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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**
15 **TUCSON DIVISION**

16 Center for Biological Diversity; and
17 Conservation CATalyst,

18 *Plaintiffs,*

19 v.

20 Kristi Noem, in her official capacity
21 as Secretary of Homeland Security;
22 U.S. Department of Homeland
23 Security; and U.S. Customs and
24 Border Protection,

25 *Defendants.*

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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INTRODUCTION

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2 1. In this action, Plaintiffs challenge the Department of Homeland Security’s
3 (“DHS” or “the Agency”) unconstitutional repeal of bedrock environmental protections
4 and dozens of other federal laws to expedite massive border wall construction on the
5 Arizona-Mexico border that will destroy the border’s last remaining significant wildlife
6 corridor and could lead to the extirpation of the iconic and critically endangered jaguar
7 (*Panthera onca*) in the United States.
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9 2. Arizona’s San Rafael Valley is the beating biodiversity heart of the broader
10 Sky Islands archipelago, a globally recognized hotspot hosting the highest diversity of
11 mammals, reptiles, and ant species anywhere in the country. Located approximately 60
12 miles southeast of Tucson and cradled among the Patagonia Mountains, Huachuca
13 Mountains and federally designated jaguar critical habitat, the San Rafael Valley is the
14 most significant remaining connectivity corridor for the endangered jaguar in the U.S.,
15 whose very existence in this country depends on its ability to traverse to southern breeding
16 grounds in Mexico. The Valley also serves as a critical movement corridor for myriad
17 other species—including endangered ocelots (*Leopardus pardalis*), black bears,
18 pronghorn, and mountain lions—who move between Arizona and the Mexico state of
19 Sonora to find mates, food, and other resources. The Valley corridor spans 32 miles of
20 oak woodlands, grassland savannah, riparian galleries, and mountainous slopes, where the
21 border is largely marked only by vehicle barriers and cattle-fencing that generally allow
22 for wildlife movement.
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27 3. On June 5, 2025, DHS Secretary Kristi Noem announced that the agency
28 would construct new border wall, roads, and related infrastructure spanning nearly 41

1 miles that cleaves through the San Rafael Valley and Nogales (“Arizona Border Wall
2 Project” or “the Project”) in the U.S. Border Patrol Tucson Sector. *See* Determination
3 Pursuant to Section 102 of the Illegal Immigration Reform Immigration Reform and
4 Immigrant Responsibility Act of 1996, As Amended, 90 Fed. Reg. 23946 (June 5, 2025)
5 (“Arizona Waiver”).
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7 4. The proposed Arizona Border Wall Project will entail immense construction
8 of walls and roads, including the erection of 27 miles of new 30-foot-tall bollard walls
9 sprawling west from the Patagonia Mountains to the steep terrain of the Coronado
10 National Memorial. While wildlife can generally move through existing vehicle barriers
11 marking the U.S.-Mexico border in this area, new bollard walls will be impermeable for
12 larger wildlife and thereby close critical transboundary pathways. The Project’s closure
13 of this vital corridor could lead to the extirpation of jaguars in the entire United States and
14 threaten the recovery of ocelots. In addition to blocking migratory routes for many
15 additional animals, the Project will also destroy habitats of 17 endangered and threatened
16 species, disturb wildlife during construction due to associated noise and light pollution,
17 divide genetic interchange, impact groundwater availability in local aquifers, and disrupt
18 the cultural integrity of borderland communities. The proposed Project also slices twice
19 across the Santa Cruz River, whose birthplace is the San Rafael Valley, and exacerbates
20 the water body’s already imperiled hydrological health. If completed, the Project will
21 create Arizona’s longest unbroken stretch of border wall amounting to 100 miles.
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26 5. Because this substantial Project will result in numerous adverse impacts on
27 wildlife and the environment, DHS typically would be required to comply with the
28 nation’s essential environmental protection laws before proceeding with the Project. For

1 example, DHS would be mandated to engage in consultation under the Endangered
2 Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, to evaluate the impacts of the Project on
3 imperiled species and ensure it does not threaten their survival or recovery. Similarly,
4 under the National Environmental Policy Act, (“NEPA”), 42 U.S.C. § 4321 *et seq.*, DHS
5 would be required to evaluate the environmental impacts of the Project, receive and
6 respond to public comment, and consider reasonable alternatives.
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8 6. However, the Agency’s June 5, 2025 announcement invoked section 102(c)
9 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”),
10 Pub. L. 104-208, Div. C, 110 Stat. 3009-546 (codified at 8 U.S.C. § 1103 note), as
11 amended. IIRIRA grants the DHS Secretary sweeping authority to “waive all legal
12 requirements,” that she determines, in her “sole discretion,” are “necessary to ensure
13 expeditious construction” of physical barriers and roads in the vicinity of the U.S.-Mexico
14 border. *Id.*
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17 7. Relying on this unbridled—and unconstitutional—delegation of legislative
18 authority, the DHS Secretary announced a waiver for the Arizona Border Wall Project
19 (“Arizona Waiver”), specifically exempting the Project from any requirement to comply
20 with the ESA and NEPA, as well as over 30 other federal environmental, public health
21 and safety, religious freedom, historic preservation, and other laws. 90 Fed. Reg. at 23946.
22

23 8. Secretary Noem’s issuance of the Arizona Waiver—and the waiver
24 authority provided by IIRIRA section 102(c) generally—violates the foundational
25 principle of the separation of powers rooted in the U.S. Constitution. Article I vests in
26 Congress alone the exclusive legislative authority to make, amend, and repeal laws for the
27 country. U.S. Const. art. I, § 8. Article II vests in the Executive Branch alone the duty to
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1 faithfully execute those laws. U.S. Const. art. II, § 3.

2 9. IIRIRA corrupts that carefully-wrought architecture by endowing the DHS
3 Secretary, an unelected Executive Branch official, with quintessential legislative
4 authorities: (i) the policymaking power to unilaterally establish the relative priority of
5 border wall construction against all other legally protected public and private interests,
6 violating the non-delegation doctrine enshrined in Article I, § 1 of the Constitution; and
7 (ii) the lawmaking power to independently nullify the statutes securing those interests
8 without complying with bicameralism and presentment procedures, violating the
9 Presentment Clause. U.S. Const. art. I, §§ 1, 7. Compounding this constitutional infirmity,
10 the statute largely insulates the DHS Secretary’s waiver decisions from judicial review by
11 entirely eliminating ordinary circuit court review of a constitutional challenge to the
12 waiver authority and instead makes discretionary review by the U.S. Supreme Court the
13 sole means of appellate review of a federal district court decision.
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17 10. The Center for Biological Diversity and Conservation CATalyst
18 (collectively, “Plaintiffs”) are harmed by the DHS Secretary’s unlawful issuance of the
19 Arizona Waiver—as well as section 102(c) of IIRIRA generally—and bring this action
20 seeking declaratory and injunctive relief and other remedies as set forth below.
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22 **JURISDICTION**

23 11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
24 and 1346, 5 U.S.C. §§ 701 to 706, and 8 U.S.C. § 1103 note. The causes of action arise
25 under the laws of the United States and the U.S. Constitution, and the United States is a
26 defendant. The relief requested is authorized pursuant to 28 U.S.C. §§ 1651 and 2201 to
27 2202, and 5 U.S.C. §§ 701 to 706.
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VENUE

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2 12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and
3 (e), because the violations are occurring here, and a substantial part of the events or
4 omissions giving rise to the claims have occurred in this district due to decisions made by
5 Federal Defendants, and/or failure(s) to act by Federal Defendants. Additionally, Plaintiffs
6 Center for Biological Diversity and Conservation CATalyst reside in Tucson, Arizona.
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PARTIES

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9 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit
10 environmental organization dedicated to the protection of native species and their habitats
11 through science, policy, and environmental law. The Center has more than 1.8 million
12 members and online activists. The Center is headquartered in Tucson, Arizona. The Center
13 brings this action on its own behalf and on behalf of its adversely affected members.
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16 14. Center members live in or regularly visit the U.S.-Mexico borderlands
17 region in the San Rafael Valley and vicinity of the Arizona Border Wall Project. Center
18 members regularly use areas impacted by and/or adjacent to the location of the Arizona
19 Border Wall Project for hiking, camping, viewing and researching wildlife, photography,
20 and other vocational, recreational, and professional activities. Center members derive
21 recreational, spiritual, professional, scientific, educational, and aesthetic benefit from their
22 interactions with wildlife, their signs and habitat in these areas. Center members have
23 specific intentions to continue to use and enjoy these areas frequently and on an ongoing
24 basis in the future.
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27 15. For example, Center member and Tucson resident Sky Jacobs is a biologist
28 and naturalist who has worked and recreated along the areas of the U.S.-Mexico border

1 where wall construction is planned to take place. He regularly travels to experience the
2 scenic beauty and wildlife in and around the San Rafael Valley, including the Patagonia
3 Mountains, Canelo Hills, and Huachuca Mountains. Mr. Jacobs enjoys hunting, camping,
4 hiking, photography, wildlife watching, and being in the vast natural landscapes in and
5 near the San Rafael Valley. He also has aesthetically and spiritually enjoyed the vast
6 natural and uninterrupted beauty of the Valley since the 1990s. He plans to return to the
7 San Rafael Valley sometime between later summer and early fall this year. In addition to
8 the rich biodiversity and beauty that makes this area so special to Mr. Jacobs, the presence
9 of wild jaguars in particular solidifies it as a truly unique and thrilling place. He has seen
10 jaguar tracks on multiple occasions just south of the border in Sonora, Mexico. Knowing
11 jaguars inhabit the area north of the border and that he could one day see a jaguar in the
12 wild makes these places incredibly special to him. Accordingly, DHS Secretary Noem's
13 Arizona Waiver of key environmental laws and planned border wall construction will
14 harm his recreational, aesthetic, and cultural interests in the magnificent areas along the
15 San Rafael Valley and nearby areas. The installation of border wall that is impassable to
16 wildlife, as well as infrastructure that will harm or cause wildlife to avoid the area, will
17 forever alter Mr. Jacobs' experience and reasons to visit these places. The loss of key
18 species who rely on the essential corridors, and loss of countless other wildlife that will
19 avoid or be driven out of the area will, among other things, negatively impact his ability
20 to hunt, photograph nature, and fully experience nature in these areas. Mr. Jacobs will be
21 deprived of the opportunity to meaningfully participate in the public process, such as by
22 drafting NEPA comments, to better inform DHS of the consequences of the proposed
23 Project given his deep knowledge of the impacted area.

1 16. Similarly, Arizona resident Russ McSpadden is a Center member who
2 currently serves as Southwest Conservation Advocate for the Center. Through his
3 conservation work, he has engaged in monitoring, advocacy, and public education related
4 to jaguars and ocelots in Arizona, as well as other species and habitat along the U.S.-
5 Mexico border. Through his wildlife monitoring work, he has been a part of capturing
6 multiple detections of jaguars and an ocelot who have used the essential wildlife corridor
7 that will be destroyed by the proposed border wall construction. Specifically, he took part
8 in trail camera monitoring that captured footage of the wild jaguar El Jefe north of the San
9 Rafael Valley in the Santa Rita Mountains in 2015, and in 2024, Mr. McSpadden captured
10 trail camera footage of an ocelot in the Whetstone Mountains in southern Arizona. Mr.
11 McSpadden also helped facilitate the naming of wild jaguars, including El Jefe, Yo'oko
12 Nahsuareo, and O:shad Ñu:kudam, who relied—and in the case of O:shad, continues to
13 rely—on the corridor that will be destroyed by DHS's construction of an impermeable
14 border wall. He co-authored a 2023 report detailing the negative environmental impacts
15 that would result from the use of 1,800 stadium lights installed along the U.S.-Mexico
16 border, as well as a recent 2025 report on the impacts of the proposed Arizona Border
17 Wall Project on sensitive borderlands and wildlife. Mr. McSpadden regularly travels to
18 areas serving as jaguar and ocelot habitat along the area where proposed construction
19 would take place to hike, camp, and observe and photograph wildlife and their signs. He
20 travels to the Huachuca mountains about three to five times a year to look for jaguars and
21 ocelots, and camps in the San Rafael Valley about three to four times a year. Additionally,
22 he often visits Fort Huachuca, Carr Canyon, Ramsey Canyon, and regularly hikes along
23 the segment of the Arizona National Scenic Trail near the Coronado National Memorial,
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1 where the wall construction is currently planned to take place. He has concrete plans to
2 return to the San Rafael Valley between late July and early August of this year to wildlife
3 watch, camp, and hike, and plans to take his son hiking in the Huachuca Mountains this
4 upcoming Labor Day. Mr. McSpadden wants to see this last critical wildlife corridor and
5 biodiversity hotspot remain intact so that he and his son can continue to have the
6 opportunity to recreate in areas where jaguars and ocelots live. The planned construction
7 and replacement of permeable vehicle barriers with impassable walls will inhibit
8 wildlife—including jaguars and ocelots—from crossing between the United States and
9 Mexico. Given the importance of these corridors to the continued existence of jaguars and
10 ocelots in the U.S., this would strip Mr. McSpadden of the opportunity to view these
11 magnificent animals and their signs in their natural habitat in Arizona, capture footage of
12 them on his cameras, and forever alter his enjoyment of these areas. Mr. McSpadden’s
13 interests will be additionally harmed by the DHS’s waiver of several key environmental
14 laws to rush construction of the proposed border wall. He will be deprived of the
15 opportunity to meaningfully participate in the public process, such as by drafting NEPA
16 comments, and will be left in the dark about the far-ranging impacts of the planned
17 construction on the places and wildlife that he has dedicated his life and career to
18 protecting.

23 17. Laiken Jordahl, Tucson resident and Center member since 2017, also works
24 to protect wildlife, ecosystems, and public lands throughout the desert Southwest and
25 U.S.-Mexico borderlands through his roles as Borderlands Campaigner and Southwest
26 Conservation Advocate for Plaintiff Center. Prior to joining the Center, he served as a
27 National Park Service Wilderness Fellow, where he prepared in-depth reports assessing
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1 threats to wilderness character to National Parks, including from U.S. Border Patrol
2 activities such as road development, infrastructure, and vehicle use. While working at the
3 Center, he co-authored a 2023 report detailing the negative environmental impacts that
4 would result from the use of 1,800 stadium lights installed along the U.S.-Mexico border,
5 as well as a recent 2025 report on the impacts of the proposed Arizona Border Wall Project
6 on sensitive borderland wildlife. Growing up in Arizona and having spent significant time
7 in the borderlands, Mr. Jordahl feels a strong emotional connection to public lands,
8 especially along the U.S.-Mexico border. That commitment led him to pledge his career
9 to protecting these special places along with the people and animals who live there. As an
10 avid hiker and camper, he has spent a great deal of time traversing, birdwatching,
11 stargazing, and wildlife-watching in and near the San Rafael Valley and Santa Cruz River.
12 He travels to the San Rafael Valley at least twice a year to camp, hike, and be in nature,
13 and periodically brings student groups to the border at the Santa Cruz River to educate
14 them on the importance of cross-border wildlife corridors and the ecological value of the
15 riparian areas. Mr. Jordahl has concrete plans to return to the San Rafael Valley in the
16 later summer to early autumn during the monsoon season. He will be harmed by the
17 expedited and underexamined construction of environmentally harmful, impassable
18 border wall fencing that will destroy the landscape that he cares so deeply about and halt
19 transboundary wildlife movement, forever altering the landscape and his enjoyment of
20 these places. Mr. Jordahl has witnessed firsthand the environmental devastation inflicted
21 by border wall construction elsewhere along the borderlands, and the lasting impacts on
22 soil, vegetation, and the halting of migrating wildlife in their tracks, preventing animals
23 like desert bighorn sheep, mule deer, Sonoran pronghorn, kit foxes, javelina, and black
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1 bears from finding water, food, and mates. The destruction of one of the last intact wild
2 places along the borderlands, especially one so physically and emotionally close to
3 home—a place that Mr. Jordahl has spent years working to protect—would undoubtedly
4 harm his professional, aesthetic, recreational, and spiritual interests, and forever alter his
5 reasons to be in these places. The Arizona Waiver will additionally deprive him of the
6 opportunity to participate in the public process normally involved with similar large-scale
7 environmental projects, as well as access to important information regarding the far-
8 reaching environmental impacts likely to occur, such as the likely installation and use of
9 artificial lighting that harms sensitive species who live near or otherwise rely on this
10 important area.
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13 18. The Center itself has a long history of environmental advocacy within the
14 borderlands region generally and the Arizona borderlands region specifically. The Center
15 has worked for nearly three decades to oppose environmentally harmful border fencing
16 and other harmful border security projects along the U.S.-Mexico border, including the
17 “Tucson Sector” region. The Center also has a long history of advocating for the protection
18 of rare wildlife habitat that would be impacted by Arizona border wall construction, as
19 well as advocating for specific species that would be harmed by border wall construction
20 in the San Rafael Valley, including jaguar and ocelot.
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23 19. In particular, the Center has been engaged in active campaign and litigation
24 efforts to secure and improve protections for jaguars for over 35 years. After the U.S. Fish
25 and Wildlife Service (“FWS”) removed jaguars from protection under the ESA in 1980,
26 in 1997, in response to a Center campaign, jaguars were again protected as endangered.
27 Since then, the Center has consistently campaigned and litigated over increased
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1 protections for jaguars. For example, it litigated to successfully halt a proposed open-pit
2 mine in jaguar critical habitat south of Tucson, litigated to successfully secure critical
3 habitat and win a recovery plan for jaguars, petitioned FWS to reintroduce jaguars in New
4 Mexico and expand critical habitat in both Arizona and New Mexico, and is currently
5 litigating against a road construction project that would adversely impact one of the two
6 known wild jaguars in the United States.

8 20. Similarly, the Center has been involved with campaign and litigation efforts
9 to protect federally endangered ocelots. For example, in 2017, it secured a settlement
10 requiring the preparation of environmental analyses to protect ocelots from federal
11 wildlife killing activities in Arizona.

13 21. Plaintiff CONSERVATION CATALYST is a Tucson-based nonprofit
14 organization founded in 2008 that specializes in education, outreach and conducting
15 scientific research on wild cats in conflict with people, including jaguars and ocelots in
16 Southern Arizona, in and near the proposed Arizona Border Wall Project. Through its
17 wildlife monitoring work, Conservation CATalyst has captured footage of jaguars and
18 ocelots who rely on the corridor that would be blocked by the proposed Arizona Border
19 Wall Project. For example, it captured footage of the wild jaguar El Jefe in 2015, in the
20 Santa Rita Mountains just outside of Tucson. It also captured footage of the wild jaguars
21 Yo'oko and O:shad in the Huachuca Mountains, and Sombra in the Chiricahua
22 Mountains. Moreover, Conservation CATalyst uses the San Rafael Valley as an outdoor
23 classroom to educate students, journalists, and other members of the public on the
24 importance of wild cats such as jaguars and ocelots, as well as habitat protection and
25 connectivity to their continued survival, and is currently litigating against a road
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1 construction project that would adversely impact one of the two known wild jaguars in the
2 United States. Conservation CATalyst brings this action on its own behalf and on behalf
3 of its adversely affected members.

4 22. For example, Arizona resident Christopher Bugbee is a member of both
5 Plaintiff organizations. He currently serves as general manager and senior researcher for
6 Plaintiff Conservation CATalyst and a Southwest Conservation Advocate for Plaintiff
7 Center for Biological Diversity. Through his conservation work, Mr. Bugbee has studied
8 and engaged in conservation work related to jaguars in southeastern Arizona since 2012.
9 Through his wildlife monitoring work, he helped document the first wild ocelot in the
10 Santa Rita Mountains, captured footage of the jaguar Yo'oko in the Huachuca Mountains,
11 and trained the scat detection dog who located the first genetically-verified jaguar scat on
12 U.S. soil. Through his work with Conservation CATalyst, Mr. Bugbee routinely uses
13 public lands in the Huachuca Mountains—including Coronado National Memorial and the
14 San Rafael Valley—as an outdoor classroom to teach students about the unique
15 biodiversity in the region. He has worked with members of the Pascua Yaqui, Tohono
16 O'odham and Navajo tribes in Arizona, conducting outreach and in return learning the
17 historical and cultural significance of jaguars to indigenous Arizona cultures, and also
18 assisted in the tribal naming of the jaguars Yo'oko Nahsuareo and O:shad Ñu:kudam, who
19 have relied on the critical wildlife corridor that will be destroyed by the proposed Arizona
20 Border Wall Project. Mr. Bugbee's intense love of the San Rafael Valley and southern
21 Huachuca Mountains, as well as the amazing wildlife that live there, helped lead him to
22 move to Cochise County. He now regularly travels to these areas to hike, camp, and
23 observe and photograph wildlife and their signs. He plans to return to the San Rafael
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1 Valley sometime between late July and early August of this year to wildlife watch, camp,
2 and hike, and plans to take his eight-year-old daughter hiking in the Huachuca Mountains
3 soon to check wildlife cameras. The DHS's waiver of key environmental laws to barrel
4 ahead with construction of the Arizona Border Wall Project will cause Mr. Bugbee
5 significant professional, scientific, recreational, and spiritual harm. He has an immense
6 passion for jaguars and ocelots, especially those that have and continue to inhabit this
7 irreplaceable landscape that holds his most cherished personal and professional
8 experiences with these species. He wants to continue to experience and share this special
9 place with his family, friends, and students, and further instill in others his deep love of
10 wild cats and the story of hope and resilience embodied by the triumphant return of the
11 jaguar to their home in Arizona. Through DHS's waivers, Mr. Bugbee is deprived of the
12 opportunity to participate, share his expertise, and access information regarding the extent
13 of harm to this area and the species he has committed his career to studying and protecting.
14 He believes the San Rafael Valley is the single most important wildlife corridor for jaguars
15 and ocelots in this country, and without that corridor, it—and the adjoining areas that will
16 feel the loss of these wild cats—will be forever changed and diminished.

21 23. Plaintiffs Center and Conservation CATalyst, and their respective members,
22 are harmed by Defendants' constitutional violations. The proposed Arizona Border Wall
23 Project entails a massive construction operation with associated noise, lighting, and other
24 impacts, and which will likely necessitate new land clearing, grading, staging, and other
25 associated activities that will impact the surrounding environment. The construction—
26 which will occur without the benefit of compliance with NEPA, the ESA and other laws—
27 will negatively impact the wildlife habitat and imperiled species described above, which
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1 will injure Plaintiffs and their members’ aesthetic, conservation, recreational, scientific,
2 educational, wildlife preservation, professional, and spiritual interests in those habitats
3 and species. These injuries would be redressed by the requested relief, as absent the
4 Arizona Waiver, the harmful construction either would not occur or would only occur
5 after compliance with the requirements of NEPA, the ESA and other laws, which are
6 designed to eliminate, reduce and/or mitigate the negative environmental consequences of
7 federal agency actions and provide meaningful public notification, comment, and
8 government transparency. Plaintiffs have no other adequate remedy at law.
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11 24. Defendant KRISTI NOEM, Secretary of the U.S. Department of Homeland
12 Security, is sued in her official capacity. Secretary Noem is the official ultimately
13 responsible under federal law for ensuring that the actions and management decisions of
14 DHS, and its component agency U.S. Customs and Border Protection (“CBP”) comply
15 with all applicable laws and regulations. Secretary Noem invoked the IIRIRA section
16 102(c) waiver in relation to the Arizona Border Wall Project on June 5, 2025.
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18 25. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY is an
19 agency within the executive branch of the U.S. government. The Department is
20 responsible for ensuring border security along the U.S.-Mexico border consistent with
21 applicable legal requirements.
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23 26. Defendant U.S. CUSTOMS AND BORDER PROTECTION is an agency
24 within the U.S. Department of Homeland Security. CBP is responsible for ensuring border
25 security along the U.S.-Mexico border consistent with applicable legal requirements.
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LEGAL BACKGROUND

A. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996

27. Congress initially enacted IIRIRA in 1996 to, for the first time, provide federal agencies with specific direction regarding the location and extent of specific border barriers to be constructed. P.L. 104-208, div. C., codified at 8 U.S.C. § 1103 note. Prior to IIRIRA, the authority to construct border barriers derived from the general statutory responsibility of the Attorney General (now the DHS Secretary) to “guard the boundaries and borders of the United States against the illegal entry of aliens.” Immigration and Nationality Act, §103(a)(5), 8 U.S.C. §1103(a)(5). That authority continues to exist independent of IIRIRA.

28. While it has been amended several times, IIRIRA Section 102 remains the primary federal statutory provision addressing border barriers. Section 102(a) remains substantively the same as originally enacted in 1996, providing the U.S. Attorney General (now the DHS Secretary) with the general policy direction to “take such actions as may be necessary to install additional physical barriers and roads . . . in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.”

29. At the time Section 102(a) was enacted, Congress also provided that “to the extent the Attorney General determines necessary to ensure expeditious construction of the barriers and roads under this Section,” the specific requirements of the ESA and NEPA may be waived.

30. As originally enacted, IIRIRA Section 102(b) “carr[ied] out subsection (a)” by identifying specific border barriers to be constructed, establishing specific deadlines

1 for the construction of such barriers, and other requirements. The only border fence
2 segment initially mandated by Congress under IIRIRA Section 102(b) was the
3 construction of 14 miles of fencing in San Diego, California.

4 **B. The 2005 REAL ID Act Amendments to IIRIRA Section 102(c)**

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6 31. Enacted in 2005 as an unrelated legislative rider to the “Emergency
7 Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami
8 Relief, 2005,” Section 102 of the REAL ID Act amended the Section 102(c) IIRIRA
9 waiver provision in two primary ways. P.L. 109-13, div. B.

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11 32. First, the REAL ID Act amendment expanded the IIRIRA Section 102(c)
12 waiver authority beyond NEPA and the ESA to permit the DHS Secretary “to waive *all*
13 *legal requirements* [that] such Secretary, *in such Secretary’s sole discretion*, determines
14 necessary to ensure expeditious construction of the barriers and roads under this Section”
15 (emphasis added). Congress provided neither specific laws to be voided nor any further
16 guidance in such authority granted to the Secretary.

17
18 33. Second, Section 102 of the REAL ID Act amended the waiver authority
19 under IIRIRA Section 102(c) to severely restrict judicial review concerning any waiver
20 decision in the following respects: (i) purporting to limit “all causes or claims” arising
21 from any waiver determination made by the DHS Secretary to alleged constitutional
22 violations only; (ii) requiring any such constitutional challenge to be filed not later than
23 60 days after the Secretary’s determination, effective upon being published in the Federal
24 Register; and (iii) eliminating appellate court review of the district court’s decision on the
25 alleged constitutional violations and instead only permitting review upon a writ of
26 certiorari to the U.S. Supreme Court.
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1 **C. The 2006 Secure Fence Act Amendments to IIRIRA Section 102(b)**

2 34. The Secure Fence Act further amended IIRIRA in 2006. P.L. 109-367.
3 Section 3 of the Secure Fence Act (“Construction of Fencing and Security Improvements
4 in Border Area from Pacific Ocean to Gulf of Mexico”) significantly expanded upon
5 IIRIRA Section 102(b). Under the Secure Fence Act amendments to IIRIRA Section
6 102(b), Congress removed the provisions referring specifically to the 14-miles of fencing
7 in San Diego and instead directed DHS to “provide for at least 2 layers of reinforced
8 fencing [and] the installation of additional physical barriers, roads, lighting, cameras, and
9 sensors” in five specific segments along the U.S.-Mexico border totaling approximately
10 850 miles. Former IIRIRA §102(b)(1)(A)(i)-(v).
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13 **D. The 2008 Consolidated Appropriations Act Amendments to IIRIRA Section**
14 **102(b)**

15 35. Section 564 of the 2008 Consolidated Appropriations Act amended Section
16 102(b) of IIRIRA once again, this time to further remove any restrictions on DHS’s far-
17 reaching law-making powers with respect to border barriers and roads as defined under
18 the 2006 Secure Fence Act amendments. These modifications—which remain the law to
19 date—include eliminating the prior Congressional parameters that border barriers be built
20 in specific locations, and instead simply outlining that such barriers be placed “along not
21 less than 700 miles of the southwest border where fencing would be most practical and
22 effective,” and amending the “priority areas” requirement to direct that DHS identify and
23 construct 370 miles of border barriers by December 31, 2008. IIRIRA § 102(b)(1)(A)-(B).
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26 36. While giving DHS this new power to unilaterally determine where to
27 undertake environmentally destructive border barrier activities, Congress also maintained
28

1 its breathtaking delegation to allow DHS to determine whether and when to waive
2 compliance with any and all laws in connection with these activities. Instead, the 2008
3 Appropriations Act simply included a largely meaningless consultation requirement,
4 directing that DHS “shall consult with the Secretary of the Interior, the Secretary of
5 Agriculture, States, local governments, Indian tribes, and property owners in the United
6 States to minimize the impact on the environment, culture, commerce, and quality of life
7 for the communities and residents located near the sites where” border barriers are
8 constructed. IIRIRA § 102(b)(1)(C).
9

10
11 **E. IIRIRA Section 102, As Amended**

12 37. The relevant Sections of IIRIRA Section 102, codified at 8 U.S.C. § 1103
13 note, in its current version to date provide:

14 (a) **In general.**--The Secretary of Homeland Security shall take such actions
15 as may be necessary to install additional physical barriers and roads
16 (including the removal of obstacles to detection of illegal entrants) in the
17 vicinity of the United States border to deter illegal crossings in areas of
18 high illegal entry into the United States.

18 (b) **Construction of fencing and road improvements along the border.**—
19 (1) **Additional fencing along southwest border.**—

19 (A) **Reinforced fencing.**--In carrying out subsection (a) [of this
20 note], the Secretary of Homeland Security shall construct
21 reinforced fencing along not less than 700 miles of the southwest
22 border where fencing would be most practical and effective and
23 provide for the installation of additional physical barriers, roads,
24 lighting, cameras, and sensors to gain operational control of the
25 southwest border.

24 (B) **Priority areas.**--In carrying out this Section [Pub. L. 104-208,
25 Div. C, Title I, § 102, Sept. 30, 1996, 110 Stat. 3009-554, which
26 amended this Section and enacted this note], the Secretary of
27 Homeland Security shall—

26 (i) identify the 370 miles, or other mileage determined by the
27 Secretary, whose authority to determine other mileage
28 shall expire on December 31, 2008, along the southwest
border where fencing would be most practical and

1 effective in deterring smugglers and aliens attempting to
2 gain illegal entry into the United States; and

3 (ii) not later than December 31, 2008, complete construction
4 of reinforced fencing along the miles identified under
5 clause (i).

6 **(C) Consultation.**

7 (i) **In general.**--In carrying out this Section, the Secretary of
8 Homeland Security shall consult with the Secretary of the
9 Interior, the Secretary of Agriculture, States, local
10 governments, Indian tribes, and property owners in the
11 United States to minimize the impact on the environment,
12 culture, commerce, and quality of life for the
13 communities and residents located near the sites at which
14 such fencing is to be constructed

15 (ii) **Savings provision.**--Nothing in this subparagraph may
16 be construed to—

17 (I) create or negate any right of action for a State,
18 local government, or other person or entity
19 affected by this subsection; or

20 (II) affect the eminent domain laws of the United
21 States or of any State.

22 **(D) Limitation on requirements.**--Notwithstanding subparagraph
23 (A), nothing in this paragraph shall require the Secretary of
24 Homeland Security to install fencing, physical barriers, roads,
25 lighting, cameras, and sensors in a particular location along an
26 international border of the United States, if the Secretary
27 determines that the use or placement of such resources is not the
28 most appropriate means to achieve and maintain operational
control over the international border at such location.

* * *

29 **(c) Waiver.—**

30 (1) **In general.**--Notwithstanding any other provision of law, the
31 Secretary of Homeland Security shall have the authority to waive all
32 legal requirements such Secretary, in such Secretary's sole
33 discretion, determines necessary to ensure expeditious construction
34 of the barriers and roads under this Section. Any such decision by the
35 Secretary shall be effective upon being published in the Federal
36 Register.

37 **(2) Federal court review.—**

38 (A) **In general.**--The district courts of the United States shall have
exclusive jurisdiction to hear all causes or claims arising from
any action undertaken, or any decision made, by the Secretary
of Homeland Security pursuant to paragraph (1). A cause of

1 action or claim may only be brought alleging a violation of the
2 Constitution of the United States. The court shall not have
jurisdiction to hear any claim not specified in this subparagraph.

3 **(B) Time for filing of complaint.**--Any cause or claim brought
4 pursuant to subparagraph (A) shall be filed not later than 60 days
5 after the date of the action or decision made by the Secretary of
Homeland Security. A claim shall be barred unless it is filed
within the time specified.

6 **(C) Ability to seek appellate review.**--An interlocutory or final
7 judgment, decree, or order of the district court may be reviewed
8 only upon petition for a writ of certiorari to the Supreme Court
of the United States.

9 **FACTUAL BACKGROUND**

10 **A. Past Construction of Border Barriers and Use of the Waiver Authority Under** 11 **IIRIRA**

12 38. Since IIRIRA was enacted in 1996, the federal government has spent
13 billions of dollars to implement the statute and create many roads and barriers and
14 undertake other measures that Congress has specifically directed in amended versions of
15 Section 102(b). Over the course of the projects undertaken pursuant to Section 102(b),
16 DHS has relied on the Section 102(c) waiver authority several times. *See, e.g.*, 72 Fed.
17 Reg. 2535 (Jan. 19, 2007) (Barry M. Goldwater Range in Arizona); 72 Fed. Reg. 60870
18 (Oct. 26, 2007) (in the San Pedro Riparian National Conservation Area in Arizona); 73
19 Fed. Reg. 18230 at 18293 (April 3, 2008), as amended; 73 Fed. Reg. 19078 (April 8, 2008)
20 (various areas in New Mexico, Texas, Arizona, and California.).
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23 39. In a 2017 executive order, then President Donald J. Trump directed DHS to
24 construct a “secure, contiguous, and impassable physical barrier” along the entirety of the
25 nearly 2,000-mile-long U.S.-Mexico border. Exec. Order No. 13767 § 3(e), 82 Fed. Reg.
26 8793 (Jan. 25, 2017). Prior to the 2017 executive order, *all* previous waivers invoked
27 under Section 102(c) of IIRIRA were for projects *required* under Section 102(b).
28

1 Subsequent to the 2017 executive order, DHS Secretaries have issued over 30 waiver
2 decisions—all for projects *outside* the scope of Section 102(b)—that amounted to over
3 1,100 miles of executed and planned construction traversing Arizona, California, New
4 Mexico, and Texas. *See, e.g.*, 83 Fed. Reg. 3012 (Jan. 22, 2018) (New Mexico Waiver);
5 84 Fed. Reg. 21798 (May 15, 2019) (Arizona Waiver); 84 Fed. Reg. 21800 (May 15,
6 2019) (El Centro, California Waiver); 84 Fed. Reg. 21,801 (May 15, 2019) (Tecate,
7 California Waiver).
8

9 **B. The June 5, 2025 IIRIRA Section 102(c) Waiver**

10 40. On January 20, 2025, President Trump declared a “national emergency at
11 the southern border,” which directed the DHS Secretary to “construct additional physical
12 barriers along the southern border.” Presidential Proclamation 10886, Declaring a
13 National Emergency at the Southern Border of the United States, 90 Fed. Reg. 8327 (Jan.
14 20, 2025). On the same day, President Trump issued an executive order further directing
15 the DHS Secretary, in conjunction with the Secretary of Defense, to “take all appropriate
16 action to deploy and construct temporary and permanent physical barriers to ensure
17 complete operational control of the southern border of the United States.” Exec. Order
18 14165, Securing Our Borders, 90 Fed. Reg. 8467 (Jan. 20, 2025).
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22 41. On June 5, 2025, Secretary Noem issued a Determination in the Federal
23 Register purporting to invoke IIRIRA Section 102(c) in order to waive the application of
24 NEPA, the ESA and numerous additional laws otherwise applicable to “additional
25 physical barriers and roads” in the “project area,” which is defined as a two-part section
26 amounting to approximately 41 miles in the U.S. Border Patrol Tucson Sector: (i) 7.6
27 miles starting one mile west of Border Monument 121 extending east to Border Monument
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1 117; and (ii) 33.4 miles starting at Border Monument 99 and extending west. 90 Fed. Reg.
2 at 23946 (Jun. 5, 2025).

3 42. In the Arizona Waiver, DHS Secretary Noem purportedly waived “in their
4 entirety” the following federal statutes—and “all federal, state, or other laws, regulations,
5 and legal requirements deriving” from them—with respect to the Arizona Border Wall
6 Project:
7

- 8 i. National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.*;
- 9 ii. Endangered Species Act, 16 U.S.C. 1531 *et seq.*;
- 10 iii. Clean Water Act, 33 U.S.C. § 1251 *et seq.*;
- 11
- 12 iv. National Historic Preservation Act, Pub. L. 89-665;
- 13 v. Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*;
- 14 vi. Migratory Bird Conservation Act, 16 U.S.C. § 715 *et seq.*;
- 15 vii. Clean Air Act, 42 U.S.C. § 7401 *et seq.*;
- 16
- 17 viii. Archaeological Resources Protection Act, 16 U.S.C. § 470aa *et seq.*
- 18 ix. Paleontological Resources Preservation Act, 16 U.S.C. § 470aaa *et*
19 *seq.*;
- 20 x. Federal Cave Resources Protection Act of 1988, 16 U.S.C. § 4301 *et*
21 *seq.*;
- 22
- 23 xi. National Trails System Act, 16 U.S.C. § 1241 *et seq.*;
- 24 xii. Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*;
- 25
- 26 xiii. Noise Control Act, 42 U.S.C. § 4901 *et seq.*;
- 27 xiv. Solid Waste Disposal Act, as amended by the Resource Conservation
28 and Recovery Act, 42 U.S.C. § 6901 *et seq.*,

- 1 xv. Comprehensive Environmental Response, Compensation and
2 Liability Act, 42 U.S.C. § 9601 *et seq.*;
- 3 xvi. Archaeological and Historic Preservation Act, 54 U.S.C. § 320301 *et*
4 *seq.*;
- 5 xvii. Antiquities Act, 54 U.S.C. § 320301 *et seq.*;
- 6 xviii. Historic Sites, Buildings, and Antiquities Act, 54 U.S.C. § 3201-
7 320303 & 320101-320106;
- 8 xix. Eagle Protection Act, 16 U.S.C. § 668 *et seq.*;
- 9 xx. Native American Graves Protection and Repatriation Act, 25 U.S.C.
10 § 3001 *et seq.*;
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12
13 xxi. Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*;
- 14 xxii. Section 438 of the Energy Independence and Security Act, 42 U.S.C.
15 § 17094;
- 16
17 xxiii. National Fish and Wildlife Act of 1956, 16 U.S.C. § 742a *et seq.*;
- 18 xxiv. Fish and Wildlife Coordination Act, 16 U.S.C. § 661 *et seq.*;
- 19 xxv. Wild and Scenic Rivers Act, 16 U.S.C. § 1281 *et seq.*;
- 20 xxvi. Farmland Protection Policy Act, 7 U.S.C. § 4201 *et seq.*;
- 21 xxvii. Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.*;
- 22 xxviii. National Wildlife Refuge System Improvement Act of 1997, 16
23 U.S.C. § 668dd-668ee);
- 24
25 xxix. Wild Horse and Burro Act, 16 U.S.C. § 1331 *et seq.*);
- 26 xxx. National Park Service Organic Act and National Park Service
27 General Authorities Act, 54 U.S.C. § 100101-100102, 100301-
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100303, 100501-100507, 100701-100707, 100721-100725, 100751-100755, 100901-100906, 102101-102102;

xxxi. 16 U.S.C. § 450y, as amended;

xxxii. 67 Stat. c18 (Nov. 5, 1952);

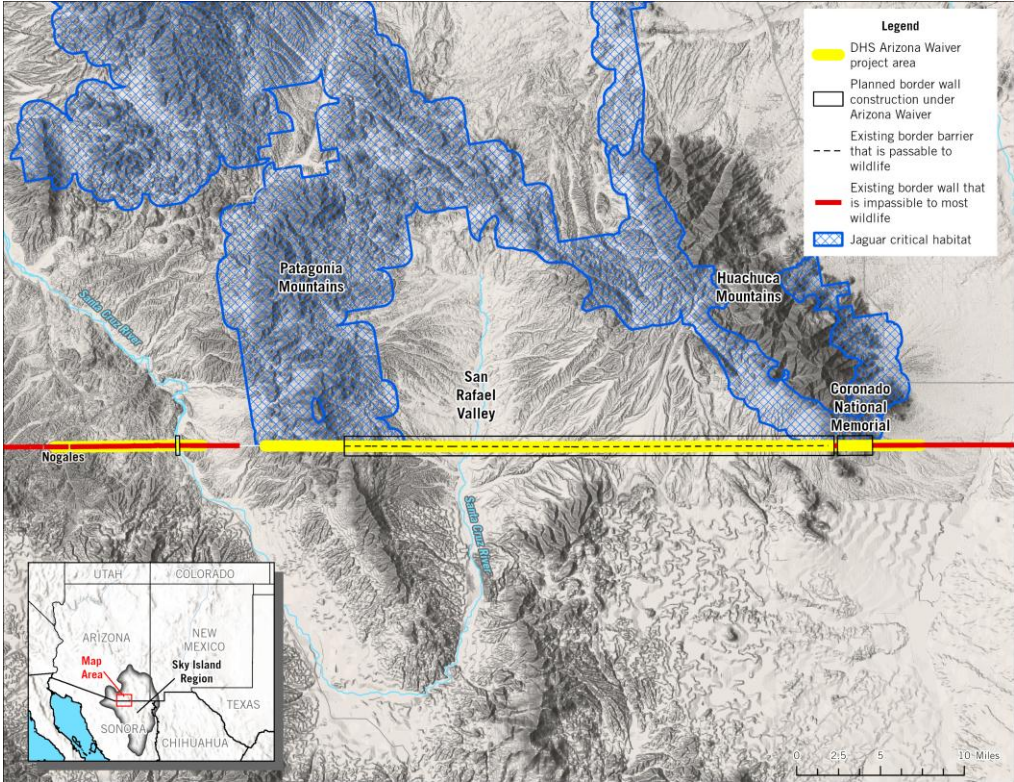
xxxiii. National Forest Management Act of 1976, 16 U.S.C. § 1600 *et seq.*;
and

xxxiv. Multiple Use and Sustained Yield Act of 1960, 16 U.S.C. § 528-531.
90 Fed. Reg. at 23946-47.

C. The Arizona Border Wall Project

43. DHS Secretary Noem’s Arizona Waiver purports to waive the application of the ESA, NEPA, and numerous other laws as applied to the Arizona Border Wall Project, an area covering 41 miles of the Arizona-Mexico border. 90 Fed. Reg. at 23946 (June 5, 2025). As further described by CBP, the Project will involve the erection of 27 miles of new bollard walls—30-foot-high barriers made of six-inch-squared steel bollards spaced four inches apart, which are obstructive of wildlife movement—to replace existing vehicle barriers—Normandy-style, low-lying structures with barbed wire—which are generally permeable and do not block wildlife movement. The main segment of new wall construction will cleave through the borderlands starting 15 miles east of the Nogales Port of Entry for 24.7 miles, accompanied by a second and third segment slicing through the Santa Cruz River for 0.2 miles and the Coronado National Memorial for 2.1 miles. *See* map below.

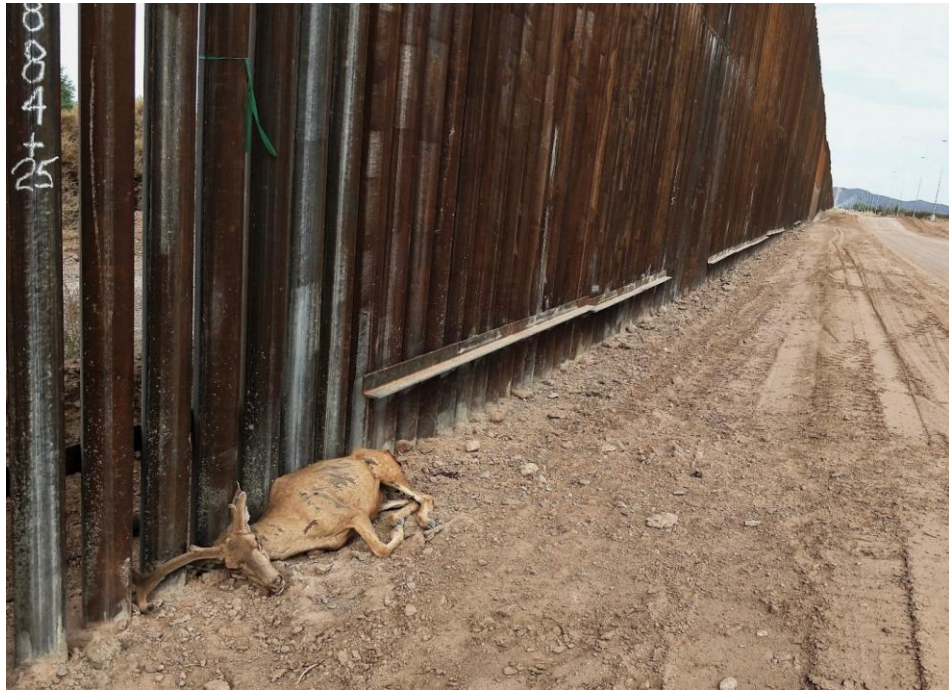
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Map of DHS's proposed Arizona Border Wall Project as outlined in the Arizona Waiver
Credit: Kara Clauser, GIS Specialist, Center for Biological Diversity

44. The Arizona Border Wall Project is planned to cleave through the San Rafael Valley and greater Sky Islands region, which is world-renowned for its immense and unique biodiversity. Nestled between the Patagonia Mountains and Huachuca Mountains and surrounded by federally protected jaguar critical habitat, the San Rafael Valley is a critical lifeline connecting imperiled jaguars and ocelots to vital breeding populations in Sonora, Mexico. It is a crucial corridor for these and other rare and iconic species like black bears, pronghorn, mountain lions, white tailed deer, mule deer, javelinas, coyotes and bobcats, who rely on transboundary movement between to search for shelter, food, mates, and other vital resources. The 32-mile Valley corridor is replete with oak woodlands, grassland savannah, and mountainous slopes, and the border largely contains only vehicle barriers and cattle-fencing that can generally be traversed by

1 wildlife.



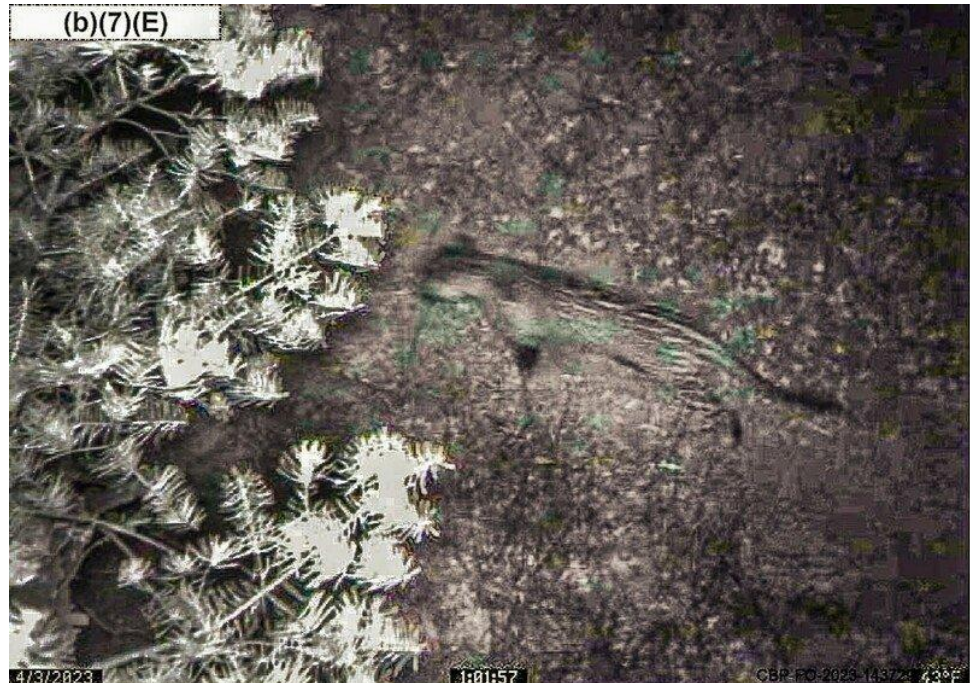
13 *Photo 1: A dead mule deer stuck along the new 30-foot-high bollard border wall*
14 *at Organ Pipe Cactus National Monument*

15 *Photo credit: Anonymous*

16 45. In the U.S.-Mexico borderlands, border wall construction has already
17 negatively impacted the amount of area, quality, and connectivity of available habitat by
18 limiting wildlife movement and dispersal of species who cannot penetrate or get around
19 existing walls. Border walls can limit essential movement of wildlife, making it more
20 difficult for individuals to find mates, prey, and other resources. They can also lead to
21 direct mortality, disrupt ecosystems, increase human activity in affected areas, fragment
22 habitats, and elevate risk of genetic isolation. Specifically, one study of the San Rafael
23 Valley and surrounding area found that transboundary wildlife crossings decreased by
24 86% in areas where border wall had been erected—entirely blocking migrations of large
25 mammal species like mule deer, pronghorn, and black bear, as well as obstructing smaller
26 mammal species like desert tortoise, wild turkey, and javelina. *See Photo 1.*

1 46. The Arizona Border Wall Project would essentially be the death knell for
2 jaguars in the United States, eliminating over 53 years-worth of jaguar conservation
3 efforts, as well as countless agency, organizational, and tribal efforts and resources, and
4 leaving an irreplaceable void in the landscape that would be continuously felt by the
5 communities who have lived beside them. Jaguars originally evolved in North America
6 and have existed here for hundreds of thousands of years, if not longer. As the world’s
7 third largest cat and apex predators who control prey populations and ecosystem health,
8 jaguars are large, carnivorous felids who once roamed throughout the American
9 Southwest until they were hunted to local extinction by the 1960s. Jaguars are listed as
10 endangered under the ESA. Notably, the Arizona Border Wall Project region has seen the
11 highest number of modern jaguar detections anywhere in the country. In recent years, at
12 least three wild jaguars were detected numerous times in the San Rafael Valley region: El
13 Jefe (Spanish for “the boss”), named by students at Felizardo Valencia Middle School in
14 Tucson, Arizona; Yo’oko Nahsuareo (meaning “jaguar warrior”), named by students from
15 the Pascua Yaqui Pueblo; and most recently, a young male named O:shad Ñu:kudam
16 (meaning “jaguar protector”) (“O:shad”), whose name was voted on by students and other
17 Tribal members from the Tohono O’odham Nation. *See* Photo 2. These individuals
18 depended—and in the case of O:shad, continue to depend—on the San Rafael Valley
19 corridor to travel into Mexico to become part of the breeding population which sustains
20 individual populations in the United States. Because this is the single most important area
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*Photo 2: The jaguar O:shad taken April 3, 2023
on a federal remote field camera in the Huachuca Mountains, released to the
Center for Biological Diversity through a Freedom of Information Act request
Image credit: Courtesy of U.S. Customs and Border Protection*

for transboundary jaguar movement between the U.S. and Mexico, the construction of impassible border wall presents an existential threat to the continued existence and recovery of jaguars in the United States. Cutting off this vital pathway in the San Rafael Valley would also have broader implications for jaguar conservation beyond the border. See Photo 3. Due to the isolation of the closest breeding population of jaguars in northwestern Mexico, the limited availability of prey in that area, and the current and impending impacts of climate change, the Project’s closure of an essential crossing corridor and further fragmentation of vital jaguar habitat may have serious implications for the long-term resilience and survival of the species in both the United States and northwestern Mexico.



Photo 3: The jaguar Yo'oko in the Huachuca Mountains on February 20, 2017
Photo credit: Russ McSpadden, Center for Biological Diversity

47. The Arizona Border Wall Project also threatens the recovery of federally endangered ocelots. Weighing as much as 35 pounds, ocelots are elusive cats with graceful bodies that may be nearly five feet long. The ocelot is listed as an endangered species under the ESA throughout its range in South and Central America, Mexico, and southern Texas and southern Arizona. 47 Fed. Reg. 31670 (July 21, 1982). Fewer than 100 ocelots are thought to currently inhabit the U.S. Multiple endangered ocelots have been detected in the San Rafael Valley corridor and would be negatively impacted by the Arizona Border Wall Project. *See Photo 4.* In July of 2024, trail camera footage showed an ocelot in a Sky Island Mountain range in Arizona. Additionally, researchers have confirmed the presence of a breeding population of ocelots in northern Sonora, just 30 miles south of the border. Consequently, the Project's closure of this wildlife crossing could mean the extirpation of ocelots in Arizona and would significantly impede recovery of ocelots in the U.S. as a

1 whole.



10 *Photo 4: Detection of ocelot in southeast Arizona on July 24, 2024*
11 *Photo credit: Russ McSpadden, Center for Biological Diversity*

12 48. In addition to the physical obstruction of wildlife movement, the Arizona
13 Border Wall Project will have numerous additional negative impacts on the San Rafael
14 Valley and surrounding areas and communities based on previous DHS and CBP activities
15 associated with border wall construction elsewhere at the U.S.-Mexico border. As the
16 proposed Project runs through the federally designated habitats for numerous endangered
17 and threatened species, the construction of physical walls and roads are almost certain to
18 destroy these sensitive habitats and ecosystems. The added noise and light pollution from
19 construction activities can cause stress, interfere with wildlife movement and their ability
20 to hunt, communicate, and avoid predators. Southern border wall construction has also
21 typically involved the installation of large, environmentally destructive stadium lights,
22 which could similarly have far-reaching negative impacts in the form of light pollution
23 known to disrupt wildlife behavior, such as navigation, feeding, predator avoidance,
24 reproduction, and sleep. Further, harm to iconic species like the jaguar negatively impacts
25 the cultural identity of the communities they have historically lived alongside, including
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1 members of the Tohono O’odham Nation for whom jaguars continue to hold great
2 historical, cultural, and spiritual significance. In addition, the construction’s anticipated
3 use of water for concrete and dust suppression from nearby sources like the Santa Cruz
4 River is likely to impact water availability in the aquifers and further impact the
5 environment. Finally, wall construction is planned to traverse the Santa Cruz River twice,
6 which requires installing concrete foundations that disturb water flows of this already
7 imperiled river.
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10 49. In short, the Arizona Border Wall Project is a major construction project
11 that poses significant negative threats to wildlife, their habitats, and the greater
12 surrounding ecosystem and borderlands culture. By exempting the Arizona Border Wall
13 Project from NEPA, the ESA, and other environmental protection laws, as well as laws
14 that protect Native American cultural sites, DHS is cutting the public out of this important
15 decision-making process and short-circuiting well-established federal processes designed
16 to safeguard our environment and its natural resources.
17

18 **CLAIMS FOR RELIEF**

19 **FIRST CLAIM FOR RELIEF**

20 **Constitutional Violation**

21 **Violation of the Non-Delegation and Separation of Powers Doctrines**

22 **Article I, Section 1 of the U.S. Constitution**

23
24 50. Plaintiffs incorporate by reference the allegations in all preceding
25 paragraphs.

26 51. Article I, Section 1 of the U.S. Constitution directs that “[a]ll legislative
27 Powers herein granted shall be vested in a Congress of the United States.”
28

1 52. Article II, Section 1 of the U.S. Constitution directs that “[t]he executive
2 Power shall be vested in a President of the United States of America.”

3 53. Under these constitutional provisions, Congress may not delegate legislative
4 authority to an executive branch agency, or in the case of IIRIRA Section 102(c), may not
5 delegate legislative authority to an individual executive branch official. *See Loving v. U.S.*,
6 517 U.S. 748, 758 (1996).

7 54. “The nondelegation doctrine is rooted in the principle of separation of
8 powers that underlies our tripartite system of Government.” *Mistretta v. United States*,
9 488 U.S. 361, 371 (1989). Specifically, the doctrine bars Congress from “transfer[ing] to
10 another branch powers which are strictly and exclusively legislative.” *Gundy v. U.S.*, 588
11 U.S. 128, 128 (2019) (internal quotations omitted).

12 55. IIRIRA Section 102(c) unconstitutionally delegates to the Executive
13 Branch, namely the DHS Secretary, the quintessential legislative power of prioritizing
14 competing public policies through the sweeping “authority to waive” any laws that, in her
15 “sole discretion,” are “necessary to ensure expeditious construction” of physical barriers
16 in the borders’ vicinity. This capacious provision grants the Executive the paradigmatic
17 legislative functions of: (i) considering the relative prioritization of expeditiously
18 constructing the border wall against the universe of all other legally protected public and
19 private interests; and (ii) making the major policy decision of choosing which laws to
20 disregard—and which to comply with—in pursuing border wall construction. Such an
21 action that “[d]ecid[es] what competing values will or will not be sacrificed to the
22 achievement of a particular objective” is “the very essence of *legislative choice*.”
23 *Rodriguez v. United States*, 480 U.S. 522, 526 (1987)(emphasis added).
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1 56. Substantial delegation of legislative powers from Congress to the Executive
2 may be permissible only if Congress “lay[s] down by legislative act an intelligible
3 principle” which “clearly delineates the general policy” and “boundaries of th[e] delegated
4 authority.” *Mistretta*, 488 U.S. at 372-73 (internal quotations omitted).
5

6 57. Congress failed to pass the permissible bar here. It proffered neither general
7 policy nor boundaries to guide the DHS Secretary’s decision-making as to which laws to
8 strike or keep when undergoing border construction. The mere objective of building
9 barriers does not circumscribe the Secretary’s waiver discretion. Nor do the terms
10 “necessary” and “expeditious” act as boundaries for waiving laws because they are
11 defined exclusively by whatever the Secretary desires them to mean in her “sole
12 discretion.”
13

14 58. Moreover, the “degree of agency discretion that is acceptable varies
15 according to the scope of the power congressionally conferred.” *Federal Communications*
16 *Commission v. Consumers’ Research*, 606 U.S.____ (2025), slip op. at 11 (internal
17 quotations omitted). Where Congress seeks to grant the Executive broad and important
18 authority—exemplified in IIRIRA’s power to waive any statutorily-protected interest in
19 perpetuity as applied to a vast and undefined geographical scope—concerns for liberty are
20 heightened, and Congress is thus required to provide more detailed instruction to channel
21 the broad authority in keeping with legislative intent.
22

23 59. Therefore, IIRIRA violates Article I, Section 1 of the U.S. Constitution, the
24 non-delegation doctrine, and the separation of powers doctrine, rendering DHS’s reliance
25 on IIRIRA to support its Arizona Waiver decision unconstitutional.
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SECOND CLAIM FOR RELIEF

Constitutional Violation
Violation of the Presentment Clause
Article I, Section 7 of the U.S. Constitution

60. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

61. Article I, § 7 of the Constitution provides that any federal statute must pass both houses of Congress, and “before it become a Law, be presented to the President of the United States; If he[/she] approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.”

62. The “[a]mendment and repeal of statutes, no less than enactment,” must conform with the presentment and bicameralism requirements of Article I. *INS v. Chadha*, 462 U.S. 919, 954 (1983). Specifically, the Supreme Court has stated that the Executive Branch cannot void any law without Congress passing a law voiding the previous law and presenting it to the President for signature. *Clinton v. City of New York*, 524 U.S. 417 (1998).

63. IIRIRA Section 102(c), as written, is facially invalid because it vests unilateral power in the DHS Secretary to waive the application of any laws in areas along the border for purposes of building border walls without Congress passing a law to void the specific laws at issue or limit their application, and presenting it to the President, as required by Article I, Section 7 of the U.S. Constitution.

64. Separately, the statute is also invalid as applied to this case. The Arizona

1 Waiver purported to waive NEPA, the ESA and numerous other laws that would otherwise
2 apply to the Arizona Border Wall Project at issue in this litigation. In so doing, Secretary
3 Noem chose which laws to waive and which laws to obey, without an act of Congress
4 specifying which particular law or set of laws could be waived and without the
5 presentation of said Congressional act to the President.
6

7 65. The IIRIRA Section 102(c) waiver authority generally, and DHS Secretary
8 Noem's Arizona Waiver specifically, are unconstitutional infringements upon the
9 lawmaking procedures required under Article I, § 7 of the Constitution.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs Center for Biological Diversity and Conservation
13 CATalyst pray that this Court:

14 1. Declare that the Arizona Waiver specifically and the IIRIRA Section 102(c)
15 waiver authority generally violate the U.S. Constitution's fundamental separation of
16 powers and non-delegation doctrines;
17

18 2. Declare that the Arizona Waiver specifically and the IIRIRA Section 102(c)
19 waiver authority generally violate the U.S. Constitution's Presentment Clause;
20

21 3. Set aside and declare null and void the Arizona Waiver and the authority
22 contained in IIRIRA section 102(c) due to its constitutional infirmities;

23 4. Enjoin Defendants from implementing the Arizona Border Wall Project,
24 until and unless Defendants comply with all laws that would apply absent the unlawful
25 waiver;
26

27 5. Retain jurisdiction in this action to ensure compliance with the Court's
28 Orders;

1 6. Award Plaintiffs their reasonable costs of litigation, including reasonable
2 attorneys' fees and costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412,
3 and/or other authority; and

4 7. Grant such other and further relief as the Court may deem just and proper.

5
6 DATED: July 9, 2025

Respectfully submitted,

7 /s/ Anchun Jean Su

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