

November 9, 2021

The Honorable Kathleen Rice
2435 Rayburn House Office Building
Washington, DC 20515

Dear Representative Rice:

We write in support of H.R. 4848, “Rescinding DHS’ Waiver Authority for Border Wall Act.” Passage of this bill should be a high priority for this Congress. The waiver authority, which allows the Secretary of the Department of Homeland Security (DHS) to waive “all legal requirements such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section” has resulted in extremely serious – indeed, incalculable – damage to the ecology, culture and economy of the Southwest as well as breaking faith with taxpayers across the nation, undermining democracy and the rule of law in the Southwest. As the broadest waiver of law in American history,¹ its continuation is an affront not only to the residents of the Southwest but also to the rest of the country.

As you know, under the waiver authority, the Secretary of DHS may waive any law upon publication of a simple notice in the *Federal Register*. Through this mechanism, 84 federal laws and related state and local laws and other legal requirements have been made irrelevant and unenforceable in the context of one of the largest construction projects undertaken in this country in modern times.² Residents in the four southern border states have been deprived in the most basic sense of equal protection of the laws that everyone else in the country enjoys. It would take a book to document the damage from this clean sweep of laws, but here are a few examples of harm that has been done as a result of the waivers:

In California, the Kumeyaay Nation’s La Posta Band of Diegueno Mission Indians suffered from the absence of compliance with laws such as the Native American Graves Protection and Repatriation Act when border wall construction proceeded without adequate consultation and monitoring. Despite notifying both Customs and Border Protection and the Army Corps of Engineers about the presence of Kumeyaay human remains and burial sites in the line of construction, wall construction continued over those sites. In the words of one member of the Kumeyaay Nation, “When they blast into that soil, it feels like they’re tearing out my chest.”³

In Arizona, protection of the taxpayers was waived when the general procurement laws that normally require adherence to measures intended to ensure that agencies objectively select contractors that are qualified to do the work were waived. The provisions waived include all competition requirements, use of the lowest-priced, technically acceptable source and requirements that contractors post payment and performance bonds. For example, the procurement laws were waived for the \$419,000,000 contract awarded to construct wall on 31

¹ Congressional Research Service, Memo, Section 102 of H.R. 418, Waiver of Laws Necessary for Improvement of Barriers at Borders, February 9, 2005 (Stephen R. Vina and Todd Tateleman).

² A list of all federal laws waived is attached. DHS has asserted that all related state and local laws have also been waived, but never identified those laws by name.

³ Stout, James, “Dispatch from the Border Wall”, *Sierra*, August 22, 2020.

miles bordering the remote and stunningly beautiful Cabeza Prieta National Wildlife Refuge. The very same week that the contract was awarded, the U.S. government sued that same company for multiple violations of law related to construction of privately funded border wall in Texas (to which the waiver authority did not apply).

In New Mexico, wildlife movement corridors in the Chihuahuan Desert have been severed through the use of the waiver authority. For tens of thousands of years this region has been a continental crossroads for connectivity, migration, and dispersal of wildlife. Both Mexican Gray Wolves and Bison are known to cross the U.S.-Mexico border in New Mexico. On January 21, 2017, a young male Mexican Gray Wolf crossed the international border from Mexico to the U.S. where only a vehicle barrier existed. He migrated into New Mexico from about 150 miles south, spent a day in Organ Mountains Desert Peaks National Monument, and returned into Mexico near Ciudad Juarez on Jan. 24th. He had traveled nearly 600 miles. The Santa Theresa section of border wall now replaces vehicle barriers with impenetrable wall. Science shows Mexican gray wolves need connected populations for recovery. The Janos-Hidalgo Bison herd, one of the few free-ranging Bison herds in North America, moved between Chihuahua, Mexico, and New Mexico, United States, since at least the 1920s, but border barrier constructed under waiver now impedes their international movement.

In Texas, residents have suffered from double insults: while being deprived of the protection of laws such as the Farmland Protection Policy Act, Safe Drinking Water Act, and other laws that provide critical protections to non-border residents of the United States, the one law still being applied has been a statute that facilitates expedited seizure of private property. There are now homes, a historic church, and hundreds of acres of farmland behind the border wall. Further, an economy recently stimulated by ecotourism has been adversely affected. In essence, the government has created a “no man’s land” between the border wall and the mile or two between the wall and the border.⁴ Private and municipal landowners have had property condemned to build border walls, but, with the National Environmental Policy Act waived, the federal government has eschewed meaningful consultation with them, examination of potential impacts upon them, or discussion with them of alternative means of achieving the project's aims.

In short, the utilization of the waiver authority has resulted in enormous damage in the borderlands and has denied equal protection of the law to the border region and the millions who call the border region home. Reinstatement of the full range of laws applicable in the rest of the United States is badly needed. We stand ready to do whatever would be helpful to support passage of H.R. 4848.

Sincerely,

National and Regional Organizations

Alliance 4 Action Immigration

Another Gulf Is Possible Collaborative

Aztlan Libre Press

⁴ The international border is in the middle of the Rio Grande River and both for engineering reasons and to meet Treaty obligations with Mexico, the wall must be set back one to two miles into Texas.

Center for Biological Diversity
Center for Gender & Refugee Studies
Comunidad Maya Pixan Ixim
Defenders of Wildlife
Earthjustice
Endangered Species Coalition
FOUR PAWS USA
Friends of the Earth
Friends of the Sonoran Desert
Friends of the Wildlife Corridor
Great Old Broads for Wilderness
Great Old Broads for Wilderness Sonoran Broadband
Immigrant Legal Resource Center
Immigrants' Rights Working Group of Democratic Socialists of America
La Union del Pueblo Entero (LUPE)
League of Conservation Voters
Madrean Archipelago Wildlife Center
Meadowlark Center
Movement Rights
National Education Association
National Immigrant Justice Center
National Immigration Project
National Parks Conservation Association
National Wildlife Federation
Progressive Democrats of America
Project Eleven Hundred
Rio Grande International Study Center
Rio Grande Valley No Border Wall Coalition
San Xavier District/Tohono O'odham Nation
Sierra Club
Sky Island Alliance
Southern Border Communities Coalition
The Wilderness Society
Union for Reform Judaism
Voces Unidas
Western Watersheds Project
WildEarth Guardians
Wilderness Watch
Wildlands Network

Texas Organizations

Carnalismo Brown Berets de Laredo (Laredo, TX)
Kalpulli Ayolopy (San Antonio, TX)
Laredo Immigrant Alliance (Laredo, TX)
National Butterfly Center (Mission, TX)
No Border Wall Coalition – Laredo (Laredo, TX)

San Antonio Interfaith Welcome Coalition (San Antonio, TX)
Save RGV (Brownsville, TX)
South Texas Environmental Justice Network (Brownsville, TX)
Texas Civil Rights Project (Texas)
Tran's Formations (Houston, TX)
Vets United to Stop the Wall (Laredo, TX)

Arizona Organizations

Barrio defense committees (Phoenix, AZ)
Frontera de Cristo (Douglas, AZ)
Humane Borders, Inc. (Tucson, AZ)

California Organizations

American Immigration Lawyers Association-San Diego (San Diego, CA)
Casa Familiar (San Ysidro, CA)
Environmental Protection Information Center (Arcata, CA)
San Diego Immigrant Rights Consortium (San Diego, CA)
South Bay People Power (Chula Vista, CA)

Other State and Local Organizations

American University Washington College of Law Energy Law and Policy Society (Washington, DC)
North American Butterfly Association (Morristown, NJ)
Rian Immigrant Center (Massachusetts)
The Advocates for Human Rights (Minnesota)
Thomas Merton Center (Pittsburgh, PA)
Washington College of Law's Environmental Law Society (Washington, DC)
Western Nebraska Resources Council (Nebraska)

Attachment: Laws Waived Under Authority of 8 U.S.C. § 1003 (Note) for border wall and associated infrastructure