

No. 19-975

In The
Supreme Court of the United States

CENTER FOR BIOLOGICAL DIVERSITY, ANIMAL
LEGAL DEFENSE FUND, DEFENDERS OF WILDLIFE,
AND SOUTHWEST ENVIRONMENTAL CENTER,

Petitioners,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY
AND CHAD WOLF, ACTING SECRETARY OF THE
U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States District Court
For The District Of Columbia**

**BRIEF OF *AMICI CURIAE*
THE EQUAL VOICE NETWORK AND
LA UNIÓN DEL PUEBLO ENTERO
IN SUPPORT OF PETITIONERS**

EFRÉN C. OLIVARES
Counsel of Record
ANDREW UDELSMAN
RICARDO A. GARZA
CAROLYN O'CONNOR
TEXAS CIVIL RIGHTS PROJECT
1017 W. Hackberry Avenue
Alamo, TX 78516
(956) 787-8171
efren@texascivilrightsproject.org

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INTEREST OF *AMICI CURIAE*¹

The Rio Grande Valley Equal Voice Network (EVN) is a coalition of nonprofit organizations advancing equity along the United States-Mexico border in south Texas. Each of the EVN's member organizations seeks to organize and amplify the historically marginalized voices of south Texas residents, including women, immigrants, the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) community, and those living in persistent poverty. Through cultural, legal, and political strategies, the EVN fights for transformative social justice at the local, state, and national levels.²

La Unión del Pueblo Entero (LUPE) is a non-profit organization serving low-income immigrant communities of the south Texas border. Founded by civil rights advocates César E. Chavez and Dolores Huerta, LUPE is rooted in the belief that members of these communities have the responsibility to organize themselves and advocate for solutions to the issues that impact their lives. LUPE works primarily with families who live in *colonias*—rural unincorporated neighborhoods lacking

¹ Petitioners have granted a blanket consent for the filing of amicus briefs. Respondents have provided *amici curiae* consent for the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons or entities, other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. The parties received notice of this filing.

² For more details on the EVN, see <https://rgvequalvoice.org/>.

basic public services, including sewer systems, streets, and safe and affordable housing. LUPE assists communities to advocate for their rights before county, state, and federal governments.³

EVN and LUPE have an abiding interest in the civil and democratic rights of individuals residing within border communities in south Texas. As described below, those communities are directly and adversely affected by the Secretary of Homeland Security's waivers of federal laws intended to protect them.

◆

SUMMARY OF ARGUMENT

The framers of the Constitution were deeply concerned that a majority of voters could use legislation to repress minority groups. To mitigate that danger, the framers created a lengthy and complex legislative process to ensure that “any new law would have to secure the approval of a supermajority of the people’s representatives.” *Gundy v. United States*, 139 S. Ct. 2116, 2134 (2019) (Gorsuch, J., dissenting, joined by Roberts, C.J., and Thomas, J.).

But the protection afforded by that legislative process disappears if Congress delegates its lawmaking power to the Executive. The Executive needs only achieve the support of a plurality of voters, so it is less responsive to minority interests. Therefore, delegation

³ For more details on LUPE’s activities and accomplishments, see <http://lupenet.org/about-us/>.

of lawmaking power destroys the system that the framers created “to guard unpopular minorities from the tyranny of the majority.” *Id.* For that reason, it is “unpopular minorities” who will suffer most when the legislative and executive powers become one.

In this case, those negatively-impacted minorities are the border communities that *amici* EVN and LUPE represent. These communities have been marginalized for decades, their rights increasingly diminished by an ever-growing federal presence near the border. Yet, even for communities accustomed to unwanted Executive interference, § 102(c) represents a radical deprivation of rights by virtually unreviewable Executive fiat. REAL ID Act of 2005, Pub. L. No. 109-113, Div. B, Title I § 102(c), 119 Stat. 231, 302, 306.

The purpose of this *amicus* brief is to describe how the § 102(c) waivers negatively and disproportionately impact minority communities within Texas’s Rio Grande Valley. *See Gundy*, 139 S. Ct. at 2132 (“[U]nbounded policy choices have profound consequences for the people they affect.”).



ARGUMENT

I. The Border Wall Waivers Negatively and Disproportionately Impact Minority South Texas Communities.

A. Border Communities within the Rio Grande Valley

The southernmost portion of Texas is known as the “Rio Grande Valley,” a unique region with a distinct culture, cuisine, and traditions. It consists of four counties, two of which are affected by the waiver decisions challenged in this petition: Hidalgo County and Cameron County. Demographically, individuals within these counties, like the RGV as a whole, are predominantly of Latino or Hispanic origin, mostly Mexican-American. According to U.S. census estimates, 92.4% of Hidalgo County residents and 89.8% of Cameron County identify as Hispanic or Latino.⁴

These counties have some of the lowest per capita income in the United States. According to federal census data, the annual per capita income in Hidalgo County is approximately \$16,490, and 30% of Hidalgo County residents are below the poverty level.⁵ Cameron County similarly has an annual per capita income of approximately \$16,587, and a poverty rate of 27.9%.⁶

⁴ U.S. Census Bureau, *Quickfacts*, <https://www.census.gov/quickfacts/fact/table/cameroncountytexas.hidalgocountytexas/PST045219>.

⁵ *Id.*

⁶ *Id.*

Within these counties are hundreds of communities known as *colonias*, defined by the state of Texas as “rural subdivisions characterized by high levels of poverty and substandard living conditions.”⁷ These unincorporated neighborhoods are typically located outside city limits and often lack public water and wastewater systems, paved streets, drainage, and adequate housing.⁸ The population of *colonia* residents is predominately Mexican-American.⁹ As of 2015, over 80% of *colonias* within Hidalgo County lacked public street lighting.¹⁰

B. The Executive’s Unchecked Expansion into the Rio Grande Valley

Over the past 70 years, the federal government has gradually expanded its presence and control in the RGV. The first massive federal expansion came in 1953 with the Immigration and Nationality Act, which authorized immigration agents to enter private property, conduct warrantless searches on buses, trains, and other vehicles, and led to the United States Border Patrol establishing fixed checkpoints on all highways

⁷ Texas Department of Housing and Community Affairs, *2007 State of Texas Low Income Housing Plan and Annual Report*, Jan. 2007, at 245.

⁸ *Id.* at 246.

⁹ *Id.*

¹⁰ *Colonia Organizations Win Groundbreaking Street Lighting Victory in Hidalgo County*, TEXAS HOUSERS, Nov. 18, 2015, <https://texashousers.net/2015/11/18/colonia-organizations-win-groundbreaking-street-lighting-victory-in-hidalgo-county/>.

exiting the RGV. 8 U.S.C. § 1357(a)(3). Today, it is virtually impossible to leave the RGV via land without passing such a checkpoint, wherein Border Patrol agents interrogate drivers and passengers about their immigration status—without the need to show independent probable cause or even reasonable suspicion—and detain those who do not answer to the agents’ satisfaction. Border Patrol agents are also stationed at every airport in the region.

This growing federal incursion into the RGV has infringed upon residents’ Fourth Amendment rights. As the number of federal immigration officials deployed to the RGV has steadily increased, so too have the numbers of individuals racially profiled and searched. While Department of Justice guidance forbids racial profiling for routine law enforcement throughout the country, it explicitly exempts border zones such as the RGV from that prohibition.¹¹ In short, for individuals “of apparent Mexican ancestry” living within 100 miles of the border, the Fourth Amendment offers scant protection. *United States v. Martinez-Fuerte*, 428 U.S. 543, 563, 553 n.8 (1976).

The REAL ID Act of 2005 authorizes the latest and most aggressive expansion of federal control over the RGV. Section 102(c) of that Act delegates to the Secretary of Homeland Security the authority to “waive all

¹¹ U.S. Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* at 2 n.2 (Dec. 2014).

legal requirements” that the Secretary “deems necessary,” in his “sole discretion,” “to ensure expeditious construction” of the border wall. As Rep. Jackson-Lee warned when the House of Representatives was considering § 102(c), “a waiver this broad is unprecedented.” 151 Cong. Rec. H459 (daily ed. Feb. 9, 2005) (adding “[a]t the very least, we should have a hearing to consider the consequences of such a drastic waiver.”).

President George Bush’s Secretary of Homeland Security exercised this waiver power on five occasions. Between 2008 and 2010, DHS built eighteen segments of border fence in Hidalgo and Cameron Counties, for a total of fifty-four miles in these two counties.¹² In 2019, CBP announced that it intends to construct another 19 miles in Cameron County and 35 in Hidalgo.¹³

In October 2018, the Secretary of Homeland Security invoked § 102(c) to waive twenty-eight federal laws to build additional border wall in those two counties. Pet. App. 83-100. The nullified laws include the National Environmental Policy Act, the Clean Water Act, the Safe Drinking Water Act, and the Administrative Procedure Act, among many others. DHS began constructing new wall in Hidalgo County in October 2019.

¹² ACLU Border Rights Center, *Death, Damage, and Failure: Past, Present, and Future Impacts of Walls on the U.S.-Mexico Border 2019 Update* (2019), at 17.

¹³ *Id.*

C. Effects of the Secretary's Waivers on RGV Communities

The wall that DHS intends to build in the RGV entails a tremendous construction project. Beyond erecting the wall itself, DHS must clear vegetation, level the ground for roads, destroy any structures—including homes—in the path of the project, and import massive amounts of steel and concrete. Normally, when undertaking projects of such magnitude, the government must comply with dozens of statutes that Congress deemed necessary to ensure such taxpayer-funded construction occurs in a reasonable and responsible manner. The Secretary's waivers nullify those laws, giving DHS free rein to neglect potentially disastrous effects as it rushes wall construction. What follows is a sampling of the negative effects RGV communities will suffer as a result of the Secretary's waiver decisions.

i. The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

The Rio Grande Valley is located in the floodplain of the Rio Grande River, near where its waters flow into the Gulf of Mexico.¹⁴ The defining aspect of a floodplain is that it periodically floods. The result

¹⁴ U.S. Border Patrol Rio Grande Valley Sector, Texas, *Environmental Stewardship Plan for the Construction, Operation, and Maintenance of Tactical Infrastructure*, July 2008, at 67 [hereinafter *Environmental Stewardship Plan*].

can be catastrophic, as occurred in 1967¹⁵ and 2008.¹⁶ But more frequent, less deadly floods still cause tremendous damage: The federal government declared disaster-flooding conditions in the RGV in both 2018 and 2019.¹⁷

Floods in the RGV destroy buildings, spoil crops, and kill animals. They disrupt economic activity and create health risks. The longer the water stays on fields, homes, and streets, the more severe the damage. Floods are particularly disastrous for individuals living in *colonias*, many of which lack adequate drainage systems.¹⁸ Once *colonias* fill with water, they remain underwater longer than areas with functional

¹⁵ National Weather Service, *Major Hurricane Beulah—September 20, 1967*, <https://www.weather.gov/crp/Beulah> (describing 15 fatalities in Texas and \$1.59 billion 2017 dollars in damage).

¹⁶ National Weather Service, *Storm Report on Hurricane Dolly in the Rio Grande Valley and Deep South Texas: Update #2*, https://www.weather.gov/bro/2008event_dollyreport (stating damage likely to exceed \$2 billion).

¹⁷ Office of the Texas Governor, *Federal Disaster Declaration Granted For Texas Counties Following Severe Weather And Flooding In The Rio Grande Valley*, July 6, 2018, <https://gov.texas.gov/news/post/federal-disaster-declaration-granted-for-texas-counties-following-severe-weather-and-flooding-in-the-rio-grande-valley>; Office of the Texas Governor, *Federal Disaster Declaration Granted For Texas Counties Following Severe Weather And Flooding In The Rio Grande Valley*, July 17, 2019, <https://gov.texas.gov/news/post/federal-disaster-declaration-granted-following-severe-weather-in-the-rio-grande-valley>.

¹⁸ Daniel Blue Tyx, *Holding Back the Flood*, THE TEXAS OBSERVER, Feb. 11, 2016, <https://www.texasobserver.org/colonias-drainage-valley/>.

drainage systems, increasing the destruction and health risks.

Despite the disastrous effects of flooding on *colonias*, those communities are frequently the last to receive federal assistance. After the flooding in 2008, *amicus* LUPE had to sue the Federal Emergency Management Agency (FEMA) for discriminating against *colonia* residents in denying their applications for assistance. FEMA eventually settled that lawsuit, providing long-overdue financial assistance.

When floods occur, there is only one place for the water to drain: the Rio Grande River. But if a wall is built in the floodplain—as CBP plans—then the wall acts like a dam, preventing the water from lowering and flowing into the river.¹⁹ In a 2008 report, CBP itself recognized this risk: “Constructing the [wall] within the floodplain has the potential to affect flood flows if the [wall] is not maintained to remove blockages to flow (debris and wrack) following high flow events.”²⁰ Land between the river and the wall is at an even greater risk of remaining underwater when the river rises, since the wall channels the water that would otherwise spread and dissipate through the floodplain. As past flooding events have demonstrated, a wall with gaps between steel bollards does not eliminate this

¹⁹ ACLU Border Rights Center, *supra* note 12, at 4.

²⁰ *Environmental Stewardship Plan*, *supra* note 14, at 6-8.

flooding risk, since debris easily clogs those gaps.²¹ In sum, the wall increases the risk of catastrophic damage caused by flooding.

If it were not waived, the National Environmental Policy Act (NEPA) would require the government to publish information about the risk of flooding and seek public input as to the wall's designs.²² In addition to providing detailed information to the public about these risks, the NEPA process would likely result in wall construction that better mitigates such risks.

ii. The Endangered Species Act, 16 U.S.C. § 1531 *et seq.*

The Endangered Species Act (ESA) requires federal agencies to minimize disruptions to the habitats of critical species.²³ DHS intends to build wall in the Lower Rio Grande Valley National Wildlife Refuge—a key habitat for the critically endangered ocelot and

²¹ ACLU Border Rights Center, *supra*, note 12, at 23.

²² In 2008, the government's failure to comply with NEPA resulted in a lawsuit and TRO enjoining wall construction. *Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119, 121 (D.D.C. 2007). Then-Secretary Chertoff responded to that lawsuit by waiving NEPA. *Id.* at 121-22. In an attempt to avoid having to comply with Congressionally mandated statutory obligations, then-Secretary Nielsen instead waived NEPA from the start in this case.

²³ U.S. Environmental Protection Agency, *Summary of the Endangered Species Act*, <https://www.epa.gov/laws-regulations/summary-endangered-species-act>.

jaguarundi.²⁴ The ESA would therefore heavily constrain wall construction in that habitat. Waiving the ESA removes those constraints, further threatening the survival of already-endangered species.

Harming those endangered species will cause additional negative effects on RGV communities. In addition to the joy such species bring to local communities, those species bring tourists to the area.²⁵ According to a 2011 study, nature tourism during the off-peak season alone contributed over \$300 million to the local RGV economy.²⁶ Reducing the numbers of the RGV's most unique species is bound to decrease that tourism.

These negative effects on tourism would normally be considered in an environmental analysis pursuant to NEPA, but, as discussed above, the Secretary has waived that act as well. Thus, this example demonstrates how waivers of multiple statutes have a compounding effect.

²⁴ ACLU Border Rights Center, *supra* note 12, at 34.

²⁵ *Environmental Stewardship Plan*, at 10-9.

²⁶ Department of Recreation, Park & Tourism Sciences and Department of Agricultural Economics, Texas A&M University, *An Initial Examination of the Economic Impact of Nature Tourism on the Rio Grande Valley* (2011).

iii. The Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Rivers and Harbors Act of 1899, 33 U.S.C. § 403

The Clean Water Act (CWA) regulates discharges of pollutants into the waters of the United States.²⁷ Normally, the CWA would require DHS to employ construction methods to minimize the amount of discharges that will enter water sources, including the Rio Grande River, which is the primary source of water for residents throughout this region.

Related to the CWA, the Rivers and Harbors Act of 1899 (RHA) criminalizes discharges of refuse matter into navigable waters such as the Rio Grande River.

With the CWA and RHA waived, nothing prevents DHS—or its contractors—from dumping pollutants into that river.

iv. The Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*

The Migratory Bird Treaty Act (MBTA) prohibits “takings” of birds listed in the act. Takings include incidental takings, such as those that might occur from construction that destroys nests or impedes migrations. Waiving the MBTA will lead to further destruction of migratory bird habitats.

²⁷ Environmental Protection Agency, *Summary of the Clean Water Act*, <https://www.epa.gov/laws-regulations/summary-clean-water-act>.

Bird watching is a major natural attraction for tourists to the RGV, which is home to the World Birding Center, a group of nature preserves together hosting some 500 bird species.²⁸ As discussed above with regards to destruction of endangered species' habitat, any reduction in migratory bird species is likely to have secondary negative impacts on RGV tourism, and, consequently, the region's economy.

**v. The Farmland Protection Policy Act,
7 U.S.C. § 4201 *et seq.***

The Farmland Protection Policy Act (FPPA) imposes restrictions on federal construction projects that irreversibly convert farmland, directly or indirectly, to nonagricultural use.²⁹ Both the wall itself and construction of roads necessary for wall construction will have irreversible effects on farmland. Moreover, wall construction “is expected to alter the topography and remove vegetation from approximately 105 acres within the floodplain of the Rio Grande, which could in turn increase erosion potential and increase runoff during heavy precipitation events.”³⁰ Such erosion will

²⁸ Department of Recreation, Park & Tourism Sciences and Department of Agricultural Economics, Texas A&M University, *An Initial Examination of the Economic Impact of Nature Tourism on the Rio Grande Valley* (2011); World Birding Center, *Birds of the Rio Grande Valley*, <http://www.theworldbirdingcenter.com/gallery.html>.

²⁹ U.S. Department of Agriculture, *Farmland Protection Policy Act*, <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>.

³⁰ *Environmental Stewardship Plan* at 6-8.

destroy farmland of property owners near the river. By waiving the FPPA and NEPA, the Executive can ignore this risk to RGV communities, which Congress had foreseen when it enacted these statutes. The predictable result is less responsible grading, faster erosion, and greater irreversible damage to RGV farmland.

II. Section 102(c) Insulates Policy-Making Decisions from the Democratic Pressure of Border Communities

A. RGV Communities Oppose Unregulated Wall Construction

Given the potentially disastrous effects of rapid, regulation-free wall construction, it should come as no surprise that RGV residents overwhelmingly oppose this government action.³¹ For years, they have expressed this opposition through frequent protests and community actions on the southern border.³² LUPE

³¹ J. Edward Moreno, *UTRGV study: About 3 in 4 RGV residents oppose border wall*, THE MONITOR, Apr. 2, 2019, <https://www.themonitor.com/2019/04/02/utrgv-study-3-4-rgv-residents-oppose-border-wall/> (noting survey found 75.7% of RGV residents opposed the border wall).

³² See, e.g., Aaron Nelsen, *Hundreds turn out for rally opposing border wall through popular wildlife refuge*, SAN ANTONIO EXPRESS-NEWS, Jan. 27, 2018, <https://www.expressnews.com/news/local/article/Hundreds-turn-out-for-rally-opposing-border-wall-12531021.php>; Gus Bova, *Border Residents Protest Trump's Wall in Hidalgo County*, THE TEXAS OBSERVER, Nov. 11, 2018, <https://www.texasobserver.org/border-residents-protest-trumps-wall-in-hidalgo-county/>; Karina Vargas, *Several groups protesting proposed border wall near cemetery*, KVEO, Nov. 14, 2019, <https://www.kveo.com/news/local-news/several-groups-protesting-proposed-border-wall-near-cemetery/>.

has organized protests against the border wall and the waiver of laws. Most recently, LUPE and EVN organized a demonstration against the border wall in Donna, Texas, where the wall is being built, on the same day DHS Secretary Wolf was visiting.³³ Predictably, Mr. Wolf drove past the protest in his motorcade without slowing.

Some of the most vociferous opponents of regulation-free wall construction are those who live or own land on or near the Rio Grande River. In addition to losing land directly in the proposed wall's path, they also face increased risks of flooding, erosion, and contamination to their land near the Rio Grande. With representation from EVN members, these landowners are calling their congressional delegates, testifying before Congress, and defending their land in court.³⁴

Through these exercises of their Free Speech rights, RGV residents occasionally win minor victories in the form of legal protections for their land. But, for the reasons described in the following section, the overall effect of § 102(c) is to insulate the true border wall policymaker from such democratic pressure.

³³ Dina Arévalo, *New DHS acting secretary visits RGV, tours border wall*, THE MONITOR, Nov. 22, 2019, <https://www.themonitor.com/2019/11/22/new-dhs-acting-secretary-visits-rgv-tours-border-wall/>.

³⁴ See, e.g., *Examining the Effect of the Border Wall on Private and Tribal Landowners: Hearing Before the H. Comm. on Homeland Sec.*, 116th Cong. (2020) (testimony of Rey Anzaldúa and Nayda Alvarez), <https://homeland.house.gov/activities/hearings/examining-the-effect-of-the-border-wall-on-private-and-tribal-landowners>.

B. Section 102(c) Unduly Insulates Policy-Makers from Democratic Pressure

Section 102(c) delegates to the Secretary of Homeland Security the power to legislate by subtraction. As the federal government has grown, the legislative branch has increasingly constrained and regulated Executive actions through a panoply of laws like NEPA, the ESA, and the CWA. Section 102(c) has no standards that the Secretary must apply when determining when it is “necessary” to waive those constraints to achieve “expeditious” wall construction. The Secretary is not required to make any record as to how he arrived at such determinations. Section 102(c) simply trusts the Secretary to exercise his authority responsibly.

In virtually any situation other than border wall construction, aggrieved citizens can challenge arbitrary and capricious Executive decisions through the Administrative Procedures Act (APA) and decisions in excess of authority through *ultra vires* challenges. But § 102(c) prohibits both actions. Thus, at the same time that § 102(c) grants legislative power to the Executive, it removes power from the Judiciary.

This lack of judicial review renders illusory § 102(c)’s supposed restraints on the Secretary’s authority. Section 102(b)(1)(C) theoretically requires the Secretary to consult with border area stakeholders, including in the RGV, “to minimize the impact” of construction. But if the Secretary fails to conduct such consultations,

aggrieved parties cannot remedy that failure through the courts.

The first casualties of such unconstrained delegations are “stability and fair notice.” *Gundy*, 139 S. Ct. at 2135 (Gorsuch, J., dissenting). Since 2005, when § 102(c) was created, there has been no significant change in immigration or security at the U.S. border. And yet the Bush administration invoked the § 102(c) waiver authority on five occasions, the Obama administration did not invoke it at all, and the Trump administration has already invoked it an alarming sixteen times. These drastic shifts from one Administration to the next reveal that the laws in force in border communities are governed by “nothing more than the will of the current president.” *Id.*

Another casualty of the § 102(c) delegation is the ability of RGV communities to exert democratic pressure on unpopular policies affecting them. While Congress could attempt to pass a law waiving all environmental laws that hinder wall construction, such a proposal would inevitably cause fierce debate and opposition, particularly from Congressional representatives from border regions. In § 102(c), Congress avoided such difficulties by “merely announc[ing] [a] vague aspiration[.]”—expeditious wall construction—and then “assign[ing] the responsibility” to the Executive to realize that goal. *Id.* at 2133. Thus, Congress took credit for furthering the aspiration while insulating itself from the consequence: the creation of a statutory-free border zone.

It would be a grave error for this court to deny certiorari merely because the Government asserts that this case involves national security near the border. Though border security is the prerogative of the Executive, this Court has repeatedly warned against treating national security as “‘a talisman’ that the Government can use ‘to ward off inconvenient claims.’” *Trump v. Hawaii*, 138 S. Ct. 2392, 2446 (2018) (quoting *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862 (2017)). All too often, it is under the guise of “national security” that the Executive violates the rights of disfavored minorities. See *Korematsu v. United States*, 323 U.S. 214 (1944), *abrogated by Trump v. Hawaii*, 138 S. Ct. at 2423.

When Congressional accountability breaks down, “minority interests” will suffer most. *Gundy*, 139 S. Ct. at 2134 (Gorsuch, J., dissenting). Over the course of decades, RGV border communities have learned that the Executive considers them “unpopular minorities” with diminished legal rights. *Id.* The framers separated the executive and legislative powers because—like RGV communities—they did not trust a government wielding both powers to protect residents’ liberties. This Court should not trust an Executive branch that the founders did not.



CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

EFRÉN C. OLIVARES

Counsel of Record

ANDREW UDELSMAN

RICARDO A. GARZA

CAROLYN O'CONNOR

TEXAS CIVIL RIGHTS PROJECT

1017 W. Hackberry Avenue

Alamo, TX 78516

(956) 787-8171

efren@texascivilrightsproject.org

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