



One Hundred Fifteenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

August 2, 2017

The Honorable Elaine Duke
Acting Secretary
Department of Homeland Security
245 Murray Lane S.W.
Washington, D.C. 20528

Dear Acting Secretary Duke:

As the Department of Homeland Security (DHS) implements the President's Executive Order 13767, *Border Security and Immigration Enforcement Improvements*, by building additional barriers and other infrastructure along the U.S. southwest border, I write to emphasize that DHS has an obligation to the public to follow the law and exercise due diligence prior to the construction of any barriers and roads. While I understand that the Secretary has the authority to waive certain laws, legal requirements, and regulations, this authority should be used after thorough evaluation and consideration of the effect on communities and the environment. The waiver authority should be a measure used as a last resort.

On August 1, DHS announced that on July 26 former Secretary Kelly signed a waiver that broadly disregards certain environmental, natural resource, and land management laws to facilitate the construction of barriers and roads along the U.S.- Mexico border near San Diego. When Congress granted waiver authority to the Secretary of Homeland Security in 2005, the intent was for this authority to be used as a means to advance border infrastructure projects that were delayed indefinitely by litigation. Congress did not intend to give the Secretary the authority to waive laws arbitrarily.

Given the substantial impact these construction projects have on both communities and the environment in the southwest border region and the extraordinarily broad scope of the July 26th waiver, I request written evidence that demonstrates the necessity of waiving each of the more than 30 laws with respect to proposed construction projects in an approximately 15-mile segment of the border within the San Diego sector. Accordingly, pursuant to Rule X and XI of the House of Representatives, please provide a written response to the following by August 17, 2017:

1. How does the Department determine when to use the Secretary's waiver authority to construct barriers and related tactical infrastructure along U.S. international borders?

2. Please provide the written recommendation from the General Counsel that states the necessity for exercising the July 26th waiver.
3. Please provide written evidence that illustrates that the border infrastructure projects being advanced by the Executive Order are being delayed indefinitely by litigation.
4. Given the short period of time between the issuance of this waiver and former Secretary Kelly's departure from the Department, please provide all documents, including emails and other correspondence, pertaining to the timing of Secretary Kelly's departure and the issuance of this waiver.
5. What factors necessitate the use of the Secretary's waiver authority of the proposed infrastructure projects in an approximately 15-mile segment of the border within the San Diego sector? Please provide details of the exact location for this proposed construction and relevant timelines.
6. Given this waiver and the Department's stated commitment to "environmental stewardship with respect to these projects," what standard will be used to measure impact on the environment in the region? Which entities will be responsible for monitoring and enforcing the Department's compliance with this standard?
7. Which federal, state, and local entities have been and will be consulted by DHS to coordinate on environmental issues? What outreach has and will the Department conduct to answer other local community concerns stemming from these border infrastructure projects? How will these entities and input from the community be considered or used moving forward?

If you have any questions about this request, please contact Alison Northrop, Chief Director for Oversight, at (202) 226-2616. Thank you for your attention to this matter.

Sincerely,



BENNIE G. THOMPSON
Ranking Member

cc: Mr. Kevin McAleenan, Acting Commissioner, Customs and Border Protection,
Department of Homeland Security