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## I. Introduction

On behalf of Familias Unidas del Chamizal and residents of the San Xavier neighborhood, Texas RioGrande Legal Aid, Inc. submits these comments on the proposed Bridge of the Americas Modernization Project (“BOTA Project” or “Project”), Docket No. 2023-0002, in response to the General Services Administration’s (“GSA”) issuance of its Draft Environmental Impact Statement (“DEIS”) under the National Environmental Policy Act (“NEPA”).<sup>1</sup>

In a step that puts environmentally and community conscious infrastructure planning at the forefront, GSA has chosen Alternative 4 as its preferred alternative and has proposed removing commercial trucks from BOTA. This decision follows months of GSA’s investigation on the feasibility of removing commercial trucks, and years of community activism that culminated in the submittal of over twelve-thousand public comments demanding the removal of commercial trucks.<sup>2</sup>

GSA’s proposal to remove commercial trucks is a critical measure in combating decades of systemic environmental racism in a city that repeatedly ranks among the worst for air quality in the nation. El Paso is in ongoing nonattainment for the 8-hour ozone standard,<sup>3</sup> PM<sub>10</sub><sup>4</sup>, and

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<sup>1</sup> GSA, Notice-PBS-2024-12; Docket No. 2024-0002; Sequence No. 42, Notice of Availability for the Draft Environmental Impact Statement for the Proposed Modernization of the Bridge of the Americas LPOE in El Paso, Texas (September 20, 2024).

<sup>2</sup> Familias Unidas has helped El Pasoans submit over 900 comments online. *See* Earthjustice, Texas Residents Deserve to Breathe Clean Air, <https://earthjustice.org/action/texas-residents-deserve-to-breathe-clean-air>; *See also* General Services Administration, Greater Southwest Region (Region 7), Draft Environmental Impact Statement for the proposed Modernization of the Bridge of the Americas (BOTA) Land Port of Entry (LPOE), El Paso, Texas (September 2024), at Appendix B (hereinafter “DEIS”).

<sup>3</sup> El Paso continues to struggle with ozone attainment issues, and has violated the ozone NAAQS every year since 2016. *See* EPA, Green Book: Texas Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants (last updated September 30, 2024), [https://www3.epa.gov/airquality/greenbook/anayo\\_tx.html](https://www3.epa.gov/airquality/greenbook/anayo_tx.html).

PM2.5.<sup>5</sup> The American Lung Association has given El Paso an “F” for ozone pollution every year since 2000,<sup>6</sup> and ranks El Paso as the 14<sup>th</sup> worst metropolitan area for high ozone days, and the 35<sup>th</sup> worst for 24-hour particle pollution—as compared to over two hundred other metropolitan areas.<sup>7</sup> And the Chamizal and San Xavier neighborhoods—historically neglected and still fighting past deeply rooted systemic discrimination—often face the worst air pollution in the city.

GSA must stand by its decision to select Alternative 4 to satisfy requirements under NEPA and Title VI of the Civil Rights Act, as well as the goals of the Bipartisan Infrastructure Act and Inflation Reduction Act. We sincerely appreciate GSA’s efforts to promote public participation throughout the project, and to take public health seriously by proposing and diligently evaluating an alternative that can help ameliorate longstanding environmental justice harms. We urge GSA to stand by its initial proposal and maintain a permanent and immediate removal of commercial trucks from BOTA as part of Alternative 4.

We also urge GSA to provide several clarifications to ensure that its analysis is adequately representative of its findings that demonstrate that Alternative 4 is the best choice to accomplish the Project’s purpose and needs, and to ensure that the final EIS is easily understood by members of the public. We further request that GSA continue to provide critical project information to the public, refine its climate impacts analysis to discuss local impacts and the Project’s GHG mitigation potential, and reconsider implementing measures that will reduce emissions from passenger vehicles.

## **II. Project Background**

The BOTA Modernization Project’s purpose is to “support CBP’s [Customs and Border Protection] mission by bringing the BOTA LPOE operations in line with current CBP land port design standards and operational requirements while addressing existing deficiencies identified with the ongoing port operations.”<sup>8</sup> GSA describes three key needs for the project:

- Improve the capacity and functionality of the LPOE to meet future public demand, while maintaining the capability to meet border security initiatives.
- Ensure the safety and security for the employees and the travelling public.
- Improve traffic congestion and safety for travelers and citizens of the City of El Paso.

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<sup>4</sup> EPA, Green Book: Texas Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants (last updated September 30, 2024), [https://www3.epa.gov/airquality/greenbook/anayo\\_tx.html](https://www3.epa.gov/airquality/greenbook/anayo_tx.html).

<sup>5</sup> El Paso has an average PM2.5 level of 9.2 µg/m3, which places the County above EPA’s newer standard. EPA, Fine Particulate Concentrations for Counties with Monitors Based on Air Quality Data from 2020-2022, available at <https://www.epa.gov/pm-pollution/final-reconsideration-national-ambient-air-quality-standards-particulate-matter-pm> (last updated April 20, 2024); *See also* Earthjustice, Mapping Soot and Smog Pollution in the United States, February 7, 2024.

<sup>6</sup> American Lung Association, State of the Air Report, Texas: El Paso, <https://www.lung.org/research/sota/city-rankings/states/texas/el-paso>.

<sup>7</sup> *Id.*

<sup>8</sup> DEIS at 1-6.

GSA conducted its original Feasibility Study in November 2018. In November 2023, GSA conducted its Enhanced Feasibility Study, which proposed six viable alternatives, including the no action alternative.

GSA has held in-person community meetings about the BOTA Project since 2022. GSA held a Community Engagement Meeting on April 4, 2023, where it presented three alternatives to the public, none of which included the removal of commercial traffic. GSA then held a Public Scoping Meeting on December 13, 2023, where the public was formally invited to submit comments on the two viable alternatives: Alternative 1a and Alternative 4 (which proposed removing the commercial traffic for the first time). GSA held another public meeting with an opportunity to submit comments on June 26, 2024. GSA released its Draft EIS on September 20, 2024, selecting Alternative 4, and initially set the deadline to submit public comments on the Draft EIS to November 14, 2024. However, after requests from several commercial interests, GSA extended the public comment period to December 2, 2024.

GSA has posted its Stage 1 Request for Quotations on August 27, 2024, and has Stage 2 Request for Proposals scheduled for January 22, 2025. GSA estimates awarding a Design-Build contract in August 2025. GSA plans to start construction in October 2026, with “substantial completion” estimated by November 2029.<sup>9</sup>

### **III. Legal Background**

NEPA enshrines a national policy to protect and promote environmental quality and the health and welfare of humankind.<sup>10</sup> In pursuit of these goals, NEPA mandates a set of action-forcing procedures that require all federal agencies to take a hard look at the environmental consequences of their proposed actions and disclose the relevant information to the public. Agencies must consider a reasonable range of project alternatives, and, after selecting a preferred alternative, demonstrate that “the agency has considered the relevant factors and articulated a rational connection between the facts found and the choice made.”<sup>11</sup> Although NEPA’s requirements are procedural, “these procedures are almost certain to affect the agency’s substantive decision.”<sup>12</sup>

NEPA and its implementing regulations require federal agencies to provide an Environmental Impact Statement: a detailed statement on proposals for major federal actions significantly affecting the quality of the human environment.<sup>13</sup> The EIS must describe the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided if the proposal is implemented, alternatives to the proposed action, the relationship between local short-term uses and the maintenance and enhancement of long-term productivity,

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<sup>9</sup> GSA, Bridge of the Americas Land Port of Entry Project Page, <https://www.gsa.gov/about-us/gsa-regions/region-7-greater-southwest/buildings-and-facilities/texas-federal-buildings/bridge-of-the-americas-land-port-of-entry>.

<sup>10</sup> 42 U.S.C. § 4321.

<sup>11</sup> *Sierra Club v. Fed. Highway Admin.*, 435 F. App’x 368, 372 (5th Cir. 2011) (quoting *Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 105, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983) (internal quotations omitted)).

<sup>12</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

<sup>13</sup> 42 U.S.C. § 4332(C); 40 C.F.R. § 1500.1(a).

and any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented.<sup>14</sup>

Agencies must analyze and disclose the direct, indirect, and cumulative effects of the proposed action and alternatives to the proposed action.<sup>15</sup> In addition, NEPA regulations require agencies to discuss the means “to mitigate adverse environmental impacts.”<sup>16</sup>

An essential component of an adequate NEPA analysis is the environmental justice analysis. CEQ’s NEPA implementing regulations define environmental justice as:

[T]he just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision making and other Federal activities that affect human health and the environment so that people:

- (1) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- (2) Have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.<sup>17</sup>

In addition, Executive Order 12898 requires federal agencies to pursue environmental justice “by identifying and addressing as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations[.]”<sup>18</sup>

GSA must also abide by the requirements of Title VI of the Civil Rights Act. Title VI prohibits discrimination in actions and projects by recipients of federal funds: “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>19</sup> Even more, GSA’s Title VI implementing regulations provide that “[w]here previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this subpart applies, *the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.*”<sup>20</sup>

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<sup>14</sup> 42 U.S.C. § 4332(C).

<sup>15</sup> 40 C.F.R. §§ 1508.1(g), 1501.5(c), 1502.16(a)(1).

<sup>16</sup> 40 C.F.R. § 1502.16(a)(9).

<sup>17</sup> 40 C.F.R. § 1508.1(m).

<sup>18</sup> 59 Fed. Reg. 7629 (1994), EO No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

<sup>19</sup> 42 U.S.C. § 2000d.

<sup>20</sup> 41 C.F.R. § 101-6.204-2 (a)(1)(vi)(4).

Thus, GSA's selected alternative must satisfy NEPA's procedural requirements to fully analyze environmental justice impacts and Title VI's substantive requirement to take all reasonable steps necessary to rectify the history of systemic discrimination impacting communities near the BOTA.

#### **IV. Argument**

GSA must adhere to Alternative 4 and immediately remove heavy-duty commercial trucks from the BOTA. The BOTA Project is funded by the Infrastructure Investment and Jobs Act ("Bipartisan Infrastructure Act") and by the Inflation Reduction Act ("IRA"), which enshrined climate mitigation, pollution abatement, energy efficiency, and community preservation and restoration into American infrastructural growth and job creation. By utilizing Bipartisan Infrastructure Act and IRA funds in its BOTA Project, GSA has committed itself to ensure that the BOTA Project translates into benefits for communities and the environment, in addition to combating climate change, ameliorating environmental injustices, and improving community resiliency.

By selecting Alternative 4, GSA commits not only to the purpose of the Bipartisan Infrastructure Act and IRA, but also adheres to the rational decision-making NEPA demands. GSA's decision takes the voices of El Paso's historically marginalized, disadvantaged,<sup>21</sup> and disproportionately polluted and overburdened environmental justice communities and envisions a project that takes a step towards reversing decades of harmful traffic patterns while achieving project goals of operational efficiency and public safety in a cost-effective manner.

##### **A. Alternative 4 is the Only Environmental Justice Alternative.**

GSA's analysis confirms what has been urged by community groups for years: that commercial truck traffic<sup>22</sup> at the BOTA places numerous communities at increased risk of hazardous air pollution. Air quality is severely degraded by commercial trucks due to their size, volume, diesel emissions, and long idling times. In its DEIS, GSA confirmed this: the allowance of continued truck traffic as is or under Alternative 1a "could result in likely long-term moderate to significant adverse traffic impacts as a result of continued commercial truck operations at BOTA"<sup>23</sup>. When examining cumulative impacts in the region, including at other LPOEs, GSA found that eliminating all commercial truck traffic would result in:

[T]he localized long-term adverse effects would be expected to change to long-term beneficial impacts. The other ports (Tornillo, Ysleta, and Santa Teresa) should experience no significant air quality related issues as a result of additional trucks utilizing those entry/exit points. From a regional standpoint, the elimination of commercial truck traffic has been modelled to result in a long-term negligible to minor beneficial impact as well.<sup>24</sup>

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<sup>21</sup> See <https://www.epa.gov/environmentaljustice/inflation-reduction-act-disadvantaged-communities-map>.

<sup>22</sup> When discussing commercial trucks, we are referring only to heavy-duty trucks or 18-wheelers.

<sup>23</sup> DEIS at 4-44.

<sup>24</sup> *Id.* at 4-45. GSA also noted that the Modernization plan has the "potential to enhance the conditions for local environmental justice communities through modernization of facilities and infrastructure, better access to, and financial support of, public services, and economic impacts from job creation, increased employment opportunities, potential income growth, increases in retail and other sales and an increase in tax base of the area." *Id.*

Even more, GSA found that Alternative 4 would result in “negligible to beneficial impacts” on air quality. Specifically, GSA found that Alternative 4 would reduce local emissions by about 10%, and, when accounting for the trucks rerouting to other ports, a net reduction of 3.2%.<sup>25</sup> Alternative 4 would also reduce local VOC emissions by 34% and produce a net reduction of 6%.<sup>26</sup> GSA must include these findings, as presented to the Joint Advisory Committee, in its Final DEIS.

While we agree with these findings, GSA must clearly indicate the factors demonstrating reduced pollution from removing commercial trucks. For example, GSA must discuss the percentage of emissions reductions locally and regionally under each alternative, paying special attention to comparing the differences in emissions reductions between Alternative 4 and Alternative 1a with continued commercial truck operations. GSA can also point to the extensive studies demonstrating the unique harms of diesel emissions.<sup>27</sup>

As noted throughout public comments and by available science, the significance of diesel emissions on its own demands the removal of commercial trucks from densely populated border crossings like the BOTA. Diesel is acutely harmful on its own, and when U.S. regulators propose more stringent emissions limitations on heavy-duty trucks—proposals that could reduce premature deaths and reduce fuel costs in the long-run—industrial forces protest.<sup>28</sup> Even more, in 2021, Mexico adopted emissions standards equivalent to current U.S. standards for newly manufactured commercial trucks. However, most in-use trucks from Mexico are still operating under standards that are significantly weaker than those affecting most trucks from the U.S.<sup>29</sup> Mexico-domiciled trucks—and their higher levels of emissions—are only allowed within a few miles of the border, increasing the impact of air pollution to nearby neighborhoods like San Xavier and Chamizal.

In its DEIS, GSA compared the environmental justice impacts, including impacts on child populations, of each alternative.<sup>30</sup> The 2-mile radius around the BOTA **contains 95.1% people of color**, a meaningfully greater percentage than 88.8% for El Paso County and 59.9% for Texas as a whole.<sup>31</sup> 38.5% of individuals within 2-miles of the BOTA are also low-income, significantly exceeding low-income populations within El Paso County and Texas (19.5% and 13.9%, respectively). BOTA also has the most schools within a mile: Zavala Elementary (within a quarter mile and directly behind I-110 which leads into BOTA), Douglass Elementary, Bowie High School, Jefferson High School, and Silva Magnet School.<sup>32</sup> The two-mile radius includes

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<sup>25</sup> GSA, Presentation to Joint Advisory Air Committee (October 24, 2024).

<sup>26</sup> *Id.*

<sup>27</sup> See Attachment A, TRLA, Scoping Comments on BOTA Modernization Project (February 23, 2024).

<sup>28</sup> InfluenceMap, New Research Shows Corporate Advocacy to Weaken the EPA Clean Trucks Plan (September 11, 2023), <https://influencemap.org/pressrelease/New-Research-Shows-Corporate-Advocacy-to-Weaken-the-EPA-Clean-Trucks-Plan-23659>.

<sup>29</sup> The more stringent emissions limitations adopted by Mexico are expected to be present in most in-use vehicles in the year 2037. International Council on Clean Transportation, Mexico Heavy-Duty Vehicle Emission Standards (February 22, 2018), <https://theicct.org/publication/mexico-heavy-duty-vehicle-emission-standards/>.

<sup>30</sup> As part of its analysis, GSA evaluated the impact of commercial truck traffic in a 2-mile radius near the BOTA and other commercial LPOEs in Santa Teresa, Tornillo, and Ysleta. DEIS at 3-21.

<sup>31</sup> DEIS at 3-23. GSA utilized EPA’s EJScreen model to identify the area demographics around the BOTA.

<sup>32</sup> *Id.* at 3-46. See Figure 3-5 for Sensitive receptors (populations more susceptible to the adverse effects of air pollution).

hundreds of subsidized housing apartments, such as the Paisano Green Community, which was developed for very low-income senior citizens.<sup>33</sup> In addition, BOTA has at least two daycare centers within a mile, including Rayito De Sol Daycare & Learning,<sup>34</sup> and the Project Vida Early Childhood Education Center. GSA did not mention the location of the Project Vida Center, and should ensure that it includes all community centers with sensitive receptors in its analysis. In contrast, there are no schools within a mile of the Ysleta, Santa Teresa, and Tornillo LPOEs.<sup>35</sup>

In contrast to the ROI around BOTA, the impacts to other LPOEs that would absorb the BOTA commercial truck traffic were not found to be significant under current conditions. GSA found that long-term impacts to Santa Teresa, Tornillo, and Ysleta under Alternative 4 would be:

Minor to moderate, beneficial, direct and indirect effects to earnings, employment, and unemployment...with [commercial and industrial] growth focused around the Santa Teresa and Ysleta LPOEs. Residents living near the Santa Teresa, Tornillo, and Ysleta LPOEs would be the most likely to experience negligible to minor adverse quality of life effects from increased commercial traffic.<sup>36</sup>

Commercial truck traffic at BOTA is increasingly harmful because BOTA has the densest population, with 53,359 people within the 2-mile ROI.<sup>37</sup> In comparison, Santa Teresa has 10,465 people, Ysleta has 27,457, and Tornillo has 1,494.<sup>38</sup> The residents near BOTA are also closer to the bridge, with only 1,000 feet or less than a quarter (.19) mile of distance.<sup>39</sup> In comparison, the nearest residential neighborhood to Santa Teresa is four miles away,<sup>40</sup> 2,800 feet or more than half a mile (.5) from the Ysleta LPOE, and over a mile from the Tornillo LPOE.<sup>41</sup>

## **B. Rerouting Trucks to Other LPOEs is Feasible.**

Alternative LPOEs are better suited to accommodate commercial traffic than the BOTA. Tornillo, Santa Teresa, and Ysleta LPOEs have the capacity to absorb BOTA's commercial traffic, and investment in transportation technology at these ports promises to further increase capacity and efficiency. Alternative LPOEs offer more flexibility for increased industrial development and opportunities for cross-border trade that are limited in the dense residential spaces surrounding the BOTA. With rapidly growing developments at the Santa Teresa and Ysleta LPOEs, and governmental commitments to enhance the arteries feeding these LPOEs,<sup>42</sup> commercial truck traffic is better served at these alternative LPOEs.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 3-46, 3-54.

<sup>36</sup> *Id.* at 4-19.

<sup>37</sup> *Id.* at 3-23.

<sup>38</sup> *Id.* at 29, 32.

<sup>39</sup> *Id.* at 3-34.

<sup>40</sup> *Id.* at 3-35.

<sup>41</sup> *Id.* at 3-37. Tornillo has residences about 900 feet from the Tornillo LPOE, but GSA does not estimate increased truck traffic at the Tornillo LPOE. *Id.* at 3-36.

<sup>42</sup> Ryder, *Ryder Continues Cross-Border Expansion; Opens Another Multiclient Logistics Facility at Top U.S.-Mexico Port*, April 29, 2024, <https://newsroom.ryder.com/news/news-details/2024/Ryder-Continues-Cross-Border-Expansion-Opens-Another-Multiclient-Logistics-Facility-at-Top-U.S.-Mexico-Port/default.aspx>; Jerry Pacheco, *Part Two: The Growth of the Santa Teresa Port of Entry*, KRWG, April 22, 2024, <https://www.krwg.org/local-viewpoints/2024-04-22/part-two-the-growth-of-the-santa-teresa-port-of-entry>; AJOT, *Maersk Opsn New Warehouse*

The City of El Paso has demonstrated a commitment to investing in these improvements. In 2021, the El Paso City Council approved \$32 million to improve El Paso's ports.<sup>43</sup> The priority for this funding was improving technology at the BOTA and Ysleta LPOEs, including "additional camera monitoring systems, dynamic message signs that allow communication with drivers and truck drivers in real-time about events at the bridge, wait times."<sup>44</sup> Recently, the City of El Paso approved a grant application for \$20 million from the U.S. Department of Transportation to improve the Ysleta LPOE as well as surrounding infrastructure, including Pan American Drive, Winn Road and Rio del Norte Drive.<sup>45</sup> This grant would require a local match of \$5 million, totaling \$25 million dedicated to these improvements.

El Paso County Commissioners have expressed the view that development of the Ysleta LPOE is an urgent matter that we must address quickly and through collaboration with all entities involved, including the federal government.<sup>46</sup> The County also recently committed \$90,000 to the Metropolitan Planning Organization (MPO) for a study analyzing El Paso's entire network of ports as an integrated system.<sup>47</sup> This study aims to help the region develop El Paso's port system as a whole, rather than as discrete entities.

Tornillo is the largest LPOE in El Paso and contains the most advanced infrastructure for south- and north-bound commercial traffic of all the LPOEs in the region. Unlike BOTA, Tornillo was designed from its inception to handle heavy-duty commercial traffic.<sup>48</sup> Tornillo was intended to alleviate congestion from BOTA,<sup>49</sup> something that will be more likely in light of proposed improvements on the El Paso and Cd. Juarez sides of Tornillo to port-supporting infrastructure. El Paso County officials believe that the Tornillo LPOE has been underutilized thus far, but will form a critical part of El Paso's ability to efficiently redirect commercial traffic.<sup>50</sup> El Paso County officials are working to attract new business activity to the Tornillo POE.<sup>51</sup>

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*Facility in El Paso, TX to Support Cross-Border Logistics Needs*, American Journal of Transportation, September 5, 2024, <https://www.ajot.com/news/maersk-opens-new-warehouse-facility-in-el-paso-texas-to-support-customers-cross-border-logistics-needs>.

<sup>43</sup> Gabriel Caracciolo, *El Paso City Council Approves Millions to Improve Ports of Entry*, CBS 4 LOCAL (August 30, 2021, 5:43 PM), <https://cbs4local.com/news/local/el-paso-city-council-approves-millions-to-improve-ports-of-entry?src=link>.

<sup>44</sup> *Id.* As these improvements have not begun, the allotted \$32 million of funding remains available. In an October 2024 conversation with Veronica Carabajal, climate justice and civil rights organizer, City representatives confirmed that the city plans to use this money "very soon" to improve the Ysleta commercial lanes.

<sup>45</sup> Diego Mendoza-Moyers, *Residents Near Bridge of the Americas Demand Action on Truck Pollution; Businesses Warn of Economic Impacts*, EL PASO MATTERS, October 27, 2024, <https://elpasomatters.org/2024/10/27/bota-bridge-americas-el-paso-truck-traffic-pollution-chamizal/>.

<sup>46</sup> Comm'r Sergio Coronado, Remark at El Paso Cnty. Comm'rs Ct. Meeting (Oct. 7, 2024) (video and transcript available online at <https://elpasocountytx.new.swagit.com/videos/317001>).

<sup>47</sup> Comm'r Iliana Holguin, Remark at El Paso Cnty. Comm'rs Ct. Meeting (Oct. 7, 2024) (video and transcript available online at <https://elpasocountytx.new.swagit.com/videos/317001>).

<sup>48</sup> Lorena Figueroa, *Tornillo-Guadalupe Bridge is Now Open*, EL PASO TIMES, February 4, 2016, <https://www.elpasotimes.com/story/news/2016/02/04/new-tornillo-guadalupe-bridge-inaugurates/79849438/>.

<sup>49</sup> *Id.*

<sup>50</sup> See Comm'r David Stout, Remark at El Paso Cnty. Comm'rs Ct. Meeting (Oct. 7, 2024) (video and transcript available online at <https://elpasocountytx.new.swagit.com/videos/317001>).

<sup>51</sup> *Id.*



While proposed improvements at other LPOEs improve the efficiency of commercial truck crossings, the rerouting of commercial traffic from BOTA is feasible under current conditions. Under both alternatives, the Ysleta, Santa Teresa, and Tornillo LPOEs are able to absorb BOTA's commercial traffic for two to three years during construction.<sup>52</sup> If GSA determined that commercial traffic can be rerouted for several years, it reasonably follows that commercial traffic can be permanently rerouted. Businesses would be incentivized during the construction phase to enhance fleet infrastructure around other ports of entry, continuing an already extant development trend, and improvements envisioned by City and County officials would only facilitate shift in commercial traffic.

GSA has reasonably determined that the removal of commercial trucks under Alternative 4 is feasible. However, GSA should clarify why its projections did not include an increase of commercial trucks rerouting from BOTA to Tornillo, especially in light of commitments to fund improvements at and around Tornillo, and Tornillo's unique ability to handle commercial traffic.<sup>53</sup>

### **C. Alternative 4 is the Most Efficient and Cost-Effective Alternative.**

Alternative 4 reduces environmental degradation, mitigates harms to public health and increases operational efficiency at the BOTA in the most cost-effective manner. As such, it is the only Alternative whose selection can be rationalized under NEPA's mandate of fully informed decisionmaking. According to GSA's own analysis, Alternative 4 "would have direct, beneficial effects on personal travel expenditures and freight transportation costs."<sup>54</sup> GSA found that Alternative 4 would result in:

Long-term, minor to moderate, beneficial, direct and indirect effects to earnings, employment, and unemployment in the BOTA LROI would be expected from reduced traffic wait/queue times from the additional lanes and the elimination of all commercial traffic at the port. **This would have direct, beneficial effects on personal travel expenditures and freight transportation costs.** Long-term, negligible to minor, beneficial effects on local businesses and neighborhoods near the port would also be expected from increased quality of life. These benefits would result from reduced traffic congestion, improved traffic circulation and pedestrian safety, and potentially reduced air quality and noise effects from that traffic.<sup>55</sup>

In addition to the facilitated flow of traffic, and greater capacity to support commercial infrastructure, including the increased capacity to handle future commercial expansions at other LPOEs, there are several factors that support Alternative 4 as the most cost-efficient alternative.

Alternative 4 provides a significant reduction to the socio-economic costs of environmental pollution by eliminating diesel emissions from heavy-duty commercial trucks and reducing the emissions of POV traffic. The level of emissions reductions achieved by removing commercial trucks could not have been achieved with any of the other alternatives. Even under

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<sup>52</sup> DEIS Table 2-6, at 2-26.

<sup>53</sup> DEIS at 2-49 (predicting an additional 35 trucks northbound at Santa Teresa, 232 at Ysleta and none at Tornillo, and an additional 20 trucks southbound at Santa Teresa, 294 at Ysleta and none at Tornillo).

<sup>54</sup> DEIS at 4-19.

<sup>55</sup> DEIS at 4-19 (emphasis added).

Alternative 1a, the removal of commercial trucks was only proposed as an eventual possibility, not a future guarantee. Removing the trucks in the future is not as cost-effective as an immediate elimination, since future removal would require additional costs for the transformation of the commercial lanes into additional POV lanes.

In addition, Alternative 4 is cost-efficient because it requires less land acquisition than Alternative 1a while achieving even greater levels of operational efficiency. Alternative 4 requires the least land acquisition, with only 4.4-acres of TxDOT land required.<sup>56</sup> Alternative 4 would add six primary outbound POV lanes, with space and infrastructure in place for four additional future lanes.<sup>57</sup> Alternative 4 also includes 35 inbound primary POV and 20 secondary POV lanes.<sup>58</sup> In contrast, Alternative 1a requires nearly three times as much land acquisition (12.4 acres), all to add the same six additional primary POV lanes, four additional commercial lanes, 20 inbound primary POV lanes, and 42 secondary POV lanes.<sup>59</sup> In other words, Alternative 1a proposes nearly 300% the cost of land acquisition for a mere 12% increase in inbound POV lanes.

Furthermore, while the socioeconomic benefits from improved quality of life are significant, the risk of any economic cost of relocating trucks is minor to nonexistent. GSA clearly stated that removal of the trucks would have “beneficial effects on personal travel expenditures and freight transportation costs.”<sup>60</sup> As already noted, cross-border trade infrastructure is already established at other LPOEs, and these ports have the increased capacity for growth. Businesses can reap long-term benefits continuing to invest in infrastructure around these ports, a strategy not similarly available at the densely populated BOTA area.

Importantly, the economic cost incurred by large businesses engaged in trade with Mexico will not detrimentally affect the El Paso economy. The trade through the ports does not account for a significant proportion of the Texas, let alone the El Paso economy. For perspective, the El Paso ports of entry affect roughly 1% of jobs in the entire state of Texas.<sup>61</sup> In contrast, following closely after government and healthcare jobs, the largest job sectors in El Paso are in the service industry (retail, accommodation, and food and service).<sup>62</sup> These key economic sectors stand to benefit immensely from the facilitated flow of POV traffic from Mexico, as many individuals and families cross the border on a daily basis to shop and dine around El Paso.

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<sup>56</sup> DEIS at 2-33.

<sup>57</sup> DEIS at 2-34.

<sup>58</sup> DEIS at 2-43.

<sup>59</sup> DEIS at 2-14, 2-20.

<sup>60</sup> DEIS at 4-19.

<sup>61</sup> Texas Comptroller, 2018 Texas Regional Report, available at <https://comptroller.texas.gov/economy/economic-data/ports/el-paso.php#en2>; Texas Comptroller, Port of Entry: El Paso (2018), <https://comptroller.texas.gov/economy/economic-data/ports/el-paso.php#en2>.

<sup>62</sup> DEIS at 3-42 (discussing employment by sector in El Paso County in 2010 and 2022); See also <https://www.elpasotexas.gov/economic-development/economic-snapshot/industry-and-jobs/> (El Paso City Employment by Sector in 2023).

## **D. GSA Must Clarify Several Aspects of its DEIS.**

### ***i. GSA Should Clarify About Environmental Justice Impacts.***

GSA included an extensive discussion on the impacts to communities near each LPOE under each alternative. However, GSA discussed most of the impacts individually, and did not comprehensively explain the key differences between the ports of entry and their nearest neighborhoods. For clarity, GSA should include a chart that compares the 1-Mile and 2-Mile ROI total population for each port of entry that serves El Paso and Dona Ana Counties (including non-commercial LPOEs). In one section, GSA should include its discussion of the ROI impacts at each LPOE under each alternative, with a 1-mile radius zone for each LPOE.

Additionally, the impacts should be measured with the same mile radius ROI for each LPOE. In its analysis of commercial truck impacts at Santa Teresa, GSA expanded the 2-mile radius to 5-miles “because the 2-mile radius was too sparsely populated to generate an EJScreen report.”<sup>63</sup> While this finding substantiates the finding that negative impacts on environmental justice communities can be reduced by relocating commercial trucks from the BOTA to less populated LPOEs, it risks unfairly comparing the environmental justice impacts across ports. While it may be appropriate for GSA to expand the mile radius for EJScreen population statistics, it should not compare the environmental impacts between a 2-mile radius zone and a 5-mile radius zone.

### ***ii. GSA Must Clarify the Extent of its Reliance on MPO Data.***

GSA’s conclusion that the removal of commercial trucks is feasible is based on extensive research, including, but not limited to, the evaluation of data provided by the El Paso Metropolitan Organization (“MPO”). While the feasibility of re-routing commercial traffic is clear, GSA’s presentation of the studies and data it has relied upon must also be clear.

GSA must present a sufficiently reliable estimate for the number of trucks that utilize the BOTA daily and what ports these trucks will reroute to under Alternative 4. The MPO data GSA used to calculate re-routing estimates might not be up to date or complete.<sup>64</sup> GSA must fill data gaps by explaining how its own studies and data collection—which are still pending a full release—help explain possible future commercial truck traffic increases at alternative ports. GSA must also update the data used with the most recent data provided by MPO,<sup>65</sup> or provide its own data and an explanation for why it has chosen to rely on a specific source.

Even more, GSA must address the MPO’s specific comments on how MPO data was interpreted, including:

- (1) MPO is concerned that GSA misrepresented its 2022 daily field counts of traffic passing through BOTA as “estimates” of monthly values for 2024.<sup>66</sup> MPO is concerned that this

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<sup>63</sup> DEIS at 3-26.

<sup>64</sup> The numbers provided by MPO are not exact, as the figures for south-bound traffic are tabulated by Mexican custom officials who have not shared this data with El Paso.

<sup>65</sup> MPO Letter (estimating the number of northbound trucks that will be rerouted from BOTA to Santa Teresa daily as 16 more than GSA’s numbers reflect, and to Ysleta as 57 more (daily); southbound, the difference is 11 more trucks to Santa Teresa and 98 more trucks to Ysleta).

<sup>66</sup> DEIS at 1-5, Table 1-2.

interpretation of the data is incorrect, especially as the numbers of their field counts have changed since 2022.<sup>67</sup>

For 2024, GSA estimated that northbound truck traffic at 319 per day, while southbound truck traffic would be 358 per day.<sup>68</sup> MPO did not mention the possibility that GSA simply included a typo that it reiterated on each page, and GSA should clarify if this is the case. In addition, the MPO did not discuss Table 1-1, which provides data for yearly northbound traffic from 2012 to 2023. Between 2022 and 2023, northbound truck traffic significantly decreased. GSA should clarify whether it projected 2024 truck traffic estimates were based on these changes.

(2) MPO states that GSA's statements regarding increased southbound traffic at alternate LPOEs are also misleading because they are reported in the DEIS as monthly estimates when in fact they are daily estimates.<sup>69</sup> Regarding these numbers (trucks to be rerouted from BOTA), MPO has expressed that they would like these projections to be excluded from EIS entirely, as "this scenario was just prohibiting trucks at BOTA, without any geometric-primary booth modifications."<sup>70</sup>

On page 2-32 and 2-49, GSA correctly notes that the numbers for northbound traffic are "daily" estimates, which indicates that there could have been a typo when it reported southbound traffic in those same pages as "monthly" estimates.<sup>71</sup> GSA needs to identify the sources of its estimates for north and southbound traffic when it presents current or revised estimates in its Final EIS.

(3) MPO disagrees with GSA's finding that the increase in northbound traffic of personal vehicles "appears to be an outlier" under Alternative 4.<sup>72</sup> MPO maintains that this number is not an outlier, and reflects the traffic that will be drawn from other LPOEs to BOTA in response to its increased capacity to process personal vehicles and the fact that it is toll-free.<sup>73</sup> As Alternative 4 provides the greatest capacity for POV traffic of the two alternatives, it makes eminent sense that more POV traffic would be drawn to the BOTA. GSA notes that this finding is "undergoing further review and changes will be incorporated in the Final EIS."<sup>74</sup>

It is crucial for GSA to provide a complete discussion on the implications of any traffic increase – under both alternatives, POV traffic is projected to increase. However, only Alternative 4 counters the harms of increased POV emissions by eliminating the even greater harm of diesel emissions from heavy-duty commercial trucks. Even more, the increase in POV traffic must be viewed in the context of increased processing capacity and more POV lanes than Alternative 1a. GSA should thus discuss how the benefits of reduced diesel emissions outweigh the harms of

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<sup>67</sup> MPO Letter (stating that from 2022 to 2024 daily field counts, northbound POV crossings have decreased to less than 10,000/day, while trucks have increased to over 500/day).

<sup>68</sup> DEIS at 1-5, Table 1-2. The table states that both "daily and monthly" estimates for northbound and southbound traffic, without distinguishing in its columns whether specific numbers are either daily or monthly.

<sup>69</sup> *Id.* at 2-32.

<sup>70</sup> MPO Letter.

<sup>71</sup> DEIS at 2-32.

<sup>72</sup> *Id.* at 4-29.

<sup>73</sup> MPO Letter.

<sup>74</sup> DEIS at 4-30.

gasoline-powered POV traffic, and how the improved POV traffic flow and processing times at the BOTA mitigate potential impacts from increased traffic.

***iii. GSA Must Clearly Explain how its own Studies Supplement its Existing Analysis.***

While it may be difficult for GSA to provide every data file and study that it relied on in preparation of its EIS, GSA must at least provide the public with a high-level summary of its studies and methods so that the public has a reasonable chance to understand the basis behind GSA's conclusions. We request that GSA clarify the following issues regarding its air and traffic studies:

- Whether GSA considered any future scenarios where more trucks from BOTA rerouted to Tornillo, and the traffic and air quality impacts at other ports under such a scenario.
- Whether GSA considered proposed infrastructure improvements at other LPOEs in analyzing the traffic and air quality impacts from commercial trucks at other ports.

GSA must also clarify in its Final EIS how its Draft EIS provided the key findings from its studies, as GSA is required to provide the public a meaningful opportunity to review its work. It is critical that GSA clearly explains to the public that it provided all interested parties with the opportunity to review its analysis, and even extended the comment deadline to allow all interested parties to do so.

***iv. GSA Must Correct Inconsistencies in its Attribution of Impacts for each Environmental Criterion under Both Alternatives Considered.***

NEPA requires that agencies adequately articulate their basis for findings of significance when discussing the impacts of a project.<sup>75</sup> An agency must explain its reasoning for each finding of significance in sufficient detail, including summarization of any supporting information used to justify that reasoning (data, studies, etc.).<sup>76</sup> We understand that GSA is finishing additional studies, and request that details from these studies be summarized for each relevant category of significance criteria where relevant.

For the two alternatives carried forward for detailed study (Alternative 1a and Alternative 4), GSA attributed significance criteria to compare the environmental impacts of each alternative.<sup>77</sup> The significance criteria measured the magnitude and duration of potential impacts across various categories.<sup>78</sup>

While we agree with GSA's overall conclusions regarding the significance criteria analysis for Alternative 4, GSA evaluated many of the criteria under the assumption that Alternative 1a would remove trucks eventually, thus unduly conflating some of the benefits of Alternative 1a to that of Alternative 4. We request that in its Final DEIS, GSA include a clear comparison of Alternative 4 to Alternative 1a before any potential removal of the trucks. A

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<sup>75</sup> See *Sierra Club v. Fed. Highway Admin.*, 435 F. App'x 368, 372 (5th Cir. 2011); *O'Reilly v. All State Fin. Co.*, No. 22-30608, 2023 WL 6635070, at \*5 (5th Cir. Oct. 12, 2023).

<sup>76</sup> *Id.*

<sup>77</sup> DEIS at ES-5.

<sup>78</sup> *Id.*

simple solution would be for GSA to add a column to its tables that evaluate significance criteria and include separate columns for Alternative 1a with trucks and Alternative 1a with an executed removal of the trucks. Specific discrepancies that should be corrected are listed below:

- **Land Use and Zoning Impacts:** GSA attributes the same findings of impacts to both action alternatives, including that there would be “minor-moderate long-term beneficial” impacts to visual/aesthetics in the surrounding area given “that a new, modern port which incorporates energy efficiency as well as aesthetically pleasing architectural and design elements, would actually result in a minor to moderate long-term beneficial impact as a focal point for entry into the U.S./city and possibly for redevelopment of the surrounding area.”<sup>79</sup> While this is certainly true for Alternative 4, the “minor to moderate” benefits stemming from a visually improved port are insufficient to outweigh the heavily negative aesthetic impacts from constant commercial truck traffic in the adjacent area, especially during congestion hours.
- **Socioeconomics Impacts (including Environmental Justice and Protection of Children):** GSA defined relevant “significant adverse effects” as those related to local economic, demographic, housing, local governance, and community services.<sup>80</sup> GSA needs to expand this definition to include environmental impacts, as it later discusses the impacts of commercial trucks on quality of life.<sup>81</sup>

Under both action alternatives, GSA found minor short-term impacts, and negligible to minor long-term impacts.<sup>82</sup> However, there is a significantly reduced “quality of life” under Alternative 1a, so Alternative 1a cannot be said to have only “negligible to minor long-term impacts.” GSA later admits that this impacts finding is not even based on Alternative 1a with commercial trucks, as it notes that long-term beneficial effects to quality of life under Alternative 1a should be expected “from the removal of commercial traffic should that option be implemented.”<sup>83</sup> GSA further noted that the “rerouting of commercial traffic away from the area could also reasonably be expected to increase pedestrian safety and potentially reduce air quality and noise effects from that traffic.”<sup>84</sup>

- **Noise Impacts:** GSA properly delineated the difference in impacts between Alternative 1a without removal of commercial trucks and with removal for the criterion of “unacceptable short—long-term noise levels to nearby sensitive receptors.”<sup>85</sup> GSA found that the elimination of commercial trucks would result in a “long-term moderate to significant beneficial impact,”<sup>86</sup> compared to the “long-term minor to moderate adverse” impact from idling trucks under Alternative 1a.<sup>87</sup> However, GSA determined both

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<sup>79</sup> *Id.* at 4-10.

<sup>80</sup> *Id.* at 4-13.

<sup>81</sup> *Id.* at 4-14.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 4-17.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 4-20.

<sup>86</sup> *Id.* at 4-24, 4-27.

<sup>87</sup> *Id.*

alternatives would have no impacts related to “vibrations that could affect nearby sensitive receptors.”<sup>88</sup> We ask that GSA explain why no vibrations would be expected under Alternative 1a, given the earth-trembling effect 40-ton trucks can have on the roads they traverse. The current routes trucks take to and from the BOTA cross dangerously close to neighborhoods, where residents have noted the rumbling sensations from frequent truck traffic.

- **Traffic Impacts:** GSA properly distinguished the impacts between alternatives for impact to area vehicular traffic and/or transportation routes.”<sup>89</sup> Alternative 4 would have “moderate to significant long-term beneficial” impacts with the elimination of truck traffic, while Alternative 1a would have “moderate to significant long-term adverse” impacts with the inclusion of truck traffic.<sup>90</sup>
- **Air Quality Impacts on Communities:** GSA properly distinguished the impacts between alternatives for “short- or long-term public/community health or other related environmental impacts.”<sup>91</sup> Alternative 4 was found to have long-term moderate to significant beneficial impacts with the removal of the trucks, while Alternative 1a would have long-term moderate to significant adverse impact with truck traffic.<sup>92</sup> GSA specified that:

[T]he continued north- and south bound commercial truck traffic (and associated wait, queuing/processing and idling times) is considered to be a long-term moderate to significant negative health or other related environmental impact to the local community based on comments received as part of the scoping/public involvement aspects of the proposed project. Should the option to eliminate all commercial truck traffic be implemented in the future, this long-term adverse impact should be largely replaced by a long-term moderate to significant beneficial localized air quality impact.<sup>93</sup>

- **Regional Nox and/or VOC Impacts:** No differences in impacts were distinguished for “short- or long-term impacts as a result of Regional NOx and/or VOC increases.”<sup>94</sup> For this criterion, GSA found “long-term negligible to minor beneficial” impacts under both Alternatives. GSA explained that:

When the regional NOx and VOC data is combined with the daily idling emissions data presented above (see Tables 4-18 through 4-21) the modeled data shows total projected overall regional NOx less than the baseline (No Action) for Alternative 1a (with trucks) and Alternative 4, with **Alternative 4 showing the greatest reduction**. The modeled data also shows total projected overall regional VOCs to be less than the baseline (No Action) for all alternatives with Alternative

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<sup>88</sup> *Id.* at 4-24.

<sup>89</sup> *Id.* at 4-28.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 4-31.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 4-32.

<sup>94</sup> *Id.* at 4-31.

4 again showing the greatest difference (see Table 4-23). This too is considered to be a minor to moderate long-term beneficial impact resulting from the alternatives.<sup>95</sup>

We understand that GSA is still conducting further studies, and request that GSA specify whether the “greatest reduction” of NOx and VOC emissions that is possible under Alternative 4 merits a finding of greater beneficial impacts for GSA’s Air Quality Impacts criterion.

We also request that GSA clarify whether it considered the unique dangers posed by diesel exhaust emissions and how such findings can also support this determination of impacts. As discussed in our Scoping Comments, diesel exhaust often constitutes the most significant source of ultrafine particles (diameter <0.1m) in urban environments,<sup>96</sup> which are likely to result in greater health risks than those associated with larger particles.<sup>97</sup>

Further, as required by NEPA, GSA conducted a cumulative impacts analysis. While the BOTA on its own may not produce any direct or indirect impacts, when combined with past, present, and reasonably foreseeable future projects throughout El Paso, the BOTA could contribute towards cumulative impacts. Given the overarching benefits of removing commercial trucks from the BOTA, it is not likely that Alternative 4 would contribute significantly towards detrimental cumulative impacts.

While we do not challenge GSA’s finding that Alternative 4 will not significantly contribute towards negative cumulative impacts, we note that GSA improperly concluded that those developments pose no detrimental cumulative impacts on their own.<sup>98</sup> GSA properly listed the various ongoing and future development projects by the City of El Paso, TxDOT and other actors that could risk environmental impacts, and concluded that no disproportionate impacts would result from any of these projects due to presumed compliance with NEPA and other applicable laws and regulations, and the City of El Paso’s commitment to manage development in an environmentally responsible manner that supports its residents.<sup>99</sup> As has been demonstrated by the City in the past<sup>100</sup> and in ongoing projects,<sup>101</sup> environmental justice and historic communities are set aside in the name of development. Even more, TxDOT has and continues to

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<sup>95</sup> *Id.* at 4-33 (emphasis added).

<sup>96</sup> EPA, Study of Ultrafine Particles Near a Major Highway with Heavy-Duty Diesel Traffic, [https://cfpub.epa.gov/si/si\\_public\\_record\\_Report.cfm?Lab=NCER&dirEntryId=83813](https://cfpub.epa.gov/si/si_public_record_Report.cfm?Lab=NCER&dirEntryId=83813).

<sup>97</sup> Hector A. Olvera, Mario Lopez, Veronica Guerrero, Humberto Garcia and Wen-Whai Li., Ultrafine Particle Levels at an International Port of Entry Between the US and Mexico: Exposure Implications for Users, Workers, and Neighbors, 23 *Journal of Exposure Science and Environmental Epidemiology* 289 (2013).

<sup>98</sup> *See id.* at 4-44 (“Cumulatively, the reasonably foreseeable plans and projects identified in Section 4.10.2, along with the proposed modernization of the port should also not result in any future disproportionate impacts to environmental justice communities or children.”).

<sup>99</sup> *Id.* at 4-36-44.

<sup>100</sup> Michel Martin, In Texas, A Struggle to Preserve Historic Duranguito Neighborhood, NPR: ALL THINGS CONSIDERED, July 24, 2021, <https://www.npr.org/2021/07/24/1020224698/in-texas-a-struggle-to-preserve-historic-duranguito-neighborhood>.

<sup>101</sup> Vania Castillo, *El Paso’s Onward Alameda Project Sparks Fears of Displacement Among Residents*, KFOX14/CBS4, September 5, 2024, <https://cbs4local.com/news/local/el-pasos-onward-alameda-project-sparks-fears-of-displacement-among-residents>.



engage in a practice of exacerbating harms to environmental justice communities through the expansion of highways and related infrastructure in El Paso. GSA may not have responsibility for these practices, but it should at least acknowledge that other actors may not always select the most environmentally responsible alternative that responds to the concerns of environmental justice communities.

***v. GSA Must Discuss Local Climate Change Impacts.***

GSA discussed the impacts of climate change on the Great Plains region, which includes the El Paso area.<sup>102</sup> While this discussion satisfies a requisite under climate impacts evaluation for an agency's EIS, it does not satisfy the need to discuss local impacts. The localized impacts of global climate change in the El Paso region are particularly acute at border crossings, where large amounts of concrete retain heat in already extreme weather conditions and expose pedestrians and vehicle passengers to hours of potentially dangerous conditions. While GSA may not play a significant role in contributing towards these impacts, it must still discuss them in its environmental analysis, as well as any steps it is taking to combat the challenges of extreme weather at its LPOE. For example, GSA included a brief description of several features that would be implemented at the BOTA, such as added shade and native vegetation. These features are prime examples of climate adaptation at the border, and GSA should describe them as such.

Furthermore, the increased operational efficiency at the BOTA is the foundation of GSA's mitigation of the harmful effects of air pollutants, including GHGs, and as such, we urge GSA to clearly note how its studies support this finding. We understand that GSA will provide completed study findings in its Final EIS, and it is critical that GSA tie specific findings from these studies to the claims it makes in its analysis.

**V. GSA Must Continue to Provide Critical Project Information to the Public.**

The quality and availability of project information is the foundational pillar of NEPA. We appreciate GSA's efforts thus far in holding various public meetings throughout the project's development, providing information to the public, and correcting deficiencies in the information provided. We ask GSA to continue to provide information to ensure that the public is fully informed of the continued steps taken to modernize the port.

To allow for continued public information and reduce the burden of GSA having to release additional studies, reports, and plans with its Final EIS, we request that GSA specifically provide the following information to the public and publish the information on GSA's BOTA Modernization Project website as it becomes available:

- Traffic and Air Quality Studies: we understand that providing complete studies is difficult due to the size of the studies. While public availability of complete studies is ideal to ensure meaningful public information, GSA should at the very least provide high-level summaries of its studies that include discussions of key findings used to support GSA's final decision.
- Public Comments submitted on GSA's DEIS.

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<sup>102</sup> *Id.* 3-59-61.

- SWPPP: if a draft SWPPP is prepared, we request that the draft be made available on GSA's project website.
- Phase II Soil Survey Findings: We request that GSA include its findings in its ongoing soil analyses, or at the very least, a summary of its findings, on the project website.
- Construction Impact Mitigation Plans: We request that GSA update the public when Asbestos, Lead Paint, and any other construction impacts mitigation plans are finalized. We request that GSA provide information to the public about the individuals who can be contacted to obtain further information about these plans and any other measures that will be undertaken to ensure minimally disruptive construction.
- We also request that the homes within a quarter mile of the BOTA be pre-assessed, that the GSA provide a liaison that residents can notify if construction activities damage their homes, and that the GSA not allow contractors to use equipment harmful to residential structures next to homes.

## **VI. GSA Should Reconsider Adding POV Traffic Improvements.**

GSA proposes improving the pick-up and drop off stations for pedestrians heading north. However, aside from adding more POV lanes than Alternative 1a, it does not propose any measures to mitigate the projected increase in POVs at BOTA once the commercial vehicles are removed. In anticipation of this increase in POVs heading both north and south, we request dedicated lanes for buses heading north and south, a bicycle and motorcycle lane in both directions, and a Dedicated Commuter Lane (SENTRI) for vehicles heading north.

## **VII. Conclusion**

We commend GSA for choosing Alternative 4 as its preferred alternative in its DEIS and urge GSA to stand by its decision in its Final EIS. We only request that GSA ensure that information is presented clearly in detailing the precise benefits that Alternative 4's immediate removal of commercial truck traffic holds over Alternative 1a, that GSA provide further requested clarification in its analysis, and that GSA continue to fully inform the public of significant project updates.

Sincerely,

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## **I. Introduction.**

On behalf of Familias Unidas del Chamizal and residents of the San Xavier neighborhood, Texas RioGrande Legal Aid, Inc. submits these comments on the proposed Bridge of the Americas Modernization Project (“BOTA Project”), Docket No. 2023-0002, in response to the General Services Administration’s (“GSA”) Notice of Intent to Prepare an Environmental Impact Statement (“EIS”) under the National Environmental Policy Act (“NEPA”).<sup>1</sup> Familias Unidas del Chamizal and residents of the San Xavier neighborhood request that the GSA select Alternative 4.<sup>2</sup>

The BOTA is a “Free Bridge” as a result of the Chamizal Treaty of 1963. The BOTA’s lack of tolls and its central location have made it a magnet for traffic, particularly passenger vehicles and heavy-duty diesel commercial traffic (“semis” or “heavy-duty trucks”). Unlike most land ports of entry in the country, BOTA is within close proximity of residential neighborhoods. Most efforts to expedite traffic on the BOTA have focused on traffic heading north, despite the fact that congestion also forms heading south every single day. Even more alarming, due to the failings of TXDOT’s I-10 Connect Project, southbound traffic at the BOTA backs up into I-10 East, I-10 West and US-54. If GSA selects Alternative 4 and removes the semi traffic from the BOTA, it will reduce the traffic congestion on its north- and southbound arteries.

The BOTA Project is funded by the Infrastructure Investment and Jobs Act (“Bipartisan Infrastructure Act”) and by the Inflation Reduction Act (“IRA”), which enshrined climate mitigation, pollution abatement, energy efficiency, and community preservation and restoration into American infrastructural growth and job creation. By utilizing Bipartisan Infrastructure Act and IRA funds in its BOTA Project, GSA has committed itself to ensure that the BOTA Project

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<sup>1</sup> General Services Administration, Notice-PBS-2023-04; Docket No. 2023-0002; Sequence No. 23, Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting and Comment Period.

<sup>2</sup> Commenters hereby incorporate their April 12, 2023 comments, attached as Exhibit A, TRLA, Complaint under Title VI of the Civil Rights Act of 1964 on behalf of the San Xavier Community, December 7, 2023 [hereinafter TRLA Title VI Complaint].

translates into benefits for the communities and the environment, in addition to combating climate change, ameliorating environmental injustices, and improving community resiliency.

Commenters represent Southside residents currently living with the longstanding environmental harms of the BOTA and threatened by the Project's proposed expansion of the Port of Entry ("POE"). Southside residents have been continuously bombarded by the environmental harms that stem from commercial growth at the BOTA, with heavy commercial truck traffic stalling for hours on a daily basis directly next to residences and Zavala Elementary School.

GSA must select Alternative 4 and remove all heavy-duty commercial traffic from the BOTA. GSA faces two choices: *to help* ameliorate the harms of this history by removing and relocating semis from the BOTA, or to *encroach further* on already vulnerable communities with noxious pollution from heavy-duty commercial truck traffic. GSA should not repeat history and perpetuate unacceptable threats to public safety, the economy, and the civil and human rights of Southside El Paso communities. Alternative 4 is currently the only proposed alternative that can accomplish this goal and satisfy the goals of the Bipartisan Infrastructure Act and IRA, as well as achieve Title VI and NEPA compliance. GSA cannot shirk its duties under federal law by choosing an alternative that continues to permit the incessant idling of heavy-duty diesel commercial traffic at the cost of public health.

GSA must prepare an EIS that addresses the significant impacts of the BOTA Modernization Project and adequately mitigates those impacts. To do so, GSA must conduct a robust environmental justice analysis and fully inform itself of the immense benefits of removing commercial truck traffic from the BOTA in both directions and the harms of allowing it to continue, including a discussion of local climate change impacts. This analysis must include a detailed history of environmental racism in Southside El Paso and fully disclose the wide-reaching impacts of the BOTA on these communities, which are already overrun with air pollution sources.

GSA must also implement other environmental pollution reduction strategies, including public transportation on the BOTA for students and daily commuters, additional ready lanes and improved technology to expedite traffic heading north, incentives to boost electric vehicles, native landscaping, and the closure of Zavala Elementary. In the face of climate change, the Project must implement climate adaptation strategies to ensure the safety of commuters and customs officers. The BOTA crossing, which serves everyone across El Paso and Juarez, should be a part of improving public health by tackling air pollution and improving the quality of life of communities near the port and its feeder highways.

## **II. Summary of the Proposed Project.**

The San Xavier and Chamizal are special and unique communities in El Paso: keystones of El Paso's Mexican American heritage and imbued with a strong support network between neighbors. These communities are intrinsically linked to the BOTA by their proximity and are particularly sensitive to the foreseeable adverse impacts of the BOTA Project.

On November 13, 2023, GSA published its Notice of Intent for the proposed BOTA Port Modernization Project. GSA's Notice of Intent states that purpose of the proposed action is for GSA to "bring[] the BOTA LPOE [Land Port of Entry] infrastructure in line with current CBP

land port design standards...and operational requirements while addressing existing deficiencies identified with the ongoing port operations.”<sup>3</sup> The NOI further describes the project need as “improv[ing] the capacity and functionality of the LPOE to meet future public demand, while maintaining the capability to meet border security initiatives,” and “ensur[ing] the safety and security for the employees and the travelling public.”<sup>4</sup>

GSA received \$9.9 million in funds through the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law, a key measure of President Biden’s administration that aims to rebuild the Nation’s infrastructure, create jobs, support environmentally conscious manufacturing and innovation, bolster national security, support clean-energy, combat climate change, and increase community resiliency.<sup>5</sup> In December 2023, GSA awarded the contract for pre-design services for the project.<sup>6</sup> The funding for the BOTA is further supplemented by the Inflation Reduction Act, which allocated a total of \$2 billion to GSA to reduce the carbon emissions of its buildings across the nation, including the BOTA.<sup>7</sup> GSA has correctly recognized that:

The [BOTA] project is part of President Biden’s Investing in America agenda in growing the American economy from the bottom up and middle-out – from rebuilding our Nation’s infrastructure, to creating a manufacturing and innovation boom powered by good-paying jobs, to building a clean-energy economy that will combat climate change and make our communities more resilient.<sup>8</sup>

On December 13, 2023, GSA held its Public Scoping Meeting to discuss the currently proposed alternatives and obtain public comment on the project. GSA noted that its EIS would discuss direct, indirect, and cumulative effects, and identified the following as issues for analysis of the project’s impacts:

- Hazardous Materials
- Waste, and/or Site Contamination

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<sup>3</sup> General Services Administration, Notice-PBS-2023-04; docket No. 2023-0002; Sequence No. 23, Notice of Intent to Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting and Comment Period.

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> General Services Administration, *GSA awards \$10 Million for Pre-Design Services for Modernizing Facilities at the Bridge of the Americas Land Port of Entry*, December 26, 2023, <https://www.gsa.gov/about-us/gsa-regions/region-7-greater-southwest/region-7-newsroom/greater-southwest-feature-stories-and-news-releases/gsa-awards-10-million-for-predesign-services-for-modernizing-facilities-at-the-bridge-of-the-americas-land-port-of-entry-12262023>.

<sup>6</sup> *Id.*

<sup>7</sup> General Services Administration, *Biden-Harris Administration Announces \$2 Billion for Cleaner Construction Projects to Tackle the Climate Crisis, Spur American Innovation, and Create Good-Paying Jobs as Part of Investing in America Agenda*, November 6, 2023, <https://www.gsa.gov/about-us/newsroom/news-releases/bidenharris-administration-announces-2-billion-for-cleaner-construction-projects-to-tackle-the-climate-crisis-spur-american-innovation-and-create-good-paying-jobs-as-part-of-investing-in-america-agenda-11062023#:~:text=TOPEKA%20%E2%80%93%20The%20U.S.%20General%20Services,Administration's%20Investing%20in%20America%20agenda>.

<sup>8</sup> General Services Administration, *GSA awards \$10 Million for Pre-Design Services for Modernizing Facilities at the Bridge of the Americas Land Port of Entry*, December 26, 2023, <https://www.gsa.gov/about-us/gsa-regions/region-7-greater-southwest/region-7-newsroom/greater-southwest-feature-stories-and-news-releases/gsa-awards-10-million-for-predesign-services-for-modernizing-facilities-at-the-bridge-of-the-americas-land-port-of-entry-12262023>.

- Socioeconomics (including Environmental Justice)
- Public Services, Infrastructure, and Utilities
- Surface Waters, Drainage, and Floodplains
- Land Use and Zoning (including Visual and Aesthetics)
- Traffic (Vehicular and Pedestrian), Transportation, and Parking
- Air Quality (including Greenhouse Gas Emissions)
- Noise and Vibration
- Cultural and Historic Resources<sup>9</sup>

GSA presented the public with six alternatives, including the No Action Alternative. Alternative 4 was the only alternative presented that would immediately and permanently remove heavy-duty diesel commercial truck traffic, with minimal land acquisition and the preservation of the County Coliseum. In contrast, every other alternative, excluding the No Action Alternative, would expand the BOTA eastwards towards the County Coliseum and seize portions of County land that are currently used for the benefit of El Paso communities.

GSA further discussed the project timeline, with publication of the Draft EIS expected in the summer of 2024.<sup>10</sup> In nearly every comment submitted to GSA at the December 13, 2023 Meeting, the public urged the removal of heavy-duty commercial traffic and spoke about the hardships of enduring constant diesel emissions from these trucks.

On January 22, 2024, Congresswoman Veronica Escobar and GSA hosted a Public Meeting for the Project, where the community voiced a unified message through shared experiences of living in the forefront of environmental pollution. Residents expressed the struggles of raising children afflicted with respiratory diseases or lung cancer, public schoolteachers spoke about the daily detrimental impact air pollution had on their students, and residents from the San Xavier and Chamizal community groups urged GSA to remedy their ongoing struggle of living under an incessant cloud of diesel emissions, noise, vibrations, and bearing witness to an increasing number of friends and neighbors passing away from cancer. Dr. Toni Ramirez, a public health doctor who serves Central El Paso residents, described how she witnessed the struggles discussed by residents in her daily practice, and voiced concern over the lack of resources to address the medical needs and resiliency of residents most impacted by air pollution.<sup>11</sup>

### **III. Legal Framework**

#### **A. Title VI of the Civil Rights Act.**

Title VI serves as a critical bulwark against further discrimination in projects such as this one. Title VI's prohibition on discrimination applies to all recipients of federal funds: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. As a federal agency, GSA manages its day-to-day operations with federal funding, and relies on federal funding for its

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<sup>9</sup> General Services Administration, December 13, 2023, NEPA Public Meeting Summary at 23.

<sup>10</sup> *Id.* at 24.

<sup>11</sup> Congresswoman Veronica Escobar's office informed participants that the public comments were being recorded.



projects. Because of this inextricable reliance on federal funding, GSA is obligated to comply with Title VI in all its programs or activities.<sup>12</sup>

Critically, GSA's Title VI implementing regulations provide that “[w]here previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this subpart applies, *the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage*, and to accomplish the purposes of the Act.<sup>13</sup> Thus, because of the legacy of discriminatory practices impacting San Javier and Chamizal residents, GSA has an affirmative responsibility to not only avoid discriminating against these communities today, but also to overcome the legacy of past discrimination.

A disproportionate share of the families who live near the BOTA and its arterial highways are Hispanic or Mexican-American. A pattern of governmental decisions has placed Southside communities like San Xavier and the Chamizal at the forefront of environmental contamination. In recognition of this, the Chamizal community—west of San Xavier—has advocated for clean air since the passage of the North American Free Trade Agreement (“NAFTA”) in 1994. The Chamizal community has voiced concerns to TXDOT, GSA, EPA, and local government authorities to take meaningful action to ameliorate air pollution, including by advocating for the removal of semi-trucks from Paisano Drive and the BOTA. In furtherance of this goal, residents of the Chamizal and San Xavier neighborhoods engaged in public participation throughout the TXDOT I-10 Connect Project, which removed the semis from Paisano Drive only to place them behind San Xavier. Both communities have been actively engaged in the BOTA Modernization Project, as have Southside community residents east of BOTA and community members from throughout the County.

If GSA allows for a continuation or increase in heavy-duty commercial truck traffic through its BOTA Project, it will authorize the continued pollution of the air that residents breathe, increasing fine particulate pollution associated with premature death and serious health problems. As explained in more detail below, the public health impacts of vehicular air pollution, particularly from heavy-duty diesel trucks, are widespread and severe.<sup>14</sup> The project also risks aggravating soil and water pollution from construction and continued operations at the BOTA. These are unacceptable harms for communities that have suffered from pollution and health problems from the port of entry, highways, busy roads, Marathon refinery, the EPISD bus hub, the EPWU water treatment plant, the covered (yet unabated) toxic landfill at Modesto Park, and other pollution sources for many decades. Should GSA fail to prevent further environmental degradation on the San Xavier and Chamizal communities, it risks violating Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, as well as its own Title VI implementing regulations.<sup>15</sup>

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<sup>12</sup> 42 U.S.C. § 2000d-4a.

<sup>13</sup> 41 C.F.R. § 101-6.204-2 (a)(1)(vi)(4).

<sup>14</sup> See *infra* at Section IV.F.1. Air Pollution Impacts.

<sup>15</sup> 41 C.F.R. Chapter 101 Subpart 101-6.2 et seq.

## B. The National Environmental Policy Act.

The National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4332 et seq., provides the congressionally mandated procedure for assessment of these impacts, and NEPA requires that these procedures be completed “at the earliest possible time,” i.e., “before decisions are made and before actions are taken.”<sup>16</sup> Accordingly, GSA cannot select final project plans for the BOTA Modernization project and obtain necessary permits until the NEPA process is completed, including preparation of an EIS.

An EIS must describe:

- i. the environmental impacts of the proposed action;
- ii. any adverse environmental effects which cannot be avoided should the proposal be implemented;
- iii. alternatives to the proposed action;
- iv. the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and
- v. any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.<sup>17</sup>

An EIS must also describe the direct and indirect effects, and cumulative impacts of, a proposed action.<sup>18</sup> These terms are distinct from one another. Direct effects are “caused by the action and occur at the same time and place.”<sup>19</sup> Indirect effects are also “caused by the action” and “are later in time or farther removed in distance, but are still reasonably foreseeable.”<sup>20</sup> Indirect effects “may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effect on air and water and other natural systems, including ecosystems.”<sup>21</sup>

Cumulative impacts are not causally related to the action. Instead, they are:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from

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<sup>16</sup> 40 C.F.R. §§ 1501.2, 1500.1(b) (emphases added).

<sup>17</sup> 42 U.S.C. § 4332(C).

<sup>18</sup> 40 C.F.R. §§ 1502.16, 1508.7, 1508.8; *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1072-73 (9th Cir. 2011).

<sup>19</sup> 40 C.F.R. § 1508.1(g)(1).

<sup>20</sup> *Id.* § 1508.1(g)(2).

<sup>21</sup> *Id.*

individually minor but collectively significant actions taking place over a period of time.<sup>22</sup>

The EIS must give each of these categories of effect due consideration.

Finally, while an EIS is being prepared GSA may take no action which would tend to “limit the choice of reasonable alternatives,” or “tend[] to determine subsequent development.”<sup>23</sup>

#### **IV. NEPA Procedural Comments of Familias Unidas and San Xavier Residents.**

##### **A. GSA Must Select Alternative 4 and Remove Semis from the BOTA.**

The alternatives analysis “is the heart of the environmental impact statement.”<sup>24</sup> Federal agencies must take care not to define the project’s purpose so narrowly as to prevent the consideration of a reasonable range of alternatives.<sup>25</sup> CEQ’s regulations implementing NEPA, 40 C.F.R. § 1502.14, explain that a reasonable range of alternatives should be presented and compared in the EIS to allow for a “clear basis for choice among options by the decision maker and the public.” In addition, CEQ’s “Forty Most Asked Questions Concerning National Environmental Policy Act Regulations” explain that agencies must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.”<sup>26</sup>

Crucially, the alternatives must examine even those alternatives which may be outside the jurisdiction or capability of the agency or applicant.<sup>27</sup> Further, “[a] potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered.”<sup>28</sup> GSA must also include “appropriate mitigation measures not already included in the proposed action or alternatives.”<sup>29</sup> Because alternatives are central to decisionmaking and mitigation, “the existence of a viable but unexamined alternative renders an environmental impact statement inadequate.”<sup>30</sup> Should the agency only give an alternative threadbare analysis or ignore critical information pertaining to that alternative, the deficient analysis also renders an environmental impact statement inadequate.<sup>31</sup>

As such, the GSA must fully consider Alternative 4 and its removal of all heavy-duty commercial truck traffic from the POE in both directions, particularly because Alternative 4 emerged from the public’s overwhelming demand—reiterated since the first BOTA public meeting in the fall of 2022—for an alternative that prioritizes public health. Including an alternative in the “alternatives analysis” is only the first step, however, and should GSA

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<sup>22</sup> § 1508.1 (g)(3).

<sup>23</sup> 40 C.F.R. § 1506.1.

<sup>24</sup> 40 C.F.R. § 1502.14.

<sup>25</sup> See, e.g., *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997).

<sup>26</sup> CEQ, “Forty Most Asked Questions Concerning National Environmental Policy Act Regulations,” at 3, <https://www.energy.gov/nepa/articles/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act>.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1170 (10th Cir. 2002), as modified on reh’g, 319 F.3d 1207 (10th Cir. 2003).

encounter challenges in the implementation of Alternative 4, it must in good faith consider potential resolutions. Indeed, it would be a clear violation of NEPA should GSA decline to dismiss Alternative 4 prematurely with no further consideration. Such dismissal would brazenly depart from what is reasonably feasible, especially given the fact that *GSA has full authority to remove and redirect commercial truck traffic from the BOTA*. There is also ample evidence that demonstrates that Alternative 4 is practicable.

***1. Removing Semi Traffic from the BOTA is Feasible.***

The BOTA is not the only land port of entry in the El Paso region that is currently equipped—and certainly not the port that is best equipped—to inspect commercial trucks and their cargo. There are three ports of entry in the region with capacity to handle commercial traffic: Ysleta, Santa Teresa, and Tornillo, all within 10-, 27-, and 40- miles of the BOTA, respectively. Further, the BOTA only operates its northbound commercial crossings from 6a.m. to 2p.m. and as such, cannot be considered a key LPOE in the region for commercial traffic.

With increased border pollution and unprecedented stalling of commercial traffic near the BOTA, GSA must conduct its own analysis on the strategies available to redirect both north- and southbound commercial truck traffic. The other POEs have already demonstrated reliability in absorbing the BOTA’s commercial traffic. Since 2022, the BOTA’s commercial lanes have been closed numerous times due to the surge in immigrant crossings, and semis were rerouted to other ports. As part of its Alternatives Analysis, GSA must review how these closures at the BOTA impacted other LPOEs and consider strategies to effectuate greater mobility and reduce idling at the BOTA by permanently implementing a similar diversion of truck traffic.

It makes eminent sense to redirect traffic to other POEs, especially Tornillo, given that the transportation infrastructure around the BOTA on both sides of the border was not built to handle heavy-duty truck traffic, while Tornillo was built with semis in mind and is currently the largest POE in El Paso. GSA must seriously consider how to redirect traffic to Tornillo, Ysleta, and Santa Teresa, and analyze how traffic flow can be improved, and the significant air pollution reductions that would flow from such relocations.

***2. Local Governments have Already Agreed to Explore Using Technology at Another POE to Reduce Semi Traffic.***

The sister cities of El Paso and Ciudad Juarez have recognized that they need to address the semi traffic at the ports of entry. In January of 2023, the two cities entered into a Memorandum of Understanding to promote the use of conveyor belt technology at the Ysleta POE to facilitate commercial traffic. GSA should collaborate with the City of El Paso and Juarez in moving forward on installing this technology at the Tornillo POE, given the success of conveyor belt technology in increasing operational efficiency.<sup>32</sup> Upon information and belief, truck drivers do not feel safe queuing on the Mexican side of the Tornillo POE as they wait to enter the U.S., due to cartel activity. However, conveyor belt technology would eliminate idling for northbound traffic and increase safety at the border. GSA must also explore any other actions it can take to improve safety at the Tornillo Bridge and facilitate crossings, including through collaborations with U.S. and Mexican authorities. Unlike the BOTA, the Tornillo Bridge was

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<sup>32</sup> CHIA, Benefits of Conveyor Belts in the Port Sector, September 19, 2023, <https://espirales.es/notice/benefits-of-conveyor-belts-in-the-port-sector>.

built with increased capacity to handle heavy-duty commercial traffic and was meant to help remove congestion from the BOTA.<sup>33</sup> As part of its analysis of alternatives, GSA should rigorously explore options to maintain the Tornillo POE running. GSA should also consider the implementation of conveyor belt at Ysleta and Santa Teresa.

### ***3. The Area Surrounding the BOTA has a Denser Population of People than the Other POEs.***

Over 9,300 residents live in the three census tracts immediately adjacent to the BOTA, according to the 2020 U.S. Census. The census tracts surrounding the port of entry in Tornillo and Santa Teresa have less than half of those residents, and the neighborhoods are further removed from the border crossings, which mitigates any adverse impacts of traffic and reduces the likelihood that residents will be replaced if there is a need to expand the POE. Even more, the port of entry at Santa Teresa has nearby warehouses and industrial infrastructure that could facilitate commercial truck traffic, and the Tornillo POE has increased capacity to facilitate mobility. We urge GSA to explore these options with careful attention to the impacts of rerouting the trucks. Care should be taken to avoid impacting other environmental justice communities with the relocation of semis. Again, the use of conveyor belt and other technology to improve efficiency would minimize the impact of semi traffic at all the POEs.

### **B. GSA Must Select Alternative 4 to Comply with the Environmental Goals of the Bipartisan Infrastructure Act and Inflation Reduction Act.**

Given the fact that the source of the GSA's funding for the project is rooted in federal laws intended to advance environmental justice and reduce GHG emissions, GSA has a duty to integrate the principles of the Bipartisan Infrastructure Act and IRA into its selected alternative. GSA risks violating its duties imparted by the Bipartisan Infrastructure Act and IRA funds should it select an alternative that allows for a continuation and potential increase of vehicular air emissions, which is an outcome that would be set in stone should GSA reject Alternative 4. Even more, GSA would not accomplish its stated goals of “reducing greenhouse gas emissions,” “mitigating human health and environment impact,”<sup>34</sup> and “**ensur[ing] the safety and security for the employees and the travelling public**”<sup>35</sup> through the BOTA Project if it allows heavy-duty commercial traffic to continue to cross on the BOTA. While GSA's commitment to use lower carbon materials in the Project is a notable step in the right direction, this alone will not satisfy the agency's responsibilities under federal law.

Both the Bipartisan Infrastructure Act and IRA aim to reduce U.S. GHG emissions and ameliorate the disproportionate impacts that the country's longstanding reliance on fossil fuels have had on communities of color and low-income communities. The Bipartisan Infrastructure Act was passed to boost American infrastructure with an environmentally forward approach. The Bipartisan Infrastructure Act is intended to “rebuild America's roads, bridges and rails, expand access to clean drinking water, ensure every American has access to high-speed internet, tackle

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<sup>33</sup> Lorena Figueroa, *Tornillo-Guadalupe Bridge is Now Open*, EL PASO TIMES, February 4, 2016, <https://www.elpasotimes.com/story/news/2016/02/04/new-tornillo-guadalupe-bridge-inaugurates/79849438/>.

<sup>34</sup> GSA, *GSA Awards \$10 Million for Pre-Design Services for Modernizing Facilities at the Bridge of the Americas Land Port of Entry*, December 26, 2023, <https://www.gsa.gov/about-us/gsa-regions/region-7-greater-southwest/region-7-newsroom/greater-southwest-feature-stories-and-news-releases/gsa-awards-10-million-for-pre-design-services-for-modernizing-facilities-at-the-bridge-of-the-americas-land-port-of-entry-12262023>.

<sup>35</sup> *Id.* (emphasis added).

the climate crisis, advance environmental justice, and invest in communities that have too often been left behind.”<sup>36</sup>

The IRA funding provided to modernize ports of entry is specifically conditioned on infrastructure efforts aimed at reducing air pollution.<sup>37</sup> The IRA pushes for the installation of zero emissions equipment and technology at the ports, the development of climate action plans, and the granting of funds to communities near ports that breathe disproportionately high levels of toxic pollutants.<sup>38</sup> The IRA provides additional funding for those ports that are located in areas of nonattainment for any air pollutant, a provision which GSA should take advantage of given El Paso’s nonattainment of ozone and PM<sub>2.5</sub> pollution.<sup>39</sup> GSA cannot reject the environmental goals of the IRA to view the BOTA Modernization in a climate vacuum and not seize clear opportunities to reduce or eliminate sources of GHG emissions. Accordingly, GSA must select Alternative 4, as it is the only alternative that conforms with the goals of the Bipartisan Infrastructure Act and IRA.

### **C. GSA Must Evaluate the Economic Benefit and Harm of Each Alternative, Including Alternative 4.**

NEPA requires that GSA “take a hard look at the environmental consequences” of a proposed action.<sup>40</sup> To satisfy this mandate, GSA must carefully discuss all the benefits of reducing air pollution—as well as the harms of not doing so—in its EIS. GSA cannot give greater weight to the economic benefits of commercial crossings—for example, by monetizing the trade benefits—without also giving fair weight to the harms, and similarly quantifying those harms. Crucially, GSA must evaluate the far-reaching health and economic benefits of removing heavy-duty commercial truck traffic from the BOTA and, conversely, examine the harms of allowing semis to continue to corrode air quality.

The data shows that mitigating air pollution produces astronomical economic benefits. According to a 2019 study, poor air quality may cost the U.S. about \$886 billion a year.<sup>41</sup> Just recently, on February 7, 2024, the EPA took a major step to protect communities by strengthening the national ambient air quality standard for PM<sub>2.5</sub>, which the agency estimated to produce \$46 billion in net health benefits by 2032.<sup>42</sup> This is just one of many examples that highlights the immense benefits of reducing the emissions of a single air pollutant. When considering the wide array of pollutants in diesel emissions, the elimination of heavy-duty commercial traffic and its toxic emissions would produce vast economic benefits—including a reduction of asthma attacks, hospitalizations, emergency room visits, missed school- and work

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<sup>36</sup> White House, Statements and Releases: Fact Sheet: The Bipartisan Infrastructure Deal, November 6, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/>.

<sup>37</sup> 42 U.S.C.A. § 7433, Sec. 133. Grants to Reduce Air Pollution at Ports.

<sup>38</sup> *See id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976)).

<sup>41</sup> Andrew L. Goodkind et al., *Fine-Scale Damage Estimates of Particulate Matter Air Pollution Reveal Opportunities for Location-Specific Mitigation of Emissions*, 116 PNAS 18 (April 8, 2019), <https://www.pnas.org/doi/10.1073/pnas.1816102116>.

<sup>42</sup> EPA, *EPA Finalizes Stronger Standards for Harmful Soot Pollution, Significantly Increasing Health and Clean Air Protections for Families, Workers, and Communities*, February 7, 2024, <https://www.epa.gov/newsreleases/epa-finalizes-stronger-standards-harmful-soot-pollution-significantly-increasing>.

days, and fewer deaths from cardiopulmonary diseases and cancer, among other diseases and ailments linked to vehicular air pollution.

If GSA implements a rerouting strategy, removing heavy-duty commercial truck traffic can also produce savings in reduced fuel consumption and wear and tear by the trucks themselves. The costs of any added mileage pale in comparison to the potential fuel and repair savings from reduced idling. Idling for more than ten seconds consumes more fuel than turning off and restarting an engine, reduces engine life by up to 20%.<sup>43</sup> Heavy-duty diesel trucks consume at least half a gallon of diesel per hour, with nearly an entire gallon consumed depending on the type of truck.<sup>44</sup> And an hour of idling is approximately equivalent to 30 miles of driving for the strain placed on the engine.<sup>45</sup> GSA must take these considerations into account and factor in the benefits of removing trucks from the BOTA—where they inevitably idle and bottleneck for hours on end—and towards the Santa Teresa, Ysleta, and Tornillo bridges, which have greater capacity, infrastructure, and operating hours to allow for an efficient flow of commercial traffic.

GSA must also fully consider the economic detriment of allowing a continuation of—and possible increase of—commercial traffic. All Alternatives except for Alternative 4 and the No Action Alternative allow for immediate continuation—and possibly even expansion—of heavy-duty commercial traffic. Some of GSA’s alternatives also propose purchasing county property and bringing the semi traffic closer to residences and community centers. GSA must also analyze the loss of revenue in the form of tolls from commercial traffic since 1994 and then project the future loss of tolls for at least another 30 years if the semis are not removed from BOTA.

All but one of GSA’s proposed alternatives continue to rely on outdated and unjust traffic management that adheres to a decades-long pattern of systemic discrimination and environmental degradation. On December 7, 2023, the residents of San Xavier filed a Title VI Civil Rights complaint against TXDOT due to the I-10 Connect Project, which leads into the BOTA and failed to deliver on its promise of accelerating traffic into Mexico. When GSA’s longstanding practice of allowing commercial traffic at ports of entry near residential neighborhoods is considered in tandem with TxDOT’s perpetuation of the pollution associated with this traffic,<sup>46</sup> the disservice to the public interest is not only evident but egregious. The harms are widespread: mobile source emissions are linked to severe environmental degradation and increased mortality and illness in nearby communities, with disproportionate burdens on communities of color and Texans below the poverty line.<sup>47</sup>

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<sup>43</sup> TranBC, *Leading the Way in Border Greenhouse Gas Reduction*, <https://www.tranbc.ca/2013/08/06/leading-the-way-in-border-greenhouse-gas-reduction/>.

<sup>44</sup> U.S. Department of Energy, *Vehicle Technologies Office, Fact #861 February 23, 2015 Idle Fuel Consumption for Selected Gasoline and Diesel Vehicles*, <https://www.energy.gov/eere/vehicles/fact-861-february-23-2015-idle-fuel-consumption-selected-gasoline-and-diesel-vehicles>.

<sup>45</sup> Steven Lang, *How Many Miles Is Too Many for a Used Diesel Pickup Truck?*, Capital One, March 7, 2023, <https://www.capitalone.com/cars/learn/finding-the-right-car/how-many-miles-is-too-many-for-a-used-diesel-pickup-truck/2145>.

<sup>46</sup> Exhibit A, TRLA, TRLA Title VI Complaint.

<sup>47</sup> See Section IV.F.1. Air Pollution Impacts.

#### **D. GSA Must Evaluate the Feasibility of Enhancing Public Transportation and Green Mobility Strategies at the BOTA.**

In addition to removing the commercial trucks with Alternative 4, GSA must amplify and enhance existing public transportation at the BOTA and create new modes of public transportation for local commuters (a light rail, trolley, and/or a public bus system). Public transportation can improve operational efficiency through environmentally friendly and community-oriented strategies. GSA must pursue potential collaborations with the City of El Paso, Cd. Juarez, and TxDOT to maximize the benefits of public transportation. Currently, much of the public transportation at the POE consists of passenger buses coming from different regions in Mexico to the United States. However, most of the crossings at the BOTA consist of daily and frequent commuters that live in the El Paso-Juarez region and fuel the El Paso-Juarez economy. Thus, it is vital to provide adequate public transportation for these commuters and encourage pedestrian traffic over vehicular traffic from Juarez to El Paso.

We encourage GSA to enhance the availability and accessibility of public transportation options for pedestrians who have crossed the border. Usually, when pedestrians cross at the BOTA, they must embark on a harrowing journey across highways with poorly marked or completely absent traffic safety signs and signals. Dozens of students living in Juarez and attending school in El Paso must make this dangerous journey every day. GSA can help minimize this unacceptable risk to pedestrians by creating infrastructure that allows City of El Paso buses to stop at or near the BOTA and park-and-rides on both sides of the BOTA. Currently, the closest bus stop to the BOTA appears to be nearly a mile away, leaving pedestrian traffic bereft of practicable options.<sup>48</sup>

GSA should speak with the City of El Paso and Cd. Juarez to strategize efforts based on current data; these efforts must include surveys of daily commuters and the routes they take on both sides of the border so that an effective public transportation plan can be implemented. GSA should also collaborate with the City of El Paso to facilitate public transportation at the BOTA, especially in light of the City's current efforts in drafting a Climate Action Plan. Revenue generated from the public transportation system on the BOTA can be reinvested into the public transit system. Even more, public transportation can be provided during a trial period as a way to encourage drivers to learn to use the system.

GSA can also take common-sense solutions to reduce the emissions from public transportation at the border, regardless of whether the mode of transportation is a trolley, monorail, or bus. For example, GSA can require bus drivers to turn the motor off while passengers are going through customs, at least during seasons without extreme heat. In addition, the creation of a pedestrian lane exclusively for public transportation passengers would help increase operational efficiency and improve pedestrian traffic. Such a strategy has already been proposed at the San Ysidro border crossing.<sup>49</sup> GSA can also expedite the processing by implementing the use of transportable electronic scanners and canine officers to process

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<sup>48</sup> Moovit, How to Get to Free Bridge – Cordova Americas in El Paso by Bus?, [https://moovitapp.com/index/en/public\\_transit-Free\\_Bridge\\_Cordova\\_Americas-El\\_Paso\\_TX-site\\_36699807-2783](https://moovitapp.com/index/en/public_transit-Free_Bridge_Cordova_Americas-El_Paso_TX-site_36699807-2783).

<sup>49</sup> Alexandra Mendoza, *Mexico Considering a Dedicated Lane for Trolley Passengers at the San Ysidro Border Crossing*, The San Diego Union-Tribune, February 9, 2023, <https://www.sandiegouniontribune.com/news/border-baja-california/story/2023-02-09/baja-california-proposes-an-exclusive-crossing-lane-for-trolley-users-at-the-san-ysidro-border>.



pedestrian traffic using public transportation instead of concentrating inspections in one location at the customs booth, leading to longer pedestrian lanes.

In evaluating these public transportation strategies, GSA must fully consider the extent of the benefits offered in enhancing public transportation. Most notably, increased public transportation reduces traffic congestion and helps reduce air pollution, producing immense public health and economic benefits.<sup>50</sup> Public transportation also helps increase the mobility of disadvantaged communities and reduce unemployment in low-income urban areas.<sup>51</sup> Expanded access to public transportation in the cross-border context also creates a positive economic impact through the increased mobility of cross-border shoppers.<sup>52</sup>

GSA should also consider the role public transportation can play in ensuring that any induced development and induced demand—a natural risk and foreseeable impact from expanding vehicular capacity—occurs without inducing increased air pollution. Increased traffic and development often follow the heels of additional roadway capacity,<sup>53</sup> putting already vulnerable communities at further risk of environmental contamination and displacement. But with a strong public transportation system, the benefits that flow from development can be equitable, and historically rejected communities can benefit from growth instead of carrying the burdens of development alone.

#### **E. Additional Strategies to Reduce Air Pollution.**

GSA should consider implementing a dedicated commuter lane (“DCL”) or two at the BOTA and rolling out a “batching” strategy. DCLs have the potential to accelerate traffic heading north exponentially. Currently, the BOTA does not have a DCL and commuters to and from Juarez who would like to use the center of the cities must rely on the Stanton DCL located in Segundo Barrio.

GSA should also consider the feasibility of a “batching” strategy at the BOTA to reduce idling and air pollution. “Batching” is the process of moving traffic up to the customs booth in batches with the use of light signals, with those batches of vehicles furthest from the customs booth encouraged to turn off their vehicle engines.<sup>54</sup> The benefits of “batching” improve fuel efficiency, increase the life of vehicle engines by up to twenty per cent, and significantly reduce

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<sup>50</sup> See *infra* Section IV.F.1. Air Pollution Impacts.

<sup>51</sup> Kai A. Schafft and Robin Blakely, *Local Residential Mobility as a Dimension of Rural Disadvantage*, 2005 ANNUAL MEETING OF THE POPULATION ASSOCIATION OF AMERICA (2005), <https://paa2005.populationassociation.org/papers/50719>; Mark Alan Huges, *A Mobility Strategy for Improving Opportunity*, 6(1) HOUSING POLICY DEBATE 271 (1995), [https://scholar.archive.org/work/mnagx4veovadxgekj6zuiqbfiu/access/wayback/https://www.drexel.edu/greatworks/Theme/Fall/~media/Files/greatworks/pdf\\_FL10/WK4\\_1\\_Hughes\\_1995.ashx](https://scholar.archive.org/work/mnagx4veovadxgekj6zuiqbfiu/access/wayback/https://www.drexel.edu/greatworks/Theme/Fall/~media/Files/greatworks/pdf_FL10/WK4_1_Hughes_1995.ashx); Paul M. Ong et al., REPORT: MOBILITY, ACCESSIBILITY AND DISADVANTAGED NEIGHBORHOODS: ASSESSING DIVERSITY IN TRANSPORTATION-RELATED NEEDS AND OPPORTUNITIES, PACIFIC SOUTHWEST REGION UNIVERSITY TRANSPORTATION CENTER (June 2021), <https://knowledge.luskin.ucla.edu/wp-content/uploads/2022/07/ca21-3431-finalreport-a11y.pdf>.

<sup>52</sup> Adam Gregory Walke, M.A., *Transit in a Border Zone: The Demand for Public Transportation in Three Texas Border Cities*, University of Texas at El Paso (December 2011), [https://scholarworks.utep.edu/cgi/viewcontent.cgi?article=3412&context=open\\_etd](https://scholarworks.utep.edu/cgi/viewcontent.cgi?article=3412&context=open_etd).

<sup>53</sup> Transportation for America, REPORT: THE CONGESTION CON: HOW MORE LANES AND MORE MONEY EQUALS MORE TRAFFIC (March 2020), available at <https://t4america.org/maps-tools/congestion-con/>.

<sup>54</sup> TranBC, *Leading the Way in Border Greenhouse Gas Reduction*, <https://www.tranbc.ca/2013/08/06/leading-the-way-in-border-greenhouse-gas-reduction/>.

vehicle wear. Batching was successfully implemented at the Canadian-American Peach Arch crossing, where vehicles 200 meters or further from the customs booth would get a red traffic light until nearly all vehicles in the batch ahead were cleared. The strategy resulted in an estimated 45% reduction of GHG emissions, fuel savings, and no impact on the amount of overall time to cross the border.<sup>55</sup>

GSA must seriously consider implementing “batching” at the BOTA, at least during seasons where border crossers are not exposed to excessive heat. Should GSA reject consideration of “batching” as a strategy to aid in promoting public health and reducing noxious air contamination, it must explain why consideration of “batching” would not contribute to informed decisionmaking.<sup>56</sup> As with any response to public comments, GSA cannot simply assert that such analysis is “not required.”<sup>57</sup>

#### **F. GSA Must Consider the Full Extent of Environmental Justice Impacts from the Project.**

Under NEPA, “environmental justice is not merely a box to be checked,” and agencies are required to thoroughly evaluate the environmental justice impacts of a proposed project, and to inform communities of all potential impacts.”<sup>58</sup> CEQ’s NEPA Guidelines specify:

Where a potential environmental justice issue has been identified by an agency, the agency should state clearly in the EIS or EA whether, in light of all the facts and circumstances, a disproportionately high and adverse human health or environmental impact on minority populations, low-income populations, or Indian tribe is likely to result from the proposed action and any alternatives. This statement should be supported by sufficient information for the public to understand the rationale for the conclusion.<sup>59</sup>

Even more, a 1994 Executive Order requires federal agencies, “[t]o the greatest extent practicable and permitted by law,” to “make achieving environmental justice [(“EJ”)] part of [their] mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”<sup>60</sup> GSA has recognized this principle, and in 2011, the Administrator of the GSA signed a Memorandum of Understanding on Environmental Justice and Executive Order 12898, committing to identify and address:

[A]ny disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations, including, but not limited to, as appropriate for its mission, in the following areas: (1) implementation of the National Environmental Policy Act; (2) implementation of Title V

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<sup>55</sup> *Id.*

<sup>56</sup> *WildEarth Guardians v. Bernhardt*, 502 F. Supp. 2d 237, 255-56 (D.D.C. 2020).

<sup>57</sup> *See id.*

<sup>58</sup> *Friends of Buckingham v. St. Air Pollution Control Bd.*, 947 F.3d 68, 91–92 (4th Cir. 2020).

<sup>59</sup> Council on Environmental Quality, *Environmental Justice: Guidance Under the National Environmental Policy Act*, at 15.

<sup>60</sup> Exec. Order 12,898 § 1-101, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 11, 1994).

of the Civil Rights Act of 1964, as amended; (3) impacts from climate change; and (4) *impacts from commercial transportation and supporting infrastructure*].<sup>61</sup>

When agencies seek to enlarge or extend highways, they must grapple with the context: infrastructure is where it is often for discriminatory reasons; expanding these systems may disparately burden the same communities, who continue to live along the same thoroughfares. While El Paso is a majority-minority city, communities like the Chamizal and San Xavier neighborhoods—which are nearly 100% people of color and have higher concentrations of foreign-born residents—are disproportionately burdened by air pollution stemming from the discriminatory siting of railroads, highways, industries, international ports of entry, and cross-border air pollution centuries in the making.<sup>62</sup>

El Paso was not exempt from Jim Crowe discrimination, and the effects are felt to this day. Here as across the country, highways were constructed around and through Black and Hispanic communities to cement segregation. The discriminatory practices of redlining laid the groundwork for future highway sitings.<sup>63</sup> In 1963, when the Chamizal Convention led to the displacement of Hispanic people and the creation of the current BOTA, the environmental burden of heavy truck traffic at the border crossing fell on the same communities targeted by explicit redlining discrimination.

### **1. Air Pollution Impacts.**

As already noted, because the BOTA Modernization is funded through the Bipartisan Infrastructure act and IRA, there is an inextricable duty for GSA to reduce and mitigate air pollution. The availability of additional IRA funds allocated for community air pollution monitoring creates an incredible opportunity for GSA to evaluate the local impacts of mobile air pollution on the communities most impacted by air pollution from the BOTA, including the San Xavier and Chamizal communities. These communities are exposed to disproportionately high mobile source air emissions due to the traffic flow heading to and from the BOTA, including from 18-wheelers. GSA must analyze existing information on the state of air quality and impacts from the BOTA on communities, but also conduct its own studies to ensure that it makes a fully informed decision with the BOTA Project.

El Paso is marked by excessive levels of pollution. According to a 2020 report, El Pasoans were breathing air with elevated levels of pollution on one out of every three days last year.<sup>64</sup> The report measured days with elevated levels of small particulate matter and elevated ozone. The El Paso area had 78 days with elevated small particulate matter and 68 days of elevated ozone.<sup>65</sup> The American Lung Association currently ranks El Paso as the 14<sup>th</sup> worst

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<sup>61</sup> GSA, *Memorandum of Understanding (MOU) on Environmental Justice and Executive Order 12898 (MOU on Environmental Justice*, August 4, 2011 (emphasis added), available at [https://www.gsa.gov/system/files/MOU\\_Environmental\\_Justice.pdf](https://www.gsa.gov/system/files/MOU_Environmental_Justice.pdf).

<sup>62</sup> See Isa Gutierrez et al., *'Like a Dumping Ground': Latina moms in Texas border city are fighting air pollution*, NBC NEWS (Feb. 22, 2022), available at <https://www.nbcnews.com/news/latino/-dumpingground-latina-moms-texas-border-city-are-fighting-air-polluti-rcna16789>.

<sup>63</sup> Exhibit A, TRLA Title VI Complaint at 7-10 (discussing the history of environmental racism in Southside El Paso communities like San Xavier).

<sup>64</sup> Environment Texas, Report: Trouble in the Air: Millions of Americans Breathed Polluted Air in 2020, October 5, 2021, available at <https://environmentamerica.org/texas/resources/trouble-in-the-air/>.

<sup>65</sup> *Id.*

metropolitan area for high ozone days, and the 35<sup>th</sup> worst for 24-hour particle pollution—as compared to over two hundred other metropolitan areas.<sup>66</sup> In order to comply with NEPA, GSA must analyze the impacts of air pollution on communities near the BOTA, including the San Xavier and Chamizal communities, two communities besieged by decades of environmental racism and disproportionately high levels of environmental contamination.

GSA must use the modernization of the BOTA as an opportunity to put decades of research into practice. GSA must look to studies on air quality conducted at ports of entry, including the BOTA and in the El Paso region. Over \$8 million has been spent studying air pollution in the region, based on the CV of only on one of the top researchers on the topic, Dr. WenWhai Li. This research also includes the work of Dr. Hector A. Olvera, who, among other studies, conducted a study on ultrafine particulate matter pollution at the BOTA. GSA must include an analysis of the impacts of vehicular air pollution in its EIS that fully examines available studies on air quality conducted at ports of entry, including the BOTA POE.<sup>67</sup> For GSA to fulfill its duty under NEPA to fully inform itself of the air quality impacts of the project, it cannot ignore local studies on air quality.

Crucially, GSA must analyze the significant dangers posed by diesel and ultrafine particulate matter pollution at and near the BOTA. EPA has classified diesel exhaust as a likely carcinogen, and the National Institute for Occupational Safety and Health has classified diesel exhaust as a potential carcinogen.<sup>68</sup> Motor vehicle emissions—and especially diesel emissions—often constitute the most significant source of ultrafine particles (diameter <0.1 μm) in an urban environment.<sup>69</sup> The highest concentrations are closest to highways, POEs, etc., and dissipate with distance.<sup>70</sup> Exposure to diesel-emitted particles has been linked to increased cancer risk and cardiopulmonary diseases. Because of their size (<100 nm), exposure to ultrafine particles (“UFPs”) emitted from heavy-duty diesel vehicles (“HDDV”) might result in greater health risks than those associated with larger particles.<sup>71</sup> A 2013 study found that “[c]ommercial traffic, mostly composed of HDDV, heavily influenced UFP concentrations in the BOTA vicinity.”<sup>72</sup> The study also found that on Sundays, when commercial traffic was absent, the UFP numbers were the lowest. Populations near the BOTA’s traffic zone and within 400 meters are exposed to UFP’s above the background level and include residents on both sides of the border, including a church

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<sup>66</sup> American Lung Association, State of the Air: El Paso-Las Cruces, TX-NM, <https://www.lung.org/research/sota/city-rankings/msas/el-paso-las-cruces-tx-nm>.

<sup>67</sup> We specifically recommend that GSA consider the numerous studies performed by When Wai Li, Hector Olvera Alvarez, and Penelope J.E. Quintana. When Wai Li’s CV with a list of publications is included as Exhibit E: When Wai Li CV. A list of Hector Olvera Alvarez’s publications is available at <https://www.ohsu.edu/people/hector-olveraalvarez-phd-pe>. A list of Penelope J.E. Quintana’s publications is available at <https://scholar.google.com/citations?user=Qs4riTkAAAAJ&hl=en>.

<sup>68</sup> American Cancer Society, Diesel Exhaust and Cancer Risk, last revised July 27, 2015, <https://www.cancer.org/cancer/risk-prevention/chemicals/diesel-exhaust-and-cancer.html#:~:text=The%20EPA%20classifies%20diesel%20exhaust,a%20%E2%80%9Cpotential%20occupational%20carcinogen.%E2%80%9D>.

<sup>69</sup> EPA, Study of Ultrafine Particles Near a Major Highway with Heavy-Duty Diesel Traffic, [https://cfpub.epa.gov/si/si\\_public\\_record\\_Report.cfm?Lab=NCER&dirEntryId=83813](https://cfpub.epa.gov/si/si_public_record_Report.cfm?Lab=NCER&dirEntryId=83813).

<sup>70</sup> *Id.*

<sup>71</sup> Hector A. Olvera, Mario Lopez, Veronica Guerrero, Humberto Garcia and Wen-Whai Li., *Ultrafine Particle Levels at an International Port of Entry Between the US and Mexico: Exposure Implications for Users, Workers, and Neighbors*, 23 *Journal of Exposure Science and Environmental Epidemiology* 289 (2013), attached as Exhibit B.

<sup>72</sup> *Id.*

and several schools, law enforcement officers, street vendors, private commuters, and commercial vehicle drivers.”<sup>73</sup>

Another recent study examined the short-term associations (24-, 48-, 72-, and 96-hr averages) of traffic-related air pollutants (PM<sub>2.5</sub>, PM<sub>10</sub>, NO<sub>2</sub>, and O<sub>3</sub>) with biomarkers of respiratory and cardiovascular disease in a group of uninsured participants from low-income communities in El Paso.<sup>74</sup> Researchers found associations of short-term air pollutant concentrations with respiratory outcomes, which was expected.<sup>75</sup> However, researchers also found associations with metabolic risk factors such as BMI, waist circumference, and fasting glucose.<sup>76</sup> The study also found a correlation between PM<sub>2.5</sub> and NO<sub>2</sub> and respiratory risk of chronic obstructive pulmonary disease.<sup>77</sup>

There is also research that highlights the increased air pollution present at US-Mexico ports of entry. A 2014 study investigated the effect of long northbound traffic delays at the San Ysidro POE and found consistently higher concentrations of toxic pollutants (ultrafine particulate matter (UFP), black carbon (BC), and particulate matter <2.5 µm in diameter (PM<sub>2.5</sub>)).<sup>78</sup> This study also emphasized that “[d]isparities in traffic exposures an environmental justice issue and this should be taken into account during planning and operation of POEs.”<sup>79</sup>

Even more, traffic at the BOTA contributes to dangerous levels of ozone pollution. Jason Sarate, who oversees the city of El Paso’s Air Quality Program stated, “[o]ne of the largest contributing sources to ozone in El Paso is the vehicle emissions. I think the biggest challenge is the vehicles that are idling for multiple hours at our ports of entry. When you have vehicles and semi-trucks lined up on the freeways waiting to cross into Mexico or cross into El Paso, those are real issues.”<sup>80</sup>

GSA must also account for the impacts of PM<sub>2.5</sub> pollution at the BOTA. PM<sub>2.5</sub> kills nearly 50,000 people in the United States every year, with disproportionate impacts on communities of color.<sup>81</sup> On February 7, 2023, the EPA strengthened the National Ambient Air Quality Standards (“NAAQS”) for PM<sub>2.5</sub> from 12 micrograms per cubic meter to 9 micrograms

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<sup>73</sup> *Id.*

<sup>74</sup> Soyoung Jeon, Association of Traffic and Related Air Pollutants on Cardiorespiratory Risk Factors from Low-Income Populations in El Paso, TX (February 2021), available at <https://www.carteoh.org/wp-content/uploads/2021/06/03-27-UTEPAssociation-of-Traffic-and-Related-Air-Pollutants-on-Cardiorespiratory-Risk-Factors-from-Low-Income-Populations-in-El-Paso-TX-Jeon.pdf>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Penelope J.E. Quintana et al., Traffic-Related Air Pollution in the Community of San Ysidro, CA, in relation to Northbound Vehicle Wait Times at the US-Mexico Border Port of Entry, 88 Atmospheric Environment 353 (May 2014)

<sup>79</sup> *Id.*

<sup>80</sup> El Paso, Las Cruces rank high in ozone pollution in 2023 report, El Paso Matters, April 2023, available at <https://elpasomatters.org/2023/04/25/el-paso-texas-american-lung-association-ozone-pollution-f-grade-2023/#:~:text=El%20Paso%20recorded%2040%20unhealthy,days%20than%20the%20previous%20year.>

<sup>81</sup> <https://earthjustice.org/brief/2024/soot-pm2-5-pollution-standard-stronger-biden>

per cubic meter.<sup>82</sup> This designation automatically placed El Paso in nonattainment for PM 2.5,<sup>83</sup> adding to El Paso's ongoing nonattainment for the 8-hour ozone standard<sup>84</sup> and PM 10.<sup>85</sup> We recommend that GSA look into studies by the Joint Advisory Committee, including the Committee's most recent 2024 Air Quality Report, as these specifically look into the state of air pollution in the Paseo del Norte air basin.<sup>86</sup>

GSA must also examine the impacts of air pollution from highways on neighboring communities, as these highways are inextricably linked to the BOTA and its impacts. Numerous studies have shown that pollution from highways is very localized. For example, studies have shown that living in close proximity to highways causes a significantly elevated exposure to a complex mixture of pollutants including air toxics, diesel particulate matter, and other highway emissions including tire wear, brake wear, resuspended road dust, and various metals.<sup>87</sup> GSA must evaluate the community risk to adverse health impacts from highway traffic, including, but not limited to:

- Asthma and bronchitis: exposure to diesel exhaust can induce histamine releases that result in allergic conjunctivitis, rhinosinusitis, pharyngitis, laryngitis, and chronic cough. This exposure can also lead to degradation of lung tissue.<sup>88</sup> Children are especially vulnerable to chronic negative respiratory issues, as living in close proximity to highway traffic can inhibit lung development during childhood and lead to lifelong weakened lung function.<sup>89</sup>
- Negative cardiovascular effects: long-term exposure to air pollution from high traffic has been shown to increase incidences of coronary artery calcification<sup>90</sup> as well as increased coronary heart disease and strokes in women.<sup>91</sup>
- Adverse birth outcomes and developmental effects: living in close proximity to heavy-traffic roadways can cause an increase in term low birth weight and preterm infants.<sup>92</sup>

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<sup>82</sup> EPA, *EPA Finalizes Stronger Standards for Harmful Soot Pollution, Significantly Increasing Health and Clean Air Protections for Families, Workers, and Communities*, February 7, 2024, <https://www.epa.gov/newsreleases/epa-finalizes-stronger-standards-harmful-soot-pollution-significantly-increasing>.

<sup>83</sup> El Paso has an average PM2.5 level of 9.2 µg/m<sup>3</sup>, which places the County above EPA's newer standard. Earthjustice, *Mapping Soot and Smog Pollution in the United States*, February 7, 2024.

<sup>84</sup> El Paso continues to struggle with ozone attainment issues, and has violated the ozone NAAQS every year since 2016.

<sup>85</sup> Soyoung Jeon, *Association of Traffic and Related Air Pollutants on Cardiorespiratory Risk Factors from Low-Income Populations in El Paso, TX* (February 2021), available at <https://www.carttech.org/wp-content/uploads/2021/06/03-27-UTEPAssociation-of-Traffic-and-Related-Air-Pollutants-on-Cardiorespiratory-Risk-Factors-from-Low-Income-Populations-in-El-Paso-TX-Jeon.pdf>.

<sup>86</sup> See Exhibit C, JAC Paseo Del Norte Air Quality Report.

<sup>87</sup> U.S. Environmental Protection Agency, *Near-Road Air Quality Monitoring Research* (Nov. 3, 2009).

<sup>88</sup> Irina N. Krivoshto et al., *The Toxicity of Diesel Exhaust: Implications for Primary Care*, J. AM. BOARD FAM.MED. 55, 58 (2008).

<sup>89</sup> W. James Gauderman et al., *Effect of Exposure to Traffic on Lung Development From 10 to 18 Years of Age: A Cohort Study*, THE LANCET 571, 574 (Jan. 26, 2007).

<sup>90</sup> B. Hoffman et al., *Residential Exposure to Traffic is Associated with Coronary Atherosclerosis*, 116 CIRCULATION 489 (2007).

<sup>91</sup> Kristin A. Miller et al., *Long-Term Exposure to Air Pollution and Incidence of Cardiovascular Events in Women*, 356 NEW ENG. J.MED. 447, 453-56 (2007).

<sup>92</sup> Michelle Wilhelm & Beate Ritz, *Residential Proximity to Traffic and Adverse Birth Outcomes in Los Angeles County, California, 1994-1996*, 111 ENVTL. HEALTH PERSP. 207, 210-11 (2003).

- Premature mortality: epidemiological surveyors have discovered high acute and chronic respiratory disease morbidity rates from proximity exposure to diesel exhaust, as well as incidences of acute coronary syndrome (heart attacks) and ischemic effects (strokes).<sup>93</sup>
- Increased incidences of cancer: many emissions released by heavy traffic flow, such as diesel exhaust fumes and particulate matter, have carcinogenic properties.<sup>94</sup>

The San Xavier and Chamizal communities breathe dangerous levels of pollution in their daily lives, and the severity of this fact cannot be written off with a brief summation of environmental justice.<sup>95</sup> GSA must acknowledge and evaluate the various incommensurable harms posed by the proximity of these communities to the highways that feed the BOTA, and the immense public benefit of protecting communities from pollution.

GSA must also account for the impacts of air pollution at the BOTA on those crossing the bridge and the Customs and Border Protection (“CBP”) officials working on the bridge. CBP officials at the bridge must endure long workdays with constant exposure to the toxic air pollution. Due to an increased volume of traffic and prolonged wait times, individuals and families crossing the BOTA north and south are exposed to dangerously high concentrations of toxic air pollutants for hours on end. Studies have shown that air quality inside vehicles idling at border crossings contains higher concentrations of toxic pollutants,<sup>96</sup> and pedestrians standing in lines at the border face increased exposure to increased levels of air pollution.<sup>97</sup>

GSA must also conduct local air quality monitoring to assess the current impact of vehicular emissions on the BOTA, and the San Xavier and Chamizal neighborhoods. It is critical that GSA examine the air quality data provided by TCEQ monitors and PurpleAir sensors,<sup>98</sup> but also conduct its own air quality monitoring that focuses on impacts in the project area, especially during peak idling hours. Crucially, GSA must analyze air pollution impacts in the context of TXDOT’s recent I-10 Connect project, as air monitoring data taken before the historic

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<sup>93</sup> Irina N. Krivoshto et al., *The Toxicity of Diesel Exhaust: Implications for Primary Care*, J. AM. BOARD FAM.MED. 55, 56-59 (2008).

<sup>94</sup> Rachel A. Morello-Frosch, Tracey J. Woodruff, Daniel A. Axelrad, Jane C. Caldwell, *Air Toxics and Health Risks in California: The Public Health Implications of Outdoor Concentrations*, Risk Analysis, 20 (2) RISK ANALYSIS, February 2000 (predicting 8600 excess cancer cases).

<sup>95</sup> TxDOT has included only a brief discussion of environmental justice, displaying the quintessential “box to be checked” attitude that contravenes NEPA’s informed decision-making mandate. *See* Exhibit A, TRLA Title VI Complaint.

<sup>96</sup> Penelope J.E. Quintana, *Traffic Pollutants Measured Inside Vehicles Waiting in Line at Major US-Mexico Port of Entry*, 622-623 *Science of the Total Environment* 236 (May 2018), <https://doi.org/10.1016/j.jenvp.2022.101775>.

<sup>97</sup> Vanessa Eileen Galaviz et al., *Urinary Metabolites of 1-Nitropyrene in US-Mexico Border Residents who Frequently Cross the San Ysidro Port of Entry*, 27 *Journal of Exposure Science & Environmental Epidemiology* 84 (December 16, 2015) <https://doi.org/10.1038/jes.2015.78>; Vanessa Eileen Galaviz et al., *Traffic Pollutant Exposures Experienced by Pedestrians Waiting to Enter the U.S. at a Major U.S.-Mexico Border Crossing* 88 *Atmospheric Environment* 362 (May 2014), <https://doi.org/10.1016/j.atmosenv.2013.12.042>;

<sup>98</sup> Air monitoring data for PurpleAir sensors is available at <https://map.purpleair.com/1/mAQI/a10/p604800/cC0#11/31.7775/-106.4903>. As noted by a 2022 air quality study in El Paso conducted by several prominent air quality researchers: “Highways and roadways, such as I-10 and US-54, are major sources of vehicular traffic air emissions in El Paso resulting in substantial variations in neighborhood air pollutant concentrations, which cannot be captured by [central ambient monitoring] sites.” Adan Rangel et al., *Assessment of Traffic-Related Air Pollution (TRAP) at Two Near-Road Schools and Residence in El Paso, Texas, USA*, 13(2) *Atmospheric Pollution Research* (February 2022), <https://www.sciencedirect.com/science/article/abs/pii/S1309104221003664>.

congestion of semis resulting from TXDOT's Project may not reflect the most extreme conditions many residents near the BOTA are currently exposed to.

The current air quality monitoring data is alarming and demands further studies to determine precise impacts. Currently, the closest air monitor to the BOTA is the El Paso Chamizal (481410044) air monitor, located within the Chamizal National Memorial. Although the Chamizal Monitor records 24-day average measurements of PM 2.5 only intermittently, between January 2023 and September 2023, it frequently recorded PM 2.5 concentrations well above EPA's NAAQS standard, often reaching levels more than twice the standard.<sup>99</sup> Yet this data only captures a glimpse of the full extent of the dangerous contamination in the Chamizal neighborhood and surround communities. GSA has the ability to fill in these gaps, and it must work closely with community groups to perform local air monitoring and conduct on-site measurements of air quality to ensure that GSA makes an informed decision.<sup>100</sup>

## 2. GSA Must Conduct a Health Risk Assessment.

One of NEPA's key goals is to "stimulate the health and welfare of man."<sup>101</sup> Under NEPA, an EIS must "disclose the significant health, socioeconomic and cumulative consequences of the environmental impact of a proposed action."<sup>102</sup> If the major federal action bears a "reasonably close causal relationship" to a change in the physical environment, such as deteriorated human health, then it must be fully analyzed in the EIS.<sup>103</sup> Where an agency action can be reasonably anticipated to increase air pollution and impact the health of individuals in surrounding communities, a health risk assessment must be undertaken.<sup>104</sup>

Should GSA choose an alternative that allows for a continuation of heavy-duty commercial traffic, it must conduct a health risk assessment. This assessment would also aid in informing GSA of the environmental justice implications of its project and contribute towards an analysis of the costs of allowing heavy-duty commercial traffic to continue. But should GSA remove heavy-duty trucks through Alternative 4, the threat of increased contamination and dangerous air pollution might be avoided, and the necessity of a health risk assessment may no longer be present.

While we support the selection of Alternative 4 as the only viable alternative that accomplishes GSA's mandates under federal law, we urge GSA to ensure that any conclusion of air quality and public health benefits is supported by adequate studies. As of now, Alternative 4 is missing critical details, and GSA must ensure that it accomplishes the goals of operational efficiency at the BOTA so that toxic emissions from passenger vehicles. Increased development

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<sup>99</sup> TCEQ, Clean Air Monitor: El Paso Chamizal, available at [https://www17.tceq.texas.gov/tamis/index.cfm?fuseaction=report.view\\_site&siteAQS=481410044](https://www17.tceq.texas.gov/tamis/index.cfm?fuseaction=report.view_site&siteAQS=481410044).

<sup>100</sup> A 2022 air quality study assessing vehicular air pollution near two schools in El Paso found recommended that air quality studies performed in a high-altitude arid region like El Paso employ on-site measurements for increased accuracy instead of relying solely on central ambient monitoring sites. Adan Rangel et al., *Assessment of Traffic-Related Air Pollution (TRAP) at Two Near-Road Schools and Residence in El Paso, Texas, USA*, 13(2) ATMOSPHERIC POLLUTION RESEARCH (February 2022), <https://www.sciencedirect.com/science/article/abs/pii/S1309104221003664>

<sup>101</sup> 42 U.S.C.A. § 4321.

<sup>102</sup> 40 CFR §§ 1508.7, 1508.8.

<sup>103</sup> *Id*; *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 771-72, 103 S.Ct. 1556, 75 L.Ed.2d 534 (1983).

<sup>104</sup> See *Trenton Threatened Skies, Inc v. Fed. Aviation Admin.*, 90 F.4th 122, 140 (3d Cir. 2024).



and traffic often follow on the heels of developments such as this one, but that need not be the case. If GSA cannot reasonably establish that air pollution will be reduced through the implementation of Alternative 4 and increased operational efficiency, it must conduct a health risk assessment.

### 3. GHG Emissions and Climate Impacts.

“The impact of [GHG] emissions on climate change is precisely the kind of [ ] impacts analysis that NEPA requires agencies to conduct.”<sup>105</sup> It is particularly poignant that the BOTA project is funded by the Bipartisan Infrastructure Act and Inflation Reduction Act, which are aimed at addressing the climate crisis through sustainable and environmentally responsible infrastructure funding. Even more, Executive Order 14,008, issued by President Biden in 2021, instructs agencies to address the “profound climate crisis[::]”

We must listen to science—and act. We must strengthen our clean air and water protections... We must deliver environmental justice in communities all across America. The Federal Government must drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy, marshaling the creativity, courage, and capital necessary to make our Nation resilient in the face of this threat. Together, we must combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy.<sup>106</sup>

Yet the way things work now, agency decisions on highway and related infrastructure projects occur in a vacuum. These decisions do not factor in U.S. commitments to reduce greenhouse-gas emissions 50% below 2005 levels by 2030. They do not factor in the immensity of the climate disasters that have and continue to strike communities across the country, especially historically marginalized and vulnerable communities. And most unfortunately, these decisions fail to account for their irrefragable role in these impacts and harms. GSA must correct this woeful trend in its EIS for the BOTA Modernization and analyze the qualitative and quantitative impacts of the GHG emissions from its Project.

First, GSA must inform its decision by assessing the extent of climate impacts on its project and nearby communities. GSA has already recognized its responsibility to prepare for the inevitable harm climate change will unleash across its facilities and the communities it serves. GSA has also committed to heed the latest scientific documents on climate change, including the Fourth National Climate Report,<sup>107</sup> and we urge GSA to incorporate the latest National Climate Report<sup>108</sup> into its analysis of the Project’s impacts on surrounding communities. We also urge GSA to collaborate with local community groups, and state and federal agencies to address potential climate adaptation strategies at the BOTA.

As a desert community with no reliable water resources, El Paso faces unique risks from climate change. Communities in El Paso are already contending with back-to-back heat

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<sup>105</sup> *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008).

<sup>106</sup> Exec. Order 14,008, 86 Fed. Reg. 7619, 7619, 7,622 (Jan. 27, 2021).

<sup>107</sup> GSA, Environmental Justice Implementation Progress Report: Fiscal Years 2016-2018, [https://www.gsa.gov/system/files/signed4302019Environmental\\_Justice\\_Report.pdf](https://www.gsa.gov/system/files/signed4302019Environmental_Justice_Report.pdf).

<sup>108</sup> USGCRP, 2023, FIFTH NATIONAL CLIMATE ASSESSMENT, U.S. GLOBAL CHANGE RESEARCH PROGRAM, WASHINGTON, CD, USA (2023), available at <https://nca2023.globalchange.gov/downloads/>.

records.<sup>109</sup> The summer of 2023 was the hottest summer on record for El Paso.<sup>110</sup> The season saw sixty days of 100-plus temperatures, including a record-shattering 44 days in a row from mid-June through the end of July.<sup>111</sup> The average temperature in El Paso between June and August surpassed 88 degrees Fahrenheit for the first time in recorded history.<sup>112</sup> And with an already dangerous level of ozone pollution, the more frequent and severe heat waves El Paso will face pose additional unacceptable risks. Hotter temperatures increase ozone pollution, and the impacts are most acutely felt by environmental justice communities near highways. As shown by a recently created map of the heat island effect, the hottest streets in El Paso are along I-10.<sup>113</sup>

Second, GSA must collaborate with local governments to develop strategies to mitigate GHG emissions and adapt to climate impacts. The City of El Paso is currently drafting its Climate Action Plan, and GSA should collaborate with the City to incorporate climate solutions at the BOTA, including energy efficient infrastructure, public transportation, and incentivizing electric vehicles. Given the contribution of cross-border traffic on GHG emissions and the long-term exposure to extreme heat pedestrians, passengers and CBP officials on the BOTA face, GSA should also coordinate with the City of El Paso on climate adaptation efforts. We urge GSA to prepare a robust climate adaptation strategy to protect the thousands of people that cross the BOTA every day, as well as the CBP employees who must endure long workdays in record-breaking heat. This strategy should include robust public transportation, which can help reduce the impacts of GHG emissions from passenger vehicles and reduce the amount of time pedestrians are exposed to extreme heat, as well as green infrastructure solutions and native landscaping to reduce the carbon footprint of the project.

Third, GSA must include a qualitative and quantitative analysis of GHG emissions from the BOTA and its contribution to climate change. In addition to evaluating the impact of climate change on the project and its surrounding area, GSA has a responsibility to contextualize its project's emissions contribution towards climate change. GSA has the information readily available to calculate the approximate amount of GHG emissions generated at the BOTA—as well as its other POEs. With data on the amount of passenger and commercial vehicle crossings, measurements on wait times at its border crossings, and estimations available as to the quantity of emissions vehicles generate when stalled, GSA is reasonably able to calculate GHG emissions. The data from northbound traffic should be readily available and the data from southbound traffic should be gathered by CBP or Mexican authorities. Should GSA forecast future traffic, it must similarly estimate future GHG emissions. This is keeping in line with

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<sup>109</sup> John Nielsen Gammon et al., *Assessment of Historic and Future Trends of Extreme Weather in Texas, 1900-2036*, TEXAS A&M UNIVERSITY, Office of the Texas State Climatologist (2021), <https://climatexas.tamu.edu/files/ClimateReport-1900to2036-2021>; Raymond Zhong and Elena Shao, *2024 Begins With More Record Heat Worldwide*, NEW YORK TIMES, February 7, 2024, <https://www.nytimes.com/2024/02/07/climate/2024-hottest-january-data.html>; National Weather Service, NOAA, El Paso's 100 Degrees Days FAQ, last updated 5/27/2023, available at [https://www.weather.gov/epz/el Paso\\_100\\_degree\\_page](https://www.weather.gov/epz/el Paso_100_degree_page); Robert Moore, *El Paso Continues to Shatter Heat Records*, EL PASO MATTERS, November 28, 2023, <https://elpasomatters.org/2023/11/28/el-paso-weather-hottest-fall-ever-climate-change/>.

<sup>110</sup> Robert Moore, *Why El Paso's Summer was so Damn Hot*, EL PASO MATTERS, September 1, 2023, <https://elpasomatters.org/2023/09/01/el-paso-record-summer-heat/>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> University of Texas at El Paso, *Mapping Urban Heat Islands in El Paso, Texas (2020)*, available at <https://www.utep.edu/liberalarts/sega/environmental-injustice-hurricane-harvey-in-greater-houston12.html>.

NEPA’s mandate for informed decision making and working towards the goals of the Bipartisan Infrastructure Act and IRA. There are tools available to translate the social cost of GHG emissions into monetary impacts, and GSA should consider utilizing these tools, including the Social Cost of Carbon.<sup>114</sup>

Fourth, GSA must evaluate the direct, indirect and cumulative impacts of GHG emissions on environmental justice communities from each of its Ports of Entry. Should GSA choose an alternative that allows for commercial truck traffic or risks increasing traffic and emissions, it must consider those emissions in evaluating the overall climate impacts of alternatives.<sup>115</sup> A potential risk of increased capacity—without a formidable public transportation component—is increased traffic, increased pollution, and increased demand for services. And while the GHG emissions from one POE alone may not amount to a significant contribution towards climate change, the cumulative impacts of all of GSA’s POEs GHG emissions can be significant. GSA must account for these impacts, and consider the foreseeable risks of potentially increased GHG emissions.

Environmental justice communities like San Xavier and Chamizal are disproportionately burdened by environmental pollution and face cumulative air pollution burdens from climate change-driven hazards.<sup>116</sup> These same communities are slated to face worsened air pollution and climate risks in the coming decades.<sup>117</sup> GSA has a clear opportunity to address these historically discriminatory impacts by placing the communities impacted by border crossing emissions first. Should it instead perpetuate these harms, GSA must analyze the full extent of the air and climate risks that are undeniably fueled in part by the BOTA and explain why it would chose a project alternative that imposes additional burdens on surrounding communities.

### **G. GSA Must Consider the Cumulative Impacts of the Project.**

GSA is required to analyze the cumulative impacts of the BOTA Project in connection with past governmental actions amplifying commercial traffic at the BOTA, TxDOT’s past and anticipated I-10 projects, and in connection with any other actions that risk magnifying the BOTA Project’s impacts. CEQ regulations define cumulative impacts as:

[E]ffects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.<sup>118</sup>

In the cumulative impacts analysis, GSA must examine the “ecological [,]... economic, [and] social” impacts of emissions from these projects, including an assessment of their “significance.”<sup>119</sup>

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<sup>114</sup> *Vecinos para el Bienestar de la Comunidad Costera v. F.E.R.C.*, 6 F.4th 1321, 1329 (D.C. Cir. 2021).

<sup>115</sup> *See, e.g., WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 870 F.3d 1222, 1234–37 (10th Cir. 2017).

<sup>116</sup> Fifth National Climate Report: Chapter 14, available at <https://nca2023.globalchange.gov/chapter/14/>.

<sup>117</sup> *Id.*

<sup>118</sup> 40 CFR § 1508.1 (effective 05/20/2022).

<sup>119</sup> 40 C.F.R. §§ 1508.8(b), 1502.16(a)-(b).

GSA must account for how NAFTA has rewired the flow of vehicular traffic across the border and increased cross-border air pollution. When the Bridge of the Americas was first built, GSA could not have foreseen the overwhelming air pollution that would result from unprecedented semi-truck traffic. When the Chamizal Treaty of 1963 led to toll-free crossings at the BOTA, some amount of increased traffic could be expected, but nothing beyond ordinary expectations. But the passage of NAFTA in 1994 heralded an implosion of commercial traffic heading north and south, and as a result, has inflicted one of the most dangerous health hazards on communities around the BOTA.

Now, numerous studies have been conducted as a result of the La Paz Agreement that detail the impact of traffic from highways and the ports of entry on nearby residents' respiratory and cardiovascular health.<sup>120</sup> GSA must not only consider the studies, but acknowledge the role the port of entry plays in allowing for a continuation of the flow of passenger and commercial traffic, and the pollution that inevitably flow from it. As part of its cumulative impacts analysis, GSA must review all information available on the potential for an increase in vehicular traffic at its POEs, and specifically the BOTA that stems from the continuation of NAFTA. Since the passage of NAFTA, commercial crossings at the border have dramatically increased,<sup>121</sup> implicating increased pollution.

GSA must also consider how the current trend of increased trade with Mexico risks increased cumulative impacts of diesel emissions from commercial traffic at the BOTA. Trade between the U.S. and Mexico has been on the rise both north and southbound, and in 2023, Mexico surpassed China to become the biggest exporter of goods to the United States, with continued reliance on Mexican goods anticipated in the near future.<sup>122</sup> GSA must do its due diligence in discussing the foreseeable increase in trade and commercial trucks. GSA should also consider reaching out to American and Mexican authorities to discuss these impacts, and evaluate strategies GSA can take to reduce the adverse impacts of increased commercial traffic.

The air pollution from vehicular crossings at the BOTA is inextricably linked with I-10 in El Paso, and GSA must consider the cumulative impacts of past, present, and future TxDOT plans to expand I-10. In determining “reasonably foreseeable actions” that must be evaluated under the cumulative impacts analysis, agencies are required to look ahead and address actions that are “contemplated” or “potential,” and need not be formal NEPA proposals that may never trigger NEPA requirements.<sup>123</sup> Given that TxDOT has completed a Corridor Study for the entire

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<sup>120</sup> The Paso del Norte air basin—which encompasses parts of Dona Ana County in New Mexico, Cd. Juarez, Chihuahua, Mexico and El Paso Texas—was detrimentally impacted by the passage of NAFTA, and the Joint Advisory Committee on Air Quality was created as a part of the La Paz Agreement. Millions of dollars continue to fund studies on air quality in the region, with a particular emphasis on vehicle emissions.

<sup>121</sup> Barry L. Sullivan, Dennis L. Soden, and Janet S. Conary, *Nafta Transportaiton: The Impacts of Southern Border Trucking on the Texas Highway System*, IPED TECHNICAL REPORTS (2000), [https://scholarworks.utep.edu/cgi/viewcontent.cgi?article=1006&context=iped\\_techrep](https://scholarworks.utep.edu/cgi/viewcontent.cgi?article=1006&context=iped_techrep); *See generally*, Office of the United States Trade Representative, Countries & Regions: Western Hemisphere, Mexico, <https://ustr.gov/countries-regions/americas/mexico#:~:text=U.S.%20goods%20imports%20from%20Mexico,up%2064%20percent%20from%202012.>

<sup>122</sup> Maya Averbuch and Leda Alvim, *Mexico's Moment: The Biggest US Trading Partner Is No Longer China*, BLOOMBERG BUSINESS, September 11, 2023, <https://www.bloomberg.com/graphics/2023-mexico-china-us-trade-opportunity/>.

<sup>123</sup> *Fritiofson v. Alexander*, 772 F.2d 1225, 1243 (5th Cir. 1985), *abrogated by Sabine River Auth. v. U.S. Dep't of Interior*, 951 F.2d 669 (5th Cir. 1992); *accord, Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062,

Reimagine I-10 Project and secured most of the funding for the Downtown Segment, TxDOT's Reimagine I-10 Project is reasonably foreseeable.<sup>124</sup> The Reimagine I-10 Project would significantly increase the capacity of I-10, risking additional traffic to and from the BOTA. Highway expansions induce widespread development with serious environmental consequences, including deterioration of air quality. By removing the trucks from the BOTA, GSA can reduce the cumulative impacts of air contamination at and around the BOTA, but it cannot evade its responsibility to account for the impacts that TxDOT's I-10 Connect and Reimagine I-10 Projects have had and will continue to have on communities surrounding the BOTA.

#### **H. GSA Must Provide Sufficient Information throughout the Public Participation Process.**

The San Xavier community has faced a history of environmental racism, including being denied the opportunity to meaningfully participate in projects that impart significant detrimental impacts on the community. Between DATES, TxDOT held several public meetings for its I-10 Connect Project where it touted significant traffic and pollution benefits, but the reality was far from the image cast.<sup>125</sup> The San Xavier community and public at large were repeatedly misinformed about the full extent of the I-10 Connect Project's impacts, including construction impacts on homes, streets and drainages, increased traffic, and increased noise and air pollution. TxDOT provided the public with numerous grandiose assurances about traffic reductions and public benefits, but never provided critical traffic studies and substantive justification for its conclusions throughout the public participation process. While GSA was not the agency responsible for the I-10 Connect Project, we urge GSA to reflect on the significant departure TxDOT took from NEPA's public participation mandate and avoid inflicting the same harm on a community already burdened by environmental pollution and a lack of transparency from those who impose additional pollution burdens. We urge GSA to readily make the materials it relies upon—including any expert studies, traffic data, and air quality data—readily available to the public both in-person and online.

GSA has recognized the importance of meaningful public participation in the NEPA process, especially for environmental justice communities. On August 4, 2011, the GSA signed the Memorandum of Understanding (“MOU”) on Environmental Justice and Executive Order 12898 (MOU on Environmental Justice), which affirmed the agency's commitment to pursue environmental justice as an agency objective, and identify and address disproportionately high and adverse human health or environmental effects of activities such as the one at hand on minority and low-income populations.<sup>126</sup> The MOU also reaffirmed GSA's responsibilities under Title VI of the Civil Rights Act of 1964. As part of the MOU, GSA committed itself to “[e]nsure

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1077 (9th Cir. 2002) (“contemplated” actions); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998) (“potential” actions).

<sup>124</sup> TxDOT, Reimagine I-10: Next Steps, <https://www.txdot.gov/reimaginei10/corridor-study/nextsteps.html>; TxDOT, 2024 UTP at 96, available at <https://www.txdot.gov/projects/planning/utp.html>.

<sup>125</sup> Exhibit A, TRLA, Complaint under Title VI of the Civil Rights Act of 1964 on behalf of the San Xavier Community, December 7, 2023 [hereinafter TRLA Title VI Complaint].

<sup>126</sup> GSA, *Memorandum of Understanding (MOU) on Environmental Justice and Executive Order 12898 (MOU on Environmental Justice)*, August 4, 2011 (emphasis added), available at [https://www.gsa.gov/system/files/MOU\\_Environmental\\_Justice.pdf](https://www.gsa.gov/system/files/MOU_Environmental_Justice.pdf).

meaningful opportunities exist for the public to submit comments and recommendations relating to the strategy, implementation, and ongoing efforts associated with environmental justice.”<sup>127</sup>

TRLA and its clients appreciate GSA’s efforts thus far to ensure public participation opportunities, including the extension of the time granted to submit these comments. We urge GSA to continue to provide periodic opportunities throughout the development of the EIS to ensure that the numerous concerns of the public are addressed throughout the process.

We also urge GSA to take a step further in ensuring that environmental justice communities are provided with the adequate means to access information beyond public meetings. At public meetings, the information provided to the public is often limited, and significant studies, data, expert reports, and draft NEPA documents like the draft EIS are often not provided at public meetings. Often, the draft EIS and other critical information is only available for review at agency offices, which are hard to reach for those communities with limited funds and resources. We respectfully request that GSA take steps to make critical information, including the draft EIS, available at public meetings and online. It should not be left for the public to obtain missing information through an informal request to GSA, or through the formal FOIA process, which can be lengthy and impede the public’s ability to meaningfully review the materials the agency relies on in its decisionmaking process.

Finally, we request that GSA clarify the proposed project timeline and funding details. In its December 13, 2023 meeting, GSA noted that it would put forth the final IS in September 2024, and issue “Completion of EIS” in late 2024. These statements leave confusion for the estimated date of the final EIS. We ask that GSA clarify the estimated timeframe for the final EIS, preferably within a month range. Further, while GSA indicated that it received funding from the IRA and plans to utilize low-carbon materials as a result of those funds, it remains unclear how much funding from the IRA will be used at the BOTA.

### **I. GSA Must Include Adequate Mitigation.**

GSA must consider possible strategies to mitigate the impact of vehicle emissions on pedestrians at the BOTA. A YEAR study examined the serious environmental justice impacts of cross-border air pollution and noted potential mitigation strategies:

[I]ncreased staffing, improved technology, increased capacity, reductions in emissions per vehicle, anti-idling measures, reductions in personal exposures through such measures as separation of pedestrians from traffic, the use of vegetation barriers, rerouting traffic away from schools and planning and design to reduce exposure.<sup>128</sup>

We urge GSA to evaluate this and other studies examining air pollution mitigation and exposure mitigation at POEs.

### ***1. GSA Must Include Sustainability Measures.***

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<sup>127</sup> GSA, Environmental Justice Strategy: Fiscal Years 2016-18 (May 2016), [https://www.gsa.gov/system/files/Final\\_Approved\\_EJ\\_Strategy\\_FY16\\_-\\_FY18%28Final%29.pdf](https://www.gsa.gov/system/files/Final_Approved_EJ_Strategy_FY16_-_FY18%28Final%29.pdf).

<sup>128</sup> Penelope J.E. Quintana et al., *Risky Borders: Traffic Pollution and Health Effects at US–Mexican Ports of Entry*, JOURNAL OF BORDERLANDS STUDIES (2015), available at [https://www.researchgate.net/publication/324719712\\_Risky\\_Borders\\_Traffic\\_Pollution\\_and\\_Health\\_Effects\\_at\\_US-Mexican\\_Ports\\_of\\_Entry](https://www.researchgate.net/publication/324719712_Risky_Borders_Traffic_Pollution_and_Health_Effects_at_US-Mexican_Ports_of_Entry).

We are pleased to see that GSA plans to utilize low-carbon infrastructure materials, notably LEC materials, to reduce the carbon footprint of the project. GSA should not stop at building materials, and should seriously consider incorporating landscape architecture into the design of the BOTA. Landscape architecture has already been demonstrated to reduce the carbon footprint of government infrastructure, boost the preservation of the surrounding environment, and help alleviate past harms of systemic environmental discrimination.<sup>129</sup>

GSA can also expand on the benefits of landscape architecture through the creation of green spaces for people using the POE and CBP employees. This is not new to GSA, and the agency has already incorporated landscaping at POEs to provide shade and nature for employees in the middle of the desert.<sup>130</sup> Research shows that exposure to green natural environments produces physical and mental health benefits.<sup>131</sup> In a 2022 study, researchers found that green and desert environment simulations promote the stress recovery of cortisol.<sup>132</sup> Even more, native landscaping can be utilized to create barriers between vehicle and passenger traffic, minimizing exposure to the emissions of idling vehicles.

## ***2. GSA Must Incentivize Electric Vehicles.***

The Bipartisan Infrastructure Act created the Electric Vehicle Working Group, which includes GSA among its members.<sup>133</sup> The Bipartisan Infrastructure Act states that “[n]ot later than 1 year after the date of enactment of this Act, the Secretaries shall jointly establish an electric vehicle working group to make recommendations regarding the development, adoption, and integration of light-, medium-, and heavy-duty electric vehicles into the transportation and energy systems of the United States.”<sup>134</sup>

As part of the NEPA process, agencies are required to gain input from stakeholders and the public, and to engage other potentially interested agencies. We encourage GSA to consult with the Electric Vehicle Working Group to discuss strategies that can be undertaken at the BOTA and through other anticipated and planned POE modernization projects to incentivize electric vehicles.

## ***3. GSA Must Include Mandatory Measures to Ensure Best Practices and Minimal Disruption during Construction.***

San Xavier residents are still dealing with the damage caused by TXDOT’s construction of I-10 Connect, and GSA must ensure that BOTA does not follow the same route of preventable

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<sup>129</sup> See Richard Schiffman, Ecosystems as Infrastructure: A New Way of Looking at Climate Resilience, Yale Environment 360 (November 7, 2023), <https://e360.yale.edu/features/kate-orff-interview>.

<sup>130</sup> Reed Karaim, Mariposa Land Port of Entry, Designed by Jones Studio, Architect (October 27, 2014), [https://www.architectmagazine.com/design/buildings/mariposa-land-port-of-entry-designed-by-jones-studio\\_o](https://www.architectmagazine.com/design/buildings/mariposa-land-port-of-entry-designed-by-jones-studio_o).

<sup>131</sup> Gregory N. Bratman, Nature and Mental Health: An Ecosystem Service Perspective, 5(7) Science Advances 118,413 (July 24, 2019); Mathew P. White et al., Associations Between Green/Blue Spaces and Mental Health Across 18 Countries, 11 (8903) Scientific Reports (April 26, 2021).

<sup>132</sup> Jie Yin et al., Stress Recovery from Virtual Exposure to a Brown (Desert) Environment Versus a Green Environment, 81 Journal of Environmental Psychology 101775 (February 22, 2022), <https://doi.org/10.1016/j.jenvp.2022.101775>.

<sup>133</sup> 23 USCA § 151, SEC. 25006. ELECTRIC VEHICLE WORKING GROUP. The federal stakeholders of the group are the Department of Energy, the EPA, CEQ, and GSA, and membership may be extended to a representative of any other Federal agency that the Secretaries of the membership agencies consider appropriate.

<sup>134</sup> *Id.*

construction damage. GSA must ensure that none of its construction negatively impacts the surrounding homes, buildings, and infrastructure; GSA must conduct proper soil tests and take photographs of surrounding homes and buildings and infrastructure prior to construction. GSA must also have clear direction and supervision of the contractors that prohibits the use of heavy machinery that is known in the industry to harm homes and buildings, particularly those homes and buildings in older neighborhoods. GSA must also ensure that construction is only done during limited—and reasonable—hours of the day so that the adverse effects of noise and additional air pollution are minimized. Residents should not bear the burden of construction activities 24 hours a day, 7 days a week as they did with the I-10 Connect Project. We further urge GSA to take all available measure to prevent damage to nearby infrastructure, drainage, and wildlife at the Chamizal, and to avoid creating traffic hazards (e.g. removing lighting).

## **V. Conclusion**

GSA's BOTA Modernization Project risks imposing significant environmental and economic harm, which must be disclosed as part of its EIS. Moving forward, GSA should select Alternative 4 and remove north- and southbound heavy-duty commercial traffic from the BOTA, improve public transportation, adequately analyze environmental justice impacts, conduct local air quality monitoring and a health assessment, reduce its contribution towards climate change, and take all practicable measures to mitigate the impacts of the BOTA.

Sincerely,

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