

[ORAL ARGUMENT NOT SCHEDULED]
No. 26-5306

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TOHONO O'ODHAM NATION,

Plaintiff-Appellant,

v.

MARKWAYNE MULLIN, in his official capacity as Secretary of U.S.
Department of Homeland Security; RODNEY SCOTT, in his official capacity as
Commissioner of U.S. Customs and Border Protection; and ROSARIO
VASQUEZ, in his official capacity as Chief of U.S. Border Patrol,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia

**BRIEF OF AMICUS CURIAE CENTER FOR BIOLOGICAL DIVERSITY
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

All parties appearing before the district court are listed in Plaintiff-Appellant's Opening Brief. Except for *amici curiae*, all parties appearing before this Court are listed in Plaintiff-Appellant's Opening Brief. *Amicus curiae* Center for Biological Diversity ("Center") and additional *amici curiae* are filing briefing in support of Plaintiff-Appellant Tohono O'odham Nation (the "Nation") and reversal.

References to the ruling at issue appear in the Brief for Appellant.

The case under review has not previously been before this Court or any other court other than the district court. The undersigned counsel is not aware of any other related cases.

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GLOSSARY

the “Center”	the Center for Biological Diversity
DHS	the U.S. Department of Homeland Security
IIRIRA	the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IIRIRA § 102	Pub. L. 104-208, Div. C, 110 Stat. 3009-546, as amended (codified at 8 U.S.C. § 1103 note)
the “Nation”	Plaintiff-Appellant Tohono O’odham Nation
the “Procurement Waivers”	the October 15, 2025 Federal Register publications waiving dozens of laws at the U.S.-Mexico border under IIRIRA: 90 Fed. Reg. 48286 (Oct. 15, 2025) (Big Bend Sector); 90 Fed. Reg. 48281 (Oct. 15, 2025) (Tucson Sector); 90 Fed. Reg. 48282 (Oct. 15, 2025) (El Centro Sector); 90 Fed. Reg. 48283 (Oct. 15, 2025) (Del Rio Sector); 90 Fed. Reg. 48284 (Oct. 15, 2025) (Rio Grande Valley Sector); 90 Fed. Reg. 48285 (Oct. 15, 2025) (Yuma Sector); 90 Fed. Reg. 48287 (Oct. 15, 2025) (Laredo Sector); 90 Fed. Reg. 48288 (Oct. 15, 2025) (El Paso Sector); 90 Fed. Reg. 48289 (Oct. 15, 2025) (San Diego Sector)
the “Secretary”	the Secretary of Homeland Security

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, the Center for Biological Diversity states that it is a nonprofit corporation, has no parent corporation, and issues no stock.

CERTIFICATE OF COUNSEL REGARDING AUTHORITY TO FILE

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), all parties have consented to the filing of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), the Center certifies that no party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund preparing or submitting this brief. No person other than the Center, its members, or its counsel contributed money intended to fund its preparation or submission.

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel certifies that *amicus curiae* Center for Biological Diversity provides this stand-alone brief to highlight unique constitutional issues and procedural shortcomings that have arisen in separate border barrier litigation. No other brief, to the Center's knowledge, will provide this perspective.

INTEREST OF AMICUS CURIAE

The Center for Biological Diversity (“Center”) is a non-profit organization dedicated to protecting and restoring imperiled species, ecosystems, public lands, and public health. The Center has more than 1.8 million members and online activists, with offices in Arizona and other states. The Center works through science, law, and public advocacy to secure a future for all species hovering on the brink of extinction. It has litigated border barrier disputes for nearly a decade, challenging projects that threaten wildlife movement, sensitive habitat, public lands, and communities along the United States-Mexico border. The Center has a particular interest in ensuring that border barriers do not harm wildlife and sensitive habitats along the U.S.-Mexico border.

The Center is a plaintiff in *Friends of the Ruidosa Church v. Mullin*, which challenges the U.S. Department of Homeland Security’s (“DHS”) use of Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) to waive dozens of federal laws to build border barrier across approximately one-third of the U.S.-Mexico border in the Big Bend region of Texas. No. 3:26-cv-01099 (W.D. Tex. filed Apr. 16, 2026); *see also* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, as amended (codified at 8 U.S.C. § 1103 note). The Center’s experience gives it a distinct perspective on the consequences of construing border-

security authority to displace statutes, place-specific land protections, and sovereign interests without a clear congressional command.

INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal asks whether Executive Branch officials may proceed with 30-foot-tall steel bollard walls and associated infrastructure along the Tohono O’odham Nation’s southern boundary without the Nation’s consent and despite a statute that provides “[c]hanges in the boundaries of reservations” may only be made “by Act of Congress.” 25 U.S.C. § 398d. The Nation raises trespass and ultra vires claims. The Court should hold for the Nation on both claims because the proposed wall would impermissibly trespass upon tribal lands and, by stripping a swath of reservation territory of the Nation’s rights of use, occupancy, and governance, would unlawfully diminish reservation boundaries absent the clear congressional authorization that federal law requires.

But the implications of this case extend beyond trespass and ultra vires. The government’s position here reflects a broader and increasingly consequential theory of executive authority: that, in service of constructing a border-wide barrier system, the Executive may disregard statutory and constitutional limits on its power whenever it invokes border security.

The proposed wall across the Nation’s Reservation is not an isolated project. It is part of an effort to complete what the Executive has described as a “secure,

contiguous, and impassable physical barrier” spanning the entirety of the southern border. Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 30, 2017) §§ 3(e), 4(a). As stated by Defendant Secretary Markwayne Mullin, the wall is projected for completion by the Summer of 2027 and will stretch “from the Pacific to the Gulf of America [sic].” *A Review of the Fiscal Year 2027 Budget Request for DHS: Hearing Before the H. Comm. on Homeland Sec.*, (June 3, 2026) (statement of Markwayne Mullin, Secretary, Department of Homeland Security). This project, to bifurcate the North American Continent, would permit the Executive to accomplish through unilateral action what Congress has neither authorized nor approved, while advancing its position that existing statutory constraints and tribal sovereignty must yield to purported border security objectives. The Court should reject these premises.

Two important principles should inform the Court’s decision in this case. First, border security does not suspend separation of powers. The Executive may carry out the policy Congress enacted, but it may not substitute a general appeal to border security for the clear congressional authorization that Indian-law and separation of powers require. Second, recent events along a stretch of the U.S.-Mexico border in Texas underscore these constitutional concerns and demonstrate the government’s disregard for the law as it seeks to fulfill its agenda. Accordingly, the Court should reverse the District Court’s decision and preserve the status quo during the pendency of the Nation’s claims.

I. The Executive's Project to Build a "Great Wall" Spanning the Entire Southern Border Violates the Constitution.

Since his first presidential campaign, President Trump has championed a promise to build a "Great Wall" across America's southern border. That effort remained incomplete during his first term, and subsequent attempts by members of Congress to mandate completion of the project were never enacted into law. Upon President Trump's return to office in 2025, he renewed his commitment to finishing the wall. Marking a significant step towards enacting this goal, on October 15, 2025, the Secretary of Homeland Security waived dozens of laws under IIRIRA. These waivers apply to areas that collectively span the entire southern border, advancing through executive action what Congress had declined to mandate by statute.¹ Separation of powers principles such as the major questions doctrine, Take Care Clause, and the nondelegation doctrine all council against executive overreach of this magnitude and principles of constitutional avoidance further underscore the Nation's claims.

¹ 90 Fed. Reg. 48286 (Oct. 15, 2025) (Big Bend Sector); 90 Fed. Reg. 48281 (Oct. 15, 2025) (Tucson Sector); 90 Fed. Reg. 48282 (Oct. 15, 2025) (El Centro Sector); 90 Fed. Reg. 48283 (Oct. 15, 2025) (Del Rio Sector); 90 Fed. Reg. 48284 (Oct. 15, 2025) (Rio Grande Valley Sector); 90 Fed. Reg. 48285 (Oct. 15, 2025) (Yuma Sector); 90 Fed. Reg. 48287 (Oct. 15, 2025) (Laredo Sector); 90 Fed. Reg. 48288 (Oct. 15, 2025) (El Paso Sector); 90 Fed. Reg. 48289 (Oct. 15, 2025) (San Diego Sector) (collectively, "Procurement Waivers").

a. Congress, Not the Executive, Has Authority to Rewrite the Legal Status and Boundaries of Indian Reservations.

The Constitution purposefully separates legislative and executive power. Recognizing that structural protections against abuse of power are critical to preserving liberty, the Framers’ “solution to governmental power and its perils was simple: divide it.” *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 223 (2020). Article I vests “[a]ll legislative Powers” in Congress. U.S. Const. art. I, § 1. Article II requires the Executive to “take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3. This allocation is not a matter of administrative convenience. It is a structural protection designed to preserve liberty by ensuring that the same actor cannot simultaneously make, suspend, revise, and enforce the law. Separation of powers therefore protects not merely institutional prerogatives, but the rights of affected individuals, communities, tribes, and states.

Border enforcement is no exception to these foundational principles. The Executive has substantial authority to enforce federal immigration laws and secure the Nation’s borders. But even in areas touching immigration, national security, or foreign affairs, executive power remains bounded by statutes enacted by Congress and by the Constitution itself. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (“The President’s power, if any, to issue the order must stem

either from an act of Congress or from the Constitution itself.”); *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) (“state of war is not a blank check for the President”).

The Executive’s newfound and expansive interpretation of IIRIRA as authorizing it to build a border wall along the entire southern border—and to avoid any and all legal constraints in doing so—raises profound concerns under a number of doctrines and provisions designed to safeguard the Constitution’s separation of powers, including the major questions doctrine, the Take Care Clause, and nondelegation doctrine.

First, when an agency discovers in statutory language the power to resolve a question of great political and economic significance, courts expect Congress to speak clearly. *See, e.g., West Virginia v. EPA*, 597 U.S. 697 (2022); *Biden v. Nebraska*, 600 U.S. 477 (2023). The authority DHS claims, to build a cross-continental border wall, is unquestionably vast. It seeks to authorize the displacement of dozens of statutory schemes Congress enacted to protect environmental, cultural, historic, and tribal interests. Yet the government locates that authority in a statute directed toward barrier construction only in specific “areas of high illegal entry.” IIRIRA § 102. The constitutional concern is not merely the scope of the projects themselves. It is that the Executive seeks to infer sweeping authority from statutory language far removed from the extraordinary power now claimed.

Second, the Executive's interpretation violates the Take Care Clause. The Executive Branch must execute Congress's laws, not claim a free-floating power to determine for itself where and when they will operate. *See Kendall v. United States ex rel Stokes*, 37 U.S. 524, 613 (1838); *Youngstown*, 343 U.S. at 787. DHS has now invoked IIRIRA, a statute limited to "areas of high illegal entry," to waive laws across the entire border. IIRIRA § 102 (emphasis added). Similarly, the Tohono O'odham Nation alleges that the Executive seeks to proceed with extensive border-wall construction affecting Reservation lands despite Congress' longstanding reservation-boundary protections and without express congressional authorization to alter those boundaries. *Appellant's Opening Br.* at 45–49. The significance of these claims reveals that the Executive's asserted authority amounts to a conception of executive power vast enough to substantially reconfigure, if not eviscerate, the legal obligations that Congress imposed.

Third, the government's interpretation of IIRIRA violates the nondelegation doctrine. Courts previously upheld IIRIRA against nondelegation challenges by emphasizing limiting principles embedded within the statute, including construction in areas of high illegal entry and waiver authority tied to expeditious construction of barriers and roads. *See, e.g., Cnty. of El Paso v. Chertoff*, No. EP-08-CA-196-FM, 2008 WL 4372693, at *4 (W.D. Tex. Aug. 29, 2008) (citing *Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119, 127 (D.D.C. 2007); *Save Our Heritage Org. v.*

Gonzales, 533 F. Supp. 2d 58, 63 (D.D.C. 2008). But as the government’s interpretation of its authority under IIRIRA has expanded, those limiting principles have become increasingly difficult to identify. If the Executive may determine that the entire southern border qualifies as an area of high illegal entry, *see* Procurement Waivers, *supra* note 1, and may waive broad categories of legal requirements whenever doing so facilitates border construction, the practical constraints that were previously invoked to justify the delegation disappear. Under the government’s interpretation the phrase “areas of high illegal entry” performs no meaningful limiting function. At minimum, that reality counsels caution before reading IIRIRA to confer the expansive authority the Executive now asserts.

b. Constitutional Avoidance Reinforces the Nation’s Construction of the Law.

The Nation’s claims focus on reservation boundaries, congressional authority in determining those boundaries, and trespass upon tribal lands. However, overarching constitutional concerns inevitably inform the Court’s interpretation of the relevant laws at issue here.

Courts should avoid reading a statute in a manner that raises grave constitutional problems when a viable alternative interpretation avoids them. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). That rule is instructive here, where the Government’s asserted

interpretation would result in multiple constitutional infirmities by transferring to the Executive a power the Constitution and duly enacted legislation reserved to Congress alone. *See Almendarez-Torres v. United States*, 523 U.S. 224, 238 (1998) (noting the canon “is followed out of respect for Congress, which we assume legislates in light of constitutional limitations”).

The Nation’s construction avoids those problems. It acknowledges the authority granted under IIRIRA while preserving the separate, specific rule that only an act of Congress may change an Indian reservation’s boundaries. The Nation merely asks the Court to prevent officials from acting beyond the authority Congress gave them.

The Government’s construction does the opposite. It treats general border-construction and appropriations language as silently authorizing permanent occupation of Tribal land despite Section 398d. A grant of authority to generally waive “legal requirements” does not necessarily confer the power to alter a sovereign boundary Congress separately protected and exclusively reserved the right to change. A contrary interpretation risks running afoul of numerous bedrock principles upholding the Constitution’s separation of powers. Accordingly, in addition to the reasons enumerated by the Nation, the Court should reject the Government’s interpretation because the canon of constitutional avoidance counsels against interpretations giving rise to such constitutional infirmities.

II. This Court Should Carefully Scrutinize the Government's Assertions Regarding Border Barrier Related Construction.

Amicus Center does not lightly invite skepticism of Executive Branch representations. Courts properly begin from a presumption of regularity, and national-security and border-enforcement decisions ordinarily warrant substantial respect. But that presumption is not irrebuttable. Where the government seeks extraordinary authority to reshape legal obligations, displace statutory protections, and alter the physical landscape of border communities, courts must examine both the claimed authority and the factual predicates offered in support of it. The government's conduct in pursuing border wall construction projects across the southern border demonstrates why careful scrutiny is particularly appropriate here. Specifically, federal officials have repeatedly invoked generalized border-security interests to justify expansive assertions of power across the entire southern border, including the least active sectors of the southern border, repeatedly shifted descriptions of planned construction, and made litigation representations difficult to reconcile with events occurring on the ground. *See Friends of the Ruidosa Church v. Mullin*, No. 3:26-cv-01099-KC (W.D. Tex. 2026) (Pls.' Mot. to Expedite and Decl. of Emma Yip, Exhibit 1, Dkt. Nos. 21 and 21-2 (Exhibit A)).

a. The Government's Characterization of the Southern Border as an "Area of High Illegal Entry" Illustrates the Elasticity of Its Current Theory of Authority.

The Executive's recent determinations to blanket the entire U.S.-Mexico border in IIRIRA waivers demonstrates why courts should carefully scrutinize, rather than reflexively defer to, assertions that extraordinary measures are necessary to address pressing border-security concerns.

The October 2025 Procurement Waivers illustrate the problem. Rather than identifying particular stretches of the border where Congress's statutory prerequisites were satisfied, the Secretary issued a coordinated series of waiver determinations spanning the entirety of the southern border, from the Pacific Ocean to the Gulf. The significance of that action is not merely its geographic scope. By treating the entire border as eligible for IIRIRA's extraordinary authorities, the Executive effectively rendered the statute's geographic limitation a nullity. If every sector qualifies, then the phrase "areas of high illegal entry" ceases to distinguish between locations where Congress authorized extraordinary measures and locations where it did not.

The constitutional concern is not simply whether unlawful crossings existed within a sector. Rather, it is the Executive's willingness to interpret statutory limitations so broadly that meaningful constraints disappear altogether. Congress did not authorize the waiver of laws for border-barrier construction everywhere along

the southern border whenever the Executive deemed such construction desirable. Instead, Congress tethered the relevant authority to particular circumstances and locations.

That pattern is relevant here because the Court is again confronted with executive claims resting on generalized assertions of border-security necessity. When a statutory predicate is stretched to encompass all sectors on the border, judicial scrutiny becomes especially important. This suggests that courts should carefully examine the factual and legal predicates underlying extraordinary exercises of authority rather than assume those predicates have been faithfully applied.

b. The Government's Repeatedly Changing Construction Plans Undermine Requests for Judicial Deference.

Additionally, the record developed in *Friends of the Ruidosa Church v. Mullin* demonstrates why courts should exercise caution when the government assures them that currently contemplated activities are narrow, limited, or unlikely to burden protected interests. No. 3:26-cv-01099-KC (W.D. Tex. 2026). Over the course of only a few months, the government's descriptions of construction plans repeatedly shifted. At various points, federal officials, agency maps, public reporting, and litigation filings reflected differing descriptions regarding border barrier construction plans in and around Big Bend National Park, including what precise mix of walls, roads, surveillance systems, vehicle barriers, and related infrastructure

would ultimately be built. Plaintiffs repeatedly documented these evolving plans and noted that agency construction maps had been revised multiple times. *Friends of the Ruidosa Church*, Pls. Mot. Summ. J., Dkt. No. 19 at 3 n.1 (Exhibit B).

To be sure, large infrastructure projects may legitimately evolve. The concern is that the government simultaneously sought judicial deference while the factual predicates underlying that deference remained in flux. Concerningly, nothing in those challenged waiver determinations constrains the government from revising, enlarging, or expanding construction plans long after judicial review concludes. A current intention is not a limit on the government's assertion of power.

c. The Government's Conflicting Representations Concerning Construction Activity Further Demonstrate the Need for Careful Judicial Review.

Friends of the Ruidosa Church has further revealed significant discrepancies between the government's stated positions and what was occurring on the ground. For example, government counsel represented that plaintiffs would receive at least thirty days' notice before the commencement of ground-disturbing activities within Big Bend National Park. *Friends of the Ruidosa Church*, Pls.' Mot. to Expedite and Decl. of Emma Yip, Exhibit 1, Dkt. Nos. 21 and 21-2 (Exhibit A). Nevertheless, government officials commenced construction after providing plaintiffs with just a few days' notice and subsequently took the position that bulldozing new roads, vegetation clearing, and largescale earthmoving "is not considered ground disturbing

activity” and therefore “does not necessitate advance notice.” *Friends of the Ruidosa Church*, Decl. of Emma Yip, Exhibit 1, Dkt. No. 21-2 (Exhibit A). In fact, the government defendants represented that construction impacts were limited to “geotechnical sub-surface investigation (e.g., temporarily removing dirt and refilling a hole), disturbance of above-ground vegetation, and maintenance of previously disturbed roadways.” *Id.*

Yet contemporaneous evidence painted a markedly different picture. Plaintiffs submitted photographs, video footage, news reporting, and witness declarations documenting heavy machinery within Big Bend National Park, vegetation clearing, road creation, and other apparent construction-related impacts. When challenged, federal officials characterized these activities as “field work” necessary for “geotechnical surveys” rather than construction. *Friends of the Ruidosa Church*, Decl. of Paul Enriquez, Dkt. No. 38-1 at ¶ 15 (Exhibit C). Satellite imagery resolves any disputes about the extent of construction that took place in the National Park. While defendants maintained that no border barrier related construction occurred in the National Park, they in fact bulldozed miles of new road for patrol roads and vehicle barrier, and constructed a new bridge. Christoph Koettl, et al., *Satellite Images Contradict Border Agency on Construction in Big Bend*, N.Y. Times, Sept. 4, 2026, <https://www.nytimes.com/video/us/100000011128810/big-bend-construction-border-wall.html?smid=nytcore-ios-share>.

The Big Bend record demonstrates that the Government's descriptions of planned border wall activities, anticipated impacts, and project scope may evolve substantially over time. Under those circumstances, the proper judicial response is not unquestioning deference but careful scrutiny. Particularly where sovereign tribal interests are at stake, courts should demand clear legal authorization rather than infer sweeping authority from broad appeals to border security or administrative necessity.

CONCLUSION

The serious infringement on the Tohono O'odham Nation's lands and sovereignty represents the latest manifestation of an increasingly expansive theory of executive authority along the southern border. Under that theory, generalized appeals to border security are invoked to justify extraordinary assertions of power over lands, communities, and legal interests that have traditionally been protected through legislation and constitutional structure. As the Nation's brief demonstrates, those assertions now extend to actions that would intrude upon tribal sovereignty, alter the legal status and use of Reservation lands, and disrupt rights and interests of profound cultural, religious, and governmental significance. Accordingly, this Court should reverse because the district court erred in denying Plaintiff-Appellant's request for a preliminary injunction.

//

DATED: September 23, 2026 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with Fed. R. App. P. 29(a)(4)(G) and Fed. R. App. P. 29(a)(5) because it is 15 pages in length and, according to the Microsoft Word word-processing program on which it was created, contains 3,203 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Times New Roman 14-point font.

/s/ Edward B. Zukoski

Edward B. Zukoski

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on September 23 and 24, 2026, I electronically filed this *amicus curiae* brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, which will send notice to all counsel who are registered CM/ECF users.

/s/ Edward B. Zukoski

Edward B. Zukoski

Counsel for Amicus Curiae

EXHIBITS

EXHIBIT A:

Friends of the Ruidosa Church v. Mullin, No. 3:26-cv-01099-KC (W.D. Tex. 2026), Pls.' Mot. to Expedite and Decl. of Emma Yip, Exhibit 1, Dkt. Nos. 21 and 21-2.

EXHIBIT B:

Friends of the Ruidosa Church v. Mullin, No. 3:26-cv-01099-KC (W.D. Tex. 2026), Pls. Mot. Summ. J., Dkt. No. 19.

EXHIBIT C:

Friends of the Ruidosa Church v. Mullin, No. 3:26-cv-01099-KC (W.D. Tex. 2026), Decl. of Paul Enriquez, Dkt. No. 38-1.

EXHIBIT A

Friends of the Ruidosa Church v. Mullin,
No. 3:26-cv-01099-KC (W.D. Tex. 2026)

Pls.' Mot. to Expedite and Decl. of Emma Yip,
Exhibit 1, Dkt. Nos. 21 and 21-2

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

FRIENDS OF THE RUIDOSA CHURCH;
DANNY WILLIAM MILLER JUNIOR; and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

MARKWAYNE MULLIN, in his official
capacity as Secretary of Homeland Security;
U.S. DEPARTMENT OF HOMELAND
SECURITY; and U.S. CUSTOMS AND
BORDER PROTECTION,

Defendants.

Case No. 3:26-cv-01099-KC

**PLAINTIFFS' UNOPPOSED MOTION TO EXPEDITE CONSIDERATION OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Plaintiffs Friends of the Ruidosa Church, Danny William Miller Junior, and Center for Biological Diversity (collectively, “Plaintiffs”) respectfully ask this Court to expedite its consideration of Plaintiffs’ Motion for Summary Judgment (ECF No. 19) in the above-captioned case.¹ Border barrier construction is now underway in the Big Bend region, including within Big Bend National Park (the “National Park”). Expedited consideration is warranted to prevent further irreparable harms to Plaintiffs and because Defendants have disregarded their previously agreed-upon commitment to provide at least 30 days’ notice prior to commencing any ground disturbing activities in the National Park. Accordingly, Plaintiffs respectfully request that this Court expedite its consideration of Plaintiffs’ Motion for Summary Judgment as set forth below. Alternatively, if the Court prefers to consider the Parties’ cross motions for summary judgment together, Plaintiffs respectfully request that this Court expedite its considerations of the cross motions. Defendants do not oppose Plaintiffs’ request to expedite proceedings, and reserve the right to respond.

BACKGROUND

Plaintiffs filed their initial Complaint (ECF No. 1) on April 16, 2026 alleging that the West Waiver, issued pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) violates the U.S. Constitution. Plaintiffs subsequently amended (ECF No. 11) and supplemented (ECF No. 18) their Complaint to include new waivers issued by Defendant Secretary of Homeland Security, Markwayne Mullin.

¹ Additionally, Plaintiffs plan to request leave to supplement their Complaint to include a new waiver, issued pursuant to Section 102 of IIRIRA, implicating the present case. The new waiver rises and falls on the same arguments alleged in the operative Complaint and, given the urgency of resolving Plaintiffs’ Motion for Summary Judgment as expeditiously as possible, Plaintiffs respectfully submit that supplementation should not impede or otherwise affect the prompt resolution of Plaintiffs’ pending Motion.

On June 12, 2026, counsel for the Parties met and conferred regarding a case management plan. During that meeting and in subsequent communications, the Parties discussed planned construction schedules in the Big Bend region. *See* Declaration of Emma Yip (“Yip Decl.”) ¶ 3 & Ex. 1. Among other things, Defendants stated that they would provide Plaintiffs with at least 30 days’ notice prior to the commencement of any ground disturbing activities in the National Park (the “Agreement”). ECF No. 15 at 4; Yip Decl. ¶ 3 & Ex. 1 at 12–14. In reliance on this Agreement, Plaintiffs joined Defendants in proposing a briefing schedule to resolve this case through summary judgment motions, along with an extended filing timeline, which this Court granted (ECF No. 16).

Plaintiffs filed their Motion for Summary Judgment on July 17, 2026 (ECF No. 19).

Beginning around the week of July 27, 2026, Plaintiffs’ counsel received communications from Plaintiffs and community members that construction in the National Park was imminent. On July 28, 2026, Plaintiffs asked Defendants to confirm that “the government still intend[s] to provide” 30 days’ notice prior to commencing construction in the National Park. Yip Decl. ¶ 3 & Ex. 1 at 7. On July 29, 2026, Defendants confirmed that they “still plan to provide notice” in accordance with the Parties’ Joint Motion for Scheduling Order (ECF No. 15). Yip Decl. ¶ 3 & Ex. 1 at 7. On Thursday, July 30, 2026, Defendants informed Plaintiffs that contractors in the National Park anticipated beginning activities such as “geotechnical testing, clearing and grubbing (i.e. removing vegetation to get to the geotech sites), and pioneering (i.e. creating a rudimentary access route into the project area)” plus potential “repairs to existing roads due to recent storms.” Yip Decl. ¶ 3 & Ex. 1 at 5–6. On Friday, July 31, 2026, Defendants clarified that this work would begin “next week,” meaning the week of August 3, 2026. Yip Decl. ¶ 3 & Ex. 1 at 4–5.

On Monday, August 3, 2026, Plaintiffs provided Defendants with notice of intent to file for emergency, expedited injunctive relief unless Defendants suspended all ground disturbing

activities in the Big Bend Sector until resolution of Plaintiffs' Motion for Summary Judgment. Yip Decl. ¶ 4 & Ex. 2.

On August 4 and 5, 2026, Defendants declined to suspend construction in the Big Bend Sector while the Parties' summary judgment motions are pending, or even, consistent with the Parties' Agreement, agree to a more limited pause on construction in the National Park until 30 days after initially providing Plaintiffs with notice. Yip Decl. ¶ 3 & Ex. 1 at 2–4. However, in lieu of pursuing duplicative briefing for a preliminary injunction alongside summary judgment briefing, Defendants agreed to expediting the current summary judgment briefing schedule, stating that they would file their final reply within seven days of Plaintiffs' response/reply. Yip Decl. ¶ 3 & Ex. 1 at 3–4.

Pursuant to this Court's scheduling order (ECF No. 16), Defendants' Motion for Summary Judgment and response to Plaintiffs' Motion for Summary Judgment is due no later than tomorrow, August 7, 2026.

ARGUMENT

Construction is now underway in the National Park. *See* Declaration of Laiken Jordahl ("Jordahl Decl.") ¶¶ 4–7 & Ex. 3–4; Yip Decl. ¶ 5 & Ex. 3. Video footage from the week of August 3, 2026 depicts bulldozers breaking ground by clearing plant life and moving earth in the National Park, near Santa Elena Canyon. *Id.* Despite Defendants' assurance that Plaintiffs would receive at least 30 days' notice prior to the commencement of any ground disturbing activities in the National Park, Defendants provided approximately four days' notice and refused to pause construction activities to honor the Parties' Agreement.² Absent immediate relief, Plaintiffs face imminent and

² The government has demonstrated a pattern of violating state and local agreements regarding border barrier construction. *See* Yip Decl. ¶¶ 6–7 & Exs. 4–5. More broadly, it has

irreparable injury. If construction is allowed to continue, vegetation will be removed, habitat will be fragmented, cultural and historic resources may be disturbed, and the character of the Big Bend landscape will be permanently altered.

Accordingly, and to avoid duplicative briefing for a temporary restraining order/preliminary injunction alongside the summary judgment motions, Plaintiffs respectfully request that this Court grant expedited relief on their Motion for Summary Judgment, which is soon to be fully briefed.³

Plaintiffs will file their response and reply no later than Friday, August 14, two weeks ahead of the deadline established by the current scheduling order (ECF No. 16 at 2). Defendants state that they will file their final reply brief within seven days of Plaintiffs' filing. Thus, the Court will have before it all necessary information to resolve Plaintiffs' Motion by August 14 and all briefing for both Parties' Motions no later than August 21.⁴ Accordingly, we respectfully request that this Court schedule a hearing or issue a ruling as expeditiously as possible in light of ongoing activities on the ground.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that this Court grant its Motion to Expedite Consideration of Plaintiffs' Motion for Summary Judgment.

repeatedly sought to expedite border barrier construction by circumventing or disregarding otherwise applicable legal requirements and approval procedures.

³ Because harm is ongoing and Plaintiffs lack a clear understanding of the forthcoming construction plans in the National Park, Plaintiffs may need to request a temporary restraining order or preliminary injunction prior to resolution of this case.

⁴ The Court need not wait for reply briefs to schedule a hearing or issue an opinion resolving the Parties' motions. Local Rule CV-7(e)(2).

DATED: August 6, 2026

Respectfully submitted,

/s/ Emma Yip

Emma Yip (CA Bar No. 352446)*
Center for Biological Diversity
2100 Franklin St., Ste 375
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Tel: (206) 858-2297
Fax: (520) 623-9797
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Alana Park (TX Bar No. 24150568)
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alana@texascivilrightsproject.org

** Admitted Pro Hac Vice*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically through the CM/ECF system, which causes all parties or counsel to be served by electronic means.

DATED: August 6, 2026

Respectfully submitted,

/s/ Emma Yip

Emma Yip (CA Bar No. 352446)

Center for Biological Diversity

2100 Franklin St., Ste 375

Oakland, CA 94612

Tel: (206) 858-2297

Fax: (520) 623-9797

eyip@biologicaldiversity.org

Admitted Pro Hac Vice

EXHIBIT 1

Yip Declaration



Outlook

Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

From Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Date Thu 8/6/2026 1:38 PM

To Emma Yip <eyip@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Cc Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.Org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>

Hi Emma,

Thanks for asking. I take your question to mean that you'll move to expedite plaintiffs motion for summary judgment, but in the alternative move to expedite both plaintiffs and defendants motions for summary judgment. If that's correct, we have no objection to you framing the motion this way.

Thanks,
Alex

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Thursday, August 6, 2026 2:45 PM

To: Zeynep Graves <zgraves@biologicaldiversity.org>; Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Cc: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.Org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Andrew and Alex,

After considering how to frame Plaintiffs' motion to expedite, we feel it would be most efficient to request that the court expedite its consideration of Plaintiffs' motion for summary judgment, and in the alternative, both motions. Would this framing change the government's position on our motion?

Thank you,
Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Zeynep Graves <zgraves@biologicaldiversity.org>

Sent: Wednesday, August 5, 2026 6:31 PM

To: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Emma Yip <eyip@biologicaldiversity.org>; Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Cc: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.Org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>

Subject: Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Andrew,

Thank you for your response. At this point, Plaintiffs intend to move for expedited consideration of their Motion for Summary Judgment and will defer seeking a TRO or preliminary injunctive relief in the hope that the merits can be resolved more expeditiously through summary judgment.

We also appreciate Defendants' agreement to file their reply in support of their Motion for Summary Judgment within seven days after Plaintiffs file their opposition.

Sincerely,
Zeynep

Zeynep Graves
Senior Attorney
Center for Biological Diversity
2100 Franklin St., Suite 375
Oakland, CA 94612-3030
510.844.7160

This message may be protected by the attorney-client privilege and/or the attorney work product doctrine. If you believe you have received this message in error, please do not read it. Please reply to the sender that it has been sent in error and delete the message. Thank you.

From: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Sent: Wednesday, August 5, 2026 1:16 PM

To: Emma Yip <eyip@biologicaldiversity.org>; Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Cc: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.Org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Emma:

CBP cannot agree to postpone the current work that has started this week in the park. We regret any confusion about the notice issue. While CBP's view is that temporary impacts on the surface ground, such as geotechnical sub-surface investigation (e.g., temporarily removing dirt and refilling a hole), disturbance of above-ground vegetation, and maintenance of previously-disturbed roadways, does not necessitate advance notice, we understand Plaintiffs take a different view and have concerns with this degree of pre-construction planning work. We have no interest in delaying resolution of this case and, as noted in my email yesterday, we are willing to work with you to set an expedited schedule to resolve the litigation as efficiently as possible for all sides.

Best regards,
Andrew

Andrew I. Warden
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch
Tel: (202) 616-5084

From: Emma Yip <eyip@biologicaldiversity.org>
Sent: Tuesday, August 4, 2026 9:53 PM
To: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Yun, Alex (CIV) <Alex.Yun@usdoj.gov>
Cc: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben Fishman <bfishman@biologicaldiversity.org>
Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Andrew,

We will confer with our clients regarding your proposal and respond shortly. However, today our clients saw footage of what appeared to be heavy machinery entering the National Park. Given the irreparable harms our clients would face by ground-disturbing activities within the National Park, we would ask, at a minimum, Defendants postpone any clearing, grubbing, pioneering, road building, and other ground-disturbing activities until 30 days have elapsed from Defendants' notice to Plaintiffs (July 31, 2026). If the 30-day notice agreement is no longer in effect, please let us know.

Thank you,
Emma

Emma Yip (she/her)
Staff Attorney
Public Lands Law Center
CENTER *for* BIOLOGICAL DIVERSITY
206-858-2297

From: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>
Sent: Tuesday, August 4, 2026 2:15 PM
To: Emma Yip <eyip@biologicaldiversity.org>; Yun, Alex (CIV) <Alex.Yun@usdoj.gov>
Cc: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.Org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>
Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Emma:

CBP cannot agree to postpone the pre-construction geo-technical planning work that is scheduled to begin in the Big Bend 4 project area this week, nor is CBP in a position to suspend all ground disturbing activities in the entire Big Bend Sector as demanded in your letter of August 3. To avoid duplicative preliminary injunction and summary judgment briefing, we would be open to accelerating the current summary judgment schedule so the Court would be in a position to rule on the motions on a faster basis. We will file our opposition and cross-motion on Friday. We have no objection to you filing your opposition / reply as soon as you are able. We would ask for 7 days to file

our final reply. Instead of a separate PI motion briefing process, we'd suggest plaintiffs move for expedited consideration of the summary judgment motions. Defendants would reserve the right to submit an appropriate response to any such motion, but we would not oppose a request by Plaintiffs for the Court to expedite a ruling on the motions.

Best regards,
Andrew

Andrew I. Warden
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch
Tel: (202) 616-5084

From: Emma Yip <eyip@biologicaldiversity.org>
Sent: Monday, August 3, 2026 4:24 PM
To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben Fishman <bfishman@biologicaldiversity.org>
Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Dear Alex,

Please find attached Plaintiffs' notice of intent to file for emergency, expedited injunctive relief in this matter. We remain open to discussing alternative options, please let me know if you would like to schedule a call to discuss further.

Thank you,
Emma

Emma Yip (she/her)
Staff Attorney
Public Lands Law Center
CENTER *for* BIOLOGICAL DIVERSITY
206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>
Sent: Friday, July 31, 2026 7:18 AM
To: Emma Yip <eyip@biologicaldiversity.org>
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.Org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>
Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

The field work is set to begin next week. To be clear, this is more of pre-construction work and is not considered ground disturbing activity. As to the man camp, I have not received any information about that, but again, it wouldn't be considered a ground disturbing activity.

Happy to discuss more if you'd like.

Alex

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Thursday, July 30, 2026 4:50 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne

<Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>;

Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben

Fishman <bfishman@biologicaldiversity.org>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Thanks for the update, Alex.

Are you able to share when the field work/road repair work in the National Park is set to begin? Is it less than 30 days from now? Additionally, we've heard that a man camp is being built in the National Park. Can you confirm whether or not this is accurate?

Thanks,

Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER for BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Thursday, July 30, 2026 12:18 PM

To: Emma Yip <eyip@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne

<Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>;

Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.Org

<dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.org>; Ben

Fishman <bfishman@biologicaldiversity.org>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Emma,

I just received word from my clients regarding your initial inquiry. There is currently no work scheduled within 10 miles of either the Miller property or Ruidosa Church. There is also no work scheduled in the BB Ranch State Park within the next 30 days.

As to Big Bend National Park, no dates have been set for installation of vehicle barrier or the construction or improvement of new or existing roads. The contractor does anticipate beginning some “field work” in the park soon, which includes activities like geotechnical testing, clearing and grubbing (i.e. removing vegetation to get to the geotech sites), and pioneering (i.e. creating a rudimentary access route into the project area). They also are considering some repairs to existing roads due to recent storms.

Please let me know if you have any questions.

Thanks,
Alex

From: Emma Yip <eyip@biologicaldiversity.org>
Sent: Wednesday, July 29, 2026 5:57 PM
To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben Fishman <bfishman@biologicaldiversity.org>
Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex,

Great, thank you. To clarify, is the government's consent to us supplementing pleadings for the new waiver contingent on (1) supplementing our SJ motion and/or (2) modifying the summary judgment schedule?

I'm not sure that we're in a position where we can agree to anything that would extend the current briefing timeline—we've heard numerous rumors about ongoing and imminent construction in the waiver areas and are assessing our best options for how to address that while also navigating the timelines in the current case.

Thanks,
Emma

Emma Yip (she/her)
Staff Attorney
Public Lands Law Center
CENTER *for* BIOLOGICAL DIVERSITY
206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>
Sent: Wednesday, July 29, 2026 8:44 AM
To: Emma Yip <eyip@biologicaldiversity.org>
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>;

Alana@texascivilrightsproject.org <Alana@texascivilrightsproject.org>; Dustin@texascivilrightsproject.org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.org <Kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Emma,

Thanks for your email. Yes, we still plan to provide notice as stated in our briefing schedule. I do not believe anything significant has occurred, but I'll check with my clients in case.

As to the second point, we feel that a second MSJ is not the most efficient way to resolve this case. We have no objections to Plaintiffs supplementing the complaint, but we then suggest revising your current motion rather than filing a separate MSJ. This way we only brief everything once. If that's acceptable to you, we'd be happy to amend the briefing schedule to allow you time to revise your motion.

Please let me know what you think. If a call would be easier to discuss, I'm generally free the rest of the week.

Thanks,

Alex

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Tuesday, July 28, 2026 4:47 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.org; Dustin@texascivilrightsproject.org; Kate@texascivilrightsproject.org; Ben Fishman <bfishman@biologicaldiversity.org>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex,

We are checking in with two questions. First, we are curious to know if there are any additional construction updates that you can provide us in the Big Bend sector. Does the government still intend to provide us with 30 days notice before construction commences in the state or national parks, and is it still the government's stated position that no ground disturbing activities will occur within 10 miles of the Church or Plaintiff Miller's property before February?

Second, DHS published another waiver yesterday that implicates the current lawsuit: 91 Fed. Reg. 46939 (July 27, 2026). After discussions about whether Plaintiffs should file a new complaint or seek to supplement the existing complaint, we believe supplementing would be the most efficient path forward. We propose to file another motion for leave to supplement the existing complaint and ask that the court not modify the existing briefing schedule and treat our filed-MSJ as a partial MSJ. This way, we can resolve the already briefed waivers on summary judgment and stay briefing on the new waiver until resolution of what's already before the court. Would DOJ consent to this approach?

Thank you,

Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

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From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Wednesday, July 1, 2026 2:41 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <dustin@texascivilrightsproject.org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.org>; Ben Fishman <bfishman@biologicaldiversity.org>

Subject: Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Great, thanks Alex.

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Wednesday, July 1, 2026 1:51 PM

To: Emma Yip <eyip@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne

<Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>;

Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org

<Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben

Fishman <bfishman@biologicaldiversity.org>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Emma,

Thanks for asking about this. Defendants consent to Plaintiffs supplementing the complaint.

Best,

Alex

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Wednesday, July 1, 2026 3:56 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>; Shannon Labuschagne

<Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>;

Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben

Fishman <bfishman@biologicaldiversity.org>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex,

A new waiver was published in the inspection documents for the Federal Register (scheduled to be formally published tomorrow), which purports to amend the February 17 waiver "by including additional legal requirements that are being waived." From what I can tell from an initial review of the new waiver, the only amendment is to add the Rivers and Harbors Act to the February waiver.

Plaintiffs would like to supplement the complaint to include tomorrow's waiver. This will not change our claims and we will not request any amendments to the current briefing schedule. Will you please let me know Defendants' position on our motion for leave to supplement?

Thanks,

Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

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From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Monday, June 22, 2026 10:55 AM

To: Emma Yip <eyip@biologicaldiversity.org>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Thanks, Emma. We're good with the added changes, so I'll file now. And yes, service via email for the discovery requests is fine.

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Monday, June 22, 2026 12:14 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Good morning, Alex,

Our clients have signed off on the terms set forth in the attached joint motion and proposed scheduling order as you last shared it with us. My only substantive edit to the joint motion was to add in that "Defendants state . . . that they will provide Plaintiffs' council with at least a 30 day notice prior to the commencement of any ground disturbing activities in Big Bend Ranch State Park or Big Bend National Park."

In order for us to issue service for filings and other papers pursuant to Rule 5 (e.g., discovery requests), will you consent to receive service via email?

I signed the joint motion assuming the added language and email service would be acceptable—if so, are you able to finalize the documents and file with the court today?

Thank you,

Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Thursday, June 18, 2026 6:37 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

I imagine that will work for us. Let me touch base with our clients over the weekend and we can hopefully finalize on Monday.

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Thursday, June 18, 2026 5:45 PM

To: Emma Yip <eyip@biologicaldiversity.org>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Got it. Would you be opposed to limiting the 30 day notice to just ground disturbing activities? Otherwise the waiver language encompasses noninvasive activities, such as surveying, which I assume are not harmful to your clients.

Alex Yun

Trial Attorney

U.S. Department of Justice

Civil Division | Federal Programs Branch

(202) 674-0255

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Thursday, June 18, 2026 5:04:35 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Fantastic. By construction, we mean all actions that are included in the challenged IIRIRA waivers: "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)."

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Thursday, June 18, 2026 1:53 PM

To: Emma Yip <eyip@biologicaldiversity.org>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman

<bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Yes they would. Just to clarify though, what do you mean by construction? Any pre construction testing or preparation, or actual building of border wall?

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Thursday, June 18, 2026 4:21:27 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Understood, thanks Alex. Would your clients be willing to provide us with 30 days notice before construction begins in the state or national parks?

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Thursday, June 18, 2026 1:10 PM

To: Emma Yip <eyip@biologicaldiversity.org>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Thanks again, Emma. We're fine with the statement that no activity is expected before Feb. 2027. 2 other comments:

1. As we don't know the schedule for BB4, we can't state what is expected for Big Bend Ranch or Big Bend National Park. If new information comes to light, we're open to amending the schedule accordingly. We're also open to adding a sentence in the proposed order regarding amendments.
2. Regarding the man camps, we feel that that is outside the scope of this lawsuit. To the extent you're talking about border construction workers trespassing, that is essentially a follow-the-law order, which we generally don't agree to.

Again, happy to discuss. Tomorrow is a federal holiday meaning getting anything from my clients will be difficult, so this might have to wait until Monday, unfortunately.

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Thursday, June 18, 2026 2:40 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Alex,

Thanks for chatting just now. We will need to run these edits by our clients prior to finalizing, but here are my proposed changes.

Additionally, I forgot to ask about man camps when we spoke: Friends of the Ruidosa Church is concerned that a possible man camp is being built near the church, and that it will result in workers trespassing onto church property. I've added a line to the draft join motion that I hope will alleviate that concern for our client.

Thanks,

Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Thursday, June 18, 2026 9:12 AM

To: Emma Yip <eyip@biologicaldiversity.org>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>;

Zeynep Graves <zgraves@biologicaldiversity.org>;

Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>;

Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>;

Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman

<bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Emma,

Thanks for drafting this. Here are some edits, let me know what you think.

On the issue of construction schedules, we feel it isn't necessary to inform the Court of when exactly construction will be taking place. Construction schedules are notoriously subject to change due to many factors (weather, personnel, materials, etc.), so providing dates could lead to unnecessary updates with the Court. Of course, we will still keep you all informed of any changes, if any.

Regarding the stay, we cannot agree to stay construction pending judicial resolution. According to our schedule, briefing will be complete by the beginning of September, giving the Court approximately five months to reach a decision. If for some reason the case is not resolved within that time frame, Plaintiffs can always file for emergency relief, but we believe that it is unnecessary at this time.

If you'd rather discuss this over a phone call, let me know. I'm free until 4 ET.

Thanks,

Alex

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Wednesday, June 17, 2026 4:36 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Alex,

Thanks for getting back to us. Our clients will be relieved to know that construction near these points is still a ways out. In order for us to consent to a longer briefing schedule and to avoid seeking emergency relief, we think it's important to memorialize preserving the status quo during the pendency of the litigation. Attached is a draft joint motion for scheduling order and proposed order that puts forward the basis upon which we're willing to agree to this schedule.

As we discussed on our call, we are also seeking limited fact discovery and have suggested a 20-day deadline for Defendants to respond to those requests in order to fit within the proposed schedule.

Thanks,

Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Wednesday, June 17, 2026 5:08 AM

To: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Emma Yip <eyip@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman

<bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Shannon,

Sorry for the delay as we conferred with our clients. It appears that both gps locations you provided are within the Big Bend 2 project area, with the Church of the Sacred Heart at the tale end of BB 3 and the Miller property at the tale end of BB 4. Based on current construction schedules, the soonest construction activity of BB 3 or 2 would be within 10 miles of those points would be mid February 2027.

As to BB 4, CBP awarded a contract to a contractor on May 11, 2026, but otherwise no construction schedule has been set. I can certainly update you if or when I get more definite dates.

As this case will be fully briefed and decided well in advance of February 2027, we don't think a stay or emergency relief are necessary. If you agree, we'd be happy to pick up with our agreed briefing schedule.

Thanks,

Alex

From: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>

Sent: Tuesday, June 16, 2026 5:06 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Emma Yip <eyip@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Ben Fishman <bfishman@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex,

I'm just checking in to see if you've heard anything from your clients regarding the BB4 construction schedule, or their positions on staying construction within the special interest area zones?

Thanks,

Shannon

From: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>

Sent: Monday, June 15, 2026 11:24 AM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Emma Yip <eyip@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex,

I've included answers to your questions below. Please let me know if anything needs further clarification.

1. What are your clients' concerns regarding the two GPS points? I believe you mentioned a concern that construction vibrations could harm the Church, but what about Plaintiff Miller's property?

Plaintiff Friends of the Ruidosa church has a special interest in GPS points 29.984362571863777, -104.68223833533409 because that is the location of the historic adobe church, El Corazón Sagrado de la Iglesia de Jesús (also known as the Sacred Heart Church). Construction vibrations and ground disturbance from border wall construction poses a physical threat to the church's extremely fragile adobe structure, as well as aesthetic harms. To maintain the status quo and ensure the church is not damaged or destroyed pending cross motions for summary judgment, a buffer of 10 miles should protect the church from such damage.

Plaintiff Miller has a special interest in GPS points 29.3842116, -104.1276861 because that is the location of his family property. He uses the family property regularly for river access and to camp with his family. Construction impacts such as lights, noise, and physically blocking access to the river in the vicinity of his property would substantially impair the use and enjoyment of his property which he uses to connect nature and bond with his family. A 10-mile buffer would ensure that construction does not impair his continued use of his historic access points to the river and would allow him to recreate undisturbed during the pendency of the motions.

2. I don't think we discussed the state and national park. Are you asking for construction to be stayed within the entirety of BB Ranch and BB National Park?

Yes, we are asking for construction to be stayed in BB Ranch and BB National Park due to Client Center for Biological Diversity's special interest in public lands, native species, and their habitats. I want to highlight that there is a portion of the state park located in BB 2, but the rest of the park land is located in BB 4. Have you been able to get a construction schedule for that segment?

Best,

Shannon

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Monday, June 15, 2026 9:47 AM

To: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>; Emma Yip <eyip@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>;

Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>;

Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>;

Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Thanks Shannon. A few clarifying questions:

1. What are your clients' concerns regarding the two GPS points? I believe you mentioned a concern that construction vibrations could harm the Church, but what about Plaintiff Miller's property?
2. I don't think we discussed the state and national park. Are you asking for construction to be stayed within the entirety of BB Ranch and BB National Park?

Thanks,

Alex

From: Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>

Sent: Monday, June 15, 2026 12:35 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Emma Yip <eyip@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>
Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex,

Thank you for following up. Our clients' key locations of concern are:

- Sacred Heart Church (GPS points 29.984362571863777, -104.68223833533409)
- Plaintiff Miller's Property (GPS points: 29.3842116, -104.1276861)
- Big Bend Ranch State Park and Big Bend National Park

As mentioned on the call, if your clients agree to staying construction within 10-miles of these points, we anticipate being able to proceed with the proposed MSJ schedule discussed on Friday. We drafted a joint stipulation for a briefing schedule that lays out this agreement, the cross-motion for summary judgment schedule, and limited discovery for Plaintiffs. We will share the draft as soon as we complete our internal routing process.

Best,

Shannon

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Monday, June 15, 2026 8:11 AM

To: Emma Yip <eyip@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>; Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi all,

Just following up on our Friday conversation. Will you still be able to get me your clients' locations of concern by end of day today?

Thanks,

Alex

From: Emma Yip <eyip@biologicaldiversity.org>

Sent: Friday, June 12, 2026 1:58 PM

To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Zeynep Graves <zgraves@biologicaldiversity.org>;
Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Kate@texascivilrightsproject.Org; Shannon
Labuschagne <Slabuschagne@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex,

We had some follow-up questions that might be easier to discuss briefly on a call again. Are you available to rejoin the original meeting link for another 5-10 minutes?

Thanks,

Emma

Emma Yip (she/her)

Staff Attorney

Public Lands Law Center

CENTER *for* BIOLOGICAL DIVERSITY

206-858-2297

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Thursday, May 28, 2026 11:04 AM

To: Zeynep Graves <zgraves@biologicaldiversity.org>;
Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>;
Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Emma Yip
<eyip@biologicaldiversity.org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Shannon
Labuschagne <Slabuschagne@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

That works for us. Thanks.

Alex

From: Zeynep Graves <zgraves@biologicaldiversity.org>
Sent: Thursday, May 28, 2026 2:01 PM
To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Emma Yip <eyip@biologicaldiversity.org>; Kate@texascivilrightsproject.Org; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>
Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Great. How is 10:00 a.m. PT on June 12? I can circulate a calendar invite and Microsoft Teams link.

Best,

Zeynep

Zeynep Graves

Senior Attorney

Center *for* Biological Diversity

2100 Franklin St., Suite 375
Oakland, CA 94612-3030

510.844.7160

This message may be protected by the attorney-client privilege and/or the attorney work product doctrine. If you believe you have received this message in error, please do not read it. Please reply to the sender that it has been sent in error and delete the message. Thank you.

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>
Sent: Thursday, May 28, 2026 10:32 AM
To: Zeynep Graves <zgraves@biologicaldiversity.org>; Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>;

Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Emma Yip <eyip@biologicaldiversity.org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>
Subject: RE: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Thanks for the prompt response, Zaynep.

June 12 works for us if you want to have a call. I'll talk to DHS about the construction schedule in the meantime.

Thanks,

Alex

From: Zeynep Graves <zgraves@biologicaldiversity.org>
Sent: Thursday, May 28, 2026 12:44 PM
To: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>; Alana@texascivilrightsproject.Org; Dustin@texascivilrightsproject.Org; Emma Yip <eyip@biologicaldiversity.org>; Kate@texascivilrightsproject.Org; Shannon Labuschagne <Slabuschagne@biologicaldiversity.org>
Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>
Subject: [EXTERNAL] Re: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi Alex and Andrew,

We're amenable to negotiating a briefing schedule, the timing of which will largely depend on your clients' plans for construction. Perhaps we can set up a call to discuss further. Plaintiffs' attorneys would be available to meet Tuesday, June 9, between 9:00 a.m. and 3:00 p.m. PT, Wednesday, June 10, between 9:00 and 11:00 a.m. PT or after 1:00 p.m. PT, or any time on Friday, June 12.

Also, as a courtesy, we wanted to let you know that we are planning to file an amended complaint, which may affect any negotiated schedule.

Thank you,

Zeynep

Zeynep Graves

Senior Attorney

Center *for* Biological Diversity

2100 Franklin St., Suite 375
Oakland, CA 94612-3030

510.844.7160

This message may be protected by the attorney-client privilege and/or the attorney work product doctrine. If you believe you have received this message in error, please do not read it. Please reply to the sender that it has been sent in error and delete the message. Thank you.

From: Yun, Alex (CIV) <Alex.Yun@usdoj.gov>

Sent: Thursday, May 28, 2026 7:31 AM

To: Alana@texascivilrightsproject.Org <Alana@texascivilrightsproject.Org>;

Dustin@texascivilrightsproject.Org <Dustin@texascivilrightsproject.Org>; Emma Yip

<eyip@biologicaldiversity.org>; Kate@texascivilrightsproject.Org <Kate@texascivilrightsproject.Org>; Shannon

Labuschagne <Slabuschagne@biologicaldiversity.org>; Zeynep Graves <zgraves@biologicaldiversity.org>

Cc: Warden, Andrew (CIV) <Andrew.Warden@usdoj.gov>

Subject: Friends of Ruidosa Church v. Mullin, 3:26-cv-1099 (W.D. Tex.)

Hi all,

I'm reaching out about the above captioned case for which you are listed as counsel. Andrew Warden (cc'd) and I will be representing Defendants in the matter. We're hoping that we can negotiate a briefing schedule that would be mutually beneficial to both parties. As we don't anticipate any disagreements on the facts of the case, we propose a four brief cross motions for summary judgment schedule with Plaintiffs filing first. We'd also propose staying Defendants' response to the complaint pending resolution of the MSJs. If that's acceptable to you, I'm happy to discuss a more detailed schedule.

Sincerely,

Alex Yun

Alex Yun

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EXHIBIT B

Friends of the Ruidosa Church v. Mullin, No.
3:26-cv-01099-KC (W.D. Tex. 2026)

Pls.' Mot. for Summ. J., Dkt. No. 19

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

FRIENDS OF THE RUIDOSA CHURCH;
DANNY WILLIAM MILLER JUNIOR; and
CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

MARKWAYNE MULLIN, in his official
capacity as Secretary of Homeland Security;
U.S. DEPARTMENT OF HOMELAND
SECURITY; and U.S. CUSTOMS AND
BORDER PROTECTION,

Defendants.

Case No. 3:26-cv-01099-KC

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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STATEMENT OF ISSUES

1. Whether the West Waiver (91 Fed. Reg. 7297–98 (Feb. 17, 2026), *as amended by* 91 Fed. Reg. 40550–51 (July 2, 2026)) and National Park Waiver (91 Fed. Reg. 27969–70 (May 15, 2026), *as amended by* 91 Fed. Reg. 34831–33 (June 9, 2026)) (together, the “Big Bend Waivers” or “Waivers”), issued by the Secretary of the U.S. Department of Homeland Security pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) violate the major questions doctrine.
2. If the Court does not resolve Plaintiffs’ claims under the major questions doctrine, whether the Waivers and IIRIRA violate the nondelegation doctrine.
3. Whether the Big Bend Waivers violate the Take Care Clause for purporting to authorize IIRIRA § 102(c) for construction that extends beyond areas of “high illegal entry.”
4. Whether the National Park Waiver violates the Presentment Clause by granting the DHS Secretary the authority to unilaterally alter or repeal portions of duly enacted statutes without complying with the Constitution’s dual presentment and bicameralism procedures.

INTRODUCTION

The Big Bend region of southwest Texas is known as one of this nation’s crown jewel wilderness corridors—it is a place of immense canyons, dark skies, abundant archeological sites, tremendous biodiversity, and irreplaceable stretches of the Rio Grande’s wild and scenic river. Winding along the curvatures of the Rio Grande, approximately one quarter of the U.S-Mexico border is contained in this region—and it encompasses the largest remaining unwallled stretch of southern border. Before this Court are four constitutional challenges opposing a plan to decimate this pristine wilderness to erect a wall cleaving through North America, relying on waivers issued pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”). Although various plaintiffs, including Plaintiff Center for Biological Diversity (the “Center”), have unsuccessfully challenged IIRIRA waiver decisions in the past—a court has never before been presented with the question of whether IIRIRA authorizes construction of a “Great Wall,” spanning the length of our southern border. As Plaintiffs describe herein, the government’s efforts to contort IIRIRA for such a purpose contravenes our nation’s Constitution.

Pursuant to Fed. R. Civ. P. 56 and this Court’s Standing Order Regarding Motions for Summary Judgment (May 1, 2012), Plaintiffs Friends of the Ruidosa Church, Danny William Miller Junior, and the Center (“Plaintiffs”) move for summary judgment. This motion is supported by Plaintiffs’ Proposed Undisputed Facts (“PUF”), Appendices of Evidence, and Proposed Order as filed herewith. Because the record evidence shows that there are no genuine issues of material fact in dispute, Plaintiffs are entitled to summary judgment.

LEGAL FRAMEWORK

IIRIRA directs the DHS Secretary to install physical barriers in the “vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.” IIRIRA

§ 102(a). To construct the barriers, Congress also conferred on the Secretary waiver power in IIRIRA § 102(c), providing 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.” Congress also curtailed the Judiciary’s check on the Secretary’s waiver decisions by constricting legal challenges to constitutional claims, brought within 60 days in federal district court. *Id.* § 102(c)(2).

Here, Plaintiffs move for summary judgment on the application of IIRIRA § 102 to waive dozens of laws in the Big Bend region. Pursuant to Rule 56, summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is material if it “might affect the outcome of the suit,” and a factual dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Instone Travel Tech Marine & Offshore v. Int’l Shipping Partners, Inc.*, 334 F.3d 423, 427 (5th Cir. 2003) (citation omitted). This standard “provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).

FACTUAL BACKGROUND

For years, the United States has been embroiled in an “extensive, and often intense” debate, *California v. Trump*, 379 F. Supp. 3d 928, 936 (N.D. Cal. 2019), propelled to the national stage by President Trump, about whether our southern border should be barricaded by a wall. *See* PUF ¶¶ 4–13. During his first term, President Trump accomplished just a small fraction of his project to build a “Great Wall,” PUF ¶ 6, and committed to “finishing the wall” during his second term, PUF ¶ 11. Recently, the Secretary of Homeland Security Markwayne Mullin stated that the wall

will be completed by June 2027, stretching “from the Pacific to the Gulf of America” and that a *secondary wall*, parallel to the first, will be completed by the end of the President’s term.¹ PUF ¶¶ 14–16.

Marking a significant initiation to this massive project, on October 15, 2025, the Secretary issued nine new waivers pursuant to Section 102(c), waiving dozens of procurement laws for barrier construction along the border (the “Procurement Waivers”). PUF ¶ 17. Each waiver encompasses the totality of a border patrol sector and for the first time, taken together, these waivers span the entirety of the U.S.-Mexico border. PUF ¶ 18.

In 2026, the Secretary published four more waivers in the Federal Register that, together, make up the “Big Bend Waivers” at issue in the present case. The waivers purport to invoke IIRIRA Section 102(c) in order to waive the application of the National Environmental Policy Act (“NEPA”), the Endangered Species Act (“ESA”), the National Historic Preservation Act (“NHPA”), the Wild and Scenic Rivers Act (“WSRA”) and numerous additional laws “with respect to the construction of physical barriers and roads,” which includes “but [is] 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.” 91 Fed. Reg.

¹ Throughout this Motion, Plaintiffs refer to the administration’s goal of building a “Great Wall” on the southern border. Since 2017, the government’s description of what this would entail has changed numerous times. In 2017, the “Great Wall” meant a “secure, contiguous, and impassable physical barrier.” PUF ¶ 5. Secretary Mullin’s more recent statements characterize it as a “Smart Wall” consisting of two parallel walls. PUF ¶ 15. Indeed, the online map of the wall available on the U.S. Customs and Border Patrol Website has changed over 100 times since April 24, 2026, revising things like border construction types and routes. PUF ¶ 33. Whatever form the “Great Wall” ultimately takes, all border barrier construction harms Plaintiffs. Moreover, Plaintiffs challenge the *waivers* at issue here, not an amorphous and constantly shifting online map. The waivers authorize *full border wall construction* and contain no sunset date.

7297–98 (Feb. 17, 2026), *as amended by* 91 Fed. Reg. 40550–51 (July 2, 2026) (“West Waiver”); 91 Fed. Reg. 27969–70 (May 15, 2026), *as amended by* 91 Fed. Reg. 34831–33 (June 9, 2026) (“National Park Waiver”). The West Waiver encompasses an area just south of Fort Quitman down through Ruidosa, Presidio, Redford, the Hoodoos, and ends midway through Big Bend Ranch State Park. PUF ¶ 29. The National Park Waiver begins where the West Waiver ends in Big Bend Ranch State Park, continuing through Lajitas, Big Bend National Park, and ending at the northeastern-most edge of Black Gap Wildlife Management Area. PUF ¶ 29.

Together, the Waivers span approximately 430 miles of border, or nearly one-quarter of the entire U.S.-Mexico border. PUF ¶ 30. A conservative estimate of the wall’s route, spanning the entire length of the border, approximates that the Big Bend Waiver segment would fill in one third of the southern border’s last remaining unwalled segments. PUF ¶ 3. The Big Bend Sector accounts for just 1.1% of total border apprehensions this century, or approximately 1.5 migrant apprehensions per border mile per month, despite being the largest sector. PUF ¶¶ 34–35.

ARGUMENT

I. The Big Bend Waivers Violate the Major Questions Doctrine.

The major questions doctrine “ensures that the national government’s power to make laws that govern us remains where Article I of the Constitution says it belongs—with the people’s elected representatives.” *Nat’l Fed’n of Indep. Bus. (NFIB) v. U.S. DOL*, 595 U.S. 109, 124 (2022) (Gorsuch, J., concurring). To effectuate this constitutional safeguard, the Supreme Court has instructed that “in certain extraordinary cases,” courts should be “reluctant to read into ambiguous statutory text the delegation claimed to be lurking there.” *W. Virginia v. EPA*, 597 U.S. 697, 723 (2022) (cleaned up). Instead, the government must point to a clear congressional statement authorizing the asserted power. *Id.* at 732. The government’s asserted authority here—facilitating

construction of a near continuous border-wide barrier through serial invocation of IIRIRA Section 102(c) and the Big Bend Waivers—presents precisely the type of “extraordinary case” that requires a clear statement from Congress. Plaintiffs believe that this Court will be the first to consider whether IIRIRA waivers violate the major questions doctrine.

In the Fifth Circuit, “there are three indicators that each *independently* trigger” major questions review, two of which are readily apparent when considering the implications of the Big Bend Waivers: (1) if an agency asserts power “to resolve a matter of great political significance;” and (2) if an “agency seeks to . . . require billions of dollars in spending by private persons or entities.” *Mayfield v. U.S. DOL*, 117 F.4th 611, 616 (5th Cir. 2024) (emphasis added) (cleaned up). Either alone is sufficient to trigger ‘skepticism’ in the court’s review of a statutory grant of authority. “To overcome that skepticism, the Government must . . . point to clear congressional authorization” for the authority it seeks. *W. Virginia*, 597 U.S. at 732 (2022) (cleaned up). Ultimately, the plain language of IIRIRA falls far short of the clear statement that major questions precedent demands for government actions at this scale.

a. The Big Bend Waivers and ultimate goal of a “Great Wall” are extraordinary.

Under both Supreme Court and Fifth Circuit precedent, when an agency’s assertion of authority has “great political significance” or “vast economic” consequences, it triggers scrutiny under the major questions doctrine. *W. Virginia*, 597 U.S. at 716; *Mayfield*, 117 F.4th at 616. Both are met here. The Big Bend Waivers are not an isolated infrastructure decision; they form a substantial component of a coordinated federal effort to implement President Trump’s promise to “finish[],” PUF ¶ 11, the “Great, Great Wall,” PUF ¶ 4, and as described by Secretary Mullin, a barrier that will span “from the Pacific to the Gulf of America,” PUF ¶¶ 14–16, with a completion date of approximately June 2027 for the primary wall—and a *secondary wall* to be completed by

the end of President Trump’s second term, PUF ¶¶ 14–16. A conservative estimate of the “Great Wall” approximates that its length would span around 1,748 miles, and the Big Bend Waivers alone authorize construction for a significant portion of this wall (approximately one-third of the remaining unwallled portion and around one quarter of the border). PUF ¶¶ 3, 30. This is extraordinary. Even standing alone, waivers of this geographic scope and consequence qualify as an “extraordinary case.” Viewed in context of the broader, border-wide project they help effectuate, that conclusion is unavoidable.

First, political significance is generally characterized as whether the action involves a “politically controversial” or “contentious” topic; or where an agency unearths powers “Congress considered and rejected” on multiple occasions, *Mayfield*, 117 F.4th at 617 (cleaned up), or whether the pertinent issue is a matter of “earnest and profound debate across the country,” *Biden v. Nebraska*, 600 U.S. 477, 504 (2023) (quoting *W. Virginia*, 597 U.S. at 743). Under any of these standards, building the “Great Wall” is clearly marked by great political significance.

The political significance of border wall construction is confirmed by years of sustained national controversy. President Trump launched his 2015 presidential campaign with a promise to “build a great, great wall on our southern border.” PUF ¶ 4. This campaign promise instigated the already-divisive topic of border security further into the national spotlight, prompting years of debate across national media outlets, party platforms, and legislative bodies. Since 2015, Congress has considered and declined to pass numerous proposed bills that aimed to “finish” the wall or otherwise expand DHS’s wall-building authority under IIRIRA. PUF ¶¶ 8–10. “These policy questions,” surrounding border barrier construction “are the subject of extensive, and often intense differences of opinion,” *California*, 379 F. Supp. 3d at 936, marking the “Great Wall” as a project that maintains a fierce and undeniable character of controversy and its status quo as an “earnest

and profound debate across the country.” *W. Virginia*, 597 U.S. at 743.

Independently sufficient to evidence the extraordinary nature of this administration’s plan to build the “Great Wall,” its economic impacts are vast. The Supreme Court has found that economic impacts are vast when they amount to some billions of dollars. *See Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021) (finding \$50 billion to be “a reasonable proxy” for the eviction moratorium found in violation of the major questions doctrine). Here, a conservative calculation of the wall’s total cost, is \$513 billion. PUF ¶ 58. This figure accounts for direct costs (*e.g.*, construction and maintenance costs, and costs associated with equipping, administering, and ultimately removing a nearly continuous border wall system) as well as external and non-budgetary economic costs (*e.g.*, migrant mortality, ecological and natural resource damage, forgone cross-border trade and economic integration, enforcement-induced violence and other enforcement-related harms, and costs imposed on border communities). PUF ¶¶ 58–60. The low and high bounds of this estimate range from \$220 billion to \$1.3 trillion, PUF ¶ 58, and omit numerous substantial harms that evade traditional cost analyses such as loss of cultural or religious sites, PUF ¶ 61. These figures dwarf those considered in other major questions cases.²

The Big Bend Waivers are not a discrete or localized infrastructure decision. They authorize construction across the largest remaining unwallled stretch of the southern border, PUF ¶ 3, span nearly one quarter of the U.S.-Mexico border, PUF ¶ 30, target a region with the lowest rates of illegal crossings, PUF ¶ 35 and function as a substantial component of a broader effort to construct a near-continuous border-wide barrier—amounting to economic costs that could surpass \$1 trillion, PUF ¶ 58. At this scale, the Big Bend Waivers carry “vast economic and political

² *See Ala. Ass’n of Realtors*, 594 U.S. at 764 (\$50 billion); *Biden v. Nebraska*, 600 U.S. at 504 (\$430 billion); *W. Virginia*, 597 U. S. at 714 (“billions of dollars”); *NFIB*, 595 U.S. at 120 (“billions of dollars”).

significance” and therefore require a clear statement from Congress.

b. IIRIRA does not clearly authorize the Waivers or “Great Wall.”

Faced with these extraordinary circumstances, the Government must point to clear congressional authorization for the power it claims. *W. Virginia*, 597 U.S. at 732. The Supreme Court has repeatedly rejected efforts to locate sweeping authority in ambiguous statutory language; in these cases, “the statutory text might as a matter of definitional possibilities have been read to delegate the asserted power.” *Learning Res., Inc. v. Trump*, 607 U.S. ____ (2026) (slip op. at 8) (opinion of Roberts, C.J.) (cleaned up). “But context counseled skepticism,” where “separation of powers principles and a practical understanding of legislative intent suggested Congress would not have delegated highly consequential power through ambiguous language.” *Id.* Here, the most the Government can offer is IIRIRA § 102, which fails to delegate the power the government seeks.

IIRIRA § 102 grants the Secretary of Homeland Security limited authority to take actions “necessary to install . . . physical barriers and roads” along the U.S. border in “areas of high illegal entry,” and to waive laws that, in his “sole discretion,” are “necessary to ensure expeditious construction of the barriers and roads” IIRIRA § 102(a), (c). But nothing in IIRIRA’s text clearly authorizes DHS to waive laws for the purpose of creating a continental border-length barrier, “from the Pacific to the Gulf of America.” PUF ¶¶ 14–16. The question before the Court “is not whether something should be done; it is who has the authority to do it.” *Biden v. Nebraska*, 600 U.S. at 501; *see also Gonzales v. Oregon*, 546 U.S. 243, 265 (2006) (the Government’s sought after authority was “inconsistent with the design of the statute”).

Here, the statutory text of IIRIRA confirms the absence of any clear authorization. IIRIRA authorizes construction only in “areas of high illegal entry,” and limits waiver authority to what is “necessary” to ensure the “expeditious construction” of “barriers and roads.” These textual

limitations imposed by Congress are irreconcilable with the government’s assertion of authority to facilitate a border-length barrier through sweeping waivers applied across vast geography, including regions like Big Bend, that see minimal unlawful crossings and record the lowest levels of such crossings across all Border Patrol sectors. PUF ¶ 35. The Waivers amount to an unprecedented interpretation of IIRIRA, leaving to the Secretary’s “sole” discretion, whatever actions he deems “necessary”—making it “hard to see what measures” would be “outside the [government’s] reach.” *Ala. Ass’n of Realtors*, 594 U.S., at 765. If Congress had intended to build a continent-long barrier system, it would have authorized IIRIRA waivers across the entire border, not limited to “areas” with “high illegal” crossings. *See Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001) (Congress does not “hide elephants in mouseholes”).³

At minimum, if IIRIRA could be read to support the government’s goal of building the “Great Wall” through Big Bend as a matter of “definitional possibilities,” that ambiguity is the deciding blow under major questions precedent. *W. Virginia*, 597 U.S. at 732. Here, where no clear statement exists, the government’s asserted authority to construct a border-wide barrier system through the Big Bend Waivers fails.

II. If the Court Does Not Resolve Plaintiffs’ Claims Under the Major Questions Doctrine, then the Waivers and IIRIRA § 102(c) Violate the Nondelegation Doctrine.

The nondelegation doctrine enforces the Constitution’s separation of powers by barring Congress from “transfer[ring] to another branch powers which are strictly and exclusively legislative.” *Gundy v. United States*, 588 U.S. 128, 128 (2019) (cleaned up). In view of the

³ Context reinforces this conclusion. Congress has repeatedly considered—and declined—to enact legislation requiring completion of a contiguous border wall or expanding DHS’s authority under IIRIRA to do so. PUF ¶¶ 8–10. For example, the Secure the Border Act of 2023 sought to revise IIRIRA § 102(a) by removing its limitation to “areas of high illegal entry,” and expanding the statute to encompass the entire “southwest border.” PUF ¶ 9.

legislative power underlying IIRIRA § 102(c), and DHS’s increasingly capacious use of IIRIRA since the October 2025 Procurement Waivers,⁴ IIRIRA’s waiver authority is now squarely at odds with the Supreme Court’s long-standing intelligible principle test. To be clear, this test is “not demanding,” and the Supreme Court has not found a delegation of legislative power unconstitutional since 1935. *Big Time Vapes, Inc. v. FDA*, 963 F.3d 436, 442 (5th Cir. 2020). This “does not mean, however, that [courts] must rubber-stamp all delegations of legislative power,” *id.* at 443, and in instances such as this, the spirit and importance of the nondelegation doctrine are poised to address the increasing boundlessness of the Secretary’s asserted authority under IIRIRA.

While affirming that Congress cannot altogether forfeit its legislative powers to the Executive, the Fifth Circuit and Supreme Court have explained that a delegation is constitutionally adequate “if Congress (1) clearly delineates its general policy, (2) the public agency which is to apply it, and (3) the boundaries of that delegated authority.” *Big Time Vapes*, 963 F.3d at 443–44 (cleaned up) (quoting *Mistretta v. United States*, 488 U.S. 361, 372–73 (1989)). Moreover, “the degree of agency discretion that is acceptable varies according to the scope of the power congressionally conferred.” *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 673 (2025) (citation omitted). In other words, the strictness of the intelligible principle test tightens and the level of agency deference permitted recedes as the breadth of the purported delegated power expands.

Here, if this Court finds that the major questions doctrine does not prevent the Secretary from issuing the Big Bend Waivers under IIRIRA, then IIRIRA itself is fatally flawed. In this case,

⁴ The Procurement Waivers also act to degrade any meaning behind the term “area[] of high illegal entry.” See PUF ¶ 17. Each encompasses an entire border patrol sector and, together, span the entire U.S.-Mexico border, characterizing all 1,975 miles as areas of high illegal entry. PUF ¶ 18. Although these waivers are not directly at issue in the present litigation, they underscore now total indifference towards IIRIRA’s limitations, which should constrain DHS to specific *areas*—not the entire border.

the scope of the delegated power is astonishing. IIRIRA § 102(c) grants the Secretary *carte blanche* power to (1) unilaterally suspend the application of *any and all laws*, (2) in order to pursue *any kind* of border construction, (3) at *any time* and *in perpetuity* (without any sunset date), (4) *anywhere* within the border’s “vicinity.” Because Congress has presented a breathtakingly broad set of circumstances under which the Secretary may exercise his delegated power, mandating tight bounds on that delegation are necessary to satisfy the intelligible principle test. Under a statutory scheme that grants tremendous power with few guardrails, “areas of high illegal entry” fails to set forth an intelligible principle if it applies to the entire border and authorizes the Big Bend Waivers.

The Big Bend Sector is the largest sector of all nine geographic border patrol sectors, and it boasts the lowest apprehension rates. PUF ¶¶ 34–35. Since the start of this century, the sector has averaged 1.5 apprehensions per mile per month—and less than 0.4 apprehensions per mile per month since the beginning of President Trump’s second administration. PUF ¶ 35. Thus, distinguishing the Big Bend Waivers from prior waivers challenged on nondelegation grounds, these Waivers do not merely push the established policy or boundaries of the statute—they collapse them altogether. Regardless of whether “areas of high illegal entry” is meant to act as a comparative guidepost or an absolute metric, the same conclusion must be made: the Big Bend Sector is not an area of high illegal entry. For example, using a comparative guidepost, the 118-mile boundary of Big Bend National Park has accounted for just 0.02% of total apprehensions in the last decade, out of all border apprehensions. PUF ¶ 36. Using an absolute metric, this translates to a total of 0.14 apprehensions per border mile per month over that same period. PUF ¶ 36. Under any framing, the park and surrounding Big Bend region is simply not an area of high illegal entry.

Here, with this limiting principle and general policy rendered meaningless, DHS invokes § 102(c) to authorize sweeping construction across a region that boasts the lowest illegal crossings.

If “areas of high illegal entry” is permitted to mean *any* area in the vicinity of the U.S. border the Secretary selects, it ceases to function as an intelligible principle. What remains is not a bounded delegation or clearly delineated general policy, but a grant of unreviewable authority to waive any law, anywhere along the border, in service of any barrier project the Secretary deems expedient. This transformation presents a nondelegation problem of a fundamentally different order than those previously considered, and one that the Constitution does not permit.

Prior courts have found that the Secretary’s waiver authority contained a clearly delineated general policy prescribed by Congress, which is the expeditious construction of border barriers and roads to prevent unlawful border crossings “in areas of high illegal entry.” *See e.g., Defenders of Wildlife v. Chertoff*, 527 F. Supp. 2d 119, 127 (D.D.C. 2007) (the general policy is clearly delineated: “to expeditiously install additional physical barriers and roads to deter illegal crossings in areas of high illegal entry”) (cleaned up); *Save Our Heritage Org. v. Gonzales*, 533 F. Supp. 2d 58, 63 (D.D.C. 2008) (same); *Cnty. of El Paso v. Chertoff*, No. EP-08-CA-196-FM, 2008 U.S. Dist. LEXIS 83045, at *11 (W.D. Tex. Aug. 29, 2008) (same); *Zapata Cnty. v. Biden*, No. 5:20-CV-00106, 2023 U.S. Dist. LEXIS 241487, at *38 (S.D. Tex. Mar. 31, 2023) (same); *Ctr. for Biological Diversity v. Mullin*, No. CV-25-00365-TUC-AMM, 2026 U.S. Dist. LEXIS 64207, at *12 (D. Ariz. Mar. 26, 2026) (same). Today, however, it is no longer possible to identify an intelligible principle in the term “areas of high illegal entry,” which was central to earlier courts’ conclusions that Congress clearly delineated a general policy to guide the Secretary’s authority under IIRIRA. DHS has now effectively rendered that policy meaningless through the issuance of waivers across the entire U.S.-Mexico border and specifically in areas that, under any metric, are not areas of high illegal entry. *See* PUF ¶¶ 17, 34–36.

At base, in shifting legislative power to the DHS Secretary, Congress failed to fulfill its

basic obligation to at least set out *some* criteria, standards, or rules for the Secretary to adjudicate whether it is “necessary” to effectively void existing law, and how to weigh consequences against construction of border barrier.⁵ If the intelligible principle test is to mean anything, it must mean that a total lack of meaning of “areas of high illegal entry” and complete absence of Congressional guidance is impermissible under the Constitution. The Supreme Court struck down a similarly unbridled delegation of legislative power when Congress offered no guidance on an authority to prohibit the transportation in interstate commerce of petroleum and related products. *Panama Refining Co. v. Ryan*, 293 U.S. 388, 405–05 (1935). IIRIRA’s paucity of congressional instruction is inexcusable, especially in light of Congress’s history of providing robust intelligible principles for similarly broad delegations.⁶ Thus, the Waivers and IIRIRA § 102(c) are unconstitutional.

III. The Big Bend Waivers Violate the Executive’s Duty to Take Care that the Laws Be Faithfully Executed.

Article II of the U.S. Constitution vests the executive power in the President and directs that the President “shall take care that the laws be faithfully executed.” U.S. Const. art. II, § 3. The President carries out that constitutional duty through executive officers and other subordinates,

⁵ The lack of a judicial standard that a court could apply to determine whether the Secretary acted within § 102(c)’s bounds exacerbates these issues. Where an intelligible principle exists, it “ensures that courts . . . reviewing the exercise of delegated legislative discretion will be able to test that exercise against ascertainable standards.” *Indus. Union Dep’t v. API*, 448 U.S. 607, 686 (1980) (Rehnquist, J., concurring); *see also FCC*, 606 U.S. at 673 (Congress should provide “sufficient standards to enable both the courts and the public to ascertain whether the agency has followed the law”) (internal citations and alterations omitted).

⁶ Section 102(c) lacks substantive guidance found in other delegations deemed valid under the intelligible principle test. *See Touby v. United States*, 500 U.S. 160, 166–67 (1991) (requirement to consider at least three of eight codified factors in setting drug designations); *Mistretta*, 488 U.S. at 374–75 (explicit restrictions on range of minimum and maximum sentences, grade of offense, nature and degree of harm, and demographics of offender in sentencing guidelines); *FCC*, 606 U.S. at 680–92 (qualifications concerning populations, types of services and programs covered by telecommunications fee). These examples demonstrate that Congress *can* design necessary guardrails and failed to do so here.

including the Secretary. *See, e.g., Myers v. United States*, 272 U.S. 52, 117 (1926); *see also Trump v. Slaughter*, 609 U.S. ___, (2026) (slip op at 14) (Gorsuch, J., concurring) (noting that “the executive branch must faithfully execute th[e] laws”).

This is among the President’s “most important constitutional dut[ies].” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 577 (1992). The Take Care clause duty requires the Executive to implement the laws enacted by Congress; it does not authorize the Executive to amend, suspend or dispense with those laws. As the Supreme Court explained in *Youngstown Sheet & Tube Co. v. Sawyer*, “[i]n the framework of our Constitution,” the President’s Take Care Clause duty “refutes the idea that he is to be a lawmaker,” and instead limits the President’s role in the legislative process “to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.” 343 U.S. 579, 587 (1952). And it “is neither silent nor equivocal about who shall make laws which the President is to execute.” *Id.* As the Court recently reaffirmed, “[o]ur Constitution creates three branches, but only one President. That President is not all powerful—not by any means.” *Trump v. Slaughter*, 609 U.S. at ___ (slip op at 35) (citations omitted).

Here, the Secretary is purporting to be a lawmaker by suspending or dispensing with duly enacted statutes without being confined and guided by any Congressional limits.⁷ Through the multiple waivers discussed herein, the Executive has sought to construct the “Great Wall”—a project that would result in unprecedented and permanent changes to the Nation’s borderlands. In furtherance of that plan, the Executive has unilaterally dispensed with bedrock environmental, historic-preservation, and numerous other statutory mandates, invoking the purported authority of IIRIRA Section 102(c) to expedite construction. PUF ¶¶ 17, 19, 20, 23, 25.

⁷ Congress may, of course, delegate some legislative authority to an executive officer so long as those delegations are meaningfully constrained. *See* Section II, *supra*. But when it does so, the Executive remains confined by the limits Congress prescribed. *Id.*

Supreme Court precedent establishes that the Take Care Clause is judicially enforceable against executive assertions of a dispensing power. In *Kendall v. United States*, 37 U.S. 524 (1838), for example, the Court affirmed the issuance of mandamus compelling a cabinet official to settle claims with mail contractors as required by an act of Congress. The official argued that he could disregard the act because the President possessed exclusive authority to execute the laws. *Id.* at 545–47, 612. The Court rejected that contention: “To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the [C]onstitution and entirely inadmissible.” *Id.* at 613; *see also Youngstown Sheet & Tube Co.*, 343 U.S. at 637 (Jackson, J., concurring) (“When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.”)

The challenged Waivers form part of a broader program to displace, on a serial and sweeping basis, multiple statutory regimes in order to construct a border-wide barrier bisecting the North American continent. *See* Section I, *supra*. By invoking IIRIRA’s limited waiver authority to authorize construction even in areas that do not experience high levels of illegal entry, the Executive has effectively dispensed with duly enacted laws governing the construction project. Such action exceeds any constitutionally permissible construction of IIRIRA and violates the Executive Branch’s obligation to “take care that the laws be faithfully executed.” U.S. Const. art. II, § 3.

Outside the narrow bounds of a constitutionally valid exercise of IIRIRA’s waiver authority, it is not the province of the Executive to decide whether Congress’s statutory directives will be carried out. As the Court explained in *Kendall*, recognizing such authority amounts to:

vesting in the President a dispensing power, which has no countenance for its support in any part of the constitution; and is asserting a principle, which, if carried out in its results, to all cases falling within it, would be clothing the President with

a power entirely to control the legislation of congress, and paralyze the administration of justice.

Kendall, 37 U.S. at 613. The Waivers do precisely what *Kendall* forbids: they permit the Executive, rather than Congress, to determine whether and to what extent duly enacted laws will govern executive action.

IV. The National Park Waiver and IIRIRA § 102(c) Violate the Presentment Clause.

The authority to legislate is entrusted solely to Congress. U.S. Const. art I, §§ 1, 7; *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). This includes the “[a]mendment and repeal of statutes, no less than enactment, [all of which] must conform with” the bicameralism and presentment requirements of Article I. *INS v. Chadha*, 462 U.S. 919, 954 (1983). Indeed, the Supreme Court has stated that the Executive Branch cannot void any law, in whole or in part, without Congress passing a law voiding the previous law and presenting it to the President for signature. *Clinton*, 524 U.S. at 448–49. But IIRIRA grants the Secretary—an unelected executive official—precisely that power, one that not even Congress possesses.

IIRIRA grants the Secretary unbridled authority to dispose of any and all legal requirements to pursue border construction that causes irreversible damage to or complete destruction of places and properties that have been designated and granted protections by Congress through proper bicameralism and presentment procedures. Once those statutorily designated places and properties are irreversibly damaged or destroyed by wall construction, the specific legal protections guaranteed by statute can no longer be provided, preventing sections of duly enacted statutes from having continued “legal force or effect,” and thus function as amendments or partial repeals of those statutes. *Id.* at 438.

Here the Secretary waived the WSRA, 16 U.S.C. §§ 1271–1287, for the construction of physical barriers and roads covering a segment of the Rio Grande designated by statute for

protection of its “scenic, geologic, fish and wildlife, and recreational values.” 16 U.S.C. §§ 1271, 1274(a)(17); PUF ¶¶ 28, 45. The WSRA protects “certain selected rivers . . . which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values” in “free-flowing condition,” as well as their “immediate environments” for the benefit and enjoyment of present and future generations. 16 U.S.C. § 1271(b). The Act sets forth a process by which certain rivers eligible for protection can be added as components of the wild and scenic rivers system, *id.* §§ 1272–73, 1275, and imposes substantive requirements on responsible agencies to administer designated rivers “to protect and enhance the values which caused it to be included in said system.” *Sierra Club v. United States*, 23 F. Supp. 2d 1132, 1136-37 (N.D. Cal. 1998) (cleaned up); 16 U.S.C. § 1281(a). Congress amended the WSRA to include a segment of the Rio Grande River in Texas—on the U.S. side of the river from river mile 842.3 above Mariscal Canyon downstream to river mile 651.1 at the Terrell-Val Verde County line—as a component of the wild and scenic river system. National Parks and Recreation Act, Pub. L. No. 95-625, § 702, 92 Stat. 3467, 3522 (1978).

Border construction would decimate the “outstanding and remarkable” scenic, fish and wildlife, geological, and recreational values that made this segment of the Rio Grande eligible for inclusion as a component of the wild and scenic river system and serve as the basis for its protection under the WSRA. It would deteriorate the scenic and recreational values of the river and surrounding area by disrupting the vast, unobstructed landscape with unnatural manmade structures, such as bollard walls, roads, barbed wire, and stadium lights, PUF ¶¶ 54–55, 57, and entirely remove recreational access to the Rio Grande. PUF ¶ 56. Construction of border barriers and roads would also cause devastating impacts to fish and wildlife by, *inter alia*, fragmenting, degrading, and destroying species habitat, and obstructing wildlife movement essential for

endangered and transboundary species, cutting them off from vital food, water, and other resources. PUF ¶¶ 53–54. Finally, construction activities such as blasting, quarrying, and land-clearing for wall construction, roads, and staging areas can irreversibly damage the unique geologic formations shaped over the course of millions of years. PUF ¶ 55.

Accordingly, border construction in and near the Rio Grande would permanently alter this statutorily protected river and degrade each and every outstandingly remarkable value that Congress sought to protect when it added this segment to the National Wild and Scenic River System. This strips the responsible agency—the National Park Service—of its ability to administer the area in accordance with Congress’s mandate to *protect and enhance* those values. 16 U.S.C. § 1281(a), (c); PUF ¶ 48. It therefore effectively amends 16 U.S.C. § 1274(a)(17) to shrink the Congressionally designated and statutorily protected component of the Wild and Scenic River System to “[t]he segment on the United States side of the river from ~~river mile 842.3 above Mariscal Canyon~~ GPS point 29.728522, -102.683945 downstream to river mile 651.1 at the Terrell-Val Verde County line.”

Because IIRIRA’s extraordinarily broad delegation authorizes the Secretary to disregard acts of Congress in a manner that deprives portions of those laws of their legal force and effect without complying with the Constitution’s requirements of bicameralism and presentment, the § 102(c) waiver power is not materially distinguishable from the power invalidated in *Clinton v. City of New York*. 524 U.S. 417. There, the Line Item Veto Act granted the President the unilateral authority to strike portions of duly enacted statutes concerning statutory spending and taxes, which effectively permitted the President to “amend” the underlying laws. *Id.* at 438, 448–49. The Supreme Court held that the Constitution prohibits such an Executive branch power, just as it prohibits the executive amendment of an enacted law. Additionally, in *Clinton*, Congress at least

retained the power to reject the vetoes. *Id.* at 436–37. By contrast, here, IIRIRA provides no procedure for Congress to override a waiver decision. This effectively grants the Executive exclusive lawmaking power, which is constitutionally impermissible. *Id.* at 448–49.

V. Plaintiffs Have Article III Standing.

Here, all Plaintiffs have Article III standing.⁸ Members of Plaintiffs Friends and the Center, and Plaintiff Miller himself have a myriad of longstanding interests in the Rio Grande and surrounding borderlands injured by the Waivers, which invalidation will redress. *See* PUF ¶¶ 63–108. These interests, and the threats that the Waivers and imminent construction projects pose to them, *see* PUF ¶¶ 37–40, are more than sufficient to confer standing. *See, e.g., S. Texas Env'tl Just. Network v. Texas Comm'n on Env't Quality*, 165 F.4th 356, 366 (5th Cir. 2026) (holding that members established injury in fact where a proposed construction site threatened “recreational, aesthetic, and religious experiences in the area surrounding the site”). These interests are germane to the Center’s core mission to protect imperiled wildlife and their habitats, including in the southern borderlands, PUF ¶¶ 84–87, and Friends’ core mission to restore the Ruidosa Church to its status as a community gathering place, *see* PUF ¶ 71. Moreover, the Big Bend Waivers and ongoing border wall construction also pose imminent, concrete, and particularized injuries to Plaintiff Miller’s longstanding financial, professional, aesthetic, recreational and spiritual interests in the Rio Grande corridor. *See* PUF ¶¶ 63–69.

⁸ To show standing, a plaintiff must show an “injury in fact” that is “concrete and particularized,” and “actual or imminent,” that “the injury is fairly traceable to the challenged action of the defendant,” and that the injury would likely be redressed by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 180–81 (2000). Associations have standing “when its members would otherwise have standing to sue,” the interests at risk of harm “are germane to the organization’s purpose,” and individual members are not required to participate in the lawsuit. *Id.*

Additionally, organizational Plaintiff Friends has standing to sue on its own behalf. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982). Border barrier construction threatens imminent and serious damage to the Ruidosa Church’s fragile adobe structure. *See* PUF ¶¶ 71, 80. Defendants’ actions will therefore directly affect and interfere with Friends’ core organizational activities—restoring the Church’s function as a community gathering place and carrying out ongoing restoration work to this end—and thereby impair Friends’ ability to perform those activities. *See* PUF ¶ 81. Additionally, imminent and ongoing harms flowing directly from Defendants’ unlawful conduct will force Friends to divert labor and financial resources away from activities central to its mission, further impairing its core activities. *See* PUF ¶ 83.

Injuries to Plaintiffs and their members have already occurred (*e.g.*, lack of notice and meaningful opportunity comment) or are imminent (*i.e.*, construction contracts have already been awarded), and would be redressed by the requested relief because, absent the Big Bend Waivers, wall construction would not occur or would occur in compliance with both procedural and substantive laws. *See, e.g.*, PUF ¶¶ 78, 99, 106–08. For example, the NHPA would require Defendants to consider the effects of construction on the Ruidosa Church and provide a reasonable opportunity for comment, 54 U.S.C. § 306108, and the WSRA, would require that the Rio Grande “be preserved in free-flowing condition,” and its “immediate environments” “be protected for the benefit and enjoyment of present and future generations.” 16 U.S.C. § 1271.

CONCLUSION

Plaintiffs respectfully request that this Court grant summary judgment in their favor by declaring that the Big Bend Waivers and IIRIRA Section 102(c) violate the Constitution, setting aside the Waivers to avoid constitutional infirmities, and enjoining Defendants from building border barrier in the Big Bend Sector without first complying with all applicable laws.

DATED: July 17, 2026

Respectfully submitted,

/s/ Emma Yip

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EXHIBIT C

Friends of the Ruidosa Church v. Mullin,
No. 3:26-cv-01099-KC (W.D. Tex. 2026)

Decl. of Paul Enriquez, Dkt. No. 38-1

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

FRIENDS OF RIUDOA CHURCH, et al.

Plaintiffs,

v.

MULLIN, et al.

Defendants.

Civil Action No. 3:26-cv-01099-KC

DECLARATION OF PAUL ENRIQUEZ

I, Paul Enriquez, declare as follows:

1. I am the Director, Infrastructure Portfolio, U.S. Border Patrol Program Management Office Directorate (“PMOD”), U.S. Customs and Border Protection (“CBP”), an agency of the 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 the BPAM office. In that role, I performed environmental analyses for various border infrastructure projects. From 2008 to 2011, I was a contractor assigned to the BPAM office 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, including the border barrier construction at issue in this litigation.
5. This declaration is based on my personal knowledge and information made available to me in the course of my official duties.
6. Physical barriers are an essential component to the United States Border Patrol's ("USBP") layered border security approach and provide numerous benefits including: (1) barriers protect USBP agents, (2) barriers assist USBP in gaining and maintaining operational control of the border, and (3) barriers support a safe and secure border community. Border barriers allow USBP agents to gain more control and situational awareness in the area near the U.S.-Mexico border. Barriers deter and impede smugglers and aliens from entering the U.S. illegally and increase the effectiveness of USBP. There are over 750 miles of primary border barrier, over 125 miles of secondary barrier, and over 27 miles of water barrier along the United States – Mexico border. CBP also has over 40 barrier projects currently in various stages of planning and construction.
7. Among the projects currently being executed by CBP are multiple border barrier system

projects that will be executed in the USBP Big Bend Sector (the “Big Bend Sector”). These projects include the Big Bend 1, Big Bend 2, Big Bend 3, Big Bend 4, and Big Bend 5 projects.

DESIGN AND CONSTRUCTION STATUS OF THE BIG BEND 4 PROJECT

8. The Big Bend 4 project area includes portions of the Big Bend National Park. The project area for the Big Bend 4 project is shown on the map that is attached as Exhibit A. The contract for the Big Bend 4 project was awarded on May 11, 2026.
9. As part of the Big Bend 4 project, CBP planned to construct approximately 17 miles of non-contiguous vehicle barrier system in strategic locations within Big Bend National Park and east of the National Park. CBP also planned to construct a new patrol road, improve existing roads, and install technology within the National Park; however, the aspects of the project within the National Park are now subject to the Commissioner of CBP’s review noted below. The Big Bend 4 project also includes construction or improvement of roads and installation of technology outside the National Park in Presidio and Brewster County, Texas, within the Big Bend Sector.
10. The vehicle barrier system that planned for the Big Bend National Park would be designed in coordination with the National Park Service and may include a “post and rail” vehicle barrier or other materials which will spaced about 4 feet apart, a patrol road, and barrier system attributes, including cameras and sensors. A depiction of a typical section of post and rail vehicle barrier is attached as Exhibit B.
11. A waiver covering the Big Bend 4 project was published in the Federal Register on May 15, 2026 (the “Big Bend 4 Waiver”). 91 Fed. Reg. 27969 (May 15, 2026). The Big Bend 4 waiver was executed by Secretary Mullin pursuant to § 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. No. 104-208, div. C, tit. I, § 102(c), 110 Stat. 3009-546, 3009-554 (1996) (codified as amended at 8 U.S.C. § 1103 note). On June 9, 2026, an amendment to the Big Bend 4 waiver, which was executed by Secretary Mullin, was published in the Federal Register. 91 Fed. Reg. 34831 (June 9, 2026). The amendment to the Big Bend 4 Waiver corrected the project area covered by the Big Bend 4 Waiver.

12. The Big Bend 4 project will be executed with funding provided by Congress as part of the One Big Beautiful Bill Act (“OBBA”), Pub. L. No. 119-21, tit. IX, § 90001 (1)-(3), 139 Stat. 72, 357-58 (2025).

Current Activities.

13. CBP awarded a design-build contract for the Big Bend 4 project. As such, the contractor is responsible for designing the project as well as the construction activities. The contractor must complete and CBP must approve design before construction of the vehicle barrier, roads, and technology that are to be constructed as part of the Big Bend 4 project can begin. The contractor can, however, undertake other activities pending design. For example, the contractor can do field work for design, establish laydown yards for the project, clear and grub vegetation within the project alignment, procure materials, and engage in other preparatory work.
14. To this end, the contractor for the Big Bend 4 project has initiated design activities for the Big Bend 4 project. The design-related activities included actions within Big Bend National Park that began on the week of August 3, 2026. On August 18, 2026, however, the Commissioner of CBP ordered a pause of all activities related to the Big Bend 4 project within Big Bend National Park pending review of the planned construction in the National Park by the Commissioner. The pause will last until at least August 31, 2026.
15. Prior to the pause, within Big Bend National Park the contractor had mobilized equipment and started some of the field work that is needed to facilitate geotechnical surveys. Geotechnical surveys are necessary for design of the project to assess soil, rock, and groundwater conditions.
16. To access the project alignment to perform geotechnical surveys, the contractor graded, repaired, and made limited improvements to existing roads within National Park to facilitate access to the project alignment for geotechnical surveys. The contractor also “pioneered” access routes that were necessary to facilitate access for geotechnical surveys. The pioneering involved removing vegetation and grading soils to create a limited but passable route to the

project alignment. The contractor was also clearing and grubbing vegetation within the project alignment in preparation for geotechnical surveys. CBP was also conducting biological and cultural surveys in the areas within the National Park where work related to geotechnical surveys would be performed. Geotechnical surveys were scheduled to begin within the next three weeks. All of this work has now been paused.

17. While the design work was on-going, the contractor was also planning for certain activities in support of construction within the National Park as part of the Big Bend 4 project. These preparatory activities were scheduled to begin in early-September. These activities included preparing laydown yards or staging areas, clearing and grubbing vegetation along the project alignment, and grading the project alignment. That work may now be pushed back as a result of the pause.

DESIGN AND CONSTRUCTION STATUS OF THE BIG BEND 1 – 3 and 5 PROJECTS

18. The Big Bend 1 project area is shown on the map that is attached as Exhibit C. As part of the Big Bend 1 project, CBP will construct approximately 47 miles of barrier system in Hudspeth County, Texas, within the Big Bend Sector. The elements of the barrier system include 30-foot bollard-style pedestrian barrier, a patrol road, and barrier system attributes, including, as appropriate to each area, cameras, lights, sensors, and other detection technology. The contract for the Big Bend 1 project was awarded on March 5, 2026.
19. A map of the Big Bend 2 project area is attached as Exhibit D. As part of the Big Bend 2 project, CBP will construct approximately 61 miles of barrier system in Presidio County, Texas, within the Big Bend Sector. The contract for the Big Bend 2 project was awarded on March 5, 2026.
20. A map of the Big Bend 3 project area is attached as Exhibit E. As part of the Big Bend 3 project, CBP will construct approximately 56 miles of barrier system in Hudspeth, Jeff Davis, and Presidio County, Texas, within the Big Bend Sector. The contract for the Big Bend 3 project was awarded on March 5, 2026.
21. On February 17, 2026, a waiver to facilitate the expeditious construction of barrier system and

roads in the Big Bend Sector covering the project areas for the Big Bend 1, 2, and 3 projects was published in the Federal Register (the “Big Bend 1-3 Waiver”). 91 Fed. Reg. 7297 (February 17, 2026). The Big Bend 1-3 Waiver was executed by then-Secretary Noem pursuant to § 102 of IIRIRA. An amendment to the Big Bend 1-3 Waiver was signed by Secretary Mullin and published in the Federal Register on July 2, 2026. 91 Fed. Red. 40550 (July 2, 2026).

22. A map of the Big Bend 5 project area is attached as Exhibit F. As part of the Big Bend 5 project, CBP will construct approximately 160 miles of vehicle barrier system in Brewster, Terrell, and Val Verde County, Texas, within the Big Bend Sector and Del Rio Sectors. The contract for the Big Bend 5 project was awarded on June 2, 2026.
23. On July 27, 2026, a waiver to facilitate the expeditious construction of barrier system and roads in the Big Bend and Del Rio Sectors covering the project area for the Big Bend 5 project was published in the Federal Register (the “Big Bend 5 Waiver”). 91 Fed. Reg. 45939 (July 27, 2026). The Big Bend 5 Waiver was executed by Secretary Mullin pursuant to § 102 of IIRIRA.
24. The Big Bend 1 - 3 and 5 projects will be executed with funding provided by Congress as part of the OBBBA.

Current Activities

25. Like Big Bend 4, CBP awarded design-build contracts for the Big Bend 1-3 and 5 projects. The contractor is therefore responsible for designing the projects as well as the construction activities, and the contractor must complete and CBP must approve a design before starting construction on the barrier infrastructure that is planned for the Big Bend 1-3 and 5 projects. As noted above, the contractor can engage in other activities while design is pending.
26. The majority of the land within the alignments for the Big Bend 1-3, and 5 projects is private land. Prior to accessing private land for surveys or other pre-construction activity, CBP secures a right of access from the private landowner. Field work necessary for design

therefore requires that CBP secure real estate agreements or property acquisitions within the project alignment. Generally speaking, before constructing border infrastructure, CBP acquires a fee or easement interest in the property, thereby converting the land to federal property.

27. *Big Bend 1.* For the Big Bend 1 project, the contractor has started the field work necessary for design in those areas where CBP has secured access. These activities include clearing and grubbing where geotechnical work is occurring and clearing and grubbing access routes to the geotechnical sites. The contractor is also repairing roads needed for geotechnical or construction access. CBP does not have a precise timeline as to when real estate will be secured for the entire project alignment.
28. *Big Bend 2.* For the Big Bend 2 project, the contractor is currently using publicly available data and other information to initiate design for the Big Bend 2 project. The contractor has not started any of the field work necessary for design, including geotechnical surveys, clearing and grubbing for geotechnical surveys, or mobilization of equipment.
29. CBP expects that the contractor will begin field work for design in those locations where CBP has secured the necessary agreements in the coming weeks. CBP does not have a precise timeline as to when real estate will be secured for the entire project alignment.
30. *Big Bend 3.* Big Bend 3 is similar to Big Bend 1. The contractor has started field work necessary for design in those areas where CBP has secured access. These activities include clearing and grubbing where geotechnical work is occurring and clearing and grubbing access routes to the geotechnical. The contractor is also repairing roads needed for geotechnical or construction access. CBP does not have a precise timeline as to when real estate will be secured for the entire project alignment.
31. *Big Bend 5.* No field work necessary for design has started in the Big Bend 5 project area. CBP expects field work necessary for design will begin in the coming weeks.

ALLEGED HARMS

32. Plaintiffs state for a historic adobe structure like Sacred Heart Church, construction in the vicinity of the Church could cause it to collapse. *See* Mot. 17. These claims appear to be overstated. The Sacred Heart Church is situated near, but not within, the Big Bend 2 project area. As noted, there is currently no construction activity within the Big Bend 2 project area. The Sacred Heart Church is situated on the east side of FM 170. The planned barrier alignment is west of FM 170 between the highway and the Rio Grande River. Plaintiffs also express concerns about vibrations from construction; however, CBP has experience constructing barrier near historic structures, including historic churches in the USBP Rio Grande Valley Sector. In its twenty plus years of experience constructing barrier systems, CBP has never experienced a historic structure collapse from barrier system construction vibrations.
33. Plaintiffs state that, based on their review of the Big Bend waivers, the Big Bend projects will create thousands of acres of “restricted border lands,” including over 11,000 acres within Big Bend National Park and over 140,000 acres east of Big Bend National Park in the Big Bend 5 project area, which Plaintiffs refer to as the “Lower Canyon.” Phillips Decl. ¶ 8. Plaintiffs further express concerns about future access to the Rio Grande River. Jordahl Decl. ¶ 13. These allegations are overstated.
34. As noted above, as part of the Big Bend 4 project, CBP planned to construct approximately 17 miles of non-contiguous vehicle barrier system within and to the east of the National Park. CBP also planned to construct a new patrol road, improve existing roads, and install technology within the National Park. CBP will also construct vehicle barrier system, construct or improve roads and install technology outside the National Park in Presidio and Brewster County, Texas, within the Big Bend Sector. No bollard-style pedestrian barrier is planned as part of the Big Bend 4 project. Thus, while there may be some temporary closures during construction, after the project is complete the Big Bend 4 project should have little to no impact on Plaintiffs’ or any other member of the public’s ability to access areas within Big

Bend National Park or other publicly accessible portions of the Big Bend 4 project area, including the Rio Grande River. The same is true of the Big Bend 5 project area. As noted, within the Big Bend 5 project area, or what plaintiffs refer to as Lower Canyons, CBP will construct approximately 160 miles of vehicle barrier system. While there may be temporary restrictions during construction, once it is complete, vehicle barrier system will not restrict access to any publicly accessible portions of the Big Bend 5 project area.

35. Regarding the Big Bend 1-3 project areas where CBP will construct barrier system, as a part of both planning border barrier system projects and consulting with landowners as part of the real estate acquisition process, CBP has a long history of incorporating gates into barrier system to facilitate access for various activities. Gates have been added throughout the southwest border to allow access to facilitate access to border monuments and to address other concerns. For example, in the United States Border Patrol Rio Grande Valley Sector, where barrier is constructed off the border to address treaty and floodplain issues, gates have been added to ensure access for emergency medical services, to accommodate access for farm machinery/equipment, and other purposes. For the Big Bend 1-3 projects, CBP will consult with impacted landowners and other stakeholders about the installation of gates and other access-related issues as the project moves forward.

36. Plaintiff also express concern about lighting that may degrade dark skies. *See* Mot. 17. However, no new stadium or LED lighting is planned in Big Bend National Park as part of the Big Bend 4 project. Infrared illuminators will be used in place of any LED lighting for cameras that will need to operate at night. In the Big Bend 1, 2, 3, and 5 project areas, and those parts of the Big Bend 4 project area that are outside the National Park, infrared illuminators will also be used in place of LED or stadium lighting in rural areas. In urban areas where LED lighting may be installed, CBP will implement measures such as light shielding to minimize lighting spillage. At this time, because the Big Bend projects are still in the planning phase, no final decisions have been made regarding the precise location of LED lighting or infrared illuminators that may be installed in the project areas.

37. Plaintiffs also express concerns about impacts from the design-related field work that has occurred in Big Bend National Park as part of the Big Bend 4 project. *E.g.*, Devine Decl. ¶¶ 10-15; Jordahl Decl. ¶ 13; Miller Junior Decl. ¶¶ 10-13.
38. As part of every barrier infrastructure project, however, including Big Bend 1-5 projects, CBP conducts biological and cultural surveys of the project area to identify cultural or biological resources, including plant and animal species, artifacts, or historic or cultural sites, that may be within the project footprint. The results of those surveys are used in conjunction with the results of prior surveys, other existing data and literature, and any information provided by stakeholders and federal resource managers. Where there are identified resources, CBP develops means to avoid or minimize impacts where it is possible, which includes consultation with federal or state resource agencies and affected stakeholders.
39. For the Big Bend projects, CBP also did targeted outreach to affected stakeholders, posted information about the projects on [cbp.gov](https://www.cbp.gov), and solicited input from the general public regarding potential impacts from the Big Bend projects. *See, e.g.*, [Vehicle Barrier System Construction– Brewster, Terrell, and Val Verde Counties, Texas – July 2026 | U.S. Customs and Border Protection](https://www.cbp.gov/document/environmental-assessments/vehicle-barrier-system-construction-brewster-terrell-and-val-verde-counties-texas-july-2026), available at <https://www.cbp.gov/document/environmental-assessments/vehicle-barrier-system-construction-brewster-terrell-and-val> (last accessed Aug. 24, 2026); [Vehicle Barrier System and Road Construction– Brewster County, Texas – June 2026 | U.S. Customs and Border Protection](https://www.cbp.gov/document/environmental-assessments/vehicle-barrier-system-and-road-construction-brewster-county-texas-june-2026), available at <https://www.cbp.gov/document/environmental-assessments/vehicle-barrier-system-and-road-construction-brewster-county> (last accessed Aug. 24, 2026); [Border Barrier System– Hudspeth, Jeff Davis, and Presidio Counties, Texas – January 2026 | U.S. Customs and Border Protection](https://www.cbp.gov/document/environmental-assessments/border-barrier-system-hudspeth-jeff-davis-and-presidio-counties-texas-january-2026), available at <https://www.cbp.gov/document/environmental-assessments/border-barrier-system-hudspeth-jeff-davis-and-presidio-counties> (last accessed Aug. 24, 2026). As planning and execution of the Big Bend projects move forward, CBP has and will continue to coordinate with local officials, federal and state land managers, and other stakeholders.
40. Additionally, CBP has environmental monitors that observe construction activities, and every

construction contract includes Best Management Practices (“BMPs”) that must be adhered to by the construction contract. For example, the BMPs for the Big Bend 4 contract are attached as Exhibit G. The BMPs include, among other things:

- Minimizing the number of roads needed for the project and restoring roads used solely for access to natural surface and topography when they are no longer needed (BMP No. 12);
- Ensuring that disturbed soils not paved or otherwise permanently stabilized for construction have topsoil set aside to be used with species native to the project vicinity (BMP No. 15);
- Utilizing measures to prevent invasive species (BMP No. 16-18, 26);
- Minimizing tree and brush removal in threatened or endangered species habitat (BMP No. 30);
- Conducting pre-construction surveys for migratory birds (BMP No. 33);
- Implementing species-specific BMPs for state or federally-listed species (BMP Nos. 36-39; and
- Following protocols for inadvertent discoveries of cultural or historic resources (BMP Nos. 27-28.)

HARMS TO THE GOVERNMENT

41. If the Court were to issue an injunction, it could result in substantial harms to the government.

A court-ordered pause could result in CBP becoming liable for contractor delay claims or other increased costs from the contractors.

42. In addition to harming the government, enjoining CBP from further construction of border infrastructure will harm the general public. As stated in the IIRIRA waivers that were issued for the Big Bend border barrier system projects, 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. 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 24 day of August, 2026.



Paul Enriquez
Infrastructure Portfolio Director
Program Management Office Directorate
U.S. Border Patrol