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August 31, 2020

Hon. Pete Saenz
Mayor, City of Laredo
1110 Houston Street
Laredo, Texas 78040

Re: Landowners' Response to Your Letter Regarding Laredo Border Wall

Dear Mayor Saenz:

The undersigned attorneys represent landowners in the Laredo area in the path of President Trump's planned border wall, including Sacred Heart Children's Home, Laredo College, Zapata County, Azteca Low-Income Housing Project, International Bank of Commerce, Fasken Oil & Ranch, Ltd., as well as other ranchers, farmers, developers, small-business owners, and single-family homeowners. We are writing to address your letter to the *Laredo Morning Times* published this past Wednesday, August 26, 2020.

In that letter you state: "The stark realization and inevitable acceptance of 'the Wall' is becoming more and more apparent to some Laredoans, especially if President Trump is re-elected." We want to assure you that, based upon our legal research and analysis, the Wall is anything but inevitable in the Laredo Sector, regardless of the electoral outcome. In this letter we will address the two points in your letter that implicate legal issues pertinent to Wall construction and demonstrate the fatal flaws in your analysis.

- **Your letter states that the Laredo Wall is inevitable because of: "The federal government having issued and awarded construction contracts of the Wall, namely, the Bulkhead and Bollard physical structures."**

You are correct that the federal government has awarded contracts for construction of the Wall in the Laredo Sector—to date, two contracts to be exact, totaling \$565 million.

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But the federal government had no legal authority to do so. Indeed, in a May 4, 2020 filing in federal district court, the City of Laredo, of which you, of course, are Mayor, expressly so argued and admonished the Government to “refrain from binding itself to any such contract pending this Court’s resolution of the parties’ competing arguments as to whether Congress has granted the Government the requisite construction authority.” But, disrespecting the Court’s jurisdiction to decide that issue, the Government awarded the first of the two contracts just four days later, on May 8, 2020.

In the announcements of its awards of those two contracts, Customs and Border Patrol pointed to the 2020 Department of Homeland Security Appropriations Act as the source of funding. In that 2020 Act, Congress appropriated \$1.375 billion “for the construction of barrier system along the southwest border.” But DHS cannot invoke the 2020 Act as the source of funding for construction in the Laredo Sector for two independent reasons.

First, referring to its \$1.375-billion appropriation, Congress imposed an unambiguous restriction: “no such amounts may be obligated prior to the [Secretary of Homeland Security’s] submission of” an “expenditure plan” to Congress. Though Congress mandated Acting DHS Secretary Chad Wolf to submit such plan by no later than this past March, to date he has failed to do so. Thus, DHS was not congressionally authorized to obligate \$565 million in contracts for construction of the Wall in the Laredo Sector, and Acting Secretary Wolf’s attempted obligation of those funds was unlawful, thereby rendering the contracts invalid.

Second, in the 2020 Act, Congress specifically stated that the \$1.375 billion that it appropriated “shall only be available for barrier systems that . . . are constructed in the highest priority locations as identified in the Border Security Improvement Plan.” DHS has not, and cannot, show that the lands in the Laredo Sector on which it has awarded construction contracts fall within “the highest priority locations as identified in the Border Security Improvement Plan.” At the time it prepared that Plan, DHS designated projects in California, Arizona, and New Mexico as the highest priority locations for Wall construction, not Laredo.

- **Your letter states that the Laredo Wall is inevitable because of: “Congressional (both Democrats and Republicans) appropriation for the Laredo wall; together with the Supreme Court’s posture of favoring President Trump’s Wall contracts and construction.”**

First, Congress has *not* appropriated funds for construction of the Laredo Wall. As demonstrated above, DHS is prohibited from expending funds for such construction in the Laredo Sector, as the City of Laredo itself has previously argued.

Second, the Supreme Court has never indicated that it favors President Trump's Wall contracts and construction. The Court has only confronted these issues in preliminary motions arising out of lawsuits by non-landowner parties, such as the Sierra Club, who arguably lack judicial standing to challenge the Wall's construction; the Court has yet to say a word on the merits of those challenges. Our clients, by contrast, are all landowners; they unquestionably have standing to challenge the federal government's condemnation of their properties to construct a Wall that DHS has no congressional authority to build. And our clients are confident that, if necessary, they can successfully fight construction of an unlawful Wall on their properties all the way to the Supreme Court.

Very truly yours,

/s/ Douglas W. Alexander
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cc: Robert Eads, City Manager
Kristina L. Hale, Asst. City Manager & Acting City Attorney
United States Representative Henry Cuellar
Members of the Laredo City Council