

# DHS Border Barrier Legal Waivers

Many laws were waived from 2005-2008 and 2017-present in specific stretches of border to expedite construction of border barriers. These waivers are proclaimed by the U.S. Secretary of Homeland Security and include “all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended.” Although the focus is border barriers, the reach of these waivers includes, but is not limited to “accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors” (wordings from 4/15/20 waiver as published in the *Federal Register*).

Authority for these waivers is provided by the Real ID Act of 2005 and is codified in Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (8 U.S.C. 1103 note).  
<https://www.congress.gov/bill/109th-congress/house-bill/1268/text>  
<https://www.law.cornell.edu/uscode/text/8/1103>

To-date, waiver authority has been utilized 29 times – 5 times under George W. Bush (all by DHS Secretary Chertoff) and 24 times under Donald J. Trump (once each by DHS Secretary Kelly and Acting Secretary Duke, four times by Secretary Nielsen, ten times by Acting Secretary McAleenan, and eight times by current Acting Secretary Wolf).

Amount of border covered by a waiver, by state\*:

California – 104 out of 141 miles (74%)	New Mexico – 114 out of 180 miles (63%)
Arizona – 323 out of 377 miles (86%)	Texas – 174/233# out of 1,280 miles (18%)

Total border-wide not including duplication = 716 miles (covering 39% of the border).

Total including duplicate proclamations = 909 miles.

\* Waivers of 10/1/19 and later are not yet included in these calculations.

# Waiver distance in Texas is greater when accounting for *coverage* of the actual river boundary. Many Texas waivers are described in terms of levees or other features some distance away and which do not strictly parallel the border. This frequently covers multiple bends along the Rio Grande River. Based on coverage as estimated by the shortest line from the end of each waiver to the river, 174 miles of waiver descriptions cover approximately 233 miles or 18% of the border. Waiver segments along the Colorado River in Arizona are to-date all described in terms of the actual river and do not present the same issue.

Disclaimer: The document was prepared with great care and a focus on accurate representation. Nonetheless, it is meant for academic research and general reference rather than definitive legal purposes. Factors that impact the final layout and accuracy of measurements include (for example): base map, data layers, judgement calls and interpretations when conflicts or unclear data was encountered, rounding, level of source detail, technical expertise, and map projection. Map projection used for these calculations was adapted from USA Contiguous Equidistant Conic with a focus on the border region and a central meridian of 107° 08' W. Not responsible for omissions or errors. Feel free to contact me if you have questions or note any mistakes, typos, or errors. Suggestions welcome.

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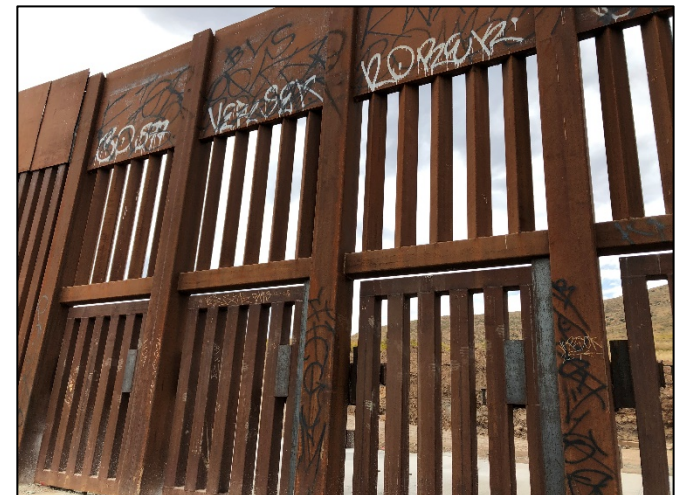
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THE OHIO STATE  
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NEWARK



Maps, updates, and other documents available at:  
<http://u.osu.edu/madsen.34/maps/>



Border wall in San Diego County, California (April 2019).

### Waiver proclamations:

**George W. Bush / DHS Secretary Chertoff**  
SD1 = 9/22/05; San Diego, CA; 14.0 miles  
BGR = 1/19/07; Goldwater Range, AZ; 38.1 miles  
SPR = 10/26/07; San Pedro River, AZ; 7.3 miles  
H1 = 4/8/08; Hidalgo Co., TX; 21.4 miles  
i1 = 4/8/08; intermittent border-wide; 559.9 miles  
**Donald J. Trump / various DHS Secretaries**  
SD2 = 8/2/17; San Diego, CA; 16.2 miles; Kelly  
Cal = 9/12/17; Calexico, CA; 3.0 miles; Duke  
ST = 1/22/18; Santa Teresa, NM; 23.5 miles; Nielsen  
Cam = 10/10/18; Cameron Co., TX; 6.6 miles; Nielsen  
H2 = 10/11/18; Hidalgo Co., TX; 17.7 miles; Nielsen  
SD3 = 2/8/19; San Diego, CA; 15.2 miles; Nielsen  
SL = 4/24/19; San Luis, AZ; 21.8 miles; McAleenan  
L/D = 4/24/19; Luna/Doña Ana Cos., NM; 51.1 miles; McAleenan  
Yu = 4/24/19; Yuma Co., AZ; 7.6 miles; McAleenan

C/P = 5/15/19; Cochise/Pima Counties, AZ; 68.4 miles; McAleenan  
Im1 = 5/15/19; Imperial County, CA; 15.9 miles; McAleenan  
T/C = 5/15/19; Tecate/Calexico, CA; 17.8 miles; McAleenan  
St1 = 7/1/19; Starr Co., TX; 4.1 miles; McAleenan  
S/H = 8/30/19; Starr/Hidalgo Counties, TX; 13.0 miles; McAleenan  
C/H = 10/1/19; Cameron/Hidalgo Counties, TX; mileage TBD; McAleenan  
SHC = 10/31/19; Starr, Hidalgo, Cameron Cos., TX; mileage TBD; McAleenan  
i2 = 2/20/20; intermittent border-wide; mileage TBD; Wolf  
V/M = 3/16/20; Val Verde/Maverick Counties, TX; mileage TBD; Wolf  
SD4 = 3/16/20; San Diego Co., CA; mileage TBD; Wolf  
Im2 = 3/16/20; Imperial Co., CA; mileage TBD; Wolf  
PSC = 3/16/20; Pima, Santa Cruz, Cochise Counties, AZ; mileage TBD; Wolf  
LDE = 3/16/20; Luna & Doña Ana Counties, NM & El Paso Co., TX; mileage TBD; Wolf  
Y/I = 3/16/20; Yuma Co., AZ & Imperial Co., CA; mileage TBD; Wolf  
St2 = 4/15/20; Starr Co., TX; mileage TBD; Wolf

For poster-sized table with full description of laws waived and maps of some of the areas covered by these waivers, [visit my website](#).

- 1) Nat'l. Env. Policy Act: SD1, BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 2) Endangered Species Act: SD1, BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 3) Clean Water Act: SD1, BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 4) Nat'l. Historic Pres. Act: SD1, BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 5) Migratory Bird Treaty Act: SD1, , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 6) Migratory Bird Cons. Act: , , , , SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 7) Clean Air Act: SD1, , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 8) Archeological Resources Prot. Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 9) Paleontological Resources Pres. Act: , , , , SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 10) Fed. Cave Res. Prot. Act 1988: , , , , SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2

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- 11) Nat'l. Trails Systems Act: , , , , SD2, , , , SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 12) Safe Drinking Water Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 13) Noise Control Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 14) Solid Waste Disp. Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 15) Comp. Env. Resp., Comp., & Liab. Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 16) Archaeological & Historic Pres. Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 17) Antiquities Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 18) Historic Sites, Bldgs., & Antiq. Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 19) Arizona-Idaho Cons. Act 1988: , , SPR, , , , , , , , , , , C/P, , , , , , , , PSC, , , ,
- 20) Wild & Scenic Rivers Act: , , SPR, , i1, SD2, , , , , SD3, SL, , Yu, C/P, , T/C, , , , , , V/M, , , PSC, LDE, Y/I, St2

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- 21) Farmland Protection Policy Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, i2, V/M, SD4, Im2, PSC, LDE, Y/I, St2
- 22) Coastal Zone Manag. Act: SD1, , , H1, i1, SD2, , , Cam, H2, SD3, , , , , , , C/H, SHC, , , , , , , , ,
- 23) Wilderness Act: , BGR, , , i1, SD2, , , , , SD3, , , , C/P, Im1, , , , , , , SD4, Im2, PSC, , , , ,
- 24) Fed. Land Policy & Manag. Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, L/D, Yu, C/P, Im1, T/C, St1, S/H, C/H, SHC, , , SD4, Im2, PSC, LDE, Y/I, , , ,

