

TOHONO O'ODHAM NATION  
OFFICE OF ATTORNEY GENERAL  
P.O. Box 830  
Sells, AZ 85634  
Telephone: (520) 383-3410  
Fax: (520) 383-2689

Jonathan L. Jantzen, Arizona Bar No. 016220  
Attorney General  
jonathan.jantzen@tonation-nsn.gov

*Counsel for amicus curiae Tohono O'odham Nation*

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Friendly House; et al.,

Plaintiffs,

vs.

Michael Whiting; et al.,

Defendants.

Case No. CV10-1061-PHX-SRB

**BRIEF OF *AMICUS CURIAE*  
TOHONO O'ODHAM NATION IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

**STATEMENT OF *AMICUS CURIAE* INTEREST**

The Tohono O'odham Nation ("Nation") is a federally recognized Indian tribe organized under a constitution approved by the United States Secretary of the Interior pursuant to Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, under which it exercises sovereign powers over its lands and people.

The Nation's 2.8 million acre reservation is the second-largest in the country and is surrounded on the north, west, and east by the State of Arizona. Seventy-five miles of the reservation's border runs along the United States-Mexico border. The land is rural and is sparsely inhabited in many areas, with limited transportation options. This

1 situation limits opportunities for employment, health care, participation in religious  
2 ceremonies, and other vital life activities.

3 Arizona State Highway 86 (“SR 86”) bisects the Nation and is one of two major  
4 thoroughfares on which the Nation’s members frequently drive or hitchhike. SR 86 is  
5 located on a state right-of-way granted to the Arizona Department of Transportation.  
6 The state right-of-way runs for approximately 82 miles through the Nation and is 200  
7 feet wide. It is patrolled by the police forces of the state and Nation, as well as by U.S.  
8 Customs and Border Protection (“Border Patrol”). Both the state highway right-of-way  
9 and the entire Tohono O’odham reservation are “Indian country,” a federal term of art  
10 with significant jurisdictional implications. 18 U.S.C. § 1151(a); *Bressi v. Ford*, 575  
11 F.3d 891, 896 (9<sup>th</sup> Cir. 2009).

12 The Tohono O’odham speak O’odham, English, or Spanish. Many of the  
13 Nation’s members speak with accents, which is common among multilingual people.  
14 Additionally, many of the Nation’s members share physical characteristics with many  
15 persons of Mexican or Central American descent (e.g., dark hair and dark complexions).  
16 An estimated 300 Tohono O’odham individuals, particularly older members of the  
17 Nation, are United States citizens by birth but lack documents to prove citizenship (such  
18 as state-issued birth certificates) because they were born at home.

19 The Nation’s location on the Mexican border exposes the Nation to major impacts  
20 from border crossing traffic. The Nation has experienced an epidemic of border related  
21 burglaries and thefts, litter, land desecration, destruction of protected species, migrant  
22 rescues, migrant deaths, drug trafficking, and human smuggling. The Tohono O’odham  
23 Nation is recognized as being one of the southern border’s most heavily used corridors  
24 for unauthorized entries into the country, drug trafficking, and human smuggling. The  
25  
26  
27  
28

1 impact on the Nation's land and people is tremendous and well-documented.<sup>1</sup> For these  
 2 reasons, the Nation has largely supported federal efforts to enforce U.S. immigration  
 3 law.<sup>2</sup> The Nation has expended large sums (up to \$3 million annually) of unreimbursed  
 4 tribal money on problems related to the unauthorized migrant traffic.

5 The Nation's people will be directly affected by Arizona's "Support our Law  
 6 Enforcement and Safe Neighborhoods Act ("SB 1070") because they are especially  
 7 likely to suffer from civil rights violations by inadequately trained state law enforcement  
 8 officers. This is due to the physical appearance, frequency of travel to ancestral lands in  
 9 Mexico for familial and religious purposes, and linguistic characteristics of the Tohono  
 10 O'odham. Equally important, SB 1070 infringes upon the Nation's sovereign right to  
 11 self-governance as guaranteed by the Indian Commerce Clause of the U.S. Constitution.

## 12 13 ARGUMENT

### 14 **I. TOHONO O'ODHAM TRAVELING ARE LIKELY TO BE VICTIMS OF CIVIL** 15 **RIGHTS VIOLATIONS BY ARIZONA LAW ENFORCEMENT OFFICERS.**

16 State and county officers currently patrol the highway and enforce state law on  
 17 SR 86 within the reservation. The Nation anticipates that these officers will try to  
 18 enforce SB 1070 on SR 86 within the reservation. Undertrained state and county  
 19

---

20 <sup>1</sup> See, e.g., "National Drug Threat Assessment 2010," U.S. Department of Justice,  
 21 National Drug Intelligence Center, Product No. 2010-Q0317-001, page 18,  
 22 February 2010; "Border Indian reservations sources of drug smuggling," *The Seattle*  
 23 *Times*, June 26, 2010, available at [http://seattletimes.nwsource.com/html/nationworld/2012209920\\_rezdrugs27.html](http://seattletimes.nwsource.com/html/nationworld/2012209920_rezdrugs27.html); "Shadow Wolves," *Tucson Weekly*, September 27, 2001,  
 24 available at [www.tucsonweekly.com/tucson/shadow-wolves/Content?oid=1069047](http://www.tucsonweekly.com/tucson/shadow-wolves/Content?oid=1069047).

25 <sup>2</sup> For example, the Nation supported the establishment of a trial tactical Border Patrol  
 26 Checkpoint on U.S. Route 15 in the Nation's Sif Oidak District (Resolution No. 07-679,  
 27 attached as Exhibit A), the construction of vehicle barriers along the international border  
 28 (Resolution Nos. 04-095 and 06-465, attached as Exhibit A), the allocation of Nation's  
 land for use as a joint-use law enforcement facility shared by the Nation's police force  
 and the U.S. Border Patrol (Resolution No. 07-129, attached as Exhibit A).

1 officers will determine whether O’odham drivers and pedestrians on SR 86 are in  
2 violation of federal immigration law. Because these officers will not be trained in  
3 accordance with the federal scheme provided at 8 U.S.C. §1357(g), and will be detaining  
4 suspects based on the undefined term “reasonable suspicion,” O’odham on SR 86 within  
5 their own homeland are likely to be subjected to unconstitutional arrests and  
6 mistreatment by state and county officers.

7  
8 **A. SB 1070 Circumvents The Controls And Training Proscribed By The**  
9 **Federal Scheme.**

10 In an effort to balance the need for more immigration enforcement personnel with  
11 the protection of the Constitutional rights of individuals, 8 U.S.C § 1357(g) sets forth the  
12 circumstances and conditions under which state officers may perform immigration  
13 officer functions. The law limits the types of functions state officers may perform and  
14 requires a written agreement between the state (or its political subdivisions) and the  
15 United States Attorney General in order for state officers to perform these functions.  
16 This agreement requires certification that state officers acting in this capacity have  
17 received adequate training on federal immigration law enforcement, and subjects the  
18 state officer to the supervision and direction of the Attorney General of the United  
19 States. When acting under a Section 1357(g) agreement, state officers act in an auxiliary  
20 enforcement capacity.

21 SB 1070 requires state officers to exceed the scope of what is permitted under  
22 Section 1357(g), yet provides for far less federal oversight and lacks even the minimal  
23 specific enforcement details contained in the federal law. The oversight requirement in  
24 Section 1357(g) is designed to prevent overzealous state enforcement of complex federal  
25 immigration laws. SB 1070 disregards the federal requirements regarding written  
26 agreements, federal supervision, and legal training of officers. It also authorizes all state  
27 officers, not simply those specifically trained and designated, to act in a primary  
28 capacity in enforcing federal law, deciding for themselves who should be detained,

1 transporting those persons without federal authorization, and detaining those persons  
2 until such point as immigration status is determined (A.R.S. Sec. 11-1051 as added by  
3 SB 1070).

4 Most critically, nowhere does Section 1357(g) permit a state officer to shift the  
5 burden of proving citizenship to the suspected unauthorized alien or to charge and  
6 criminally prosecute an alien for being unlawfully present in the United States. But,  
7 perversely, SB 1070 does just that. In order to trigger the presumption that they are not  
8 unlawfully present, members of the Nation (whose forebears have lived on these lands  
9 many hundreds of years before Arizona statehood) would have to show a valid tribal  
10 enrollment card, Arizona driver license, or Arizona nonoperating identification card. By  
11 shifting the burden of proving innocence of criminal wrongdoing to the individual tribal  
12 member, SB 1070 turns basic constitutional precepts on their heads.

13 Even with Section 1357(g)'s strict training and oversight requirements, a U.S.  
14 Government Accountability Office (GAO) study published in 2009 noted that better  
15 controls over state officers were necessary. *Better Controls Needed Over Program*  
16 *Authorizing State and Local Enforcement of Federal Immigration Laws*, GAO-09-109  
17 (January 2009)<sup>3</sup>.

18 Tohono O'odham routinely experience harassment, intimidation and violation of  
19 civil rights at the hands of federal officers, who are trained in an intensive immigration  
20 law-focused academy for 55 days.<sup>4</sup> State officers who enforce SB 1070, in contrast,  
21 will be provided only a 90-minute video as their training in federal immigration law  
22 enforcement. The harassment, intimidation and violation of civil rights endured by the  
23  
24

---

25 <sup>3</sup> Available at [www.gao.gov/new.items/d09109.pdf](http://www.gao.gov/new.items/d09109.pdf)

26 <sup>4</sup> Resolutions of the Tohono O'odham Legislative Council record the Nation's  
27 displeasure with the civil rights record of federal officers. Resolution No. 04-469  
28 (attached as Exhibit A) calls on the United States Attorney for the District of Arizona to  
investigate Border Patrol civil rights violations.

O'odham from federal officials can only increase if immigration enforcement is turned over to lesser trained state officers on SR 86.

**B. SB 1070's Implementation Using the "Reasonable Suspicion" Standard Would Increase The Likelihood of Racial Profiling Of O'odham Members by State Police.**

SB 1070 requires that state officers use "reasonable suspicion" in order to determine whether to detain an individual for violation of federal immigration law. SB 1070 provides absolutely no guidance as to what would give rise to "reasonable suspicion," thus vesting the state officer with extraordinary discretion in the performance of these mandatory duties. As many O'odham have cultural, linguistic, and physical characteristics that are distinct from Anglo American populations, the Nation's members are particularly vulnerable to racial profiling and detention by an Arizona officer whose "reasonable suspicion" has thereby been aroused. This vulnerability has been extensively documented in a 2008 study of racial profiling by Arizona Department of Public Safety (AZ-DPS) officers on Arizona interstate highways. American Civil Liberties Union of Arizona, *Driving While Black or Brown, an Analysis of Racial Profiling in Arizona*, (ACLU of Arizona, 2008).<sup>5</sup> As this study shows, Native Americans stopped by AZ-DPS along Arizona interstate highways were 3-4 times more likely than whites to be searched, a rate that on some roadways constituted "the highest seen in this analysis." *Id.*, at 7. Despite this disparate treatment, the rates of actual contraband seizures from Native American searches were lower than those for whites. *Id.*, at 10.

In addition to driving on SR 86, Tohono O'odham members frequently walk along the highway or hitchhike on the highway and carry backpacks. Unauthorized border crossers also use the highway for walking or hitchhiking and carry backpacks.

---

<sup>5</sup> Available at <http://acluaz.org/DrivingWhileBlackorBrown.pdf>

1 Because of similarities in appearance, skin color, and location near the highway, Tohono  
2 O’odham on the highway are likely to raise suspicion and may trigger an SB 1070  
3 detention by an Arizona officer, despite the fact that they are American citizens. If these  
4 individuals are not carrying the documents which create a presumption of lawful  
5 presence (a tribal enrollment card, an Arizona driver license, or an Arizona nonoperating  
6 identification license), they may be questioned as to citizenship and lawful presence in  
7 the United States. Individuals who are not carrying a birth certificate, or do not have a  
8 birth certificate, will be at risk of being referred to federal authorities and of being  
9 deported. All of this would be happening in their own homeland, on land that their  
10 family may have lived on for generations.

11 The Nation’s members traveling within the Nation’s territorial boundaries are  
12 entitled to live their lives free from questioning by state officers about their right to be  
13 present on O’odham land. The broad discretion SB 1070 affords to state officers in the  
14 enforcement of federal immigration law creates a significant likelihood that they will be  
15 improperly detained, turned over to federal authorities, and deported.

16  
17 **II. SB 1070 VIOLATES THE INDIAN COMMERCE CLAUSE’S GUARANTEES OF**  
18 **THE NATION’S RIGHT TO SELF-GOVERNANCE.**

19 Plaintiffs and other *amici* correctly identify the fact that SB 1070 is preempted by  
20 existing federal immigration law. However, because it is likely that tribal members on  
21 the Nation’s reservation will be subject to wrongful detention under SB 1070 by state or  
22 county officers on SR 86, SB 1070 also runs afoul of a wholly different, and higher,  
23 federal authority: the Indian Commerce Clause of the U.S. Constitution, Art. 1, § 8, cl. 3.  
24 The Commerce Clause vests Congress with the “exclusive authority over relations with  
25 Indian tribes.” *Montana v. Blackfeet Tribe*, 471 U.S. 759, 764 (1985). Accordingly,  
26 while the usual preemption approach presumes that state exercise of authority will  
27 prevail unless it can be shown that Congress intended to preempt the field, the opposite  
28 presumption is imposed where the state exercise of authority implicates Indian affairs.



1 *See, e.g., White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-144 (1980); *see*  
 2 *also, Cohen's Handbook of Federal Indian Law* § 6.03[2][a] at 526-527 (Nell Jessup  
 3 Newton et al., eds., 2005). This unique form of preemption not only applies to state  
 4 authority that is pre-empted by federal law, but also state authority that infringes “on the  
 5 right of reservation Indians to make their own laws and be ruled by them.” *Bracker*, at  
 6 142, *citing Williams v. Lee*, 358 U.S. 217 (1959).<sup>6</sup>

7 In such circumstances, “[w]hen on-reservation conduct involving only Indians is  
 8 at issue, state law is generally inapplicable, for the State's regulatory interest is likely to  
 9 be minimal and the federal interest in encouraging tribal self-government is at its  
 10 strongest.” *Bracker*, 448 U.S. at 144. In this respect, SB 1070’s impact on the Nation’s  
 11 interests requires the law’s invalidation, at least to the extent that it may be applied  
 12 within the Nation’s reservation. The Nation’s Constitution guarantees its members  
 13 freedom of movement to “go into any district to live or beneficially use the lands [of the  
 14 Tohono O’odham Nation] in accordance with the customary procedures of the district.”  
 15 Constitution of the Tohono O’odham Nation, Art. XVI, Sec. 3.<sup>7</sup> SB 1070 thus strikes at  
 16 the core of the Nation’s right to self-governance: its ability to ensure that its members  
 17 remain unmolested in their exercise of tribal Constitutional rights.

18 However, the mere fact that SB 1070 is not ostensibly directed at the Nation’s  
 19 members does not make it applicable on the reservation. It still infringes on the Nation’s

---

20 <sup>6</sup> It is worth noting that the Supreme Court’s pronouncements on Indian Commerce  
 21 Clause preemption involve the repeated invalidation of Arizona laws. Along with the  
 22 restrictions placed on Arizona authorities in *Bracker* and *Williams*, the Supreme Court  
 23 similarly curtailed Arizona state action in *McClanahan v. Arizona State Tax Comm’n*,  
 24 411 U.S. 164 (1973) and *Warren Trading Post Co. v. Arizona Tax Comm’n*, 380 U.S.  
 25 685 (1965). Even the Arizona Supreme Court has recognized that otherwise routine  
 26 exercises of state authority, such as service of process, may not be effected by state  
 27 officers against tribal members within the Nation’s reservation. *Francisco v. State*, 113  
 28 Ariz. 427 (1976) (Pima County Sheriff had no authority to effectuate service of process  
 on a Tohono O’odham member residing on the Tohono O’odham Nation because  
 “Arizona has no authority to extend the application of its laws to an Indian reservation”).

<sup>7</sup> The Nation’s Constitution and laws are available at [www.tolc-nsn.org/tocode.htm](http://www.tolc-nsn.org/tocode.htm).



1 right to govern itself. Tribal and federal autonomy with regard to Indian country  
2 governance is not limited to tribal members; rather, state laws that infringe upon tribal  
3 self-governance may be invalidated even where such laws are applied only to non-  
4 Indians within Indian country. In *Bracker*, for example, the Supreme Court recognized  
5 that even the application of state law to non-Indians in Indian country required a  
6 “particularized inquiry into the nature of state, federal, and tribal interests at stake.” 448  
7 U.S. at 145. The Court prevented the application of a state motor carrier license tax as  
8 applied to a non-Indian trucking company operating on the White Mountain Apache  
9 Reservation in light of the substantial tribal and federal interests at issue. *Id.*, at 148.

10 Therefore, even assuming *arguendo* that the State of Arizona has the authority,  
11 under state law, to stop and detain non-citizens for immigration violations (a point the  
12 Nation does not concede), this authority must not be allowed to intrude upon the  
13 Nation’s sovereign rights within its reservation. *Williams*, 358 U.S. at 223 (“The  
14 exercise of State jurisdiction here would undermine the authority of the tribal courts over  
15 Reservation affairs and hence would infringe on the right of the Indians to govern  
16 themselves”). To be sure, SB 1070 presents such an intrusion by failing to articulate any  
17 standards by which state officers are to undertake immigration investigations, and by  
18 providing these officers with nearly limitless authority, on a state highway right of way  
19 within the Nation’s reservation, to stop and detain tribal members. But, as detailed by  
20 Plaintiffs and *amici*, SB 1070 intrudes upon the federal government’s authority as well,  
21 and in light of this interest, coupled with the Nation’s interests, the state law must be  
22 found invalid.

1 **CONCLUSION**

2 For the foregoing reasons, *amicus curiae* the Tohono O’odham Nation requests  
3 that the Court grant the Plaintiffs’ Motion for Preliminary Injunction.  
4

5 Dated: July 14, 2010

6 Jonathan L. Jantzen  
7 Attorney General

8 /s/ Jonathan L. Jantzen  
9 (AZ Bar #016220)  
10 Office of Attorney General  
11 Tohono O’odham Nation  
12 P.O. Box 830  
13 Sells, AZ 85634  
14 Tel. (520) 383-3410/Fax (520) 383-2689  
15 jonathan.jantzen@tonation-nsn.gov  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on July 14, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and transmittal of a Notice of Electronic Filing to the following ECF registrants:

- David Lawrence Abney  
abneymaturin@aol.com
- Russell Reid Abrutyn  
rabrutyn@marshallyman.com
- Joseph G. Adams  
jgadams@swlaw.com
- Joe A. Albo, Jr  
joe.albo@pinalcountyz.gov
- Maria E. Andrade  
mandrade@andradelegal.com
- Kenneth Andrew Angle  
kangle@graham.az.gov
- Cynthia Ann Aziz  
cynthia@azizimmigrationlaw.com
- Vikram Ketty Badrinath  
vbadrinath@aol.com
- Daniel Clayton Barr  
DBarr@perkinscoie.com
- GaryM Baum  
gary.baum@cityofpaloalto.org
- Anjali Bhargava  
anjali.bhargava@cco.sccgov.org

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Adam Netel Bleier  
adam@sherickbleier.com
- Ronald G Blum  
rblum@manatt.com
- Sean Aloysius Bodkin  
sean.bodkin@azbar.org
- David Jeremy Bodney  
dbodney@steptoe.com
- Victor Bolden  
vbolden@newhavenct.net
- Jean Boler  
jean.boler@seattle.gov
- John J Bouma  
jbouma@swlaw.com
- Susan Traub Boyd  
Susan.Boyd@mto.com
- Maria R Brandon  
brandonm@mail.maricopa.gov
- Richard Louis Brusca  
richard.brusca@skadden.com
- Robert Glenn Buckelew  
gbuckelew@co.la-paz.az.us
- William W. Carter  
William.Carter@lacity.org
- Sirena Castillo  
scastillo@manatt.com
- Bryan B Chambers  
bchambers@co.gila.az.us

1 • Stephanie Fleischman Cherny  
2 stephanie.chemy@skadden.com

3 • Connie Choi  
4 cchoi@apalc.org

5 • Christopher R Clark  
6 crclark@dl.com

7 • Vikki Cooper  
8 vcooper@newhavenct.net

9 • Zachary D. Cowan  
10 ZCowan@ci.berkeley.ca.us

11 • Katherine Desormeau  
12 kate.desormeau@cco.sccgov.org

13 • Sara Elizabeth Dill  
14 sdill@pkjlaw.com

15 • Cynthia Valenzuela Dixon  
16 cvalenzuela@maldef.org

17 • Christopher Baird Dupont  
18 dupontlaw@cox.net

19 • Paul F Eckstein  
20 Peckstein@perkinscoie.com

21 • Nicholas Jason Enoch  
22 nicholas.enoch@azbar.org

23 • Ivan E Espinoza-Madrigal  
24 iespinoza@maldef.org

25 • Nicholas David Espiritu  
26 nespiritu@maldef.org

27 • David Joseph Euchner  
28 deuchner@comcast.net

• Stanley G Feldman

1 sfeldman@hmpmlaw.com

2 • Wendy L Feng  
3 wfeng@cov.com

4 • Louis S Fidel  
5 loufidel@hotmail.com

6 • Nathan Jean Fidel  
7 nfidel@hmprnlaw.com

8 • Noel A Fidel  
9 noel.fidel@mwmf.com

10 • Jack Hamilton Fields  
11 jackfields@co.yavapai.az.us

12 • Albert M Flores  
13 amflegal@aol.com

14 • June Ava Florescue  
15 jfloresc@co.gila.az.us

16 • Kathleen M. Foster  
17 kfoster@newhavenct.net

18 • Nora V Frimann  
19 nora.frimann@sanjoseca.gov

20 • Peter William Ginder  
21 peter.ginder@ci.minneapolis.mn.us

22 • Carla Gorniak  
23 cgoniak@dl.com

24 • Matthew Harrison Green  
25 mgreenh@mattgreenlaw.com

26 • Jon Marshall Greenbaum  
27 jgreenbaum@lawyerscommittee.org

28 • Lucas Guttentag  
lguttentag@aclu.org

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Lawrence L Hafetz  
lhafetz@counsel.lacounty.gov
- Greta S Hansen  
greta.hansen@cco.sccgov.org
- Britt Wesley Hanson  
bhanson@cochise.az.gov
- Gerald T Hendrickson  
jerry.hendrickson@ci.stpaul.mn.us
- Robert Arthur Henry  
bhenry@swlaw.com
- Dennis J Herrera  
tara.collins@sfgov.org
- Peter S Holmes  
peter.holmes@seattle.gov
- Jeffrey Allen Imig  
jimig@hmpmlaw.com
- Omar C Jadwat  
ojadwat@aclu.org
- Linton Joaquin  
joaquin@nilc.org
- Daniel S Jurkowitz  
DanielJurkowitz@pcao.pima.gov
- Joseph Andrew Kanefield  
jkanefield@az.gov
- Melissa S Keaney  
keaney@nilc.org
- Peter Shawn Kozinets  
pkozinets@steptoe.com



1 • Elizabeth Janney Kruschek  
2 ekruschek@perkinscoie.com

3 • Annie Lai  
4 alai@acluaz.org

5 • Carolyn B Lamm  
6 clamm@whitecase.com

7 • Tamara Lange  
8 tamara.lange@cco.sccgov.org

9 • Michael Dennis Latham  
10 mlatham@co.apache.az.us

11 • Jennifer AD Lehman  
12 jlehman@counsel.lacounty.gov

13 • Thomas P Liddy  
14 tliddy@mail.maricopa.gov

15 • Gladys Limon  
16 glimon@maldef.org

17 • William M. Litt  
18 littwm@co.monterey.ca.us

19 • James Neil Lombardo  
20 neil.lombardo@skadden.com

21 • Anne Cecile Longo  
22 longoa@mcao.maricopa.gov

23 • Richard Anthony Lopez  
24 rlopez@cov.com

25 • Foster Maer  
26 finaer@latinojustice.org

27 • Stephen W Manning  
28 smanning@ilgrp.com

• Michael M Markman

1 mmarkman@cov.com

2 • Miguel A Marquez  
3 miguel.marquez@cco.sccgov.org

4 • Joanna S McCallum  
5 jrnccallum@rnanatt.com

6 • Michael William McCarthy  
7 mmccarthy@co.greenlee.az.us

8 • Charles J. McKee  
9 mckeecj@co.monterey.ca.us

10 • Lydia Mendoza  
11 Irnendoza@manatt.com

12 • LindaMeng  
13 linda.meng@portlandoregon.gov

14 • Yuval Miller  
15 yuval.miller@rnto.com

16 • Mary Bridget Minder  
17 BMinder@perkinscoie.com

18 • Vivek Mittal  
19 mittal@nilc.org

20 • Tanaz Moghadam  
21 tmoghadam@aclu.org

22 • Elisabeth Jill Neubauer  
23 Elisabeth.Neubauer@rnto.com

24 • Chris Newman  
25 newman@ndlon.org

26 • George A. Nilson  
27 george.nilson@baltimorecity.gov

28 • Carmina Ocampo  
cocampo@apalc.org

1  
2 • Andrea Sheridan Ordin  
aordin@counsel.lacounty.gov

3  
4 • Daniel R Ortega, Jr  
danny@nngmo.com

5  
6 • Yungsuhn Park  
ypark@apalc.org

7  
8 • Robert Enrique Pastor  
rpastor@hrnpmlaw.com

9  
10 • Lance B Payette  
lance.payette@navajocountyaz.gov

11  
12 • Cesar A Perales  
cperales@latinojustice.org

13  
14 • Nina Perales  
nperales@maldef.org

15  
16 • Jose L Perez  
jperez@latinojustice.org

17  
18 • William Rowe Phelan, Jr.  
william.phelan@baltimorecity.gov

19  
20 • Bradley S Phillips  
brad.phillips@mto.com

21  
22 • Gregory N Pimstone  
gpirnstone@manatt.com

23  
24 • Daniel Joseph Pochoda  
dpochoda@acluaz.org

25  
26 • Nora A Preciado  
preciado@nilc.org

27  
28 • Harini Raghupathi  
hraghupathi@aclu.org

1 • Rebecca Ann Reed  
rreed@hrnpmlaw.com

3 • Robert S Remar  
rremar@leonardcarder.com

5 • Jose de Jesus Rivera  
azdjrivera@hmpmlaw.com

7 • Chris Myrl Roll  
chris.roll@pinalcountyaz.gov

9 • George Jacob Romero  
YCAAttCivil@yumacountyaz.gov

11 • Thomas A Saenz  
tsaenz@maldef.org

13 • Gerald Sato  
gerald.sato@lacity.org

15 • Susan L Segal  
susan.segal@ci.minneapolis.mn.us

17 • Deborah S Smith  
deb@debsmithlaw.com

19 • Wayne Snodgrass  
wayne.snodgrass@sfgov.org

21 • Henry L Solano  
hsolano@dl.com

23 • Julie A Su  
jsu@apalc.orgjsu@apalc.org

25 • Ghazal Tajmiri  
tajmiri@nilc.org

27 • Robert Alexander Taylor  
robert.taylor@co.mohave.az.us

28 • Phil A Thomas

1 pthomas@leonardcarder.com

2 • Karen Cassandra Tumlin  
3 tumlin@nilc.org

4 • Victor Viramontes  
5 vviramontes@maldef.org

6 • Charles F Walker  
7 charles.walker@skadden.com

8 • Cecillia D Wang  
9 cwang@aclu.org

10 • Paul J Watford  
11 paul.watford@mto.com

12 • Aileen Wheeler  
13 awheeler@cov.com

14 • Bruce P White  
15 whiteb@mcao.maricopa.gov

16 • Jean E Wilcox  
17 jwilcox@coconino.az.gov

18 • Joseph J Ybarra  
19 joseph.ybarra@mto.com

20 • Joseph Young  
21 jyoung@co.apache.az.us

22 • Stephen N Zack  
23 szack@bsflp.com

24 • Barnaby W. Zall  
25 bzall@aol.com

26 I hereby certify that on July 14, 2010, I served the attached document by U.S. Mail on the  
27 following, who are not registered participants of the CM/ECF System:  
28

1 Laura D Blackburne  
2 NAACP  
3 4805 Mt. Hope Dr  
4 Baltimore, ND 21215

5 Zach Cowan  
6 Berkeley City Attorneys' Office  
7 2180 Milvia St., 4th Floor  
8 Berkeley, CA 94704

9 Richard Doyle  
10 Office of the City Attorney  
11 200 E. Santa Clara St., 16th Fl.  
12 San Jose, CA 95113

13 Claudia McGee Henry  
14 Los Angeles City Attorney  
15 200 N. Main St.  
16 915 City Hall E.  
17 Los Angeles, CA 90012

18 Lisa Kung  
19 National Day Labor Organizing Network  
20 675 S. Park View St., Ste. B  
21 Los Angeles, CA 90057

22 Ronald Lee  
23 Asian Pacific American Legal Center  
24 1145 Wilshire Blvd., Ste. 200  
25 Los Angeles, CA 90017

26 Andrew Silverman  
27 James E. Rogers College of Law  
28 University of Arizona  
P.O. Box 210176  
Tucson, AZ 85721

COPY also sent with Notice of Electronic Filing, via Federal Express, the 14th day of  
July, 2010, to:

The Honorable Susan R. Bolton

1 United States District Court  
2 Sandra Day O'Connor U.S. Courthouse, Suite 522  
3 401 West Washington Street, SPC 50  
4 Phoenix, AZ 85003-2153  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

s/Jonathan Jantzen  
Jonathan Jantzen



## **EXHIBIT A**

# **Tohono O'odham Legislative Council Resolutions**

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Supporting the United States Department of Homeland Security, Customs and**  
**Border Protection, to Gain Control of the International Border Within the**  
**Tohono O'odham Nation with a Trial Tactical Checkpoint)**

**RESOLUTION NO. 07-679**

1 **WHEREAS, the United States Department of Homeland Security, Customs and Border Protection**  
2 **("CBP"), is responsible for managing, securing and controlling the international**  
3 **border within the Tohono O'odham Nation; and**

4 **WHEREAS, the CBP has proposed a tactical checkpoint to be operated at mile marker 26.5 on**  
5 **Federal Route 15 and a backup location at mile marker 16.8 on Federal Route 15 and**  
6 **has advised the Nation that all required environmental assessments have been**  
7 **completed and approved on the above-identified sites; and**

8 **WHEREAS, CBP has received support from the impacted communities, the Sif Oidak District by**  
9 **District Resolution No. 09-07-23, and the North Komelik community; and**

10 **WHEREAS, a tactical checkpoint will provide enforcement in depth on the Tohono O'odham**  
11 **Nation in order to deny major routes of egress from the international border and**  
12 **allow the Border Patrol to establish an additional layer of defense; and**

13 **WHEREAS, the tactical checkpoint would coincide with a reduction of illegal entries through the**  
14 **Nation, including a reduction of smuggler traffic on Federal Route 15, and reduce**  
15 **illegal activity in the Sif Oidak District; and**

16 **WHEREAS, CBP Border Patrol will operate the checkpoint in a safe manner, with utmost concern**  
17 **for safety of the Tohono O'odham Nation tribal members, and, will in addition, work**  
18 **cooperatively with the Tohono O'odham Police Department ("TOPD"), and other**  
19 **partner law enforcement agencies; and**

20 **WHEREAS, CBP Border Patrol has agreed to contact the Tohono O'odham Utility Authority to**  
21 **arrange power usage at the proposed sites, and to minimize the usage of a generator;**  
22 **and**

23 **WHEREAS, this proposal was presented at the Tohono O'odham Legislative Council session held**  
24 **on October 12, 2007.**

25 **NOW, THEREFORE, BE IT RESOLVED by the Tohono O'odham Legislative Council that it hereby**  
26 **conditionally approves the CBP Border Patrol's implementation of a trial tactical**  
27 **checkpoint on Federal Route 15 at the above-identified sites, provided that the Nation**

**EXHIBIT**

**A**

tabbles

**RESOLUTION NO. 87-679**

**(Supporting the United States Department of Homeland Security, Customs and Border Protection, to Gain Control of the International Border Within the Tohono O'odham Nation with a Trial Tactical Checkpoint)**

**Page 2 of 3**

reserves the right to revoke its approval by subsequent resolution and further provided that the CBP Border Patrol personnel shall:

- (1) consult and coordinate with the Nation's Department of Public Safety ("TODPS") to the maximum extent possible, and work with a liaison appointed by the TODPS Director to provide public information and address concerns;
- (2) respect the human and civil rights of the Nation's members and respond in a timely manner to concerns regarding these issues;
- (3) minimize any environmental impacts of their operations by not destroying vegetation, littering, or otherwise injuring the Nation's lands, provided that the National Guard may assist in constructing and improving border vehicle barriers and fences;
- (4) consult with the Nation's Cultural Affairs Office to avoid damage to cultural sites or interruption of traditional ceremonies or celebrations;
- (5) refrain from harassing the Tohono O'odham and comply with all applicable federal laws, including but not limited to those governing searches, seizures, vehicle and other stops;
- (6) consider improving existing roads serving the Nation's members and its communities as a means of improving community relations, lawful transportation, communications and access;
- (7) remove vehicles abandoned by smugglers and drug traffickers but refrain from destroying or unnecessarily damaging such vehicles, which are often stolen from the Nation's members or other innocent victims.

**BE IT FINALLY RESOLVED** that the CBP Border Patrol shall provide a daily report to the Sif Oidak District Chairwoman and the TODPS during the checkpoint's initial 90-day trial period, after which time an evaluation will be performed by the District and Nation in consultation with TOPD and CBP Border Patrol on the checkpoints' effectiveness and impacts.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 12<sup>TH</sup> Day of OCTOBER, 2007 at a meeting at which a quorum was present with a vote of 2,335.3 FOR; 199.2 AGAINST; -0- NOT VOTING; and [05] ABSENT, pursuant to the powers vested in the Council by Section 1(c)(1), (c)(2), and (c)(6); Section 1(f) and 1(j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

**RESOLUTION NO. 07-679**

**(Supporting the United States Department of Homeland Security, Customs and Border Protection, to Gain Control of the International Border Within the Tohono O'odham Nation with a Trial Tactical Checkpoint)**

Page 3 of 3

**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

Felicia Muniz Jr  
Verlon M. Jose, Legislative Chairman

17<sup>th</sup> day of October, 2007

**ATTEST:**

Lucille Lopez  
Lucille Lopez, Acting Legislative Secretary

17 day of October, 2007.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 17<sup>th</sup> day of October, 2007 at 3:44 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

**TOHONO O'ODHAM LEGISLATIVE COUNCIL**

Felicia Muniz Jr  
Verlon M. Jose, Legislative Chairman

☒ **APPROVED**

on the 17 day of October, 2007

☐ **DISAPPROVED**

at 3:55 o'clock, P.M.

Ned Norris, Jr.  
NED NORRIS, JR., CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 17 day of

October, 2007, at 4:20 o'clock, P.M.

Lucille Lopez  
Lucille Lopez, Acting Legislative Secretary

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Supporting Vehicle Barriers and All-weather Road Project Along the International**  
**Boundary Within the Tohono O'odham Nation)**

RESOLUTION NO. 04-095

1 WHEREAS, the Tucson Sector of the United States Border Patrol ("USBP") is responsible for  
2 enforcing homeland security within the United States of America, including the  
3 Tohono O'odham Nation ("Nation") lands along the International Boundary with  
4 Mexico ("International Boundary"); and

5 WHEREAS, illegal immigration and narcotics trafficking and the use of motor vehicles in the  
6 furtherance of these crimes has become an increasing problem along the  
7 International Boundary; and

8 WHEREAS, these incursions by motor vehicles create a human safety risk to civilians and law  
9 enforcement personnel, especially tribal residents, and create a detrimental impact  
10 on the natural environment of the Nation; and

11 WHEREAS, since the September 11, 2001 terrorist attacks and with the increased threat of  
12 terrorism including the threat of terrorists obtaining entry into the United States  
13 across the International Boundary; and

14 WHEREAS, the USBP has developed designs, construction processes, and enforcement  
15 techniques utilizing border vehicle barriers and all-weather roads in conjunction  
16 with other technologies to prevent and deter illegal entry into the United States by  
17 motor vehicles; and

18 WHEREAS, the USBP has agreed, subject to Congressional appropriation, to design, build,  
19 manage and maintain an effective border enforcement barrier and an all-weather  
20 road along the entire International Boundary within the Nation in consultation with  
21 the Nation's Districts, Legislative Committees, Legislative Council and Executive  
22 Branch, at no cost to the Nation; and

23 WHEREAS, the USBP plans to utilize private contractors, United States military units, United  
24 States Border Patrol units or any combination thereof in constructing the border  
25 vehicle barrier and all-weather road, and will request that, to the extent possible,  
26 these construction units utilize employees and subcontractors from the Nation, with  
27 the understanding that any federal construction units would utilize their own  
28 personnel entirely; and

RESOLUTION NO. 04-0

(Supporting Vehicle Barriers and All-weather Road Project Along the International Boundary Within the Tohono O'odham Nation)

Page 2 of 4

1 WHEREAS, the USBP plans to construct the border vehicle barrier and road entirely within the  
2 sixty-foot strip of land reserved by the Presidential Proclamation of President  
3 Theodore Roosevelt dated May 27, 1907 for customs enforcement purposes along the  
4 entire International Boundary, except for small areas where the road must be  
5 constructed outside the sixty-foot strip of United States reserved land in order to  
6 avoid a natural barrier, in which case the road improvement will occur along the  
7 same route as the existing road; and

8 WHEREAS, the USBP has provided information to the Districts relating to the border vehicle  
9 barriers and all-weather road proposal, including information regarding the success  
10 of these technologies in other settings; and

11 WHEREAS, Chukut Kuk District by Resolution No. 2003-18 and No. 2003-57 and Gu Vo District by  
12 Resolution No. GV03-80, all attached hereto, have expressed support for the border  
13 vehicle barrier and the all-weather road project and have expressed a preference for  
14 the "corral fence" or "rail on rail" design of barrier.

15 NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby supports  
16 the USBP's border vehicle barrier and all-weather road construction proposal along  
17 the entire International Boundary within the Nation's lands, and supports  
18 Congressional appropriation for the project, subject to the following conditions:

- 19 1. if required by federal law, the USBP will obtain a right-of-way easement from the  
20 Nation and the Bureau of Indian Affairs for any segments where the road is  
21 constructed outside the sixty-foot strip of United States reserved land or, if  
22 preferred by the applicable federal agencies and the Nation, will enter into a  
23 memorandum of agreement regarding use of those segments of the road; and
- 24 2. that the USBP will perform cultural resource clearance and fully comply with the  
25 National Environmental Policy Act to the extent necessary considering the  
26 compliance already performed for the 1992 to 1995 border road construction  
27 project; and
- 28 3. that the USBP agree to maintain the border vehicle barriers and the all-weather  
29 road; and

RESOLUTION NO. 04-09

(Supporting Vehicle Barriers and All-weather Road Project Along the International Boundary Within the Tohono O'odham Nation)

Page 3 of 4

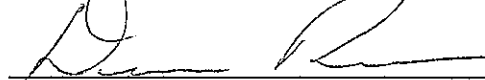
4. that the design of the border vehicle barriers and the all-weather road is subject to the approval of the Nation; and

5. the USBP agrees to continue to allow use of the entire length of road by tribal members and the officials, employees and agents of the Nation.

BE IT FURTHER RESOLVED that if right-of-way easements are required for segments of the road, the Nation hereby grants approval of those easements, consents to the performance of surveys to describe the easements, and waives its right to require consideration or damages for the grant of such easements.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 05<sup>TH</sup> Day of MARCH, 2004 at a meeting at which a quorum was present with a vote of 2,629.7 FOR; -0- AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Section 1 (f) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

8<sup>th</sup> day of March, 2004

ATTEST:

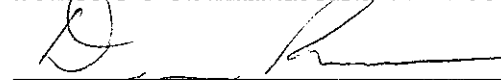


Lucille Lopez, Acting Legislative Secretary

05 day of March, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'odham Nation on the 8<sup>th</sup> day of March, 2004 at 5:06 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman



RESOLUTION NO. 04-0

(Supporting Vehicle Barriers and All-weather Road Project Along the International Boundary Within the Tohono O'odham Nation)

Page 4 of 4

☒ APPROVED

on the 8 day of March, 2004

☐ DISAPPROVED

at 8:55 o'clock, P.M.

Vivian Juan-Saunders  
VIVIAN JUAN-SAUNDERS, CHAIRWOMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 09<sup>th</sup> day of

March, 2004, at 9:16 o'clock, A.M.

Lucille Lopez  
Lucille Lopez, Acting Legislative Secretary

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Approving Border Vehicle Barrier Design Pursuant to Resolution No. 04-095,**  
**"Supporting Vehicle Barriers and All-weather Road Project Along the International**  
**Boundary Within the Tohono O'odham Nation")**

**RESOLUTION NO. 06-465**

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to "administer land**  
2 **and other public property, and by law, ordinance or resolution . . . to manage, protect,**  
3 **preserve and regulate the use of the property, wildlife, land, air and natural resources**  
4 **(including surface and ground waters) of the Tohono O'odham Nation" and the power**  
5 **to consult "appropriate federal agencies regarding federal activities that affect the**  
6 **Tohono O'odham Nation" (Constitution of the Tohono O'odham Nation, Article VI,**  
7 **Section 1(i)(2) and 1(j)); and**

8 **WHEREAS, the Tucson Sector of the United States Border Patrol ("USBP") is responsible for**  
9 **enforcing homeland security within the United States of America, including the**  
10 **Tohono O'odham Nation ("Nation") lands along the international boundary with**  
11 **Mexico ("International Boundary"); and**

12 **WHEREAS, the USBP has consulted with the Nation and has developed designs, construction**  
13 **processes, and enforcement techniques utilizing border vehicle barriers and all-**  
14 **weather roads in conjunction with other technologies to prevent and deter illegal**  
15 **entry into the Nation's lands within the United States by motor vehicles; and**

16 **WHEREAS, the USBP has agreed, subject to Congressional appropriation, to design, build,**  
17 **manage and maintain an effective border enforcement barrier and an all-weather**  
18 **road along the International Boundary within the Nation in consultation with the**  
19 **Nation's Districts, Legislative Committees, Legislative Council and Executive Branch,**  
20 **at no cost to the Nation; and**

21 **WHEREAS, pursuant to Resolution No. 04-095, the Tohono O'odham Legislative Council did**  
22 **support "the USBP's border vehicle barrier and all-weather road construction**  
23 **proposal along the entire International Boundary within the Nation's lands, and**  
24 **supports Congressional appropriation for the project," subject to several conditions,**  
25 **including that "that the design of the border vehicle barriers and the all-weather road**  
26 **is subject to the approval of the Nation"; and**

27 **WHEREAS, Chukut Kuk District, by Resolutions No. 2003-18 and No. 2003-57, and Gu Vo District,**  
28 **by Resolution No. GV03-80, previously expressed support for the border vehicle**

1 barrier and the all-weather road project, as well as a preference for the "corral fence"  
2 or "rail on rail" design of barrier; and

3 WHEREAS, the USBP is now requesting that the Nation approve the use of three types of vehicle  
4 barriers, corral (rail-on-rail), temporary (Normandy), and Bollard-style fencing, based  
5 on terrain features, soil quality, and the presence of cultural or natural resources; and

6 WHEREAS, the USBP has made presentations on the use of the three vehicle barriers to the  
7 Chukut Kuk and Gu Vo Districts, which have passed resolutions supporting the  
8 installation of a variety of barriers by Chukut Kuk District Resolution No. 2006-35 and  
9 Gu Vo District Resolution No. GV03-80 as amended by Resolution No. GV06-082; and

10 WHEREAS, the USBP has further requested that the vehicle barrier be augmented with cable  
11 and/or barbed wire fencing to prevent cattle rustling and keep undesirable livestock  
12 from entering the United States.

13 NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby  
14 reaffirms its support for the USBP's border vehicle barrier and all-weather road  
15 construction project along the International Boundary within the Nation's lands, and  
16 supports congressional appropriation for the project, subject to the conditions set  
17 forth in Resolution No. 04-095 and further provided that the barrier contain openings  
18 at the traditional crossing areas along the border known as San Miguel Gate, Serapo's  
19 Gate, and Papago Farms Gate with 24 hour surveillance by US Customs and USBP.

20 BE IT FURTHER RESOLVED that, pursuant to the terms of Resolution No. 04-095, the Tohono  
21 O'odham Legislative Council hereby approves the use of (1) Bollard-style, corral (rail-  
22 on-rail), and/or temporary (Normandy) fencing in the design and construction of the  
23 USBP's border vehicle barrier as appropriate depending upon factors including the  
24 location of washes, archaeological sites, mountainous areas and areas deemed  
25 biologically sensitive to the Nation, etc. and (2) cable and/or barbed wire fencing to  
26 augment the vehicle barrier to prevent cattle rustling and keep undesirable livestock  
27 from entering the United States.

28 BE IT FINALLY RESOLVED by the Tohono O'odham Legislative Council that the Nation's  
29 approval of the USBP's border vehicle barrier is subject to the terms and conditions  
30 set forth in this Resolution and Resolution No. 04-095; the USBP must therefore receive

prior approval from the Nation before taking any action contrary to the terms and conditions embodied in these Resolutions.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 12<sup>TH</sup> Day of JULY, 2006 at a meeting at which a quorum was present with a vote of 2,440.80 FOR; -0- AGAINST; -0- NOT VOTING; and 102 ABSENT, pursuant to the powers vested in the Council by Article VI, Section 1 (i)(2) and 1 (j) of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Evelyn B. Juan Manuel, Legislative Chairwoman

12<sup>TH</sup> day of July, 2006

ATTEST:

  
Lucille Lopez, Acting Legislative Secretary

12 day of July, 2006.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'odham Nation on the 12<sup>TH</sup> day of July, 2006 at 4:07 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

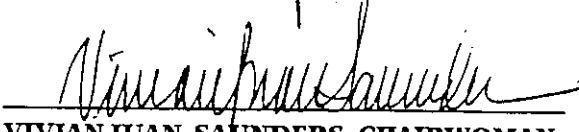
  
Evelyn B. Juan Manuel, Legislative Chairwoman

☒ APPROVED

on the 19 day of July, 2006

☐ DISAPPROVED

at 6:50 o'clock, P.M.

  
VIVIAN JUAN-SAUNDERS, CHAIRWOMAN  
TOHONO O'ODHAM NATION

1 Returned to the Legislative Secretary on the 20 day of

2  
3 July, 2006, at 10:05 o'clock, A.M.

4  
5  
6 Lucille Lopez  
7 Lucille Lopez, Acting Legislative Secretary

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Supporting United States Department of Homeland Security, Customs and Border**  
**Protection Secure Border Initiative)**

**RESOLUTION NO. 07-129**

1 **WHEREAS, the Tohono O'odham Nation is vested with the duty to manage and preserve all lands**  
2 **within the Nation's aboriginal homeland, including lands within the Nation's**  
3 **reservation and the along the international border between the United States and**  
4 **Mexico (Constitution of the Tohono O'odham Nation, Article VI, Section 1(i)); and**

5 **WHEREAS, the Tohono O'odham Legislative Council has previously and conditionally approved**  
6 **the deployment of National Guard personnel and other measures to improve the**  
7 **health, safety, and welfare of Nation's members on or near the international border;**  
8 **and**

9 **WHEREAS, the United States Department of Homeland Security, Customs and Border Protection**  
10 **(CBP) patrols and enforces the international border within the Tohono O'odham**  
11 **Nation and has entered into a contract with the Boeing Corporation to place Mobile**  
12 **Surveillance Platforms (MSPs) and Monitoring Bases as part of the Secure Border**  
13 **Initiative (SBInet); and**

14 **WHEREAS, the SBInet Project will provide a mix of personnel, technology and infrastructure,**  
15 **thereby reducing the impact of current operations by reducing the number of agents**  
16 **assigned to the Nation, and is designed to reduce illegal entries through the Nation;**  
17 **and**

18 **WHEREAS, CBP works closely with the Tohono O'odham Police Department (TOPD), which will**  
19 **have access to the SBInet system; and**

20 **WHEREAS, the SBInet Project has been reviewed by the Domestic Affairs Committee, which**  
21 **recommends approval by the Legislative Council.**

22 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council conditionally**  
23 **approves the SBInet Project on the Nation, provided that CBP will:**

- 24 (1) **seek prior approval from the impacted communities, border districts and the**  
25 **Natural Resources Department prior to any deployment of SBInet equipment;**  
26 (2) **consult and coordinate with the Nation' Department of Public Safety ("TODPS")**  
27 **to the maximum extent possible, and work with a liaison appointed by the TODPS**  
28 **Director to provide public information and address concerns;**

**RESOLUTION NO. 07-129****(Supporting United States Department of Homeland Security, Customs and Border Protection Secure Border Initiative)****Page 2 of 3**

- (3) respect the human and civil rights of the Nation's members and respond in a timely manner to concerns regarding these issues;
- (4) minimize any environmental impacts of their operations by not destroying vegetation, littering, or otherwise injuring the Nation's lands;
- (5) consult with the Nations Cultural Affairs Office to avoid damage to cultural sites or interruption of traditional ceremonies or celebrations;
- (6) refrain from harassing the Tohono O'odham and comply with all applicable federal laws, including but not limited to those governing searches, seizures, vehicle and other stops;
- (7) consider improving existing roads serving the Nation's members and its communities as a means of improving community relations, lawful transportation, communications and access;
- (8) remove vehicles abandoned by smugglers and drug traffickers but refrain from destroying or unnecessarily damaging such vehicles, which are often stolen from the Nation's members or other innocent victims;
- (9) assist the TODPS in assessing its radio operations and equipment infrastructure, such as repeater towers, to assess security and operational effectiveness, with the goal of enhancing or establishing interoperability between federal border enforcement agencies and the TODPS.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 06<sup>TH</sup> Day of MARCH, 2007 at a meeting at which a quorum was present with a vote of 2,440.80 FOR; -0- AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Section 1(f) and (j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

**TOHONO O'ODHAM LEGISLATIVE COUNCIL**
  
 Verlon M. Jose, Legislative Chairman

14 day of March, 2007



**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**

(Resolution requesting that the United States Attorney for the District of Arizona initiate a criminal investigation into the death of Mr. Bennett Joseph Patricio, Jr. to determine whether the United States Border Patrol agent operating the United States Border Patrol vehicle that struck and killed Mr. Patricio did violate Mr. Patricio's civil rights)

RESOLUTION NO. 04-469

- 1 WHEREAS, on April 9, 2002 at approximately 4:33 A.M., Bennett Joseph Patricio, Jr., an enrolled  
2 member of the Tohono O'odham Nation, was struck and killed by a U.S. Border Patrol  
3 vehicle driven by an on-duty Border Patrol agent; and
- 4 WHEREAS, the Tohono O'odham Police Department did conduct an investigation into this  
5 incident; and
- 6 WHEREAS, lacking jurisdiction over the non-Indian U.S. Border Patrol agent, the Tohono  
7 O'odham Police Department referred this matter to the United States Attorney for the  
8 District of Arizona for prosecution; and
- 9 WHEREAS, the United States Attorney for the District of Arizona did decline to prosecute the U.S.  
10 Border Patrol agent; and
- 11 WHEREAS, members of the Tohono O'odham Legislative Council have witnessed U.S. Border  
12 Patrol agents traveling at high speeds on repeated occasions throughout the Nation;  
13 and
- 14 WHEREAS, members of the Tohono O'odham Legislative Council have witnessed U.S. Border  
15 Patrol agents operating Border Patrol vehicles in an unsafe, careless and reckless  
16 manner of repeated occasions throughout the Nation; and
- 17 WHEREAS, members of the Tohono O'odham Legislative Council have received numerous  
18 complaints from community members stating the U.S. Border Patrol agents operate  
19 Border Patrol vehicles in a manner which endangers community members,  
20 particularly children and Elders; and
- 21 WHEREAS, the Tohono O'odham Nation finds that U.S. Border Patrol agents must operate Border  
22 Patrol vehicles in a careful and responsible manner at all times within the exterior  
23 boundaries of the Tohono O'odham Nation; and
- 24 WHEREAS, the Tohono O'odham Legislative Council finds that the United States Attorney for the  
25 District of Arizona decision to decline prosecution is unacceptable; and
- 26 WHEREAS, the Tohono O'odham Legislative Council finds that the U.S. Border Patrol agent who  
27 was operating the U.S. Border Patrol vehicle which struck and killed Mr. Patricio  
28 must be held accountable for this conduct.

RESOLUTION NO. 04-4

(Resolution requesting that the United States Attorney for the District of Arizona initiate a criminal investigation into the death of Bennett Joseph Patricio, Jr. to determine whether the United States Border Patrol agent operating the United States Border Patrol vehicle that struck and killed Mr. Patricio did violate Mr. Patricio's civil rights)

Page 2 of 3

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Nation, formally and on a government-to-government basis, requests that the United States Attorney for the District of Arizona initiate a criminal investigation into the death of Mr. Patricio to determine whether the United States Border Patrol agent operating the United States Border Patrol vehicle that struck and killed Mr. Patricio did violate Mr. Patricio's civil rights.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 17<sup>TH</sup> Day of SEPTEMBER, 2004 at a meeting at which a quorum was present with a vote of 2,629.7 FOR; -0- AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Section 1 (c)(2), (f) & (i) of Article VI of the Constitution of the Tohono O'odham Nation, adopted by the Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
 Isidro Lopez, Legislative Chairman

17<sup>th</sup> day of September, 2004

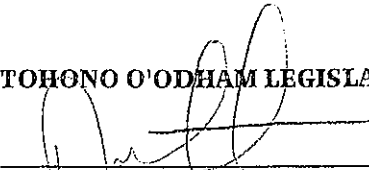
ATTEST:

  
 Rosita N. Ruiz, Legislative Secretary

17 day of September, 2004.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'odham Nation on the 17 day of September, 2004 at 5:46 o'clock, p.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
 Isidro Lopez, Legislative Chairman

RESOLUTION NO. 04-46

(Resolution requesting that the United States Attorney for the District of Arizona initiate a criminal investigation into the death of Bennett Joseph Patricio, Jr. to determine whether the United States Border Patrol agent operating the United States Border Patrol vehicle that struck and killed Mr. Patricio did violate Mr. Patricio's civil rights)

Page 3 of 3

☒ APPROVED

on the 17<sup>th</sup> day of September, 2004

☐ DISAPPROVED

at 5:47 o'clock, P.M.

Vivian Juan Saunders

VIVIAN JUAN SAUNDERS, CHAIRWOMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 17 day of

September, 2004, at 5:56 o'clock, P.M.

Rosita N. Ruiz  
Rosita N. Ruiz, Legislative Secretary

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL**  
**(Adopting and Authorizing the Submission of Comments on the Proposed Rule on Documents**  
**Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-**  
**of-Entry from within the Western Hemisphere)**

**RESOLUTION NO. 07-542**

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to consult "with**  
2 **appropriate federal agencies regarding federal activities that affect the Tohono**  
3 **O'odham Nation" (Constitution of the Tohono O'odham Nation, Article VI, Section 1(j));**  
4 **and**

5 **WHEREAS, as a sovereign government, the Nation has worked diligently with federal and state**  
6 **agencies and officials to enhance security and address immigration, smuggling, and**  
7 **environmental damage and other impacts along the Nation's 75-mile international**  
8 **border with Mexico; and**

9 **WHEREAS, the Nation has**

- 10 • **supported the allocation of Tohono O'odham Nation land for a joint use law**  
11 **enforcement facility that is shared by the Tohono O'odham Nation Police**  
12 **Department with the U.S. Customs and Border Patrol in the Chukut Kuk District**  
13 **(Resolution No. 02-238);**
- 14 • **supported vehicle barriers and the accompanying all-weather road project along**  
15 **the international boundary within the Tohono O'odham Nation (Resolution No. 04-**  
16 **095);**
- 17 • **approved leases, memoranda of understanding, and other agreements necessary**  
18 **to National Guard and Customs and Border Patrol law enforcement operations on**  
19 **the Nation (Resolutions Nos. 04-198, 06-428, and 07-056);**
- 20 • **supported the United States Department of Homeland Security Secure Border**  
21 **Initiative (Resolution No. 07-129); and**

22 **WHEREAS, while the Nation is a long-standing ally and partner in border law enforcement efforts,**  
23 **it is essential that the O'odham right to continue freely crossing the border to**  
24 **traditional O'odham lands, communities, and sacred sites in Mexico for all purposes**  
25 **is honored and protected; and**

26 **WHEREAS, the U.S. Customs and Border Protection, Department of Homeland Security, Bureau**  
27 **of Consular Affairs, and Department of State have published in the Federal Register**

**RESOLUTION NO. 07-542**

**(Adopting and Authorizing the Submission of Comments on the Proposed Rule on Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere)**

Page 2 of 4

a Proposed Rule on Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere ("Proposed Rule on Travel Documents"); and

WHEREAS, the Proposed Rule on Travel Documents includes provisions restricting the use and content of tribal enrollment cards for entry into the United States; and

WHEREAS, the Proposed Rule on Travel Documents provides that tribal comments "should explain the traditional border crossings of that tribe by:

- a. Specifically identifying the federally recognized tribe;
- b. Indicating the traditional destination or destinations across the border that are visited by members of the tribe;
- c. Explaining in detail the purpose or purposes of all such travel;
- d. Relating all such travel to traditional ethnic, religious, cultural or other activities of the tribe;
- e. Indicating the frequency of the travel; and
- f. Specifying the border crossing point or points which are generally utilized to travel to each destination."; and

WHEREAS, such a rule will disproportionately impact the Tohono O'odham Nation and require that the Nation disclose, as part of the national public comment process, the details of traditional cross-border travel for religious and cultural purposes; and

WHEREAS, it is in the Nation's interest to comment on the Proposed Rule on Travel Documents in order to preserve

- (1) the right to cross what is now an international border across the Nation's traditional lands;
- (2) the right to use traditional border crossings on the Nation's reservation at San Miguel Gate, Serapo's Gate, and Papago Farms Gate as well as those traditional crossings that have become designated ports-of-entry at Nogales, Sasabe, Lukeville, and San Luis; and
- (3) the sovereign right to use the Nation's enrollment card as the sole source of necessary identification to cross the international border.

**RESOLUTION NO. 07-542**

**(Adopting and Authorizing the Submission of Comments on the Proposed Rule on Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere)**

Page 3 of 4

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council hereby adopts the Tohono O'odham Nation's "Comments on U.S. Customs and Border Protection, Department of Homeland Security; Bureau of Consular Affairs, Department of State Notice of Proposed Rulemaking on Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere" in substantially in the form attached hereto and authorizes and directs the Nation's Chairman to submit the Nation's comments to all appropriate federal agencies and officials.

The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 27<sup>TH</sup> Day of AUGUST, 2007 at a meeting at which a quorum was present with a vote of 2,202.9 FOR; -0- AGAINST; 331.6 NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Section 1 (i) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Verlon M. Jose, Legislative Chairman

27 day of August, 2007


ATTEST:

  
Lucille Lopez, Acting Legislative Secretary

27<sup>th</sup> day of August, 2007.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 27 day of August, 2007 at 4:15 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Verlon M. Jose, Legislative Chairman

RESOLUTION NO. 07-54

(Adopting and Authorizing the Submission of Comments on the Proposed Rule on Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere)

Page 4 of 4

☒ APPROVED

on the 27 day of August, 2007

☐ DISAPPROVED

at 4:18 o'clock, P.M.

Ned Norris, Jr.  
NED NORRIS, JR., CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 27th day of

August, 2007, at 4:20 o'clock, P.M.

Lucille Lopez  
Lucille Lopez, Acting Legislative Secretary



**RESOLUTION NO. 07-542**

**(Adopting and Authorizing the Submission of Comments on the Proposed Rule on Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere)**


**Page 4 of 4**

☒ **APPROVED**

☐ **DISAPPROVED**

on the 27 day of August, 2007

at 4:18 o'clock, P.M.

  
NED NORRIS, JR., CHAIRMAN  
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 27th day of

August, 2007, at 4:20 o'clock, P.M.

  
Lucille Lopez, Acting Legislative Secretary