

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, this waiver authority has been utilized 31 times – 5 times under George W. Bush (all by DHS Secretary Chertoff) and 26 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 ten 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, although mileage for some individual waivers can be found on the next page.

^ 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.



Levee wall in Hidalgo County, Texas (May 2019).



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

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 ([orig. 4/3/08](#)‡)

i1 = [4/8/08; intermittent border-wide](#); 559.9 miles ([orig. 4/3/08](#)‡)

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

LD = [4/24/19; Luna & Doña Ana Cos., NM](#); 51.1 miles; McAleenan*

Yu = [4/24/19; Yuma Co., AZ](#); 7.6 miles; McAleenan*

CP = [5/15/19; Cochise & Pima Cos., AZ](#); 68.4 miles; McAleenan*

Im1 = [5/15/19; Imperial Co., CA](#); 15.9 miles; McAleenan*

TC = [5/15/19; Tecate & Calexico, CA](#); 17.8 miles; McAleenan*

St1 = [7/1/19; Starr Co., TX](#); 4.1 miles; McAleenan*

SH = [8/30/19; Starr & Hidalgo Cos., TX](#); 13.0 miles; McAleenan*

HC = [10/1/19; Cameron & Hidalgo Cos., TX](#); mileage TBD; McAleenan*

SHC = [10/31/19; Starr, Hidalgo, Cameron Cos., TX](#); mileage TBD; McAleenan*

VM = [3/16/20; Val Verde & Maverick Cos., TX](#); mileage TBD; Wolf*

SD4 = [3/16/20; San Diego Co., CA](#); 27.6 miles; Wolf*

Im2 = [3/16/20; Imperial Co., CA](#); 11.0 miles; Wolf*

LDE = [3/16/20; Luna & Doña Ana Cos., NM & El Paso Co., TX](#); mileage TBD; Wolf*

YI = [3/16/20; Yuma Co., AZ & Imperial Co., CA](#); mileage TBD; Wolf*

St2 = [4/15/20; Starr Co., TX](#); 16.9 miles; Wolf*+

i2 = [5/13/20; intermittent border-wide](#); mileage TBD; Wolf*+ ([orig. 2/20/20](#)‡)

PSC = [5/13/20; Pima, Santa Cruz, Cochise Cos., AZ](#); mileage TBD; Wolf*+ ([orig. 3/16/20](#)‡)

WZ = [5/15/20; Webb & Zapata Cos., TX](#); 75.4 miles; Wolf*+

St3 = [7/17/20; Starr Co., TX](#); mileage TBD; Wolf*+

‡ Re-published due to inadvertent omissions in initial appearance in the *Federal Register*. * Acting DHS Secretary. + Proclamation signing authority delegated to Mizelle.

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

LINKS below: # = government agency, professional association, or academic article ; law name = Cornell Law School Legal Information Institute ; first waiver = Wikipedia

these are general reference information sources and may not cover precise legal aspects of laws waived; see also [blog](#) of the Friends of the Sonoran Desert

[1\) Nat'l. Env. Policy Act:](#) [SD1](#), BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[2\) Endangered Species Act:](#) [SD1](#), BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[3\) Clean Water Act:](#) [SD1](#), BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[4\) Nat'l. Historic Pres. Act:](#) [SD1](#), BGR, SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[5\) Migratory Bird Treaty Act:](#) [SD1](#), , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[6\) Migratory Bird Cons. Act:](#) , , , , , [SD2](#), Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[7\) Clean Air Act:](#) [SD1](#), , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[8\) Archeological Resources Prot. Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[9\) Paleontological Resources Pres. Act:](#) , , , , , [SD2](#), Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[10\) Fed. Cave Res. Prot. Act 1988:](#) , , , , , [SD2](#), Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[11\) Nat'l. Trails System Act:](#) , , , , , [SD2](#), , , , , SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[12\) Safe Drinking Water Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[13\) Noise Control Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[14\) Solid Waste Disp. Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[15\) Comp. Env. Resp., Comp., & Liab. Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[16\) Archaeological & Historic Pres. Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[17\) Antiquities Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

18) Historic Sites, Bldgs., & Antiq. Act: , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

19) [Arizona-Idaho Cons. Act 1988:](#) , , [SPR](#), , , , , , , , , , , CP, , , , , , , , , , , PSC, ,

[20\) Wild & Scenic Rivers Act:](#) , , [SPR](#), , i1, SD2, , , , , SD3, SL, , Yu, CP, , TC, , , , , VM, , , LDE, YI, St2, , PSC, WZ, St3

[21\) Farmland Protection Policy Act:](#) , , [SPR](#), H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, SD4, Im2, LDE, YI, St2, , PSC, WZ, St3

[22\) Coastal Zone Manag. Act:](#) [SD1](#), , , H1, i1, SD2, , , Cam, H2, SD3, , , , , , , , , , HC, SHC, , , , , , , , , , ,

