



COMMITTEE ON HOMELAND SECURITY

The “Rescinding DHS’ Waiver Authority for Border Wall Act” As Introduced by Representative Kathleen Rice (D-NY)

The ***Rescinding DHS’ Waiver Authority for Border Wall Act*** would strike a 2005 law that granted the Secretary of Homeland Security unilateral authority to waive all local, State and Federal laws such as important environmental laws such as *the Endangered Species Act, the Clean Air Act, the Native American Graves Protection and Repatriation Act, and the Safe Drinking Water Act* to expedite the construction of fences, concrete slabs, or other infrastructure at the border. This authority had been used a handful of times in the twelve years prior to Trump Administration.

However, in just the last year, it was used far more frequently, including:

- On January 22, 2018, Secretary of Homeland Security Kirstjen Nielsen waived approximately 20 laws, including the *Endangered Species Act, the National Environmental Policy Act, the American Indian Religious Freedom Act, and the Antiquities Act*, in order to build new border barriers in southeastern New Mexico.
- On October 10, 2018, Secretary Nielsen waived approximately 25 laws to build gates and new physical barriers in Texas' Cameron County in the Rio Grande Valley.
- On October 11, 2018, Secretary Nielsen invoked this waiver authority to build 18 miles of 30-foot-high walls in Texas' Hidalgo County, also in the Rio Grande Valley.
- On February 8, 2019, Secretary Nielsen once again waived more 30 laws in order to construct replacement fencing for approximately 12.5 miles in San Diego, California.

DHS has indicated that its issuance of the October 2018 waivers cleared the way for the Department to begin new construction in February 2019 in the Rio Grande Valley with no discussion or input from landowners, border communities, conservationists, and others with an interest in protecting border spaces.

Potential consequences of waiving environmental laws include:

- pollution in the air and drinking water for residents in impacted southwest border communities;
- exacerbation of current flooding patterns along the Rio Grande, which could result in millions of dollars in economic, environmental, and ecological damage;
- significant disturbances to the natural habitats of endangered animals such as the ocelot, pigmy owl, and jaguar that are only native to North America, possibly resulting in certain species becoming extinct; and
- destruction of historic, prehistoric and scientific features such as National Monuments;
- removal of protections for Native American tribal lands such as burial sites.

The ***Rescinding DHS' Waiver Authority for Border Wall Act*** would prevent DHS from moving forward on southwest border construction projects without having to comply with the dozens of Federal law on the books to protect the health, economic, environmental, ecological, historical, cultural, commercial and quality of life of residents of border communities, thereby giving southwest border residents the same consideration they would be due to them if they lived elsewhere in the United States.