

THE STUPIDEST GOVERNMENT SHUTDOWN IN HISTORY

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I've represented several million undocumented immigrants in class action cases over the past forty years and in the course of that work interviewed several thousand immigrant class members about why and how they came to the United States evading inspection, or overstayed their visas. The facts learned from this work show that the idea of building a "wall" along the southern border to keep America safe is probably the stupidest reason any president has ever offered to support a government shutdown with its known adverse domestic and international costs.

Here is what thousands of immigrants have said that makes clear building a wall to stop undocumented migration would be a waste of time and taxpayers' money:

First, of the thousands of undocumented immigrants I have interviewed, a large number never made the dangerous journey sneaking across the southern border and so would never even see any wall President Trump may build. They entered the country concealed in vehicles.

Each year about nine million vehicles enter California from Mexico at Otay Mesa, thirteen million at San Ysidro, and eleven million at Calexico. Five million vehicles enter Texas at Brownsville, and another five million at Eagle Pass. Only a miniscule fraction of these tens of millions of vehicles are ever inspected for concealed migrants, making this a safe and relatively cheap way to enter the U.S. without detection.

President Trump has never proposed allocating funds to make modern technology available at ports of entry to reduce migration (or drugs) in concealed vehicles because this approach is too clinical and cannot match the visceral appeal of a "border wall" that triggers and stokes nativist sentiment. A wall will do nothing to stop migrants using thousands of vehicles each year to evade inspection upon entry. Hiding in a vehicle is far quicker, easier, and safer than crossing a desert or trekking through mountains and then trying to scale a wall.

Second, my discussions with thousands of undocumented migrants made clear that about half simply entered the United States with temporary visas, developed ties here, and decided to stay. Studies confirm that up to fifty percent of the undocumented population in the country today (and one hundred percent of the known foreign terrorists) entered lawfully and then overstayed their temporary visas.

Each year the U.S. admits about ten million immigrants on temporary visas (visitors, students, workers, etc.). The President has not advocated for funding for the development of improved programs to track whether visitors timely depart when their visas expire.

Most of these immigrants are not from Central America or Mexico. Most come from European or Asian countries and will arrive in airplanes flying right over the wall President Trump wants to build.

Third, I have interviewed and represented thousands of migrants who entered the United States without inspection in a myriad of ways no wall would impact one way or the other. For little more than an immigrant may pay a smuggler to lead a dangerous journey across a land border, they may pay a pilot to fly small groups of migrants to remote landing strips in a U.S. border state. With five passengers a pilot can make twenty-five thousand dollars in a few hours. They will fly right over President Trump's wall.

Thousands of migrants I've interviewed paid a boat captain to bring them in by sea, coming ashore mostly in Florida and California. Others flew to a third country where they didn't need a visa or could easily obtain one via Canada, disembarked in Canada, and simply walked across the unguarded northern border. The cost of the airline ticket is less than the cost of a human smuggler to guide one across the U.S.-Mexico border. President Trump's wall will be irrelevant to migrants sneaking into the U.S. by sea or through the U.S.-Canada border.

Fourth, interviews with migrants also disclosed a critical fact no wall will address: those fleeing extreme forms of violence, and others seeking to be united with husbands, wives or children here, will do almost anything to get across the border. Their determination is so strong and the drive for family unity so powerful that they will find ways to get over, under, or around, any wall President Trump may build. As former Secretary of the Department of Homeland Security Janet Napolitano once said, "You show me a 50-foot wall, and I'll show you a 51-foot ladder."

Regarding the allocation of resources to reduce undocumented migration at the border, President Trump should consider several steps his Administration could take other than building a useless wall.

Thousands of "carvanistas" are stuck in Mexico trying to apply legally to enter the U.S. as refugees. Nationwide, immigration judges have about three quarters of a million backlogged cases. Because the Trump administration refuses to allocate the necessary funds for a sufficient number of asylum officers and immigration judges to process asylum cases presented at the border reasonably promptly, migrants I have interviewed simply give up on the process to enter the country legally and opt to enter without inspection.

A second problem is that under President Trump the denial of asylum claims has skyrocketed. A few years ago the denial rate was about forty percent. Under President Trump the overall denial rate has climbed to over sixty percent. For Central Americans the denial rate is closer to seventy-five percent. This is due to the Trump administration's overall hostility to approvals of any immigration benefits and its issuance of directives to deny asylum to those fleeing gang or domestic violence. Asylum-seekers are now routinely attempting entry without inspection because, for good reason, they have little faith in the fairness or integrity of the process used to apply for lawful admission at the border.

Adding to the overall immigration catastrophe the wall will not address, President Trump's termination of several programs that provided authorized status for certain Central Americans

and immigrants brought here as children, will soon add well over a million people to the ranks of the undocumented population (unless blocked by the courts). The wall will keep these immigrants in rather than out of the United States.

Finally, it seems obvious a wall will have almost no effect on the activities of drug smugglers. The U.S. Drug Enforcement Agency's (DEA) 2018 National Drug Threat Assessment states that "controlled prescription drugs remain responsible for the largest number of overdose deaths of any illicit drug class ..." The manufacturers and suppliers of these drugs operate both domestically and internationally. They have no need to use mules transporting their drugs across the border. The DEA also makes clear that the most common method employed by transnational criminal organizations involves "transporting drugs in vehicles through U.S. ports of entry." A wall will have no impact on this most commonly used method to smuggle drugs into the United States.

According to the U.S. Customs and Border Protection, small airplanes, ultra light aircraft, and drones are also being used to conduct drug drops. Cargo ships are used to import drugs from Afghanistan, Columbia and Mexico. President Trump's proposed wall would have no impact on these methods of drug smuggling.

The solutions to international drug trafficking are complex. Programs must be adopted to disentangle links between organized crime and state actors through judicial and police reforms; laws must be enacted and enforced to prevent financial institutions from laundering hundreds of millions of dollars for drug cartel bosses; and drug treatment and education must be intensified to reduce the consumer demand for illicit drugs in this country. Building a border wall is not even on the list of things experts agree need to be done to reduce the drug abuse epidemic.

Refusing to agree on a budget for the government because the president wants to build a big "beautiful" wall along the Mexican border may fire-up the nativist tendencies in about thirty percent of the electorate, but it's one of the stupidest reasons ever put forward by any president to justify a shut down of the federal government, or to blow away \$5b.

President Trump praises himself as a "genius" on many subjects. However, the hair-brained idea about building a border wall is grounded in passion and prejudice and will not lead to anything close to sound immigration policy or border security.

** Cases we have worked on as counsel for undocumented class members include Flores v. Sessions, 862 F.3d 863; Haitian Refugee Center v. Smith, 676 F.2d 1023; In re Alien Children Education Litigation, Doe v. Plyler, 457 U.S. 202; League of United Latin American Citizens v. Wilson, 908 F.Supp. 755; Immigrant Assistance Project of the LA County Federation of Labor v. INS, 306 F.3d 842; Orantes-Hernandez v. Smith, 541 F.Supp. 351; Catholic Social Services v. Meese, 113 S.Ct. 2485.*