

Cornell University Law School

Scholarship@Cornell Law: A Digital Repository

Cornell Law Faculty Publications

Faculty Scholarship

7-16-2020

Harm to Border Irreparable

Sara C. Bronin

Follow this and additional works at: <https://scholarship.law.cornell.edu/facpub>



Part of the [Environmental Law Commons](#)

Harm to border irreparable



SARA C. BRONIN

The Trump administration once again has unilaterally waived all federal laws that normally would protect against the environmental and cultural destruction being wrought by constructing a wall on the southern border. Despite numerous lawsuits, including one filed two months ago, the president is hell-bent on fulfilling his absurd campaign promise to build the wall.

To achieve this goal, his administration has exercised its emergency powers to waive about two dozen congressional statutes 28 times.

Each new waiver signals ruin for a few more miles of territory. The latest targets Starr County, a lightly populated area in the Rio Grande Valley.

According to the acting Secretary of Homeland Security Chad Wolfe, this 28th waiver is necessary because of security issues in "an area of high illegal entry." Wolfe cited statistics that included "over 1,000 drug-related events" and 339,000 apprehensions of what he called "illegal aliens." These statistics cover not just the patch of Starr County subject to the latest waiver, but all 17,000 square miles and 34 counties of the Rio Grande Valley Sector.

It's hard to see how a few miles of "physical barriers," as Wolfe refers to the wall, will remedy these security issues. The wall has wellknown design flaws, and it is easy for determined people to get over, under or around it. But worse than the physical ineffectiveness is the total disregard for U.S. law that this administration continues to demonstrate. There is something Kafka-esque about a government that circumvents important public laws, only to build a wall that people will circumvent.

Among the 27 laws the administration's waiver says it can now ignore in Starr County are those protecting clean air and water, endangered species, native American artifacts, migratory birds, archaeological resources and historic sites. There are significant consequences to ignoring these laws, even deep in what appears to the untrained eye to be desolate Texas scrubland.

When I was growing up in Texas, most every November or December my family would drive from Houston to my grandparents' house in Brownsville. As

important as watching the Cowboys play on Thanksgiving or eating tamales on Christmas was the tradition of going duck hunting with my dad.

We would pick up breakfast tacos or convenience-store apple pies and drive out, then walk, to the river marshes before dawn. In those early-morning hours, the pristine beauty and ecological diversity of the Valley was on full display, even as we sporadically disturbed the scene with gunshots. Out on the marsh, my dad would point out the migratory birds, show me animal tracks and tell stories about being chased by javelina when he visited the same spot as a boy.

Wildlife abounds in the Valley year-round. In Starr County, rabbits, white-tailed deer and alligator — plus unique native birds including the screaming chachalaca and brightlyyellow Audubon's oriole — make up an ecosystem found nowhere else.

Similarly, the Valley is rich in significant historic and cultural resources. In the area subject to Wolfe's recent waiver is the Roma Historic District, which includes 11 distinct buildings dating to the 1850s. In 1993, the district received National Historic Landmark status, making it one of the most highly treasured historic sites in the country. Individually listed on the National Register of Historic Places is the Roma-San Pedro International Bridge, a two-lane suspension bridge that is one of a handful left in Texas.

The impact of Wolfe's waiver is that all of these resources — the birds, the wildlife, the historic places, the river itself — can be ignored, desecrated, killed.

The Tucson-based Center for Biological Diversity, along with other conservation groups, has filed a lawsuit against the administration for prior legal waivers for border wall construction. The administration is also being challenged on other legal grounds, including its use of federal funding and eminent domain, by entities ranging from the national Sierra Club to a local butterfly center.

Despite these lawsuits, no judge has enjoined ongoing construction. Earlier this year, one mile of the new section of border wall went up in Starr County. Without successful legal intervention, Wolfe's waiver will be followed by more miles of destructive metal.

The purpose of legal requirements constraining government action is to ensure the things and places we value are protected from short-sighted politicians. We all should care about how the Trump administration's waivers will irreversibly destroy biodiversity, culture and heritage. We cannot let the fact that the administration has issued dozens of these waivers numb us to the values being trampled each and every time.

Sara C. Bronin is a professor of property and environmental law at the University of Connecticut. Her parents were born in Brownsville.