



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

December 13, 2022

Mr. Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

The Honorable Gary Restaino
United States Attorney
U.S. Attorney's Office
40 N. Central Ave, Ste. 1800
Phoenix, AZ 85004

Dear Mr. Kim and Restaino,

This letter is in response to your December 12, 2022, letter, in which you state the Department of Agriculture and the United States Department of Interior, "intends to file legal action in relation to the State of Arizona's unlawful trespass and construction of makeshift shipping container barriers on federal lands along the United States' border with Mexico, as well as the Governor's executive order purporting to authorize the same." In the letter, you make a series of unfounded or inaccurate claims that warrant a response. Please be advised, Arizona stands ready to cooperate with the federal government on construction of a border wall and always has been.

Claim one: the temporary border barriers "present serious public safety risks and environmental harms"

In August, following a historic investment by the Arizona State Legislature, Arizona began placing shipping containers to protect the state from the unprecedented crisis confronting our communities and law enforcement. **The number one public safety risk and environmental harm has come from inaction by the federal government to secure our border.**

In January 2021, when the federal government abruptly halted border wall construction, our forests and public lands in Arizona quickly became strewn with abandoned clothing and property, and an ever-increasing number of migrants who continue to flow into the state. This influx has resulted in fields of

agricultural produce being contaminated¹, hospitals overflowing and U.S. citizens not being able to enjoy their homes or property due to trespassers.²

In addition to this unsustainable humanitarian crisis and agricultural impact, bad actors continue to exploit the crisis through drug and human trafficking and other crime. According to data from the United States Customs and Border Protection, the Tucson Sector recorded 186 events involving Fentanyl in FY2022, compared with 95 events in FY2020.

Arizona and its citizens have borne the brunt and expense in addressing these issues. Arizona has continued to request dialogue with the Federal Government through letters to the President and Secretary Mayorkas, yet we have not received a substantive response to these appeals.

These serious public safety risks were created by the federal government's inaction, international criminal organizations taking advantage of such inaction, and necessitated the state to take urgent action and erect a temporary border barrier.

Claim two: the temporary border barriers “interfere with federal agencies’ ability to carry out their official duties”

Contrary to this unsupported assertion, local law enforcement professionals have in reality lauded the installation of the temporary barrier³ and according to conversations between state officials and Customs and Border Patrol officials, the barrier has assisted the agency in taking operational control of the border.⁴

As the State of Arizona cited in our complaint filed on October 21, 2022, John Modlin, chief of the Border Patrol's Tucson Sector, explained that closing these gaps is a helpful strategy because “[i]f Yuma has 10 gaps and people were crossing all 10 gaps, it's much more difficult for us to deal with than if Yuma has one or two gaps and the majority of traffic is crossing through those gaps.”

¹ “According to a statement, migrants are passing through Yuma on foot, through farming fields, which can destroy crops and lead to ‘significant economic loss and property damage in the farming community.’” <https://www.abc15.com/news/region-central-southern-az/yuma/yuma-declares-local-emergency-due-to-number-of-migrants-passing-through-city>

² “The Yuma community does not have the infrastructure to handle thousands of people crossing the border in need of food, shelter and medical services. The surge of migrants the federal government has allowed to trek over the border has the grave potential to greatly impact and strain our community.” <https://azgovernor.gov/governor/news/2022/08/governor-ducey-issues-executive-order-fill-gaps-border-wall>

³ Yuma County Sheriff Leon Wilmot stated, “The border barrier helps put a stop to the revolving door for the cartels that has been the southern border. Yuma area law enforcement has been greatly impacted and has dealt with an increase in trespassing calls, criminal damage cases, 911 calls for rescues in the desert, and 50 death investigations this year” <https://azgovernor.gov/governor/news/2022/09/governor-ducey-tours-yuma-border-barrier>

⁴ Arizona State Legislator Tim Dunn stated, “CBP says the containers assisted in gaining operational control... The Border Barrier Mission in Yuma is critical and has assisted in gaining operational control over the chaos and let our brave law enforcement officers do their job more efficiently.” <https://azgovernor.gov/governor/news/2022/10/governor-ducey-arizona-border-barrier-mission-will-not-be-deterred>

The need for the temporary border barrier was also validated by United States Senator Mark Kelly, who stated, “I understand the governor’s sentiment on this and why he wanted to do that. There’s a crisis at the border and it’s important to address it.”

Claim Three: Arizona’s actions stymie federal efforts to complete construction of border infrastructure projects in certain locations.

We are encouraged by the federal government’s long-overdue efforts to finally begin constructing a border barrier. However, the announcement from the Department of Homeland Security that it would finally be filling gaps in the border wall dates back to December 2021. **One year ago.**

Yet, no information about when construction would begin was made available even though Arizona’s agencies have made regular inquiries on the issue to their federal agency counterparts. So, Arizona had no other choice but to address the crisis at its southern border and began erecting a temporary border barrier — a move validated by Senator Kelly.⁵

Arizona’s border barrier was always intended to be a temporary solution until the federal government erects a permanent solution. In fact, following our previous discussion, construction has ceased. Arizona agencies and contractors stand ready to assist in the removal of the barriers, but the federal government owes it to Arizonans and all Americans to release a timeline on when construction will begin and details about how it will secure the border while construction is underway.

Furthermore, as mentioned during our conversations, it is vital that the federal government project manager responsible for building the promised wall be identified and put in direct communication with Arizona’s point of contact to effectuate an orderly construction timeline. This is a normal exercise in any joint federal and state operation – that lawyers step aside and those actually responsible for protecting our border step up to coordinate in a meaningful way.

Finally, we note that the issues you raise in your letter are already the subject of federal litigation. Additional legal action would be redundant to that case.

We look forward to discussing this and other issues to ensure collaboration in the interest of addressing the very real public safety risks at the southern border, and keeping the public safe.

Sincerely,



Anni L. Foster
General Counsel
Office of the Arizona Governor

⁵ United States Senator Mark Kelly stated, “I understand the governor’s sentiment on this and why he wanted to do that. There’s a crisis at the border and it’s important to address it.”
<https://ktar.com/story/5203567/mark-kelly-says-he-gets-duceys-initiative-to-close-border-wall-gaps/>