

APPENDIX

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- Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group
- Vaccine Research Center Board of Scientific Counselors National Institute of Allergy and Infectious Diseases
- Vascular and Hematology Integrated Review Group

5. *Justification that the information or advice provided by the Federal advisory committee or subcommittee is not available from another Federal advisory committee, another Federal Government source, or any other more cost-effective and less burdensome source:*

All members of the CCRHB are directly or indirectly associated with biomedical research, and upon acceptance of CCRHB appointment, each member is fully introduced to the unique aspects of the CC hospital which exists to provide safe delivery of patient-centric care in support of scientific research aligned with public health needs. Each year approximately 10,000 new research participants are seen at the CC as active partners in medical discovery, a partnership that has resulted in a long list of medical milestones, including the first cure of a solid tumor with chemotherapy, gene therapy, and the use of AZT to treat AIDS. The CC differs from other hospitals as it is not a general hospital, nor is it a part of a health system. There is no trauma care, no emergency room, no labor and delivery and no billing department. The mission of the CC is to provide hope through pioneering clinical research to improve human health. With our patient partners, the CC proudly is referenced as the “House of Hope.” The Board members’ recommendations are invaluable because the complex nature of the CC’s clinical research mission requires a unique balance and breadth of expertise not available at NIH or from other established sources. This advice and unique, expert perspectives cannot be obtained through other mechanisms.

6. *If the consultation is a committee renewal, a summary of the previous accomplishments of the committee and the reasons it needs to continue:*

The CCRHB is the sole entity to provide advice about hospital operations aligned with the CC’s clinical research priorities. As such, the CCRHB’s focus is on the complementary aims of achieving the highest standards of safety for research participants and the CC community, while fostering an environment of cutting-edge high-impact research to improve the health of Americans.

2016: The CCRHB recommended the submission of regular reports to the

Board addressing Patient Safety & Quality Performance Metrics. This topic became a ‘standing item’ for all Board meetings and members continue to receive a Current Executive Dashboard Report on Clinical and Safety Performance Metrics one week prior to each meeting for review. The CEO Presentation includes reference to these standing reports; and the CEO solicits discussion or questions from the Board, then reports are posted on the CC’s website for public review.

2016—Present: Annual reports to the CCRHB are delivered by the Director, Office of Research Facilities. These reports generate discussions for planned or ongoing facility changes that directly or indirectly affect CC patients, researchers, staff, and the CC community. In October 2019, all Board members signed a letter to the NIH Director, ultimately shared with Congress during budget discussions, to address needed funding for NIH maintenance issues and facility projects to improve environment of care and specialized capabilities requests, including construction of the new Surgery, Radiology and Laboratory Medicine Wing.

A key accomplishment of the CCRHB in 2022 was to provide a comprehensive review and assessment of pediatric care at the CC, focused on the delivery of care to children, current clinical research studies, and setting a vision to consider for the future of pediatric research. With the assistance of a working group that included pediatric leaders from across the country, the CCRHB provided advice that identified strengths and areas of focused improvement to be considered going forward.

7. *Explanation of why the committee/subcommittee is essential to the conduct of agency business:*

The CCRHB was created in 2016 as recommended by the Advisory Committee to the NIH Director following results of an FDA visit and review of hospital operations. Per the CCRHB charter, the purpose of the Board is to advise, consult with, and make recommendations to the NIH Principal Deputy Director (or designee) and the CEO with respect to maintaining excellence in hospital operations, safety and quality, unique clinical research care requirements for CC patients, regulatory compliance, clinical research, and hospital leadership performance oversight. Currently in its 9th year, the CCRHB has provided expert guidance and recommendations related to most aspects of CC operations.

In conclusion, this public interest determination documents that renewing the committee is in the public interest, essential to the conduct of agency business, and that the information to be obtained is not already available through another advisory committee or source within the Federal Government.

Inquiries may be directed to Patricia Brandt Hansberger, Acting Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or patricia.hansberger@nih.gov.

Dated: June 3, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–11519 Filed 6–5–26; 4:15 pm]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular and Structural Immunology Study Section, June 25, 2026, 09:30 a.m. to June 25, 2026, 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 21, 2026, 91 FR 29973 FR Doc No. 2026–10231.

The meeting is being amended to change the contact person from Velasco Cimica to Katie Alexander. The meeting is closed to the public.

Dated: June 5, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–11541 Filed 6–8–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in the state of Texas. The notice of determination was published in the **Federal Register** on May 15, 2026. The project area description in the May 15, 2026, notice of determination was incorrect. This document is a republication of the May 15, 2026, document with the correct project area description.

DATES: This determination takes effect on June 9, 2026.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate, the President’s Executive Order on Securing Our Borders directs that I take all appropriate action to deploy and construct physical barriers to ensure complete operational control of the southern border of the United States. Executive Order 14165, section 3 (Jan. 20, 2025).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS’s border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”). Public Law 104–208, Div. C, Tit. I, section 102, 110 Stat. 3009–546, 3009–554 (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, Tit. I, section 102, 119 Stat. 302, 306 (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, section 3, 120 Stat. 2638 (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Tit. V, section 564, 121 Stat. 2042, 2090. In section 102(a) of

IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated that in carrying out the authority of section 102(a), I provide for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors to achieve and maintain operational control of the border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol Big Bend Sector is an area of high illegal entry. Between fiscal year 2021 and fiscal year 2025, Border Patrol apprehended over 89,000 illegal aliens attempting to enter the United States between border crossings in the Big Bend Sector. In that same time period Border Patrol seized over 87,574 pounds of marijuana, over 867 pounds of cocaine, over 1,156 pounds of methamphetamine, over 12 pounds of heroin, and over 94 pounds of fentanyl.

Since the President took office, DHS has delivered the most secure border in history. More can and must be done, however. As the statistics cited above demonstrate, the Big Bend Sector is an area of high illegal entry where illegal aliens regularly attempt to enter the United States and smuggle illicit drugs, and given my mandate to achieve and maintain operational control of the border, I must use my authority under section 102 of IIRIRA to install additional barriers and roads in the Big Bend Sector. Therefore, DHS will take immediate action to construct additional barriers and roads in a segment of the border in the Big Bend Sector. The segment where such construction will occur is referred to herein as the “project area,” which is more specifically described in Section 2 below.

Section 2

I determine that the following area in the vicinity of the United States border, located in the state of Texas within the U. S. Border Patrol Big Bend Sector is

an area of high illegal entry (the “project area”): Starting at approximately GPS point 29.325866, –104.046466 and extending east to approximately GPS point 29.728522, –102.683945.

There is presently an acute and immediate need to construct additional physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area pursuant to section 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of additional physical barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915, as amended, repealed, or replaced by Pub. L. 113–287 (formerly codified at 16 U.S.C. 470 *et seq.*, now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*);

the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Pub. L. 113–287 (formerly codified at 16 U.S.C. 469 *et seq.*, now codified at 54 U.S.C. 312502 *et seq.*); the Antiquities Act (formerly codified at 16 U.S.C. 431a *et seq.*, now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.*, now codified at 54 U.S.C. 320301–320303 & 320101–320106); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); Section 438 of the Energy Independence and Security Act (42 U.S.C. 17094); the National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Wild Horse and Burro Act (16 U.S.C. 1331 *et seq.*); 43 U.S.C. 387; the Wild and Scenic Rivers Act (Pub. L. 90–542 (16 U.S.C. 1281 *et seq.*); the Federal Land Policy and Management Act (Pub. L. 94–579 (43 U.S.C. 1701 *et seq.*)); the Wilderness Act (Pub. L. 88–577 (16 U.S.C. 1131 *et seq.*)); the National Park Service Organic Act and the National Park Service General Authorities Act (Pub. L. 64–235, 39 Stat. 535 and Pub. L. 91–383, 84 Stat. 825 as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (formerly codified at 16 U.S.C. 1, 2–4 and 16 U.S.C. 1a-1 *et seq.*, now codified at 54 U.S.C. 100101–100102, 54 U.S.C. 100301–100303, 54 U.S.C. 100501–100507, 54 U.S.C. 100701–100707, 54 U.S.C. 100721–100725, 54 U.S.C. 100751–100755, 54 U.S.C. 100901–100906, 54 U.S.C. 102101–102102)); 16 U.S.C. 156; 16 U.S.C. 157; 16 U.S.C. 157c; and 16 U.S.C. 157d.

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Markwayne Mullin,
Secretary of Homeland Security.

[FR Doc. 2026–11473 Filed 6–8–26; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Modernizing Federal Workforce Information Tools: Request for Information (RFI) on Online Career Tools and the Occupational Information Network (O*NET) Program

ACTION: Request for information; request for comments.

SUMMARY: The U.S. Department of Labor (DOL or the Department), Employment and Training Administration (ETA) seeks public input to inform two related modernization efforts that together aim to strengthen the nation’s public workforce information infrastructure. First, ETA is soliciting input to inform the design and implementation of a modernized online career site, currently delivered through CareerOneStop.org—a public-facing workforce information website that helps job seekers explore occupations, locate training programs, identify local services, and connect to job listings. Second, ETA is soliciting input to inform a modernization of the Occupational Information Network (O*NET) Program, which publishes detailed descriptions of occupational employment and serves as a foundational data resource for workforce tools and services across the country. These two efforts are closely linked: a modernized career site is only as good as the occupational and skills data that powers it. O*NET data informs how CareerOneStop presents occupations, skills, and pathways to users—and improvements to O*NET’s timeliness, granularity, and interoperability will directly expand what a modernized site can offer. DOL is therefore seeking input on both efforts together, and respondents are encouraged to consider how improvements in one area could strengthen the other. Please note that this RFI is issued for information-gathering purposes only; it is not a solicitation or an offer for procurement. DOL will not award contracts or grants based on responses to this notice and will not respond individually to commenters. Comments may inform program and policy planning, including potential future notices and procurement activities. DOL expects that any possible procurement activity will be posted on the GSA Multiple Award Schedule.

DATES: To be ensured consideration, comments are due by August 10, 2026.

ADDRESSES: You may submit comments in response to the RFI described in this notice by one of the following methods:

Electronic submission: Submit comments related to Online Career Tools by email to: OnlineCareerToolsRFI@dol.gov. Submit comments related to O*NET by email to: ONETRFI@dol.gov.

Postal Mail and hand delivery/courier: Written comment submissions may be mailed or delivered to Attn: Steven Rietzke, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Avenue NW, Suite C–4510, Washington, DC 20210.

Instructions: This Request for Information invites comments from job seekers, workers, employers, HR practitioners, state and local workforce agencies, training and education providers, credentialing bodies, developers, researchers, and other interested stakeholders. Respondents may address either the Online Career Tools or O*NET sections of this RFI or may address both. Label all Online Career Tools submissions with “Online Career Tools RFI.” Label all O*NET submissions with “O*NET RFI.” If you respond to both sections, please provide two separate submissions. Please submit your comments by only one delivery method (*i.e.*, Email or postal mail; Email is highly preferred).

Instructions for Submitting Comments

- Clearly label your submission with the applicable subject line (see Addresses section above) to indicate whether your comments address Section I (Online Career Tools), Section II (O*NET), or both.
- Identify your stakeholder group (*e.g.*, job seeker, employer, developer, state workforce agency) at the top of your response.
- Focus on the questions most relevant to your expertise. Respondents are not required to address every question.
- Include organization and contact information if you are commenting on behalf of an institution and are willing to be contacted for follow-up.
- Do not include sensitive PII or confidential information; all submissions will be posted publicly.

FOR FURTHER INFORMATION CONTACT:

Steven Rietzke, Office of Workforce Investment (OWI), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room C–4510, Washington, DC 20210, Telephone: (202) 693–3912 (this is not a toll-free number), Email: OnlineCareerToolsRFI@dol.gov for questions about online career

The following laboratories are voluntarily withdrawing from the National Laboratory Certification Program effective June 30, 2026.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400/800-437-4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866-827-8042/800-233-6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Carlos Castillo,

Public Health Analyst.

[FR Doc. 2026-13402 Filed 7-1-26; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in the state of Texas. The notice of determination was published in the **Federal Register** on February 17, 2026. This document amends the February 17, 2026, notice of determination by including additional legal requirements that are being waived.

DATES: This determination takes effect on July 2, 2026.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109-367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined “operational

control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate, the President’s Executive Order on Securing Our Borders directs that I take all appropriate action to deploy and construct physical barriers to ensure complete operational control of the southern border of the United States. Executive Order 14165, section 3 (Jan. 20, 2025).

Congress has provided the Secretary of Homeland Security a number of authorities necessary to carry out DHS’s border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”). Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, 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). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated that in carrying out the authority of section 102(a), I provide for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors to achieve and maintain operational control of the border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol Big Bend Sector is an area of high illegal entry. Between fiscal year 2021 and fiscal year 2025, Border Patrol apprehended over 89,000 illegal aliens

attempting to enter the United States between border crossings in the Big Bend Sector. In that same time period Border Patrol seized over 87,574 pounds of marijuana, over 867 pounds of cocaine, over 1,156 pounds of methamphetamine, over 12 pounds of heroin, and over 94 pounds of fentanyl.

Since the President took office, DHS has delivered the most secure border in history. More can and must be done, however. As the statistics cited above demonstrate, the Big Bend Sector is an area of high illegal entry where illegal aliens regularly attempt to enter the United States and smuggle illicit drugs, and given my mandate to achieve and maintain operational control of the border, I must use my authority under section 102 of IIRIRA to install additional barriers and roads in the Big Bend Sector. Therefore, DHS will take immediate action to construct additional barriers and roads in a segment of the border in the Big Bend Sector. The segment where such construction will occur is referred to herein as the “project area,” which is more specifically described in Section 2 below.

Section 2

I determine that the following area in the vicinity of the United States border, located in the state of Texas within the U. S. Border Patrol Big Bend Sector, is an area of high illegal entry (the “project area”): Starting at approximately GPS point 31.037623, - 105.579877 and extending south and east to approximately GPS point 29.325866, - 104.046466.

There is presently an acute and immediate need to construct additional physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area pursuant to section 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of additional physical barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project

area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Public Law 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.*, now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the National Trails System Act (16 U.S.C. 1241 *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Pub. L. 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.*, now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.* and 16 U.S.C. 431a *et seq.*, now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.*, now codified at 54 U.S.C. 320301–320303 & 320101–320106); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); Section 438 of the Energy Independence and Security Act (42 U.S.C. 17094); the National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)); the Farmland Protection Policy Act (7

U.S.C. 4201 *et seq.*); the Wild Horse and Burro Act (16 U.S.C. 1331 *et seq.*); 43 U.S.C. 387; the Wild and Scenic Rivers Act (Pub. L. 90–542 (16 U.S.C. 1281 *et seq.*); the Federal Land Policy and Management Act (Pub. L. 94–579 (43 U.S.C. 1701 *et seq.*)); 33 U.S.C. 408; and the Rivers and Harbors Act of 1899 (33 U.S.C. 403 *et seq.*).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Markwayne Mullin,

Secretary of Homeland Security.

[FR Doc. 2026–13419 Filed 7–1–26; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number: FR–7106–N–32]

Privacy Act of 1974; Matching Program

AGENCY: Office of Single Family Program Development, Department of Housing and Urban Development.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD) and the Small Business Administration (SBA) are providing notice of a new computer matching program. Under this program, SBA will provide HUD with delinquent debtor data for inclusion in HUD’s Credit Alert Verification Reporting System (CAIVRS). CAIVRS is a shared, government-wide database that contains information on individuals who are delinquent or in default on Federal debts. Participating Federal agencies, their authorized contractors, and approved financial institutions use CAIVRS to prescreen applicants for Federal direct loans or federally guaranteed loans to determine whether the applicant is delinquent in repaying a debt owed to, or guaranteed by, the Federal Government. This matching program supports Federal credit eligibility determinations and promotes the integrity of Federal lending programs.

DATES: Comments due date: August 3, 2026. The matching program will commence no sooner than 30 days after

publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months, beginning approximately July 2, 2026, and may be renewed for one additional year within three months of expiration if the parties make no changes to the matching program and certify that it has been conducted in compliance with the computer matching agreement.

ADDRESSES: Interested parties may submit comments as follows:

1. *Electronically.* Interested parties are invited to submit comments electronically to <http://www.regulations.gov>. Commenters should follow the instructions provided on the website to submit comments regarding this matching program. To locate the appropriate notice, commenters may search *Regulations.gov* using the title of this Matching Notice, the participating agency names, or by viewing recently posted HUD dockets and documents.

2. *By Regular Mail.* You may mail written comments to the following address: U.S. Department of Housing and Urban Development, Office of Single Family Program Development, Home Mortgage Insurance Division, 451 Seventh Street SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding HUD’s participation in this matching program, contact Lejorian Stewart, Management Analyst, Single Family Program Development, Home Mortgage Insurance Division, U.S. Department of Housing and Urban Development, at (202) 402–2334 or Lejorian.J.Stewart@hud.gov. If contacting either agency by email, please state “Public inquiry: SBA CMA” in the email subject line.

For inquiries regarding the Small Business Administration’s participation in this matching program, contact Jihoon Kim, Director, Financial Program Operations, Office of Capital Access, Small Business Administration, at (202) 420–0304 or Jihoon.Kim@sba.gov.

For SBA privacy or security-related inquiries, contact Michael Post, Chief Information Security Officer (Acting) and Chief Privacy Officer (Acting), Office of the Chief Information Officer, Small Business Administration, at (202) 205–3645 or Michael.Post@sba.gov or PrivacyOfficer@sba.gov.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), establishes requirements governing the use of computer matching by Federal agencies when records in a system of records are compared with

are covered in OMB control number 0910–0014.

The primary purpose of this collection of information is to determine whether the research studies are being conducted in accordance with applicable statutes and regulations specified under 21 CFR 361.1 and that human subject safety is assured. If these studies were not reviewed, human

subjects could be subjected to inappropriate radiation or pharmacologic risks. Respondents to this information collection are the chairperson or chairpersons of each individual RDRC, investigators, and participants in the studies. The burden estimates are based on our experience with these reporting and recordkeeping requirements and the number of

submissions we received under the regulations over the past 3 years.

In the **Federal Register** of April 17, 2026 (91 FR 20659), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR section and applicable form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 361.1(c)(3) reports and (c)(4) approval (Form FDA 2914: Membership Summary) ² .	55	1	55	1	55
§ 361.1(c)(3) reports (Form FDA 2915: Study Summary) ^{–3}	35	9	324	3.5	1,134
§ 361.1(d)(8) adverse events	10	1	10	.5 (30 minutes).	5
Total			389		1,194

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM094979.pdf>.

³ <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM074720.pdf>.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR section	Number of recordkeepers	Number of records per recordkeepers	Total annual records	Average burden per record-keeping	Total hours
§ 361.1(c)(2) RDRC	55	4	220	10	2,200
§ 361.1(d)(5) human research subjects	35	9	324	.75 (45 minutes).	243
Total			544		2,443

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 52 hours and a corresponding decrease of 97 responses. This is attributed to the Agency receiving fewer submissions over the last few years due to decreased subject enrollment during the pandemic.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–15070 Filed 7–24–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in the state of Texas.

DATES: This determination takes effect on July 27, 2026.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (“DHS”) include

border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate, the President’s Executive Order on Securing Our Borders directs that I take all appropriate action to deploy and construct physical barriers to ensure complete operational control of the southern border of the United States. Executive Order 14165, section 3 (Jan. 20, 2025).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). Public Law 104–208, Div. C, Tit. I, section 102, 110 Stat. 3009–546, 3009–554 (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, Tit. I, section 102, 119 Stat. 302, 306 (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, section 3, 120 Stat. 2638 (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Tit. V, section 564, 121 Stat. 2042, 2090. In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated that in carrying out the authority of section 102(a), I provide for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors to achieve and maintain operational control of the border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol Big Bend and Del Rio Sectors are areas of high illegal entry. Between fiscal year 2021 and fiscal year 2025, Border Patrol apprehended over 89,000 illegal aliens attempting to enter the United States between border crossings in the Big Bend Sector. In that same time period Border Patrol seized over 87,574 pounds of marijuana, over 867 pounds of cocaine, over 1,156 pounds of methamphetamine, over 12 pounds of heroin, and over 94 pounds of fentanyl. Between fiscal year 2021 and fiscal year 2025, Border Patrol apprehended over 1,410,330 illegal aliens attempting to enter the United States between border crossings in the Del Rio Sector. In that same time period Border Patrol seized over 277 pounds of marijuana, over 198

pounds of cocaine, over 353 pounds of methamphetamine, and over five pounds of fentanyl.

Since the President took office, DHS has delivered the most secure border in history. More can and must be done, however. As the statistics cited above demonstrate, the Big Bend and Del Rio Sectors are areas of high illegal entry where illegal aliens regularly attempt to enter the United States and smuggle illicit drugs, and given my mandate to achieve and maintain operational control of the border, I must use my authority under section 102 of IIRIRA to install additional barriers and roads in the Big Bend and Del Rio Sectors. Therefore, DHS will take immediate action to construct additional barriers and roads in a segment of the border in the Big Bend and Del Rio Sectors. The segment where such construction will occur is referred to herein as the "project area," which is more specifically described in Section 2 below.

Section 2

I determine that the following area in the vicinity of the United States border, located in the state of Texas within the U.S. Border Patrol Big Bend and Del Rio Sectors, is an area of high illegal entry (the "project area"): Starting at approximately GPS point 29.728522, –102.683945 and extending east to approximately GPS point 29.449892, –101.058017.

There is presently an acute and immediate need to construct additional physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area pursuant to section 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of additional physical barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or

related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915, as amended, repealed, or replaced by Pub. L. 113–287 (formerly codified at 16 U.S.C. 470 *et seq.*, now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Pub. L. 113–287 (formerly codified at 16 U.S.C. 469 *et seq.*, now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.* and 16 U.S.C. 431a *et seq.*, now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.*, now codified at 54 U.S.C. 320301–320303 & 320101–320106); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); Section 438 of the Energy Independence and Security Act (42 U.S.C. 17094); the National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Wild Horse and Burro Act (16 U.S.C. 1331 *et seq.*); 43 U.S.C. 387; the Wild and Scenic Rivers Act (Pub. L. 90–542 (16 U.S.C. 1281 *et seq.*); the Federal Land Policy and Management Act (Pub. L. 94–579 (43

U.S.C. 1701 *et seq.*); the Wilderness Act (Pub. L. 88–577 (16 U.S.C. 1131 *et seq.*)); the National Park Service Organic Act and the National Park Service General Authorities Act (Pub. L. 64–235, 39 Stat. 535 and Pub. L. 91–383, 84 Stat. 825 as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (formerly codified at 16 U.S.C. 1, 2–4 and 16 U.S.C. 1a-1 *et seq.*, now codified at 54 U.S.C. 100101–100102, 54 U.S.C. 100301–100303, 54 U.S.C. 100501–100507, 54 U.S.C. 100701–100707, 54 U.S.C. 100721–100725, 54 U.S.C. 100751–100755, 54 U.S.C. 100901–100906, 54 U.S.C. 102101–102102)); 16 U.S.C. 156; 16 U.S.C. 157; 16 U.S.C. 157c; and 16 U.S.C. 157d.

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Markwayne Mullin,
Secretary of Homeland Security.

[FR Doc. 2026–15096 Filed 7–24–26; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2026–1783;
FXIA16710900000–267–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: Comments will be accepted on or before August 26, 2026. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by

11:59 p.m. eastern time on the closing date.

To ensure your comment is received and considered, you must submit it using one of the methods identified in the **ADDRESSES** section of this document. Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered.

ADDRESSES: Comment submission: All submissions must include the docket number [FWS–HQ–IA–2026–1783] for this document. You must submit comments using one of the following methods:

- **Electronic submission:** Federal eRulemaking Portal at: <https://www.regulations.gov>. In the Search box, enter FWS–HQ–IA–2026–1783, which is the docket number for this action. Then click the Search button. On the resulting page, you may submit a comment by clicking on “Comment.” Please ensure that you have found the correct document before submitting your comments.

- **U.S. mail:** Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2026–1783, Policy and Regulations Branch, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered. We will not accept comments via email, fax, or hand delivery. We are not required to consider comments that are submitted after the comment period ends or that are submitted via a method outside of these instructions. Comments containing profanity, vulgarity, threats, or other inappropriate content will not be considered.

We will post all comments at <https://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at DMAFR@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at <https://www.regulations.gov> unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and

DEFENDANTS' EXHIBIT 2

Big Bend Sector Drug Seizures – 2023 to Present

FY	Month	Drug Type	Sum Qty (lbs)
2023	APR	Cocaine	0
2023	APR	Ecstasy	0.0066
2023	APR	Fentanyl	31.7198
2023	APR	Heroin	0
2023	APR	Marijuana	611.6704
2023	APR	Methamphetamine	0.1168
2023	APR	Other Drugs**	1.6005
2023	AUG	Cocaine	42.2829
2023	AUG	Ecstasy	0.0669
2023	AUG	Fentanyl	0.3007
2023	AUG	Marijuana	281.8361
2023	AUG	Methamphetamine	0.2065
2023	AUG	Other Drugs**	1.2765
2023	DEC	Cocaine	45.961
2023	DEC	Fentanyl	2.0481
2023	DEC	Heroin	0.0249
2023	DEC	Marijuana	1386.335
2023	DEC	Methamphetamine	0.3369
2023	DEC	Other Drugs**	0.0073
2023	FEB	Cocaine	28.3881
2023	FEB	Ecstasy	0.0022
2023	FEB	Fentanyl	2.2465
2023	FEB	Heroin	0.0022
2023	FEB	Marijuana	1268.0753
2023	FEB	Methamphetamine	0.1679
2023	FEB	Other Drugs**	1.4167
2023	JAN	Cocaine	0.0551
2023	JAN	Heroin	0.0088
2023	JAN	Marijuana	2602.4162
2023	JAN	Methamphetamine	30.8369
2023	JAN	Other Drugs**	1.1866
2023	JUL	Cocaine	29.2921
2023	JUL	Ecstasy	0.0088
2023	JUL	Fentanyl	9.1491
2023	JUL	Heroin	1.8739
2023	JUL	Marijuana	1828.1138
2023	JUL	Methamphetamine	3.2851
2023	JUL	Other Drugs**	8.0379
2023	JUN	Cocaine	13.5872
2023	JUN	Ecstasy	0.0059

Big Bend Sector Drug Seizures – 2023 to Present

2023	JUN	Fentanyl	0.0022
2023	JUN	Marijuana	414.1408
2023	JUN	Methamphetamine	0.093
2023	JUN	Other Drugs**	2.661
2023	MAR	Cocaine	0.0031
2023	MAR	Fentanyl	2.3369
2023	MAR	Marijuana	565.0808
2023	MAR	Methamphetamine	0.0051
2023	MAR	Other Drugs**	0.1858
2023	MAY	Cocaine	25.6187
2023	MAY	Fentanyl	0.0176
2023	MAY	Marijuana	484.4352
2023	MAY	Methamphetamine	0.1499
2023	MAY	Other Drugs**	14.268
2023	NOV	Cocaine	0.0243
2023	NOV	Fentanyl	0.8913
2023	NOV	Marijuana	1322.3557
2023	NOV	Methamphetamine	4.647
2023	NOV	Other Drugs**	0.0332
2023	OCT	Cocaine	0
2023	OCT	Ecstasy	0.0186
2023	OCT	Marijuana	602.7953
2023	OCT	Methamphetamine	0.1448
2023	OCT	Other Drugs**	6.0882
2023	SEP	Cocaine	6.9687
2023	SEP	Ecstasy	0.4874
2023	SEP	Fentanyl	0.0084
2023	SEP	Marijuana	234.5697
2023	SEP	Methamphetamine	83.6204
2023	SEP	Other Drugs**	3.4689
		TOTAL	12009.0732
2024	APR	Cocaine	112.0234
2024	APR	Ecstasy	0.0143
2024	APR	Fentanyl	0.022
2024	APR	Heroin	0.0101
2024	APR	Marijuana	675.5057
2024	APR	Methamphetamine	287.5083
2024	APR	Other Drugs**	7.7567
2024	AUG	Cocaine	7.3008
2024	AUG	Ecstasy	0.0055
2024	AUG	Fentanyl	0.2354

Big Bend Sector Drug Seizures – 2023 to Present

2024	AUG	Marijuana	1019.8885
2024	AUG	Methamphetamine	0.0597
2024	AUG	Other Drugs**	1.4871
2024	DEC	Cocaine	0.0176
2024	DEC	Fentanyl	5.3124
2024	DEC	Marijuana	501.376
2024	DEC	Methamphetamine	0.1746
2024	DEC	Other Drugs**	2.1517
2024	FEB	Cocaine	0.004
2024	FEB	Marijuana	1134.4315
2024	FEB	Methamphetamine	0.1246
2024	FEB	Other Drugs**	5.8054
2024	JAN	Cocaine	134.4843
2024	JAN	Ecstasy	0.1089
2024	JAN	Fentanyl	10.7846
2024	JAN	Marijuana	585.352
2024	JAN	Methamphetamine	10.0173
2024	JAN	Other Drugs**	0.3178
2024	JUL	Cocaine	0.1191
2024	JUL	Fentanyl	0.0141
2024	JUL	Marijuana	1214.4037
2024	JUL	Methamphetamine	0.085
2024	JUL	Other Drugs**	1.7646
2024	JUN	Cocaine	0.0238
2024	JUN	Ecstasy	0.0452
2024	JUN	Fentanyl	0.097
2024	JUN	Heroin	2.478
2024	JUN	Marijuana	1780.955
2024	JUN	Methamphetamine	0.3278
2024	JUN	Other Drugs**	0.4261
2024	MAR	Cocaine	0.0415
2024	MAR	Fentanyl	4.1093
2024	MAR	Marijuana	1460.9701
2024	MAR	Methamphetamine	2.2835
2024	MAR	Other Drugs**	2.8191
2024	MAY	Cocaine	0.0478
2024	MAY	Ecstasy	0.002
2024	MAY	Marijuana	814.7259
2024	MAY	Methamphetamine	0.123
2024	MAY	Other Drugs**	170.7729
2024	NOV	Cocaine	3.065

Big Bend Sector Drug Seizures – 2023 to Present

2024	NOV	Fentanyl	2.4497
2024	NOV	Marijuana	884.9445
2024	NOV	Methamphetamine	0.0397
2024	NOV	Other Drugs**	0.2663
2024	OCT	Cocaine	0.1719
2024	OCT	Ecstasy	0.0068
2024	OCT	Fentanyl	0.0328
2024	OCT	Marijuana	1402.3108
2024	OCT	Methamphetamine	0.1211
2024	OCT	Other Drugs**	9.0653
2024	SEP	Cocaine	0.0325
2024	SEP	Ecstasy	0.0009
2024	SEP	Fentanyl	0.0022
2024	SEP	Marijuana	61.0225
2024	SEP	Methamphetamine	0.3082
2024	SEP	Other Drugs**	41.1765
		TOTAL	12363.9314
2025	APR	Cocaine	0.0476
2025	APR	Fentanyl	0.0154
2025	APR	Marijuana	897.2543
2025	APR	Methamphetamine	0.0892
2025	APR	Other Drugs**	0.7495
2025	AUG	Cocaine	3.5947
2025	AUG	Fentanyl	0.3638
2025	AUG	Heroin	0.0055
2025	AUG	Marijuana	247.7131
2025	AUG	Methamphetamine	0.1296
2025	AUG	Other Drugs**	1.1269
2025	DEC	Cocaine	0.0106
2025	DEC	Ecstasy	0.0042
2025	DEC	Fentanyl	5.3056
2025	DEC	Marijuana	480.7906
2025	DEC	Methamphetamine	0.1471
2025	DEC	Other Drugs**	1.1677
2025	FEB	Ecstasy	0.0044
2025	FEB	Fentanyl	0.1208
2025	FEB	Marijuana	2048.6763
2025	FEB	Methamphetamine	0.1534
2025	FEB	Other Drugs**	0.292
2025	JAN	Ecstasy	14.3928
2025	JAN	Marijuana	193.9075

Big Bend Sector Drug Seizures – 2023 to Present

2025	JAN	Methamphetamine	29.6932
2025	JAN	Other Drugs**	5.2922
2025	JUL	Cocaine	12.473
2025	JUL	Ecstasy	0.0516
2025	JUL	Marijuana	77.5533
2025	JUL	Methamphetamine	299.8153
2025	JUL	Other Drugs**	0.6756
2025	JUN	Cocaine	7.7665
2025	JUN	Marijuana	94.0485
2025	JUN	Methamphetamine	0.3101
2025	JUN	Other Drugs**	1.2538
2025	MAR	Cocaine	0.1347
2025	MAR	Ecstasy	0.0243
2025	MAR	Marijuana	84.5035
2025	MAR	Methamphetamine	23.1208
2025	MAR	Other Drugs**	8.6375
2025	MAY	Cocaine	19.2302
2025	MAY	Ecstasy	0.0002
2025	MAY	Fentanyl	4.8155
2025	MAY	Heroin	2.5573
2025	MAY	Marijuana	3003.6043
2025	MAY	Methamphetamine	18.9915
2025	MAY	Other Drugs**	2.0017
2025	NOV	Cocaine	0.0031
2025	NOV	Marijuana	1129.8556
2025	NOV	Methamphetamine	0.0347
2025	NOV	Other Drugs**	0.309
2025	OCT	Cocaine	23.2458
2025	OCT	Ecstasy	0.0247
2025	OCT	Fentanyl	3.3289
2025	OCT	Marijuana	365.686
2025	OCT	Methamphetamine	0.0163
2025	OCT	Other Drugs**	0.5824
2025	SEP	Cocaine	0.0407
2025	SEP	Marijuana	463.7726
2025	SEP	Methamphetamine	0.8125
2025	SEP	Other Drugs**	0.231
		TOTAL	9580.5605
2026	APR	Cocaine	0.0322
2026	APR	Ecstasy	0.0441
2026	APR	Fentanyl	4.2505

Big Bend Sector Drug Seizures – 2023 to Present

2026	APR	Marijuana	1325.2321
2026	APR	Methamphetamine	0.0489
2026	APR	Other Drugs**	2.3109
2026	DEC	Cocaine	0.0371
2026	DEC	Marijuana	2082.7041
2026	DEC	Methamphetamine	35.6601
2026	DEC	Other Drugs**	0.0877
2026	FEB	Cocaine	36.3523
2026	FEB	Ecstasy	0.0077
2026	FEB	Marijuana	1241.079
2026	FEB	Methamphetamine	0.2535
2026	FEB	Other Drugs**	1.1721
2026	JAN	Cocaine	0.0343
2026	JAN	Ecstasy	0.0022
2026	JAN	Heroin	5.1146
2026	JAN	Marijuana	509.515
2026	JAN	Methamphetamine	183.5784
2026	JAN	Other Drugs**	0.8264
2026	JUN	Cocaine	0.0044
2026	JUN	Heroin	0.0187
2026	JUN	Marijuana	356.6347
2026	JUN	Methamphetamine	20.6823
2026	JUN	Other Drugs**	1.461
2026	MAR	Cocaine	0.0452
2026	MAR	Ecstasy	0.0024
2026	MAR	Fentanyl	0.013
2026	MAR	Marijuana	2296.1742
2026	MAR	Methamphetamine	1.261
2026	MAR	Other Drugs**	0.4052
2026	MAY	Cocaine	0.0033
2026	MAY	Ecstasy	0.0082
2026	MAY	Fentanyl	0.0137
2026	MAY	Marijuana	724.3733
2026	MAY	Methamphetamine	3.1333
2026	MAY	Other Drugs**	0.691
2026	NOV	Cocaine	25.1657
2026	NOV	Ecstasy	0.0022
2026	NOV	Fentanyl	41.9205
2026	NOV	Marijuana	5602.8414
2026	NOV	Methamphetamine	54.8763
2026	NOV	Other Drugs**	0.8076

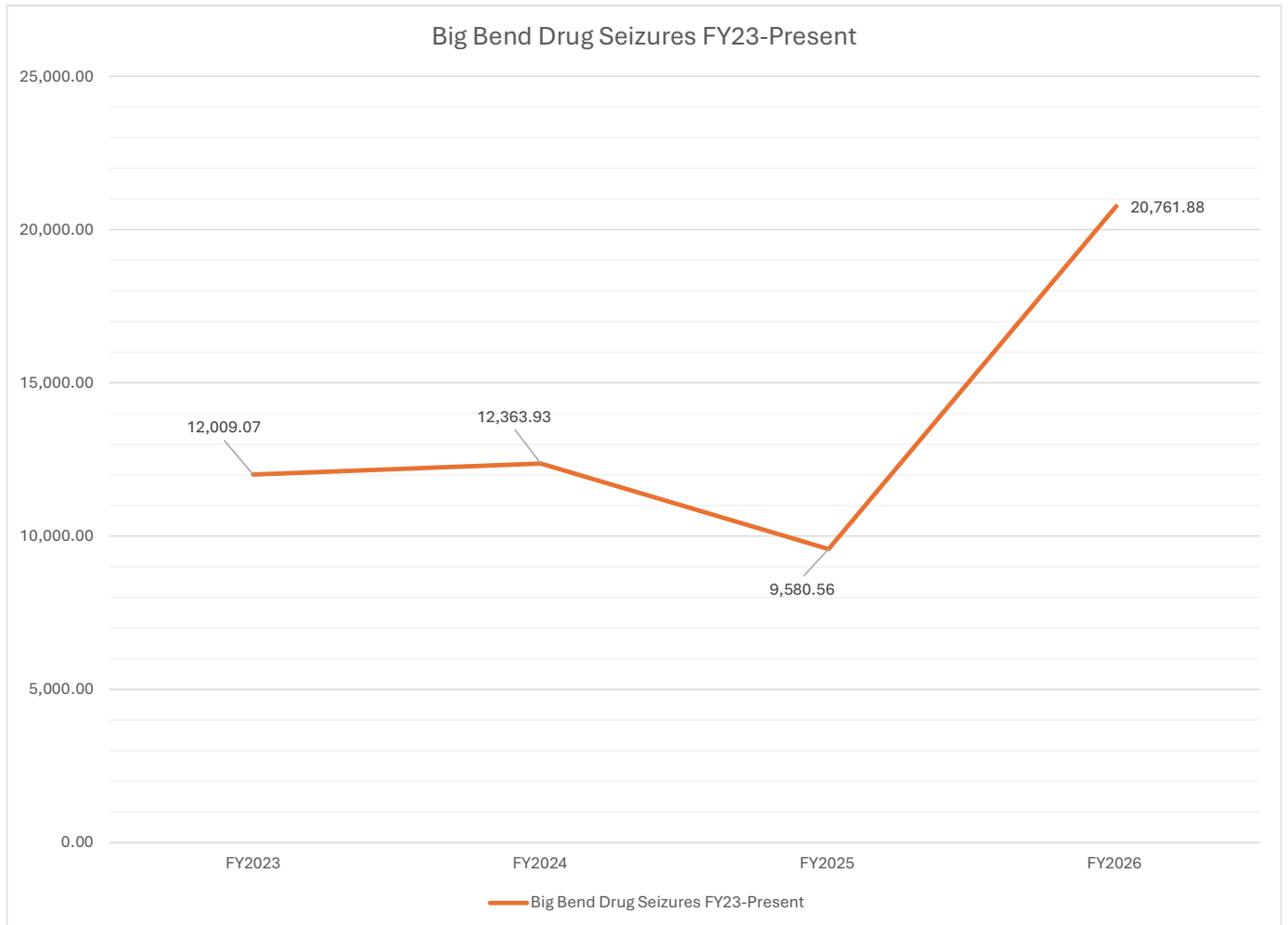
Big Bend Sector Drug Seizures – 2023 to Present

2026	OCT	Cocaine	32.0713
2026	OCT	Ecstasy	0.002
2026	OCT	Marijuana	272.0876
2026	OCT	Methamphetamine	0.0503
2026	OCT	Other Drugs**	1.3637
2026	JUL	Cocaine	0.0161
2026	JUL	Ecstasy	0.0013
2026	JUL	Marijuana	5896.5313
2026	JUL	Methamphetamine	0.414
2026	JUL	Other Drugs**	0.4647
		TOTAL	20761.8841

Source Data:

- <http://www.cbp.gov/document/stats/nationwide-drug-seizures>

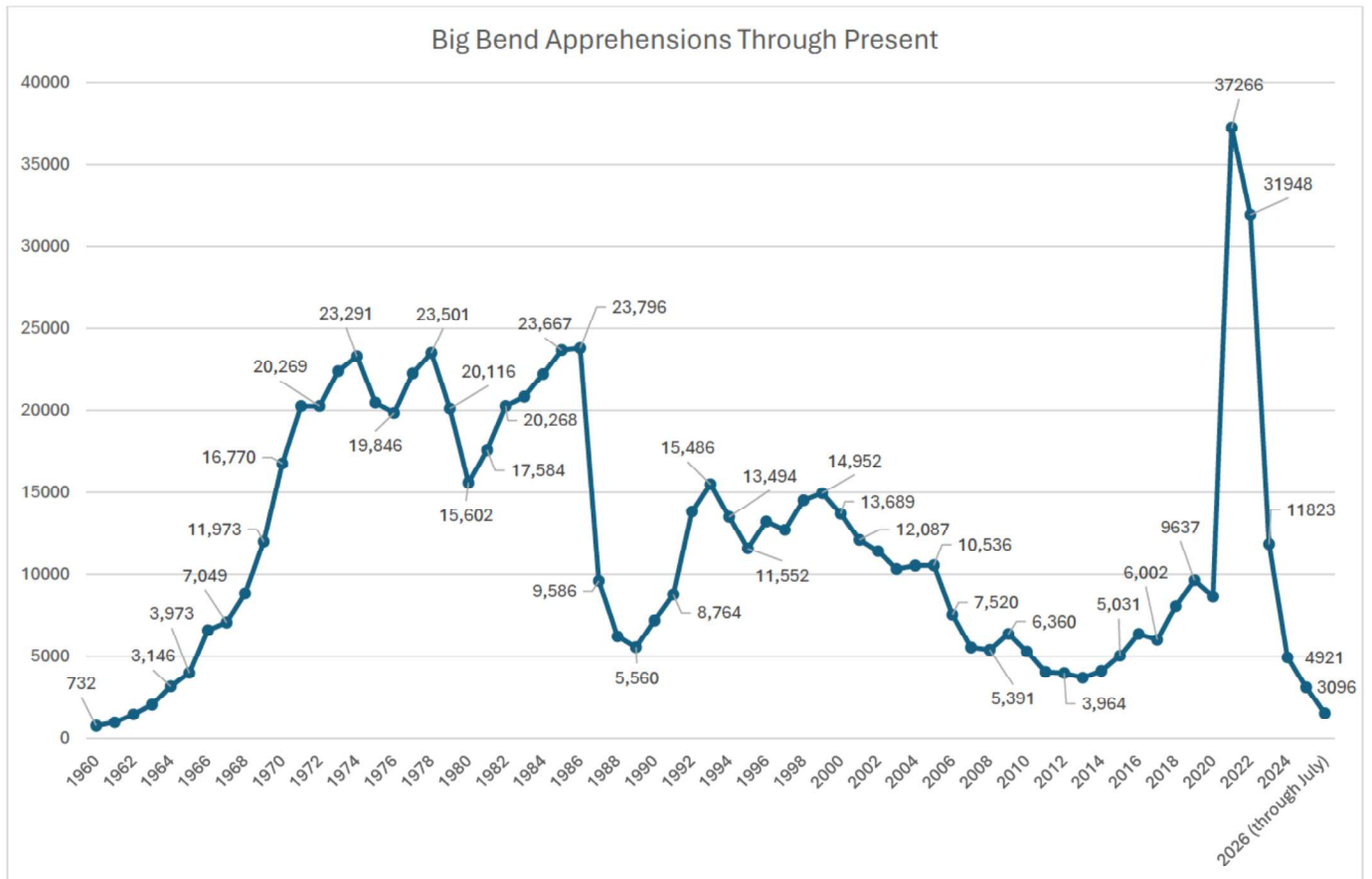
DEFENDANTS' EXHIBIT 3



Source Data:

- <http://www.cbp.gov/document/stats/nationwide-drug-seizures>

DEFENDANTS' EXHIBIT 4



Source Data:

- 1960-2018: <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-apps-fy1960-fy2018.pdf>
- 2019-2023: DHS Border Security Report - Fourth Quarter, Fiscal Year 2023 (January 9, 2025) (page 46, Appendix C, Table B1) (ECF No. 38-2)
- 2024-July 2026: FY23 - FY26 (FYTD) Nationwide Encounters by Area of Responsibility – July, at <https://www.cbp.gov/sites/default/files/2026-08/nationwide-encounters-fy23-fy26-jul-aor.csv>

DEFENDANTS' EXHIBIT 5

Big Bend Sector Encounters – 1960 to 2026

YEAR	ENCOUNTERS
1960	732
1961	954
1962	1,431
1963	2,026
1964	3,146
1965	3,973
1966	6,592
1967	7,049
1968	8,834
1969	11,973
1970	16,770
1971	20,269
1972	20,269
1973	22,378
1974	23,291
1975	20,472
1976	19,846
1977	22,239
1978	23,501
1979	20,116
1980	15,602
1981	17,584
1982	20,268
1983	20,829
1984	22,196
1985	23,667
1986	23,796
1987	9,586
1988	6,209
1989	5,560
1990	7,180
1991	8,764
1992	13,819
1993	15,486
1994	13,494
1995	11,552
1996	13,214
1997	12,692
1998	14,509
1999	14,952
2000	13,689
2001	12,087

Big Bend Sector Encounters – 1960 to 2026

YEAR	ENCOUNTERS
2002	11,392
2003	10,319
2004	10,530
2005	10,536
2006	7,520
2007	5,536
2008	5,391
2009	6,360
2010	5,288
2011	4,036
2012	3,964
2013	3,684
2014	4,096
2015	5,031
2016	6,366
2017	6,002
2018	8,045
2019	9637
2020	8627
2021	37266
2022	31948
2023	11823
2024	4921
2025	3096
2026 (through July)	1607

Source Data:

- 1960-2018: <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-southwest-border-sector-apps-fy1960-fy2018.pdf>
- 2019-2023: DHS Border Security Report - Fourth Quarter, Fiscal Year 2023 (January 9, 2025) (page 46, Appendix C, Table B1) (ECF No. 38-2)
- 2024-July 2026: FY23 - FY26 (FYTD) Nationwide Encounters by Area of Responsibility – July, at <https://www.cbp.gov/sites/default/files/2026-08/nationwide-encounters-fy23-fy26-jul-aor.csv>

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FRIENDS OF THE RUIDOSA)
CHURCH, et al.,) No. EP:26-CV-01099-KC
vs.) El Paso, Texas
MARKWAYNE MULLIN, et al.) October 2, 2026

PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: MS. ZEYNEP GRAVES
Center for Biological Diversity
2100 Franklin Street, Suite 375
Oakland, CA 94612

FOR THE DEFENDANTS: MR. ALEXANDER J. YUN
Trial Attorney, U.S. Dept. Of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005

Proceedings reported by the court reporter.
Transcript produced via computer-aided transcription.

1 COURTROOM DEPUTY: The Court calls case
2 EP:26-CV-1099, Friends of the Ruidosa Church, et al., vs.
3 Markwayne Mullin, et al.

4 THE COURT: And could I have announcements?

5 MS. GRAVES: Good morning, Your Honor. May it
6 please the Court. Zeynep Graves, Center for Biological
7 Diversity, on behalf of all plaintiffs; Friends of the
8 Ruidosa Church, Danny William Miller, Jr., and the Center
9 for Biological Diversity.

10 THE COURT: All right. And your name again?

11 MS. GRAVES: Zeynep Graves.

12 THE COURT: Okay. Thank you.

13 MS. GRAVES: And would you like me to introduce
14 my co-counsel? With me at counsel table are Emma Yip and
15 Shannon Eva Labuschagne from the Center for Biological
16 Diversity. And then in the bench behind we have Dustin
17 Rynders, Charlotte Weiss from Texas Civil Rights Project.
18 And we're also joined by Angelina Ramirez, a recent law
19 school graduate and fellow at Texas Civil Rights Project.

20 THE COURT: Okay. And then on behalf of the
21 respondents?

22 MR. YUN: Yes. Good morning, Your Honor,
23 Alexander J. Yun for defendants. And with me at counsel
24 table are Kristy Callahan and Pam Amaechi. And defendants
25 did just have two preliminary matters to address. We

1 could do that now.

2 THE COURT: Okay, go ahead.

3 MR. YUN: First of all, counsel has -- we've
4 spoken and we've agreed that all witnesses should be
5 excluded from the courtroom other than party
6 representatives and experts.

7 THE COURT: Okay.

8 MR. YUN: And, secondly, defendants would just
9 like to note that all witnesses have submitted
10 declarations in this case and, therefore, any testimony
11 should be limited to extra declaration testimony and we
12 would hope that the Court could limit that to maybe 20 to
13 30 minutes if possible. Plaintiffs had -- have indicated
14 that they opposed that, however.

15 THE COURT: All right. Well, let's go ahead and
16 identify the witnesses, bring them up since the rule has
17 been invoked, so that I can get them sworn in.

18 Are they all outside? Is that it? Yeah. Go
19 ahead and bring them in.

20 MS. GRAVES: I believe we have our experts in the
21 room and our party representatives if we would like to
22 start with them. It's not in the order in which we're
23 going to call them --

24 THE COURT: All right. But could -- could I have
25 all -- all the witnesses. Are they all present?

1 MS. GRAVES: Yeah.

2 THE COURT: Okay. If you'd all just come here,
3 line right up in front of the bench, that'd be perfect.
4 Right there.

5 And are we missing any witnesses or is this all
6 of them?

7 MS. GRAVES: We are. We are missing three
8 witnesses.

9 THE COURT: And where are they? Are they --

10 MS. GRAVES: Sorry --

11 THE COURT: Okay. Sorry, gentlemen. Give us
12 just a second.

13 MS. GRAVES: Your Honor, they're -- they're not
14 right out the courtroom right now because they have been
15 excluded and they weren't prepared to get sworn in at the
16 outset. My apologies.

17 THE COURT: Okay. So my only concern is that
18 the -- you told me these are all experts, right?

19 MS. GRAVES: No, it's -- so we have our two party
20 representatives and two experts and -- including our first
21 witnesses here. Yeah --

22 THE COURT: Okay. Well -- and so the two party
23 representatives are going to be remaining in the
24 courtroom. The first witness is fine and the two experts
25 get to remain in the courtroom. So the only ones I'm

1 worried about are the ones who are not experts or allowed
2 to remain in the courtroom and that's why we -- the rule
3 has been invoked. So I guess my only concern is that, you
4 know, they're not supposed to talk about the case and --
5 are they here in the courtroom or --

6 MS. GRAVES: And they've been informed of that --
7 well, the problem is they weren't allowed to bring their
8 cell phones in the courtroom, so -- my understanding is
9 one has just gone to their vehicle and --

10 THE COURT: All right. How about we do this.
11 I'll go ahead and get these sworn in and then when you
12 know that the other ones are available, let's bring them
13 in and get them sworn in and -- and I'll explain the rule
14 to them. Okay. Whenever you're ready.

15 MS. GRAVES: Okay.

16 (Witnesses duly sworn).

17 THE COURT: You can lower your hands, gentlemen.

18 My understanding is you all have various roles.
19 The rule has been invoked. It probably is not going to
20 apply to any of you, but I do want you all to be clear
21 that what that means is you cannot discuss the case,
22 certainly not with the other witnesses and not with people
23 in the audience, et cetera. Now, I assume all of you are
24 going to be allowed to remain in the room, but I do need
25 you, since you have been sworn in, to go ahead and give me

1 your name so that we have it on the record who's already
2 been sworn in.

3 So we'll start with you. Okay?

4 MR. RENFROW: Jeffrey Renfrow.

5 MR. MILLER: Danny Miller, but I go by Billy.

6 THE COURT: Okay.

7 MR. KRUMENAKER: Robert Krumenaker.

8 MR. GREEN: Michael Wilber Green.

9 MR. ISACSON: And Adam Isacson.

10 THE COURT: All right. Thank you, gentlemen.

11 All right. And he is going to be your first
12 witness? All right. So you can come on up. And,
13 gentlemen, you can resume wherever you are. I don't know
14 where everybody was.

15 And before we get started, I did receive the
16 posting this morning by the Government, I think it was
17 regarding the ruling by Judge Garcia out of San Antonio.
18 I've reviewed that. The way this Court views it is this
19 case presents different issues, and -- so we will proceed
20 this morning.

21 So whenever you're ready, you can begin.

22 MS. GRAVES: And, Your Honor, one more
23 housekeeping matter, if I may. If it pleases the Court,
24 we would like to actually move to admit Plaintiffs'
25 evidence P1 through P14 into the record to streamline our

1 proceedings this morning.

2 THE COURT: All right. And it is my
3 understanding those are pretty much agreed to. I know
4 there's some issues regarding some of the testimony. I've
5 reviewed that. I think they're all going to be admitted.

6 Does the -- does the respondent have any
7 objections?

8 MR. YUN: No objections, Your Honor.

9 THE COURT: All right. They will all be
10 admitted.

11 MS. GRAVES: Thank you.

12 ROBERT J. KRUMENAKER,
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GRAVES:

16 Q. Can you please state your name for the record?

17 A. Yes, my name is Robert Krumenaker.

18 Q. And, Mr. Krumenaker, what is your current occupation?

19 A. I am the volunteer chair of an organization called
20 Keep Big Bend Wild. I am also retired from the National
21 Park Service.

22 Q. And what were your responsibilities at the National
23 Park Service?

24 A. I was the national park superintendent of Big Bend
25 National Park and Rio Grande Wild and Scenic River from

1 2018 through 2023. And as the superintendent of a
2 national park the size of the state of Rhode Island and of
3 245 miles of the U.S.-Mexican border, I was responsible
4 for all national park operations and management, which
5 included budget and personnel. I was also responsible for
6 law enforcement, natural resources, cultural resource
7 management, all visitor services and all external
8 relationships with the community and the political world.

9 Q. Thank you. Did your work include coordinating with
10 Border Patrol and other law enforcement agencies?

11 A. Yes, very much. There were eight Border Patrol
12 agents that, at their maximum staffing, were stationed in
13 the park and they were our colleagues and force
14 multipliers for what we did. They lived in our community.
15 I had first-name relationships with their bosses at the
16 Alpine subsector and the Marfa sector. The Big Bend
17 sector chief, we spoke on a regular basis and we also
18 worked with the county sheriff, all of the National Park.
19 In Brewster County, Texas, we worked with him and his
20 staff very closely.

21 Q. During your time as superintendent, how was border
22 enforcement carried out in the park?

23 A. It was very cooperative and clearly the Border Patrol
24 had the lead. The National Park Service had, at our full
25 staffing, 18 to 20 law enforcement rangers and all of them

1 were patrolling the park, although obviously for somewhat
2 different purposes. When Border Patrol had an incident,
3 they often asked for our help. Often we were the first
4 people that came across someone who had migrated into the
5 park and and so, generally, whoever was closer was the
6 first on scene. And it was very cooperative.

7 There was also a very large network of wireless
8 sensors in the National Park that were jointly operated by
9 the Border Patrol, the National Park Service and the
10 county. And there were aerial patrols that were done by
11 the National Park Service. We had our own plane and
12 pilot, and the Border Patrol also did aerial patrols.

13 Q. And, in your experience, were those measures
14 effective?

15 A. There were some people that did cross the border, but
16 they were very effective. Almost everyone who crossed,
17 the Border Patrol told me, was apprehended in the park and
18 that was always peaceful. And most of those folks
19 actually gave themselves up along existing roads. And so
20 it worked very well. And never in my five-year time did
21 any Border Patrol officials say that they needed any
22 additional infrastructure at the scale that's being
23 contemplated right now.

24 Q. And during your time as superintendent, did you track
25 apprehensions in the park?

1 A. I -- the Border Patrol supervisor in the National
2 Park shared data with our staff and I compiled that in an
3 Excel spreadsheet on an annual basis and left that behind
4 when I -- when I retired.

5 Q. And why did you do that?

6 A. It was -- it was obviously of great interest to us
7 how much activity was going on in the border. We needed
8 to understand what our partners were doing, we needed to
9 understand the magnitude of the -- of the issue. And I
10 was -- the Mexican border was always an issue politically
11 in Washington, so I needed to be able to explain what --
12 what was going on.

13 Q. I'm going to show you Plaintiffs' Exhibit 2 --

14 MS. GRAVES: Ms. Padilla-Yanez, could you
15 publish?

16 Q. (BY MS. GRAVES) What does the column "Apprehensions
17 inside Big Bend National Park Per Mile Per Month" show?

18 A. That is a mul -- a division. Let me take you over to
19 the left column. The Apprehensions Inside Big Bend
20 National Park, those were the numbers that the Border
21 Patrol shared with us and, since my retirement, the
22 numbers came from a Freedom of Information Act request
23 that I filed on behalf of Keep Big Bend Wild. So that is
24 the actual number of apprehensions inside the national
25 park.

1 The column that you have referred to, which is
2 the fourth, fifth column from the right, "Apprehensions
3 Inside Big Bend National Park Per Mile Per Month." Is
4 that number in the yellow left column divided by 118,
5 which is the number of miles of border inside the national
6 park divided by 12, number of months per year.

7 Q. And what do the figures reflected in Plaintiffs'
8 Exhibit 2 show about the level of unlawful migrant
9 activity within the national park?

10 A. It was extremely low. The border -- CBP, in their --
11 actually Department of Homeland Security, in their waiver
12 documents, aggregated data for the last five years. So
13 the last row in there, 21 to 25, is the data comparable to
14 the numbers that -- that Homeland Security had.

15 So looking at the total number of people inside
16 the national park, 14,130 in that five-year period.
17 Compared to the entire sector, which is 89,000-plus, it
18 was very small. And the number in red in the right
19 section, third column from the right, is the percentage of
20 apprehensions inside the national park compared to the
21 entire border, and it was 0.016 percent, less than 0.2
22 percent over that five-year period that Homeland Security
23 is saying there is a national emergency.

24 Q. In the table in Plaintiffs' Exhibit 2, is this
25 different from the table you attached to your declaration

1 supporting Plaintiffs' Preliminary Injunction Motion?

2 A. Yes. Yes, the the original Freedom of Information
3 Act response from the National Park Service had an error
4 in it for 2025. There they had given two documents and
5 they were inconsistent with one another. And so when
6 looking at the the document, which was month by month, I
7 noted that they had made a mathematical error and pointed
8 that back out to the FOIA officer of the National Park
9 Service and said, "Can you update that with the correct
10 numbers?"

11 So that was revised just recently. And so what
12 you -- what we see in front of us reflects the updated
13 FOIA numbers. The only difference was in 2025.

14 THE COURT: Can I just clarify something? It
15 says it's compiled by you, so I'm trying to understand:
16 Did -- did this come from --

17 THE WITNESS: Yes.

18 THE COURT: -- Washington? Or is this something
19 you compiled?

20 THE WITNESS: I put the numbers together in the
21 spreadsheet. So if -- if you look below the table, there
22 are the sources for all the numbers. So it's my Excel
23 spreadsheet, but the numbers in the left column inside
24 B&P, the yellow column, those came from the FOIA and --
25 and that came from the regional office in Denver, from the

1 National Park Service, and all of the other numbers are
2 from publicly available sites that CBP has published.

3 THE COURT: All right. So you created the
4 spreadsheet?

5 THE WITNESS: I created the spreadsheet. I did
6 not create the data.

7 THE COURT: All right. Thank you.

8 THE WITNESS: You're welcome.

9 Q. (BY MS. GRAVES) And we're bringing up what has been
10 marked as Plaintiffs' Exhibit 3.

11 Is this the FOIA data that you used to create
12 that spreadsheet?

13 A. Yes. This is -- what you're showing in front of me
14 is the narrative explaining the data, but they also -- if
15 you keep going, there's probably the actual numbers. Yes,
16 these numbers are the ones in that leftmost yellow column.
17 So this came from the National Park Service.

18 THE COURT: And it's the updated one, correct?
19 Because it says September 21st. Okay. Thank you.

20 THE WITNESS: That's correct.

21 Q. (BY MS. GRAVES) And are you familiar with the terrain
22 in Big Bend National Park?

23 A. Yes.

24 Q. And how about the Rio Grande Wild and Scenic River
25 corridor?

1 A. Yes.

2 Q. And are you familiar with the terrain in Mexico
3 adjacent to the national park and can you briefly describe
4 those terrains?

5 A. I am, yes. This is really remote area that is marked
6 by river canyons, Some are as much as 1500 feet high, and
7 mountains that go up to 7800 feet high. And in between,
8 you're looking at incredibly rugged terrain, many smaller
9 canyons, arroyos, some steep cliffs. Very, very difficult
10 terrain to traverse immediately along the river on both
11 sides. There's dense riparian vegetation, which is often
12 very hard to get through, and then almost everywhere else
13 there's desert vegetation, which, while sparser, almost
14 everything is sharp and and extremely hazardous. And so
15 it is almost exactly the same on the Mexican side for even
16 more miles than on the American side.

17 Q. And, in your experience, how easy is it to travel
18 through Big Bend National Park?

19 A. Well, if you're a tourist and you stick to the roads
20 and trails, it's fairly easy. But going cross-country?
21 Legally or illegally is extremely difficult. It is just
22 rough terrain. It is up and down. It is deceptively
23 complicated terrain. If you look from Point A to Point B
24 and you think you can go on a straight line, when you
25 actually try walking it, you find that you can't. And

1 there's -- there's arroyos and it's really hard to get
2 from one place to another safely and there's virtually no
3 water. And so this is a hot desert climate, not unlike
4 what we have here in El Paso, down by the river. It's
5 often 110 or 120 degrees in the summertime. And so anyone
6 who's traveling cross country who is not well prepared
7 with good maps, GPS and all the rest is -- is going to get
8 themselves in trouble.

9 Q. And based on your experience as superintendent, what
10 features make Big Bend National Park unique or
11 significant?

12 A. It's one of the wildest places in the Lower 48. Both
13 physically wild, as I've described, but also
14 psychologically wild. These -- this area has the darkest
15 night skies in the Lower 48 that's been documented. In
16 fact, it's part of the world's largest international dark
17 sky reserve, including the Mexican lands. And so if you
18 are in Big Bend National Park, even as what we call a
19 "windshield tourist", you can generally see virtually no
20 other signs of -- of -- of human development from where
21 you are at that time. It's got the greatest wildlife
22 assemblage anywhere in the state of Texas and great
23 recreational opportunities on the river, as well as hiking
24 and -- and horseback riding, et cetera. So people love
25 the park because it is so, so different from almost

1 everything else they've ever seen.

2 Q. And how would you describe the character of the Rio
3 Grande Wild and Scenic River corridor?

4 A. Much of the the Wild and Scenic River begins inside
5 the national park and then it flows out of the national
6 park. And so I'll describe the area outside the national
7 park. Those are -- it's generally referred to as the
8 lower canyons, and I'm not sure the exact elevation of the
9 canyon rims, but it's well over 1,000 feet for most of it.
10 It is just as wild and remote. And in fact, because there
11 are not as many tourist facilities, it's actually more
12 remote in many ways than it is inside the National Park.

13 THE COURT: Can I ask a favor? I know one of
14 your exhibits is the map. It would probably be helpful
15 if, as he's describing these areas, we have the map.

16 MS. GRAVES: Yeah. And we also have a
17 demonstrative in, like, a larger poster size, if that
18 would be more helpful?

19 THE COURT: That would not be more helpful.

20 MS. GRAVES: Okay. We can pull up the digital
21 exhibit.

22 THE COURT: Okay. That would be perfect.

23 MS. GRAVES: And can we publish this exhibit?

24 Thank you.

25 THE COURT: Okay. So could I ask you to sort of

1 reiterate -- and the screen in front of you, actually, you
2 can touch and mark. So as you're talking about those
3 various areas, if you could mark what you're talking
4 about, that would be helpful.

5 THE WITNESS: Okay. Yes, thank you.

6 So Big Bend National Park is this, the area in
7 green. The upstream boundary is right there, downstream
8 boundary is right there. That's 118-mile span of the
9 border where the entire Big Bend sector is 517 miles. So
10 it's 23 percent of that.

11 The Rio Grande Wild and Scenic River starts in
12 the park roughly there and extends to -- actually to the
13 sector boundary over here, that which is the county line
14 as well. So between -- from this upstream point to the
15 downstream point, I had some administrative
16 responsibilities for 245 miles of the border.

17 THE COURT: Thank you.

18 THE WITNESS: You're welcome. I should also
19 point out that Mexico has protected lands all over here
20 that many people would love to see it be an international
21 park. It's a different paradigm there. But these are
22 also lands that, while there are private individuals that
23 live there, it's a little different than in the U.S.
24 It's -- it's generally wild land and there are no paved
25 roads anywhere in that vicinity.

1 THE COURT: Thank you.

2 THE WITNESS: You're welcome.

3 Q. (BY MS. GRAVES) And are you familiar with the
4 proposed border barrier construction within the park and
5 along the Wild and Scenic River corridor?

6 A. Yes, I am.

7 Q. And based on your experience as superintendent, how
8 would the proposed construction affect the character of
9 the park?

10 A. As I said earlier, a huge part of what makes Big Bend
11 so unique as an American landscape and protected area by
12 the Congress is the fact that there is so little visible
13 development. I will say there are paved roads, there are
14 trails, there are -- there are lodges and other things,
15 but they are in corridors in the park and everything
16 between the corridor is -- is pretty wild. So the fact
17 that this infrastructure that Border Patrol is -- or CBP
18 is proposing -- which I will also point out is very hard
19 to figure out what they're proposing because their
20 information has changed frequently and it's vague on their
21 websites. But, nonetheless, 17 miles of vehicle
22 barriers -- and, Judge, there would be some over here.
23 Some on this side of the canyon and on this side of the
24 canyon, and then right over here at the edge of the park.
25 So the -- the two -- the east and most west

1 section are partially in the park and partially out, and
2 the two in the middle are totally in the park. These are
3 vehicle barriers. And I will point out that in those
4 middle ones, there are no Mexican roads on the other side.
5 There's also very steep cliffs. They are proposing about
6 61 miles, I believe, of new patrol routes that would
7 parallel existing national park roads that the Border
8 Patrol currently uses. In between those roads and the
9 river, one of those would go over this mountain right over
10 here, needing to climb 1700 feet to get over that
11 mountain. And while they deny blasting, engineers that --
12 that I'm familiar with have said there's no way you could
13 build that without blasting.

14 There are also a total of 205 miles of what are
15 vaguely called system attributes, which, as we best can
16 figure out, are -- includes the new patrol road and
17 upgrades to existing roads and buried communication
18 cables, power lines -- we don't know whether they'd be
19 buried or not -- possibly man camps, possibly wells that
20 would affect the -- the groundwater in the park, which is
21 fundamental to the administrative facilities as well as
22 several endangered species. This is what I call massive
23 infrastructure. It would be major development in areas
24 that the park service has -- has very intentionally not
25 developed. It would impact wildlife, it would impact

1 scenic views, It would have major impact on the
2 recreational experience of anyone who wanted to use the
3 river or anyone who's in the park and values the open
4 space and not seeing anything else.

5 Q. Thank you. And how would the proposed construction
6 affect the character of the Wild and Scenic River
7 corridor?

8 A. There's -- I don't know the miles, but all along here
9 there is a proposed vehicle barrier as well. It looks
10 like it's proposed to be continuous. The judge -- oh.
11 And actually -- yeah. Sorry. The -- the sheriff from
12 Terrell County, which is this area here, who has 25 years
13 of experience with the Border Patrol has publicly said
14 that's an absurd thing. I agree with that. He's more
15 expert than I. But most of those barriers would be at the
16 top of canyon rims and there's just no way for a vehicle
17 to actually get from the river to the top of the canyon
18 rim. So it is overkill in -- in -- in the biggest way.

19 Q. Thank you. And during your tenure, were there any
20 physical border barriers within the park or along the Wild
21 and Scenic section of the Rio Grande?

22 A. There were no physical barriers anywhere in the
23 national park or the Wild and Scenic River in my tenure.

24 Q. And despite the absence of barriers, did border
25 enforcement operations continue within the park?

1 A. Yes, they did.

2 Q. And based on your experience as superintendent, would
3 a temporary pause in construction impact how border
4 enforcement agencies operate within the park?

5 A. I can't see how it would have any impact at all.

6 MS. GRAVES: Thank you.

7 No further questions.

8 THE COURT: All right, on behalf of the
9 respondent?

10 MS. AMAECHI: Yes, we have some questions, Your
11 Honor.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MS. AMAECHI:

15 Q. Hello, Mr. Krumenaker. How are you?

16 A. I'm well, thank you.

17 Q. Good. You were superintendent of Big Bend National
18 Park from 2018 to 2023, correct?

19 A. Yes.

20 Q. You have never been employed by DHS or CBP, correct?

21 A. That's correct.

22 Q. You have never been trained as a Border Patrol agent,
23 correct?

24 A. Correct.

25 Q. You retired from the National Park Service in 2023,

1 July, correct?

2 A. Yes.

3 Q. And since July 2023, you have not had any official
4 role within the federal government, correct?

5 A. Correct.

6 Q. I want to show you the exhibit that you submitted
7 with your declaration.

8 Do you recognize what's on the screen?

9 A. There's nothing on my screen.

10 THE COURT: It will be in just a second.

11 A. Yes, I recognize that.

12 Q. (BY MS. AMAECHI) Perfect. Can you just tell the Court
13 again what this document is?

14 A. This is a spreadsheet that I compiled, as I described
15 to the judge a few minutes ago, from data that was
16 obtained through a Freedom of Information Act that --
17 that -- I submitted and received the data from the
18 National Park Service. That is the left yellow column.
19 All the other data comes from publicly available sites
20 from CBP's websites.

21 Q. Perfect. We'll just wait one second for it to come
22 up.

23 So this is a chart of illegal migrant activity in
24 and around Big Bend National Park, correct?

25 A. That is the title I put on it, yes.

1 Q. And you compiled this, correct?

2 A. I compiled the data from the Freedom of Information
3 Act data that had been supplied by the National Park
4 Service. That data came from the Border Patrol. All the
5 other data came from publicly available sites. But, yes,
6 I put it on a spreadsheet myself.

7 Q. Is it possible that the numbers are incomplete?

8 A. Say again, please?

9 Q. Is it possible that the numbers are incomplete?

10 A. I have no reason to think that that the publicly
11 available data nor the data that the Border Patrol shared
12 with the National Park Service are not accurate. I am
13 simply reporting the data that they have provided.

14 Q. Okay. Do you recall four groups of migrants that CBP
15 apprehended in December 2024 in Big Bend National Park?

16 A. I was not there in December 2024. I have no
17 knowledge of that.

18 Q. Okay. Did the data you compiled show those groups of
19 migrants?

20 A. If that is included in the data that the Border
21 Patrol agents have shared with the National Park Service,
22 then yes.

23 Q. Okay. So you were not aware of a group of 23
24 migrants that came over in December 2024, correct?

25 A. I do not have any knowledge of specific groups after

1 I departed from the National Park Service. I am reporting
2 simply the data that the -- that the Border Patrol agents
3 in the National Park Service have provided to the National
4 Park Service.

5 Q. Okay. So you're not aware of a total of 163 migrants
6 that CBP apprehended inside Big Bend National Park just in
7 December 2024, correct?

8 A. I have no knowledge of whether that happened or not,
9 so I -- I'm not denying knowledge of 163. I'm denying
10 knowledge of that incident. I only know of the numbers
11 that the Border Patrol has shared with the National Park
12 Service and have no reason to think that, if there were
13 that number of people that were apprehended inside the
14 national park, they would not have shared that data with
15 the National Park Service.

16 Q. Okay. And the number that you listed in your exhibit
17 for 2024 inside that second row titled "Inside Big Bend
18 National Park," that number says 102, correct?

19 A. Yes.

20 Q. Okay. And that number isn't 163, correct?

21 A. The number is 102 because that's the number the
22 Border Patrol shared with the National Park Service.

23 Q. Okay. And it's the number that you compiled, right?

24 A. I have simply taken the number that the Border Patrol
25 shared with the National Park Service that the National

1 Park Service provided to me in a Freedom of Information
2 Act and put it on a spreadsheet.

3 Q. One other question: On the third to last row from
4 the bottom -- if we could --

5 A. Scroll up, please, so I can see which row that is.

6 MS. AMAECHI: Can we go back to Exhibit 1? The
7 same document. Perfect. You can stop there. Thank you.

8 Q. (BY MS. AMAECHI) Do you see the row that says "2016
9 to 2025 Total"?

10 A. Yes.

11 Q. And do you see the column that is labeled "Entire Big
12 Bend Sector"? I believe it's the third column.

13 A. Yes.

14 Q. Is it right that from 2016 to 2025, Border Patrol
15 apprehended 127,732 people in the Big Bend sector?

16 A. I have no personal knowledge of that. I'm simply
17 reporting what the Border Patrol -- what CBP has put on
18 their public websites.

19 Q. But it's the number that you compiled and that you
20 listed here, correct?

21 A. Yes, from publicly available sources.

22 Q. Okay. You would agree that these numbers do not
23 account for undetected border crossings, correct?

24 A. These are apprehensions.

25 Q. Okay. So it's people who -- people who cross the

1 border but were not detected. This number doesn't reflect
2 that, correct?

3 A. Correct.

4 Q. You would agree that people who cross the border
5 sometimes carry drugs, correct?

6 A. I have no knowledge of what those people carry.

7 Q. Do you have knowledge of whether they carry guns?

8 A. I have no knowledge of what they carry.

9 Q. You have no knowledge of what they carry, correct?
10 But you said that you worked with CBP earlier when you
11 were superintendent.

12 A. Yes.

13 MS. AMAECHI: No further questions, Your Honor.

14 THE COURT: All right. Anything further?

15 MS. GRAVES: Just one quick question.

16 REDIRECT EXAMINATION

17 BY MS. GRAVES:

18 Q. I'm going to show you what is labeled as Plaintiffs'
19 Exhibit 3. And this is, I believe, Page 3 of Plaintiffs'
20 Exhibit 3 -- sorry, Page 4, Plaintiffs' Exhibit 3. Under
21 2024, can you read out the number that Mr. Rick Gutman
22 from National Park Service provided you for the number of
23 unlawful apprehensions -- migrant apprehensions in 2024?

24 A. Is this what we're talking about from the chart?
25 What I've circled? 102.

1 Q. Yeah. Thank you.

2 MS. GRAVES: No further questions.

3 THE COURT: All right. I have a quick question
4 for you and I would ask -- I don't know who has the map
5 that -- if you could put up the map.

6 Okay. So on this map, what you drew on
7 previously, you'll note that there is -- it's labeled
8 BBT1, BBT22, BBT3. You see that correct?

9 THE WITNESS: Yes.

10 THE COURT: All right. And you specifically
11 designated BBT4 as where the area of the Big Bend National
12 Park is, correct?

13 THE WITNESS: Yes. I -- I didn't label it, but
14 it's my understanding that BBT4 includes the national park
15 as well as a little bit of land outside --

16 THE COURT: Okay. Do you know -- I'm sorry. I
17 didn't mean to interrupt.

18 So do you know what these different areas are
19 specifically or do you only know where the Big Bend
20 National Park -- you didn't create this map?

21 THE WITNESS: I did not create this map, but --
22 but I will say those -- the numbers are referring to the
23 contracts that CBP has issued. I don't know if the
24 boundaries are in the correct place. I did not compile
25 them out.

1 THE COURT: Okay. Okay. So if somebody could
2 display Exhibit 2 -- so in Exhibit 2 where it says "Inside
3 Big Bend National Park" and the numbers there, is that
4 referring to what's essentially labeled on that map as
5 BBT4? Are those -- those numbers, is that what we're
6 talking about?

7 THE WITNESS: These numbers would be within BBT4.
8 There is a little bit of BBT4 that is outside the park,
9 but this is the vast majority of BBT4.

10 THE COURT: Okay. Okay. And then where it says
11 "Entire Big Bend Sector," does that then encompass all of
12 the rest of those BBTs that are labeled or do you know?

13 THE WITNESS: Yes, it would be 1 through 5,
14 including 4.

15 THE COURT: Okay. So does BB -- I'm sorry. Does
16 Entire Big Bend Sector not only include 1 through 5, but
17 it also includes 4 in there.

18 THE WITNESS: Yes, that's correct.

19 THE COURT: So 4 is twice. It's -- it's
20 individualized in the first column. It's also included in
21 the second column.

22 THE WITNESS: That's correct, yes. It is a
23 subset of what's in the second column.

24 THE COURT: All right. Thank you.

25 MS. GRAVES: No further questions.

1 THE COURT: All right. On behalf of the
2 Government? Anything further?

3 MS. AMAECHI: Nothing further.

4 THE COURT: All right. Thank you.
5 You may call your next witness.

6 MS. GRAVES: Plaintiffs call Adam Isacson.

7 THE COURT: And he's already been sworn in, so
8 whenever you're ready.

9 ADAM B. ISACSON,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. GRAVES:

13 Q. Please state your name for the record.

14 A. Hi, I'm Adam Isacson.

15 Q. And have you been retained to reach an expert opinion
16 in this case?

17 A. Yes, I have.

18 Q. And did you form an opinion about the unlawful entry
19 activity in the Big Bend sector?

20 A. Yes, I did.

21 Q. And we'll talk about your opinion in detail in a bit,
22 but first, let's talk about your qualifications to testify
23 as an expert in this case.

24 Where do you currently work?

25 A. I work at a nonprofit and -- based in Washington

1 called the Washington Office on Latin America.

2 Q. And what is your current position at that
3 organization?

4 A. My title is director for defense oversight, where my
5 focus is security issues, including border security.

6 Q. And how long have you served in that role?

7 A. I've been at WOLA, the Washington Office on Latin
8 America, since 2010 and ran a similar project at the
9 Center for International Policy since 1995.

10 Q. And what does your work as director for defense
11 oversight involve?

12 A. It involves oversight, as you might imagine, of U.S.
13 security assistance, foreign aid to military and police.
14 Since 2011, we have managed a project that monitors border
15 security throughout the entire U.S.-Mexico border as well
16 as how that relates to migration along the migrant route
17 through Latin America to the border. We are a Latin
18 America-focused organization, so we go from the border
19 south and we don't work very much in the U.S. interior.

20 Q. And before joining the Washington Office on Latin
21 America, where did you work?

22 A. I worked for a similar nonprofit called the Center
23 for International Policy.

24 Q. And did you analyze data in that role?

25 A. I analyzed data mainly about U.S. security assistance

1 in that role, yes.

2 Q. And how long did you serve in that position?

3 A. From 1995 to 2010.

4 Q. And could you please describe your educational
5 background?

6 A. Sure. I have a master's in international relations
7 from Yale University and a Bachelor of Arts in social
8 sciences from Hampshire College.

9 Q. And how long have you worked on issues relating to
10 border security and migration?

11 A. 15 years since 2011.

12 Q. And have you published any work about border security
13 and migration?

14 A. Published numerous reports and book chapters, yes.

15 Q. And you also publish a regular U.S.-Mexico border
16 update?

17 A. We do. We -- we publish a border update that is a
18 rather popular product.

19 Q. And what is that?

20 A. We -- I basically am gathering information from all
21 sources, every source that I can, as well as what I
22 learned in meetings with people from up and down the
23 border. And every two weeks we put out a synthesis of
24 trends and a lot of data. It tends to be sort of data
25 heavy about what is happening up and down the border.

1 Q. And how frequently is that published?

2 A. It's biweekly.

3 Q. And approximately how many in-depth reports have you
4 authored or supervised concerning border and migration
5 issues?

6 A. Reports about border and migration that I found
7 consequential enough, say, to list in my CV, I counted 28.

8 Q. And how about articles?

9 A. A much larger number than that.

10 Q. Are you aware of any peer-reviewed journals that have
11 cited your work on migration and border security?

12 A. Yeah. I mean, I -- I -- I Googled -- I used Google
13 Scholar to look at -- of those 28, at least five of them
14 have more than 25 citations.

15 Q. Have you previously testified or presented expert
16 analysis concerning border security, migration or related
17 issues?

18 A. I've never testified in federal court on this before.
19 I have submitted declarations or had access to information
20 through discovery. That's about it.

21 Q. And have you testified before Congress on border
22 matters?

23 A. Past cases, yes.

24 Q. And how did you develop your knowledge and skills in
25 analyzing data?

1 A. I developed them mainly through -- it's going to be
2 very nerdy here, but collecting data using database
3 technology as it evolved over the years. I taught myself
4 the MySQL, MySQL, database language, HTML to present data,
5 PHP and Python languages in order to extract data from
6 large datasets as well as just learning where, online or
7 elsewhere. And in CBP's datasets or in, you know,
8 things -- things that Congress is able to report on, you
9 could find data quickly and then tabulate it.

10 Q. And does your work regularly require you to analyze
11 and interpret quantitative data?

12 A. Yeah. I -- I think we've become known for that over
13 the years as regular producers of hard-to-find numerical
14 data about security as well as, you know, producing
15 infographics and other visual aids to make it easier to
16 understand.

17 Q. And let's talk briefly about the materials you
18 reviewed in this case.

19 Did you review what's called "discovery" in
20 connection with this case? In other words, the written
21 materials that were provided to plaintiffs by defendants?

22 A. I did. I did.

23 Q. And do you recall what those materials covered?

24 A. They did not cover a lot, to be honest. They did not
25 provide a lot of new -- really very little that I could

1 find useful in addition to what was already in the public
2 domain.

3 Q. And what other materials did you review?

4 A. I relied heavily on almost pretty much entirely from
5 CBP. CBP does produce its apprehension data going back to
6 1925 when the Border Patrol was founded, but particularly
7 by sector since 1960 and then monthly data since 2000 --
8 2000, rather, and monthly data about apprehensions by a
9 whole range of characteristics like nationalities and
10 demographics, et cetera, since 2020.

11 Q. Did you also review drug seizure datasets?

12 A. I did. CBP also publishes drug seizure data going
13 back -- I have it since 2000 -- fiscal 2018, but you can
14 find the full dataset from fiscal 2020.

15 Q. And did you review any information obtained through
16 FOIA requests?

17 A. I did. CBP's FOIA page -- library page does include
18 since, I believe it's 2010, row by row tables where they
19 have -- show the characteristics of every single migrant
20 who was apprehended or encountered during those years.

21 Q. And are you being compensated for your work in this
22 case?

23 A. I am not.

24 MS. GRAVES: Okay. Your Honor, we'd like to
25 offer Mr. Isacson as an expert witness pursuant to Rule

1 702 in the area of migrant trends along the U.S.-Mexico
2 border and analysis of government migrant apprehension
3 data.

4 THE COURT: Any objections?

5 MS. AMAECHI: No objections, Your Honor.

6 THE COURT: All right. He'll be recognized as an
7 expert. Whenever you're ready.

8 MS. GRAVES: And may I please copy -- provide him
9 with a copy of his report just to kind of refresh his
10 recollection as we walk through the data?

11 THE COURT: Is -- is it different than an
12 exhibit? I'm not sure what --

13 MS. GRAVES: His -- his report is different than
14 the -- than an exhibit. It's a little more comprehensive.

15 THE COURT: All right. Does the Government have
16 any objections?

17 MS. AMAECHI: No objections, Your Honor.

18 THE COURT: All right. Yes, you may.

19 THE WITNESS: It's a lot of numbers to keep up
20 here.

21 Q. (BY MS. GRAVES) Mr. Isacson, do you have an opinion
22 as to the number of unlawful entries in the Big Bend
23 sector?

24 A. Yes.

25 Q. And do you have an opinion as to how it compares to

1 other Border Patrol sectors?

2 A. The Border Patrol divides the U.S.-Mexico border into
3 nine geographic sectors. Big Bend sector is not only in
4 last place among those nine sectors, it is in a very
5 distant last place.

6 Q. And do you have an opinion as to whether the Big Bend
7 sector is an area of high illegal entry?

8 A. My conclusion is that this is -- the Big Bend sector
9 is not an area of high illegal entry.

10 Q. And how did you reach those opinions?

11 A. I reached those opinions by reviewing some of the --
12 all of the data from CBP that I mentioned already.

13 Q. And did you use a particular methodology in
14 conducting that analysis?

15 A. Sure. I mean, I was basically taking these PDF
16 files, which are giant tables of -- of how many migrants
17 CBP apprehends every year from every sector, and then
18 turning those PDFs into spreadsheets, which I have shared
19 a few. If you -- if you go to -- in my declaration
20 Section 4, Letter E, I just made a big Google spreadsheet
21 out of them and you'll -- they'll -- they'll be the exact
22 same numbers that you find. And then adding up by sector,
23 how many people Border Patrol is finding, each of those
24 sectors in each year.

25 Q. Okay. And is that methodology one that you regularly

1 use in your professional work?

2 A. Constantly, yes.

3 Q. And how large is the Big Bend sector?

4 A. The Big Bend sector is -- it covers about 517 border
5 miles, which is -- it's like driving from Richmond to
6 Boston. It's very big and it is about 135,000 square
7 miles. About the size of Germany or if you were to put
8 New York, Pennsylvania and Ohio together.

9 Q. And does it include the state of Oklahoma?

10 A. It goes all the way to Oklahoma, yes.

11 Q. And what percentage of all U.S.-Mexico land border
12 miles are located within the Big Bend sector?

13 A. I believe it's 25.8 percent of all border miles are
14 in this sector.

15 Q. And in formulating your opinion in this matter, did
16 you review data relating to "at large" and "at entry"
17 apprehensions?

18 A. I did. The CBP has only started reporting that data
19 since, I believe, fiscal year 2024, as far as I can find
20 it.

21 Q. And what does "at-large apprehensions" mean?

22 A. That means that somebody was apprehended without
23 apparent evidence that they had recently crossed the
24 border. That they just found them probably in a vehicle
25 stop or a checkpoint.

1 Q. And --

2 A. Not always.

3 Q. -- What does "at entry apprehension" mean?

4 A. At entry means there are indications that this person
5 is a recent, very recent, border crosser.

6 Q. And what information did you review concerning
7 at-large apprehensions?

8 A. If you go to -- CBP has a nationwide apprehensions
9 web page where only in the last few years that they
10 started breaking down what is "at large" and what is not.
11 But they only provided border-wide, so I don't have that
12 information for the Big Bend sector specifically.

13 Q. And what did the data show concerning the proportion
14 of apprehensions that were classified at large?

15 A. It showed that at-large apprehensions were -- looking
16 for the page exactly -- but it was a three-point-something
17 percent of the the total since 2024. That number rose to
18 about 15-point-something percent in fiscal year 2026 so
19 far.

20 Q. And what does the at-large apprehension -- what does
21 an at-large apprehension indicate about where an
22 individual was encountered?

23 A. It really doesn't tell us anything about whether --
24 where the individual was encountered. This could be
25 somebody whose visa expired, who lost their temporary

1 protected status and Border Patrol just happened to find
2 them at a vehicle stop or something similar.

3 Q. And what does an at-large apprehension indicate about
4 when an individual was encountered?

5 A. It really doesn't tell us anything about when they
6 were encountered. They could have been here for decades.

7 Q. And does an at-large apprehension tell you where a
8 person crossed the border, if at all?

9 A. It does not. They could have -- they could have
10 flown in on a legal visa.

11 Q. And does an at-large apprehension tell you whether a
12 person entered the country unlawfully?

13 A. It does not.

14 Q. What information about apprehended individuals was
15 included in the CBP data that you reviewed?

16 A. In the CBP data the information -- well, obviously by
17 sector where -- where along the border Border Patrol found
18 them, whether they were single adults or family members or
19 children, what country they came from. Although with some
20 limits there as well as whether they were -- we can get
21 into this -- whether they're processed under regular
22 immigration law or Title 42.

23 Q. Yeah. And we'll get to that in a minute. But what,
24 if anything, does the data indicate about the location of
25 an apprehension?

1 A. It really only tells you the sector it happened in.
2 I don't -- it -- Border Patrol -- we'd requested, but CBP
3 would not provide data according to what station or what
4 subregion of the Big Bend sector people were apprehended
5 in. This -- this -- this new information from the park is
6 news to me. That's great to see. The reason for that
7 being that if they were to report it that granularly, that
8 organized crime might take advantage of it.

9 Q. And you had mentioned a highway checkpoint.

10 What is a Border Patrol highway checkpoint?

11 A. Border Patrol maintains interior checkpoints.
12 Usually, you know, the -- somewhere within 100 miles of
13 the border where it's almost on just about every major
14 road or even minor roads leaving the border region into
15 the U.S. interior. All motorists are going to have to
16 stop, asked if they're a citizen, maybe brought to
17 secondary screening or something like that. And it's sort
18 of an extra layer of defense. What did they miss at the
19 borderline that might be coming in further?

20 My understanding from a report, just looking at
21 the map, is that the Big Bend sector, at least in the late
22 2010s, had four checkpoints.

23 Q. And during the period covered by the data, what was
24 the highest percentage of apprehensions that occurred at
25 Border Patrol highway checkpoints?

1 A. You know, I have to look at my declaration here.

2 Q. And I'll refer to you to your supplemental
3 declaration for that.

4 A. Right. And you have the exact paragraph number? I
5 just don't want to get it wrong. I believe it's nine
6 percent. We pulled so much data out of out of this that,
7 you know, I made -- I made flash cards and tried to
8 memorize it all.

9 But do you have the paragraph number? Oh, I see.
10 No, that's -- yes, 99 percent during -- between fiscal
11 years 2013 and 2025, nine percent of Border Patrol's
12 apprehensions in the Big Bend sector happened at
13 checkpoints. In 2025, it actually jumped to 27 percent of
14 apprehensions for checkpoints.

15 Q. And based on your review, do apprehension numbers for
16 a sector necessarily mean that those individuals cross the
17 border in that sector?

18 A. No, it's just a -- it's a number. It's not even a
19 count of people. It's a count of arrests that happen in
20 that sector. It doesn't indicate anything about where
21 they entered.

22 Q. And what did the data show regarding how long
23 individuals had been present in the U.S. before
24 apprehension?

25 A. The data about checkpoint arrests in the Big Bend

1 sector showed that 42 percent of those apprehended at
2 checkpoints had been in the United States for a month or
3 more. Thirty-three percent had been in the United States
4 for a year or more.

5 Q. And why is that information relevant to understanding
6 apprehension statistics?

7 A. I mean, that -- that tells you that the -- the person
8 who is apprehended may very easily have entered the United
9 States somewhere else. They may -- there's nothing there
10 that indicates -- and it actually reduces the likelihood,
11 in my view, that they would have crossed within the 517
12 miles of the Big Bend sector quite often. I imagine these
13 are vehicle stops, for instance, on Interstate 10, which
14 goes from Los Angeles to Florida, and people could have
15 entered anywhere.

16 Q. And what other categories of individuals are
17 reflected in the CBP apprehension data that you analyzed
18 in this case?

19 A. Other categories would include whether -- their
20 nationalities and their demographic characteristics.

21 Q. And does the apprehension data distinguish between
22 individuals who seek asylum and those who do not?

23 A. The -- it does not. It also does not indicate
24 whether it does -- it doesn't separate people who
25 willingly turn themselves in, which most asylum seekers

1 do, versus people who tried to evade capture.

2 Q. So does it include individuals who sought asylum in
3 the U.S.?

4 A. This number completely includes all asylum seekers
5 who were waiting to be arrested, yes.

6 Q. Are apprehension of asylum seekers relevant to any
7 determination of whether border barrier is necessary?

8 A. No. I mean section -- the -- the -- the Immigration
9 and Nationality Act says that anybody who is physically
10 present on U.S. soil has the right to ask for asylum if
11 they fear return to their country. U.S. soil, especially
12 where the Rio Grande is always changing its course, you
13 always have some riverbank between the river and the wall.
14 So people routinely -- and I think you probably saw it
15 here at Gate 36 in El Paso -- for a long time will stand
16 on the riverbank and wait to be arrested south of the
17 wall.

18 Q. And prior, you mentioned Title 42. So does the
19 apprehension data include individuals apprehended under
20 Title 42?

21 A. Yes, it does include encounters under -- under Title
22 42.

23 Q. And can you explain what that is?

24 A. Absolutely. Between March 2020 and May of 2023,
25 during the pandemic, the rules were changed. Basically

1 the right to ask for asylum was suspended and anybody who
2 was caught by Border Patrol was not processed under normal
3 immigration law. For all intents and purposes, they
4 weren't officially here in the United States. If it was
5 easy to return them to Mexico or if they were from a
6 country that Mexico would -- would accept, they were
7 brought right back to the borderline quickly without a
8 record of having committed misdemeanor, improper entry,
9 into the United States. That meant without anything on
10 their record, if they were caught again, there was no
11 extra consequence. They were not punished for that.

12 So what you had during the Title 42 period was a
13 lot of particularly single adults who were trying to evade
14 capture, who kept getting caught over and over again. And
15 every time they were caught, they were counted as an
16 apprehension or rather technically an encounter over and
17 over and over again. So this is not -- especially 2020 to
18 2023 -- this is not a count of individuals. This is a
19 count of arrests, which are often multiple.

20 Q. And let's talk about drug seizures. As part of your
21 work in this matter, did you analyze CBP drug seizure
22 data?

23 A. Yes, I did.

24 Q. And what data did you review?

25 Q. CBP -- if you go to CBP's drug seizures data page,

1 they actually have a dataset of every month, sector and
2 type of drug since fiscal year 2020, since late 2019.

3 Q. And how did you analyze the drug seizure data for the
4 Big Bend sector?

5 A. Well, I took all of that data, which is roughly a 90
6 or 100,000 row table, and I used -- I made a database out
7 of it using MySQL and I made little web pages out of it
8 that generate tables so that I could see what was being
9 found in the Big Bend sector.

10 Q. And after analyzing the CBP drug seizure data, what
11 did you observe about the Big Bend sector's contribution
12 to total drug seizures along the southern border?

13 A. All right. We have to separate this into Border
14 Patrol drug seizures, seizures between the ports of entry
15 and then seizures at the ports of entry because all
16 drugs -- except marijuana, more than 80 percent of those
17 drugs are seized at the ports of entry. So that's not --
18 nothing to do with border walls.

19 Border Patrol seizures, the -- the Big Bend
20 sector accounts for one percent of non-marijuana drug
21 seizures and 15 percent of all drug seizures in the -- the
22 period for which we have data, 2020 to 2026.

23 Q. And does the seizure data that you reviewed include
24 drugs seized at interior immigration checkpoints?

25 Q. Yeah. This is -- a significant -- actually, between

1 a quarter and half of all nonmarijuana drugs border
2 wide -- I don't have it just for the Big Bend sector --
3 but border wide, between a quarter and half of all drug
4 seizures happen at checkpoints. Marijuana is normally 12
5 percent. Actually, this year it's 36 percent of -- that
6 drug gets seized at checkpoints of all the Border Patrol
7 seizes.

8 Q. And does the seizure data distinguish between drugs
9 seized at the border and drugs seized farther inland
10 within the sector?

11 A. I mean, Border Patrol is just reporting what it finds
12 anywhere inside the sector.

13 Q. Okay. And does the drug seizure data distinguish
14 between drugs seized by CBP from U.S. citizens and drugs
15 seized by the individuals who are in the U.S. unlawfully?

16 A. I haven't seen data about the citizenship of people
17 arrested with drugs.

18 Q. And does the drug seizure data distinguish between
19 drugs that originated within the United States and drugs
20 that were unlawfully imported across the U.S.-Mexico
21 border?

22 A. No. There -- there's no estimate of -- of where the
23 drugs came from.

24 Q. So CBP's data could include marijuana grown in Texas
25 that was seized at a CBP checkpoint?

1 A. It could include -- yes, it absolutely could.

2 Q. Or marijuana bought from a -- lawfully purchased at a
3 dispensary in New Mexico and seized at the CBP checkpoint?

4 A. Sure. We should keep in mind Texas is the only of
5 the four border states right now that still maintains
6 cannabis illegal, so it could come from one of the
7 other -- any state where there is legal cannabis.

8 Q. And based on the seizure data alone, can you
9 determine how much of the seized drugs actually cross the
10 border in the Big Bend sector?

11 A. There is no way to tell that, no.

12 Q. And why not?

13 A. Well, I mean, it looks like between checkpoints and
14 simple vehicle stops, we have to deal with the data that
15 we're given. But a very significant portion -- most
16 likely a majority of what is found is found on roads, in
17 vehicles and conveyances or in cargo trains or -- or
18 trucks. And those may have entered the sector from
19 somewhere else a significant portion of the time.

20 Q. And do drug seizure figures tell us what -- sorry.

21 What do drug seizure figures tell us about
22 whether the Big Bend sector is an area of high legal
23 entry?

24 A. I mean, one percent of non-marijuana drugs. You're
25 not -- you're only finding trace amounts of drugs. There

1 is some marijuana found here and I'd like to know more,
2 frankly, about whether it's at checkpoints coming from
3 somewhere else or whether that many people are actually
4 putting it in backpacks and bringing it through the
5 terrain that Bob Krumenaker described. I find that harder
6 to believe.

7 But, yeah, there is some marijuana found here in
8 the Big Bend sector, but that is also distorted because
9 nobody's bringing marijuana into the other three states
10 where it's -- you can buy it in a dispensary.

11 Q. Okay. And I want to now pivot to some of the graphs
12 that you created, so let's talk about the migration
13 apprehension datasets that you reviewed.

14 Is it accurate to say that the migrant
15 apprehension datasets go back to 1960?

16 A. By sector, yes, we have it all the way back to 1960.

17 Q. And in conducting your analysis, did you examine the
18 apprehension data over multiple periods?

19 A. Yes, I did.

20 Q. And what time periods did you examine?

21 A. Let me find my graphics here. But, yes, we -- we did
22 it from 1960 to the present. From this century, 2000, to
23 the present. We did it, I believe, from 2020 to the
24 present and then just during the Trump administration.

25 Q. And on your screen, there should be a copy of

1 Plaintiffs' Exhibit 4.

2 Mr. Isacson, can you see Plaintiffs' Exhibit 4 on
3 your screen?

4 A. And my screen is still black.

5 Q. Okay.

6 A. There we go. That's Figure 1. Okay.

7 THE COURT: And do you wish to publish?

8 MS. GRAVES: Yes, please. Please publish.

9 Q. (BY MS. GRAVES) So can you just tell us: What does
10 this data summarize?

11 A. Okay. So the first column, of course, is just how
12 many miles are in each sector. The next two columns are
13 the entire data from 1960 all the way to the present. You
14 can see each row is the -- the -- the sectors themselves
15 with Big Bend. In the last row, I looked at the total
16 number of apprehensions. I looked at then dividing that
17 number by the number of miles in each sector and then
18 dividing that by 12 to get how many people per mile per
19 month were found. And the same happens then for the
20 2000s, you know, the -- the -- the 21st century so far,
21 the 2020s and then the Trump administration at the bottom.
22 I just divide everything out.

23 So here's the the percentage of border wide. You
24 can see here that, for instance, Big Bend is 1.6 percent
25 of all migrant apprehensions during this time.

1 Q. And from what sources did you obtain that data?

2 A. That is entirely CBP data. And I include links to
3 the sources in my report.

4 Q. And does this accurately summarize the CBP data that
5 you reviewed?

6 A. It's an exact replica, copy/paste.

7 Q. And how did your analysis of CBP apprehension data
8 from 1960 to the present reveal about Big Bend sector
9 share of the total southern border apprehensions?

10 A. I mean, from 1960, this 25, 26 percent of the border
11 accounts for less than two percent, 1.6 percent of all
12 migrants apprehended.

13 Q. And how does that compare to Big Bend's sector share
14 of southern border mileage?

15 A. That would be -- you're basically -- you're talking
16 about how -- how does it compare to mileage? I mean,
17 it's -- if it's one quarter of miles and less than two
18 percent of migrants, that's a big difference. I mean,
19 you're -- you're -- you're talking about less than two,
20 1.9 migrants encountered in this sector over this entire
21 period in every typical mile in every typical month.
22 Whereas border wide, the number of apprehensions per mile
23 per month was 32. Quite a bit bigger than 1.9.

24 Q. And what did you observe when you compare the Big
25 Bend sector's apprehension rate per mile to the southern

1 border average?

2 A. You get -- you get a number of apprehensions per mile
3 that is roughly one-fifteenth of what the rest of the
4 border or what the entire border sees.

5 Q. And are you familiar with the Illegal Immigration
6 Reform and Immigrant Responsibility Act of 1996 and
7 when -- I'm going to refer to that as IIRA -- when was
8 IIRA signed into law?

9 A. It became law in 1996.

10 Q. And I'm going to show you Plaintiffs' Exhibit 5.

11 MS. GRAVES: Could we please publish Plaintiffs'
12 5?

13 Q. (BY MS. GRAVES) So from what sources -- and we can
14 go -- start up, Page 2.

15 From what sources did you obtain the data that's
16 analyzed in Plaintiffs' Exhibit 5?

17 A. This comes from the same sources. The -- the annual
18 from 1960 to 2020, the monthly since 2000, and the
19 detailed dataset since 2020.

20 Q. And does it accurately summarize the underlying CBP
21 apprehension data?

22 A. This is the data exactly.

23 Q. Okay. And what information is shown in each yearly
24 table?

25 A. For each year here I showed, you know, breaking out

1 for each individual year the number of people apprehended,
2 the number of people apprehended per mile per month and
3 the percentage of the border-wide total for each sector.
4 So for this one, 1996, you can see the Big Bend had 13,214
5 apprehensions -- I should not call this number of people
6 apprehended because you have multiple apprehensions. So
7 it's the number of apprehensions, 13,214 apprehensions,
8 two apprehension events per mile per month, and then 0.9
9 percent of what was found border-wide.

10 Q. And again --

11 A. And then I made a pie chart just to illustrate that.

12 Q. -- these apprehensions do not necessarily reflect the
13 number of apprehensions that were made of migrants that --
14 who actually crossed in the Big Bend sector, correct?

15 A. This just explains who they found in the Big Bend
16 sector. It doesn't indicate anything about how they
17 entered or whether they turned themselves in willingly.

18 Q. And what does the per mile, per month column
19 represent?

20 A. Per month, you basically take the number of
21 apprehensions in that sector, divide it by the number of
22 border miles in that sector, and then divide that by 12 to
23 get the -- the monthly average.

24 Q. And why did you calculate apprehensions on a per-mile
25 basis?

1 A. Because the -- it further illustrates just how remote
2 and how barely trafficked Big Bend is. It is bigger than
3 the other sectors, yet it sees significantly fewer migrant
4 entries that -- or apprehensions than the other sectors.
5 So this just further illustrates how sparsely crossed
6 or -- or entered this -- this -- this sector is.

7 Q. And I want to talk about 1996. This is Page 2 of
8 Exhibit 5.

9 Approximately how many migrant apprehensions per
10 border mile per month occurred in the Big Bend sector in
11 this year?

12 A. You had 2.1 apprehensions per mile per month was --
13 actually over this 30-year stretches is on the higher end
14 of what we were measuring -- or what the data shows.

15 Q. Thank you. Excuse me.

16 And in that same year, what percentage of all
17 southern border apprehensions occurred in the Big Bend
18 sector?

19 A. Less than one percent, 0.9 percent.

20 Q. And are you aware of which year recorded the highest
21 number of apprehensions in the Big Bend sector from the
22 data you analyzed?

23 A. I want to say 2021.

24 Q. And let's direct your attention to 2021. And that's
25 Page 27 of P5.

1 Approximately how many migrant apprehensions per
2 border mile per month occurred in the Big Bend sector in
3 2021?

4 A. So Border Patrol is making six apprehensions per mile
5 per month in that year. It never got that high before
6 since.

7 Q. And directing your attention to 2025 -- this is Page
8 31 of Exhibit 5.

9 Approximately how many migrant apprehensions per
10 border mile per month occurred in the Big Bend Sector in
11 this year?

12 A. Zero point five apprehensions per mile per month. So
13 one apprehension for every two months.

14 Q. And in that same year, what percentage of all
15 southern border apprehensions occurred in the Big Bend
16 sector?

17 A. Big Bend accounted for 1.3 percent, a pretty typical
18 amount.

19 Q. And since 1996, has the total number of apprehensions
20 per border mile per month exceeded six?

21 A. Six was the maximum.

22 Q. And based on your analysis of the data, how does the
23 Big Bend sector compare to other southern borders sectors
24 in terms of unlawful entry activity?

25 A. It is an extraordinarily distant last place. It --

1 it doesn't play in the same league as the other eight
2 sectors. In fact, if you look at the -- my first slide,
3 that shows the overall number of apprehensions since 1960.
4 There it is. The next last place sector neighboring Del
5 Rio is about -- is -- is more than nearly one -- nearly
6 six times higher than Big Bend and there -- that's eighth
7 place. So, yeah, I mean it's a completely different
8 dimension of -- of low illegal entry.

9 Q. And how does the Big Bend sector compare to some of
10 the northern Border Patrol sectors?

11 A. Historically, Big Bend sector has had more
12 apprehensions than what you see along the Canada border.
13 But, actually, things have dropped so far at the
14 U.S.-Mexico border in the last year and a half that Big
15 Bend has actually started to surpass some kind of border
16 sectors. Buffalo, NY, which goes from the
17 Ohio/Pennsylvania border to the end of Lake Ontario
18 actually is -- Border Patrol's apprehending more people
19 there than in Big Bend since, I believe, May or June of
20 this year.

21 Q. And what did your analysis reveal about the level of
22 unlawful entry in the Big Bend sector in absolute terms?

23 A. In absolute terms, this is the very definition of an
24 area of non or low illegal entry.

25 Q. And have you formed opinions to a reasonable degree

1 of certainty within your field of expertise and what are
2 those opinions?

3 Q. Yes, I have. My opinion is that this is not an area
4 of high legal entry. There have not even been periods
5 where it has even approached that definition by any way
6 you could define it.

7 MS. GRAVES: No further questions for this
8 witness.

9 THE COURT: Whenever you're ready.

10 MS. AMAECHI: Thank you, Your honor.

11 CROSS-EXAMINATION

12 BY MS. AMAECHI:

13 Q. Hello, Mr. Isacson.

14 A. Hello.

15 Q. Do you consider yourself an expert on border
16 security?

17 A. Yes, I do.

18 Q. What happens when there is barrier wall all along the
19 Texas border except for the Big Bend sector?

20 A. Probably, in my view, not very much.

21 Q. And, again, you do consider yourself an expert -- an
22 expert on border security, right?

23 A. That's -- enough to have been invited to testify
24 here, yes.

25 Q. Are you familiar with the cartel turf war in Ojinaga

1 across Presidio?

2 A. You know, Ojinaga, there have been recurring --
3 there's been recurring competition for that -- that Plaza,
4 although it is certainly not one of the hottest parts of
5 the border.

6 Q. How long has the turf war been ongoing?

7 A. I couldn't give you a date when it began, but it is
8 mostly a 20 -- well, it's mostly a 21st-century
9 phenomenon.

10 Q. And does that turf war reduce illegal crossings?

11 A. It's a different dynamic. But often if there is an
12 increase in violence, illegal crossings will go down.
13 People who, especially asylum seekers, will choose to go
14 somewhere else. However, if the organized crime group is
15 involved in migrant smuggling, yeah, I mean, they're going
16 to want things peaceful there in order to have that
17 happen.

18 Q. Do you know which cartel controls the legal crossings
19 in Big Bend One?

20 A. In Big Bend One, I believe the competition has been
21 between the Juarez cartel and the Sinaloa cartel. I don't
22 know actually whether the Jalisco cartel has made any
23 roads lately.

24 Q. Okay. And do you know which cartel controls illegal
25 crossings in Big Bend Two?

1 A. I think the dynamic is pretty similar here. It's all
2 the -- the Chihuahua Valley.

3 Q. What about Big Bend Three?

4 A. If there's a variation, it hasn't been reported.

5 Q. And same for Big Bend Four?

6 A. And Five.

7 Q. And Five. Okay. Are you aware of *sicarios* entering
8 the United States through Big Bend Two and Big Bend Four?

9 A. I -- if there has been any report of that, I have not
10 seen it in secondary sources and CBP has certainly not put
11 out any press releases that I'm aware of.

12 Q. But you do consider yourself an expert on the border
13 and security, right?

14 A. Am I somebody who is able to go into very dangerous
15 areas and do mapping of organized crime presence across a
16 2,000 mile stretch of border? I still consider myself an
17 expert, but I know of no expert who does that.

18 Q. I want to ask about an assertion that you made
19 earlier.

20 What is the basis for your assertion that no
21 marijuana is being illegally imported into United States
22 like certain states that allow marijuana?

23 A. I didn't say no, but -- but the data show incredibly
24 small amounts that -- well over 95 percent, I believe, of
25 marijuana that is being seized by Border Patrol at the

1 border right now is happening in Texas.

2 Q. Okay. I want to talk about your supplemental expert
3 report now.

4 Can you see what's on the screen? Paragraph 20?

5 A. Not yet. It's black.

6 Q. Okay.

7 THE COURT: And do you wish to publish?

8 MS. AMAECHI: Yes, I do wish to publish.

9 Q. (BY MS. AMAECHI) Can you see it now?

10 A. I sure can.

11 Q. Okay. So in Paragraph 20, you noted that between
12 fiscal year 2021 and fiscal year 2025, Border Patrol
13 apprehended over 89,000 individuals in the Big Bend
14 sector, correct?

15 A. Correct.

16 Q. And let's turn to Paragraph 25.

17 Can you see it on your screen?

18 A. Yes.

19 Q. In Paragraph 25, you said that in fiscal year 2025,
20 Border Patrol apprehended 3,096 people in the Big Bend
21 sector, correct? And that 3,096 figure that represents --
22 sorry. That represents apprehensions in just one year,
23 right?

24 A. Yes. An unusually low year, but yes.

25 Q. And you agree that that number doesn't account for

1 those who came to the border totally undetected, correct?

2 A. It doesn't account for what Border Patrol calls
3 "gotaways" now.

4 Q. I'm sorry. Could you repeat that?

5 A. It does not account for what Border Patrol calls
6 "gotaways." People who got away.

7 Q. Okay. And that 89,000 figure that we also spoke
8 about earlier, that also doesn't account for the people
9 who came to the border undetected, correct?

10 A. Correct. We do have data, though, for effectiveness
11 rates across the border that show Border Patrol's
12 estimates of border-wide gotaways, and the effectiveness
13 rate is usually over 80 percent. So you would have to add
14 maybe another 20 percent. I don't know if the dynamic is
15 different in Big Ben because we don't have the data from
16 CBP.

17 Q. Okay. And you didn't include that data in your
18 expert report, correct?

19 A. The getaway data, no.

20 Q. All right. Let's turn back to Paragraph 20 of your
21 supplemental expert report. I want to focus in on that
22 figure of 89,000 undocumented persons.

23 You said in Paragraph 20 the figures include
24 individuals encountered throughout the sector regardless
25 of where they cross the border, correct?

1 A. Right.

2 Q. So, in other words, you -- you would argue that the
3 Big Bend sector numbers could reflect individuals who
4 entered from other sectors but were apprehended in Big
5 Ben?

6 A. There's some likelihood of that, yes.

7 Q. Wouldn't the inverse also be true? Couldn't there be
8 individuals who entered from, for example, the Del Rio
9 sector, but were apprehended in Big Bend?

10 A. Possible, but unlikely because of the higher numbers
11 found in the other sectors.

12 Q. You also said that CBP's figure of 89,000 includes
13 individuals who were lawfully admitted but later
14 encountered within the sector after overstaying or
15 otherwise lacking lawful status, right?

16 A. That describes at large and checkpoint or vehicle
17 stops, yes.

18 Q. But it's part of the 89,000 figure, correct?

19 A. Sure.

20 Q. Overstaying a visa means that a person is no longer
21 in the U.S. legally, right? So an individual who
22 otherwise lacks lawful status means the person is here
23 unlawfully, correct?

24 A. They are. They're here -- yeah, I mean, they -- they
25 do not have a documented status in the United States.

1 Q. So regardless of when they entered, these individuals
2 were still in the Big Bend sector without lawful status
3 when they were apprehended, correct?

4 A. Correct.

5 MS. AMAECHI: All right. No further questions.

6 THE COURT: Anything further of this witness?

7 MS. GRAVES: No, Your Honor.

8 THE COURT: All right. I'd ask you -- please
9 remain. I'd ask you to put up the map again. I think
10 it's Exhibit 1. I have a question for you.

11 If -- and I don't know -- I think you have it in
12 front of you. It's part of your supplemental expert
13 report, Mr. Isacson. And in looking through it, I see
14 that you go fiscal year by fiscal year as part of your
15 attachment, correct?

16 THE WITNESS: Correct.

17 THE COURT: Okay. So I'm looking at fiscal year
18 number, let's see, 2004 and I'm comparing it to fiscal
19 year 2021, right?

20 THE WITNESS: Sure.

21 THE COURT: All right. And in fiscal year 20 --
22 2004, there were 10,000 apprehensions correct?

23 THE WITNESS: Correct.

24 THE COURT: And in fiscal year 2021, there were
25 37,000 in Big Bend, correct?

1 THE WITNESS: Correct.

2 THE COURT: And for -- let's take El Paso in
3 fiscal year 2004. There were 104,399, and in fiscal year
4 2021, there were 193,918, right?

5 THE WITNESS: Right. Correct.

6 THE COURT: Okay. So would you disagree with the
7 idea that these numbers are fluid? In other words, there
8 are different reasons why people cross at different areas
9 at different times of the year because of different
10 circumstances and in different locations.

11 THE WITNESS: Yeah, we found that organized crime
12 patterns on the Mexican side often have a lot to do with
13 it, too.

14 THE COURT: Okay. So these numbers could change
15 in any given sector at any given time, correct?

16 THE WITNESS: They do, although we've seen on --
17 some real consistency in the Big Bend sector.

18 THE COURT: All right. Well -- and so part of my
19 my next question for you is one of the calculations that
20 you did was you took the sector land border miles and you
21 divided the number of crossings by that number of miles,
22 correct? What information does that give me? In other
23 words, when we're talking about Big Bend, it's 517 miles,
24 right? But we're talking about San Diego, that has 60
25 miles, so --

1 THE WITNESS: Right.

2 THE COURT: -- how -- you wouldn't disagree with
3 me that there's not any way to know at any given time
4 where someone's going to cross Big Bend versus knowing in
5 a 60-mile area -- covering a 60-mile area where people are
6 going to cross, right?

7 THE WITNESS: I'm not sure I got that question.

8 THE COURT: Well, I'm -- I'm trying to understand
9 why -- when you say the -- when you're calculating the
10 number of crossings over 517 miles, you're comparing it to
11 the crossings in a 60-mile area --

12 THE WITNESS: I'm not sure I'm -- I'm just trying
13 to characterize high illegal entry or illegal entry at
14 all. And if you had, say, 10,000 apprehensions in two
15 sectors of wildly different sizes, I think that would tell
16 us different things about the likelihood of high illegal
17 entry in both of them.

18 THE COURT: Well, but, for example, in the El
19 Paso sector, there may be a whole lot of people that cross
20 right around El Paso and nobody that crosses in Hudspeth
21 County, for example, because of the terrain or whatever.
22 But that doesn't change the fact that in certain parts of
23 the El Paso sector, there could be a high volume of
24 crossings, correct?

25 THE WITNESS: Right. Correct. And yet how urban

1 an area is often does determine that.

2 THE COURT: Okay. So that's why I'm trying to
3 understand why this 517-mile stretch really gives me any
4 information because there may be sectors of that 517-mile
5 stretch that may have more crossings than others.

6 THE WITNESS: Yeah. I mean, I wish I had the
7 data showing that. I wish that CBP shared it. My guess
8 is any major population centers or major crossroads would
9 have vastly more and account for nearly all of the
10 apprehensions in the sector.

11 THE COURT: Okay. So we go back to that map that
12 you have in front of you and we're talking about that
13 whole 517-mile area as the border. The Big Bend area,
14 right? And so those numbers that we're talking about, we
15 don't know exactly where these apprehensions are
16 happening.

17 THE WITNESS: I wish we did.

18 THE COURT: Okay. Thank you.

19 MS. GRAVES: Your Honor, if I may. So, Your
20 Honor, we did -- plaintiffs did request data from
21 defendants breaking down the -- the sector-wide data to
22 station and even substation and they refused to give us
23 that data in discovery and that's why Mr. Isacson does not
24 have that data. And -- and I would also like to note for
25 the record in discovery they did not -- they -- said that

1 they tracked, you know, the data of individuals who evade
2 apprehension, but they -- they would also not release that
3 data to us.

4 THE COURT: So noted. Thank you. All right, any
5 other questions of this witness? You may step down.

6 You may call your next witness.

7 MS. GRAVES: No -- no further questions. Thank
8 you, Your Honor. And I -- I was -- I've been informed
9 that our other three witnesses are waiting to -- to be
10 sworn in.

11 THE COURT: Why don't we have them come in that
12 way they're covered.

13 If you would all come right forward in front of
14 the bench and raise your right hand.

15 (Witnesses duly sworn).

16 THE COURT: You three have also been designated
17 as witness -- potential witnesses in this case and the
18 rule has been invoked. And what that means is that, as
19 witnesses, you cannot remain in the courtroom while
20 testimony is being given. You have to remain outside.
21 We'll call you in when it is your time is to testify.

22 While you're waiting, it is really important that
23 you understand that you cannot talk about the case. You
24 can't talk about it with each other. You can't talk about
25 it with the audience. You can't talk about it with

1 anyone. If you do, it will result in a mishearing. So
2 it's really important you don't talk about the case. Now,
3 that doesn't mean you can't talk. You can talk about
4 anything else you like, just not about the case.

5 Everyone understand? Yes. All right. We'll see
6 you in just a minute. Thank you.

7 You may call your next witness.

8 Oh, excuse me. I forgot to have you give out
9 your names of -- each of you that have been sworn in.

10 MR. JORDAHL: Laiken Jordahl.

11 MR. ADDINGTON: Bill Addington. Guerra-
12 Addington.

13 MS. DEVINE: Bernadette Devine.

14 THE COURT: Thank you.

15 LAIKEN JORDAHL,
16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. GRAVES:

19 Q. Mr. Jordahl, can you please state your name for the
20 record?

21 A. Laiken Jordahl.

22 Q. And where do you currently live?

23 A. I live in Tucson, Arizona.

24 Q. And where do you currently work?

25 A. I work at the Center for Biological Diversity.

1 Q. And what is your position at the center?

2 A. I am currently a national public lands advocate.

3 Q. And what do you do in that role?

4 A. I advocate for protected public lands, wildlife and
5 endangered species across the Southwest.

6 Q. And what position did you hold prior to your current
7 position?

8 A. Prior to this, I was a Southwest conservation
9 advocate, also at the center, and prior to that I was a
10 borderlands campaigner dating back to 2017.

11 Q. And what did you do before you worked at the Center
12 for Biological Diversity?

13 A. Before I worked at the center, I worked for the
14 National Park Service as a wilderness fellow. I compiled
15 reports assessing threats to wilderness character at five
16 different national parks, including Big Bend National
17 Park.

18 Q. And what did you do at Big Bend National Park in your
19 capacity as a wilderness fellow?

20 A. At Big Bend, I compiled a report called "Building
21 Blocks" to wilderness stewardship. I assessed science --
22 I worked with ecologists, biologists, archaeologists and
23 park rangers to compile this report that looked at the
24 biggest threats facing the Big Ben wilderness.

25 Q. And are you familiar with the area of west Texas

1 commonly known as Big Bend -- the Big Bend region?

2 A. Yes.

3 MS. GRAVES: Can we get our exhibit on the screen
4 please and publish? Thank you.

5 Q. (BY MS. GRAVES) And are you aware of any waivers
6 issued by the Department of Homeland Security for border
7 construction in the Big Bend region?

8 A. Yes, I am.

9 Q. And what waivers are you aware of?

10 A. Last October, there was a waiver issued for the
11 entire sector. That waiver covered procurement
12 contracting laws. Later on in March, another waiver was
13 issued that covered our nation's most important
14 environmental laws like the National Environmental Policy
15 Act, the Endangered Species Act, and dozens of other laws.
16 There were a series of additional waivers for different
17 areas within the Big Bend sector following that March
18 waiver.

19 Q. And is the geographic scope of those waivers depicted
20 on what has been marked as Plaintiffs' Exhibit 1?

21 A. Yes.

22 Q. And you can actually annotate the map by running your
23 finger on it.

24 Can you point to the area that we refer to as the
25 the West Waiver and the -- the waivers covering the

1 national park and the part of the state park and the Lower
2 Canyons waiver that -- depicted on -- in yellow on that
3 map?

4 Okay. Thank you. And can you describe the
5 geographic scope of those waivers?

6 A. Yeah. In totality, these waivers span the entire Big
7 Bend sector and also stretch into the Del Rio sector.
8 They encompass all of the border in Big Bend National
9 Park. They cover the Black Gap Wildlife Management Area.
10 They cover portions of the Big Bend Ranch State Park and
11 stretching downstream into the entire Lower Canyons area,
12 reaching all the way to Lake Amistad. Moving upstream or
13 west, they cover the areas around Presidio and then all
14 the way up to Fort Quitman.

15 Q. And what kind of construction activities do those
16 waivers authorize?

17 A. Those waivers authorized the construction of
18 30-foot-high border walls of vehicle barriers, of roads,
19 of staging areas and of other border infrastructure.

20 Q. And are you familiar with any construction activities
21 in the Big Bend region that have occurred pursuant to the
22 challenge waivers?

23 A. Yes. I have personally witnessed and documented a
24 couple of different areas where construction has occurred.

25 Q. And can you describe what you observed?

1 A. Yeah. In Big Bend National Park, I visited the area
2 near Santa Elena Canyon where they had bulldozed native
3 riparian vegetation, desert willows, mesquites, Palo Verde
4 trees to build seemingly a new road alongside the existing
5 road. Between the existing road, the river. That area
6 seemed to stretch around four miles of -- of that
7 destruction. And in addition to that in the national
8 park, I also visited and documented the area of Mariscal
9 Canyon where another stretch of seemingly roadway was
10 being built into the desert wilderness there.

11 Q. And when did you observe the construction in Santa
12 Elena or near Santa Elena Canyon?

13 A. That was the week of August 15th. I was in Mariscal
14 August 15th and Santa Elena Canyon a couple days prior.

15 THE COURT: Before you take the map off, could --
16 can you mark where you're talking about?

17 THE WITNESS: Yeah. Is -- it -- it's not on.
18 Okay. Santa Elena Canyon is here. And then Mariscal
19 Canyon area is here.

20 MS. GRAVES: Oops. Oh, sorry.

21 THE COURT: Hold on, hold on. We can clear it
22 and he can remark. Okay. Go ahead.

23 THE WITNESS: Yeah. The Santa Elena Canyon
24 area -- I would estimate that's about the area of road
25 that was cleared, and then Mariscal is down here.

1 THE COURT: Thank you.

2 MS. GRAVES: And I'm going to show you
3 Plaintiffs' Exhibit 6. Could you please publish?

4 THE COURT: It's not up yet. Hold on. There you
5 go.

6 Q. (BY MS. GRAVES) Can you describe what we're looking
7 at in this video?

8 A. This is an excavator clearing the roadway at Mariscal
9 Canyon. This video was taken by my partner and fiancée,
10 Maxie Adler, I believe on August 15th. We walked out the
11 road to find this excavator and bulldozer working in this
12 desert wilderness.

13 Q. And was there -- are you familiar with the -- how the
14 area looked like prior to this construction?

15 A. Yes, I visited one time when I was working for the
16 park.

17 Q. And how -- can you describe what the area looked like
18 at that time?

19 A. The area was free of any sign of of human activity.
20 There were no roadways, no infrastructure. It was
21 pristine.

22 A. I'm going to show you what has been marked as
23 Plaintiffs' Exhibit 7.

24 Can you describe what we're looking at here?

25 A. This is a video that I took that same day a little

1 bit downhill -- a little bit further east from the prior
2 video showing a bulldozer down below, an excavator up
3 above clearing this path.

4 Q. And this is the same area that we viewed in the prior
5 video?

6 A. This is the same area. The excavator up above
7 essentially hadn't moved, so that was being filmed from
8 higher up on that that hillside. When we were out there,
9 I spoke with construction workers as well. There was a
10 Southwest Valley Constructors truck that was present and
11 the construction workers indicated some flagging on both
12 sides of the road and said that this was just the
13 beginning. That they were going to clear a lot more area
14 to make way for ultimately 100-foot-high, 100-foot-wide
15 road.

16 Q. And now we're going to pull up Plaintiffs' Exhibit 8.

17 MS. GRAVES: Could we please publish?

18 Q. (BY MS. GRAVES) And can you please describe what
19 we're looking at in this video.

20 A. This is a video of a bulldozer at Santa Elena Canyon
21 taken, I believe, just before August 15th. This video was
22 taken by my colleague, my friend, Natalie Newman.

23 Q. And can you describe the vegetation that's being
24 removed here?

25 A. Yeah. This vegetation is typical riparian vegetation

1 along the Rio Grande. This is actually taking place
2 within designated critical habitat for the endangered
3 yellow-billed cuckoo. These appear to be mesquites and
4 maybe some Palo Verdes that are being plowed over. I
5 visited this exact site and I walked along the roadway and
6 the days following this and I know that this is in the
7 area at Santa Elena Canyon.

8 Q. Thank you. And are you familiar with any additional
9 construction plan pursuant to the challenge waivers?

10 A. Yes. My understanding is that there are extensive
11 new networks of roads that are planned for the national
12 park based on the CBP Smart Wall map that is available
13 online. There are also plans for 17 miles of vehicle
14 barriers in the park and plans for 30-foot-high border
15 walls across the rest of the region.

16 A. And you mentioned the Smart Wall map.

17 What did construction plans look like on that map
18 when you first learned of them?

19 A. We first saw the plans in March on the Smart Wall
20 map, and at that time the plans clearly called for
21 30-foot-high border walls being built across most of the
22 border in Big Bend National Park and across the rest of
23 the region.

24 Q. And, now, I'm going to show you -- actually, before I
25 get there: Have the -- have the construction plans as

1 reflected in the Smart Wall map when you first reviewed it
2 changed since then?

3 A. Yes, the Smart Wall map plans have changed dozens of
4 times, at least. I regularly check the map and I often
5 notice new additions or subtractions. There is no
6 published record of these changes. There is no way to
7 monitor these changes other than by trying to familiarize
8 yourself with that map.

9 A. Okay. And I'm now going to show you what's been
10 marked as Defendants' Exhibit 9. This is not yet in
11 evidence, but let's walk you through it.

12 Can we start on Page 6?

13 THE COURT: This is defend -- respondent's
14 exhibit?

15 MS. GRAVES: This is a defendants' exhibit, yes.

16 THE COURT: All right. And do -- do they have any
17 objection to it being admitted? I mean, if you're going
18 to use it --

19 MS. AMAECHI: No objections if it's our exhibit.

20 THE COURT: All right. So I'll go ahead and
21 admit it and you can use it.

22 MS. GRAVES: Yes, Your Honor.

23 Q. (BY MS. GRAVES) I'm showing you the the legend on the
24 last page of the Defendants' Exhibit 9, and then can we go
25 back to Page 2?

1 THE COURT: And, again, do you wish to publish?

2 MS. GRAVES: Yes, please. Thank you.

3 Q. (BY MS. GRAVES) Can you describe what we're looking
4 at here?

5 A. We are looking at a map of planned road and barrier
6 construction in Big Bend National Park.

7 Q. And what does the lime green line represent?

8 A. That represents patrol, road and technology.

9 Q. And what do the orange lines represent?

10 A. The orange lines represent vehicle barriers.

11 Q. And can we go down to Page 3 of the exhibit.

12 And can you describe what we're looking at here?

13 A. We're looking at planned patrol roads and vehicle
14 barriers in Big Bend National Park and some of the land
15 adjacent to Big Bend National Park along the Rio Grande
16 National Wild and Scenic River.

17 Q. Thank you. So earlier you testified about changes to
18 the construction plans reflected on the Smart Wall map.
19 And what, if any, changes did the Department of Homeland
20 Security make to the kinds of construction activities
21 authorized by the waivers?

22 A. The Department of Homeland Security made no changes
23 to any of the construction authorized by waivers.

24 MS. GRAVES: Thank you.

25 I have no further questions for this witness,

1 Your Honor.

2 THE COURT: All right. Whenever you're ready.

3 MR. YUN: Briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. YUN:

6 Q. Good morning, Mr. Jordahl. Just a few brief
7 questions to follow up.

8 Are you aware that CBP has stated publicly that
9 they are not building any border barriers in the national
10 park or the state park?

11 A. No. I -- my understanding is they have publicly
12 stated they are building vehicle barriers in -- in the
13 national park and the state park.

14 Q. Excuse me. I meant pedestrian barriers.
15 30-foot-high barriers.

16 A. I am aware of those statements.

17 Q. And you aren't familiar with CBP's current plans in
18 the Big Bend National Park?

19 A. I am familiar with the current Smart Wall map plan,
20 but it continues to change.

21 Q. Are you aware that CBP has stated that they are going
22 to announce a plan for the Big Bend Four sector
23 approximately next week?

24 A. I am aware of that.

25 Q. And that, until then, any of the plans, including

1 what we have seen in published exhibits, could change?

2 A. I'm aware of that.

3 MR. YUN: No further questions.

4 THE COURT: Anything further?

5 MS. GRAVES: No, nothing further, Your Honor.

6 THE COURT: You may step down. Thank you.

7 You may call your next witness.

8 MS. GRAVES: And, Your Honor, my colleague,
9 Shannon Eva Labuschagne will be examining the next two
10 witnesses.

11 THE COURT: That's fine.

12 MS. GRAVES: And may Mr. Jordahl stay in the
13 courtroom now?

14 THE COURT: Once he's testified, that's fine.

15 MS. GRAVES: Thank you.

16 MS. LABUSCHAGNE: Plaintiffs would like to call
17 Danny William Miller, Jr., to the stand.

18 THE COURT: All right.

19 MS. LABUSCHAGNE: And, Your Honor, if I may, I'll
20 be referencing Defendants' Exhibit 1, which hasn't been
21 moved into evidence. Can I move that into evidence at the
22 outset?

23 THE COURT: Does the Government have any
24 objections?

25 MS. AMAECHI: No objections, Your Honor.

1 THE COURT: All right. We'll go ahead and admit
2 it.

3 DANNY WILLIAM MILLER, JR.,
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. LABUSCHAGNE:

7 Q. Mr. Miller, where do you currently live?

8 A. I live in Terlingua, Texas. It's a ghost town.

9 Q. And how far away is Terlingua from the U.S.-Mexico
10 border?

11 A. About ten miles away as the crow flies.

12 Q. And how long have you lived there?

13 A. Since March 2005.

14 Q. So 21 years. Do you own property in the Big Bend
15 region?

16 A. Yes. Aside from the Terlingua spot, we have 20 acres
17 on the river near Redford, Texas.

18 Q. And could you indicate where that property in Redford
19 is on this map?

20 A. There's an icon right there where it says Miller
21 property. Oops, I was trying to zoom in, sorry. Yeah,
22 right there. Downstream from Redford.

23 Q. And can you describe the landscape surrounding this
24 property?

25 A. Yeah. It's pretty mountainous, not developed.

1 There's a couple state park trails on the American side
2 and then, you know, the river on one side. Dirt road from
3 the highway to the river.

4 Q. And where is the state park compared to this
5 property?

6 A. It's north slightly, a little bit to the west and
7 east. It kind of surrounds it.

8 Q. And can you describe what this property looks like?

9 A. Yeah. If you pull in from the highway, there's, you
10 know, kind of rocky terrain, high desert, and then
11 immediately you drop down into floodplains. So kind of
12 like that video with the bulldozer, a lot of mesquite, a
13 lot of Retama, Palo Verde, then kind of, like, sandy areas
14 by the river.

15 Q. And are there any permanent structures on the
16 property?

17 A. No, it's completely primitive.

18 Q. Can you see a lot of development from the property?

19 A. You can't see anything.

20 Q. And what do you do when you visit this property?

21 A. We generally go there to camp, put boats in
22 sometimes, fishing, stargazing. You know, the normal
23 outdoor activities. Typically it's with my son and his
24 friends.

25 A. And do you access the Rio Grande River from this

1 property?

2 A. If there's water in the river, yeah. If there's not,
3 then we're just kind of swimming and stuff, but -- yeah.

4 Q. And how often do you visit this property?

5 A. Depending on the month, you know, once, twice a week
6 if we're lucky, yeah. If we're in town sometimes. If I'm
7 busy on the river, you know, I just don't have an
8 opportunity to, but usually about once a week.

9 Q. And what do you do for a living?

10 A. I'm a guide on the river.

11 Q. And how long have you worked as a river guide in the
12 Big Bend region?

13 A. Since March 2005.

14 Q. And what areas do you guide people through?

15 A. Basically from the state park through the national
16 park in Black Gap through that Lower Canyons region. So
17 about 300 miles of river.

18 Q. And why do your clients seek river trips in the Big
19 Bend region?

20 A. I think it's kind of an escape from modern life.
21 Kind of, what I would call, reconnecting with the natural
22 world. Or, at least, I hope they do.

23 Q. As a longtime resident and river guide, how familiar
24 are you with the area of west Texas commonly known as Big
25 Bend?

1 A. I could draw you a map from, you know, scratch
2 basically.

3 A. So very familiar?

4 A. It's a pretty -- pretty -- yeah, very familiar.

5 Q. And within the broader Big Bend area, how familiar
6 are you with areas near the U.S.-Mexico border?

7 A. Very familiar.

8 Q. And why is that?

9 A. Why am I familiar? Through working and -- and
10 playing, I guess. Yeah.

11 Q. On the Rio Grande?

12 A. Yes. Yeah.

13 Q. And approximately how many times have you visited
14 these areas near the border?

15 A. Many. Thousands.

16 Q. And are there other certain places along the stretch
17 of the border that are particularly special to you?

18 A. You know, it's kind of like choosing your favorite
19 child if you have thousands of children. But, you know, I
20 really like the Contrabando movie set. That's a close
21 spot to home. Camp in Santa Elena, the Hoodoos, Cross
22 Canyon -- had an experience with mountain lions there.
23 Many, many places in the Lower Canyons. Too many to name
24 right here. Would take hours.

25 Q. And what makes these areas different to other parts

1 of Texas or other rivers you've guided on?

2 A. I would say the remote nature creates a situation
3 where you don't see anybody else, you don't see
4 development. It's completely wild.

5 Q. And are these places important to your profession?

6 A. They are.

7 Q. Why is that?

8 A. I think without -- being in the place without
9 experiencing the place, you can't really understand,
10 looking at a photo, how it can change you.

11 Q. And are these places important to you personally?

12 A. They are.

13 Q. And why is that?

14 THE COURT: That's okay. We have some Kleenex.

15 A. I'd say the wilderness has a healing kind of aspect
16 to it. I don't want to go into my past, but I did -- I
17 would say the wilderness of Big Bend kind of saved my
18 life.

19 Q. (BY MS. LABUSCHAGNE) Thank you. And do you intend to
20 continue using these areas along the U.S.-Mexico border?

21 A. Definitely.

22 Q. When do you plan on next visiting these areas?

23 A. Tomorrow.

24 (Laughter).

25 THE COURT: All right, ladies and gentlemen.

1 Go ahead.

2 Q. (BY MS. LABUSCHAGNE) Thank you. Mr. Miller, I'd like
3 us to turn to defendants' recent construction activities
4 now.

5 Are you familiar with any construction activities
6 that have occurred pursuant to the challenge waivers in
7 the Big Bend sector?

8 A. Yes, yes.

9 Q. And have you personally observed this construction
10 activity?

11 A. Yes.

12 Q. Could you please describe what you observed?

13 A. Just like in the video. The same two spots. The
14 foothills of Mariscal Mountain, the excavators and
15 earthmovers. We were volunteering for the -- the park
16 service with Jeff over there for that event and then the
17 earthmovers taken down the river corridor, just downstream
18 from Santa Elena Canyon. Not to mention the development of
19 the man camps in our town and surrounding areas.

20 A. Could you explain what you mean by "man camps"?

21 A. Yeah. So drilling was pretty, pretty rural. If --
22 if you compare it to a lot of towns, it's very spread out,
23 you know. Most people move there and build a carport and
24 put a trailer under there and try to catch water. The man
25 camp on 118 looks like they're developing an airport for a

1 city. It's huge. Lots of heavy machinery. I don't
2 know -- 50 to 60 RVs. It's much, much bigger than any
3 development we've ever seen.

4 Q. And before construction occurred, were you familiar
5 with these areas near Santa Elena Canyon, Mariscal Canyon
6 and the man camps?

7 A. Yes.

8 Q. And what changes to the landscape stand out most to
9 you?

10 A. Probably what's happening or what has happened in
11 Mariscal, you know, a visible scar that'll never go away
12 in rock.

13 Q. And how has this construction impacted your work as a
14 river guide?

15 A. To avoid the emotional side of things, physically,
16 it's changed our ability to do river trips. There's been
17 some flooding from the new dirt road downstream from Santa
18 Elena. There's some drainages like Blue Creek that have
19 backed up into the highway. In fact, a tourist lost their
20 vehicle the other day, so the National Park Service closed
21 the road, which created a situation where we can't run
22 that stretch of river, which last week we would have run
23 that river -- that river trip as a three-day trip. Where
24 the man camp is, it creates sort of a feeling of terror.

25 There's another man camp at what used to be known

1 as the Stillwell Store, which was acquired by, I believe,
2 Fisher Industries. So we can't stop at the store, we
3 can't get gas or resupply on our way to or from the river
4 Those are the biggest impacts, I believe. Driving to the
5 river, if -- if we were to do Mariscal, for example, I
6 think it would be hard to ignore the development in an
7 undeveloped world.

8 Q. And will this recent construction that you have
9 described affect your ability to use and enjoy these
10 areas?

11 A. It will.

12 Q. Can you explain why?

13 A. Aside from the physical limitations of roads being
14 closed because of flooding brought about by the
15 construction, I think it changes the dynamic of taking
16 people on the river, you know, we want to focus on. The
17 beauty of the scenery, the wildlife, the night skies. So
18 far since the construction has happened, it's hard to not
19 talk about the looming threat of a border barrier system,
20 whether that's vehicle barriers where we can't carry our
21 boats that far from where we can park a van to the river
22 or to the surveillance towers that might be in our camp or
23 Border Patrol driving on roads through our camp while
24 we're sleeping.

25 I've already in the past nearly been run over

1 while camping in the state park by Border Patrol at night
2 and those are in areas where there's already existing
3 roads, you know, dirt roads. This is -- this is going to
4 be along the whole river corridor.

5 Q. Thank you, Mr. Miller. And, now, turning to
6 defendants planned construction, I'd like to direct you to
7 Page 21 of Defendants' Exhibit 1.

8 MS. LABUSCHAGNE: Ms. Padilla-Yanez, could you
9 please publish?

10 Q. (BY MS. LABUSCHAGNE) What does this show?

11 A. It shows a plan of a 30-foot wall going downriver.

12 Q. And according to Defendants' Exhibit 1, what will the
13 construction do to your property?

14 A. It will basically separate the entrance from the
15 highway to the rest of the property. All -- all of the
16 property will be on the wrong side of the wall.

17 Q. And what will occur upstream of your property?

18 A. Well, just judging by what's occurred in other places
19 where they've built the wall, lots of trash, lots of
20 debris, lots of lighting, lots of wells being dug and
21 other infrastructure. That's the complete antithesis of a
22 wilderness setting. And possibly debris from that
23 construction coming downriver during high water. Creating
24 a situation where it's too unsafe to do river trips.

25 Q. And how would the construction of a 30-foot border

1 wall in this area impact you?

2 A. Kind of like a bullet to the head.

3 Q. Would it impact your business?

4 A. Yes.

5 Q. Would it impact your personal and recreational uses
6 of the area?

7 A. It would.

8 Q. And how would it visually change the landscape from
9 your property?

10 A. Well, you wouldn't be able to see the river, which is
11 the -- the reason to go there in the first place.

12 Q. Would you still want to go and visit and use the
13 property if the border wall were built?

14 A. I'd -- I'd probably want to document the damage, but
15 I don't think I'd go there anymore.

16 Q. I'm turning now to the national park in Lower
17 Canyons.

18 How would the construction of vehicle barriers in
19 those areas impact your work?

20 A. Well, we wouldn't be able to get to the river or get
21 away from the river. It would also create pretty
22 hazardous situations from -- from flooding. Sometimes we
23 paddle creeks. I could only imagine -- just like a few
24 days ago when some friends of ours had an incident in the
25 national park with flooding. If you're in the water going

1 into a man-made strainer basically, it would create
2 incredibly dangerous hazards. Not to mention preventing
3 access.

4 Q. Could you explain what you mean about "it would
5 prevent access to the river"?

6 A. Well, we have to drive vans with trailers, with
7 canoes or rafts or kayaks, and we have to get as close as
8 we can to the water because we have to carry the boats.
9 Typically it's the guides only carrying the boats, and
10 then we have to carry water jugs and coolers and paddles
11 and life jackets. And judging by what we saw at Mariscal
12 with the video of the excavator where they were showing
13 us, you know, where the vehicle barrier was going to be,
14 that's physically impossible. I mean, you would not be
15 able to do it.

16 Q. And so would vehicle barriers in these areas change
17 the experience you can offer clients?

18 A. I think it would turn into a tour of insanity. We'd
19 be seeing vehicle barriers where cars can't drive.

20 Q. And what if the vehicle barriers had fixed gates?
21 Would that mitigate impacts to your work as a guide?

22 A. It's totally illogical. I mean, just a couple days
23 ago my friend and I were on a three-day river trip where
24 the river went from 400 cubic feet per second, a
25 measurement of volume of water, to about 12,000,

1 16,000-plus judging by the gauges later that we looked at.
2 The -- the normal access where there would have been a
3 gate had this, you know, been in the future wasn't usable.
4 We had to tie canoes to ours, take out in the trees, use
5 ropes to get out of the river in a spot that there
6 wouldn't have been a gate. So, long story short, those
7 access points change.

8 Q. And, sorry, did you say the fixed gates would be
9 logical or --

10 A. No, they would be illogical. I don't see any way
11 that they would help us.

12 Q. And so have access points to the river that you've
13 used changed in the past?

14 A. They have. Many, many times.

15 Q. Could you explain why they've changed?

16 A. Yeah. With different flows sometimes the dirt road
17 that we're using, depending on where we're at or the --
18 the paved road might need -- we might need to change our
19 access point, especially after high water. It could be
20 100 feet away, could be several feet away. In some
21 instances, it could be even further.

22 Q. And turning to the national park now, how would
23 additional roads or surveillance technology impact your
24 experience of the area as a -- as a guide and also
25 personally?

1 A. Well, I can only imagine if we're going downriver to
2 try to escape the modern world to to try to teach people
3 and teach younger generations how to connect with nature
4 in a -- in an age where we have smartphones and AI. If
5 there's a Smart Wall next to us or surveillance towers
6 every 400 feet, like their plan says, if there's Border
7 Patrol agents driving through looking at us with
8 binoculars, how does that feel like an escape? How does
9 it feel like we're in a natural world.

10 Q. Would you still visit the national park?

11 A. I -- I probably would, but I don't think I would have
12 the same experience. I -- I honestly might not even go
13 anymore.

14 Q. And are there any limestone formations in the
15 national park?

16 A. There are many, many, many limestone formations among
17 other types of rock.

18 Q. And do you have concerns regarding how construction
19 might impact those limestone formations?

20 A. Yes. Just watching videos, seeing pictures of other
21 vehicle barriers being employed and border wall systems
22 being employed, it's quite obvious that they're going to
23 have to blast in areas with rock. And we have very, very
24 sensitive archaeological sites and some of these shelters
25 along the river panels, archaeologist columns, so

1 sensitive you can't even touch them with your hands. The
2 rock is often so loose that we warn people not to climb on
3 the rock because it -- it's just brittle and, in climbing
4 terms, it's rotten. If you're blasting nearby, I can't
5 see how that's not going to negatively impact those
6 sensitive areas. I mean, we've -- we see rockfalls all
7 the time just from rain. We're going through some of
8 those canyons and we have rocks falling in camp and
9 that's -- that's nothing compared to blasting with
10 explosives. Or just the vibration of machinery near those
11 areas can be incredibly damaging.

12 Q. And how would blasting and other road construction
13 activities alter the character of the park?

14 A. I think just like I said before, you know, damaging
15 those sensitive areas, you -- you can't bring it back. It
16 takes hundreds of millions of years for these formations
17 to be created. We don't have that much time to wait for
18 another volcano to uplift another ocean bed.

19 Q. And, Mr. Miller, how would border barrier
20 construction impact your community in Terlingua?

21 A. It's already really affected us. Everybody's
22 stressed out. We're constantly feeling threatened. It
23 feels like there's an invading army. Feels like we're
24 living through an occupation right now. If this actually
25 occurred, I think it would destroy the tourism that

1 Terlingua, Presidio, Marfa, Alpine, Fort Davis,
2 Sanderson -- all those towns depend on tourism, depend on
3 the wilderness of the national park and the state park.
4 And the wildlife management area in the Lower Canyons, I
5 don't -- I don't see how it couldn't be negatively
6 impacted. Similar to the ranching and the farming that
7 occurs upstream around Redford. The -- the region is named
8 Big Bend because of the river. If -- if you destroy the
9 river, what's the point?

10 Q. And if planned construction proceeds, how will your
11 clients experiences of the river corridor and surrounding
12 landscape change?

13 A. I don't think they'll have an experience anymore. I
14 think it'll be about -- it will be a tour of the military
15 industrial complex, not a tour of the wilderness.

16 Q. And if planned construction proceeds, how will your
17 connection to the landscape be impacted?

18 A. There won't be a connection anymore. Not along the
19 river anymore unless you're just like, "Let's just look at
20 the right side of the river."

21 Q. Thank you, Mr. Miller. I have a few closing
22 questions for you.

23 A. Uh-huh.

24 Q. After more than 20 years on the Rio Grande, what does
25 this landscape mean to you?

1 A. It means everything.

2 Q. Mr. Miller, what do you stand to lose if construction
3 continues?

4 A. I stand to lose the hope for, you know, my son and
5 his generations are -- my son and his, you know, children,
6 his children's children being able to experience what we
7 can now.

8 Q. And will your personal connection to the landscape be
9 harmed?

10 A. Yes.

11 MS. LABUSCHAGNE: Thank you.

12 No further questions, Your Honor.

13 THE COURT: All right. Whenever you're ready.

14 MR. YUN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. YUN:

17 Q. Good morning, Mr. Miller.

18 A. Good morning.

19 Q. Just have a few quick questions to follow up with you
20 on -- regarding border barrier walls on your property.

21 Are you aware that CBP has a long history of
22 incorporating gates into those walls to allow property
23 owners to access their property as they were before?

24 A. I've heard of that. I've talked to people in Eagle
25 Pass and in the valley that have been promised gates and

1 have not gotten them.

2 Q. And regarding vehicle barriers in the Big Bend
3 National Park, are you aware that CBP has promised that
4 the public will be able to access the property as before
5 with no inhibition?

6 A. I am aware of that promise, but I don't put much
7 stock into it.

8 Q. And CBP has stated that, "There will be little to no
9 impact on plaintiffs or any other members of the public's
10 ability to access areas within Big Bend National Park or
11 other publicly accessible portions of Big Bend Four
12 project area, including the Rio Grande River."

13 A. What's the question? I'm sorry.

14 Q. Are you -- are you aware that CBP has made those
15 promises?

16 A. I've heard these promises, yes.

17 Q. And, you know, that would include, boat launches --

18 A. I have heard these promises. And if you see in
19 reality where the lines are in person, it does not help
20 us.

21 MR. YUN: No further questions.

22 THE COURT: All right. Anything further of this
23 witness?

24 MS. LABUSCHAGNE: Thank you. A few final
25 questions from plaintiffs.

1 REDIRECT EXAMINATION

2 BY MS. LABUSCHAGNE:

3 Q. Mr. Miller, if there was a fixed gate on your
4 property, would you still want to visit it?

5 A. No.

6 Q. Why?

7 A. We visit for the natural beauty of the place, not for
8 a false sense of security. I would say that would make me
9 want to sell the property. If I could still sell it.

10 Q. And if there were fixed boat launches in barriers
11 blocking access to the river, would that protect your
12 ability to access and use the river for guiding and
13 personal recreation?

14 A. I'm sorry, can you repeat the question?

15 Q. If barriers had fixed points to launch boats, would
16 you still be able to use the river?

17 A. I think the vehicle barrier system would have to be
18 constructed outside of the flood zone, which would be too
19 far for us to carry boats. We would have to drive as
20 close as we can to the water, basically in the floodplain.
21 So that would not help.

22 Q. And based on all the construction plans you've seen
23 and heard about to date, is there any kind of
24 infrastructure worth billions of dollars in construction
25 contracts that would not harm your professional and

1 personal interests?

2 A. I think we already have walls. We already have
3 patrol roads. We already have all the infrastructure the
4 Border Patrol needs. If -- if they want to hire a million
5 more guys to stand at the river holding hands, that would
6 be fine. I don't see any need for any additional
7 infrastructure. In fact, talking to Border Patrol, they
8 also think it's insanity.

9 MS. LABUSCHAGNE: Thank you.

10 No further questions, Your Honor.

11 THE COURT: All right. On behalf of the
12 defendant, anything further?

13 MR. YUN: Nothing further, Your Honor.

14 THE COURT: You may step down. Thank you.
15 You may call your next witness.

16 MS. LABUSCHAGNE: Plaintiffs would like to call
17 Michael Wilber Green to the stand.

18 THE COURT: All right.

19 MICHAEL WILBER GREEN,
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. LABUSCHAGNE:

23 Q. Mr. Green, where do you currently live?

24 A. I currently live in Marfa and in Sanderson, where I'm
25 working on a historic building renovation.

1 Q. And how long have you lived in Marfa and Sanderson?

2 A. I've been in Marfa since 2005.

3 Q. So 21 years?

4 A. Pardon me?

5 Q. Is that 21 years?

6 A. Oh, yeah. Time flies.

7 Q. And are you currently employed?

8 A. No, I'm a retired architect.

9 Q. And what did you do for work prior to retirement?

10 A. I worked as an architect in the construction phase
11 management as a contract administrator and the corporate
12 sector. I managed large projects under construction.

13 Q. And how long did you work as an architect for?

14 A. Over 30 years.

15 Q. As an architect, did you ever evaluate structural
16 risks to buildings?

17 A. Yes, I did.

18 Q. Do you have any experience on adobe structures?

19 A. Yes. I've been doing adobe restoration for over 20
20 years.

21 Q. And, Mr. Green, how did you become involved with
22 Friends of the Ruidosa Church group?

23 A. It goes way back to 2016. I started a conversation
24 with the Catholic Diocese of El Paso and, over a period of
25 two years, I convinced them they needed to deed the

1 property to a group of people that could save the building
2 because it was deteriorating and falling down.

3 Q. And how long have you served as president of the
4 Ruidosa Church group?

5 A. Three years.

6 Q. And how long have you been a member?

7 A. Well, since its inception in 2000.

8 Q. How often do you visit the church?

9 A. I would say, on average, once a month.

10 Q. And where is the church located?

11 A. It's near the intersection of Farm Road 170 and Pinto
12 Canyon Road, also called 2810.

13 Q. And I'd like to direct your attention to Plaintiffs'
14 Exhibit 1.

15 How far is the church from the U.S.-Mexico
16 border?

17 A. It's approximately 1400 feet.

18 Q. And could you please show me where it is on
19 Plaintiffs' Exhibit 1?

20 MR. YUN: Your Honor, I would just note this is
21 Defendants' Exhibit 1.

22 THE COURT: Oh, all right. Okay. So let's just
23 go ahead and make sure it's correct on the record. I do
24 agree it's Defendants' Exhibit 1.

25 MS. LABUSCHAGNE: Yes, but it should now display

1 Plaintiffs' Exhibit 1.

2 THE COURT: Okay. Thank you.

3 Q. (BY MS. LABUSCHAGNE) Mr. Green, where is the church
4 on this map?

5 A. It's exactly between -- or at the intersection of
6 BBT2 and BBT3.

7 Q. And does the church have any historic designations?

8 A. Yes, it does. We have a recognized Texas Historical
9 Commission registered landmark. We also have been
10 recognized as one of the 11 most endangered sites for the
11 Preservation National Trust and we've also been recognized
12 by the Latinos in Heritage for ten of the most -- one of
13 the ten most endangered sites.

14 Q. And when you first saw the Ruidosa Church, what
15 condition was it in?

16 A. Well, I first saw it in 1984 when I went out to Big
17 Bend to camp and it was -- it had been abandoned and it
18 was coming apart and eroding. And the next time I saw it
19 was in 1996, again, on a camp -- camping trip and it
20 further eroded and was losing portions of its walls.

21 Q. And through Friends of the Ruidosa Church, what role
22 do you play in the restoration effort of the church?

23 A. Well, based on my background as an architect and
24 managing construction projects, I helped to coordinate the
25 contractors doing the actual restoration work. I

1 coordinate the installation of utilities. We also have
2 community days once a year in November, so I'm just
3 actively involved in all the moving parts and pieces.

4 Q. And through this role, do you regularly assess the
5 church's condition?

6 A. Yeah, I often look at the areas that I know that are
7 vulnerable because of deterioration of the adobe. It
8 needs to be maintained, so I -- every time I go down
9 there, I'm looking at the primary suspects of where the
10 walls might be starting to open up further. But it's
11 holding steady, I am glad to say that.

12 Q. And have you developed a restoration plan for the
13 church?

14 A. Yes, I have. I developed it about three years ago.
15 We just recently completed a historic structures report
16 that's going to require that to be modified and changed.
17 We've learned a lot through this historic structures
18 report.

19 Q. And are there any threats to the church?

20 A. The main threat with adobe is moisture and
21 uncontrolled moisture infiltration into the adobe. So
22 most of the walls have roofs over them. We have a back
23 section of the church called the sacristy that's exposed.
24 We have stopped the collapse of the right bell tower and
25 that was done in 2023. So we're addressing the most

1 critical areas right now as we raise funding for the full
2 restoration of the structure.

3 Q. And other than moisture, are there any threats to the
4 church?

5 A. Well, now we have an additional threat. With the
6 border wall, I've also noticed an increase in traffic down
7 there. Vibration is a threat to the adobe. It doesn't do
8 well in a seismic zone. That's why you don't see very
9 many adobe structures in seismic zones. They're very
10 vulnerable to a lateral load.

11 Q. And in preparing the report, what did you learn about
12 soil density in the vicinity of the church?

13 A. Part of the Historic Structures report is an
14 archaeological investigation to determine any historic
15 deposits. So we opened up six different digs within the
16 church and we dug down to the original soil surface that
17 the church was built on and it's a very hard-packed
18 alluvial clay deposits over thousands of years. The river
19 floods and would lay down deposits of clay and so we got
20 down to that base level in the historic archaeological
21 investigation. We found that soil to be rock-hard. It's
22 a very hard soil.

23 Q. And how have you helped make adobe bricks used in the
24 restoration effort?

25 A. On many, many different adobe days that we hold in

1 Marfa. We gather community members together and teach
2 traditional adobe practices, and so we have a big turnout
3 there. It's actually -- I call it mud therapy. It makes
4 everyone feel good. So we do that on average, like I
5 said, once a month.

6 Q. And approximately how many adobe bricks do you think
7 you've made?

8 A. A recent count, we're at about 3,000 of the target
9 4,000 that we're going to need. We've had more and more
10 people turning out for these adobe days, so we're getting
11 better and better at making them.

12 Q. And how do adobe bricks structurally support the
13 church's architecture?

14 A. Well, they make up the walls. It's a very simple
15 design. The walls are about 12 inches thick. They
16 actually bear directly on that hard-packed soil. There is
17 no footing, so the adobe walls need lateral support from
18 the roof structure or adjoining walls that lock together.
19 The adobes need support from a 90-degree converging wall,
20 so it's -- that's the basic structural components of adobe
21 structures.

22 Q. And based on your restoration work, what conditions
23 are most harmful to adobe structures?

24 A. Well, moisture, like I mentioned, but also vibration.
25 Vibration is very harmful to the adobe, as I mentioned

1 earlier.

2 Q. And why is that?

3 A. Well, adobe has just adhered with other mud and it's
4 considered in the building code as nonreinforced masonry.
5 So it's really just the mud of the mortar that locks the
6 adobe bricks together and that can easily fracture in a
7 seismic event.

8 Q. Thank you, Mr. Green. And I'm going to ask some
9 questions about the federal government's plans for
10 construction in the area.

11 Are you familiar with the federal government's
12 plans to construct a border wall in the vicinity of the
13 church?

14 A. Yes.

15 Q. And have you received notice of imminent construction
16 near the church?

17 A. Yes. We recently received a e-mail from Alex Yun
18 describing a ground disturbing activity that would include
19 geotech investigation, grubbing and clearing within 10
20 miles of the church site.

21 Q. And to the best of your knowledge, what do
22 construction plans --

23 MS. LABUSCHAGNE: Oh, apologies. Your Honor, I
24 would like the witness to consider Defendants' Exhibit 7,
25 which hasn't been offered into evidence yet.

1 THE COURT: Any objection to its admittance?

2 MR. YUN: No, Your Honor.

3 THE COURT: All right. It may be admitted.

4 Q. (BY MS. LABUSCHAGNE) Mr. Green, I'd like to direct
5 your attention to Defendants' Exhibit 7.

6 Could you describe what we're looking at?

7 A. Yeah. We can see the church on the right of Farm
8 Road 170, and you can see the turn of Farm Road 170, and
9 then there's a dimension describing 575 feet to the border
10 barrier, and they're calling it a preliminary barrier
11 alignment.

12 Q. And so based on this, how far is the planned
13 construction from the church's property?

14 A. Well, again, the dimension is 575 feet, but as I
15 understand it, the border barrier requires a clearing of
16 120 feet and that would bring the construction activities
17 even that much closer to the church.

18 Q. Thank you. And approximately how far is the church
19 from the nearest paved road?

20 A. Well, Farm Road 170 is about 12 feet from the edge --
21 the corner of the left tower.

22 Q. Mr. Green, I'd like to direct your attention to
23 Plaintiffs' Exhibit 11.

24 MS. LABUSCHAGNE: Ms. Padilla-Yanez, could you
25 please publish?

1 THE COURT: It's taking a minute. It's turning
2 on.

3 Q. (BY MS. LABUSCHAGNE) Have you seen vehicles drive on
4 the shoulder between this road and the church?

5 THE COURT: There's no -- nothing up for them to
6 see. Hold on. It's -- it had to reboot, I think.

7 A. Yeah. I mean, I can tell you without the image that
8 I see tire tracks that go between the edge of the paving
9 and the corner of -- okay. What we're seeing is the left
10 tower, closest to Farm Road 170. And oftentimes I see
11 tire tracks that run in that space between the corner of
12 the left tower and the paving, sometimes as close as five
13 or six feet.

14 Q. (BY MS. LABUSCHAGNE) And how frequently do you
15 observe tire tracks or vehicles driving outside of the
16 roadway near the church?

17 A. Almost every time I go down there I see tire tracks.

18 Q. And is there anything else notable about this road?

19 A. Well, if you approach the road from 2810 Pinto Canyon
20 Road, there's actually a blind corner there. And so I --
21 I don't know how big the rigs will be that come in with
22 heavy equipment that they may have to go out further to
23 keep from driving off the road or they may just cut off
24 the corner.

25 Q. And are there any other roads besides FM 170 that

1 could provide access to the area of the U.S.-Mexico border
2 near the church? And based on your familiarity with the
3 church's architecture, are there portions of the church
4 that remain particularly fragile?

5 A. The nave is pretty solid and we've basically braced
6 the right tower to keep it from falling, but it's still
7 vulnerable. All parts of the church are vulnerable and
8 particularly the walls that are not connected to the main
9 part of the structure, like I said, with this locking
10 connection. Those walls we refer to as wing walls, and
11 they're very, very vulnerable to any kind of lateral load
12 or vibration.

13 Q. And are any sections of the church with wing walls
14 visible in this photo?

15 A. Well, the left tower is not connected to the main
16 nave with that locked-in connection, and so it's
17 vulnerable to vibration.

18 Q. And during the restoration process, what have you
19 learned about the risks from ground -- from ground
20 vibrations to the section of the church?

21 A. Well, the current traffic on Farm Road 170 is pretty
22 minor, I think. We have a school bus that comes through
23 every morning and every evening, so there hasn't been any
24 heavy-duty traffic coming through there yet, so we've not
25 been able to really observe any kind of vibration impact.

1 Q. Does heavy machinery passing on FM 170 pose a threat
2 to the church's structural integrity?

3 A. Well, just personal vehicles. Light vehicles doesn't
4 really pose a threat, but heavy trucks would.

5 Q. How?

6 A. By imposing vibration.

7 Q. And anything else?

8 A. Not -- no, I can't think of anything else.

9 Q. Would the risk of traffic collisions pose a risk to
10 the section of the church?

11 A. Well, if -- if someone went wide on that blind turn
12 and there was oncoming traffic, yeah, that could be a
13 risk.

14 Q. Are there any arroyos near the church?

15 A. Yes, there's an arroyo that is to the northwest. And
16 it's a pretty good-sized arroyo.

17 Q. And can you describe that arroyo after significant
18 rain events?

19 A. Well, all the arroyos in this area on Farm Road 170
20 cross the road and it requires a lot of maintenance to
21 remove, mainly, gravel and mud that goes across the
22 pavement. And a small rain event can create a large
23 amount of water rushing through these arroyos to the
24 extent where traffic has to stop. They can't get through
25 it.

1 Q. And have you ever seen portions of nearby roads to
2 the church washed out after significant rain events?

3 A. Yes. At our last year's Community Day, we lost
4 sections of asphalt between Presidio and Ruidosa.

5 Q. And is a border wall currently scheduled to be built
6 through the arroyo near the church?

7 A. Yes.

8 Q. Thank you, Mr. Green. And what role does the Ruidosa
9 Church play in the community?

10 A. Well, it's a community gathering, mainly during our
11 community days that are held in November. This year it's
12 November 14th and I invite everyone here today to attend.
13 We also have workshops that are conducted down there. So,
14 originally, it was a community gathering spot and our
15 restoration mission is to bring it back to that community
16 gathering spot.

17 Q. Mr. Green, I'd like to direct your attention to
18 Plaintiffs' Exhibit 10.

19 MS. LABUSCHAGNE: Could we please publish Exhibit
20 10?

21 A. Yeah, that's our Community Day celebration of
22 November 2023. The painting and the archway is done by
23 Matt Kleberg of San Antonio, and the main focal point for
24 this community day was called Raise the Bell. We found
25 the bell through local citizens in Alpine. The bell had

1 been used by the schoolteacher down the road to ring the
2 kids to class in the morning, so we were celebrating
3 finding the bell. And we also have the Matachines
4 traditional dance that are gathered in front between the
5 bell and the audience. The Matachines dancers are
6 traditional dancers that come over from Ojinaga. We start
7 off our community days with a dance.

8 Q. And why are events like this important to the
9 community?

10 A. Well, I think it's an expression of community,
11 connectedness and love. It's a simple gathering that --
12 it celebrates the cross-border culture as well, so it's
13 just a -- it's a wonderful gathering.

14 Q. And how would structural damage to the church affect
15 the community's ability to continue holding events like
16 these?

17 A. It's -- it would probably have to be discontinued, I
18 mean, until we made repairs. Right now the nave is safe
19 to gather in, but we could have damage that would halt
20 those community celebrations inside of the nave.

21 Q. And would an increased threat of collapse impact
22 these community days?

23 A. It most certainly would.

24 Q. Would you still be able to hold them?

25 A. You know, of course it depends on the degree of

1 damage, but I don't think we could hold them in the
2 church.

3 Q. And how would border wall affect the visitors'
4 experience of the church and its surroundings on community
5 days like this?

6 A. Aesthetically, the border wall -- the 30-foot border
7 wall is a rusty steel structure. It resembles a picket
8 fence. We have no man-made structures like that anywhere
9 in this region. I think what we stand for is community,
10 connectedness and love. And I think the border wall
11 stands for just the opposite of that.

12 Q. And how would it affect your aesthetic experience of
13 the church when you visit it?

14 A. I -- you know, I think it would break my heart to see
15 that down there. It's such a beautiful spot. You can see
16 the escarpment in Mexico. Scenically, it's one of those
17 beautiful spots.

18 Q. Thank you, Mr. Green. I have just a few final
19 questions for you.

20 Why have you devoted the last decade to restoring
21 the Ruidosa Church?

22 A. Well, I love the rich history of the region. I love
23 historic architecture. I think it's important to give
24 back to the community once you retire, especially if you
25 have some skill sets to share and offer. We're in a very

1 sparsely populated remote community and I think -- I love
2 it and I want to give back.

3 A. And what would be at stake for the Friends of the
4 Ruidosa Church if construction proceeds?

5 A. I think there's a real possibility of damage due to
6 vibration. It's kind of hard to imagine how that damage
7 would impact us, but I think it would. It would hurt the
8 progress of the restoration.

9 Q. And aesthetically?

10 A. Aesthetically, like I said before, it's -- it's a
11 foreign invasion of a construction type that it's going to
12 stick out significantly and not blend into the environment
13 at all. It's -- it's tragic to just imagine. And I've
14 thought about it a lot, what it's going to be like
15 imposing on this historic -- rich, historic area. It's
16 not going to be good.

17 MS. LABUSCHAGNE: Thank you.

18 No further questions.

19 THE COURT: All right. On behalf of the
20 defendant.

21 CROSS-EXAMINATION

22 BY MR. YUN:

23 Q. Good morning, Mr. Green. I have some questions to
24 follow up on your testimony.

25 To begin, you stated that you have extensive

1 experience on adobe structures.

2 A. Correct.

3 Q. Have you ever witnessed an adobe structure fall down
4 as the result of vehicle vibrations?

5 A. No, I have not.

6 Q. Are you aware that CBP also has extensive experience
7 working around adobe structures?

8 A. No.

9 Q. And are you aware that CBP also has never experienced
10 an adobe structure fall down as a result of vibrations?

11 A. I am not aware of that.

12 Q. You stated that cars drive by regularly on Farmer
13 Market Road 170?

14 A. It's very little traffic down there. As I said,
15 Alex, mainly what we see is the school bus that comes and
16 goes every day. And we do have ranch trucks down there,
17 farm trucks, but that's about it.

18 Q. So some traffic, regular traffic, but not a lot?

19 A. Yes.

20 Q. And as a result of any of those vibrations along the
21 church, the church has not been damaged in any way?

22 A. I haven't noticed any.

23 Q. And halting construction along the border will not
24 prevent those cars, those trucks, from traveling along
25 that road?

1 A. Can you repeat that, please?

2 Q. Sure. Halting construction on the barrier, the
3 border barrier, will not prevent the trucks, the cars that
4 you stated regularly travel along this road from
5 continuing to travel along that road?

6 A. Correct.

7 Q. And you stated that you regularly observed tire
8 tracks imposing off the road when you visit the church.

9 A. That's correct.

10 Q. Even though there's no construction currently
11 occurring next to the church.

12 A. Not yet.

13 Q. You also stated that DHS's construction plans will
14 require transporting fleets of heavy vehicles and
15 construction equipment down the road.

16 A. Correct.

17 Q. You don't have personal knowledge of how DHS is
18 planning to transport their construction equipment to the
19 project area?

20 A. I don't have personal knowledge. But just based on
21 the road map, it appears that they'll be coming from
22 Presidio or maybe from North Chispa Road.

23 Q. But you'd agree that it's possible that DHS could use
24 alternate staging routes that would avoid the corner on
25 Farmers Market Road?

1 A. I don't know of another alternate route.

2 Q. They could potentially create routes off of the road?

3 A. Well, they could build another alternate route.

4 Q. I'd like to move to the issue of flooding that you
5 raised.

6 You're not a hydrologist or flood engineer,
7 correct?

8 A. That's correct.

9 Q. You've not conducted any modeling showing what the
10 damming effects would have?

11 A. No, I have not.

12 Q. You have no evidence that the water from the river
13 has ever reached the base of the church walls?

14 A. I have no evidence.

15 Q. You've not seen DHS's border wall design plan to know
16 whether it will include drainage infrastructure such as
17 stormwater gates?

18 A. I have not seen those details. I'd like to look at
19 them.

20 Q. I'd also like to turn to the danger of direct vehicle
21 impacts that you mentioned.

22 Have you ever witnessed any vehicle directly
23 impact the church off of Farmer Market Road?

24 A. No.

25 Q. You also stated that you've never seen a migrant come

1 through the area around the church, correct?

2 A. I have never seen anyone in all the time I've been
3 going down there.

4 Q. You only visit the church about once a month?

5 A. Yes, sir.

6 Q. Finally, you stated in your declaration that you're
7 building a temporary fence around the church.

8 A. We need to do that to keep the vehicles or traffic
9 away from the church.

10 Q. Is your testimony, though, that that fence has not
11 been constructed yet?

12 A. Not yet.

13 MR. YUN: No further questions, Your Honor.

14 THE COURT: Anything further of this witness?

15 MS. LABUSCHAGNE: No further questions, Your
16 Honor.

17 THE COURT: You may step down. Thank you.

18 MR. YUN: Your Honor, may we take a brief recess?

19 THE COURT: Yeah. We'll take a ten-minute
20 recess.

21 (Recess)

22 COURTROOM DEPUTY: The Court is back in session.

23 The Court calls case EP:26-CV-1099, Friends of the Ruidosa
24 Church, et al., vs. Markwayne Mullin, et al.

25 THE COURT: All right. You may call your next

1 witness.

2 MS. YIP: Hi, Your Honor. Emma Yip for
3 plaintiffs. Our next witness is Willard "Bill"
4 Guerra-Addington.

5 THE COURT: All right. Come on up,
6 Mr. Guerra-Addington.

7 WILLARD GUERRA-ADDINGTON,
8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. YIP:

11 Q. Will you please state your name for the record?

12 A. My name is Willard Guerra-Addington.

13 Q. Thank you, Mr. Addington. Let's start with some
14 background.

15 Where do you currently live?

16 A. Sierra Blanca, Texas, in Hudspeth County.

17 Q. And how long have you lived there?

18 A. All my life.

19 Q. Do you also own the Guerra Farm and Ranch in the
20 area?

21 A. Yes. The Guerra Farm and Ranch, That's correct.

22 Q. Can you describe to us approximately where that is
23 located?

24 A. Our ranch, the Guerra Farm and Ranch, my family farm
25 and ranch is located 34 miles southeast of Sierra Blanca

1 on FM 1111 and then Bramlett Road on the river itself. We
2 have frontage on the river.

3 Q. Thank you.

4 MS. YIP: Can we publish Exhibit 1 -- Plaintiffs'
5 Exhibit 1?

6 Q. (BY MS. YIP) Mr. Addington, can you see the map?

7 A. I see the map.

8 Q. Can you tell us where your farm is located on this
9 map?

10 A. The screen just went blank. There it is. It's
11 below -- BBT1, the Guerra Farm and Ranch clearly marked
12 right there on the river. Down Bramlett Road.

13 Q. Can you tell us about your ranch?

14 A. My grandfather started this ranch in 1916. He had
15 about 640 acres of farmland and still do. And then a lot
16 of rangeland up into the Indian mountains. We also used
17 to own a larger ranch.

18 Q. And what do you like to do when you visit the ranch?

19 A. I love to visit and recreate and take care of my
20 horses. I ride horses every time I go and check after all
21 the wildlife and cattle and -- we have a few head of
22 cattle still on the river. We fish in the river and
23 enjoy -- enjoy it every -- we just love being on the
24 river, so -- it's an experience that's hard to put into
25 words, to be honest.

1 Q. Thank you. How often do you visit your ranch?

2 A. About four to five times a week.

3 Q. Do you enjoy viewing the wildlife in this area?

4 A. Yes, there's a lot of wildlife in this region and
5 area.

6 Q. What sorts?

7 A. We have, badgers, skunks, mule deer, quail, elk.

8 I've seen elk on the -- on these borderlands that are now
9 coming from Mexico. And I've most recently seen a bear on
10 our ranch and farm.

11 Q. Is it special to see a black bear?

12 A. Yes. In my county it's -- I haven't never seen one
13 in the last seven years I've been living there and this is
14 the first time. You usually see these bears in the Big
15 Bend National Park and around Alpine and whatnot. They've
16 been coming back for years.

17 Q. Do you enjoy viewing the night skies in these areas?

18 A. Very much so. I have fond memories since I was a
19 child, sleeping under the stars and watching the galaxy,
20 the Milky Way for hours on end next to a campfire. I've
21 spent so many hours not even wanting to sleep, under the
22 stars. It's something very special to me, the dark sky.

23 Q. And are you a member of the Center for Biological
24 Diversity?

25 A. Yes, I am.

1 Q. How long have you been supporting the center's work?

2 A. Since about 2012.

3 Q. And can you tell us why you support the center's
4 work?

5 A. Yes, I can. It's because the Center for Biological
6 Diversity, what I've seen, has -- protects all animals,
7 whether they're cute or not.

8 (Laughter)

9 THE COURT: No laughing please.

10 A. And that means the ecosystem is all connected. And I
11 appreciate their attention to protect all animals and
12 vertebrates and, of course, the habitat they live on,
13 which is super important. And so that's only one of the
14 two organizations I've ever donated money to,
15 environmental organizations.

16 Q. (BY MS. YIP) Thank you. I'd like to pivot to talking
17 about border barrier construction near your property.

18 To the best of your knowledge, what sorts of
19 border barrier construction are planned near your ranch?

20 A. On and near my ranch. Are you asking near or on?

21 Q. Well, how about on?

22 A. On, yes. We own several miles of river frontage on
23 the Guerra Farm and Ranch. And from what I understand
24 from the U.S. Army Corps of Engineers, they want to build
25 this wall, this 30-foot wall, not directly on the river,

1 but kind of far up on the hill behind -- behind the river,
2 which would take hundreds of acres of our land by imminent
3 domain if they're successful.

4 Q. And if they build the wall across your property, how
5 would that impact your use of the river and your ranch?

6 A. It would destroy our ranch and farm. I wouldn't be
7 able to ever access our water. We own 640 acre feet of
8 priority water rights from the Rio Grande Water Master
9 since 1915. Although there's not a lot of water in the
10 river that we can access, there is still water in the
11 river, significant quantities and we'd lose that. That
12 would be behind a wall.

13 It's my opinion that they're putting -- they're
14 taking the river away from us and it's devastating. I
15 wouldn't -- there's not enough water in that area.
16 There's -- we have wells there on the -- on the lower part
17 of our farm, but it's kind of brackish water. The -- the
18 animals, whether they're domestic cattle or my horses or
19 wildlife, they prefer the river to drink out of that will
20 be cut off and they will not have that source of drinking
21 water if they -- if they're successful in putting up this
22 border wall.

23 Q. And can you describe how a wall across the greater
24 region that your ranch is in would change the Rio Grande
25 corridor?

1 A. Yes. It would affect the flow of the river itself, I
2 believe. I've studied this for many years on how the
3 river flows and it would -- it would also put debris in
4 the river. I can talk about where they blasted. So far
5 there's been debris falling into the river. I'm very
6 concerned about all the -- all the different things that
7 would happen to the river. I see the river as a living
8 being. Anything that happens on one section of the river
9 affects all of the river. An attack on any part of the
10 Rio Grande is an attack on all of the Rio Grande. I don't
11 think that a wall belongs on any part of the Rio Grande.
12 I think this is a mistaken way and an ineffective way to
13 control immigration in this country.

14 Q. Thank you. I'd like to turn now to the staging area.

15 Are you aware of a construction staging area
16 that's located approximately two miles from your ranch?

17 A. I'm very aware of that.

18 MS. YIP: Can we please publish Plaintiffs'
19 Exhibit 12?

20 A. There it is.

21 Q. (BY MS. YIP) Mr. Guerra-Addington, can you tell us
22 what we're looking at in this video?

23 A. We're looking at a 200-acre staging area on two and a
24 half miles from our farm and ranch. As you can see,
25 there's a lot of activity. It's -- this is -- that's a

1 one-million-gallon water tank that they're bringing water
2 into. It's a complete disruption of the region. It's --
3 it's indescribable. It's an industrial nightmare and a
4 place that used to be very serene and quiet and peaceful
5 and they've destroyed a lot of land.

6 Q. Is this visible from your property?

7 A. Yes. In the higher elevation, yes.

8 Q. And can you tell us approximately when the staging
9 area was built?

10 A. They started this 200-acre staging area, I think it
11 was -- I first saw it in -- in May they started clearing
12 it off and then they started bringing machines and more
13 machines down Bramlett Road, which you see today. All
14 those machines have to be passed through our farm and
15 ranch on the county road. Every one of them passes there.
16 And I see that with my camera that I have installed and
17 when I'm there I see them driving by.

18 Q. Can you tell us -- you bring up the traffic.

19 Can you -- can you describe to us what traffic on
20 Bramlett Road was like before the staging area was built?

21 A. It was very quiet. People drove pretty slow. It
22 wouldn't -- they weren't driving 50 like they are now.

23 Q. Around how many cars did you see per day on an
24 average day before?

25 A. When you -- maybe if you were there all day you might

1 see 10 or 15, including Border Patrol.

2 Q. And today, approximately how many cars do you see on
3 an average day?

4 A. Countless. It's in the hundreds.

5 Q. Have you noticed a difference in the average speed
6 that the cars are driving today?

7 A. Yes. Although there's a posted speed limit with the
8 county road agreement of 30 miles per hour, I'm seeing a
9 lot of these contractors drive 40 and 50 with diesel
10 trucks. Not just their personal -- not just their SUVs,
11 but with diesel trucks. It's very dangerous. There could
12 be a head-on collision and I almost had one.

13 Q. You mentioned diesel trucks.

14 Can you describe the different vehicle types that
15 you typically see today?

16 A. Yes. Yes, there's gravel trucks that haul quite a
17 bit of gravel to build these roads from a quarry on the
18 Sierra Blanca Mountain that -- and they're -- it's just --
19 at least 20 trucks. They started out with making round
20 trips, then there's five water trucks bringing a lot of
21 water back and forth to put on the roads. It continues to
22 this day. This has been going on for months.

23 Q. Can you describe what this area looked like before
24 the staging area was built?

25 A. It was grassland with grama grass, chaparral, which

1 is also known as creosote, and cactus. A very natural
2 area. And I used to see a lot of wildlife. They're all
3 gone now.

4 Q. Have you witnessed any harm to wildlife?

5 A. Yes, I have.

6 Q. Can you describe any that have occurred recently?

7 A. The road has become a critter-killing road. An
8 animal-killing road at night and day. Their speed that
9 they drive at night, a lot of these contractors in their
10 personal vehicles and the trucks, and that's when they hit
11 badgers, porcupines, skunks. I picked up many of them and
12 showed respect by putting them off the road or they've --
13 they've been squashed by these trucks that are speeding
14 through there. Some of them may not be speeding, but
15 they're hitting a lot of animals and I never used to see
16 that before. Hardly ever.

17 Q. I'd like to turn to a different area.

18 Are you familiar with Box Canyon?

19 A. Very familiar with Box Canyon. I've been going there
20 since I was a child.

21 MS. YIP: Can we please publish Plaintiffs'
22 Exhibit 13?

23 Q. (BY MS. YIP) Mr. Guerra-Addington, can you please
24 describe what we're seeing in the video?

25 A. Box Canyon.

1 Q. And you can take a moment if you need to.

2 A. It's our favorite fishing place. The -- my community
3 has been fishing there since I was a child. We've gone
4 there, we've camped there at Box Canyon. There's catfish,
5 bass, carp, turtles. We like to fish for catfish and bass
6 there.

7 Q. What river are we seeing in this video?

8 A. The Rio Grande.

9 Q. And is the road that the -- that the person who's
10 filming this video is standing on, was that road there
11 before? Can you describe what Box Canyon looked like
12 before this road was built?

13 A. There was no road. What you're seeing now there is
14 bulldozing of the cliff there. And also they've used
15 explosives on the hill in patterns. I'm very familiar
16 with explosives. See that -- you see that orange cone
17 there? Those were used to cover the the dynamite holes.
18 This has already been blasted. You can see rocks have
19 fallen. Rocks and boulders have fallen into the Rio
20 Grande that I don't see any concern for. Debris, rocks
21 and boulders and other things going into the river itself.

22 Q. And how has the community used Box Canyon?

23 A. Like I said, it's our favorite fishing place to fish,
24 camp, stay and hike and that. The Indian mountains are
25 just above that. It's a very beautiful biodiverse area.

1 So it's not just a fishing place. It's a place where we
2 camp and hike and recreate on. We were just there
3 recently. My friend caught eight two-foot catfish and a
4 lot of turtles that we threw back.

5 Q. Can you describe how detonating the canyon walls here
6 impacts you and your connection to this place?

7 A. It devastates me. It devastates my spirit. This
8 canyon and these lands are part of me and it hurts me. It
9 triggers me to see these pictures right now. This -- this
10 place is a beautiful place. For them to continue this
11 road, they're going to have to blast through this canyon
12 with major explosives. It's a slot canyon. They're going
13 to have to use a lot more explosives. This is just the
14 beginning. What you're seeing here, they bulldozed the
15 road up further almost -- I haven't walked to the very
16 end, but they've gone way up the hill. But to get through
17 there, this canyon, they're going to have to use more
18 explosives and that just -- irreparable harm has already
19 been done to this canyon. It just makes me want to cry.
20 I'm trying to hold back seeing these images right here
21 before me.

22 Q. We can take this down now. Thank you.

23 To the best of your knowledge -- do you need a
24 moment perhaps?

25 A. Sorry. I apologize.

1 Q. It's okay.

2 A. It never fails to trigger me. This canyon is a part
3 of me.

4 Q. Well, let's move on to another nearby area.

5 Mr. Guerra-Addington, have you observed
6 construction of a new border wall near your ranch?

7 A. Yes, I have.

8 Q. Can you tell us when you first observed the newly
9 constructed wall?

10 A. I observed it when they started the first section
11 about two weeks ago.

12 MS. YIP: Can we please publish Plaintiffs'
13 Exhibit 14?

14 Q. (BY MS. YIP) Mr. Guerra-Addington, can you tell us
15 what we're seeing in this picture?

16 A. It's a border wall on what was formerly the Bramlett
17 Ranch, right on the river. I took this picture.

18 Q. Approximately when?

19 A. I'm sorry?

20 Q. When did you take this picture?

21 A. It was -- excuse me. It was about a week ago.

22 Q. And to the best of your knowledge, is this style of
23 border wall what is planned to be constructed across your
24 property and through Box Canyon?

25 A. Yes. On this section, there's a 200-foot clearing,

1 which I don't see why they need a 200-foot clearing for
2 this wall. Even if you need a patrol road, this is a wide
3 swath. It -- this photo doesn't show the entire clearing
4 of how much they've cleared. So it's not just the wall,
5 it's the clearing itself of -- of bulldozing of miles and
6 miles of what they want to continue here. I just don't
7 get it. That's -- it disturbs me to see this. And this
8 is about two and -- two miles from our farm. On the side
9 of the wall here, you can't even see our farm anymore, and
10 you could just be able to see our farm clearly. Now the
11 wall obstructs the view.

12 Q. Mr. Guerra-Addington, can you please describe for us
13 why the mountains in the canyons in this area are
14 important to you?

15 A. These mountains, the river and the canyons are part
16 of me. I'm not separate from nature. I'm part of nature.
17 We as human beings, we think that nature and animals are
18 separate from us. I don't believe that. It's my
19 spiritual belief that we're part of the land and all of
20 creation that lives on us -- on the land.

21 Q. And considering all your interests in this region,
22 how has the construction that's taken place so far
23 impacted you?

24 A. I can't even begin to put it into words without
25 breaking down, but I'll try it. Every time I see this,

1 without fail, this picture here or at Box Canyon, I break
2 down. I get triggered. Tears literally flow down your
3 face when you lose something you can't replace. And
4 that's what happens to me every time I take reporters down
5 there or give tours or just see it for myself when I --
6 when I go to visit my farm and ranch. I've cried a river
7 of tears seeing what they've done to my home.

8 Q. And if construction is allowed to continue, how would
9 a completed wall across this region impact you?

10 A. Could you repeat the question?

11 Q. If the government is allowed to continue construction
12 of this wall, how would a completed wall impact you?

13 A. Well, personally, it's not just me, it's the entire
14 Rio Grande region from Fort Quitman to Brownsville. To be
15 honest, the way I see it, an attack on any part of the
16 river is an attack on all of the river and it -- it
17 impacts all of us. So this would -- I would never be able
18 to physically visit my farm and ranch again. It would not
19 only devalue it, it would -- I just -- I'm sorry. I just
20 see this as a complete outrage on my home. And this is --
21 like I said, it was a very isolated, quiet, serene area
22 and now it's become an industrial zone that I can't
23 even -- I just see it kind of like a dystopian nightmare
24 in my very home, a place that I hold sacred. I've lived
25 here. I plan to move there in the future and live there

1 forever, but I -- so I stay there a lot at this place. So
2 I just -- I'm having trouble expressing the words how much
3 and how deeply this has affected me. This could kill me,
4 I think, of a broken heart. I really believe that. It's
5 devastating. I never thought my home would become
6 something like this.

7 MS. YIP: Thank you, Mr. Guerra-Addington.

8 No further questions.

9 THE COURT: On behalf of the defendant?

10 MS. AMAECHI: Just a few questions, Your Honor.

11 THE COURT: Sure, whenever you're ready.

12 CROSS-EXAMINATION

13 BY MS. AMAECHI:

14 Q. Hi, Mr. Addington. You wrote that you became a
15 member of the Center for Biological Diversity in 2026,
16 correct?

17 A. No, I -- I don't know what they consider as a
18 membership. I've donated to them way before 2026.

19 Q. Okay. That's fair. So you are a member of the
20 Center for --

21 A. I consider myself a member. I support them.

22 Q. Okay. Sounds good.

23 A. I think they consider me a member, too.

24 Q. I'm sure that they do.

25 You wrote that your property abuts the Rio Grande

1 and the U.S.-Mexico border, correct?

2 A. That's correct.

3 Q. And you stated that your ranch falls within the
4 pathway of the planned border wall construction, correct?

5 A. That's what the U.S. Army Corps of Engineers tell me,
6 and I believe it to be so.

7 Q. Okay. Did they send you paperwork saying that?

8 A. Yes, they did.

9 Q. Okay.

10 A. Registered letters over and over, packets of
11 information and phone calls.

12 Q. Okay. I want to turn to Paragraph 7 of your
13 declaration.

14 Can you see it on your screen?

15 THE COURT: Not yet. Give it just a sec.

16 MS. AMAECHI: Okay. And can we publish it?

17 A. I see it.

18 Q. (BY MS. AMAECHI) Okay. And you stated in your
19 declaration, "I probably will not be able to ever grow
20 crops again after being cut off from the Rio Grande
21 waters." Correct?

22 A. That's correct. That's the way I see it.

23 Q. You have not conducted any soil analysis showing your
24 land cannot be irrigated by sources other than the Rio
25 Grande River, correct?

1 A. Well, it wouldn't be a soil analysis. It would be a
2 hydrological analysis of the aquifer and the river itself
3 were cut off from the river. I know for a fact that
4 the -- that the brackish aquifer underneath it will not
5 irrigate crops. It -- it will kill them.

6 Q. And you've conducted an analysis that told you that?

7 A. I don't need to conduct an analysis. My grandfather
8 and -- we farmed there for decades. We know what is
9 there. We don't need to -- a scientific analysis. We
10 know what grows there. We've tried to use the pump --
11 see, we have some wells there, ma'am. We have some wells.
12 When we tried to use those wells, it killed the crops
13 because it's a -- it's brackish -- it's brackish water.
14 The dissolved solids is too much for plants to survive or
15 even do well, so you what you're doing is contaminating
16 the soil by using aquifer water on the river.

17 Q. You've not had any discussion with CBP or the U.S.
18 Army Corps of Engineers about maintaining irrigation lines
19 for your property, have you?

20 A. No, I have not had any discussion with CBP or the
21 U.S. Army Corps of Engineers.

22 Q. Okay. Have you had any discussion with CBP or the
23 U.S. Army Corps of Engineers about installing access gates
24 on your property?

25 A. I haven't had any discussions with them, no.

1 Q. I want to go back to Paragraph 7 of your declaration.
2 You also stated here, "Because of border wall
3 construction, the nights would never be as dark."

4 Is that correct?

5 A. Could you repeat that? I didn't hear.

6 Q. Sure. In Paragraph 7 of your declaration, you
7 stated, "Because of border wall construction, the nights
8 would never be as dark."

9 Is that correct?

10 A. Well, it's my understanding that first they build a
11 wall, then they put in lighting, and I've seen that in
12 sections. I've been dealing with this issue since 2008.
13 I'm very familiar with the process of how the Border
14 Patrol and the Army Corps build these walls. They want to
15 put stadium lighting. Just the construction, ma'am, by
16 itself is causing a lot of disruption of the night sky.
17 They have a floodlights that they're using 24/7 at night
18 to do a lot of this work.

19 Q. No one from the Government has informed you that they
20 plan to install lighting on your property, correct?

21 A. I don't -- I'm not talking with the Government right
22 now, ma'am.

23 Q. You're not talking to them?

24 A. No, ma'am. Because I -- they -- they've sent me
25 everything they want to know. These are their choices

1 they've sent me: Either sign a waiver or be taken to
2 federal court for a taking. That's the choice they've
3 given me. Very intimidating and coercive.

4 Q. Let's go to Paragraph 10 of your declaration, sir.
5 Actually --

6 A. Looks like 10 is on there now.

7 Q. Do you see 10?

8 A. I see 10.

9 Q. Perfect. In 10, you stated, "I also have historic
10 interest in preserving and maintaining my property because
11 it contains one of the last remaining one-room
12 schoolhouses in Texas built in 1920." Correct?

13 A. Yes, that is correct.

14 Q. No one from the Government has informed you that they
15 intend to demolish or destroy that schoolhouse, correct?

16 A. No, but I wouldn't -- I would never want to live
17 there or build that into my home, which I planned to do
18 major renovations on it. So it would be virtually
19 unusable to me because I would never want to visit there
20 again. Seeing a 30-foot wall and not being -- my animals
21 or myself or the wildlife to access the river, I wouldn't
22 want to use it. So it would be no-man's-land to me and
23 many other people.

24 Q. I want to turn to Paragraph 12 of your declaration.
25 I believe on the -- the first sentence that you say,

1 "Visible from my property is an active 200-acre
2 construction project staging area situated approximately
3 two miles away."

4 So that staging area is two miles away, right?

5 A. Approximately, yeah. Yes, ma'am.

6 Q. You understand that two miles away is not located on
7 your ranch, correct?

8 A. I understand it's not located on my ranch. However,
9 this land used to be part of our ranch. The Bramblets
10 bought it from the from the General Land office because my
11 uncle didn't exercise that option. We were leasing that
12 ranch. So it used to be part of the Guerra Ranch and Farm
13 where they have this 200-acre construction site right now.
14 I'm very familiar with the area. I've lived there for 70
15 years.

16 Q. But it is correct that that area is no longer part of
17 your ranch today, right?

18 A. That's correct.

19 Q. Let's turn to Paragraph 17. In Paragraph 17, you
20 wrote animals will be stranded by the wall, correct?

21 A. Animals will be what? I'm reading it again.

22 Q. You stated -- I can just read what the -- what it
23 says. "Certainly I fear a wall being erected here because
24 it will cut off my ability to access this place and strand
25 animals who depend on cross river migration and on the

1 river's water and fish to survive."

2 That's what you wrote, correct?

3 A. That's what I wrote and I believe that to be true.

4 Q. No government official has told you that animals will
5 be prevented from accessing the river, correct?

6 A. I don't think a human being needs to tell me that
7 it's a fact. It's a documented fact across not just here,
8 but in Arizona and New Mexico and here that animals cannot
9 cross. A border wall you can try to put, like, access
10 areas. Well, not all of them are going to be able to
11 access an access area now. You're just basically walling
12 off the river from wildlife and our livestock, a critical
13 source of water in the Chihuahuan Desert. I don't see how
14 you can defend that.

15 Q. You're not a biologist or a wildlife migration
16 expert, though, correct?

17 A. Well, I consider myself a citizen expert. You don't
18 have to have a degree to be an expert on anything. I
19 consider myself knowledgeable in geology, hydrology and
20 wildlife. And that's from experience and my own reading.

21 Q. And degree aside, you don't have any formal training
22 in zoology, ecology or wildlife sciences, correct?

23 A. Yes, I've had some formal training in it. Yes, I
24 don't have a degree in it, but I've -- I've talked to many
25 people, many experts that do have degrees and have studied

1 this for decades.

2 Q. You have never conducted a scientific study of animal
3 migration on your property, correct?

4 A. I don't need to. I can see what's happening on this
5 land and throughout the area. There's plenty of wildlife
6 that's -- that was there before all this disruption and
7 now it's -- they're getting scared off.

8 Q. In your declaration, did you include any scientific
9 data showing that the animals you observed rely on
10 cross-border movement to survive?

11 A. No, I did not include any so-called scientific data.

12 Q. Mr. Addington, are you aware that CBP has declared it
13 is not installing any sort of stadium lights in rural
14 areas?

15 A. I'm not aware of anything. I think they do this
16 piecemeal first. They're going to build one wall and --
17 like I said with this 200-acre swath that they cleared.
18 Why are they doing that? It's because they'll -- later
19 they'll put in another wall. Same thing with the
20 lighting. It may not be planned now, but it will
21 definitely be put in later. I believe that to be a fact
22 because it's happened in other areas.

23 Q. Okay. Are you aware that in rural areas, CBP has
24 said that it may install infrared lighting at least?

25 A. Yes. I believe that it's -- it's going to -- it's

1 not a question of if, but when they do that. In addition,
2 the lighting from the construction and all the patrolling
3 of very bright lights that I'm seeing right now has
4 already disrupted the night sky. It's a lot of activity.
5 This would go on for another year and a half or two I'm
6 told, but who knows what they're going to do? But I
7 believe that they're going to do this piecemeal and I
8 believe that, sooner or later, they're going to put up
9 another wall. You'll have a double wall as you're seeing
10 constructed in Arizona.

11 MS. AMAECHI: No further questions, Your Honor.

12 THE COURT: Anything further of this witness?

13 All right. You may step down. Thank you.

14 Could the attorneys approach for just a second?

15 (Discussion off record)

16 THE COURT: All right. Plaintiffs may call their
17 next witness.

18 MS. YIP: Plaintiffs call Bernadette Devine.

19 THE COURT: She's already been sworn in, so
20 whenever you're ready.

21 MS. BERNADETTE DEVINE,
22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. YIP:

25 Q. Can you please state your name for the record?

1 A. Bernadette Devine.

2 Q. Hi, Ms. Devine. Where do you currently live?

3 A. I live in Terlingua, Texas.

4 Q. And how long have you lived there?

5 A. I lived there a little over 30 years. I moved there
6 about 1994. I work at the Terlingua Common School
7 District.

8 Q. And how long have you worked as an educator?

9 A. I started working in TCSD in 1997 and I took a couple
10 years off when my son was a baby and a couple more later
11 on. So almost 30 years there.

12 Q. And what types of things do you do in your role as an
13 educator?

14 A. I'm the English language coordinator there. I also
15 teach second grade. I have taught students between
16 kindergarten up to eighth grade, and I do a lot of
17 educational work with middle school and elementary
18 students as well as high school.

19 Q. Do you do any outdoor education?

20 A. Outdoor education, that is correct.

21 Q. Where do you take students on outdoor education
22 trips?

23 A. So we do things -- anything from hikes, day hikes,
24 overnight camping trips and river trips. Usually those
25 river trips are day trips and sometimes we work with other

1 schools.

2 Q. And what did you do -- oh, sorry.

3 What did you do before becoming a teacher?

4 A. Before I was a teacher, I was a land guide and a
5 river guide with an archaeological company that was based
6 in Central America. It was based in the United States,
7 but I worked in Central America and New Mexico and Texas.

8 MS. YIP: And can we please publish Plaintiffs'
9 Exhibit 1? Just to have the map.

10 A. Thank you. I can see it.

11 Q. (BY MS. YIP) Great. Are there specific areas within
12 the Rio Grande corridor that you regularly visit?

13 A. Yes. I just lost the map, but -- so there are a
14 variety of river options typically starting up in the --
15 in the Redford Hoodoos -- Redford area and Hoodoos area.
16 That's a place that I go. Also through Colorado Canyon,
17 which is in Big Bend National Park. I'm just following
18 the river downstream. So the furthest up was at Billy
19 Miller's property and then all through that -- that Big
20 Bend Ranch State Park. There are a lot of different
21 options including Colorado Canyon, Madera, Grassy Banks
22 and Lajitas. And then once you enter in the national
23 park, you'll get Santa Elena Canyon. So that's another
24 beautiful river trip that we do. I don't typically go to
25 the great unknown, but then we go down to Mariscal Canyon.

1 So I've accessed all these places, continuing down through
2 Hot Springs Canyon, Boquillas Canyon, and then the creme
3 de la creme, the Lower Canyons.

4 Q. Why are these places important to you?

5 A. Well, there is so much solace and peace along the
6 river corridor. It is a place that I feel safest and most
7 content. It's -- it's just very -- it's very peaceful and
8 very joyous.

9 Q. Do you enjoy viewing wildlife in these areas?

10 A. Very much so.

11 Q. What sorts of wildlife have you seen?

12 A. So I have seen -- the birding, for one, is phenomenal
13 along the river, so -- just to start there. But then, of
14 course, you get your snakes and your tarantulas and other
15 spiders, and then people love the mammals. So anything --
16 we start with rabbits and -- excuse me. But I've also
17 been lucky enough in the general area to see things like
18 mountain lions and bears. And the majesty of these
19 creatures is incomparable.

20 Q. Do you enjoy viewing the dark skies in these areas?

21 A. Indeed I do. We are so incredibly -- excuse me. We
22 are so incredibly lucky with our night skies. I have
23 never been any place where I could walk outside and to see
24 at night without even a moon to guide me, that it can be
25 so dark there that I can see by starlight. And if there's

1 a moon, you see your moon shadow. It's a miracle to
2 behold.

3 Q. When do you next plan to visit some of these areas
4 that you've just mentioned that you like to recreate in?

5 A. I regularly visit places along Big Bend Ranch State
6 Park and Big Bend National Park, and -- so I'm likely to
7 be there within the next week or two. I've made multiple
8 trips in -- just in the last two or three weeks I've been
9 in and out of the park and Big Bend Ranch State Park.
10 Sometimes as simple as just driving over with a book and
11 sitting under a tree next to the river.

12 Q. Are you a member of the Center for Biological
13 Diversity?

14 A. Yes, I am.

15 Q. Do you know when you became a member?

16 A. Excuse me?

17 Q. When did you become a member?

18 A. In the mid '90s.

19 Q. And can you tell us why you became a member?

20 A. The Center for Biological Diversity, it really --
21 they really embody this value that I share deeply and that
22 is this inherent connection between human beings and
23 nature and wildlife that they -- and they are -- they
24 uphold this becoming more and more lost ideal of
25 recognizing that public policy and public decisions need

1 to be based on long-term plans and, you know, knee-jerk
2 reactions to things are not -- do not serve our
3 relationship in nature.

4 Q. Thank you. Have you witnessed any border barrier
5 construction activities near Mariscal Canyon in Big Bend
6 National Park?

7 A. Yes. Excuse me. Yes, I have.

8 Q. And can you tell us when you observed construction
9 activities?

10 A. I was volunteering in a plant rescue in Big Bend
11 National Park in mid-August, I believe the 16th of August,
12 and --

13 Q. Can you tell us what you saw?

14 A. Yes. So I was working with the group of volunteers
15 and we were near Solis -- which is the takeout area for
16 Mariscal Canyon, one of my heartfelt beautiful places --
17 and we were hiking and I turned around to bend and on the
18 top of this foothill of Mariscal Mountain on this
19 precipice, there was an excavator working and it was -- I
20 was dumbstruck. I mean, it was so startling to actually
21 see this monstrosity. And it's there. I mean, we all
22 stopped in our tracks at first just to -- and watching it
23 digging in and then, you know, just picking up a piece of
24 this mountain and then pulling it around, lifting and
25 pulling it over and dropping it. And just, you know,

1 dropping dust and dirt and rocks and going back and forth.
2 And just the the noise of that, the mechanics of the
3 creaking of the arm of this excavator and the -- and then
4 the beep, beep, beep and -- you know, we are in this
5 peaceful, remote, safe wilderness and this just scar is
6 being built.

7 Q. Have you been to that area previously?

8 A. Yes. That's our takeout for -- our usual takeout for
9 the Mariscal Canyon trip.

10 Q. Can you describe how it's changed?

11 A. Well, there are new roads in that area now, so that's
12 just more clearing of wild areas. And that particular
13 area, like I said, that -- it's actual pieces of rock
14 being removed. And this is irreparable, you know?

15 There's no gluing together back the rocks to mountains
16 and -- like, the noise, as I said, was very disturbing.

17 Q. Ms. Devine, if new patrol roads and vehicle barriers
18 are built in areas that we've discussed, how would that
19 impact your enjoyment of the aesthetics in these areas?

20 A. Well, any kind of physical barriers to this last wild
21 place in the Lower 48, you know, is -- it completely would
22 change the character of what this experience is, the Big
23 Bend. We have people coming from all over the world to
24 experience this kind of remote wilderness, this feeling
25 of, you know, no impact from people that once you start

1 putting barriers up and lighting up and industrializing
2 the area, it's -- it completely changes the character of
3 what it actually is.

4 Q. And can you tell us how waterborne barriers in the
5 Rio Grande might impact your use of the river in the
6 future?

7 A. Waterborne barriers in the Rio Grande where I am
8 would be, number one, impractical because of our water
9 levels, but, number two, they would completely disrupt any
10 activity, any recreational use that we can have on the
11 river there would be the -- any kind of waterborne barrier
12 inside the river would be likely -- by the dynamics of how
13 water works, would be sitting in the -- it would be placed
14 in the area where we would actually operate our canoes and
15 rafts and kayaks.

16 Q. And how would construction of a border wall in the
17 areas we've discussed interfere with your enjoyment of the
18 scenery?

19 A. It would be appalling to see this man-made industrial
20 scar in this majestic, sacred landscape with towering
21 cliffs that are already -- you know, they wouldn't -- it
22 would completely diminish the aesthetic experience of the
23 area.

24 Q. And how would all of or any of this construction
25 impact your ability to enjoy wildlife and the dark night

1 skies in this area?

2 A. I worry deeply about that on a number of different
3 levels, especially with regard to, I mean -- excuse me --
4 the passage of larger mammals through barriers would be a
5 problem. The disruption in habitat for the birds that
6 live in the area would be problematic. It's a
7 migratory -- a birder's paradise and the wildlife would
8 greatly suffer in that area. It could conceivably block
9 live wildlife from actual water. And we are in a desert.
10 There is very little water elsewhere, almost none. Very
11 few springs anywhere else.

12 Q. Ms. Devine, how would this infrastructure impact how
13 your community uses and connects to these places?

14 A. So our community has many traditions and activities
15 that take place along the river and we -- so we would
16 suffer that -- just our personal shared community
17 experience. And greater than that also, just the damage
18 to our tourism economy because our tourism is based
19 largely on the river as well.

20 MS. YIP: Thank you, Ms. Devine.

21 No further questions.

22 THE COURT: Whenever you're ready.

23 CROSS-EXAMINATION

24 BY MS. AMAECHI:

25 Q. Hi, Ms. Devine.

1 A. Hello.

2 Q. You mentioned preserving the dark skies.

3 A. Yes.

4 Q. Are you aware that CBP is not placing stadium or LED
5 lighting in Big Bend National Park?

6 A. Can you repeat that, please?

7 Q. Yes, of course. Are you aware that CBP is not
8 placing stadium or LED lighting in Big Bend National Park?

9 A. The CBP map has not been clear on what they will be
10 using.

11 Q. Are you aware of the declaration that the defendants
12 filed in this matter stating that CBP does not intend to
13 place stadium or LED lighting in Big Bend National Park?

14 A. I have not read the declarants' file.

15 Q. Okay. Are you aware that CBP is not placing stadium
16 or LED lighting in rural areas in the Big Bend One project
17 sector?

18 A. I can say that I have witnessed personally giant
19 lights at a camp that is for the border barrier system
20 that is about 25 miles north of my home. I have
21 personally witnessed them.

22 Q. Are you aware that there will be no pedestrian
23 barrier in Big Bend National Park?

24 A. I have looked at the CBP map several times and I have
25 noticed it changed many times, so I am not clear on a

1 final plan, nor am I convinced that CBP has issued a final
2 plan on what will happen along the Big Bend barrier
3 system.

4 MS. AMAECHI: No further questions, Your Honor.

5 THE COURT: On behalf of the plaintiff?

6 MS. YIP: Nothing further.

7 THE COURT: All right. You may step down. Thank
8 you.

9 You may call your next witness.

10 MS. GRAVES: Your Honor, plaintiffs call
11 Mr. Jeffrey Renfrow.

12 THE COURT: All right. He's already been sworn
13 in.

14 JEFFREY RENFROW,
15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. GRAVES:

18 Q. Please state your name for the record.

19 A. Jeffrey Renfrow.

20 Q. And have you been retained to reach an expert opinion
21 in this case?

22 A. Yes.

23 Q. And did you form opinions about how border barrier
24 construction affects the ecology of areas within Big Bend
25 region?

1 A. Yes.

2 Q. And we'll talk about your opinion in detail, but
3 let's go over your qualifications.

4 Where do you currently work?

5 A. Rio Bravo Restoration.

6 Q. And what is your position at Rio Bravo Restoration?

7 A. I'm the director.

8 Q. And how long have you served in that role?

9 A. Since its founding in 2015.

10 Q. And what are your responsibilities as the director?

11 A. I do all of the administration work, I write grants
12 and I'm the lead on all field projects.

13 Q. And what do you mean by "field projects"?

14 A. We do a wide variety of monitoring implementation, we
15 do a lot of work with the protected areas in Mexico -- so
16 we just do a wide variety of restoration and ecological
17 monitoring.

18 Q. And how long have you done ecological restoration
19 work in the Big Bend region?

20 A. I started -- I was previously a river guide and I
21 started volunteering around 2001 or so, started working
22 professionally in about 2008, and then slowly transitioned
23 to full-time starting sometime before 2015.

24 Q. And, more broadly, how long have you worked in the
25 field of ecological restoration?

1 A. Well, those years -- if you count the volunteer years
2 since 2001, plus I was a fisheries biologist and worked
3 for several years in the field in the late '80s.

4 Q. And would you please describe your educational
5 background?

6 A. I have a degree -- undergraduate degree from Texas
7 A&M University in wildlife and fishery sciences.

8 Q. And what year did you receive your degree?

9 A. 1984.

10 Q. And what types of ecological restoration projects
11 have you worked on in the Big Bend region?

12 A. I've worked on a wide variety of mapping projects,
13 including accuracy assessments of vegetation maps and Big
14 Bend, as well as Death Valley and Mojave National
15 Preserve. I've done vegetation mapping. I've been the
16 lead implementer for exotic plant management along the
17 river. I've done work with CONANP, which is the manning
18 agency of the protected areas in Mexico, on the same types
19 of projects as well as upland restoration. Rare cactus
20 surveys, geomorphology -- just a wide variety of projects.

21 Q. Thank you. And have you conducted any ecological
22 monitoring within the national park?

23 A. Yes, many projects in many locations, primarily along
24 the riparian corridor.

25 Q. And how long have you been involved in that work?

1 A. As a volunteer, again, probably really got started
2 with that kind of work in about 2005.

3 Q. And are you familiar with the areas of the Big Bend
4 National Park affected by construction activities at issue
5 in this case?

6 A. Yes.

7 Q. And do you currently hold any research permits
8 related to work in the national park?

9 A. I do. I have a research permit to map anthropogenic
10 change in the park with an emphasis on the border
11 infrastructure project.

12 Q. And what -- do you do any other work under that
13 permit?

14 A. We are interested in change caused by historical
15 activities like ranching, but most of it has been mapping
16 along their -- the proposed corridor, including the areas
17 that were impacted.

18 Q. And are you currently under any contract or agreement
19 with the national park?

20 A. I have a memorandum of understanding to conduct
21 exotic plant management in association with a grant I have
22 from the Coca-Cola Corporation along the river, and then I
23 have a master cooperative agreement and six or seven
24 different task agreements for specific projects.

25 Q. And you mentioned your vegetation mapping projects.

1 Can you describe more what that work involves?

2 A. Well, the accuracy assessment mapping project was
3 going out into the field and ground truthing the map that
4 was created by a contractor that classified vegetation
5 associations in the park. We also just got funding from
6 the National Park Service to map exotic vegetation along
7 the entire reach of the Rio Grande through rigor.

8 Q. And have you published or contributed to publications
9 relating to restoration ecology?

10 A. I have. I have co-authored three chapters of a book
11 called "Restoring our Rivers," which is about dry land
12 stream restoration, and I have one published paper about
13 *Arundo donax* control along the river in river research and
14 applications.

15 Q. And is that an invasive species?

16 A. Yes.

17 Q. And have you received any specialized training in
18 stream and watershed restoration?

19 A. I have a certification in Stream Functions Pyramid
20 workshops, which is a methodology for assessing the health
21 of streams, and then I frequently attend workshops with
22 the Borderlands Research Institute, Sul Russ University.

23 Q. And do you keep up with the literature relevant in
24 your field?

25 A. Yes, I do.

1 Q. Do you have any go-to journals?

2 A. I do. I typically use Google Scholar and -- you
3 know, as an ecologist, there's a wide range of issues that
4 I look into. Frequently restoration ecology, that's a
5 go-to for me. I actually have a subscription of that and
6 read it for fun sometimes. I look at a lot of USGS
7 publications, like the Southwest Biological Research
8 Center, and spend a lot of time talking to colleagues who
9 have particular areas of interest in getting citations
10 from them.

11 Q. And have you previously served in leadership roles
12 relating to ecological restoration?

13 A. I'm on the board of the Texas Society for Ecological
14 Restoration.

15 Q. And does your professional work regularly involve
16 evaluating ecological disturbances and restoration needs?

17 A. Yes.

18 THE COURT: I'm going to ask this: Does
19 defendant have an objection to recognizing him as an
20 expert? I don't know how much longer this is going to go
21 on.

22 MS. GRAVES: Sorry. That was my last question,
23 but --

24 MR. YUN: We do not, Your Honor.

25 THE COURT: I should have asked earlier.

1 All right. Court will recognize him as an
2 expert. Let's go ahead.

3 MS. GRAVES: Okay. Sorry. Thank you.

4 Q. (BY MS. GRAVES) Mr. Renfrow, do you have an opinion
5 about the nature, extent and duration of the ecological
6 impacts from recent border barrier construction activities
7 in the Big Bend region?

8 A. Yes.

9 Q. And what is that opinion?

10 A. My opinion is that there's been significant harm to
11 hydrologic function, vegetation and soils and that that
12 harm will probably persist for decades if not centuries,
13 and, in some cases, never recover. And that it would take
14 significant long-term restoration to fix the problems if
15 they were fixable.

16 Q. Okay. Let's discuss how you came to that opinion.

17 Before forming your opinions, did you review
18 photographs and videos showing construction activities in
19 the project area known as BBT1?

20 A. Yes, I did.

21 Q. And did you visit parts of the construction corridor
22 within the Big Bend National Park?

23 A. Yes. I visited all of those sites both before,
24 during and after, including doing some mapping with my
25 research project.

1 Q. And were those areas affected by border wall
2 construction activities?

3 A. Yes.

4 Q. And during those visits, did you observe those
5 ecological conditions associated with the construction
6 corridor?

7 A. Yes.

8 Q. And did you observe areas where vegetation had been
9 removed?

10 A. Yeah, and the immediately impacted area was 100
11 percent.

12 Q. And did you observe disturbed soils?

13 A. The same. 100 percent.

14 Q. And did you observe changes to drainage features or
15 the hydrologic function?

16 A. Yes.

17 Q. And before forming your opinions, did you review any
18 relevant scientific literature?

19 A. I did.

20 Q. What types of literature did you review?

21 A. I looked at literature on disruption of hydrologic
22 function. I looked at literature on the recovery time
23 from various impacts, like removal of vegetation,
24 disturbance of biocrusts. I looked at some -- compaction
25 was another thing. Looked at the effects of heavy

1 machinery, and I also looked at literature that informed
2 my thoughts on what recovery times would be from these
3 impacts.

4 Q. And did your analysis require you to identify the
5 cause of the ecological disturbance at issue here?

6 A. Yeah. That was probably the easiest part.

7 Q. And why is that?

8 A. Because they just took bulldozers and, with no regard
9 for topography, just ran them through the landscape.

10 Q. And to evaluate the effects of construction, did you
11 compare the disturbed areas with nearby undisturbed areas?

12 A. I did and, fortunately, I had the opportunity to see
13 all these places previous to the impact and I have spent
14 decades working in these corridors, so I had prior
15 knowledge as well. Also, they had the corridor flagged
16 and I think it's very important to note that the work that
17 we were evaluating was only probably 20 or 30 percent of
18 the actual long-term area that was going to be destroyed.
19 But -- so, yeah, that -- it's -- extensively saw it ahead
20 of time.

21 Q. And was your approach here different in any way from
22 the approach you would normally use to evaluate ecological
23 impacts?

24 A. No. I mean, almost all evaluations of ecological
25 conditions involve a thorough walkthrough, reliance on

1 your knowledge of the terrain, comparison -- in this case,
2 we had the opportunity to compare pre and post. You don't
3 always get that. And then consulting the literature and
4 using your expertise. And that's what we did here.

5 Q. And did you have the opportunity to do any pre, like,
6 transect surveys?

7 A. No, we did not.

8 Q. And if you had been able to collect that information
9 before construction began, would that have changed your
10 conclusions at all?

11 A. No. I think that would be necessary were we to have
12 the opportunity to make a prescription for restoration,
13 but we have all the knowledge we need to draw the
14 conclusions that we have drawn.

15 Q. Okay. Let's focus on the construction activities
16 within the national park.

17 Can you please describe for the Court the types
18 of ecological communities that were affected by the
19 construction activities?

20 A. Yeah. There were three primary types of areas that
21 were affected. There was the riparian, primarily
22 mesquite; lowland, which was the area that was downstream
23 of Santa Elena and upstream of Talley; and then there was
24 the area near Solis, which we could divide into two
25 different types of habitat, which would be the limestone,

1 sparse Chihuahuan desert vegetation and then the ephemeral
2 washes.

3 Q. And can you describe the alluvial floodplain
4 dominated by the mesquite bosque?

5 A. Yeah. That area is characterized by mesquite bosque,
6 its alluvial soils, richer soils. Generally a lot
7 flatter. It's the most productive area in the Big Bend
8 region because of it's proximity to the water and the
9 river. It's also a critical habitat. Big Bend has one of
10 the -- and, actually, the whole region has one of the
11 highest bird diversities in North America -- or at least
12 in the United States -- and so this is all critical
13 nesting habitat, including the yellow-billed cuckoo.

14 Q. And is that a federally endangered species?

15 A. It's threatened under the Endangered Species Act.

16 Q. And can you describe the upland sparsely vegetated
17 scrub on the limestone hills?

18 A. Yeah. In this particular area, it's relatively steep
19 rolling terrain dominated by lechuguilla, Hechtia,
20 ocotillo -- a wide variety of cactus. It's kind of the
21 classic desert -- Chihuahuan desert scrubland.

22 Q. And does it provide any habitat for any special
23 status species?

24 A. It does. There's a particular species of concern
25 where we actually collected hundreds of them in the day

1 that we were working as volunteers for the National Park
2 Service, *Ariocarpus fissuratus*, or living rock, which is a
3 very slow going -- like, a lot of the specimens we
4 collected were probably well over 100 years old. And it's
5 also relatively close to the like *mariposensis*, which is
6 another species of great concern. Cactus.

7 Q. And can you please describe the area -- the ephemeral
8 dry washes?

9 A. Yeah. The -- so, you know, when you walk across the
10 desert, it's really easy to see that there's a very strong
11 correlation between where water is and productivity and
12 vegetation. And so these dry washes are basically the --
13 they're the engines of the local ecosystems in terms of
14 productivity. That's where there's nesting habitat,
15 that's where there's cover for both predator and prey,
16 That's where a lot of forage for wildlife occurs.
17 Typically it's characterized by porous sandy or gravel
18 soil, so a lot of local recharge of the aquifer occurs
19 there, attenuates floods. So they're at -- really
20 critical habitat.

21 Q. And do any of the characteristics of the upland areas
22 differ? Or, I guess, do any of the characteristics of
23 those ecosystems affect their ability to recover from
24 disturbance?

25 A. Yeah. So the -- we just go through the three

1 quickly. The riparian habitat down there by the river,
2 that's the two places by Talley and Santa Elena, are
3 probably going to recover more quickly because there's
4 more fertile soils and there's more water available there.
5 However, the big danger and probably high probability
6 danger is that there will be, like, an alternative stable
7 state, which means that they will probably become
8 dominated by non-native species. So they're likely not to
9 recover without intervention to their previous state.

10 Q. And can you just briefly list the types of ecological
11 impacts that resulted from the construction activities to
12 these ecosystems?

13 A. The three primary things are the destruction of the
14 hydrologic function, and that is going to result in not
15 only areas that are immediately impacted, probably having
16 a loss -- lot less water available to them. But in most
17 cases, especially in the dryer ephemeral washes and the
18 the desert scrub, everything downslope is going to be
19 what's called a deprived zone. So they're going to have
20 less water in an already very challenged environment,
21 which means that the impact of the destruction is going to
22 be far greater than the actual footprint.

23 Q. Okay. So let's stick with hydrologic function.

24 What did you observe regarding the natural
25 drainage patterns in the affected areas?

1 A. Well, they -- the bulldozers basically went through
2 and just built a road with the berm on both sides blocking
3 water moving down slope. And then a particular concern is
4 the fact that they blocked all of these femoral drainages,
5 which is going to cause downstream vegetation to
6 eventually die or be severely impacted or see shifts in
7 the vegetation communities. And then also there's going
8 to be the risk that eventually these are going to --
9 they're going to burst these dams because they were
10 haphazardly constructed and they're going to put huge
11 flushes of large rocks and very heavy sediment loads,
12 which is going to further destroy the downstream
13 vegetation.

14 Q. And, in your opinion, how urgent is restoration of
15 the hydrologic function from the past construction
16 activities?

17 A. I would say it's extremely urgent. And,
18 additionally, we're in our monsoon season right now and so
19 the plants rely on this time of year to gain resilience to
20 get through the winter and make it, and they're not
21 getting that right now.

22 Q. And let's talk about vegetation now.

23 What effects did the construction activities have
24 on the vegetation in the affected areas?

25 A. I mean, there's nothing left. It's -- in the actual

1 areas where they were working, there's no vegetation or
2 there's piles of vegetation.

3 Q. And are there impacts from these construction
4 activities beyond the loss of those individual plants?

5 A. I mean, you're going to have this downslope effect
6 that I mentioned earlier, so that these deprived zones are
7 going to have a lot less water. And these are already
8 communities that are very marginal in terms of the amount
9 of moisture available to them. So, yeah, they're going
10 to -- we'll see a much larger impact on vegetation
11 communities than the actual footprint.

12 Q. And did you evaluate the plants present in the
13 pathway of construction prior to the bulldozing?

14 A. We did a general survey and sort of classified the
15 associations of vegetation there. We also -- you've heard
16 several people reference the volunteer efforts, and you
17 can see in my report that we collected in a 30 meter by
18 350 meter reach over -- I think it was 565 cactus. And we
19 weren't even trying to collect plants that couldn't be
20 repotted and used for restoration, you know. All the
21 plants that you can't transplant, which would be the
22 majority of them, just were going to die had they
23 continued work there.

24 Q. And you mentioned one of the slow-growing species.
25 Were there any other slow-growing species that you came

1 across in either that plant salvage or in your surveys?

2 A. Yeah. The plan I mentioned was Ariocarpus and it,
3 again, can live well over 100 years. And it's very, very
4 selective. It will be the size of a baseball, like a
5 really big one. Generally all of the plants in that
6 particular habitat are slow growing and, you know, any
7 recovery would be very slow.

8 Q. And let's move on to soils.

9 What impacts did the construction have on the
10 soils?

11 A. You know, in the riparian corridor, all the soil
12 horizons were reordered, basically just moved to the side
13 with no regard. Those soils will recover, but it's going
14 to take probably decades or they'll just be completely
15 overtaken or grown over with exotics. Of more concern are
16 the desert scrub soils because they're just very delicate.
17 There's not, like, a traditional topsoil there and all of
18 the biologic crusts were destroyed, so putting them back
19 in to condition, restoring the hydrologic function to the
20 soils, especially with the compaction that occurred, could
21 take many decades, if ever.

22 Q. And you mentioned the biological soil crust.

23 What role do those play in desert ecosystems?

24 A. Their primary function or service that they provide
25 is that they reduce erosion. They help with nutrient

1 cycling and they help retain water in the soils. And
2 they're -- you know, it's a relatively narrow crust that,
3 you know, once you scrape it away, it's gone.

4 Q. And how long can recovery of those crusts take?

5 A. It can take many decades to even get reestablished,
6 and then it can take 100 years to fully form -- you know,
7 reform the assemblages that were there previously.

8 Q. And does the return of some vegetation necessarily
9 mean that an ecosystem has recovered?

10 A. No. And, you know, talking about this riparian zone
11 is an excellent example because, you know, there's --
12 there's what's called species richness. So, like, say
13 there's 30 species there before, there can be 30 species
14 there again 30 years later, but they're not the same. And
15 so that's not what we're aiming for when we're trying to
16 do restoration work. So the return to the species that
17 were there previously is what we're after, and without
18 intervention that can take a very long time. And in the
19 case of those riparian areas where there could easily be
20 non-natives, takeover could never happen.

21 Q. And let's now discuss the construction in BBT1.

22 What types of ecological impacts did you observe
23 in BBT1?

24 A. They were substantially the same as the types of
25 disturbances we saw in the riparian zones and Big Bend

1 National Park, but the scale was significantly greater and
2 it appears from the photos, because the work occurred is
3 ongoing, occurred over a much longer period of time that,
4 like, issues with things like compaction will be
5 significantly higher. It's also a longer linear feature,
6 and so the disruptions to the local hydrology are going to
7 be significantly magnified.

8 Q. And how do those impacts compare to the impacts you
9 observed in the National Park?

10 A. It would be like the impacts in the national park
11 squared or cubed just because of the extent.

12 Q. And what role does that size of the disturbance play
13 in evaluating the ecological impacts?

14 A. Well, it's just that much harder to ever come back
15 from something like that. And, again, a lot of these
16 impacts, like the compaction, which is a major issue in
17 soils like this, you know, they're -- they've been running
18 over those soils, you know, in the Big Bend National Park.
19 It was really a bad situation, but it was a relatively
20 short duration. There those areas have been run over by
21 bulldozers dozens of times. And, again, the fact that
22 it's such a long feature makes it even more susceptible to
23 invasion by non-natives and it cuts off even more of the
24 area. Like none of those drainages are functioning
25 anymore down -- downslope of that work.

1 Q. And have you formed opinions to a reasonable degree
2 of scientific certainty regarding the ecological impacts
3 to construction within the national park in BBT1? And what
4 are those opinions?

5 A. My opinion is that there was severe damage caused.
6 That the damage was primarily focused on hydrologic
7 function, which is of great urgency because it's causing
8 further damage also to vegetation and soils. That those
9 damages would take decades to even centuries to recover
10 without intervention and, in some cases, would never
11 recover. And that any kind of restoration would take a
12 long-term commitment to be successfully implemented.

13 MS. GRAVES: Thank you.

14 No further questions.

15 THE COURT: All right, on behalf of the
16 defendants?

17 MR. YUN: Nothing from defendants, Your Honor.

18 THE COURT: All right. You may step down. You
19 may step down. Thank you.

20 Plaintiffs may call their next witness.

21 MS. GRAVES: That was our final witness, Your
22 Honor.

23 THE COURT: All right, so you rest?

24 MS. GRAVES: Yes. I would actually like to draw
25 Your Honor's attention to one thing in the record.

1 So plaintiffs are not presenting any live
2 testimony from Terrell County Sheriff and former Border
3 Patrol Agent Thaddeus Cleveland, but we instead request
4 that the Court consider the relevant portions of
5 Mr. Cleveland's prior testimony, which plaintiffs
6 submitted in their supplementary preliminary injunction
7 filings at ECF 55-5. And, you know, that testimony
8 addresses the security measures already in place to detect
9 and apprehend individuals who unlawfully cross the border,
10 which is relevant to the balance of harms and the public
11 interest should a preliminary injunction issue. And the
12 relevant portions of those transcripts are identified in
13 our supplemental filing, the parent Document 55.

14 Thank you.

15 THE COURT: All right. So noted.

16 All right. On behalf of the defendant, do you
17 intend to present anything?

18 MR. YUN: Defendants do not intend to call any
19 witnesses, Your Honor.

20 THE COURT: All right. So both sides rest and
21 close.

22 MR. YUN: Yes, Your Honor. We would ask for
23 brief closing arguments, if that's possible.

24 THE COURT: All right. You can make it very
25 brief.

1 All right. On behalf of the plaintiff, you can
2 go first.

3 MS. GRAVES: Thank you, Your Honor.

4 The evidence presented today answers each of the
5 Court's factual questions and, together, each answer
6 supports the same conclusion. Preliminary relief is
7 necessary to prevent further irreparable harm. While this
8 case is decided on the merits first, Big Bend is not an
9 area of high illegal entry. Through Mr. Isacson's
10 testimony, the Court saw that Big Bend consistently
11 records the lowest apprehension numbers on the southern
12 border, despite its vast geography. The available data
13 shows that this has been true in every recorded year.
14 Mr. Isacson further demonstrated that CBP apprehension
15 data misrepresents the number of people who have
16 unlawfully crossed the border within the Big Bend sector.

17 Apprehension data is inflated by people who
18 crossed the border long ago, people who crossed the border
19 legally, and even people who crossed the border in other
20 sectors only to be apprehended at vehicle checkpoints or
21 while at large in a sector the size of Germany.
22 Mr. Krumenaker's testimony demonstrated that conditions
23 within Big Bend National Park are lower still.

24 Second, plaintiffs are already suffering
25 irreparable harm. The Court has heard testimony regarding

1 vegetation clearing, road and wall construction, habitat
2 disturbance, aesthetic degradation, and the loss of
3 wilderness character that defines this region.

4 Mr. Miller, Mr. Jordahl, Mr. Addington, Ms. Devine, and
5 Mr. Green demonstrated that these harms reach far beyond
6 the landscape itself, injuring their recreational,
7 professional, aesthetic, historic and spiritual interest.
8 A later order cannot undo the harms resulting from
9 plaintiffs' injuries.

10 Third, the harms are ongoing and accelerating.
11 Construction is already underway in BBT1 and BBT3, and the
12 Government's own declaration confirm the ground disturbing
13 activity is imminent in BBT2, Four and Five. The record
14 shows that construction will expand in scope and
15 intensity, bringing further vegetation clearing, blasting,
16 road building, habitat fragmentation, noise, visual
17 degradation, and loss of wilderness character to the areas
18 that remain undisturbed today, and Mr. Renfrow's testimony
19 demonstrated how this construction brings immense and
20 cascading harms to the Big Bend's ecosystem.

21 Whether the final project is a wall, a vehicle
22 barrier, or road, all ongoing and proposed construction
23 have and will harm plaintiffs' interests. And regardless
24 of whether the Government's plans are final, any
25 construction pursuant to the challenge waivers before or

1 after those plans are finalized poses a threat, a
2 substantial threat of irreparable injury. The changes
3 cannot be relied on because once the waiver is in place,
4 and here we have three, two of which have been
5 subsequently amended, nothing prevents more changes.

6 Fourth, a preliminary injunction would not harm
7 the Government or the public interest. The record shows
8 that Big Bend has long been managed through natural
9 barriers, personnel, surveillance technology and other
10 enforcement tools. On one side of the scale is a
11 temporary delay, on the other is permanent alteration of
12 nationally significant public lands, habitats, waterways,
13 historic resources and places of profound significance to
14 plaintiffs and their organizations' members. The balance
15 weighs decisively in favor of enjoining further
16 irreparable harm.

17 For these reasons, plaintiffs respectfully
18 request that the Court grant a narrowly tailored
19 preliminary injunction halting ongoing and imminent ground
20 disturbing activities associated with border barrier
21 construction pursuant to the challenge waivers in BBT1
22 through 5 within one mile of the Rio Grande, across the
23 Big Bend sector and within Big Bend National Park and Big
24 Bend Ranch State Park. Thank you.

25 THE COURT: Thank you. On behalf of the

1 defendant.

2 MR. YUN: Thank you, Your Honor. I would just
3 like to make three brief points.

4 First, as to whether the Big Bend sector is an
5 area of high illegal immigration, with all due respect,
6 the Court lacks jurisdiction to decide this issue. IIRIRA
7 Section 102(c) strips jurisdiction courts to hear any
8 causes or actions that are not violations of the
9 Constitution of the United States. The only claim that
10 plaintiffs have brought that even implicates this issue is
11 the major questions doctrine claim. And as defendants
12 have argued in their briefs, this is a statutory issue.
13 Not an issue of the violation of the Constitution of the
14 United States.

15 Finally, Congress has given the Secretary of
16 Homeland Security sole discretion in making determinations
17 about whether an area is an area of high illegal
18 immigration, and the Court is therefore outside of its
19 jurisdiction to make any decisions on that regard.

20 Second, as to the harms and the balance of the
21 equities, it's unnecessary for the Court to reach any of
22 those issues. The Fifth Circuit has stated that if a
23 plaintiff fails on the first factor, the plaintiff is not
24 likely to succeed on the merit of their claim. The Court
25 need not address the other three.

1 Now, Your Honor is right that in the notice of
2 supplemental authority in the *People of La Junta v. DHS*
3 case, the merits arguments were different, but notably,
4 the Court there denied the motion for temporary
5 restraining order because the plaintiffs were unlikely to
6 succeed on the merits of their claim. The Court did not
7 reach the harms and the equities and Your Honor should do
8 the same in this case.

9 Finally, I would just make a brief note that any
10 testimony Your Honor has heard today regarding the Big
11 Bend Four project, it's all speculation. Defendants have
12 not decided on any plan for the Big Bend Four project, but
13 CBP plans to decide upon that by next week at the latest,
14 and defendants will notify the court as soon as that
15 decision is made. Thank you.

16 THE COURT: I just have a quick question for you.
17 So when you say that the Court has no
18 jurisdiction, is it not correct that if it involves a
19 constitutional claim, the Court would have jurisdiction to
20 decide this case?

21 MR. YUN: Well, Your Honor, I would say two
22 things. One, the major questions doctrine claim is not a
23 constitutional claim. And then second --

24 THE COURT: And what -- and what basis of law do
25 you say that --

1 MR. YUN: If you look at plaintiffs' arguments,
2 they're asking whether the secretary has violated the text
3 of the Illegal Immigration Act -- Illegal Immigration
4 Reform Act. They're not asking whether the secretary has
5 violated any provision of the Constitution. It's -- so
6 it's statutory claim, Your Honor.

7 THE COURT: Okay. Thank you.

8 All right. So I'm going to render a short order
9 from the bench. As I go through the order, I'm going to
10 ask everybody, because I know this is a very emotional
11 topic for many people, but all of you are here and I
12 expect all of you to respect the Court and remain quiet as
13 I read the order. And at the conclusion of the order, I
14 will adjourn and -- so, again, I expect everybody to
15 conduct themselves appropriately.

16 On this day, the Court held an evidentiary
17 hearing on Plaintiffs' Motion for Preliminary injunction.
18 After considering the witnesses testimony, the parties'
19 exhibits, the pertinent legal authorities, and the
20 arguments of counsel, the motion is granted. The Court
21 finds that the plaintiffs are likely to succeed on the
22 merits of at least one of the claims in suit, that there
23 is a likelihood that they will suffer serious irreparable
24 harm without an injunction, and that the balance of the
25 equities and the public interest weigh in their favor. A

1 memorandum opinion will follow and it will explain the
2 Court's rationale in greater detail. The Court enjoins
3 the defendants as follows.

4 Effective immediately and until the Court orders
5 otherwise, the defendant shall not build border barrier or
6 related infrastructure or engage in any construction or
7 ground disturbing activities in the Big Bend sector until
8 and unless defendants comply with all applicable laws.
9 Defendants must comply with all applicable laws,
10 notwithstanding the Big Bend waivers, including the West
11 Waiver, as amended, the National Park Waiver, as amended,
12 and the Lower Canyon Waiver. The effect of all Big Bend
13 Waivers is stayed for the duration of this injunction. It
14 will be so ordered. The order will be signed and placed
15 on the docket shortly. With that, the Court stands
16 adjourned. Thank you.

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CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: October 3, 2026

/s/Veronica P. Esparza-Bylicki

Veronica P. Esparza-Bylicki

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FRIENDS OF THE RUIDOSA
CHURCH et al.,

Plaintiffs,

v.

MARKWAYNE MULLIN et al.,

Defendants.

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CAUSE NO. EP-26-CV-1099-KC

ORDER GRANTING PRELIMINARY INJUNCTION

On this day, the Court held an evidentiary hearing on Plaintiffs’ Motion for Preliminary Injunction (“Motion”), ECF No. 34. After considering the witnesses’ testimony, the parties’ exhibits, the pertinent legal authorities, and the arguments of counsel, the Motion is **GRANTED**. The Court finds that Plaintiffs are likely to succeed on the merits of at least one of the claims in suit, that there is a likelihood that they will suffer serious, irreparable harm without an injunction, and that the balance of the equities and the public interest weigh in their favor. *See Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008) (citing *Planned Parenthood of Hous. & S.E. Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005)); Fed. R. Civ. P. 65. A memorandum opinion will follow, explaining the Court’s rationale in greater detail.

The Court **ENJOINS** Defendants as follows: Effective immediately and until the Court orders otherwise, Defendants **SHALL NOT** build border barrier or related infrastructure, or engage in any construction or ground disturbing activities, in the Big Bend Sector until and unless Defendants comply with all applicable laws. Defendants must comply with all applicable laws notwithstanding the “Big Bend Waivers,” including the “West Waiver,” 91 Fed. Reg. 7297 (Feb. 17, 2026), as amended by 91 Fed. Reg. 40550 (July 2, 2026), the “National Park Waiver,”

91 Fed. Reg. 27969 (May 15, 2026), as amended by 91 Fed. Reg. 34831 (June 9, 2026), and the “Lower Canyons Waiver,” 91 Fed. Reg. 46939 (July 27, 2026). The effect of all “Big Bend Waivers” is **STAYED** for the duration of this Injunction.

SO ORDERED.

SIGNED this 2nd day of October, 2026.


KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FRIENDS OF THE RUIDOSA
CHURCH, et al.,

Plaintiffs,

v.

MARKWAYNE MULLIN, et al.,

Defendants.

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CAUSE NO. EP-26-CV-1099-KC

MEMORANDUM OPINION

On August 17, 2026, Plaintiffs Center for Biological Diversity, Friends of the Ruidosa Church, and Danny William Miller Junior filed their Motion for Preliminary Injunction (“Motion”), ECF No. 34. On October 2, 2026, the Court **GRANTED** the Motion with a memorandum opinion to follow. Oct. 2, 2026, Order, ECF No. 66. The Court now issues its opinion.

I. BACKGROUND

This case involves Plaintiffs’ claims that the Government lacks the authority to build border enforcement infrastructure in a remote swath of West Texas. *See* 1st Am. 2d Supp. Compl. ¶¶ 1–4, ECF No. 26. That construction proceeded pursuant to a series of waivers issued between February and July 2026 by the Secretary of the Department of Homeland Security (the “Secretary”). *See id.* ¶ 3. The Secretary invoked the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) to waive the application of dozens of laws, mainly environmental laws, along a 517-mile stretch of the U.S.-Mexico border. *See* 91 Fed. Reg. 7297 (Feb. 17, 2026), as amended by 91 Fed. Reg. 40550 (July 2, 2026) (the “West Waiver”); 91 Fed. Reg. 27969 (May 15, 2026), as amended by 91 Fed. Reg. 34831 (June 9, 2026) (the “National

Park Waiver”); 91 Fed. Reg. 46939 (July 27, 2026) (the “Lower Canyons Waiver”) (collectively, the “Big Bend Waivers”).

The area of the border at issue includes Big Bend National Park, Big Bend Ranch State Park, and other public and private land in Hudspeth, Jeff Davis, Presidio, Brewster, Terrell, and Val Verde Counties, Texas. Pls.’ Ex. 1 (“Map of Big Bend Area”).¹ The area is co-extensive with the section of the border encompassed by the United States Border Patrol’s “Big Bend Sector.” *Id.*; Hr’g Tr. 28:10–23, 35:25–36:5, ECF No. 72. The Big Bend Waivers invoked “an acute and immediate need to construct additional physical barriers and roads” to prevent “illegal entry” and the “smuggl[ing of] illicit drugs.” National Park Waiver; Lower Canyons Waiver; West Waiver.

On April 16, 2026, Plaintiffs brought suit, claiming on various grounds that the Secretary’s waivers are unconstitutional. Compl. ¶¶ 63–94, ECF No. 1. They contend that they would be personally and irreparably harmed by the construction of border wall and related infrastructure in the Big Bend Sector. *Id.* ¶¶ 14, 22, 24. After fully briefing cross-motions for summary judgment, *see* Pls.’ Mot. Summ. J., ECF No. 19; Defs.’ Mot. Summ. J., ECF No. 24, Plaintiffs filed the instant Motion, citing ongoing construction as the basis for immediate, preliminary relief. Mot. 4–6. Defendants filed a Response, ECF No. 38, in opposition, to which Plaintiffs filed a Reply, ECF No. 39. Amicus Briefs, ECF Nos. 33, 42, were also filed by the Coalition to Protect America’s National Parks, Keep Big Bend Wild, National Parks Conservation Association, the Sierra Club, and its Lone Star Chapter.

¹ The exhibits presented by the parties at the October 2, 2026, Preliminary Injunction Hearing were submitted via a secure cloud-based file-sharing system and remain on file with the Court as part of the record of the case.

On October 2, 2026, the Court convened an evidentiary hearing. Minute Entry, ECF No.

64. After hearing the parties' evidence and argument, the Court granted Plaintiffs' Motion and entered a preliminary injunction as follows:

Effective immediately and until the Court orders otherwise, Defendants shall not build border barrier or related infrastructure, or engage in any construction or ground disturbing activities, in the Big Bend Sector until and unless Defendants comply with all applicable laws. Defendants must comply with all applicable laws notwithstanding the "Big Bend Waivers," including the "West Waiver," 91 Fed. Reg. 7297 (Feb. 17, 2026), as amended by 91 Fed. Reg. 40550 (July 2, 2026), the "National Park Waiver," 91 Fed. Reg. 27969 (May 15, 2026), as amended by 91 Fed. Reg. 34831 (June 9, 2026), and the "Lower Canyons Waiver," 91 Fed. Reg. 46939 (July 27, 2026). The effect of all "Big Bend Waivers" is stayed for the duration of this Injunction.

Oct. 2, 2026, Order 1–2 (emphasis omitted).

II. DISCUSSION

A. Standard

Whether to grant a preliminary injunction is within the district court's discretion. *Allied Mktg. Group, Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir. 1989). "The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable injury until the court renders a decision on the merits." *Sambrano v. United Airlines, Inc.*, No. 21-11159, 2022 WL 486610, at *4 (5th Cir. Feb. 17, 2022) (citing *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974)).

To prevail on a request for a preliminary injunction, a movant must show: "(1) a substantial likelihood of success on the merits, (2) a substantial threat that [the movant] will suffer irreparable harm if the injunction is not granted, (3) that the threatened injury outweighs any damage that the injunction might cause the [non-movant], and (4) that the injunction will not disserve the public interest." *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008) (citing *Planned Parenthood of Hous. & S.E. Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005)).

A plaintiff's likelihood of success on the merits is determined by reference to the applicable substantive law. *William E. McBryde, Inc. v. Rodriguez*, No. 5:07-cv-143-XR, 2007 WL 628793, at *2 (W.D. Tex. Feb. 13, 2007) (quoting *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997)). A preliminary injunction is an extraordinary, equitable remedy that "should only be granted when the movant has clearly carried the burden of persuasion." *Svoboda v. Bank of Am., N.A.*, 964 F. Supp. 2d 659, 673 (W.D. Tex. 2013) (citing *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009)); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) ("A preliminary injunction is an extraordinary remedy never awarded as of right." (citing *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008))).

B. Analysis

1. Substantial Likelihood of Success on the Merits

Plaintiffs argue that they are substantially likely to succeed on the merits of their major questions doctrine claim. Mot. 7–10. Defendants disagree. Resp. 5–8. They argue that the Court does not have jurisdiction, and even if it had jurisdiction, the major questions doctrine claim fails on the merits because the Congressional delegation of authority is clear. *Id.*

a. Jurisdiction

Defendants' jurisdictional argument is predicated on a jurisdiction-stripping provision that follows IIRIRA's delegation of authority to the Secretary "to waive all legal requirements" as "necessary to ensure expeditious construction" of certain border enforcement infrastructure. 8 U.S.C. § 1103 note, § 102(c)(1) (2009) (Improvement of Barriers at Border). For challenges to such waivers, "[a] cause of action or claim may only be brought alleging a violation of the Constitution of the United States. The court shall not have jurisdiction to hear [any other claim]." *Id.* § 102(c)(2)(A); *accord Zapata County v. Biden*, No. 20-cv-106, 2023 WL

11915719, at *2 & n.3 (S.D. Tex. Mar. 31, 2023). Defendants argue that the Court lacks jurisdiction to hear Plaintiffs’ major questions doctrine claim, because the major questions doctrine is a “‘tool’ or ‘rule’ of statutory interpretation.” Resp. 5–6. While they concede that it is “animated by constitutional principles,” they contend that a violation of the major questions doctrine is not a violation of the Constitution. *Id.* Plaintiffs, on the other hand, claim that Defendants’ actions amount to “a violation of separation of powers and Article I’s Vesting Clause,” which present a “justiciable constitutional question squarely within this Court’s Jurisdiction.” Reply 1.

Whether the major questions doctrine is merely a textual tool of statutory interpretation or a substantive rule of constitutional magnitude is a “heady question” and “the subject of ongoing debate.” *Mayfield v. U.S. Dep’t of Lab.*, 117 F.4th 611, 616 (5th Cir. 2024). Some justices on the Supreme Court view the doctrine as a canon of interpretation, while others view it as “a clear-statement rule” with a constitutional dimension. *Id.* n.2 (citations omitted). Major questions doctrine jurisprudence is thus pervaded by “both separation of powers principles and a practical understanding of legislative intent.” *Learning Res., Inc. v. Trump*, 607 U.S. 229, 243 (2026) (quoting *West Virginia v. Env’t Prot. Agency*, 597 U.S. 697, 723–24 (2022)).

By Plaintiffs’ count, “a majority of the Supreme Court agrees that the major questions doctrine is . . . rooted in constitutional separation of powers principles.” Mot. 7 & n.7 (citations omitted). But such tallying is unhelpfully reductive—it cobbles together the justices’ scattered statements on the doctrine and obscures the nuances of the debate. *See id.* Indeed, Defendants concede that the major questions doctrine “is animated by background constitutional principles,” but still insist that it does not provide a vehicle for Plaintiffs to claim that the Big Bend Waivers

amount to a “violation of the Constitution,” as required to confer jurisdiction in this case.

Resp. 6.

The constitutional view of the major questions doctrine is that “to sustain a claim that Congress has granted them an extraordinary power, executive officials must identify clear authority for that power.” *Learning Res., Inc.*, 607 U.S. at 262 (Gorsuch, J., concurring). This so-called “clear statement rule” derives from the core of the Constitution’s structure: “Article I of the Constitution vests all federal legislative power in Congress, and Article II charges the executive branch with seeing that Congress’s laws are faithfully executed.” *Id.* at 268. To be sure, “federal legislation cannot anticipate every eventuality,” so members of Congress “sometimes draft broad delegation language to account for this.” *Id.* at 270. “And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). But when the executive arrogates to itself a major legislative power without a clear statement from Congress, such an action is not within constitutional limits. *Learning Res., Inc.*, 607 U.S. at 278 (“Article I—a substantive value external to statute—imposes a clear-statement rule when executive officials claim Congress has afforded them an extraordinary authority.”) (cleaned up) (Gorsuch, J., concurring). In other words, an assertion of extraordinary authority not clearly delegated violates a “constitutional rule[]” implicit in Article I. *West Virginia*, 597 U.S. at 740 (Gorsuch, J., concurring).

Proponents of the view that the major questions doctrine is instead a linguistic tool of statutory construction contend that it is common sense to doubt that Congress would cede extraordinary powers vaguely or lightly. *Biden v. Nebraska*, 600 U.S. 477, 514–16 (2023) (Barrett, J., concurring). After all, sweeping authority is not usually communicated in general

instructions. *See id.* The doctrine is akin to other commonsense canons of textual interpretation, as embodied in the maxim that “Congress does not ‘hide elephants in mouseholes.’” *Id.* at 518 (quoting *Whitman v. Am. Trucking Ass’n*s, 531 U.S. 457, 468 (2001)). Even under this view, however, the Constitution is still relevant—demanding more clarity and specificity from a delegation of major legislative authority than from run-of-the-mill delegations makes sense “in a system of separated powers.” *Id.* at 515.

The Fifth Circuit has largely declined to weigh in on either side of the debate. *See, e.g., Rest. Law Ctr. v. U.S. Dep’t of Lab.*, 120 F.4th 163, 174 n.9 (5th Cir. 2024) (taking “no position” on whether the doctrine is “a substantive clear-statement rule” or “a purely linguistic canon of construction”). But the constitutional view has obtained at least some limited recognition. *See VDX Distro, Inc. v. U.S. Food & Drug Admin.*, 179 F.4th 356, 363 (5th Cir. 2026) (describing the major questions doctrine as “closely related” to the nondelegation doctrine, which itself is grounded in separation of powers) (quoting *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 142 (2022) (Gorsuch, J., concurring)).

While acknowledging that the law is unsettled, the Court rules that the major questions doctrine is a constitutional clear statement rule grounded in separation of powers. The doctrine’s fundamental notion, that courts should expect Congress to speak clearly when it delegates major lawmaking authority to the executive, finds its genesis nowhere but the Constitution. Advocates of the textual canon theory claim that it is common sense to demand greater clarity from Congress when they delegate extraordinary powers. *Biden*, 600 U.S. at 513–16 (Barrett, J., concurring). But as Justice Gorsuch persuasively explains, common sense only counsels such a demand in the context of this country’s constitutional structure. *See Learning Res., Inc.*, 607 U.S. at 277 (“[T]his version of common sense *does* require us to account for ‘values’ entirely

‘external to a statute,’ including specifically the ‘substan[ce]’ of Article I.”) (citation omitted). In other words, the doctrine cannot be a canon of textual interpretation because there is nothing intrinsic to the English language that warrants looking askance at a delegation of authority simply because that authority is expansive. The source of the skepticism is not linguistic—it is constitutional.

Accordingly, the Court finds that it has jurisdiction to consider Plaintiffs’ major questions doctrine claim because it alleges a Constitutional violation. *See* 8 U.S.C. § 1103 note, § 102(c)(2)(A).

b. Clear Congressional Authorization

Turning to the merits, Plaintiffs argue that the Secretary exceeded her authority when issuing the Big Bend Waivers. The “major-questions doctrine bars agencies from exploiting ambiguous statutes to grant themselves broad new powers.” *Tex. Tobacco Barn, L.L.C. v. U.S. Dep’t of Health & Hum. Servs.*, 180 F.4th 229, 233 (5th Cir. 2026) (citations omitted). It asks (1) whether the power claimed by an executive agency is “of major economic and political significance” and (2) whether the agency identified “‘clear’ congressional authorization to sustain those actions.” *Learning Res.*, 607 U.S. at 231, 280 (citing *W. Virginia*, 597 U.S. at 721). Both parties appear to agree that the waiver of all legal requirements to construct a border wall in the Big Bend Sector is of “major economic and political significance.” Mot. 9; *see also* Resp. 5–8 (making no arguments on this issue). Thus, the Court must only decide whether the Secretary had “clear congressional authorization” to issue the Big Bend Waivers.

For clear congressional authorization, it is not enough that “the statutory text might ‘[a]s a matter of definitional possibilities’ have been read to delegate the asserted power.” *Learning Res., Inc.*, 607 U.S. at 243 (citation omitted). The court should be “skeptical” of “broad” or

“uncertain” delegations of authority on major questions. *Id.* at 232, 242–43. And should consider “other language within the statute,” read in the context of common sense and our constitutional structure, to find limiting principles that cabin any potentially extraordinary delegation of authority. *See id.* at 243.

Defendants’ main argument is that Congress “unequivocally authorized DHS to construct barriers along the southern border and waive laws in furtherance thereof.” Resp. 6. And certainly, the narrow provision of IIRIRA authorizing waivers speaks in broad language: “Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive all legal requirements such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section” 8 U.S.C. § 1103 note, § 102(c)(1). But at the outset, that same section of IIRIRA—i.e., “this section”—states: “The Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads . . . in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.” *Id.* § 102(a). Reading these provisions together, the construction under “this section” for which the Secretary is authorized to waive legal requirements includes only construction “to deter illegal crossings in areas of high illegal entry.” *See id.*

To this point, Defendants argue that “the Big Bend Sector is an area of high illegal entry given the rates of illegal crossings and drug smuggling.” Resp. 8. In support, they contend that over 89,000 individuals were apprehended attempting to enter the United States illegally in the Big Bend Sector between 2021 and 2025. *Id.* at 11. Evidence submitted by Plaintiffs at the Hearing showed this gross total to be undisputed. Pls.’ Ex. 2 (“Illegal Migrant Activity in Big Bend Nat’l Park”).

However, Plaintiffs presented additional evidence putting this number in context. The evidence shows that the Big Bend Sector of the border was in “extraordinarily distant last place” for apprehensions compared to the other six Southern border sectors. Hr’g Tr. 54:22–25. The Big Bend Sector experienced both the lowest aggregate number of apprehensions and the lowest number of apprehensions per mile of border. *See* Pls.’ Ex. 5 (“Suppl. Expert Report of Adam B. Isacson”); *see also* Mot. Suppl. Ex. 1, at 12–42, ECF No. 55-3. While the Big Bend Sector comprises over 25% of the U.S.-Mexico border, for the last thirty years, annual apprehensions in the Big Bend Sector fluctuated between 0.3% and 2.2% of total border-wide apprehensions. *See* Pls.’ Ex. 5. Even assuming that apprehensions reflect only a small portion of total illegal entries,² there was no evidence adduced at the hearing to suggest that there is a lower rate of apprehensions in the Big Bend Sector compared to any other sector. Therefore, even if total apprehensions are a poor proxy for total entries border-wide, the comparative data on apprehensions is still probative of the relative number of entries, sector to sector.

As for narcotics, the evidence showed that “the Big Bend Sector accounts for one percent of non-marijuana drug seizures and fifteen percent of all drug seizures in the . . . period for which we have data, 2020 to 2026.” Hr’g Tr. 45:19–22. These totals include not only drugs seized at or near the border or otherwise determined to have recently entered the country, but also drugs seized while moving through the interior of the country. *Id.* at 46:8–23. The Big Bend Sector includes several highway checkpoints, at which twenty-five to fifty percent of border patrol drug seizures occur, nationally. *Id.* at 40:9–22, 46:2–4.

In sum, the key evidence—data regarding apprehensions and narcotics seizures—is essentially undisputed. The parties’ disagreement boils down to how the “areas of high illegal

² *But see* Hr’g Tr. 60:7–16 (Plaintiffs’ expert testifying that there was an 80% apprehension rate in the Big Bend Sector); *see also* Pls.’ Ex. 3 (“Krumenaker FOIA Request”) (reporting the number of “Got Away[s]” compared to the number of Apprehensions).

entry” limitation on the Secretary’s waiver authority should be understood. Defendants point to over 89,000 apprehensions in five years, and similarly large quantities of drugs seized in the Big Bend Sector and the neighboring Del Rio Sector to argue that because these are “high” numbers, Big Bend is an area of high illegal entry. Resp. 11–12. But this argument elides the comparative dimension. The unrebutted evidence shows that the Big Bend Sector is, by far, the sector with the lowest rate of migrant apprehensions along the entire U.S.-Mexico border, both in terms of gross totals and apprehensions per mile of border.³ Therefore, if the Big Bend Sector is an area of high illegal entry, so is every other sector, and the waiver authority would apply to the entire U.S.-Mexico border. If that were the case, Congress could have simply authorized construction “to deter illegal crossings.” Instead, it authorized construction “to deter illegal crossings in areas of high illegal entry.”

Under the major questions doctrine, courts eschew interpretations that would render limiting language meaningless. *See, e.g., Learning Res., Inc.*, 607 U.S. at 231 (rejecting an interpretation that would delegate “power to unilaterally impose unbounded tariffs” considered “[a]gainst [a] backdrop of clear and limited delegations” of tariff authority); *Biden*, 600 U.S. at 497 (rejecting an interpretation “that avoids any need to show compliance with the statutory limitation on [the relevant secretary’s] authority”). For “high illegal entry” to impose any limit, it must at least mean, “not the lowest rate of illegal entry.” And the evidence shows that the Big Bend Sector has the lowest rate of illegal entry along the entire U.S.-Mexico border. Therefore, the Court finds that Plaintiffs are likely to succeed on the merits of their major questions doctrine claim that the Big Bend Waivers were issued in excess of the Secretary’s authority.

³ The evidence also shows that the Big Bend Sector has comparatively low drug seizure rates, especially for non-marijuana drug seizures. From the evidence presented during the Hearing, the Court finds it likely that at least a significant portion of drug seizures in the Big Bend Sector represent drugs moving through the interior of the country, not drugs entering the country from Mexico. *See* Hr’g Tr. 45:10–48:10.

2. Substantial Threat of Irreparable Harm

Having established a likelihood of success on the merits,⁴ Plaintiffs must also show a substantial threat of irreparable harm if an injunction is not issued. *Nichols*, 532 F.3d at 372. To obtain preliminary injunctive relief, Plaintiffs must show that they are “‘likely to suffer irreparable harm,’ that is, harm for which there is no adequate remedy at law.” *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

Plaintiffs argue that, absent a preliminary injunction, they will be irreparably harmed because the Big Bend Sector is “one of the last great wilderness landscapes in the United States,” Mot. 16, and “[a] later order cannot undo the harms resulting from Plaintiffs’ injuries,” Hr’g Tr. 170:8–9. At the October 2 Hearing, Plaintiffs’ witnesses described how construction has and will restrict their livelihood, affect their spiritual, recreational and aesthetic interests, and impact the natural ecosystem.

First, the evidence shows that border wall construction will restrict Plaintiffs’ livelihood. Plaintiff Miller, a riverboat guide, described how barriers would prevent him from launching boat tours on the Rio Grande. *See* Hr’g Tr. 96:7–21. Bill Guerra-Addington, a member of Plaintiff Center for Biological Diversity and a rancher whose family has lived on their land for at least three generations, testified that construction would cut him off from the river and, with no alternative water sources, prevent him from growing crops. *See id.* at 119:23–25, 132:19–133:16. And Bernadette Devine, a member of Plaintiff Center for Biological Diversity and an educator and river guide, testified that the placement of waterborne barriers in the Rio Grande would disrupt any river activity she planned to lead. Mot. Ex. 4 (“Devine Decl.”) ¶¶ 2, 4, ECF No. 34-4; Hr’g Tr. 146:4–15.

⁴ The Court need not consider likelihood of success on the merits of Plaintiffs’ remaining claims, because the claim discussed suffices to demonstrate their entitlement to the injunctive relief sought. *See, e.g., Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511, 519 (S.D. Tex. 2020) (collecting cases).

In addition, they highlight the harm to the natural ecosystem, including local wildlife. Guerra-Addington testified that the influx of construction contractors' vehicles in his area has already caused a dramatic uptick in roadkill. Hr'g Tr. 125:4–16. And that if construction of border barriers proceeded, both wildlife and livestock would be prevented from accessing the river, both as a source of water and a migration route. *See id.* at 136:22–137:14. The Court also heard extensive testimony regarding the effect of construction on the overall ecosystem. *See* Hr'g Tr. 155:4–167:12. An ecologist and soil scientist testified that construction activities would destroy the hydrologic function of the riparian habitat, impacting soil, vegetation, and wildlife in and beyond the Big Bend Sector. *Id.* at 161:13–163:11. The associated vegetation loss, invasion by non-native vegetation, and soil disruption would take decades to recover, if ever. *Id.* at 163:3–164:21.

Lastly, the witnesses also testified at length about their enjoyment of the wild spaces in the Big Bend Sector, which they appreciate from spiritual, recreational, and aesthetic perspectives. Miller testified that the appeal of his riverboat trips are so individuals can “escape from modern life,” and that the wilderness “saved [his] life.” *Id.* at 81:20; 83:17–18. Devine stated that she enjoyed viewing the dark skies in Big Bend, where she “can see by starlight,” as well as go birding, which is “phenomenal along the river.” *See id.* at 142:9–143:2. Both testified at length regarding how ground disturbing and construction activities have and will continue to deteriorate the spiritual, recreational, and aesthetic value of the area. *See, e.g., id.* at 86:13–87:4, 145:17–147:19.

For these reasons, Plaintiffs have established a substantial threat of irreparable harm. As one witness neatly summarized it, the impact of construction on the land amounts to a “visible scar that’ll never go away.” Hr'g Tr. 85:11.

3. Balance of Harms and Public Interest

The third and fourth factors—the balance of the harms and the public interest, respectively—“merge when the Government is the opposing party.” *United States v. Texas*, 97 F.4th 268, 274 (5th Cir. 2024) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)).

As Plaintiffs have demonstrated, without an injunction, they and the public at large stand to permanently lose protected wilderness that benefits tourism, recreation, farming, ranching, spirituality, aesthetic sensibilities and education. On the other hand, if enjoined, Defendants only suffer a temporary delay while this Court assesses the merits of the pending summary judgment motions. Oct. 2, 2026, Order. Thus, the final factors, balance of harms and the public interest, also weigh in favor of Plaintiffs. In sum, all four factors weigh in favor of issuing a preliminary injunction.

III. CONCLUSION

Accordingly, the Motion for Preliminary Injunction, ECF No. 34, is **GRANTED**.

SO ORDERED.

SIGNED this 14th day of October, 2026.


KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

FRIENDS OF RIUDOSA CHURCH, et al.

Plaintiffs,

v.

MULLIN, et al.

Defendants.

Civil Action No. 3:26-cv-01099-KC

THIRD DECLARATION OF PAUL ENRIQUEZ

I, Paul Enriquez, declare as follows:

1. I am the Director of the Infrastructure Portfolio, U.S. Border Patrol Program Management Office Directorate (“PMOD”), U.S. Customs and Border Protection (“CBP”), an agency of the U.S. Department of Homeland Security (“DHS”). I have held this position since January 2023 and support the planning and execution of border infrastructure projects from construction to maintenance. From May 2021 to December 2022, I served as the Deputy Director for the Infrastructure Portfolio. From August 2018 to May 2021, I served as the Real Estate and Environmental Director for the Infrastructure Portfolio. From 2013 to August 2018, I was the Real Estate and Environmental Branch Chief for the Border Patrol and Air and Marine Program Management Office (“BPAM”), Facilities Management and Engineering, Office of Facilities and Asset Management. From 2011 to 2013, I was employed as an Environmental Protection Specialist in BPAM. In that role, I performed environmental analyses for various border infrastructure projects. From 2008 to 2011, I was a contractor assigned to BPAM and provided environmental support on various border infrastructure

projects.

2. CBP is the DHS component with primary responsibility for border security. CBP constructs, operates, and maintains border infrastructure necessary to deter and prevent illegal entry on the southern border.
3. Within CBP, PMOD has expertise in managing and executing border infrastructure projects. PMOD is tasked with managing the schedule, finances, real estate acquisition, environmental planning, and construction of the border infrastructure system along the U.S. border.
4. Based upon my current and past job duties, I am familiar with the funding appropriated to CBP for barrier system construction and CBP's planned and on-going border barrier construction on the southern border.
5. I previously submitted a declaration in this case dated August 24, 2026 that, among other things, described the Big Bend 1, Big Bend 2, Big Bend 3, Big Bend 4, and Big Bend 5 projects (hereinafter the Big Bend 1-5 projects) within the USBP Big Bend Sector that are at issue in this case and the IIRIRA waivers issued for each project.

BACKGROUND

6. On October 2, 2026, the Court issued an order granting a preliminary injunction. The Court's order states that, effective immediately, "Defendants **SHALL NOT** build border barrier or related infrastructure, or engage in any construction or ground disturbing activities, in the Big Bend Sector until and unless Defendants comply with all applicable laws . . . notwithstanding the [IIRIRA waivers]" issued for the Big Bend 1-5 projects.
7. To comply with the Court's order, on October 2, 2026, CBP sent suspension notices to the contractors for the Big Bend 1-5 projects. The suspension notices require that the contractors immediately suspend "all construction and ground disturbing activities in the Big Bend Sector." There will be some continued activity as CBP's contractors effectuate an orderly wind down of project activities, including securing active work sites and equipment and making them safe.
8. CBP continues to assess whether other contracts that do not directly involve the construction

of border barrier or ground disturbing activities in the Big Bend Sector need to be suspended. While these contracts do not involve border barrier construction or ground-disturbing activities, they are dependent upon barrier construction (e.g., environmental monitoring during active construction). As such, if barrier construction is enjoined, there may not be a need for such services during the injunction period.

HARMS

9. The Court's Order has and will continue to result in substantial harms on the government.
10. The contracts for the Big Bend 1, Big Bend 2, and Big Bend 3 projects were awarded on March 5, 2026. The total contract value at award for the Big Bend 1 contract was \$1,025,996,158. The total contract value at award for the Big Bend 2 contract was \$1,223,124,000. The total contract value at award for the Big Bend 3 contract was \$960,423,540.
11. The contract for the Big Bend 4 project was awarded on May 11, 2026. The total contract value at award for the Big Bend 4 project was \$1,720,040,000.
12. The contract for the Big Bend 5 project was awarded on June 2, 2026. The total contract value at award of the Big Bend 5 project was \$2,594,040,000.00.
13. The Big Bend 1-5 projects are funded by appropriations made by Congress for barrier system construction as part of the Working Families Tax Cut Act, Pub. L. No. 119-21, tit. IX, § 90001 (1)-(3), 139 Stat. 72, 357-58 (2025).¹
14. The Big Bend 1-5 projects were in various stages of execution prior to the Court's Order.
15. For the Big Bend 1 project, CBP issued notice to proceed ("NTP") for construction for portions of the Big Bend 1 project on March 30, 2026. In accordance with that directive, the contractor deployed field personnel to the project area, including engineers, project managers, equipment operators, and laborers, usually working 10 hours per day, 6 days per week. Heavy

¹ Prior declarations addressing the Big Bend Sector barrier projects referred to Public Law 119-21 as the "One Big Beautiful Bill Act." I understand that this Act is now commonly referred to as the Working Families Tax Cut Act.

equipment was also already mobilized to facilitate construction. The contractor had erected a temporary concrete batch plant where concrete is mixed for construction, as well as water delivery systems, temporary field offices, and supply yards for taking daily deliveries of steel and other material. Security cordons were established to protect personnel and equipment. At the time of the Court's injunction, approximately 3/4 mile of border barrier had been installed in the Big Bend 1 project area. Given the significant scale of this effort, the suspension of work is now imposing, and will continue to impose, significant costs on the Government, on the contractor and hundreds of individual workers.

16. On August 31, 2026, CBP agreed to pause all ground disturbing activities for the Big Bend 2 and Big Bend 4 projects to allow for additional public engagement. On September 30, 2026, CBP lifted the pause on ground disturbing activities for the Big Bend 2 project. CBP expected that ground disturbing activities in support of design and construction for portions of the Big Bend 2 project would begin this week, but that is no longer possible due to the Court's October 2nd Order.
17. For the Big Bend 4 project, CBP is actively considering adjustments to reduce the scope and avoid or minimize impact of the original project based on the input it has received from the National Park Service and other stakeholders. CBP expected to make a final decision on the revised scope of the Big Bend 4 project this week. CBP also expected ground disturbing and construction activities to resume within a few weeks of a final decision on the scope of the Big Bend 4 projects. Due to the Court's October 2nd Order, once a final decision is made on the scope Big Bend 4, CBP will be unable to move forward with the project.
18. Ground disturbing activities had already begun for portions of the Big Bend 3 project. The contractor had already cleared and grubbed and performed geotechnical surveys. It has also mobilized personnel and equipment, transported materials, and set up batch plants and laydown yards. CBP and its contractor are addressing an issue related to access to the project area. When that issue is resolved, however, the Court's Order will prohibit CBP's contractor from constructing barrier in the Big Bend 3 project area.

19. The Big Bend 5 is in the design phase. Completion of the design for the Big Bend 5 project requires ground disturbing activities, including, for example, geotechnical surveys and clearing and grubbing necessary for geotechnical surveys. These activities cannot proceed due to the Court's October 2nd Order.
20. Each day the Court's injunction continues and contract performance on the projects is suspended, CBP will incur financial liabilities to the contractors for significant, otherwise-unnecessary costs, all of which CBP would not have incurred but for the Court's injunction. Despite the suspension of work, the contractors will continue to incur costs for every day that the contracts are suspended. The costs include land leases, offices, maintaining equipment at multiple locations, costs for security to keep the equipment and materials from being stolen or vandalized, and labor costs to ensure that personnel who have been trained and are dedicated to execute the barrier construction projects remain available (*e.g.*, engineers, project managers, laborers). To this end, CBP is incurring substantial contract suspension costs, which are estimated to be at least \$462,800 per day based on rough projections provided by the contractors. CBP will be obligated to pay these additional costs, all of which would not have been incurred but for the Court's injunction. Further, CBP will be obligated to pay these additional costs from funds that would otherwise be spent on actual barrier construction activities.
21. In addition to these per day suspension costs, the injunction may result in the payment of delay damages in the form of acceleration costs to maintain the original project schedules in the event the suspension is lifted. Here again, CBP will be obligated to pay these additional costs from funds that would otherwise be spent on actual barrier construction activities.
22. The suspension and acceleration costs that CBP incurs cannot be recouped from the contractors if the injunction were to be lifted at a later date.
23. Depending on the duration of the injunction, CBP's contractors may also have to demobilize personnel and equipment from the project sites. This will also result in substantial harms to the government. Given the tight market for border barrier construction labor and equipment,

if the injunction is stayed after the contractors have demobilized, the costs of remobilizing manpower and resources are likely to be significant. Contractors have provided rough estimates of the cost to demobilize and remobilize, and the cost to demobilize the Big Bend 1-5 projects could be well upwards of \$7 million.

24. In addition, based on input from CBP's contractors, CBP understands that equipment availability within the industry is extremely limited. If equipment has to be demobilized, it may not be available for remobilization.
25. Similarly, at least one of CBP's contractors spent several months putting together a team of qualified craft personnel who have relocated to a remote project area within the Big Bend Sector from all over the country. Similar to equipment, qualified craft resources are difficult to find in the current market. If this team is demobilized, the project will experience schedule delays if the injunction is lifted and construction activities are authorized to resume. t.
26. In addition to harming the government, enjoining CBP from further construction of border barrier infrastructure will harm the general public. As stated in the IIRIRA waivers that were issued for the Big Bend border barrier system projects, the Secretary of Homeland Security determined that the Big Bend and Del Rio Sectors are areas of high illegal entry. Between fiscal year 2021 and fiscal year 2025, Border Patrol apprehended over 89,000 illegal aliens attempting to enter the United States between border crossings in the Big Bend Sector. In that same time period Border Patrol seized over 87,574 pounds of marijuana, over 867 pounds of cocaine, over 1,156 pounds of methamphetamine, over 12 pounds of heroin, and over 94 pounds of fentanyl. 91 Fed. Reg. 7297. Also in that same time period, Border Patrol apprehended over 1,410,330 illegal aliens attempting to enter the United States between border crossings in the Del Rio Sector. Border Patrol also seized over 277 pounds of marijuana, over 198 pounds of cocaine, over 353 pounds of methamphetamine, and over five pounds of fentanyl. Though apprehension numbers in the Big Bend and Del Rio Sectors may have declined recently, as also stated in the IIRIRA waivers, the statistics cited above show that illegal aliens and drug smugglers regularly try to exploit the Big Bend and

Del Rio Sectors. The lack of border barrier infrastructure within the Big Bend and Del Rio Sectors makes it harder for Border Patrol to achieve operational control of the border. Thus, if CBP is unable to construct additional border infrastructure in the Big Bend and Del Rio Sector, it will remain an area that can be exploited by illegal aliens and drug smugglers.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of October 2026.



Paul Enriquez
Infrastructure Portfolio Director
Program Management Office Directorate
U.S. Border Patrol

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

FRIENDS OF THE RUIDOSA CHURCH, et
al.,

Plaintiffs,

v.

MARKWAYNE MULLIN, et al.,

Defendants.

Case No. EP-26-CV-1099-KC

DECLARATION OF JOSH B. BARRETT

I, JOSH B. BARRETT, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records and reasonably relied upon in the course of my employment, hereby declare as follows:

1. I am currently the Acting Chief Patrol Agent for the U.S. Border Patrol's ("USBP") Big Bend Sector and have served in this role since March 28, 2026. In my current position, I manage and oversee operations spanning 165,000 square miles, covering 517 miles of border along Big Bend Sector, and lead a team of over 700 law enforcement and non-law enforcement personnel.
2. In my twenty-four years of service, I have held several USBP leadership positions in other locations throughout the nation. I began my career with USBP on June 24, 2002, at the Del Rio Station in the Del Rio Sector. From May 2008 until December 2024, I held various management positions, including Field Operations Supervisor in Yuma Sector, Assistant Chief with the Law Enforcement Operations Directorate at USBP Headquarters, and Patrol Agent in Charge within various Sectors including Buffalo Sector and Del Rio

Sector. In December 2024, I was promoted to serve as the Deputy Chief Patrol Agent of Big Bend Sector, where I oversaw the day-to-day operations of the Sector.

3. This declaration is based upon my personal and professional knowledge, information obtained from other individuals employed by U.S. Customs and Border Protection (“CBP”), and information obtained from relevant records and systems maintained by CBP.
4. I am aware that on October 2, 2026, this Court issued its Order Granting Preliminary Injunction, effectively halting the construction of border barrier or related infrastructure, or engaging in any construction or ground disturbing activities, within the Big Bend Sector.
5. The construction of border barrier is critical to DHS’s Southwest border strategy. Border barrier construction of Big Bend projects 1-5 is necessary for DHS to achieve and maintain operational control of the border and address critical national security and public safety threats. Once planned border barrier and associated infrastructure construction is completed elsewhere along the Southwest border, the Big Bend area would represent one of the few remaining open segments along the border if DHS is prevented from executing Big Bend projects 1-5. Based on my background and experience with USBP, open segments along the Southwest border without adequate border security infrastructure create funnel points for illegal alien crossings and for the smuggling of contraband, such as narcotics, firearms, ammunition, etc. Given these conditions, it is my assessment that this funneling effect will lead to an increase in illegal crossings and entries in the Big Bend area if these projects cannot proceed.
6. Big Bend Sector is vulnerable to significant numbers of aliens attempting to enter the country illegally. Between fiscal years 2021 and 2025, the Big Bend Sector saw over

89,000 individuals attempt to enter the country illegally. The number of apprehensions spiked to over 37,000 and almost 32,000 apprehensions in 2021 and 2022, respectively. These numbers do not account for individuals who illegally entered the country without detection.

7. Additionally, based on my USBP experience, and information obtained from USBP personnel and other law enforcement partners, there is evidence of significant exploitation by Transnational Criminal Organizations (“TCOs”) and TCO-related smuggling activities on the Mexican side of the border, which filters its way into the Big Bend Sector’s area of responsibility.
8. These TCOs engage in a range of criminal activity that harms the United States, including human smuggling and trafficking of drugs and weapons. The two main cartels—the Sinaloa and Juarez cartels—operating in Mexico south of the Big Bend Sector area, as well as within Big Bend Sector, are designated Foreign Terrorist Organizations. With planned international boundary wall and technology improvements in other areas across the Southwest border, not having a border barrier system in this particular area would make it a vulnerable and desirable area for TCOs to operate along the southwest border.
9. Moreover, if encounters of aliens entering illegally between ports of entry increase, vulnerabilities in the area will become particularly problematic, leading to the potential for increased criminal activity, some of which is associated with TCOs, particularly in this section of the border, where no border barrier system exists.
10. For example, during a period of high encounters in Big Bend Sector in December 2021, Alpine Station Border Patrol Agents (“BPAs”) apprehended a subject with a prior murder and felony assault conviction. He was apprehended as part of a failed human smuggling attempt.

11. In August 2022, BPAs assigned to the Van Horn Station and the Special Operations Group, CBP's Air and Marine Operations, U.S. Immigration and Customs Enforcement's Homeland Security Investigations, Drug Enforcement Administration, and Texas Department of Public Safety ("TXDPS"), executed a search warrant at a ranch house near Van Horn, Texas. The law enforcement agencies seized approximately 13,000 pounds of marijuana—with an estimated value of over \$10 million—13 assault-style firearms, four handguns, ammunition, body armor, and several vehicles. The marijuana was confirmed to have crossed the border by Big Bend Sector surveillance footage.
12. In August 2023, BPAs assigned to Presidio Station encountered a high-ranking member of a TCO which has been designated as an FTO—the Juarez Cartel. BPAs encountered a male subject walking alone on Farm to Market Road 170 near the Fort Leaton State Historic Site. The subject admitted to illegally entering the United States by wading the Rio Grande River south of Fort Leaton. Once he was at the Presidio Station for processing, BPAs confirmed the subject's identity as the leader of the Juarez Cartel in Ojinaga, Chihuahua, Mexico.
13. Even with the enforcement tools available to USBP since January 2025, additional security challenges and vulnerabilities continue to exist within Big Bend Sector. Specifically, a lack of complete situational awareness along the entirety of the border along Big Bend Sector persists because of the remoteness of the area, ruggedness of the terrain, and lack of infrastructure, including roads. This leads to delays in response times by law enforcement when illegal activity is suspected or reported. The necessity of border barrier system and associated infrastructure construction is particularly critical in this area as highlighted by recent events of significant concern relating to border security and overall public safety.

14. An example of a recent border security incident took place on May 4, 2026, when a Mexican national stole a Mexican government vehicle in Mexico and drove north towards the United States, at which point he abandoned the vehicle and entered illegally on foot near Presidio, Texas. The subject, an illegal alien, who various law enforcement sources confirmed was a heroin user, affiliated with a TCO in Mexico, and a danger to law enforcement and others, attempted to break into a home in Presidio, Texas. The armed subject stole a vehicle nearby, and fled towards Marfa, Texas. He arrived at the Valentine School, and security camera video from the Valentine School shows the individual armed with a high-powered firearm attempting to enter the school while it was in session, but he was unable to do so because of a locked door. *See below.* He then stole a third vehicle from the Valentine School parking lot, just feet away from teachers and students as young as four years old and began a dangerous pursuit in the small town of Valentine, Texas. In support of a multi-agency effort, Big Bend Sector BPAs responded to assist Jeff Davis County Sheriff's Office, Presidio County Sheriff's Office, Marfa Police Department, and the TXDPS in an ongoing pursuit of this armed and dangerous illegal alien who was actively shooting at the pursuing law enforcement units. Spike stripes were deployed by law enforcement causing the subject to wreck his vehicle near the railroad tracks. He then abandoned the stolen vehicle, fled on foot, and continued shooting at pursuing law enforcement units with a handgun. While being commanded to cease fire, the subject stopped and pointed his handgun at law

enforcement officers. Consequently, this significant border security and public safety threat was then neutralized by return fire from law enforcement personnel on the scene.

Photos from security camera from the Valentine School



15. Approximately two months later, on June 27, 2026, BPAs assigned to the Presidio Station apprehended three subjects with three assault-style rifles, two of which were in their possession and the third later located by BPAs. BPAs were responding to a citizen's report alerting USBP of two subjects seeking assistance in the Presidio Station area of responsibility. Believing they were responding to a distress call, Presidio Station BPAs unexpectedly encountered two armed subjects with assault-style rifles. A third, unarmed subject surrendered nearby later that day, stating he was fleeing a cartel in Mexico. During interviews, the subject later admitted to having crossed with a firearm and

provided the BPAs with the approximate location of the weapon. All three subjects were identified as adult Mexican males and stated that they were cartel recruits. In total, three rifles—two had serial numbers removed—and ammunition were recovered. Multiple law enforcement agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives and TXDPS, provided support. All three subjects were prosecuted for illegal entry under 8 U.S.C. § 1325 or re-entry under 8 U.S.C. § 1326 (as applicable) and additionally were prosecuted for illegal possession of a firearm under 18 U.S.C. § 922.

16. On August 29, 2026, BPAs assigned to the Alpine Station apprehended nine subjects during a failed human smuggling event involving a vehicle incursion—in which the vehicle entered the United States unlawfully from Mexico between the ports of entry. Interviews of all nine subjects—two Cuban nationals and seven Mexican nationals—indicated the vehicle used in the smuggling scheme made an incursion into the United States within Big Bend National Park, which was initially undetected by USBP personnel or available detection technology. Big Bend Sector personnel used the information obtained from the interviews to identify the specific location of the vehicle incursion. The Mexican national smuggler was prosecuted for alien smuggling under 8 U.S.C. § 1324. Four of the smuggled aliens were prosecuted for illegal entry under 8 U.S.C. § 1325 and four were prosecuted for illegal re-entry under 8 U.S.C. § 1326.
17. On September 20, 2026, BPAs assigned to the Alpine Station apprehended three subjects involved in another alien smuggling event within the Big Bend National Park. As is typical of the positive working relationship between Big Bend Sector and Big Bend National Park Law Enforcement Rangers (“Rangers”), the Rangers contacted Alpine BPAs after they stopped a suspicious vehicle in the Park. The alien smuggler/driver is a lawful permanent resident and was subsequently charged for alien smuggling under 8

U.S.C. § 1324. A handgun, registered to the alien smuggler/driver, with a loaded magazine was located between the driver's side seat and the center console. One of the two smuggled aliens was charged with illegal re-entry under 8 U.S.C. § 1326, while the other alien was charged for possessing fraudulent documents under 18 U.S.C. § 1028.

18. The construction of border wall in the Big Bend Sector is appropriate and necessary due to the law enforcement and security concerns along the Southwest border and in this region. The planned border barrier system and associated infrastructure are necessary for DHS and CBP to achieve and maintain operational control of the border, and enjoining this planned construction effort will, for example, increase the likelihood of exploitation by TCOs for cross border illicit activities.
19. Without a border barrier system, DHS and CBP anticipate increases in illegal crossings by aliens and contraband smuggling which will require diversion of Border Patrol assets and personnel within Big Bend Sector from other critical national security and public safety threats.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 8th day of October 2026.

Respectfully submitted,

JOSH B BARRETT Digitally signed by JOSH B BARRETT
Date: 2026.10.08 13:09:22 -05'00'

Josh B. Barrett
Acting Chief Patrol Agent
Big Bend Sector
U.S. Border Patrol
U.S. Customs and Border Protection

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**FRIENDS OF THE RUIDOSA
CHURCH, et al.,**

Plaintiffs,

v.

MARKWAYNE MULLIN, et al.,

Defendants.

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CAUSE NO. EP-26-CV-1099-KC

ORDER

On this day, the Court considered Defendants’ Motion to Stay Preliminary Injunction (“Motion”), ECF No. 74. On October 2, 2026, the Court granted Plaintiffs’ request for a preliminary injunction, with a memorandum opinion to follow. Oct. 2, 2026, Order, ECF No. 66. Less than a week later, Defendants filed the Motion, primarily asking the Court to stay that injunction pending their efforts to seek review from the Supreme Court. Mot. 2. Defendants also asked the Court to “immediately issue its promised memorandum opinion.” *Id.* at 1. Defendants’ second request is now moot, as the Court entered its Memorandum Opinion, ECF No. 75, on October 14.

As to the request to stay the injunction, Defendants informed the Court on October 16 that if no decision is issued by October 21, they “will treat the absence of a ruling as a constructive denial of the motion and proceed with seeking relief in the United States Supreme Court.” Notice 1, ECF No. 76. Ordinarily, the Court would await a response in opposition before adjudicating an opposed motion. And Plaintiffs’ deadline to respond to the Motion has not yet elapsed. *See* W.D. Tex. L.R. CV-7(d)(2) (“A response to [motions other than discovery or case management motions] shall be filed not later than 14 days after the filing of the

motion.”). Given the urgency of Defendants’ request, the Court considers it without awaiting a response.

A stay pending appeal is “an extraordinary remedy.” *Thomas v. Bryant*, 919 F.3d 298, 303 (5th Cir. 2019) (citation omitted). “There is substantial overlap between” the *Winter* factors that the Court just applied to decide Plaintiffs’ preliminary injunction request and the *Nken* factors that govern the request to stay that injunction pending further review. *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). To assess a stay request, courts consider: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* (citation omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the court’s] discretion.” *Id.* at 433–34.

As to likelihood of success on the merits, the only claim that formed a basis for the Court’s injunction was the major questions doctrine claim. Mem. Op. 4–11 & 12 n.4. Defendants’ arguments that Plaintiffs’ other claims fail are therefore unavailing. *See* Mot. 5–8. And Defendants’ major questions doctrine arguments largely reiterate the arguments that the Court rejected in granting the preliminary injunction. *Compare id.* at 3–5, *with* Mem. Op. 4–11. Defendants contend that they will make a strong showing for Supreme Court review because the “injunction conflicts with over 20-years’ worth of well-reasoned decisions by other district courts addressing the same issues” Mot. 10. This appears to be a reference back to seven district court decisions on IIRIRA-waiver border-wall construction, cited earlier in the nondelegation doctrine section of the Motion. *See* Mot. 6–7 (collecting cases). Critically,

however, none of those cases involved a major questions doctrine claim. *See Ctr. for Biological Diversity v. Mullin*, No. 25-cv-365, 2026 WL 836278 (D. Ariz. Mar. 26, 2026); *Ctr. for Biological Diversity v. McAleenan*, 404 F. Supp. 3d 218 (D.D.C. 2019); *In re Border Infrastructure Env't Litig.*, 284 F. Supp. 3d 1092 (S.D. Cal. 2018); *Cnty. of El Paso v. Chertoff*, No. 3:08-cv-196-FM, 2008 WL 4372693 (W.D. Tex. Aug. 29, 2008); *Save Our Heritage Org. v. Gonzales*, 533 F. Supp. 2d 58 (D.D.C. 2008); *Defs. of Wildlife v. Chertoff*, 527 F. Supp. 2d 119 (D.D.C. 2007); *Sierra Club v. Ashcroft*, No. 04-cv-272, 2005 WL 8153059 (S.D. Cal. Dec. 13, 2005). Therefore, the Court perceives no conflict between its decision and these prior decisions. While again “acknowledging that the law is unsettled” when it comes to whether the major questions doctrine is a constitutional clear statement rule sufficient to confer jurisdiction here, the Court finds that Defendants’ likelihood of success on appeal is low. *See* Mem. Op. 7; *see also id.* at 4–11.

On the second factor, Defendants claim that the Government will suffer irreparable harm to its ability to stop illegal immigration and drug smuggling; and “incur at least \$462,800 per day in suspension costs based on rough projections provided by . . . contractors.” Mot. 10–14; Mot. Attach. A (“Enriquez Decl.”) ¶¶ 10–12, ECF No. 74-1; Mot. Attach. B (“Barrett Decl.”) ¶¶ 5–19, ECF No. 74-2. Regardless, “[a]ny time [a government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted). The core of Plaintiffs’ major questions doctrine claim is that the people’s representatives—Congress—did not, in fact, authorize Defendants’ border wall infrastructure construction activities in the Big Bend Sector. But Defendants are also the people’s representatives. And

because they will continue to be prevented from effectuating their policies, Defendants have demonstrated that they will experience at least some degree of irreparable harm absent a stay.

On the final two factors, Plaintiffs' irreversible environmental, aesthetic, economic, and recreational harms outweigh Defendants' inability to construct new border wall infrastructure for reasons discussed in the Memorandum Opinion. *See* Mem. Op. 12–14. The Court reiterates its conclusion that the primary harm to Defendants is in the form of “a temporary delay while this Court assesses the merits of the pending summary judgment motions.” *Id.* at 14. If Defendants ultimately prevail on the merits, they can resume construction. But if Defendants are allowed to proceed with construction and Plaintiffs ultimately prevail on the merits, then both the natural landscape and Plaintiffs' ability to put it to their preferred uses will have been forever altered. Therefore, at least three of the four *Nken* factors cut against a stay of the injunction pending further review.

Defendants make one additional argument: that the Court's injunction is overbroad, in violation of the “basic principle” that “a plaintiff's remedy must be tailored to redress the plaintiff's particular injury.” Mot. 8 (quoting *Gill v. Whitford*, 585 U.S. 48, 73 (2018)). To be sure, any injunction of a federal government policy that exceeds the scope necessary to remedy the plaintiffs' injuries constitutes an improper intrusion into the purview of the executive branch. *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025). Defendants frame the Court's injunction as a sledgehammer to crack a nut—“a blanket halt on all construction across the entire Big Bend Sector” for the benefit of only “three plaintiffs,” who have never “seen or set foot on more than a small fraction of land where the barriers would be built.” Mot. 9. This framing poorly characterizes Plaintiffs themselves and the nature of the harm they seek to redress in this lawsuit.

First, Defendants elide the fact that two of the three Plaintiffs in this case are organizations. One Plaintiff, the Center for Biological Diversity, is an organization with “more than 101,600 members, including members who visit, recreate in, and enjoy the wildlife and public lands of the Big Bend region.”¹ Pls.’ Proposed Undisputed Facts ¶ 85, ECF No. 19-1. The Court heard testimony from two of the Center’s members during the preliminary injunction hearing. *See* Prelim. Inj. Hr’g Tr. 117:7–149:8, ECF No. 72. Their testimony was emblematic not only of their own experience, but also their fellow members’, and it described their activities throughout the Big Bend Sector. *See* Mem. Op. 12–13 (describing some of this testimony).

Second, the evidence showed that the harm that Plaintiffs have and would continue to suffer due to Defendants’ construction activities is not isolated to the areas in which they “set foot.” Mot. 15. The Court heard testimony from Jeffrey Renfrow, who was recognized without objection as an expert on “the nature, extent, and duration of the ecological impacts from recent border barrier construction activities in the Big Bend [Sector].” *See* Prelim. Inj. Hr’g Tr. 149:14–167:19. Renfrow testified at length regarding how this year’s limited construction activities have already caused “significant harm to hydrologic function, vegetation and soils . . . that . . . will probably persist for decades if not centuries, and, in some cases, never recover,” even with “significant long-term restoration” efforts. *Id.* at 155:10–15. Renfrow described how construction negatively affects the entire desert ecosystem by disturbing “hydrologic function” and “drainage patterns,” such that even limited construction has widespread effects. *See, e.g., id.* at 161:10–163:11 (“[W]e’ll see a much larger impact on vegetation communities than the actual footprint.”). In this way, the Court’s injunction—stopping all ground disturbing activities pursuant to the Big Bend Waivers—is as narrowly tailored a remedy as the Court can conceive to

¹ This fact is undisputed. Defs.’ Resp. Pls.’ Proposed Undisputed Facts ¶ 85, ECF No. 24-2.

preserve the status quo in the context of the potential for such widespread harm. Defendants have not suggested any narrower alternative. *See* Mot. 8–9.

For the foregoing reasons, the Motion to Stay Preliminary Injunction, ECF No. 74, is **DENIED**. The Court’s October 2, 2026, Preliminary Injunction **REMAINS IN EFFECT**.

SO ORDERED.

SIGNED this 20th day of October, 2026.



KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE