

**BUILDING BORDER INFRASTRUCTURE:  
A STUDY OF AN  
OFFICE OF INTERNATIONAL AFFAIRS  
FOR THE  
TOHONO O'ODHAM NATION**

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## I. INTRODUCTION

The Tohono O’odham Nation is a federally recognized American Indian nation located in Arizona. In the 1800s, the Nation’s traditional lands were severed by a 75 mile stretch of the border that lies between the United States and Mexico without the consent of or consultation with the Tohono O’odham people. As border crossings have become more restricted over time, it has forced hardships upon the O’odham people that affect health care, employment, family relationships, and sacred tribal traditions.

The Tohono O’odham Nation’s Executive Branch Administrative Plan 2004 assesses the current state of affairs of the Nation and outlines a vision for its future. Among the Administrative Initiatives set out in the 2004 Plan is a proposal to establish an Office of International Affairs to deal with border related issues. It states as follows:

### **Creation of an International Affairs Office**

The Nation must make certain that the rights and safety of our tribal members in Mexico are adequately protected, represented and effectively advocate for in all Federal/State/Mexico international discussions and agreements. The Nation is faced with a growing number of internal and international issues regarding border crossing of undocumented aliens, illegal drug trafficking, and the rights of Traditional O’odham of Northern Sonora (e.g. tribal membership, Nation voting rights, access to health care and social services, protection of sacred sites in Mexico and land claims in northern Sonora). These issues require expertise in dealing with a myriad of Tribal, Federal, State, local and International offices, and an understanding of the political and legal aspects of international relationships and agreements.

The 2004 Plan avowed to “[s]tudy the needed expertise, role and responsibilities that will be required of an office to address internal and international concerns created by the international boundary” and further to “[p]ropose the creation of an International Affairs Office and request

the resources needed for office operations in the FY 2005 budget based upon findings of this study.”<sup>1</sup>

The 2004 plan was written under the leadership of Vivian Juan Saunders, Chairwoman, but was developed through an extensive consultative process that involved all aspects of government and was adopted by the Legislative Council. But the commitment to deal with border related issues is not new. In the past there have been concerted efforts, especially to deal with the lack of U.S. citizenship documentation that affects many O’odham, north and south. Recent efforts to further tighten control of the border with Mexico make the problems even more acute than before. A continued effort is warranted.

This study will address the history of the U.S.-Mexican border related problems, the role the proposed Office of International Affairs (herein the “OIA”) could play in addressing those problems, and the expertise and resources required to meet those responsibilities. It will also briefly examine past efforts and suggest some new strategies and tactics.

## **II. HISTORY OF BORDER ISSUES**

From time immemorial, the Tohono O’odham people have lived in what is now the northern Mexican state of Sonora and the southwestern U.S. state of Arizona. Their reservation encompasses almost three million acres on four non-contiguous segments (i.e., Tohono O’odham, Gila Bend, San Xavier and Florence Village), making it the second largest reservation in the United States, and similar in size to Connecticut.<sup>2</sup> The Nation is divided into eleven

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<sup>1</sup> Tohono O’odham Nation Executive Branch, “Administrative Plan 2004,” 31.

<sup>2</sup> Indigenous Peoples Human Rights website, “The Tohono O’odham,” <<http://www.hrusa.org/indig/reports/Tohono.htm>>, (cited March 25, 2005).

districts.<sup>3</sup> Twelve traditional O’odham communities and many sacred sites now lie south of the border in northern Sonora, Mexico,<sup>4</sup> extending as far south as Hermosillo.

For thousands of years the native people of the Arizona-California region shared languages, cultures, and traditions that reflected their shared histories back through time. They learned to adapt to the different ecosystems and lived in harmony with the rhythms of their environment. “Their lifestyles were based on seasonal cycles and interaction with a series of distinct ecozones—coasts, inland valleys, mountains, and deserts—requiring a high level of mobility and an intimate knowledge of the natural environment, which they acquired through generations of habitation on the land.”<sup>5</sup>

In the Gadsden Purchase in 1853, also known as the Treaty of La Mesilla, Mexico ceded about 30,000 square miles that included O’odham land to the United States for the price of \$10 million. Little consideration was given to the rights or interests of the indigenous peoples living in the area when the modern boundary between the U.S. and Mexico sliced through the natural parameters of their land, although their right of passage was to remain unimpeded.<sup>6</sup> The border made little difference for nearly a century while the U.S. and Mexico paid little attention, leaving the O’odham people relatively unaffected by this artificial division of their territory.

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<sup>3</sup> Constitution of the Tohono O’odham Nation, Article IX, District Council Organization, Section 1. The eleven districts are: Baboquivari, Chukut Kuk, Gu Achi, Gu Vo, Hickiwan, Pisinemo, Schuk Toak, San Xavier, San Lucy (Gila Bend), Sells and Sif Oidak.

<sup>4</sup> “Facts About the Tohono O’odham Nation,” Briefing Book, (Sells, AZ.: Office of the Chairman and Vice Chairman, Tohono O’odham Nation, undated), no page numbers.

<sup>5</sup> Michael Wilken-Robertson, “Ancient ties, cross-border links: Yuman Indian Peoples of the Western Borderlands,” Borderlines 62, Volume 7, number 11, December 1999, <<http://www.americaspolicy.org/borderlines/1999/bl62/bl62comp.html>>, (cited April 1, 2005).

<sup>6</sup> Article IX of the Treaty of Guadalupe Hidalgo states that the rights of the indigenous people shall be maintained and protected in the free enjoyment of liberty and property and the people shall be secure in their religion without restriction. The Gadsden Purchase reportedly reaffirmed that Article of the treaty. Source: Indigenous Peoples Human Rights Project website.

But those days are gone. The present agenda includes virtually sealing the border for all but those whom the U.S. government chooses to let in or out. The openness of the border first began to change in the mid-1950s when a severe outbreak of hoof-and-mouth disease in cattle led to the closing of the border, except at officially specified ports of entry. While this made it more cumbersome for Mexican O'odham to cross the border, they could do so at gates in Chukut Kuk and Gu Vo districts, making it still possible to visit relatives, seek medical care at tribal clinics, or attend to other business.<sup>7</sup>

In the 1980s more significant changes occurred when the border became more militarized in response to new U.S. immigration and drug enforcement laws. This began an on-going pattern of reported harassment, arrests, deportations, and criminal prosecutions of tribal members by the U.S. Border Patrol.<sup>8</sup>

Unlike the treaties that were entered with indigenous Canadians that permitted them to freely pass over the northern border, no sweeping arrangements were made for tribes along the Mexican border.<sup>9</sup> Thus American Indians who lived along the U.S.-Canadian border did not experience the separation from their people that tribes on the Mexican border have experienced.<sup>10</sup> With each tightening of the U.S.-Mexican border, the magnitude of the difficulties suffered by the O'odham grows.

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<sup>7</sup> Ian Wilson Record, "Profile of the Tohono O'odham Nation," Udall Center, Tucson, Arizona: University of Arizona, March, 2002, 63.

<sup>8</sup> Record.

<sup>9</sup> Ken Ellingwood, "Tribes Are Caught on the Border," Los Angeles Times, May 8, 2000, Home Edition, pg. 1, < <http://pqasb.pqarchiver.com/latimes/53578959.html?MAC=5e05289e9963468bb9eda8b3dc2d971b&did=53578959&FMT=FT&FMTS=FT&date=&author=&printformat=1&desc=COLUMN+ONE%3B+Tribes+Are+Caught+on+the+Border%3B+For+centuries%2C+Indians+have+lived+on+lands+that+straddle+the+U.S.-Mexican+boundary.+Now%2C+the+crackdown+on+crossings+threatens+a+way+of+life+that+never+depended+on+checkpoints+or+visas>>, (cited April 1, 2005).

<sup>10</sup> Carmen Duarte, "Tohono O'odham: Campaign for Citizenship," Arizona Daily Star, May 30, 2001, <<http://www.azstarnet.com/tohono/>>, (cited Mar. 25, 2005).

Continued drug trafficking, illegal immigration, and now the threat of terrorism, are now creating the impetus to seal the U.S.-Mexican border to the extent possible. A bill presently before Congress, H.R. 1320 called the “Secure Borders Act,” demonstrates the types of measures that are being considered to enhance border security. If passed, it would require every mile along the U.S.-Mexican border to be continuously monitored with fully interoperable surveillance systems, including high altitude monitoring such as unmanned aerial vehicles and tethered aerostat radar systems, for use with land-based monitoring technologies. (Sec. 111)

The Secure Borders Act would establish an Office of Tribal Security within the Department of Homeland Security, to be administered by a Director responsible for coordinating relations between the Federal Government and federally recognized Indian tribes on issues relating to homeland security. This includes developing policies on “issues related to citizenship and the movement of members of federally recognized Indian tribes across the United States border, taking into consideration the unique characteristics of certain federally recognized Indian tribes with jurisdiction over lands adjacent to the Canadian and Mexican borders.” (Sec. 151(8))<sup>11</sup>

### **III. THE ROLE OF AN OFFICE OF INTERNATIONAL AFFAIRS**

Policy issues that are affected by the existence of the U.S.-Mexican border span a broad range. While jurisdiction over many border-related issues primarily lies with established agencies, there is a benefit in having one locus that concerns itself with the macro view of how

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<sup>11</sup> The bill further provides that the Secretary of Homeland Security shall transfer to the Immigration and Customs Enforcement all functions (including the personnel, assets, and obligations held by or available in connection with such functions) of the Customs Patrol Officers unit of U.S. Customs and Border Protection operating on the Tohono O'odham Indian reservation (commonly known as the `Shadow Wolves' unit). It is the duty of this unit to prevent the smuggling of narcotics, weapons of mass destruction, and other contraband. (Sec. 152)

diverse issues interrelate. This is a function the OIA could serve, reporting to the Executive Branch on trends, identifying where coordination of efforts needs attention, etc.

Policies that are potentially within the purview of an Office of International Affairs include: (a) government policy toward indigenous groups in general, such as loss of traditional habitat and lack of protection for sacred sites, (b) border issues involving policies related to poverty, economic development, and health issues, (c) environmental issues, (d) numerous social and human rights issues, including drug and human trafficking, (e) civil rights violations related to infringement of constitutional, treaty or international convention protections, (f) national security and terrorism, and of course, (g) the perennial issues of immigration and citizenship.

There are many governmental agencies with which the Office of International Affairs could interface. Issues involving documentation for border crossing alone can involve the Immigration and Naturalization Service (INS), the U.S. State Department and the Bureau of Indian Affairs (BIA), as well as agencies on the Mexican side of the border, such as the closest Mexican counterpart to the BIA, the Instituto Nacional Indigenista (INI).<sup>12</sup>

The OIA could be the site for coordination with a wide range of non-profit organizations that work on border related issues. It could also be instrumental in coordinating activities between Tohono O'odham living on both sides of the border and with members of other tribes. For example, the OIA Director could represent the Nation at conferences like the 1989 binational Border Tribal Summit that was held in Arizona, or the 1994 and 1995 binational Meetings of Indigenous Peoples held in Mexico.<sup>13</sup>

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<sup>12</sup> Tina Faulkner and George Kourous, "Native Communities of the Borderlands: An Introduction," Borderlines, 62, volume 7, number 11, December 1999, <<http://www.americaspolicy.org/borderlines/1999/bl62/bl62oview.html>>, (cited Apr. 1, 2005).

<sup>13</sup> Falkner and Kourous.

Problems created by being contiguous to an international border are experienced by other tribes, such as the Kumeyaay in California, the Kickapoo in Texas, the Yuma in California and Arizona, and the Cucapa, Paipai and Kiliwa in Baja, California. The OIA would be an appropriate place for coordinating joint efforts to address problems these and other tribes experience in common with the Tohono O'odham.

Diverse issues arising from the existence of the U.S.-Mexican border and ways in which the OIA might be used to address these issues are set out below. The intent is to set out a comprehensive list of possible roles for an OIA, realizing that choices will have to be made among them.

#### **IV. CITIZENSHIP**

Citizenship is a paramount border-related issue. After the tribe's acceptance of the Indian Reorganization Act (IRA) in 1934, the U.S. government moved to formally recognize the tribal sovereign status of the Tohono O'odham in 1937. In order to identify who were the constituents of the O'odham's new IRA government, the U.S. government conducted a census of the Tohono O'odham in both the U.S. and Mexico, and enrolled tribal members based *not* on country of birth, residency, or citizenship, but on O'odham blood. From this arose the anomaly that the O'odham in Mexico can be officially recognized as members of a U.S. recognized tribe, but they are not offered U.S. citizenship,<sup>14</sup> a source of inequity and confusion ever since.

Enrolled members of the Tohono O'odham Nation include: (a) all Indians whose names appear on the official census rolls of the Sells and Gila Bend Reservations as of January 1, 1937, and of the San Xavier Reservation as of January 1, 1940, (the "base roll,"); (b) all children born to resident members, and (c) those having one-half degree or more of Papago-Tohono O'odham Indian blood who are adopted into membership by the Council. Membership rights are lost if a

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<sup>14</sup> Record, 62.

person becomes enrolled as a member of another Indian nation or tribe. There is no requirement that a member be a resident of the U.S or a U.S. citizen.<sup>15</sup>

There are now approximately 25,000 enrolled members of the Nation, and around 2,800 O’odham live in the State of Sonora, Mexico.<sup>16</sup> Restricting border passage causes problems for thousands of tribal members. Some were born in the U.S. but lack evidence to prove it, and thus cannot obtain U.S. citizenship documentation. This precludes them from obtaining Social Security numbers and various benefits, including passports that are necessary for passage across a closed border. Hundreds of O’odham were born in Mexico to parents born in the U.S., but the parents’ unregistered births preclude the children from obtaining derivative U.S. citizenship. They, too, are denied benefits and the documentation necessary for passage back and forth throughout their native land. Although they are the indigenous people, hundreds of O’odham live and work “illegally” in the United States. It is estimated that issues related to the U.S./Mexican border that severed Tohono O’odham land directly impacts the lives of roughly one-third of all the tribe’s enrolled members.<sup>17</sup>

Uninhibited ability to cross the U.S.-Mexican border is important for several reasons. First, kinship and traditional ceremonies are vital to preserve and maintain culture. The border policies constrain the ability to travel to sacred sites, hindering the practice of religion. They also constrain ongoing cultural practices of travel and language, and the ability to pass the cultural practices on to the Tohono O’odham’s children. Second, the border splits families. Some family members are in Mexico and unable to cross the border to visit family on the U.S. side. Third, the border prevents members from getting adequate health care.<sup>18</sup>

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<sup>15</sup> Constitution, Article II, Membership.

<sup>16</sup> Silvia Parra and Adam Andrews, personal interview, March 30, 2005.

<sup>17</sup> Record, 63, citing Carmen Duarte, “Nation divided: Tighter border controls drive tribal leaders to Washington seeking free movement between countries, as Canadian tribes now enjoy.” Arizona Daily Star, May 30, 2001, A1, A8.

<sup>18</sup> Indigenous Peoples Human Rights Project website.

The proposed OIA would be a logical place to continue the fight for citizenship rights for O’odham in the U.S. and Mexico. And passage across the border for those who have no possibility of securing U.S. citizenship will continue to require coordination with Mexican and U.S. agencies. This, too, could be a function within the mission of an OIA.

## **V. MEDICAL CARE**

The issue of medical care for members of the tribe living on the Mexican side of the border is especially acute. Under contractual arrangements with the Indian Health Service (IHS) and the BIA, health and social service programs are provided for all enrolled members, in Mexico as well as the U.S., by the Department of Human Services. Facilities include a 34 bed hospital and outpatient facilities in Sells and several satellite facilities.<sup>19</sup> As poverty is widespread, especially south of the border, health problems often associated with poverty are present, including the world's highest rate of diabetes.<sup>20</sup> Continued access to this critical service is essential.

In addition to sometimes being more accessible, many O’odham in Mexico indicate that they prefer to receive health care services at the Sells Hospital rather than in the state of Sonora because treatment and medication are available at one facility, other social services can be applied for, and family visits can be coordinated with seeking health care.<sup>21</sup> Thus, precluding access to health care facilities may also weaken family ties.

Efforts that could be made by an OIA to resolve citizenship issues and facilitate passage across the U.S.-Mexican border could help protect access to health care services for O’odham who live south of the border.

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<sup>19</sup> “The First Report on the Health Concerns of the Tohono O’odham Nation and Its Members Who Reside in Mexico,” Tohono O’odham Nation, Sells, Arizona, May, 1999, 3-4.

<sup>20</sup> Ellingwood.

<sup>21</sup> “The First Report,” 11.

## VI. LAND CLAIMS IN MEXICO

Land claims in northern Sonora, Mexico are among the international issues specifically identified in the 2004 Administrative Plan as a concern that an OIA might address. The injustices to be addressed arose over time as the more than 400,000 indigenous peoples, O'odham and others, living in Mexico's northern states lost most of their traditional lands to miners, ranchers and to development, either legally or through scams. Some feel that neoliberal government policies have dismantled beneficial systems established during the revolution and earlier reform eras, like the *ejido* system that helped preserve the communal lifestyle of Mexico's indigenous peoples, while offering little to address the special needs of indigenous people.<sup>22</sup>

In 1989 Tucson attorney George S. Barnett prepared a study for the Mexican and U.S. Tohono O'odham regarding loss of land by their people in Mexico.<sup>23</sup> In the study Barnett sets out his findings with regard to the amount of ancestral land that has been lost and how, and urges the formation of a "Commission for Settlement of the O'odham Land Claims" to address the outstanding issues.

During the last century the O'odham of Mexico have lost more than five million acres of ancestral land, first by being cut in half by the Gadsden Purchase and then due to the demand for the remaining O'odham lands by miners seeking copper, gold and silver, and "immigrants and colonists" seeking land suitable for farming, leaving the O'odham, Hia-Ced, and Sobaipuris with the least irrigable and most desolate desert land.<sup>24</sup> Barnett lays much of the blame on the Mexican government for having failed to recognize and protect the rights of the O'odham from

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<sup>22</sup> Wilken-Robertson.

<sup>23</sup> George S. Barnett, "Report Regarding the Tohono and Hia-Ced O'odham of Mexico Indigenous Peoples' Loss of Their Land, Violations of Convention 107 of the Ilo, Violations of Treaty Rights, and the Lack of Protection for Cultural and Religious Rights of the O'odham of Mexico and the United States," Tucson, Arizona, October 9, 1989.

<sup>24</sup> Barnett, 1.

Mexicans and Americans who encroached upon O’odham land throughout Sonora, a failure that continues.<sup>25</sup> Land loss, drought and disease reduced the O’odham in Mexico to a small number.

Barnett asserts that “threats, harassment, bribery and the fencing of water holes” were used to confiscate land from the O’odham in Mexico. Some would obtain permission to occupy the land for a specified period, then refuse to leave. Under rules of adverse possession, this permitted the squatters to eventually obtain legal title after five or ten years of hostile possession. Barnett alleges that Mexican public authorities have facilitated the confiscation of O’odham lands, sometimes for their own personal gain.<sup>26</sup> An obstacle to the O’odham protecting their rights in the land is their lack of understanding of those rights, and the lack of resources to secure legal representation from those who do.

Efforts to redress the injustices suffered by the O’odham in Mexico began in 1943, when American and Mexican officials met to hear their complaints. But the O’odham were offered extremely arid land near San Jorge Bay in return for renouncing all claims to land near the U.S.-Mexican border, an offer they refused.<sup>27</sup> To date, no effective redress has been found.

Drug trafficking along the U.S.-Mexico border has increased the last several decades. Barnett asserts that reputed drug lords have acquired ranches located within traditional O’odham homelands, and use them to facilitate drug trafficking.”<sup>28</sup>

Barnett requests that an extensive list of actions be taken to redress past injustices, such as Mexican officials being prohibited from altering or destroying records regarding O’odham land issues and ceasing the transfer or conveyance of land claimed by the O’odham pending official review and adjudication. Further, that lands taken from the O’odham in Mexico be

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<sup>25</sup> Barnett, 1.

<sup>26</sup> Barnett, 8-9.

<sup>27</sup> Barnett, 6.

<sup>28</sup> Barnett, 7.

returned to them, and that ground water resources be administered so as to guarantee the O’odham of Mexico long-term aquifer reserves, these being a few requests on the list.<sup>29</sup>

Barnett identifies a possible basis for legal redress in the 1917 Mexican Constitution that “prohibits the alienation of communal land and the 1986 amendment to Article 107 [that] states that no statute of limitations shall run against community-owned or *ejido* land.”<sup>30</sup> He argues that illegal transfers of O’odham lands to corporations, large landholders or individuals should be set aside.

To seek redress for the lands lost through illegal means by the Mexican O’odham would be a major undertaking. But if funds and effort were devoted to the cause, perhaps at a minimum the most important areas could be restored and preserved in perpetuity, and without such effort they may be lost forever. (While it does not make reference to tribal land in Mexico, the Tohono O’odham Constitution does mandate that its public property be administered so as to serve the best interests of the Nation as a whole.<sup>31</sup>) The Administrative Plan 2004 clearly envisions a role of some nature for the OIA in seeking remedies for land claims of the O’odham of Mexico.

In considering why the Tohono O’odham Nation in the U.S. might want to invest in restoring and preserving O’odham lands in Mexico, there could be several reasons. One is to protect particular religious sites that are irreplaceable. Another is to deter confiscated O’odham land along the border from being used for illegal activities, such as drug or human trafficking, that then spill over and adversely affect the O’odham on the U.S. side of the border.

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<sup>29</sup> Barnett, 3.

<sup>30</sup> Barnett, 7-8.

<sup>31</sup> Constitution, Article VI, Powers of the Tohono O’odham Council, Section 1 (i)(1) states the general policy as follows: “The Tohono O’odham Council shall . . . have the power: . . . [t]o administer land and other public property, and by law, ordinance or resolution: (1) to prevent the sale, disposition, lease, use or encumbrance of Tohono O’odham national lands, interests in lands, rights-of-way, or other public resources when such sale, disposition, lease, use or encumbrance will, in the opinion of the Tohono O’odham Council, be injurious to the best interests of the Tohono O’odham Nation as a whole; . . . .” Article XVI is exclusively on “Land Policy” and includes a detailed description of the policy.

A third reason might be more selfless, namely to help those who have even less and who need help. Councilwoman Brenda Robertson of Gila River, while attending a summit on building a human rights movement to address border issues, is quoted as saying, “These people speak our language. They live way up in the mountains with no facilities and no jobs. They are friendly, kind people. It is hard for them. . . . We want to say, ‘We are good brothers and sisters.’”<sup>32</sup>

## VII. SACRED SITES

Many of the most sacred sites of the Tohono O’odham Nation lie in northern Mexico. Only small populations remain in the areas where the sacred sites are located, as many have been forced from the land, moved away or become assimilated into the Mexican population. While not specifically referring to Mexico, the Tohono O’odham Constitution contains a policy statement on using “all practical means” to “[p]reserve important historic, cultural and natural aspects of Tohono O’odham national heritage . . . .”<sup>33</sup>

Barnett’s report, referenced above, describes the encroachment on ancestral land as having destroyed much of O’odham culture and religious life, “desecrating irretrievable elements of their ethnic heritage.”<sup>34</sup> His list of possible remedies includes the Mexican government and O’odham of Mexico jointly establishing a means to preserve and protect the areas in Sonora that are important religious, archaeological or historical O’odham sites. The proposed OIA could mobilize efforts with the Mexican government to achieve this goal.

## VIII. THE ENVIRONMENT

The Tohono O’odham Constitution contains an explicit environmental policy. Its stated goal is to encourage

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<sup>32</sup> Norrell, “Border racism bars Indigenous passage. ”

<sup>33</sup> Constitution, Article XVIII, Environmental Policy, Section 2(d).

<sup>34</sup> Barnett, 2.

productive and enjoyable harmony between members of the nation and their environment; to promote efforts which will preserve and protect the natural and cultural environment of the Tohono O'odham Nation, including its lands, air, water, flora and fauna, its ecological systems, and natural resources, and its historic and cultural artifacts and archeological sites; and to create and maintain conditions under which members of the nation and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of members of the Tohono O'odham nation.<sup>35</sup>

This policy is being violated in many ways. Illegal immigration results in tons of trash being left behind. The Nation bears the expense of dealing with the consequences of those who die trying to enter illegally. A young police officer, Sergeant Martin Robledo, reported he personally had found the bodies of three people who made it through the fence along the border but perished soon after.<sup>36</sup> Perhaps as many as several hundred thousand people attempt illegal crossings of the U.S.-Mexican border annually,<sup>37</sup> and the impact on Tohono O'odham land and resources is significant.

[I]llegal border crossers left behind close to 4,500 abandoned vehicles in fiscal year 2002 and an estimated 4 million pounds of trash each year as they crossed over the lands. . . According to the Tohono O'odham National Police Department, it removed over 7,000 such vehicles in 2003. One land management official described another federal property on Arizona's border as so unsafe and with resources so destroyed that it is now primarily used for illegal activities and no longer visited by the legal public.

. . . [T]he Tohono O'odham Nation Police Department estimated it spent about \$3.4 million in fiscal year 2003 on activities directly related to illegal border activity on its land. This included processing drug smuggling cases, towing stolen vehicles abandoned by smugglers, investigating deaths and homicides, and conducting autopsies. According to Tohono O'odham officials, the nation wants to recoup these costs, either through direct funding to the nation, or through responsible law enforcement agencies. The administration's fiscal year 2005 budget includes \$1.4 million specifically for law enforcement for the Tohono O'odham nation. According to Bureau of Indian Affairs officials, this amount

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<sup>35</sup> Constitution. Article XVIII, Environmental Policy, Section 1. This entire Article is devoted to environmental policy.

<sup>36</sup> Martin Robledo, personal interview, March 30, 2005.

<sup>37</sup> Parra and Andrews.

will not cover the annual cost of addressing the Nation's border-related problems.<sup>38</sup> Environmental border issues aren't limited to illegal immigrants and drugs. Urbanization and industrialization can cause environmental degradation, as well. Other issues can include water rights, water quality, and air quality. NAFTA has resulted in an increase in shipments of hazardous waste in border regions that could impact the reservation, should an accident or illegal dumping occur.<sup>39</sup>

Natural resource management, sustainable development, soil erosion, and land tenancy are priority concerns for Mexican indigenous communities that don't stop neatly at the border. This involves coordinating the development of comprehensive environmental management plans, and aligning these with traditional indigenous stewardship of natural resources.<sup>40</sup>

As many governmental agencies have jurisdiction over various aspects of these environmental issues, the OIA could perhaps help fulfill an oversight role to help avoid overlaps or gaps. It could also coordinate efforts with various nongovernmental organizations, such as the International Sonoran Desert Alliance (ISDA), a bi-national nongovernmental organization dedicated to the protection of areas of the western Sonoran Desert and the upper Gulf of California. ISDA's current president is Joseph Joaquin, a Tohono O'odham Office of Cultural Affairs specialist.

## **IX. NATIONAL SECURITY**

After the events of September 11, 2001, national security became a paramount issue for the American people. Securing the Mexican and Canadian borders took on an importance even greater than before, especially the Mexican border that is feared to be an entry point for Muslim

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<sup>38</sup> Desert Invasion, "Report on the Tohono O'odham Indian Nation," citing GAO report, "Border Security – Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands," June, 2004, <[http://www.desertinvasion.us/invasion\\_pictures/invasion\\_tohono.html](http://www.desertinvasion.us/invasion_pictures/invasion_tohono.html)>, (cited March 25, 2005).

<sup>39</sup> Faulkner with Kourous.

<sup>40</sup> Wilken-Robertson.

extremists. In February, 2005, Porter J. Goss, Director of the Central Intelligence Agency, told the Senate Intelligence Committee that new intelligence information suggests that Al Qaeda has considered infiltrating the United States through the U.S.-Mexican border. In written testimony, Deputy Secretary of Homeland Security Adm. James M. Loy said there was “currently no conclusive evidence,” but in his oral testimony he described it as a “very serious situation.” He said the fear arose from information gained from detainees, stating, “Several Al Qaeda leaders believe operatives can pay their way into the country through Mexico and also believe illegal entry is more advantageous than legal entry for operational security reasons.”<sup>41</sup>

Securing porous borders, especially where border crossing can be made in remote areas, such as isolated parts of the Tohono O’odham reservation, will be a primary focus. But it’s important that the Tohono O’odham point of view and concerns about the impact of border security be voiced within the system and not be disregarded as government bureaucracy steamrolls ahead. Policy makers often make mistakes out of lack of information, and the OIA can help avoid this trap by being an effective advocate for the Tohono Nation when national security policies are formulated and implemented that affect the Nation.

If a bill, such as the Secure Borders Act, were to pass, the OIA could serve as the interface with the proposed Office of Tribal Security within the Department of Homeland Security on issues relating to homeland security, citizenship and passage across the border.

## **X. CIVIL RIGHTS**

When abuses occur along the border and O’odham from the U.S. or Mexico are harassed or subjected to illegal searches and seizures, it may be that rights guaranteed by the Fourth and Fifth Amendments to the U.S. Constitution are being violated. This may be the case when

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<sup>41</sup> Douglas Jehl, “U.S. Aides Worry on Qaeda Infiltration from Mexico,” New York Times, February 17, 2004, Late Edition – Final, 16.

automobiles or religious artifacts are confiscated, or information is gathered without a right to counsel being protected.

It is reported that immigration authorities have confiscated tribal enrollment cards and thus denied O’odham the right to legally cross the border in contravention of the treaties of Guadalupe Hidalgo and La Mesilla, the Protocol of Queretaro and international conventions and covenants.<sup>42</sup> Barnett contends that denying O’odham the right to freely move across the border also violates the International Convention on the Elimination of All forms of Racial Discrimination of 1965, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966 and the American Convention on Human Rights of 1969.<sup>43</sup>

The UN Charter and the Universal Declaration of Human Rights recognize basic rights of all people that may be violated by some border practices. More recent agreements that may apply, especially to rights denied by a sealed border, are the following: the UN Draft Declaration on Rights of Indigenous Peoples that defines the rights to occupy traditional territories, to cross borders, and to protect indigenous cultures; the Genocide Convention that guarantees the right of cultural survival; the UNESCO Declaration of Principles of Cultural Cooperation; the Helsinki Document; the Vienna Declaration and Program of Action; and the International Labor Organization Convention No. 169 that recognizes that Indigenous Peoples have the right to maintain and develop their identities, languages, and religions. The latter requires that signatories take affirmative steps to assist indigenous peoples “in preserving their culture and uphold their right to travel freely within tribal lands.”<sup>44</sup>

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<sup>42</sup> Barnett, 7.

<sup>43</sup> Barnett, 7.

<sup>44</sup> Indigenous Peoples Human Rights Project website.

With time, an OIA could develop expertise regarding the constitutional, statutory and international convention rights and remedies that apply to border issues. This knowledge could be used to issue complaints to the proper authorities when violations occur, or to facilitate the referral of people who believe their rights have been violated to individuals, agencies or organizations who may be able to help them seek redress, or its role could be used to actually provide legal expertise in addressing the violations. The nature of the OIA's involvement would depend on the scope of resources invested in this activity.

The OIA could also be used to coordinate civil rights efforts with private groups. One such group is the Tucson-based Alianza Indígena Sin Fronteras that holds trainings on both sides of the border to educate indigenous communities about their rights, publicizes Border Patrol human rights abuses, and works with the INS to establish border crossing procedures that will facilitate the transit of indigenous peoples.<sup>45</sup>

## **XI. REQUIRED EXPERTISE AND RESOURCES**

In its OIA Initiative, the 2004 Administrative Plan specifically refers to a broad number of issues related to the U.S./Mexican border, including tribal membership, Nation voting rights, access to health care and social services, protection of sacred sites in Mexico and land claims in northern Sonora. It points out that, in order to deal with these issues, “expertise in dealing with a myriad of Tribal, Federal, State, local and International offices, and an understanding of the political and legal aspects of international relationships and agreements” is required. If the International Affairs Office of the Tohono O’odham Nation is to effectively deal with the expanse of these issues, it will require an investment in staff that possesses the required expertise and has the authorization to act on behalf of the Tribe when necessary.

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<sup>45</sup> Faulkner and Kourous.

The OIA will need an executive position, such as a Director of International Affairs, to head its operations. The Director could serve at the pleasure of the Chairman or Chairwoman or the Council, but it may be more desirable to make this position more in the nature of a career civil service position, not tied to changes in administration, to assure continuity. It would be desirable for this position to be filled by a person with legal training and experience which may require that a higher salary be paid. Being bilingual in English and Spanish should be a qualification, and if they speak O'odham in addition, that would be an added benefit. An understanding of tribal issues and history is desirable, although this can be learned with time. A respect for tribal culture is important and an appreciation of the way in which tribal government operates.

An Administrative Assistant would be necessary, preferably someone who is bilingual in English and Spanish. This person needs to have basic computer and typing skills to handle correspondence and document preparation. Hiring a paralegal as the work undertaken by the OIA grows would be a desirable next step. As the work expands, the staff needed to carry it out will increase, as well.

Initial operating expenses of the OIA would include at a minimum, salaries, office space, utilities, and operational expenses. Expenses will grow as the work and staff are expanded.

## **XII. PRIOR EFFORTS**

The present proposal to establish an International Affairs Office is not the first attempt to address border related problems. Various approaches have been tried. To address one aspect of the border crossing issue, some O'odham from Mexico have entered the U.S. under special waivers for hospital visits, funerals, family emergencies or cultural ceremonies. But waivers are issued case by case and require the tribe, U.S. immigration officials and U.S. consular staffers in

Mexico to coordinate the exchange of information by faxing names back and forth, a time-consuming process that too often results in mix-ups.<sup>46</sup>

In 1999 the Nation launched a pilot program that resulted in Mexican passports and U.S. border-crossing cards being issued to 100 enrolled tribal members in Mexico. Mexican and U.S. immigration officials agreed to waive certain document requirements and instead accepted evidence of tribal membership to establish program eligibility. The program was expanded the following year when the Legislative Council paid over \$100,000 to secure passports and border-crossing cards for more than 1,200 additional tribal members residing in Mexico.<sup>47</sup> This benefited the INS, as well, reducing the number of incidents when people in need of urgent medical treatment presented themselves without proper documentation only to be turned away.<sup>48</sup>

The Kumeyaay Indians of San Diego instituted a similar program. A key step of their program was going door to door in remote indigenous communities in Baja California to compile a census for verifying the status of people seeking travel papers. The census data included the names and tribal affiliation of parents, grandparents and great-grandparents.<sup>49</sup> The Tohono O'odham might consider conducting such a census in Mexico, as well, to facilitate verification of membership qualifications. This is an undertaking the OIA could direct.

The 1999 pilot program facilitated crossing the U.S.-Mexican border for Mexican O'odham. It did not address the citizenship issues of Mexican-born O'odham living in the U.S., O'odham born in the U.S. who cannot prove it, and O'odham children who qualify for dual citizenship but who don't have it.<sup>50</sup>

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<sup>46</sup> Ellingwood.

<sup>47</sup> Record.

<sup>48</sup> Ellingwood.

<sup>49</sup> Ellingwood.

<sup>50</sup> Duarte, "Tohono O'odham: Campaign for citizenship."

The prior administration under the leadership of Chairman Edward D. Manuel mounted an aggressive lobbying campaign to amend the Immigration and Nationality Act of 1952 to make all members of the Tohono O’odham Nation citizens of the United States. In a Briefing Book on the issue, the opening statement explains:

Our Nation is divided. Our people are no longer free to live, work and travel. Our families are separated. We cannot visit the sacred places where our ancestors rest. We cannot freely exercise our religious practices. Under present law, some of us are subject to arrest, prosecution, incarceration, and deportation because we do not have documents. Under present law, some of us are subject to arrest, prosecution, and incarceration for aiding, abetting, and transporting our family members. Our vehicles have been seized.

To address these issues, the Legislative Council passed a resolution in 2000 formally requesting the U.S. Congress to amend the Immigration and Nationality Act of 1952 to officially confer U.S. citizenship status on all enrolled members of the Tohono O’odham Nation. The resolution was followed by a massive lobbying effort aimed at securing passage of a law to resolve the festering citizenship problems. Among the supporters of the law were U.S. Border Patrol, the United Nations, Mexico’s President Vicente Fox, the National Congress of American Indians, a number of prominent federal and state lawmakers, various human rights organizations,<sup>51</sup> the Intertribal Council of Arizona, the Arizona State Legislature, and the National Congress of American Indians.<sup>52</sup>

As a result, in 2001 H.R. 2348, The Tohono O’odham Citizenship Act, was introduced by Congressman Ed Pastor of Arizona along with 122 cosponsors. (*See* Appendix A.) The bill was referred to the Subcommittee on Immigration and Claims but was never voted out of committee. A bill with identical language, H.R. 731, was introduced in 2003 by Congressman Raul M.

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<sup>51</sup> Record, citing Brenda Norrell, “Tohono O’odham targeted in borderzone seek citizenship.” Indian Country Today, June 13, 2001.

<sup>52</sup> Harriet Toro, <harriet.toro@tohono-nsn.gov>, “Prior adm efforts on the citizenship bill,” personal e-mail, May 23, 2005.

Grijalva of Arizona with 119 cosponsors. It, too, was referred to the House Subcommittee on Immigration, Border Security, and Claims from which it never emerged.

In a 2001 news report, Representative Pastor is quoted as telling former Vice Chairman Henry A. Ramon and the Tohono O’odham delegation that traveled to Washington D.C. that he thought something needs to be done but it will be a difficult road because “some politicians think U.S. Immigration laws are already too lax.”<sup>53</sup> This is an important obstacle to be addressed in future efforts. In addition, efforts to pass the bill continued after 9-11 while the nation was still in a state of shock, and this may have caused some backlash. Another shortcoming was that an adequate list of the 7,000 individuals who cannot get delayed birth certificates, with their names, addresses and telephone numbers, apparently was not prepared.<sup>54</sup> (This is an undertaking that the OIA could coordinate for future efforts.)

With the tragic events of 9-11 and the growing controversy surrounding immigration, the Nation’s citizenship efforts seemed to falter. The administration of Chairwoman Saunders seeks to establish an Office of International Affairs to address not only the citizenship issue, but other border-related problems, as well.

### **XIII. SUGGESTED LEGISLATIVE STRATEGY**

The 2001 and 2003 bills that were introduced to address the citizenship issue had two problems that immediately stand out. First, they sought to amend the Immigration Act, an already delicate subject in the current political and security climate. Second, as drafted, they in effect gave the authority to determine who was granted U.S. citizenship to the Tohono O’odham Nation by requiring that inclusion on the membership role automatically resulted in U.S. citizenship. This no doubt gave rise to concerns, perhaps unfounded due to protections built into

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<sup>53</sup> Duarte, “Tohono O’odham: Campaign for citizenship.”

<sup>54</sup> Toro, personal e-mail.

the process, about possible fraud and corruption. These bills may have been doomed from the start.

The Kickapoo Tribe in Texas is the only tribe to successfully obtain passage of legislation that granted citizenship to those officially enrolled as tribal members, but it did so indirectly. It is worth examining the form the Kickapoo legislation took, because it is different in two significant ways from the route the Tohono O’odham bills took, while seeking to achieve a similar end.

The Kickapoo law was not enacted as an amendment to the Immigration and Naturalization Act, but rather an amendment to Title 25 of the U.S. Code, the Title dealing with Indians, and the tribe was not given authority to be the arbiter of citizenship. Instead it required that a roll be compiled of the members of the Tribe and that the roll be published in the Federal Register. For a period of five years after said publication, any member of the tribe whose name appeared on the roll could apply for U.S. citizenship. Such application was to be made to the Immigration and Naturalization Service and, upon receipt of the application, the law provided that citizenship was to be promptly granted to the applicant.<sup>55</sup> (*See* Appendix B.)

As a possible means of overcoming the handicaps that were present in the original Tohono O’odham bills from the start, it is suggested that a new bill be drafted that (a) is an amendment to Title 25 (Indians) of the U.S. Code, (b) that it not include the word “citizenship” in its title but instead be called “The Tohono O’odham Act,” and (c) that the citizenship determination be vested in the Immigration and Naturalization Service but be based upon tribal membership.

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<sup>55</sup> 25 USC Sec. 1300b-13.

A suggested form such a bill could take is set out in Appendix C. Unfortunately, it would probably only remedy the situation for U.S. O’odham, not those who are Mexican nationals, but it’s a start.

#### **XIV. POLITICAL STRATEGY**

If the intent is to go beyond dealing with citizenship for O’odham in the U.S., it should not be taken for granted that the OIA initiative will be embraced without opposition. But several tactics can be employed to build support for the OIA initiative. Supporters can be mobilized through a public awareness campaign, including messages conveyed on talk shows, through church events, at ceremonies and holiday events, on bumper stickers, and in school programs about the need to address a broader range of border issues in a more organized manner. A fundraiser, such as a walk-a-thon or other event, could be sponsored and this in turn would result in further information being distributed throughout the community and awareness being raised.

In addition to building support among the O’odham community, it would be important to meet with opponents, to listen to their concerns, and address them. If the vision for the OIA needs to be modified in order to garner adequate support for it to be established, then it is advisable to do so. The initial vision is not set in stone, and in any event it will evolve over time as the people, interests and issues shape its mission.

#### **XV. SUPPORT AND OPPOSITION**

Support for the work the Office of International Affairs is designed to perform, especially as it relates to citizenship for O’odham living in Mexico, is likely to be strongest among those who live near the border, have family ties with those in Mexico, feel the cultural sites in Mexico are important, or if they see economic gain in it for themselves or for the Nation.<sup>56</sup> Gila River Councilwoman Brenda Robertson met with long-separated O’odham relatives in Sonora, and is

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<sup>56</sup> Parra and Andrews.

quoted as saying, “This comes from my heart, we need to recognize them. They are our heart. They are our blood.”<sup>57</sup>

Some might support the citizenship issue because they fear that if support is not provided to those south of the border, the O’odham way of life that has been preserved there will be lost. Reports seem to indicate this is a likely outcome if nothing is done. Supporting the citizenship initiative could be a way of honoring ties to the past and giving them new life, acknowledging the value of ancestral roots by more than what some might consider to be mere “lip service.”

Opponents to the OIA concept are likely to include those who feel a sense of futility, that the citizenship issue is impossible to resolve, those who fear the cost of expanding membership to those in Mexico, especially now that per capita payments of casino profits are an issue. There could be concern about the lack of control over what the Mexican O’odham do, that they are more Mexican than O’odham, and that the Mexican O’odham are merely trying to work the system to their advantage, not because they have an allegiance to the Nation. And some fear that if the border restrictions are relaxed, “all 30,000 Yaqui in Sonora will come across.”<sup>58</sup>

Some might believe that before the per capita payments from casino profits began to be distributed, many O’odham in Sonora preferred being identified as non-Indian, and only when money became involved were they interested in establishing tribal membership. As with all Indian Nations that now have casino operations, long-term economic prospects have been enhanced by the casinos, but they also present a new source of conflict.

On August 16, 2004 the Chukut Kuk District passed a resolution (No. 2004-16) that expressed “concerns regarding the requirements for membership in the Tohono O’odham Nation regarding blood quantum and base roll additions and is in the process of reviewing original

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<sup>57</sup> Norrell, “Border racism bars Indigenous passage.”

<sup>58</sup> Brenda Norrell, “Border racism bars Indigenous passage,” Indian Country Today, December 20, 2000.

resolutions along with the Constitution and Enrollment Ordinance.” It recommended that the Council place a moratorium on all enrollment applications coming from Mexico until the review process was completed, and a moratorium on additions to the base roll. The Legislative Council did not adopt the proposed resolution and applications of the O’odham of Mexico continue to be processed, although a large backlog exists.<sup>59</sup>

## **CONCLUSION**

In coming to terms with border issues, the Tohono O’odham Nation faces many obstacles, but opportunities exist, as well. The border threatens indigenous cultural integrity, land, the environment and resources, as well as various civil and human rights, but there are more resources available to address these problems than before, the stature and political power of the Nation is growing, and many people recognize time is of the essence.

Which battles can be waged and what roles the proposed OIA can play will depend on the nature and extent of the resources the Tohono O’odham Nation is willing to invest in the effort. What is certain is that it is not in the interest of the Nation to be passive and let other forces prevail. A well run Office of International Affairs is a reasonable way to proceed to address the complex maze of border related issues, provided it is a long term commitment to which adequate resources are devoted.

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<sup>59</sup> Harriet Toro, telephone interview, May 23, 2005.

**APPENDIX A**

**TOHONO O'ODHAM CITIZENSHIP ACT OF 2001  
(INTRODUCED IN HOUSE)**

HR 2348 IH

107th CONGRESS  
1st Session  
**H. R. 2348**

To render all enrolled members of the Tohono O'odham Nation citizens of the United States as of the date of their enrollment and to recognize the valid membership credential of the Tohono O'odham Nation as the legal equivalent of a certificate of citizenship or a State-issued birth certificate for all Federal purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**June 27, 2001**

Mr. PASTOR (for himself, Mr. PALLONE, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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**A BILL**

To render all enrolled members of the Tohono O'odham Nation citizens of the United States as of the date of their enrollment and to recognize the valid membership credential of the Tohono O'odham Nation as the legal equivalent of a certificate of citizenship or a State-issued birth certificate for all Federal purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Tohono O'odham Citizenship Act of 2001'.

**SEC. 2. NATURALIZATION FOR TOHONO O'ODHAM.**

(a) IN GENERAL- Chapter 2 of title III of the Immigration and Nationality Act (8 U.S.C. 1421 et seq.) is amended by inserting after section 322 the following:

**'enrolled members of tohono o'odham nation**

`SEC. 323. (a) GRANTING OF CITIZENSHIP- A person who is listed on the official membership roll of the Tohono O'odham Nation, a federally recognized American Indian nation located in Arizona, is a citizen of the United States as of the date on which such listing occurs.

`(b) NO DERIVATIVE BENEFITS TO RELATIVES- Nothing in this section shall be construed as providing for any benefit under this Act for any spouse, son, daughter, or other relative of a person granted citizenship under this section.'

(b) CLERICAL AMENDMENT- The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 322 the following new item:

`Sec. 323. Enrolled members of Tohono O'odham Nation.'

### **SEC. 3. TREATMENT OF TRIBAL MEMBERSHIP CREDENTIAL.**

Notwithstanding any other provision of law, the valid membership credential issued to a person who is listed on the official membership roll of the Tohono O'odham Nation pursuant to the laws of the Tohono O'odham Nation shall be considered, for all purposes subject to Federal law, equivalent to--

(1) a certificate of citizenship issued under section 341(a) of the Immigration and Nationality Act (8 U.S.C. 1452(a)) to persons who satisfy the requirements of such section; and

(2) a State-issued birth certificate.

## APPENDIX B

### TEXAS BAND OF KICKAPOO ACT

25 USC Sec. 1300b-11 and 13

Sec. 1300b-11. Congressional findings and declaration of policy

#### (a) Findings

Congress finds that the Texas Band of *Kickapoo* Indians is a subgroup of the *Kickapoo* Tribe of Oklahoma; that many years ago, the Band was forced to migrate from its ancestral lands to what is now the State of Texas and the nation of Mexico; that, although many members of the Band meet the requirements for United States citizenship, some of them cannot prove that they are United States citizens; that, although the Band resides in the State of Texas, it owns no land there; that, because the Band owns no land in Texas, members of the Band are considered ineligible for services which the United States provides to other Indians who are members of federally recognized tribes because of their status as Indians except when the members of the Band are on or near the reservation of the *Kickapoo* Tribe of Oklahoma; that members of the Band live under conditions that pose serious threats to their health; and that, because their culture is derived from three different cultures, they have unique needs including, especially, educational needs.

#### (b) Declarations

Congress therefore declares that the Band should be recognized by the United States; that the right of the members of the Band to pass and repass the borders of the United States should be clarified; that services which the United States provides to Indians because of their status as Indians should be provided to members of the Band in Maverick County, Texas; and, that land in the State of Texas should be taken in trust by the United States for the benefit of the Band.

Sec. 1300b-13. Band roll

#### (a) Establishment; publication in Federal Register

Within one year of January 8, 1983, the Secretary shall, after consultation with the Tribe, compile a roll of those members of the Tribe who possess *Kickapoo* blood and who are also members of the Band. When said roll is complete, the Secretary shall immediately publish notice in the Federal Register stating that the roll has been completed. The Secretary shall ensure that the roll, once completed, is maintained and that it is current.

#### (b) Report to Congress

If the Secretary does not compile the roll within the period prescribed in subsection (a) of this section, he shall submit a report to Congress setting forth the reasons he did not do so.

(c) Citizenship for applicants

For a period of five years after the publication of the Federal Register notice required under subsection (a) of this section, any member of the Band whose name appears on the roll compiled by the Secretary, may, at his option, apply for United States citizenship. Such application shall be made to the Immigration and Naturalization Service and, upon receipt of the application, citizenship shall promptly be granted to the applicant.

(d) Border crossing, living and working rights

Notwithstanding the Immigration and Nationality Act [8 U.S.C.1101 et seq.], all members of the Band shall be entitled to freely pass and repass the borders of the United States and to live and work in the United States.

SOURCE: Pub. L. 97-429, Sec. 2 and 4, Jan. 8, 1983, 96 Stat. 2269.

## APPENDIX C

### SUGGESTED “TOHONO O’ODHAM ACT”

#### **Cite As: The Tohono O’odham Act**

##### a) Findings

Congress finds that the ancestral lands of the Tohono O’odham Nation, a federally recognized American Indian nation located in Arizona, were severed by the border between the United States and Mexico without regard to the long-existing boundaries of the tribal lands; that, this resulted in the division of the Tohono O’odham land and forced its people to reside in two nations through no act of the Nation or consultation with it; that, as stricter controls are imposed by law on passage and repassage over the border that divides the Tohono O’odham traditional lands, a crisis is being created; that lack of citizenship documentation necessary to meet strict border restrictions forces hardships on Nation members that affect health care, employment, family relationships, and sacred tribal traditions; that, although many members of the Tohono O’odham Nation meet the requirements for United States citizenship, some cannot prove that they are United States citizens; that, lack of citizenship documentation causes many Nation members to have difficulty securing critical health services and to be ineligible for services which the United States provides to other citizens; that, these conditions are causing many members of the Nation to be denied critical health care, education and other services; and that, because their culture has long existed on both sides of the border that divides their land, the Tohono O’odham Nation has unique needs that equity and justice demand be addressed.

##### b) Declarations

Congress therefore declares that the right of all persons listed on the official membership roll of the Tohono O’odham Nation, to pass and repass the borders of the United States should be clarified and facilitated.

##### c) Citizenship of Tribal Members

For a period of five years after the adoption of this act, any person who is listed on the official membership roll of the Tohono O’odham Nation, may, at his or her option, apply for United States citizenship. Such application shall be made to the Immigration and Naturalization Service and, upon receipt of the application, citizenship shall promptly be granted to the applicant. Notwithstanding any other provision of law, the valid membership credential issued to a person who is listed on the official membership roll of the Tohono O’odham Nation pursuant to the laws of the Tohono O’odham Nation shall be considered equivalent to a State-issued birth certificate.

d) No Derivative Benefits to Relatives

Nothing in this section shall be construed as providing for any benefit under this Act for any spouse, son, daughter, or other relative of a person granted citizenship under this section.

e) Border crossing, living and working rights

Notwithstanding the Immigration and Nationality Act [8 U.S.C.1101 et seq.], all members of the Tohono O'odham Nation shall be entitled to freely pass and repass the borders of the United States and to live and work in the United States.