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NO. 200826

PRESS RELEASE

FOR IMMEDIATE RELEASE
Friday September 12, 2008

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**FEDERAL DISTRICT JUDGE DISMISSES BORDER FENCE
LAWSUIT FILED BY EL PASO COUNTY**

Plaintiffs prepare to appeal the case before the U.S. Supreme Court

El Paso County Attorney José R. Rodríguez announced today that U.S. District Judge Frank Montalvo has dismissed a lawsuit filed by El Paso County, the City of El Paso, the El Paso County Water Improvement District No. 1, and the Ysleta del Sur Pueblo, among others, against the construction of the border fence in El Paso County.

Judge Montalvo granted the Department of Homeland Security's motion to dismiss based on the merits of the case on a final judgment issued on September 11th, 2008.

In his ruling, Judge Montalvo held that the waivers used by the Secretary of Homeland Security Michael Chertoff to expedite the construction of the border fence were constitutional because "...Congress constitutionally delegated its authority in the Waiver Legislation."

Judge Montalvo further ruled that the Waiver legislation did not violate the 10th amendment because the waivers were issued with the intent to "preempt state and local laws, which would interfere with Congress's objective to expeditiously construct the border fence."

El Paso County Attorney José R. Rodríguez explained that, according to the law, the plaintiffs have 90 days to file an appeal before the U.S. Supreme Court. The law firm Mayer Brown LLP of Washington D.C., who is handling the litigation, is already working on the appeal, which the County Attorney will encourage El Paso Commissioner's Court to join.

The lawsuit against the Department of Homeland Security was filed on June 23, 2008, and challenged Secretary Chertoff's statutory authority to issue a waiver of more than 30 federal

laws, as well as any state and local laws related to such federal laws, to accelerate the construction of a border fence in El Paso County.

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