal Governments*, and EO 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, both directly apply here. EO 13175 states, based on Indian tribes' "inherent sovereign powers over their members and territory,"⁶⁷ consultation must be done with tribal officials "early in the process."⁶⁸ EO 12898 outlines that Federal agencies "shall make achieving environmental justice part of its mission"⁶⁹ by "at a minimum [] promot[ing] enforcement of all health and environmental statutes in areas with minority [] and low-income populations,"⁷⁰ which includes Native Americans.⁷¹ In complying with EO 13175, DHS adopted a consultation policy that includes notifying Tribal Governments "of DHS's desire to engage in Consultation ... as early [] as reasonably possible."⁷²

Here, the activities along the border, the construction of the border wall and construction of the Elbit System towers, fly in the face of existing domestic legislation and consultation requirements of Indian tribes. NAGPRA, AIRFA, ARPA, AA, and NHPA all protect against desecrating Saguaro Cacti, destroying and disturbing tribal archaeological sites, sacred sites, and human remains, and denying access to cultural and ceremonial sites in varying degrees. However, these statutes have been purposefully ignored to the detriment to the Indigenous peoples living on and near the border. Additionally, the consultation requirements under these statutes and policies have not occurred for neither the Cocopah Indian Tribe for the West

⁶⁵ 36 CFR 800.16(f).

⁶⁶ 36 CFR 800.2(c)(2).

⁶⁷ Exec. Order No. 13175, 65 FR 67249, Sec. 2(b), (Nov. 6, 2000),

<https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>.

⁶⁸ Exec. Order No. 13175, 65 FR 67249, Sec. 5(2)(A), (Nov. 6, 2000),

<https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>.

⁶⁹ Exec. Order No. 12898, 59 FR 7629, Sec. 1-101, (Feb. 16, 1994),

<https://www.federalregister.gov/documents/1994/02/16/94-3685/federal-actions-to-address-environmental-justice-in-minority-populations-and-low-income-populations>.

⁷⁰ Exec. Order No. 12898, 59 FR 7629, Sec. 1-103(a)(1), (Feb. 16, 1994),

<https://www.federalregister.gov/documents/1994/02/16/94-3685/federal-actions-to-address-environmental-justice-in-minority-populations-and-low-income-populations>.

⁷¹ Exec. Order No. 12898, 59 FR 7629, Sec. 6-606, (Feb. 16, 1994),

<https://www.federalregister.gov/documents/1994/02/16/94-3685/federal-actions-to-address-environmental-justice-in-minority-populations-and-low-income-populations>.

⁷² U.S. Dep't of Homeland Security, *Department of Homeland Security Tribal Consultation Policy*, Sec. III(B)(ii),

https://www.dhs.gov/sites/default/files/publications/DHS%20Tribal%20Consultation%20Policy%20Final%20PDF_0.pdf.

Cocopah Reservation nor the Tohono O’odham Nation⁷³ as of March and February (consecutively) 2020 even though construction began in September 2019.

Notably, CBP admitted that it “did not consult with the Carrizo/Comecrudo Nation of Texas, the Lipan Apache [sic] of south Texas, or the federally recognized tribe of Ysleta Del Sur Pueblo of Texas.”⁷⁴ Such a failure to consult does not comply with established U.S. law and deliberately violates the rights of Indigenous peoples.

The U.S. government and the Trump Administration did not follow the laws and policies that protect Indigenous peoples while constructing the border wall or while contracting with Elbit System and constructing surveillance towers.

Elbit and the Human Rights Implications of Their Actions

I. United Nations Declaration on the Rights of Indigenous Peoples and the U.S./ Mexico Border

The U.N. Declaration on the Rights of Indigenous Peoples (UN Declaration) creates obligations for signatories, for which the U.S. is one. Of particular importance is Article 12:

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.⁷⁵

Other rights implicated under the U.N. Declaration in relation to the situations at the U.S./ Mexico Border⁷⁶ are the right to self-determination;⁷⁷ the right to fully participate in the State’s political affairs;⁷⁸ the right to life “physical and mental integrity, liberty and security of person...the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence”;⁷⁹ the right to prevention, on

⁷³ The leadership of the Tohono O’odham Nation did consent to what they understood as a “virtual border,” but the O’odham people have concerns and actively speak out against the towers. See Molly Hennessy-Fiske, *Arizona tribe refuses Trump’s wall, but agrees to let Border Patrol build virtual barrier*, L.A. TIMES (May 9, 2019), <https://www.latimes.com/nation/la-na-arizona-tribe-border-patrol-trump-wall-20190509-htlstory.html>.

⁷⁴ U.S. Customs and Border Protection Docket No. USCBP-2019-0018, 85 FR 23983 (Apr. 30, 2020), <https://www.federalregister.gov/documents/2020/04/30/2020-09236/response-to-public-comments-regarding-the-construction-of-border-wall-within-certain-areas-in-the>. The tribal consultation section of this notice is relatively *de minimis*, and does not seem to adequately address concerns around free, prior, and informed consent.

⁷⁵ U.N. Declaration on the Rights of Indigenous Peoples art. 12.

⁷⁶ Indigenous Alliance Without Borders & Christina Leza, *Handbook on Indigenous Peoples’ Border Crossing Rights Between the United States and Mexico*, 17, <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Call/IndigenousAllianceWithoutBorders.pdf> (last visited Feb. 5, 2021).

⁷⁷ U.N. Declaration on the Rights of Indigenous Peoples art. 4.

⁷⁸ U.N. Declaration on the Rights of Indigenous Peoples art. 5.

⁷⁹ U.N. Declaration on the Rights of Indigenous Peoples art. 7.

behalf of the State, to deprivation of cultural identity, dispossession of land, undermining of voting rights, forced assimilation, and propaganda intended to promote discrimination;⁸⁰ the right of belonging;⁸¹ the right to remain on their land and territory – complying with free, prior and informed consent;⁸² the right to revitalize their traditions and customs;⁸³ the right to revitalize their knowledge and pass it on to future generations;⁸⁴ the right to participate in decision-making that would affect their rights;⁸⁵ the right to consultation in good faith by the State;⁸⁶ the right to traditional medicines;⁸⁷ the right to “maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied lands;”⁸⁸ the right to determine their own identity and membership;⁸⁹ the right to maintain and develop relationships across political borders;⁹⁰ and, the right that States will take the appropriate measures, in cooperation with Indigenous peoples, to “achieve the ends of this Declaration.”⁹¹

The activities at the U.S./Mexico Border directly implicate the rights prescribed above in the U.N. Declaration. Here, the construction, and the future operation, of Elbit System tower surveillance systems implicate Indigenous peoples’ rights to self-determination and free, prior and informed consent. Reports released to the Tohono O’odham Nation regarding the construction were misleading because they stated, “tower construction wouldn’t cause archaeological, environmental or community harm.”⁹² However the towers require up to 160 by 160 feet and are also surrounded by a fence which encloses up to 10,000 square feet with “a thirty-foot wide fire buffer beyond” the fence – the entirety of these areas are cleared of all vegetation.⁹³ Vegetation clearing at this scale for 10 towers does in fact cause environmental harm. For example, a roadway built for one of the towers has “uprooted protected saguaro, prickly pear cactus, and ironwood” – plants that are used for traditional medicines and foods. Therefore, construction posed environmental and cultural harm because these plants are endangered and are sacred to the O’odham people, and the reports that garnered consent originally were not truthful. Withholding information or manipulating it to garner consent undermines the right to self-determination.

Moreover, surveillance at the scale perpetuated by the towers interferes with rights to revitalize traditions, customs and knowledge, and to pass it on to future generations. Surveillance and

⁸⁰ U.N. Declaration on the Rights of Indigenous Peoples art. 8.

⁸¹ U.N. Declaration on the Rights of Indigenous Peoples art. 9.

⁸² U.N. Declaration on the Rights of Indigenous Peoples art. 10.

⁸³ U.N. Declaration on the Rights of Indigenous Peoples art. 11.

⁸⁴ U.N. Declaration on the Rights of Indigenous Peoples art. 13.

⁸⁵ U.N. Declaration on the Rights of Indigenous Peoples art. 18.

⁸⁶ U.N. Declaration on the Rights of Indigenous Peoples art. 19.

⁸⁷ U.N. Declaration on the Rights of Indigenous Peoples art. 24.

⁸⁸ U.N. Declaration on the Rights of Indigenous Peoples art. 25.

⁸⁹ U.N. Declaration on the Rights of Indigenous Peoples art. 33.

⁹⁰ U.N. Declaration on the Rights of Indigenous Peoples art. 36.

⁹¹ U.N. Declaration on the Rights of Indigenous Peoples art. 38.

⁹² Molly Hennessy-Fiske, *Arizona tribe refuses Trump’s wall, but agrees to let Border Patrol build virtual barrier*, L.A. TIMES (May 9, 2019), <https://www.latimes.com/nation/la-na-arizona-tribe-border-patrol-trump-wall-20190509-htmlstory.html>.

⁹³ Caitlin Blanchfield & Nina Valeri Kolowratnik, *Significant Impact*, E-Flux Architecture, <https://www.e-flux.com/architecture/at-the-border/325749/significant-impact/> (last visited Feb. 27, 2021).

intimidation have “pushed community members into their homes.”⁹⁴ As a result, the O’odham people are not partaking in their traditional lifestyles as they would if they were free to move on their territory. The lack of participation in traditional life puts that life at risk of not being passed onto future generations.

II. Violation of Indigenous Peoples Right to Privacy

The United States has ratified the International Convention on Civil and Political Rights (ICCPR) and as such is bound to continued interpretation of the Convention by the U.N. Human Rights Committee (Committee). Article 17(1) states, “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour [sic] and reputation.”⁹⁵ Article 23(1) states, “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁹⁶

In *Francis Hopu and Tepoaitu Bessert v. France*⁹⁷ (*Hopu*), the Committee found that the Polynesian peoples’ right to privacy and family were violated by construction of a luxury hotel complex that threatened their culture and way of life. Construction would “destroy their traditional burial ground and ruinously affect their fishing activities.”⁹⁸ Additionally, police force was increased and up to 350 officers were flown into Tahiti to “evacuate the land and to make the start of the construction work possible,” resulting in a forced removal of the Polynesian peoples.⁹⁹ There, the Committee held that the definition of family requires “a broad interpretation so as to include all those comprising the family as understood in the society in question.”¹⁰⁰ The Polynesian people “consider the relationship to their ancestors to be an essential element of their identity and to play an important role in their family life;” therefore, even though the petitioners did not establish a “direct link,” the remains at the burial ground are indeed family.¹⁰¹ Moreover, the right to privacy was triggered by both the impending construction and upheaval of ancestors’ remains and impending forced removal by police forces.¹⁰²

Here, Elbit Systems and the United States have engaged in construction that has disturbed ancestral remains of the O’odham people and O’odham people’s ability to engage privately with

⁹⁴ Caitlin Blanchfield & Nina Valeri Kolowratnik, *Significant Impact*, E-Flux Architecture, <https://www.e-flux.com/architecture/at-the-border/325749/significant-impact/> (last visited Feb. 27, 2021).

⁹⁵ Office of the High Commissioner for Human Rights, International Covenant on Civil and Political, Rights, art. 17(1), Dec. 16, 1966.

⁹⁶ Office of the High Commissioner for Human Rights, International Covenant on Civil and Political, Rights, art. 23(1), Dec. 16, 1966.

⁹⁷ *Francis Hopu and Tepoaitu Bessert v. France*, *Comm. No. 549/1993*, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. (1997), <http://hrlibrary.umn.edu/undocs/549-1993.html>.

⁹⁸ *Francis Hopu and Tepoaitu Bessert v. France*, *Comm. No. 549/1993*, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. ¶ 2.5 (1997), <http://hrlibrary.umn.edu/undocs/549-1993.html>.

⁹⁹ *Francis Hopu and Tepoaitu Bessert v. France*, *Comm. No. 549/1993*, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. ¶ 2.5 (1997), <http://hrlibrary.umn.edu/undocs/549-1993.html>.

¹⁰⁰ *Francis Hopu and Tepoaitu Bessert v. France*, *Comm. No. 549/1993*, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. ¶ 10.3 (1997), <http://hrlibrary.umn.edu/undocs/549-1993.html>.

¹⁰¹ *Francis Hopu and Tepoaitu Bessert v. France*, *Comm. No. 549/1993*, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. ¶ 10.3 (1997). <http://hrlibrary.umn.edu/undocs/549-1993.html>.

¹⁰² *Francis Hopu and Tepoaitu Bessert v. France*, *Comm. No. 549/1993*, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. ¶ 10.3 (1997). <http://hrlibrary.umn.edu/undocs/549-1993.html>.

burial sites and areas of cultural significance.¹⁰³ Elbit Systems' activity, by disturbing ancestral remains, has directly violated the International Convention on Civil and Political Rights, Article 23(1). The O'odham people operate under the belief that these remains are their family and are sacred. As a result, Elbit Systems has violated the right to family.

Although Indigenous peoples are not being forcefully removed as the Polynesian people in Tahiti were for construction, the O'odham people are highly surveilled at all times. Surveillance radii identify "items of interest:" radio frequency detects bodies within a 9.3-mile radius; long-range video cameras capture everything within a 13.5-mile radius; radio frequency radar detects vehicles within an 18.6-mile radius; and microwave communication receivers transmit in a 40-mile radius.¹⁰⁴ Anyone living within these radii are surveilled 24/7 – even during ceremonies and sacred practices that are not available to outsiders. Removing the Polynesian people from their land was a violation of privacy. Here, O'odham are not being removed, but watched every minute of every day and have lost any semblance of privacy. The continued disturbances, militarization, and increased securitization of the border create an environment where Indigenous peoples leave and or move away from their traditional lands.

The U.S. is failing in its human rights obligations through act and/or omission by allowing Elbit Systems to operate in this matter implicating Article 17(1) and Article 23(1) of the International Convention on Civil and Political Rights by disturbing and destroying the final resting places of ancestral remains of the O'odham people. The O'odham people deem the remains as their family and therefore Elbit Systems has violated their right to family. Moreover, Elbit Systems has also violated the right to privacy. Although Elbit Systems has not forcibly removed the O'odham people, there is no question that 24/7 close surveillance of everyday activities is an egregious violation that greatly disturbs and infringes upon the full enjoyment of their human rights.

III. Inter-American Commission on Human Rights

The U.S. also has responsibilities under the American Declaration on the Rights and Duties of Man (American Declaration) because it has signed the Organization of American States Charter.¹⁰⁵ Further, the Inter-American Court of Human Rights continues to interpret the American Declaration and the jurisprudence stemming from those cases builds upon the American Declaration. The U.S. and, by extension, Elbit Systems, is acting in violation of the right to property, the right to cultural integrity, and the right to consultation.

First, Article XXIII of the American Declaration states that it is a human right to "own such private property as meets the essential needs of decent living and helps to maintain the dignity of

¹⁰³ Caitlin Blanchfield & Nina Valerie Kolowratnick, *Assessing Surveillance: Infrastructures of Security in the Tohono O'odham Nation*, ARCHINECT (Feb. 13, 2018), <https://archinect.com/features/article/150049769/assessing-surveillance-infrastructures-of-security-in-the-tohono-o-odham-nation>.

¹⁰⁴ Caitlin Blanchfield & Nina Valerie Kolowratnick, *Assessing Surveillance: Infrastructures of Security in the Tohono O'odham Nation*, ARCHINECT (Feb. 13, 2018), <https://archinect.com/features/article/150049769/assessing-surveillance-infrastructures-of-security-in-the-tohono-o-odham-nation>. See Annex – Map of Elbit Towers Along Border.

¹⁰⁵ Charter of the Organization of American States – Signatory Countries, https://www.cidh.oas.org/Basicos/English/Basic22b.CharterOAS_ratif.htm (last visited Mar. 9, 2021).

the individual and of the home.”¹⁰⁶ This right is recognized as collective in a traditional way and current jurisprudence states that “by the fact of their very existence, [I]ndigenous communities have the right to live freely on their own territories.”¹⁰⁷ Second, the right to culture is protected under the American Declaration in Article XXIII, right to property; Article III, the right to religious freedom; Article VI, the right to family and protection thereof; and Article XIII, the right to the benefits of culture.¹⁰⁸ These Articles embody the overall right to culture and are interpreted in a way that places cultural development and respect for culture in a position of supreme importance.¹⁰⁹ Third, the right to consultation has been recognized by the Inter-American Court of Human Rights in *Maya Belize* as part of the right to property.¹¹⁰ However, there the land grants were made to logging and oil companies, and consultation did not occur. Even so, consultation relates to Article XX, the right to participate in government and derives from the right to self-determination.¹¹¹

Here, the construction of the border wall and the construction of Elbit Systems surveillance towers violate Indigenous peoples’ right to property, right to cultural integrity, and the right to consultation. Construction has commenced without consultation or notification, interfering with the right to property. These activities interfere and deny Indigenous peoples’ access to religious and sacred sites thereby violating their right to cultural integrity. Moreover, increased surveillance that disparately impacts people of color interferes with Indigenous peoples’ ability to move freely within their territories. As a result, the construction of the U.S./Mexico border wall by the U.S. government is a violation of its obligations under the American Declaration; similarly, contracting with Elbit Systems to construct surveillance towers also violates obligations found within the American Declaration.

Organisation for Economic Co-operation and Development (OECD)

The Organisation for Economic Co-operation and Development (OECD) promulgated the Guidelines for Multinational Enterprises, under which Elbit Systems has responsibilities to protect, respect, and remedy human rights under international principles, regardless of whether the U.S. is fulfilling its obligations to monitor businesses and uphold international human rights

¹⁰⁶ The American Declaration, Article XXIII, Organization of American States (O.A.S.) Res. XXX (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.8 (May 2001), available at <http://cidh.org/Basicos/basic2.htm>.

¹⁰⁷ Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua (“Awas Tingni”), Judgment of August 31, 2001, Inter-Am. Ct. H.R. Ser. C., No. 79 (2001).

¹⁰⁸ The American Declaration, Article XXIII add other articles, Organization of American States (O.A.S.) Res. XXX (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.8 (May 2001), available at <http://cidh.org/Basicos/basic2.htm>.

¹⁰⁹ Charter of the Organization of American States, Articles 2(f), 3(m), 30, 48, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9, (January 2003), available at <<http://cidh.org/Basicos/charter.htm>> (last accessed: January 25, 2007) (Member States are “individually and jointly bound to preserve and enrich the cultural heritage of the American peoples”).

¹¹⁰ Judgment of August 31, 2001, Inter-Am. Ct. H.R. Ser. C., No. 79 (2001); Case of Maya Indigenous Communities of the Toledo District v. Belize (“Maya Belize”), Inter-Am C.H.R., Case No. 12.053, Report No. 40/04 (October 12, 2004)

¹¹¹ Human Rights Committee General Comment No. 23, Cf. Committee on the Elimination of Racial Discrimination, General Recommendation XXI on Self-Determination, CERD/48/Misc.7/Rev.3, paras. 3, 5 (1996) (“CERD General Recommendation on Self-Determination”) (linking the right of self-determination with the right to take part in public affairs and the right of ethnic groups to lead lives of dignity and to preserve their culture).

standards.¹¹² Additionally, those that fund Elbit Systems in the activities at and near the U.S./Mexico border also have responsibilities to respect human rights under international standards and principles.¹¹³

Specifically, businesses and banks have a responsibility to “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.”¹¹⁴ Businesses also have the responsibility to “prevent or mitigate” adverse impacts that are “directly linked...even if they have not contributed to those impacts.”¹¹⁵ Contribution occurs when “activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivize another entity to cause an adverse impact.”¹¹⁶ Whereas, direct linkage occurs when adverse impacts flow from the services provided by a business relationship.¹¹⁷ Generally, adverse impacts at the contribution or direct linkage stage can be averted or mitigated with proper due diligence.¹¹⁸

¹¹² United Nations Office of the High Commissioner of Human Rights, *U.N. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, at 13-14, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf; *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

¹¹³ See generally, *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

¹¹⁴ *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD, at 14, (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>. United Nations Office of the High Commissioner of Human Rights, *U.N. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, at 13-14, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹¹⁵ *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD, at 14, (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>. United Nations Office of the High Commissioner of Human Rights, *U.N. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, at 13-14, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹¹⁶ *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD, at 43, (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

¹¹⁷ *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD, at 42, (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

¹¹⁸ See generally, *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

Here, financiers, business partners, and shareholders, along with Elbit Systems have contributed to the adverse impacts occurring at and near the border. These adverse impacts include desecration of sacred and religious sites, and pervasively discriminatory surveillance.¹¹⁹

Even so, it is likely that all those involved are directly linked – meaning that financiers and Elbit Systems both have the obligation to use their leverage to “prevent or mitigate [the adverse impacts]” and provide a remedy where appropriate.¹²⁰ Ultimately, all those involved within the supply chain,¹²¹ bear responsibility in the occurrence and prevention of adverse human rights impacts on the U.S./Mexico border and it is imperative that urgent action is taken.

Case Law in Canada Regarding Indigenous Peoples’ Rights on an International Border

Recent caselaw from Canada shows that Indigenous rights transcend international borders. In *R. v. Desautel*¹²² Aboriginal rights¹²³ of the Lakes Tribe of the Colville Confederated Tribes (Lakes Tribe) of Washington State, U.S. were upheld in British Columbia, Canada. There, it was established that the Lakes Tribe was descended from the Sinixt peoples whose original territories covered both current day British Columbia and Washington.¹²⁴ As a result, Lakes Tribes members could exercise their Aboriginal rights recognized in Canada on their ancestral territories in British Columbia.¹²⁵ Although the case here states specifically that there is no

¹¹⁹ Maya Srikrishnan, *Sexual Assault Complaints at Otay Mesa Detention Center Have Surged*, VOICE OF SAN DIEGO (Sept. 4, 2019), <https://www.voiceofsandiego.org/topics/news/sexual-assault-complaints-at-otay-mesa-detention-center-have-surged/>. Lomi Kriel, *ICE guards “systematically” sexually assault detainees in an El Paso detention center, lawyers say*, THE TEXAS TRIBUNE (Aug. 14, 2020), <https://www.texastribune.org/2020/08/14/texas-immigrant-detention-ice-el-paso-sexual-abuse/>.

¹²⁰ *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD, at 42, (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

¹²¹ “‘Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.” *OECD Guidelines for Multinational Enterprises*, OECD, 33, (2011), <http://www.oecd.org/daf/inv/mne/48004323.pdf>. Further, “[E]nterprises should [] [c]ontinually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by encouraging such activities as: [] development and provision of products or services that have no undue environmental impacts; are safe in their intended use; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely; [] promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, *by providing accurate information* (emphasis added) on their products (for ex[.], on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues).” *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*, OECD, at 42-43, (2019), <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

¹²² 2021 SCC 17, <https://turtletalk.files.wordpress.com/2021/04/opinion-1.pdf>.

¹²³ Aboriginal rights in Canada flow from Sec. 35 of the Canadian Constitution and Sec. 25 of the Charter of Rights in Freedoms. *Aboriginal Rights*, https://indigenousfoundations.arts.ubc.ca/aboriginal_rights/ (last visited Apr. 30, 2021).

¹²⁴ 2021 SCC 17, <https://turtletalk.files.wordpress.com/2021/04/opinion-1.pdf>.

¹²⁵ 2021 SCC 17, <https://turtletalk.files.wordpress.com/2021/04/opinion-1.pdf>.

mobility right issue, – that is the right to enter Canada by way of Aboriginal right – the facts of the case are akin to the O’odham peoples’ situation on the southern border.

R v. Desautel demonstrates that colonization disrupts Indigenous peoples’ activities and their very way of life. Even so, the O’odham peoples’ crossings over the U.S./Mexico border are greatly hindered by border patrol, the wall, and IFT towers. Indigenous peoples have the right to engage in their cultural practices but cannot do so if they cannot cross the border. O’odham peoples do not enjoy the right of mobility currently.

Financing of the Border

Borders around the world have divided Indigenous peoples from their lands, cultures, and kin. As a result, allies and advocates worldwide have called for divestment of border industries and infrastructure.¹²⁶ The very act of financing border industries and infrastructure “will always be a violent apparatus that perpetuates human rights violations.”¹²⁷ Further, “any industry that provides services and products for this border regime will bear responsibility for its human consequences and its human rights violations, and over time will suffer their own serious reputational costs for their involvement in this immoral industry.”¹²⁸

As of April 2021, 1832 Asset management LP (3.51%), Fidelity Management & Research Co. (2.36%), Altshuler Shaham Mutual Funds Management Ltd. (1.62%), The Vanguard Group, Inc. (1.38%), KSM Mutual Funds Ltd. (.85%), William Blair Investment Management LLC (.78%), Psagot Mutual Funds Ltd. (.62%), Gilder, Gagnon, Howe & Co. LLC (.61%), Kennedy Capital Management, Inc. (.50%) are the largest shareholders of Elbit.¹²⁹ Moreover, Michael Federman, the chair of the Board of Directors, owns 44.3% of shares.¹³⁰ Elbit Systems does not have a good human rights track record and several investors have already divested from Elbit Systems: Norwegian Pension Fund, Danske Bank, and AXA, a French investment and insurance firm, are the most notable.¹³¹

“Worldwide, social movements and the public are starting to wake up to the human costs of border militari[z]ation and demanding a fundamental change. It is time now for the border industry and their financiers to make a choice.”¹³²

¹²⁶ See generally, Mark Akkerman, *Financing Border Wars: The border industry, its financiers and human rights*, TRASNATIONAL INSTITUTE (April 2021), https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf.

¹²⁷ Mark Akkerman, *Financing Border Wars: The border industry, its financiers and human rights*, TRASNATIONAL INSTITUTE, 6 (April 2021), https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf.

¹²⁸ Mark Akkerman, *Financing Border Wars: The border industry, its financiers and human rights*, TRASNATIONAL INSTITUTE, 6 (April 2021), https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf.

¹²⁹ Mark Akkerman, *Financing Border Wars: The border industry, its financiers and human rights*, TRASNATIONAL INSTITUTE, 66 (April 2021), https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf.

¹³⁰ Mark Akkerman, *Financing Border Wars: The border industry, its financiers and human rights*, TRASNATIONAL INSTITUTE, 40 (April 2021), https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf.

¹³¹ Mark Akkerman, *Financing Border Wars: The border industry, its financiers and human rights*, TRASNATIONAL INSTITUTE, 40 (April 2021), https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf.

¹³² Mark Akkerman, *Financing Border Wars: The border industry, its financiers and human rights*, TRASNATIONAL INSTITUTE, 6 (April 2021), https://www.tni.org/files/publication-downloads/financingborderwars-report-tni_2.pdf.

Other Technologies and Finance

Further, the digital wall is made up of several different technologies. This report focuses on the Elbit IFT towers; however, there are also remote video surveillance systems (General Dynamics), mobile video surveillance systems (Benchmark Electronics), mobile surveillance capability (Teledyne Technologies) autonomous surveillance towers (Anduril Industries), small unmanned aircraft systems (a combination of AeroVironment, Teledyne Technologies, and Lockheed Martin), license plate reader equipment (a combination of Motorola Solutions, Thomson Reuters, and Venntel), biometric collection and storage (a combination of Amazon, Northrop Grumman, NEC Corporation, and Thales S.A.), Cellebrite mobile forensics (part of warrantless device hacking – Sun Corporation), Graykey mobile forensics (part of warrantless device hacking – Grayshift), vehicle and mobile forensics (part of warrantless device hacking – Micro Systemation AB), mobile forensics (part of warrantless device hacking – Magnet Forensics Inc.), and several platforms, analytics, and cloud services are provided to ICE (a combination of Palantir Technologies, Salesforce, and Alphabet).¹³³

Upwards of 460 small drones, that will be controlled through handheld devices, will be operational with roughly 1,200 operators and will expand to facial recognition capabilities. Drone models include: Back Hornet PDS (Teledyne Technologies Incorporated), Puma 3AE (AeroVironment), Indago-3 (Lockheed Martin), and FLIR R80D SkyRaider (Teledyne Technologies Incorporated).¹³⁴

Moreover, Amazon, at a cost of \$4.3 billion, is hosting the Homeland Advanced Recognition Technology System (HART). HART is a centralized database of biometric data.¹³⁵ Northrop Grumman is the principal contractor for developing the system.¹³⁶ At full operation, HART will have full profiles of hundreds of millions of people that contains biometric data collected from the border and shared with foreign governments.¹³⁷ These profiles will contain facial recognition images, DNA profiles, iris scans, digital and latent fingerprints, palm prints, and voice prints.¹³⁸

License plate readers are also of concern. Currently, CBP uses Automated License Plate Recognition (ALPR) at border crossing lanes and Border Patrol checkpoints inland from the

¹³³ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021), citing *DHS Needs to Fully Implement Key Practices in Acquiring Biometric Identity Management System*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (June 8, 2021), www.gao.gov/assets/gao-21-386.pdf, Douglas Harpel, *A Conversation with Keith Haynes, Assistant Chief & Small UAS Program Manager, U.S. Border Patrol*, DEFENSE SYSTEMS JOURNAL (Mar. 11, 2020), www.dsjournal.com/2020/03/11/exclusive-a-conversation-with-keith-haynes-assistant-chief-small-uas-program-manager-u-s-border-patrol, Lee Fang & Sam Biddle, *Google AI Tech Will Be Used for Virtual Border Wall, CBP Contract Shows*, THE INTERCEPT (Oct. 21, 2020), <https://theintercept.com/2020/10/21/google-cbp-border-contract-anduril>.

¹³⁴ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021), citing John Davis, *Small but Mighty*, CBP, www.cbp.gov/frontline/cbp-small-drones-program, Russell Brandom, *The US Border Patrol is trying to build face-reading drones*, THE VERGE (Apr. 6, 2017), www.theverge.com/2017/4/6/15208820/customs-border-patrol-drone-facial-recognition-silicon-valley-dhs.

¹³⁵ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021), citing *DHS Needs to Fully Implement Key Practices in Acquiring Biometric Identity Management System*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (June 8, 2021), www.gao.gov/assets/gao-21-386.pdf.

¹³⁶ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

¹³⁷ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

¹³⁸ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

border.¹³⁹ As a result, ICE has over 5 billion license plate records from private businesses and roughly 1.5 billion data points from over 80 law enforcement agencies across the country.¹⁴⁰ ALPR is provided by Motorola Solutions and Vigilant Solutions (a subsidiary of Motorola Solutions) facilitated by an agreement with Thomson Reuters, a data broker.¹⁴¹

Cellebrite (Sun Corporation), Grayshift (PeakEquity Partners), Micro Systemation, and Magnet Forensics provide warrantless device hacking for CBP.¹⁴² In 2019, CBP used this technology to conduct upwards of 41,000 warrantless searches on electronic devices at the border and many of these searches targeted journalists, lawyers, and activists.¹⁴³ CBP also uses “vehicle forensics kits” that can hack and access personal information directly from vehicles’ entertainment and navigation systems, and can also access contact lists and call logs from any cellular devices that are paired with the vehicle.¹⁴⁴

Several companies provide platforms, analytics, and cloud services. The largest contributors and providers include Palantir Technologies, Salesforce, and Alphabet. Palantir Technologies provides an analytics platform that is used to facilitate workplace raids.¹⁴⁵ Salesforce provides services and platforms worth more than \$100 million to facilitate information sharing between immigration agencies, the Department of Justice, and Health and Human Services.¹⁴⁶ Alphabet provides cloud services. Alphabet’s Google Cloud was used for the Innovation Team Initiative (INVNT) which includes projects like Anduril surveillance tower image processing.¹⁴⁷

All of these technologies and companies mentioned here pose serious privacy right violations and support the human rights impacts felt by the O’odham at the U.S./ Mexico border. The apparatus of the digital walls impacts Indigenous peoples and people of color disproportionately positioning them as threats while weaponizing their traditional lands and territories.¹⁴⁸

¹³⁹ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

¹⁴⁰ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021), citing, *Internal Docs Show How ICE Gets Surveillance Help From Local Cops*, WIRED (Mar. 13, 2019), www.wired.com/story/ice-license-plate-surveillance-vigilant-solutions.

¹⁴¹ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

¹⁴² Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

¹⁴³ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021), citing, Nate Raymond, *U.S. Border Agents Do not Need Warrants to Search Digital Devices, Court Rules*, REUTERS (Feb. 10, 2021), www.reuters.com/article/us-usa-immigration-privacy/u-s-border-agents-do-not-need-warrants-to-search-digital-devices-court-rules-idUSKBN2AA2AL.

¹⁴⁴ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021), citing, Sam Biddle, *Your Car Is Spying on You, and a CBP Contract Shows the Risks*, THE INTERCEPT (May 3, 2021), <https://theintercept.com/2021/05/03/car-surveillance-berla-msab-cbp/>.

¹⁴⁵ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

¹⁴⁶ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021).

¹⁴⁷ Aaron Lackowski, Empower, LLC, Presentation at Investor Alliance for Human Rights (July 27, 2021), citing, Lee Fang & Sam Biddle, *Google AI Tech Will Be Used for Virtual Border Wall, CBP Contract Shows*, THE INTERCEPT (Oct. 21, 2020), <https://theintercept.com/2020/10/21/google-cbp-border-contract-anduril>.

¹⁴⁸ “As this report highlights, governments and non-state actors are developing and deploying emerging digital technologies in ways that are uniquely experimental, dangerous, and discriminatory in the border and immigration enforcement context. By so doing, they are subjecting refugees, migrants, stateless persons and others to human rights violations, and extracting large quantities of data from them on exploitative terms that strip these groups of fundamental human agency and dignity. Although the focus of this report is relatively recent technological innovations, many of these technologies have historical antecedents in colonial technologies of racialized

Requests of the United States

Indigenous women and peoples request the following:

1. We urge the State to freeze present and future approval of large-scale development international border projects, specifically the border wall and Elbit Systems surveillance technology and construction affecting Indigenous peoples in their traditional territories that have been bisected by the international border and seek Free, Prior and Informed Consent (FPIC) from all Indigenous peoples affected.
2. Immediately cease any forced eviction of Indigenous peoples from their lands, religious sites, and or areas of cultural or historic significance.
3. Guarantee that no force will be used against Indigenous peoples from their traditional lands who do not consent to wall infrastructure in their ancestral lands and territories.

Conclusion and Requests of Elbit Systems

For each of these reasons,

1. We ask that the shareholders, investors, insurers, and banks to follow the brave and bold lead of the Norwegian Government Pension Fund Global (GPF),¹⁴⁹ and divest and exclude Elbit Systems from your investment universe.

governance, including through migration controls. Not only is technology not neutral, but its design and use typically reinforce dominant social, political and economic trends. As highlighted in previous reports, the resurgence of ethnonationalist populism globally has had serious xenophobic and racially discriminatory consequences for refugees, migrants and stateless persons.² This report highlights how digital technologies are being deployed to advance the xenophobic and racially discriminatory ideologies that have become so prevalent, in part due to widespread perceptions of refugees and migrants as per se threats to national security. In other cases, discrimination and exclusion occur in the absence of explicit animus, but as a result of the pursuit of bureaucratic and humanitarian efficiency without the necessary human rights safeguards. The report also highlights how ongoing securitization of borders, and related massive economic profits are a significant part of the problem.” E, Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), Rep. of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, U.N. DOC. A/75/590 (Nov. 10, 2020), found at https://static1.squarespace.com/static/5f99b75728e98b061732d4a8/t/5fab946a5e6bfa61e39ca33e/1605080175624/A-75-590-AUV_race-tech-borders.pdf.

¹⁴⁹ “In September 2009, the Norwegian Government Pension Fund Global (GPF) excluded Elbit Systems due to its ‘serious violations of fundamental ethical norms’. This is largely due to Elbit Systems’ provision of the surveillance product ‘Torch’ for the separation wall built by Israel. Torch is designed to detect persons attempting to cross the barrier and to provide this information to the staff that guards it¹. The wall isolates Palestinian communities and its construction is in ‘breach of international humanitarian law and human rights instruments’². The UN Special Rapporteur on the situation of human rights in the occupied Palestinian territories has called for a boycott on companies profiting from the occupation of Palestinian territories, including Elbit Systems, until they comply with international law.” Elizabeth Adams, *Norway’s Pension Fund Drops Israel’s Elbit*, WALL STREET JOURNAL (Sept. 3, 2009), <https://www.wsj.com/articles/SB125197496278482849>. *Elbit Systems: Surveillance system “Torch” for the separation barrier in Israel/Palestine*, FACING FINANCE (Dec. 9, 2014), [23](https://www.facing-</p></div><div data-bbox=)

2. We request that Elbit Systems end operations until the Free, Prior, and Informed Consent of all Indigenous peoples is obtained regarding the impacts of the border wall and security systems on their lands, territories, resources, and cultural survival. We ask the Elbit Systems to protect, respect, and remedy adverse impacts they have caused, are directly linked to, or have contributed to.
3. We request that imaging and surveillance of the Tohono O’odham and communities cease, and subsequent use and storage of that data also cease.

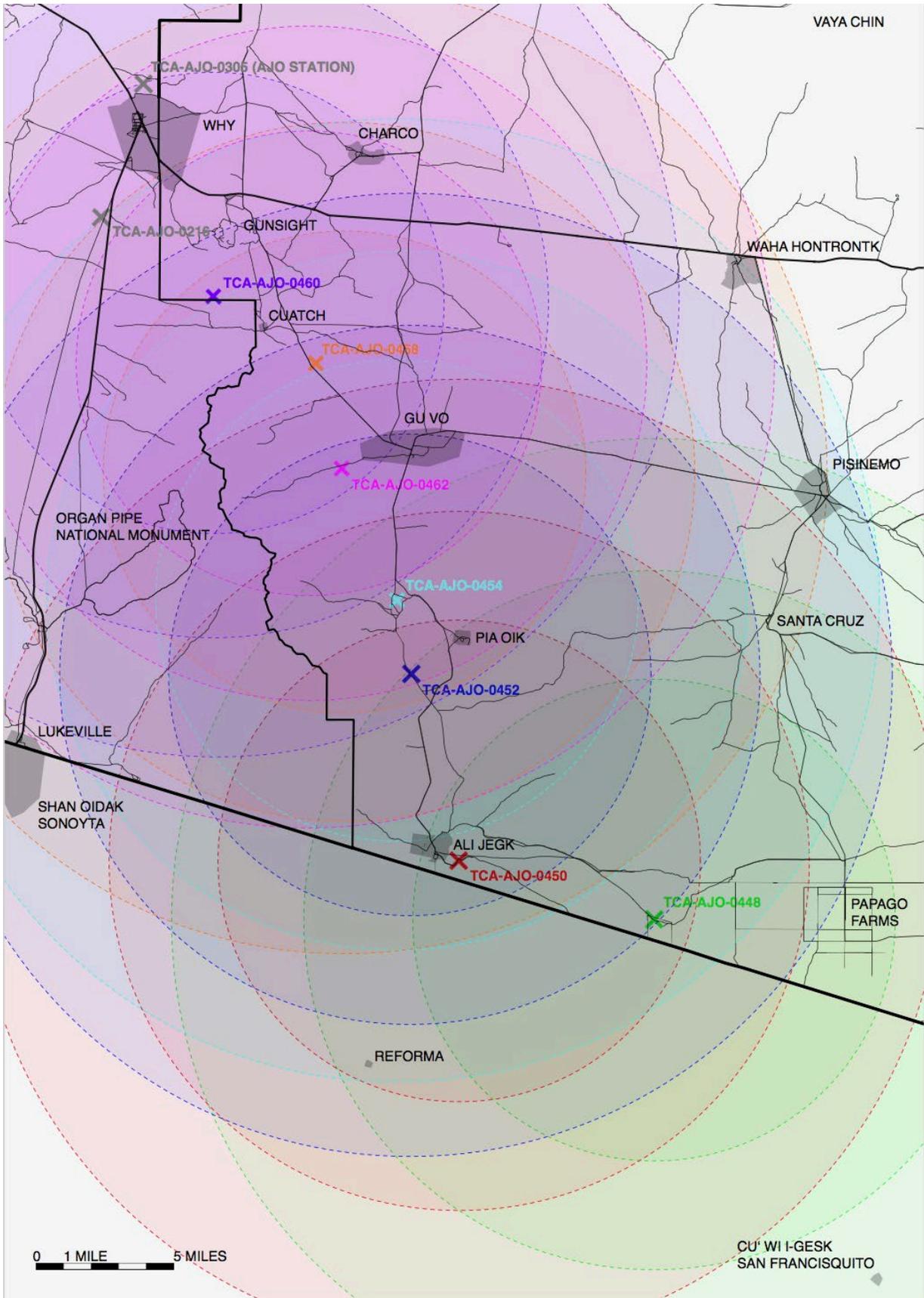
For our shared humanity, women and children are suffering from psychological trauma from restricted movement on their original homelands, destruction of cultural significant lands, twenty-four hours a day, seven days a week, surveillance without freedom to conduct a normal life while under the constant threat of heavily armed border patrol officers and foreign Elbit Systems contractors; and for Indigenous self-determination and dignity, and for the ongoing fight for racial equality in America, we ask you to divest from these companies and we ask the world to help us stop these parties from profiting from the militarization of Indigenous peoples’ ancestral lands and territories.

[finance.org/en/database/cases/elbit-systems-surveillance-system-torch-for-the-separation-barrier-in-israel-palestine/](https://www.oxfam-america.org/en/database/cases/elbit-systems-surveillance-system-torch-for-the-separation-barrier-in-israel-palestine/)
(Internal Citations Omitted).

Appendix

1. Map of Elbit IFT Towers Digital Footprint Along Border Provided by Nina Valeri Kolowratnik
2. Picture of Elbit IFT Tower in Tohono O'odham Community Provided by Ophelia Rivas
3. Picture of Elbit IFT Tower in Tohono O'odham Community Provided by Ophelia Rivas
4. Picture of Towers in Tohono O'odham Community Provided by Ophelia Rivas
5. Picture of Excavator in Tohono O'odham Community Provided by Ophelia Rivas
6. Picture of Mountain Destruction in Tohono O'odham Community Provided by Ophelia Rivas
7. Construction Ongoing as of Jan. 25, 2021
8. Statement to CBP by West Cocopah Reservation
9. Statement of Tohono O'odham Nation to U.S. House of Representatives Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States
10. PowerPoint Presentation at Investor Alliance for Human Rights Provided by Aaron Lackowski, Empower, LLC, July 27, 2021.

Appendix 1



Appendix 2



Appendix 3



Appendix 4



Appendix 5



Appendix 6



Appendix 7



Appendix 8



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SILICON VALLEY

May 14, 2020

U.S. Customs and Border Protection
U.S. Border Patrol Headquarters
U.S. Border Patrol Headquarters
1300 Pennsylvania Avenue, 6.5E Mail Stop 1039
Washington DC 20229-1100
YumaComments@cbp.dhs.gov

Re: Comments Regarding “Yuma Border Barrier Projects March 2020” and the Area on and near the West Cocopah Reservation

To Whom it May Concern:

I. Introduction

Our office represents the Cocopah Indian Tribe (“Cocopah” or “Tribe”), a federally recognized Indian Tribe, and we provide this response to the Federal Register publication of a request for comments regarding the Customs and Border Protection (“CBP”) Yuma Border Barrier Projects March 2020. Cocopah is disappointed that the Tribe was not provided any direct communication from CBP, Department of Homeland Security (“DHS”), or any other agency of the federal government regarding a proposal to place a portion of the CBP border wall across the West Cocopah Reservation. Such silence and surreptitious publication of the current Yuma Border Wall proposal is not indicative of a desire for a constructive and cooperative relationship between the two governmental entities. In order to gain additional information regarding this proposed CBP project, on April 2, 2020 the Tribe submitted a Freedom of Information Act (“FOIA”) request to DHS and CBP to gain the documents surrounding the project proposed on the West Reservation; however, the DHS indicated an inability to respond to our request until May 27, 2020 (after the deadline for comments). Accordingly, Cocopah reserves the right to supplement these comments following the FOIA response from the DHS.

As noted below, Cocopah has previously provided CBP significant concerns regarding the presence of a constructed barrier on the West Cocopah Reservation preventing access to the

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Colorado River, and the significant harm that would occur to the Tribal Community as a result of such activity. These concerns remain and cannot be overstated.

Cocopah has sought a cooperative relationship with CBP and its mission, notwithstanding the extraordinary impact that CBP has had on the West Cocopah Reservation and on the Cocopah people. When the CBP sought improved access to the West Cocopah Reservation in 2008 and the construction of a barrier to vehicular crossings, Cocopah informally cooperated with CBP by allowing the improvement of a CBP patrol road and the placement of a “Normandy Fence” along the west portion of that road. This cooperation was part of a governmental discretionary allowance and at the time, Cocopah demanded no compensation for the activity. During the discussions regarding CBP’s desire to create a barrier to transit on the West Reservation, the Cocopah representatives were very clear that regular access to the Colorado River was integral to the Tribe’s culture, community and way of life. Removal of that access would not be considered by the Tribe. This position has not changed.

While the Cocopah Tribe has not been provided any recent proposal for a CBP project on the West Cocopah Reservation, the graphic materials accompanying the federal register notice regarding the Yuma Border Barrier Projects included a verbal description of “replacing approximately seven (7) miles of existing vehicle barrier with new steel bollard fencing. . .” and a graphic depiction showing a 6.8 mile length of “New Border Barrier.” It appears that these references are to the West Cocopah Reservation; however, neither depiction acknowledges that this section of the proposed border barrier occurs on the West Cocopah Reservation and would sever approximately one-third of the acreage of the West Cocopah Reservation from the Cocopah Tribal Community, altering the configuration of the congressionally established reservation. The federal government has not consulted with the Cocopah Tribe regarding this proposed project, or even communicated with the Tribal Government regarding the proposal for a project across its sovereign land. As noted below, any proposal to alter the configuration of the West Cocopah Reservation or to conduct a project such as that apparently proposed in the Federal Register notice can only be conducted by permission of the Cocopah Tribal Government or specific congressional act. Neither action has occurred and **CBP and its contractors and agents are not authorized to take any action on the West Cocopah Reservation** (this includes the recent “inadvertent” incursion at the north end of the West Cocopah reservation which was halted by the Tribe).

II. Cocopah History and Connection to the River



They call themselves “Xawitł Kwñchawaay” – “People of the River.”

And so it is not surprising that the official seal of the Cocopah Indian Tribe uses that term and depicts a tribal member standing on the bank of the Colorado River spearfishing, with his catch at his feet. As the tribal seal graphically shows, and as Customs and Border Protection must understand, the histories and the future of the lower Colorado delta and the Cocopah people are inextricably linked.

For hundreds, perhaps thousands of years, the Cocopah Indian Tribe has lived along the banks of the Colorado River. As descendants of a traditional Yuman linguistic family, the Cocopah people have occupied lands at the southernmost part of the Colorado River delta since time immemorial. For centuries, the Cocopah People have maintained their traditional cultural beliefs through varying political environments. Throughout that time – up until today – the river has provided the basis for the Tribe’s economic, cultural and spiritual existence.

The first European acknowledgement of Native American use and occupancy of these lands came in 1540, when Hernando de Alarcón left his ship at the head of what is now known as the Gulf of California and took two small boats up the river. There, he encountered large groups of Native people who were first hostile to the Spaniards’ incursion into their territory, but who eventually became friendly and helpful to these explorers. Later, in 1604 and 1605, the first governor of New Mexico, Don Juan de Oñate took an expedition down the river. At that time, the priest accompanying Oñate recorded in his journal that they encountered the “Cocapa,” a group of perhaps 5,000 people actively engaged in fishing on and agriculture along the river. And later still, in the 1770’s, another Spanish priest – Father Francisco Garcés – traveled among the “Cucapa,” as he called them, along the lower Colorado, trying unsuccessfully to find a location to establish a Spanish Mission.

The Cocopah People’s use of and reliance on river resources has always been of economic importance to the Cocopah people. During the last half of the 19th century, steamer vessels traveling to and from Fort Yuma opened important trade routes along the river. Because of their

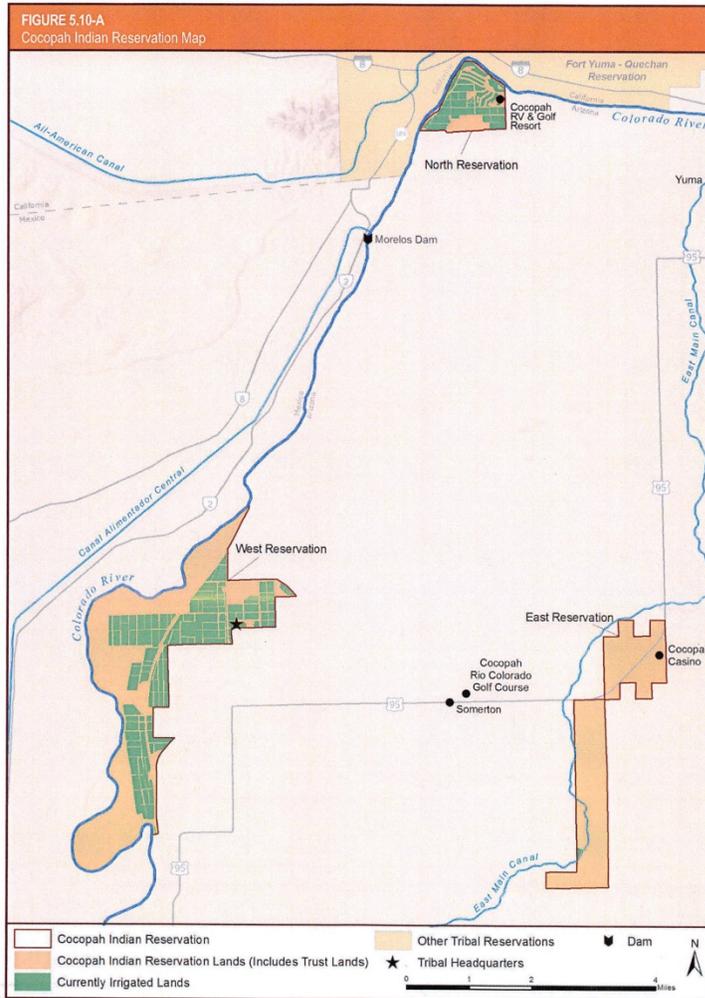
familiarity with the river, Cocopah men often served as pilots and guides on these boats and, between 1858 and 1865, two different steamers carried the name “Cocopah” on their hulls. Yet, throughout this time, the Tribe effectively resisted assimilation and maintained its social, religious and cultural identities.

Finally, in recognition of the Tribe’s aboriginal claim to the lower Colorado River, in 1917 President Woodrow Wilson established the first Cocopah Reservation – now called the West Reservation – along the banks and to the center line of the river south of Yuma, Arizona. The People of the River now had a federally-protected homeland. The extent of the West Cocopah Reservation to the middle of the Colorado River has since been independently confirmed by the Department of Interior and adopted by congressional action.

As recently as the 1960s, a number of tribal families lived in traditional arrow weed-thatched homes along the River. But in the late 1970s and 1980s, the Tribe began acquiring additional land, constructing homes, installing utilities, developing infrastructure and irrigation systems and initiating economic development including extensive agricultural use of the West Reservation. Still, the Cocopah People maintain their reliance on the natural river system.

The natural (non-agricultural) portion of the West Cocopah Reservation remains vital to current Tribal activities, including the nurturing of the few remaining cottonwood, willow and scrubine mesquite populations on the reservation which are vital for materials required in traditional cultural structures and articles and they create the habitat supporting other plants that are used in traditional basketry and other cultural activities. These areas also support a seasonal dove hunting tradition and business. It is not surprising that the Tribe has worked cooperatively with federal agencies to maintain the health of the natural river woodlands. The Tribe is currently in the third year of a 4 year fuel management and river restoration project in the natural river area—The Southern Border Fuels Management Initiative. The Initiative, funded by the Department of Interior, was created in a cooperative effort between the Cocopah Tribe, Bureau of Indian Affairs, and the Department of Homeland Security, Customs and Border Patrol. The project spans approximately 1,359 acres— 36% of the West Reservation’s land mass— and extends along the length of the west portion of the reservation. The project thins invasive brush and woodland that will allow the improved health of culturally important riparian plants and trees, while improving visibility within the river area, assisting CBP’s mission. In addition, the thinning activity will reduce the risk of high-temperature fires which can eliminate culturally important cottonwood, willow and mesquite stands. It also provides fuel control training opportunities for regional fire departments. The restoration area will also be used as a cultural gathering place by both the Cocopah and Quechan tribal communities, providing a source of mesquite wood used in burial rites and the one location the Tribes can connect directly with the river, as these *People of the River* have done since creation.

Colorado River Basin Ten Tribes Partnership Tribal Water Study



5.10-2

Cocopah Indian Tribe

December 2018

See the Disclaimer and Introduction to Chapter 5.0.

Today, approximately 1,000 enrolled Cocopah tribal members live and work in the area, and the Reservation has been expanded to include about 6,500 acres in three non-contiguous locations, as reflected on the attached map. Yet, the West Reservation – the area upon which the federal government now proposes to build a barrier that would separate the Cocopah People from their river – remains the cultural and spiritual heart of the Cocopah homeland. And it is that homeland that the Cocopah Tribe seeks to protect through these comments.

III. Border Wall Impacts to Cocopah Community

During the 2008 discussions with CBP regarding its request for a new border structure on the West Reservation, the Cocopah Tribe provided CBP their significant concerns regarding the presence of a constructed barrier on the West Reservation preventing access to the Colorado River, and the significant harm that would occur to the Tribal Community as a result of such activity. Direct, regular access to the river is critical and nonnegotiable for the Tribe. It is part of their community and self being. In that instance, the Tribe agreed to a vehicle barrier known as the “Normandy Fence” which would maintain accessibility to the River by the Tribal community while preventing vehicular access. The structure has successfully deterred border crossing activity.

The importance of the connection to the river was acknowledged in the original establishment of the West Cocopah Reservation in 1917, stating the Reservation extends to the waters of the Colorado River. This importance was included in numerous documents supporting the 1917 reservation establishment and this intent was confirmed by the Department of Interior in 1972, and codified by Congress in 1985. The creation of a border wall across the West Cocopah Reservation would sever any connection between the Tribal Community and the river and would sever approximately one-third of the acreage of the West Cocopah Reservation from the Cocopah Tribal community. As noted previously, this area, statutorily held in trust for the Cocopah Indians, is critical to the current active uses by the Tribe, and supports the long term cultural and economic base of the Tribe. In addition to the current uses, the Tribe has the ability to expand its agriculture operations westward and has plans for locating Tribal amenities including a new cemetery and mesquite grove area on the lands that would be severed by the wall.

The Cocopah are a binational people with a significant population south of the border. While an international border was created within historically recent times, the Cocopah People of the River arose and existed for thousands of years across the lower river delta. The Cocopah traditional lands and current relatives span the border area and know no country. This is precisely the concern raised in the National Congress of American Indians Resolution #ECWS-17-002, which explained the broad biological, cultural and humanistic impacts arising from a border wall that separates tribal communities. The wall would separate Cocopah’s culturally tied relatives, negating a familial connection that is similar to the barrier created by the Berlin Wall.

The totality of cultural impacts arising from the proposed border wall would be significant and are summarized in the attached document assembled by the Cocopah Cultural Department.

The construction of the wall would also eliminate the Tribe’s involvement in the Southern Border Fuels Management Initiative which will frustrate the larger coalition of cooperating agencies and fire departments, even though one of the partners and beneficiaries is the CBP. The creation of a border wall on the reservation would eliminate the ability to complete the project, and subvert all of intended benefits arising from the project. In addition, the construction of a wall isolating this area from the rest of the Reservation would lead to degradation of the river system by precluding the management of the riparian woodland area. The lack of a management system is what led to the need for the fuel management project, and the system would revert to a degraded state. Moreover, the area would become more likely to be degraded by staged border crossers, who would gather west of the fence, damaging the system with trampling, debris, and potential fires which could not be

controlled from the U.S. side of the border. There is no potential mitigation for this significant biological impact to these areas. It is important to note that extremely constrained presence facilitated by placing limited “gates” along the wall will not remedy these problems.

If ever approved, the involuntary creation of the border wall would decrease the land mass of the West Cocopah Reservation by nearly one third by eliminating reasonable access to these areas. The severance of these areas would also segregate the Tribe from its riparian rights, access to the river, and gathering, hunting and fishing rights. This elimination of Tribal lands would have immediate economic and cultural impacts on the Tribal Community, and significantly curtail its ability to provide for future generations. Diminishing the Tribe’s land base decreases federal and state funding opportunities and provides fewer opportunities for future agricultural, recreational and cultural programs.

The Department of Homeland Security has also not followed its own publicized process for the proposed border wall on the Cocopah Reservation. In its April 26, 2019 DHS Waiver Announcement for this Yuma project, DHS stated that it “has been coordinating and consulting, and intends to continue doing so, with other federal and state resource agencies to ensure that impacts to the environment, wildlife, and cultural and historic artifacts are analyzed and minimized, to the greatest extent possible.” The Tribe is not aware of any of these activities. The CBP further states on its website that:

When operating under waivers authorized by Congress and issued by the Secretary of the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) prepares Environmental Stewardship Plans (ESPs) that summarize the natural and cultural resource surveys conducted during project planning and estimate the potential environmental impacts based on the initial design. During construction, environmental monitors ensure implementation of the Best Management Practices developed and recorded in ESPs and report on any deviations from the Best Management Practices.

Environmental Stewardship Summary Reports (ESSRs) document the final “footprint” of segments constructed under the waiver. These reports incorporate construction changes approved after the ESPs were prepared that may have resulted in changes to the predicted impacts, as well as summarize the results from environmental monitor reports during construction.

Cocopah is not aware of any ESP or ESSR related to the proposed project on the West Cocopah Reservation on the CBP website, and the CBP website states “[i]f no ESSRs are listed for a Sector, this indicates that there are no ESSRs applicable for the Sector.” Clearly, no ESP has been conducted or considered for a project on the West Cocopah Reservation. As a result, it is clear that CBP has not yet investigated or inquired as to the environmental and cultural impacts associated with the proposed border wall on the reservation. Perhaps this is the rationale for the current public notice requesting information (the federal register did not state what, if any document would be prepared in response to the comments received). Nevertheless, Cocopah has learned that there are engineering drawings for the proposed wall across the Reservation and earlier this year, CBP’s contractor entered onto the Reservation and began wall construction onto the Reservation (stopped by Cocopah governmental officials). This provides a strong indication that the current comment period is a futile exercise, and due consideration of the Tribe’s comments is not anticipated.

The DHS Tribal Consultation policy directs the Department to take affirmative steps to solicit and incorporate input from affected Tribal Governments prior to taking actions. Meaningful consideration of Cocopah's comments and engaging in Tribal Consultation is required under the Policy prior to taking any actions that may have Tribal Implications. Seeking to remove one-third of the land mass of the West Cocopah Reservation from the tribe's use is a self-evident "tribal implication." However, to date, no consultation has occurred between DHS and the Cocopah Tribal Council. The CBP should not even consider the prospect of wall construction on the Cocopah Reservation until it has engaged in formal consultation as required by Executive Order 13175 so that CBP can fully understand the Tribe's concerns regarding the CBP's proposed actions. EO 13175 recognizes Indian tribes exercise inherent sovereign powers over their members and territory, and the CBP is obligated to respect those powers. Given the gravity of the potential outcome of the CBP's proposed project, Cocopah requests that immediate consultation between the Cocopah Tribal Council and the DHS at the national level be initiated.

IV. Cocopah Position Regarding the Border Wall on the Reservation

For over a dozen years, the Cocopah Tribal Council has made it clear that it does not accede to the construction of a wall across the West Cocopah Reservation. The issue should stop there, and the federal government should respect that Tribal governmental decision. Unfortunately, the CBP has not done so. Notwithstanding the Tribe's very clear statements that that it will not approve a wall across the reservation, the CBP continues to produce documents showing the wall going across the reservation, including the instant federal register notice. In addition, Cocopah has learned that the Army Corps of Engineers has already developed detailed engineering plans for the construction of the wall across the reservation.

The CBP is not authorized to alter a congressionally created reservation. Congressional power over Tribal lands does not extend so far as to allow the Government to appropriate tribal lands for its own purposes without just compensation (*US v. Sioux Nation*, 448 US 371, 408 (1980)). Congressionally created reservation lands like the West Cocopah reservation may only altered by action of Sovereign government (with approval by the BIA), an act of congress or by an eminent domain action. Such an eminent domain action must be specifically authorized by congress, would include the assessment of the public need for the taking and the private harm to the Tribe from the taking, and must specifically identify all of the property and property rights being taken by the action. No such authorization or assessment has occurred.

In 1907, President Roosevelt reserved from entry and set apart as a public reservation all public lands within 60 feet of the international boundary between the United States and Mexico within the State of California and the Territories of Arizona and New Mexico. Known as the "Roosevelt Reservation," this land withdrawal was found "necessary for the public welfare ... reserved from the operation of the public land laws and *kept free from obstruction* as a protection against the smuggling of goods between the United States and said Republic." (Emphasis added; Proclamation 758, May 27, 1907; 35 Stat. 2136). This proclamation has been cited by CBP in its virtually all of the documents supporting the construction of the Border Wall, but without the benefit of the italicized section regarding these areas being kept free from obstructions. The plain meaning of this proclamation is that it precludes the development of a border wall (an obstruction) within 60 feet of the border to allow for CBP monitoring. This distinction is important because many

borderlands that are defined by waterways necessarily carry with them hunting, fishing and water rights for the border property owner. Keeping the proclamation reservation area free from obstructions would not eliminate these rights; however, the construction of an obstruction (e.g. border wall) would eliminate these rights. There is nothing within the Proclamation that hints to the intention of the federal government to extinguish such rights or to take such property through the exercise of the proclamation.

If the 1907 proclamation is later judged to have included the ability to build a border wall (an interpretation that should require judicial review), the use of the Proclamation must also include the relevant exceptions to the authority. These include excepting all lands “within any withdrawal or reservation for any use or purpose to which this reservation for customs purposes is repugnant.” The taking of up to 1/3 of the land base of a Tribal Reservation which was created specifically to maintain a connection with the Colorado River, and severing the Tribe’s connection with that river, and severing the Tribe’s hunting, fishing and water rights from the Tribal Reservation without any compensation would certainly qualify as a “repugnant.”

It is also unclear whether CBP and the Department of Defense are authorized by Congress to expend funds for the construction of the border wall on the Cocopah Reservation. The money for the Yuma Border Wall Project stems from a \$2.5 billion account that was redirected by the Department of Defense toward border wall construction under 10 U.S.C. 284, a provision that allows the pentagon to build barriers in high drug trafficking areas along the border. However, it is the Tribe’s experience that the West Cocopah Reservation is not a high trafficking area, and the CBP has provided no documentation that it is. This is supported by the February 13, 2020 seventh declaration of Assistant Secretary of Defense of Homeland Security and Global Security, which approved the use of the 284 funds for other portions of the Yuma Border Wall project, but did not include in the directive any portion of the West Cocopah Reservation. This follows the DHS January 15, 2020 request for the use of these funds which identified what DHS considered high drug trafficking areas and also excluded from the request any lands on the West Cocopah Reservation. *[note: The February 20, 2020 Federal Register DHS Notice of Determination to waive certain laws and request assistance from the Department of Defense in construction appears to include the West Cocopah Reservation in a description of part of the project area (FR Doc 202-03452, filed Feb. 18, 2020); however, the notice did not identify any area as the Cocopah Reservation and it is unclear if the Department of Defense provided a subsequent approval of 284 funds in response to this request.]*

Moreover, there are reasonable alternatives for protection of border security that do not require the severance of one-third of the reservation and other Tribal rights. There is a multitude of electronic, seismic, and remote sensing capabilities that are and can be used within the western portion of the West Cocopah Reservation, in conjunction with the existing Normandy Fence to detect and control both foot and vehicular traffic. The Tribal Public Safety Department has been cooperative with CBP to report and root out illegal crossings when they occur. Moreover, detection is uncomplicated by the significant agricultural fields adjacent to the border area, which improves visibility for CBP officers. In the defined location of the reservation river boundary, these measures and others yet proposed could be used as a less impactful alternative and should be the subject of the yet to be calendared Tribal Consultation with DHS.

V. Indirect Effects from Border Wall Constructed Off of the Cocopah Reservation

While much of this letter addresses the direct effect of the proposed border wall, if constructed, on the West Cocopah Reservation, it is important to also include the indirect effects that the CBP border wall has had on the Tribal Community in constructing the Wall in areas adjacent to the reservation and within the Tribe's traditional cultural area. As previously mentioned, the Cocopah people have always lived throughout the lower Colorado River delta. Their customs and traditions, their ancestors and their cultural resources, and the materials that they use for their traditional activities ranged throughout the delta. These materials and uses are not confined to the current Cocopah reservations. The border wall constructed to date has eliminated that Tribe's access to over 95% of these resources by segregating the river from the Tribe for miles.

This diminishment in the availability of these resources to the Tribal government has crippled the education, cultural, and natural medicinal capabilities of the Tribe. The passing on of traditional ways is impossible without the resources necessary to teach traditional practices. Without the reeds, grasses and woods of the riparian habitat, traditional materials such as baskets, funerary objects, and food products cannot be made. The isolation of these areas also hinders the Tribe's ability to steward these resources, which are becoming increasingly rare.

Finally, the manner in which the border wall has been constructed to surround the West Cocopah Reservation appears to be an intentional strategy to create an untenable situation for the Tribe caused by potential increased cross-border pedestrian traffic on the Reservation, in hopes of coercing the Tribe to agree to the construction of the wall on its lands. However, the Federal government must still recognize that it has a trust responsibility on Tribal lands, and intentional damage to the Tribe's lands for such an untoward purpose would be a breach of that fiduciary duty. The Tribe is also concerned that this passive aggressive activity will lead to active facilitation of armed anti-immigrant groups descending upon the Tribal Community causing political and social tension. We implore the CBP to take steps to preclude this type of activity as it conducts consultation with the Tribal Council in order to determine a more appropriate resolution to the CBP goals within the region.

We are prepared to initiate meaningful government to government consultation with the national levels of the Department of Homeland Security at your earliest convenience.

Very truly yours,



Theodore J. Griswold

TJG:rsb

Cultural Impacts of Border Wall Construction on the Cocopah people:

Impacts to Culturally Significant Plants:

The river provides the source for a variety of culturally significant plants that have been used both historically and in contemporary Cocopah life. The most visible would be the x'a tree (Common Name(CN): Frémont's cottonwood, Scientific Name(SN): *Populus fremontii*). This are used to build traditional homes and more commonly ramadas, an important part of social and ceremonial life for the Cocopah people. Additionally, the leaves of the tree are used as medicine to treat contusions. Below the x'a, grows the eesh and añall (CN: Screwbean Mesquite, SN: *Prosopis pubescens*; CN: Honey Mesquite, SN: *Prosopis glandulosa*). These trees provide pods used to make flour and tea, their wood is used in traditional cremations, their roots are used to make shinny sticks and cradleboards, their sap is used to die hair and as pigments in paints and traditional tattoos. Eesh has seen massive population declines and a rapidly contracting range, suggesting that these trees should be listed as a threatened species. The river is absolutely critical for the ayaa (CN: Goodding's Black Willow, SN: *Salix gooddingii*; CN: Desert Willow, SN: *Chilopsis linearis*). These trees provide the wood for shinny sticks, fibers for traditional skirts, branches for traditional basket drums, and anti-fungal medicines. Along the floodplain of the river grows cha'aam (CN: Arrowweed, SN: *Pluchea sericea*) a critically important plant that is used in cremation ceremonies, home ceremony, as well as for the construction of ramadas and arrows.

Many of these plants require that tribal members hike to find an appropriate shape of tree or gender of plant before they can harvest. Harvesting, especially of logs, is hard enough with the current vehicle barrier. A wall would all but destroy our ability to harvest these plant species with regularity or natural access. Furthermore, these plants need to be tended to. Oral and written histories have shown that Cocopah people spend a great deal of time engineering the ecosystem to be healthy and productive. The use of fire ecology by Cocopahs was noted over a century ago. A wall will prevent any forest health management by preventing the safe employment of controlled burns, the maintenance of low fuel loads to keep naturally occurring fires from burning too hot, and the maintenance of trunk straightness through pruning. A border wall will also limit access to community members, requiring them to either seek permission to import these natural resources from the Mexico side of the river or abandon traditional cultural practices that require the river.

Impacts to Culturally Significant Animals:

Construction of any type in the Colorado River riparian habitat is of great environmental concern, and a wall more so because of its potential effects on free movement of species and alteration of critical habitat characteristics. This area has been designated by the Federal Government a critical habitat for the Yellow Billed Cuckoo (*Coccyzus americanus*), an endangered species. It is also a known occupied habitat for the Yuma Clapper Rail (*Rallus longirostris yumanensis*) and Southwestern Willow Flycatcher (*Empidonax traillii extimus*), also federally protected endangered species. As a culture, Cocopah give great reverence to birds who are seen as teachers. Our songs are known as Bird Songs for this reason. The river is historically

the habitat for the endangered Razorback sucker (*Xyrauchen texanus*) & Bonytail chub (*Gila elegans*), culturally significant species. The hydrologic effects of sediment erosion during construction will disturb already fragile habitats along the remaining course of the river. The wall itself alters the distribution of shade and vertical perches, giving raptors and advantage that will see the destruction and dislocation of a number of prey species.

Impacts to Culturally Sensitive & Important Objects:

Culturally the areas of construction and proposed construction of border wall has a high likelihood of cultural objects and burials being found during excavation. Oral traditions and modern habitation place Cocopah settlements as far north as Black Mountain, Pilot Knob, and the North Reservation. One cemetery just north of Morales Dam will be in the visual shadow of the border wall being constructed by Morelos Dam. Cremations traditionally occurred at the place of residence. After the monsoon season subsided, Cocopah often lived right alongside the river for ease of access to water, fish, and wood. This places thousands of cremations along its banks over the preceding centuries, a concentration of graves that will not come through wall construction undamaged. Culturally significant objects such as manos, metates, pottery, and stone tools are incredibly important for us to protect, as much of the material culture of the Cocopah people was constructed of biodegradable materials, limiting the access we have to ancestral objects. Furthermore, the individual who made these objects is imbued within them. Pottery has fingerprints for example and should be considered as that remains of a person who has passed on. This project has already caused irreparable harm to our shared ancestral remains at Organ Pipe Cactus National Monument.

Impacts to Culturally Significant Landscapes:

The location of border wall construction crosses a number of culturally significant landscapes. The river is the most significant for the Cocopah or as we are described in our language, Xawil Kwñchawaay, the people who live alongside the river. The river is the deepest part of our culture. It is the place our creators placed us in the creation stories. It is the place from which all of our people arise and return, the clay itself making the Cocopah people. To lose further access to the river would be an act of cultural destruction, eroding the very core of our people. As we look up from the river across the landscape, we see the mountains that guide and unify us as a people. To the south we see Wii Shpa, Eagle Mountain (El Mayor Peak), the place where our souls go to pass on to the next world. To the southwest we see Wii Ni, Whale Mountain (Cerro Prietto), a place that reminds us of the courage of whale to stand up for his community. To the west we see, Eagle Mountain's brother, Wii Shpa Echéss, Little Eagle Mountain (Mt. Signal), a place that guides us to the Kumeyaay lands, a place for spiritual ceremony, and a place for graves. Of this mountain, our late former chairperson Mr. Dale Phillips said in a 2013, during an ethnographic interview:

"Wii shpa echéss" (Little Eagle Mountain or Mt. Signal), is one of our boundaries to the north. I'm told that my grandfather is buried there. He was called the Robin Hood of Cocopahs because he robbed from the Mexican ranchers and gave back to the Cocopah people. I went to meet him once and he told me he would probably not see me again because he was wanted by the

Mexican police. He was captured and killed by them eventually and I never saw him again. He is buried below the mountain.”

“My grandfather, Enriquez was part Cocopah, and he was like Robin Hood, the Robin Hood of Cocopah people, a hero to our people. He took cattle and gave them to Cocopah. He came to Somerton, riding a horse. He picked me up and said, ‘Mijo.’ He told us that the Federales were chasing him, close to him. He went off west toward Little Eagle Mountain. They caught him just below Little Eagle Mountain and hanged him. He is buried there near Little Eagle Mountain. When I was there, I felt him around me.”

“Wiishpa echéss is a guiding post that Cocopah used when traveling. They traveled across Lake Cahuilla to Rincon, the land of the Luiseños, the Cahuillas, and beyond. The Cocopah Sierras are our ancestral home and they have sacred places for healing. Cocopah used the hot springs there for this purpose. Much ceremony is associated with Wiishpa echéss. You can pick a point on the mountain and concentrate on it, sing and pray and go to that point in the mind, and move into the spiritual world. This is very hard to do. There is a hunger among Cocopah kids today to know who they are, to know the stories of the mountains, and where to go to get into the spiritual world. The mountains are very sacred.”

To the north is Wii Kuñur (Pilot Knob), a place with deep importance for Cocopah, Quechan, and Kumeyaay alike. Oral tradition tells us that this was a place of meeting and peace between the tribes. It is a guidepost and provides protection for the Cocopah who live in its shadow. As we look to the south east we see two locations that have significance historically and culturally. The Five Points are a grouping of small hills used to navigate, shelter, and store foods during journeys into Piipaash and Tohono O’odham lands for trade and socializing. Tinajas Altas is also a location used by these three tribes while traveling for rest and hydration. Quitobaquito Springs was a resting place and trading place with our Hia C-ed O’odham and Tohono O’odham allies and friends. These landscapes are deeply rooted; they are the basis for our culture and our indigeneity. Building a wall will leave a permanent scare on the land and by that fact on our people and culture. When the wall is no longer used, its effects will still be felt.



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-17-002

TITLE: Border Security and Immigration Enforcement on Tribal Lands

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Swinomish Tribe

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Redding Rancheria

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Liana Onnen
Prairie Band of Potawatomi Nation

SOUTHWEST
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Ohkay Owingeh Pueblo

WESTERN
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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, in 1854 the United States created an international boundary with Mexico that divides tribal lands and tribal historic and culturally sensitive sites (NCAI Resolution #ECWS-08-001); and

WHEREAS, tribal nations have citizens on both sides of the southern and northern borders of the United States who cross for cultural, religious, employment, and other purposes; the borders now divide many tribal communities, separates tribal members from cultural sites and ceremonies, and blocks access to much needed health care, housing, transportation and other governmental services (NCAI Resolutions #REN-13-078 and #ECWS-08-001); and

WHEREAS, tribal members also experience direct negative impacts from illegal immigration and drug trafficking across the international boundary, including violence and crime, damage to cultural resources, increased demands on tribal law enforcement, illegal dumping, and environmental degradation; and

WHEREAS, unlike national forests, wilderness areas, and other federal lands on the Canadian and Mexican borders, Indian reservations are not public land, they are reserved for the benefit of the tribes and their members, and the tribes have a duty to ensure that tribal members' rights and the tribes' sovereignty are protected; and

WHEREAS, while Executive Order No. 13175, "Consultation and Coordination with Indian Tribal Governments," presidential memorandums, and departmental and agency policies require executive branch agencies and officials to consult and collaborate with affected Indian tribes on federal policies and actions having a substantial direct effect on tribes, in some cases, the DHS has implemented border security measures having a substantial direct effect on Indian tribes but has not consulted or collaborated with tribes (NCAI Resolutions #TUL-05-103 and #ECWS-08-001); and

WHEREAS, tribal governments incur significant expenses on border law enforcement efforts, including in partnership with the DHS and its agencies, and authorize border security measures designed to counter drug- and human-trafficking and other border crimes when those measures protect tribal members, lands and resources, and the security of the United States while respecting tribal sovereignty and members' rights; and

WHEREAS, on January 25, 2017, President Trump issued Executive Order 13767, "Border Security and Immigration Enforcement Improvements," directing the construction of a physical wall on the United States' southern border with Mexico (Executive Order 13767, Section 2(a) and Section 4(a)); and

WHEREAS, a continuous, physical wall on the southern border would

- further divide historic tribal lands and communities;
- prevent tribal members from making traditional crossings for domestic, ceremonial, and religious purposes;
- prevent wildlife from conducting migrations essential for survival and general life, health and existence;
- injure endangered species such as the jaguar and other wildlife sacred to tribes;
- destroy endangered and culturally significant plants;
- militarize the lands on the southern boundary;
- disturb or destroy tribal archeological, sacred sites, and human remains; and

WHEREAS, numerous non-Indian border communities would also be negatively impacted by a physical wall on federal, state, and private lands on the Mexican border and oppose its construction; and

WHEREAS, the NCAI has likewise opposed the waiver of federal, state, and other laws under section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), as amended, for the construction of border fencing and roads as unnecessary, destructive, and in violation of the federal obligation to interact with Indian tribes on a government-to-government basis and to respect tribal sovereignty and self-determination (NCAI Resolution #ECWS-08-001 and #REN-08-002); and

WHEREAS, resources for tribes to secure their own lands and government-to-government coordination, consultation, notification, and agreements between tribes and the federal government are critical to border security efforts (NCAI Resolution #REN-13-078).

NOW THEREFORE BE IT RESOLVED that NCAI supports

- (1) consultation, collaboration, and direct tribal participation by all affected tribes in the development of the DHS Secretary's comprehensive study of the security of the southern border and any policies or actions implementing Executive Order 13767 and other border security measures;
- (2) government-to-government agreements with the DHS at a tribe's request to improve on-reservation border security coordination and respect for tribal sovereignty and jurisdiction on tribal lands;
- (3) adequate funding for the maintenance and repair of reservation roadways used by DHS; and
- (4) funding to fill on-reservation public safety radio coverage gaps and allow for tribal law enforcement to communicate directly with CBP and other law enforcement partners.

BE IT FURTHER RESOLVED that the NCAI opposes

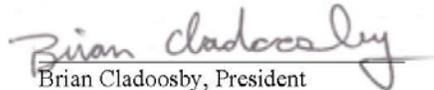
- (1) the construction of a physical wall on the southern border of the United States on tribal lands without the consent of affected tribes; and
- (2) the application of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 Section 102(c) waivers of federal and other laws on tribal lands.

CERTIFICATION

The foregoing resolution was adopted by the Executive Committee at the 2017 Executive Council Winter Session of the National Congress of American Indians, held at the Capital Hilton, February 13-16, 2017, with a quorum present.

ATTEST:


Aaron Payment, Recording Secretary


Brian Cladoosby, President

Appendix 9



**THE TOHONO O'ODHAM NATION OF ARIZONA
TESTIMONY OF THE HONORABLE NED NORRIS, JR., CHAIRMAN**

**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**

February 26, 2020

INTRODUCTION & HISTORICAL BACKGROUND

Good afternoon, Chairman Gallego, Ranking Member Cook and distinguished Members of the Subcommittee. It is an honor to have the opportunity to testify before you today on behalf of the Tohono O'odham Nation of Arizona. I also want to recognize and honor Chairman Grijalva, in whose district our Tribal Nation is located.

I am Ned Norris, Jr. and I am the Chairman of the Tohono O'odham Nation, a federally recognized tribe with more than 34,000 enrolled Tribal citizens. Our ancestors have lived in what is now Arizona and northern Mexico since time immemorial. With no consideration for our people or our sovereign and historical rights, the international boundary was drawn through our ancestral territory in 1854, separating our people and our lands. As a result, today our Main Reservation shares a 62-mile border with Mexico -- the second-longest international border of any tribe in the United States, and the longest on the southern border. Seventeen O'odham communities with approximately 2,000 members are located in our historical homelands in Mexico. O'odham on both sides of the border share the same language, culture, religion and history. Tribal members regularly engage in border crossings for pilgrimages and ceremonies at important religious and cultural sites on both sides of the border. We also cross the border to visit family and friends.

Today, only a portion of our ancestral territory is encompassed within the boundaries of our current Reservation. Our original homelands ranged well beyond these boundaries, and included what is now the Organ Pipe Cactus National Monument (adjacent to the western boundary of the Nation's Reservation and a UNESCO biosphere reserve),¹ the Cabeza Prieta National Wildlife

¹ 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

Refuge, and the San Bernardino National Wildlife Refuge to the east. The Nation has significant and well-documented connections to these lands and the religious, cultural and natural resources located there.



THE NATION SUPPORTS AND IS ACTIVELY ENGAGED IN BORDER SECURITY EFFORTS

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

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

- **High Intensity Drug Trafficking (HIDTA) Task Force:** The Nation leads a multi-agency anti-drug smuggling task force staffed by Tohono O'odham Police Department

solutions reconciling the conservation of biodiversity and sustainable use.

<http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/>.

detectives, ICE special agents, Border Patrol agents, and the FBI. This is the only tribally-led High Intensity Drug Trafficking (HIDTA) Task Force in the United States. In 2018, the Nation's Task Force Commander W. Rodney Irby received an award recognizing him as the HIDTA National Outstanding Task Force Commander.

- **ICE office and CBP forward operating bases:** Since 1974, the Nation has authorized a long-term lease for an on-reservation ICE office. The Nation also approved leases for two CBP forward operating bases that operate on the Nation's lands 24 hours, 7 days a week.
- **Vehicle barriers on our lands:** CBP constructed extensive vehicle barriers that run the entire length of the Tribal border and a patrol road that parallels it.
- **CBP checkpoints on our lands:** The Nation has authorized CBP checkpoints on the Nation's major east-west highway to Tucson and the northern highway to Casa Grande.
- **Integrated Fixed Towers:** The Nation approved a lease of its lands to allow CBP to build an Integrated Fixed Tower (IFT) system that will include surveillance and sensor towers with associated access roads on the Nation's southern and eastern boundaries to detect and help interdict illegal entries.
- **Shadow Wolves, an ICE tactical patrol unit:** The Nation also has officers that are part of the Shadow Wolves, an ICE tactical patrol unit based on our Reservation which the Nation played a role in creating. The Shadow Wolves are the only Native American tracking unit in the country, and its officers are known for their ability to track and apprehend immigrants and drug smugglers, using traditional tracking methods. The Shadow Wolves have apprehended countless smugglers and seized thousands of pounds of illegal drugs.

ONGOING AND IMMINENT HARM TO SACRED SITES AND CULTURAL RESOURCES

Although the Nation has authorized these border security measures on our Tribal lands and we share the federal government's concerns about border security, we strongly oppose the construction of a border wall on our southern boundary. 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.

The Nation has detailed the negative impacts of the border wall construction that currently is underway in Arizona, which DHS is calling Tucson Sector Projects 1, 2 and 3, and Yuma Sector 3, in several amicus briefs that the Nation has filed in litigation challenging construction of the border wall.² Tucson Sector Projects 1 and 2 involve construction of a 43-mile long, 30-foot high concrete-

² 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).

filled steel bollard fence (pedestrian barrier or wall) to replace existing vehicle barriers and pedestrian fencing near the Lukeville Port of Entry. The Yuma Sector Project contemplates over 30 additional miles, connecting with these projects, and extending through Cabeza Prieta National Wildlife Refuge and Organ Pipe Cactus National Monument, and ending less than two miles from the western boundary of the Nation's Reservation. Similar construction is moving forward to the east of the Nation's Reservation in Tucson Sector Project 3, which includes the San Bernardino National Wildlife Refuge. These projects have caused and will continue to cause significant and irreparable harm to cultural and natural resources of vital importance to the Nation, including damage to those resources from construction and associated impacts off the reservation, as well as damage caused by increased migrant traffic and interdiction on our Tribal lands.

The federal government itself acknowledged the importance of the Nation's interest in the areas now impacted by ongoing and contemplated wall construction for the Tucson and Yuma Sector Projects. For example, the National Park Service confirmed in its General Management Plan for the Organ Pipe Cactus National Monument the importance of Quitobaquito Springs to the Nation, which is located about 200 yards from the border and which is an important part of the O'odham salt pilgrimage every year:

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

...

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

The Park Service also has recognized that there are O'odham burial sites within Quitobaquito.⁴ In October 2019, the National Park Service notified the Nation that it had found a human bone fragment near Quitobaquito Springs, underscoring that it is a resting place for our ancestors. Yet despite the federal government's documented recognition of Quitobaquito Springs as a site sacred to the Nation, and despite the Nation's longstanding relationship with CBP, federal contractors working on the Tucson Sector border wall recently bulldozed and bladed a large area near

³ 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>.

⁴ *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://npshistory.com/series/anthropology/wacc/quitobaquito/report.pdf>.

Quitobaquito Springs, destroying a burial site that the Nation had sought to protect and irreparably damaging the most unique and significant oasis in the Sonoran Desert. There was no advance consultation about the destruction of this site, no advance notice given, and no effort to mitigate or avoid the irreparable damage done to this sacred site.

Earlier this month, CBP contractors also conducted blasting in support of wall construction efforts at another culturally important site within Organ Pipe Cactus National Monument known as Monument Hill.⁵ Monument Hill was historically used for religious ceremonies by the Hia-C'ed O'odham (with whom the Nation has a shared ancestry). It is the site of historical battles involving the O'odham and Apache and is believed to be the final resting place for many tribal ancestors, as recovered bone fragments there attest. CBP undertook this action despite the fact that on multiple occasions last year the Nation expressed its concerns, and in December 2019, CBP and other federal officials met with the Nation's Tribal Historic Preservation Officer and staff, who explained the significance of Monument Hill and conveyed the Nation's concerns about damage from the planned wall construction. Nevertheless, CBP completely ignored the Nation's concerns and suggestions for mitigating potential impacts from the wall construction, and failed to even notify the Nation of its plans to blast Monument Hill until the day that the blasting occurred.

This disrespect for our sacred sites and their desecration at the hands of our federal government is deeply painful. These sites are not only sacred to the Nation – they are a part of our shared cultural heritage as United States citizens. As Americans, we all should be horrified that the federal government has so little respect for our religious and cultural values, and does not appear to have any intention of slowing down enough to understand or avoid the harm it is causing.

In response to the concerns raised in the press and by environmental groups about the blasting at Monument Hill, CBP stated that it had conducted unspecified “surveys” and found no cultural or historical sites within the project area (defined as the 60-foot wide area of land adjacent to the border called the Roosevelt Reservation)⁶ -- but this statement is entirely inconsistent with the information regarding bone fragments and the ceremonial significance of Monument Hill that was provided to CBP by the Nation's staff. CBP also said that it had an “environmental monitor” in attendance to ensure that work would stop if any “unidentified culturally sensitive artifacts” were found during the blasting. But the fact is that CBP has one monitor in place for the entirety of Organ Pipe Cactus National Monument, and there are multiple crews working on clearing and constructing the wall at different locations along the border within the Monument, making it extremely unlikely that one monitor can adequately cover all the locations. Nor is it clear that the monitor was aware of the significance of Monument Hill nor likely that he could identify human

⁵ 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), available at <https://www.washingtonpost.com/immigration/2020/02/09/border-wall-native-american-burial-sites/>.

⁶ Carranza, Rafael, The Republic, *No Cultural Sites Found Where Crews are Blasting Sacred Mountain for Border Wall, Officials Say* (Feb. 13, 2020), available at <https://www.azcentral.com/story/news/politics/border-issues/2020/02/13/customs-border-protection-no-cultural-sites-near-blasting-border-wall-tohono-oodham-nation/4743103002/>.

bone fragments should any be recovered during the blasting -- bone fragments typically require additional testing to determine whether they are human or animal.

CBP's claims also are completely at odds with the results of a July 2019 National Park Service survey, which identified five new archeological sites (of pre-contact Native American artifacts) and a large number of additional archeological resources within the 60-foot wide federal easement along the border in Organ Pipe. The survey noted that many existing archeological sites will be impacted or destroyed by the border wall construction, and highlighted that many areas along the Organ Pipe border remain unsurveyed - making consultation and careful surveying critical before additional construction occurs.⁷

But such care and consultation seem extremely unlikely, as the federal government continues to plow full steam ahead with construction of the border wall, with no apparent concern for tribal culture or religious sites. Indeed, a similar fate likely awaits many other of the Nation's cultural and sacred sites, including a burial site immediately adjacent to the border and another site called Las Playas, both located in Cabeza Prieta National Wildlife Refuge.⁸ These and other sites of significance to the Nation, including some in the immediate vicinity of Tucson Sector Project 3 in the San Bernardino Valley, have been documented in other federal reports, although these areas are less well surveyed so the potential for destruction of cultural and natural resources by construction of a border wall is high.⁹ But there is little question that the ongoing construction of 30-foot high steel bollard wall in this area will have serious negative impacts, destroying tribal culture and sacred sites. Finally, while the focus of this hearing is on sacred sites, I must underscore as well the environmental damage that ongoing wall construction is wreaking on wildlife and trees, cacti, and

⁷ Veech, Andrew S., *Archeological Survey of 18.2 Kilometers (11.3 Miles) of the U.S.-Mexico International Border, Organ Pipe Cactus National Monument, Pima County, Arizona*, U.S. National Park Service, Intermountain Region Archeology Program (July 2019), available at <https://games-cdn.washingtonpost.com/notes/prod/default/documents/cbd7ef6a-3b5b-4608-9913-4d488464823b/note/7a429f63-9e46-41fa-afeb-c8e238fcd8bb.pdf> (discovery of 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).

⁸ Carranza, Rafael, The Republic, *Tohono O'odham Historic Sites at Risk as Border Wall Construction Advances in Arizona* (Jan. 20, 2020), available at <https://www.azcentral.com/story/news/local/pinal/2020/01/21/tohono-oodham-historic-sites-risk-over-border-wall-construction/4527025002/>.

⁹ 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>.

other plants of documented significance to the Nation. Also adversely affected are vitally important sources of water, and we are deeply concerned about flooding in those areas where construction occurs.¹⁰ All for the sake of a vanity project that will not effectively secure the border.

FORMAL GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH THE NATION IS REQUIRED

The federal government's actions are even more offensive because it has completely ignored its trust responsibility to tribes and its legal obligation to consult with the Nation regarding ongoing and planned construction of the border wall -- *before* decisions are made about construction that will impact tribal resources and lands. Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provides the Secretary of DHS with exceptionally broad authority to "waive all legal requirements" he determines are necessary to ensure expeditious construction of border barriers and roads. *See* 8 U.S.C. §1701 note. In 2008, DHS issued a waiver that covers a large portion of the southern border in California, New Mexico, Texas and Arizona, including the Tohono O'odham Nation's border with Mexico. *See* 73 Fed. Reg. 19087 (April 8, 2008) (correction). In 2019, DHS issued additional waivers covering the area of the border where the Tucson Sector Projects are underway. *See* 84 Fed. Reg. 21798 (May 15, 2019). In fact, this Administration has issued multiple waivers to facilitate construction of the border wall -- seventeen times in the last two and half years. As a result, DHS has been given a complete pass to entirely ignore virtually all potentially applicable federal environmental, cultural and religious protection laws, and all federal, state or other laws, regulations and legal requirements deriving from or related to the subject of those federal laws. *Id.* at 19080. As you know, with its aggressive raiding of other federal agency budgets, DHS is also now ignoring the budget limitations Congress placed on this construction.

However, IIRIRA also requires DHS to consult with Indian tribes, the Department of the Interior, state and local governments and property owners "to minimize the impact on the environment, culture, commerce and quality of life" of the construction of the border wall. IIRIRA Section 102(b)(1)(C). To date, DHS has not complied with this statutory directive, and has failed to engage in any formal government-to-government consultation with the Nation regarding the ongoing construction of the border wall and the serious harm that it is causing to the Nation. Although CBP has engaged in telephonic conversations and meetings with the Nation, primarily with the Nation's staff rather than its leadership, these actions do not constitute the government-to-government consultation that is required by law. The failure to engage in formal consultation with tribal governments before decisions are made that will affect tribal rights and interests violates not just IIRIRA, but Executive Order No. 13175, "Consultation and Coordination with Indian Tribal Governments" (Nov. 6, 2000), and the DHS Tribal Consultation Policy (Sections II.B. and III.A), as well as the federal government's general trust obligation to respect tribal sovereignty and engage with tribes on a government-to-government basis.

In November 2019, the Nation wrote a letter to CBP requesting that CBP engage in the statutorily- and administratively-required consultation and proposed several mitigation measures (including a buffer zone around Quitobaquito Springs) to address the harms that were occurring to the Nation's resources as a result of the Tucson Sector wall construction. In its January 2020 response to the Nation's letter, CBP declined all of the Nation's requests -- for information, for a

¹⁰ *See Sierra Club, Amicus Curiae Brief of Tohono O'odham Nation at 7-8.*

schedule, and for mitigation.¹¹ In the letter, CBP also declined to engage in formal government-to-government consultation with the Nation prior to taking border wall construction actions impacting the Nation -- while at the same time suggesting that it valued the ongoing communication between the Nation and CBP. Those communications are valuable, but meaningful consultation must be a two-way street. CBP cannot simply ignore the Nation's concerns or proposed mitigation measures, and turn around and bulldoze sacred sites, destroy cultural resources, and deplete precious groundwater -- that is far from the consultation that is required by the law.

Furthermore, because the reprogrammed funding originally appropriated to the Department of the Defense (DOD) is being used to fund the ongoing construction in the Tucson and Yuma Sectors, additional consultation requirements are at issue. Section 8141 of the FY 2019 DOD Appropriations Act prohibits the use of funding made available under the Act in contravention of Executive Order 13175 (requiring tribal consultation) and the FY 2020 DOD Appropriations Act contains a substantively identical provision in Section 8129. In addition, DOD has its own tribal consultation policy pursuant to Executive Order 13175 that requires DOD to engage in meaningful consultation with tribes whenever an action has the potential to significantly affect Indian lands, tribal rights, and protected tribal resources (whether such resources are located on or off Indian lands), and requires that such consultation be completed before implementation of the proposed action impacting the affected tribe. DOD Instruction 4710.02 (Sept. 24, 2018).

In contravention of the FY 2019 and 2020 DOD Appropriations Acts and its own consultation policy, *to date DOD has not conducted any government-to-government consultation with the Nation*. On February 7, 2020, the Nation wrote a letter to Secretary of Defense Mark Esper requesting that DOD immediately engage in government-to-government consultation with the Nation consistent with the FY 2019 and FY 2020 DOD Appropriations Acts and the DOD tribal consultation policy and that no DOD funds be expended on border barrier construction impacting the Nation until consultation has occurred. We have not yet received a response.

DHS (and DOD) must engage in a more thorough and substantive consultation and review process that is respectful of our government-to-government relationship, and that recognizes the Tohono O'odham Nation's unique history and relationship to these lands and resources. Meaningful consultation requires DHS and DOD to consider the information provided by the Nation before proceeding to construct border barriers that damage and destroy our sacred sites and cultural resources, and before making any decision about what type of border security measures are most appropriate in and around our ancestral homelands. Although DHS has committed to "formal, government-to-government consultation with the Tohono O'odham Nation prior to taking actions that may impact the tribe and its members in Arizona" as required by the law and its tribal consultation policy, DHS currently is giving little more than lip service to consultation. DHS and DOD must engage in formal, government-to-government consultation before proceeding further with border wall construction that irreparably harms tribal cultural resources and sacred sites, and as a consequence, harms the O'odham and harms all of us, by losing part of our cultural heritage.

¹¹ CBP did agree not to drill any new wells within five miles of Quitobaquito, but the Nation remains concerned that the continued use of water in connection with construction of the border wall will deplete groundwater resources in the area on which the Nation relies.

CONCLUSION

Two things are clear to us about the law as it currently stands. One is that Congress must withdraw or at least better limit DHS's authority to unilaterally give itself waivers to circumvent every federal statute on the books -- this authority is dangerously broad, and has allowed DHS nearly unchallengeable, dictatorial authority to run roughshod over the rights of the Tohono O'odham and every other border community in the United States. The federal government has abused its authority, trampling the rights of local communities and local governments. This kind of non-challengeable authority may be tolerated in a totalitarian state, but it does not sit well among the statutes that are supposed to protect our freedoms in the United States of America.

The second is that Chairman Grijalva's introduction in the last Congress of legislation that would put into federal law meaningful consultation requirements through his proposed Requirements, Expectations, and Standard Procedures for Executive Consultation with Tribes Act (RESPECT Act), and this Subcommittee's hearing on similar draft legislation last April, is right on target and desperately needed. The fact is that while the federal agencies pay lip service to tribal consultation, there is precious little way for tribal governments to enforce current consultation policies when the agencies choose to ignore them. Enactment of a statutory consultation requirement would help put an end to the federal government ignoring our concerns, our expertise, and our right to self-determination. The federal government owes our government, and the governments of the local communities and states around us, more respect. *We want to thank Chairmen Grijalva and Gallego for their efforts to resolve this continuing problem.*

O'odham have lived in what is now Arizona and Mexico long before the border was drawn through our lands. It should be no surprise that we have deep religious, cultural and historic ties to these lands where we have so long lived. The federal government's continued destruction of sites and resources that have religious and cultural significance to our people amounts to the bulldozing of our church grounds and our civilian and military cemeteries. For us, this is no different than DHS building a 30 foot wall through Arlington Cemetery, through the grounds of the National Cathedral, or through George Washington's Mt. Vernon.

Preservation of the history and culture of the Tohono O'odham people is not just important to the Tohono O'odham Nation -- it is important to the preservation of the history and culture of the United States as a whole. As we preserve Lincoln's house in Springfield Illinois, as we preserve Civil War battlefields and cemeteries, and as we honor holy places of worship everywhere in the United States, we also must preserve and protect such places of significance to the O'odham, the first Americans in this part of our great country.

The Nation appreciates the Committee's interest in understanding more about the harms to our cultural resources and sacred sites that already have occurred, and that will continue to occur as the result of the construction of a border wall within our ancestral territory. We welcome a continued dialogue with the federal government on these issues, and we urge Congress to exert its authority to protect our sacred sites.

Appendix 10



Who's building the digital border wall?

27 July 2021

Investor Alliance for Human Rights

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Image: Javier Zarracina/Vox

Dangers of the digital border wall



- **Increased border surveillance technology leads to more deaths.** Peer-reviewed research has shown that there is “significant correlation between the location of border surveillance technology, the routes taken by migrants, and the locations of recovered human remains in the southern Arizona desert.”*
- U.S. Border Patrol reported finding the remains of more than 250 migrants who died along the U.S.-Mexico border in 2020 alone.
- Individuals detected by “smart” border technology, when apprehended by CBP or other law enforcement, find themselves caught up in the immigration enforcement dragnet, often in privatized CBP and ICE jails.
- Border communities have to live with drones overhead, eminent domain issues, flooding, noise, checkpoints.
- The harms of border technology go far beyond the border and disproportionately impact BIPOC communities, as demonstrated by CBP drones deployed on Black Lives Matter protesters last summer. Border enforcement policies have long served as a testing ground for military grade surveillance at the border and far into the interior.

* Samuel Norton Chambers, et al, “Mortality, Surveillance and the Tertiary “Funnel Effect” on the U.S.-Mexico Border: A Geospatial Modeling of the Geography of Deterrence,” *Journal of Borderland Studies*, Volume 36, 2021 (published online January 31, 2019).”

Components of the digital wall



Technology	Companies	Program	Current contracts
Surveillance towers	Elbit Systems (NASDAQ: ESLT) General Dynamics (NYSE: GD) Benchmark Electronics (NYSE: BHE) Teledyne Technologies (NYSE: TDY) Anduril Industries	Integrated Fixed Towers Remote Video Surveillance System Mobile Video Surveillance System Mobile Surveillance Capability Autonomous Surveillance Towers	\$239 million through 2021 \$153 million through 2023 \$80 million through 2021 \$23 million through unknown \$250 million through 2025
Drones	AeroVironment (NASDAQ: AVAV) Teledyne Technologies (NYSE: TDY) Lockheed Martin (NYSE: LMT)	Small Unmanned Aircraft Systems	Various
License plate readers and location tracking	Motorola Solutions (NYSE: MSI) Thomson Reuters (NYSE: TRI) Venntel (Gravy Analytics)	License plate reader equipment Third party provider Location data broker	\$53 million through 2021 \$23 million through 2026 \$575k through 2025
Biometric collection and storage	Amazon (NASDAQ: AMZN) Northrop Grumman (NYSE: NOC) NEC Corporation (TYO: 6701) Thales S.A. (ENXTPA: HO)	Biometric database hosting Biometric database development Facial recognition algorithms Fingerprint matching algorithms	\$4.3 billion total estimated cost
Warrantless device hacking	Sun Corporation (JASDAQ:6736) Grayshift (PeakEquity Partners) Micro Systemation AB (STO: MSAB-B) Magnet Forensics Inc. (TSX: MAGT)	Cellebrite mobile forensics Graykey mobile forensics Vehicle and mobile forensics Mobile forensics	\$6 million through 2022 \$1.2 million through 2022 \$1 million through 2022 \$2.5 million through 2024
Data platforms and analytics; cloud services	Palantir Technologies (NASDAQ: PLTR) Salesforce (NASDAQ: CRM) Alphabet (NASDAQ: GOOGL)	Personal data platform for ICE Cloud services and data platform Cloud services for Border Patrol tech	\$62 million through 2022 \$100 million through 2023 Incomplete data

Tower systems

Autonomous Surveillance Towers
Anduril Industries



Integrated Fixed Towers
Elbit Systems (NASDAQ: ESLT)



Remote Video Surveillance System
General Dynamics (NYSE: GD)



Vehicle surveillance systems

Mobile Video Surveillance System Benchmark Electronics (NYSE: BHE)

SYSTEM ARCHITECTURE DIAGRAM



Mobile Surveillance Capacity Teledyne Technologies (NYSE: TDY)



Drones

- CBP plans to have 460 small drones operational in 2021. These drones are controlled through handheld devices, and the agency aims to have trained 1,200 human operators by 2021.
- CBP has expressed interest in developing drones with facial recognition capabilities.

Puma 3AE

AeroVironment (NASDAQ: AVAV)



Indago-3

Lockheed Martin (NYSE: LMT)



Back Hornet PDS

Teledyne Technologies Incorporated
(NYSE: TDY)



FLIR R80D SkyRaider

Teledyne Technologies Incorporated
(NYSE: TDY)



HART Biometric Database

The Homeland Advanced Recognition Technology System (HART) is a centralized database of biometric data hosted by **Amazon (NASDAQ: AMZN)** for the Department of Homeland Security, estimated to cost a total of \$4.3 billion.

Military contractor **Northrop Grumman (NYSE: NOC)** is the principal contractor developing the system.

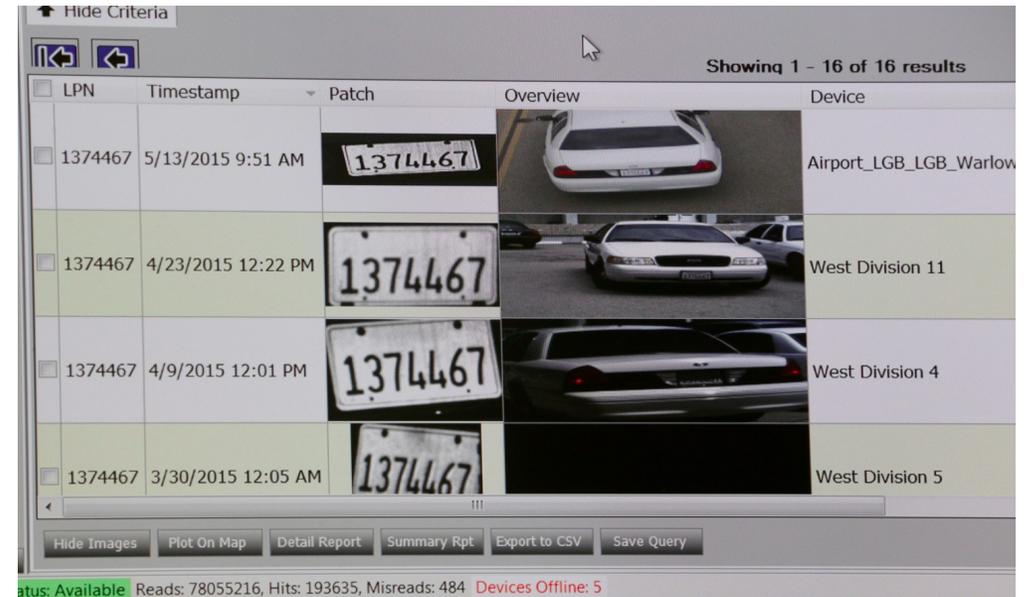
HART will house unique profiles of hundreds of millions of people, using biometric data collected at the border and in the interior, and shared by foreign governments.

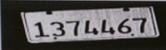
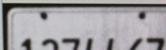
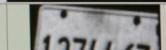
- Facial recognition images
- DNA profiles
- Iris scans
- Digital and latent fingerprints
- Palm prints
- Voice prints



License plate readers

- CBP uses Automated License Plate Recognition (ALPR) at border crossing lanes and Border Patrol checkpoints further inland.
- Equipment for the system is provided by **Motorola Solutions (NYSE: MSI)**.
- ICE subscribes to a private license database and information-sharing system run by Vigilant Solutions, a subsidiary of Motorola Solutions.
- ICE uses this for-profit platform through an agreement with data broker **Thomson Reuters (NYSE: TRI)**. Through this platform, ICE has access to over 5 billion license plate records from private businesses, as well as 1.5 billion data points from over 80 law enforcement agencies across the country.

A screenshot of a software interface for license plate recognition. The interface shows a table with columns for LPN, Timestamp, Patch, Overview, and Device. The table contains four rows of data for license plate number 1374467. Below the table are buttons for 'Hide Images', 'Plot On Map', 'Detail Report', 'Summary Rpt', 'Export to CSV', and 'Save Query'. At the bottom, there is a status bar with the text 'atus: Available Reads: 78055216, Hits: 193635, Misreads: 484 Devices Offline: 5'.

LPN	Timestamp	Patch	Overview	Device
1374467	5/13/2015 9:51 AM			Airport_LGB_LGB_Warlow
1374467	4/23/2015 12:22 PM			West Division 11
1374467	4/9/2015 12:01 PM			West Division 4
1374467	3/30/2015 12:05 AM			West Division 5



Warrantless device hacking

CBP conducted warrantless searches of 40,913 electronic devices at the border in 2019 alone. Many such warrantless searches have targeted journalists, lawyers and activists during secondary inspection at ports of entry.

The agency also uses “vehicle forensics kits” that can hack personal information directly from vehicles’ infotainment and navigation systems, even accessing contact lists and call logs from any synchronized mobile devices.

Key providers of mobile and vehicle forensics include:

- **Cellebrite**, owned by Sun Corporation (JASDAQ:6736)
- **Grayshift**, owned by PeakEquity Partners
- **Micro Systemation AB (STO: MSAB-B)**
- **Magnet Forensics (TSX:MAGT)**



Data platforms and analytics; cloud services



Numerous companies contract with federal immigration authorities for data analytics and cloud services, including:

- **Palantir Technologies (NASDAQ: PLTR)**
Provides ICE with a case management and analytics platform that is “mission critical” to the agency’s efforts, used to facilitate workplace raids.
- **Salesforce (NASDAQ: CRM)**
More than \$100 million in CBP contracts through third parties, for services including a platform that will facilitate information sharing between federal immigration agencies, the Department of Justice, and Health and Human Services.
- **Alphabet (NASDAQ: GOOGL)**
Provides cloud services to CBP, and its Google Cloud was used for the agency’s Innovation Team initiative (INVNT) on projects including Anduril surveillance tower image processing.