



Terry Rambler
Chairman

SAN CARLOS APACHE TRIBE

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Tao Etpison
Vice-Chairman

March 15, 2017

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
MCMT/CRSO/Mailstop 0075
245 Murray Lane SW
Washington, D.C. 20528-0075

Re: Executive Order 13767, "Border Security and Immigration Enforcement Improvements"

Dear Secretary Kelly:

On behalf of the San Carlos Council and the 16,000 members of the San Carlos Apache Tribe (the "Tribe"), pursuant to Council Resolution No. MR-17-031, please be advised that we join with the Tohono O'odham Nation and the Inter Tribal Association of Arizona, and provide our opposition to Executive Order No. 13767, issued on January 25, 2017, and to the construction of a physical wall crossing tribal lands along the U.S.-Mexico border.

Border tribes are by necessity active border security partners and, unlike in other states, tribes in Arizona have state and federally sworn officers. For example, the San Carlos Apache Police Department ("SCAPD") and the Tribe's Recreation & Wildlife Department ("R&WD") Rangers, routinely consult through the Indian Country Intelligence Network, and with federal and state law enforcement agencies, including CBP Yuma Sector, on illegal border activities. Recently, for example, the White Mountain Apache Police Department, together with our R&WD Rangers, successfully busted a \$2.9 million marijuana field in Cibecue, Arizona, which was operated by illegal aliens from a Mexican drug cartel. Our Tribe even established our own Residency Control Act, similar to the green card, in which all residents of the Reservation have to register with the SCAPD, due to the presence of reports of illegal aliens and others.

We also recognize that the Tohono O'odham Nation has over 160 years of experience with border issues, including: the expenditure of millions of dollars per year on border security and enforcement; partnerships with Customs and Border Patrol ("CBP") and Immigration and

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Customs Enforcement (“ICE”); support of extensive barriers and fencing along the border, including vehicle barriers; and, has allowed CBP checkpoints on reservation highways. The Tohono O’odham Nation even has the first and only tribal-led NATIVE High Intensity Drug Trafficking Area (HIDTA) Task Force, which partners the Tohono O’odham Police Department with ICE, Homeland Security Investigations, CBP, and the FBI.

However, despite these successes and our collaboration with federal law enforcement, to our knowledge, however, no one from the Trump Administration has reached out to ICIN, or otherwise consulted with our Tribe.

Under Presidential Executive Order No. 13175, orders, memorandums, and departmental and agency policies require consultation and collaboration with affected Indian tribes on federal policies and actions that have a substantial direct effect on tribes. Yet, our Tribe and other border tribes were not consulted prior to the issuance of Executive Order No. 13767. Additionally, the harms of a physical border wall may be constrained by federal law, including but not limited to the Native American Graves Protection and Repatriation Act, the National Environmental Policy Act, the National Historic Preservation Act, and the Federal Water Pollution Control Act. Furthermore, a physical border wall on tribal lands, especially on lands expressly reserved to tribes, would violate the Department’s own Tribal Consultation Policy, which provides, “The United States recognizes the right of Federally-recognized Indian Tribes (“Indian Tribes”) to self-government. Indian Tribes exercise inherent sovereign powers over their members and territories.” *See* DHS Tribal Consultation Policy, I.A.

A physical border wall will further divide tribal historic lands and communities. Tribal members will be prevented from making traditional crossings for domestic, ceremonial, and religious purposes. Tribal members will be denied access to cultural sites, ceremonies, and traditional cemeteries for burying family members. Tribal archeological, sacred sites, and human remains will no longer be protected, and will face obliteration. Tribal lands will be militarized, thus threatening cultural practices. Wildlife will no longer be able to migrate, thus compromising their survival. Endangered species, such as the jaguar and other wildlife sacred to the tribes, will most likely face extinction. We are thus deeply concerned that these harms have not been considered or addressed, and that the required consultation and collaboration has not occurred.

For border tribes, the future of security measures lies in increased tribal-federal partnerships, and federal funding for roads, communications, and technology, not physical walls. We need improvements to roads and other infrastructure heavily used by CBP in order to increase response times, and improvements to technology to relieve manpower and to facilitate increased collaboration between tribal and federal law enforcement agencies.

Tribal lands already have their fair share of physical borders, but walls are vulnerable. We know that criminal enterprises are digging tunnels underneath the walls, and we know that desperate individuals are climbing these walls.

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Border tribes have actively partnered with the federal government to strengthen border security measures, and that engagement must continue. Continuing and enhancing working relationships with CBP, ICE, the FBI and other federal security agencies is the best path forward. Over the last several decades, tribes have supported enhanced technology and government-to-government agreements to improve on-reservation border security coordination. The protection of the border poses many challenges to border tribes, and it is only through appropriate consultation and collaboration that these challenges can be understood, and the safety of the U.S. homeland can be secured.

America would be better served if the money for a border wall went instead to improved technological security, hiring more CBP agents, and coordinating with and funding of tribal police departments.

We therefore urge you to actively consult with affected tribes, especially in Arizona, in producing the comprehensive study of the security of the southern border required by Executive Order 13767 and any border security policies and actions affecting tribes. We look forward to working with you.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler
Chairman

Cc: The Honorable Edward Manuel, Chairman, Tohono O'odham Nation, edwardd.manuel@tonation-nsn.gov
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San Carlos Apache Tribe
Tao Etpison, Vice Chairman
San Carlos Council Members
Alejandro Benally, Chief, SCAPD
Jerald Thompson, Chief, Rangers
File

**SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA**

No. MR-17-031

**(Opposing Construction of a Border Wall through Tribal Lands on the Southern
U.S. Border)**

WHEREAS, the San Carlos Apache Tribe (the “Tribe”) is a federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the San Carlos Council (“Council”) has the authority, among other things, to “represent the Tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to [the Tribe’s] Constitution and Bylaws,” pursuant to Article V, Sections 1(a) of the Amended Constitution and By-Laws of the San Carlos Apache Tribe; and

WHEREAS, the Tohono O’odham and their ancestors have from time immemorial inhabited lands from present-day southern Arizona to the Sea of Cortez in northern Mexico; and

WHEREAS, in 1854 the United States created an international boundary with Mexico that cuts through Tohono O’odham lands and that forms the 62-mile southern boundary of the Tohono O’odham Nation’s main reservation; and

WHEREAS, the Tohono O’odham Nation’s members experience the direct negative impacts from illegal immigration and drug trafficking across the international border, including violence and crime, damage to the Nation’s cultural resources, increased demands on tribal law enforcement, illegal dumping, and environmental degradation; and

WHEREAS, the Tohono O’odham Nation has for decades authorized border security measures designed to counter drug- and human-trafficking and other border crimes when those measures protect Nation’s members, lands and resources, and the security of the United States while respecting the Nation’s sovereignty and members’ rights; and

WHEREAS, Executive Order No. 13175, “Consultation and Coordination with Indian Tribal Governments,” presidential memorandums, and departmental and agency policies require executive branch agencies and officials to consult and collaborate with affected Indian tribes on federal policies and actions having a substantial direct effect on tribes; and

WHEREAS, the duty to protect tribal lands and resources, and tribal sovereignty and jurisdiction, including in tribes' interactions with the United States Customs and Border Protection ("CBP"), Immigration and Customs Enforcement ("ICE"), and other agencies within the United States Department of Homeland Security ("DHS"), is consistent with the DHS Tribal Consultation Policy in which, "The United States recognizes the right of Federally-recognized Indian Tribes ("Indian Tribes") to self-government. Indian Tribes exercise inherent sovereign powers over their members and territories." DHS Tribal Consultation Policy, I.A.; and

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

WHEREAS, while the Tohono O'odham Nation coordinates closely with Customs and Border Protection and Immigration and Customs Enforcement and has supported the construction of vehicle barriers, the Tohono O'odham Nation opposes the construction of a wall on its southern boundary with Mexico; and

WHEREAS, a continuous wall on tribal lands along the southern border would

- further divide tribal historic lands and communities; and
- prevent Tohono O'odham Nation's members from making traditional crossings for domestic, ceremonial, and religious purposes, including the annual St. Francis pilgrimage to Magdalena, Mexico and cultural runs;
- deny tribal members access to cultural sites, ceremonies, and traditional cemeteries for burying family members;
- prevent wildlife from conducting migrations essential for survival and general life, health and existence;
- injure endangered species such as the jaguar and other wildlife sacred to tribes;
- destroy saguaro cactus and other culturally significant plants;
- militarize the lands on the Tohono O'odham Nation's southern boundary;
- disturb or destroy tribal archeological, sacred sites, and human remains;
- and

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

WHEREAS, the Tribe could be impacted by a physical wall along the Mexican border, as well as by other provisions of Executive Order 13767; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the San Carlos Apache Tribe that the Tribe supports the efforts of the Tohono O'odham Nation and other similarly situated tribes in their funding requests to combat illegal immigration and drug trafficking across the international border.

BE IT FURTHER RESOLVED by the Council of the San Carlos Apache Tribe that the Tribe opposes:

- (1) the construction of a physical wall on tribal lands on the southern border; and
- (2) the application of IIRIRA Section 102(c) waivers of federal and other laws on tribal lands.

BE IT FURTHER RESOLVED by the Council of the San Carlos Apache Tribe that the Chairman, or in his absence, the Vice Chairman, or designee, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

CERTIFICATION

I, the undersigned, Secretary of the San Carlos Council, hereby certify that the Council is composed of eleven (11) members, of whom nine (9), constituting a quorum, were at a Regular Meeting hereto held on the 7th day of March, 2017, and that the foregoing Resolution No. MR-17-031 was duly adopted by a vote of FOR: 8; OPPOSED: 0; ABSTAINED: 0; of the Tribal Council pursuant to Article V, Section 1 (a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe, effective, February 24, 1954.


Santana Dillon, Tribal Secretary
SAN CARLOS APACHE TRIBE