October 16, 2023

President Joseph R. Biden

The White House

1600 Pennsylvania Ave., N.W.

Washington, D.C. 20500

**Re: We urge your administration to rescind Sec. Mayorkas’ discretionary border wall waiver and restore legal protections to border communities and wildlife**

Dear President Biden:

We write to express our profound dismay and opposition to Secretary Mayorkas’ waiver of 26 federal laws to rush the resumption of border wall construction in Starr County, Texas. Both you and Secretary Mayorkas have stated that the administration has no choice but to fast-track the construction of these border walls because Congress refused to rescind the remaining prior fiscal year appropriations for border walls. Without taking a position on the administration’s interpretation of appropriations law, we must make clear that there is no legal requirement to waive laws that protect vulnerable border communities and wildlife in the appropriations language or elsewhere. This waiver of law has been issued at the discretion of your administration and your administration has the power to reverse it.

There is a disturbing irony in Secretary Mayorkas’ recent statement regarding the resumption of wall construction that “we are compelled to follow the law,”[[1]](#footnote-1) while the Secretary has chosen to waive 26 federal laws (and all state and “other laws, regulations and legal requirements related to the subject of these laws”) enacted to protect the communities, the environment, Indigenous interests, archeological and historic properties and wildlife.[[2]](#footnote-2)

We must reiterate that there is no legal requirement to waive any laws for border barrier construction. This choice was entirely discretionary. Secretary Mayorkas’ decision to cast aside these critical protections to rush the construction of a wall that you admit “does not work,” but that you are undertaking because the administration claims it is compelled to uphold appropriations law, suggests either serious confusion or troubling hypocrisy. We would like to believe that you are sincere in wanting to uphold the rule of all laws for all people in the United States, including the millions who call the border region home.

Lastly, we must take this opportunity to again underscore the profound and irreparable harms border walls have inflicted on border communities and wildlife. Just last month, the U.S. Government Accountability Office released a damning report detailing the severe damage border wall construction caused to wildlife, public lands, and Indigenous sacred sites and burial grounds along the U.S.-Mexico border, aided and enabled by the waivers of dozens of laws to rush construction.

Therefore, we ask that you immediately undertake the following actions to restore protections to border communities:

1. Direct Secretary Mayorkas to rescind all existing waivers that have been issued for border barrier construction, roads, procurement laws and associated actions.

2. Direct Secretary Mayorkas to pause moving forward with any border wall planning, property acquisition or construction in Starr County, Texas, until all applicable laws have been complied with by the appropriate agencies and robust community consultation has taken place.

Thank you for your attention.

Sincerely,

GROUPS

1. Statement by Secretary Mayorkas on Recent News Reports, Oct. 5, 2023, <https://www.dhs.gov/news/2023/10/05/statement-secretary-mayorkas-recent-news-reports#:~:text=We%20have%20repeatedly%20asked%20Congress,and%20modernized%20ports%20of%20entry>. [↑](#footnote-ref-1)
2. 88 Fed. Reg. 69214, Oct. 5, 2023. The laws being waived are the Administrative Procedures Act, the National Environmental Policy Act, the Endangered Species Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Federal Water Pollution Control Act, the National Historic Preservation Act, Migratory Bird Treaty Act, the Migratory Bird Conservation Act, the Clean Air Act, the National Wildlife Refuge System Administration Act, the Eagle Protection Act, the National Fish and Wildlife Act of 1956, the Fish and Wildlife Coordination Act, the Archaeological Resources Protection Act, the Paleontological Resources Protection Act, the Safe Drinking Water Act, the Archaeological and Historic Preservation Act, the Noise Control Act, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Antiquities Act, the Historic Sites, Building and Antiquities Act, the Farmland Protection Policy Act, the National Trials System Act, and the Federal Land Policy and Management Act. [↑](#footnote-ref-2)