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 5/15/20 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, DHS waiver authority has been utilized 32 times – 5 times under George W. Bush (all by DHS Secretary Chertoff) and 27 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 eleven 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 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.

Border wall west of Calexico, CA (Sept. 2017).

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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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*+ [for roads only, not for barriers]
i3 = 1/4/21; intermittent border-wide; 71.5 miles; Wolf*+

‡ Re-published due to inadvertent omissions in initial appearance in the *Federal Register*. * *Acting* DHS Secretary. + Signing authority delegated to Mizelle/Brekke.
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, prof. assoc., or academic article ; law name = Cornell Law School Legal Info. Institute ; first waiver = Wikipedia or US Code on GovInfo.gov
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

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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

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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, , , , , , , , , , ,

23) Wilderness Act: , BGR, , , i1, SD2, , , , , SD3, , , , CP, Im1, , , , , , , SD4, Im2, , , , , PSC, , ,

24) Fed. Land Policy & Manag. Act: , , SPR, H1, i1, SD2, Cal, ST, Cam, H2, SD3, SL, LD, Yu, CP, Im1, TC, St1, SH, HC, SHC, , SD4, Im2, LDE, YI, , , PSC, , ,

25) Nat'l. Wildlife Ref. Syst. Adm. Act: , BGR, , H1, i1, SD2, , , Cam, H2, SD3, , , , CP, , , St1, SH, HC, SHC, , , , , , St2, , PSC, , St3,

26) Nat'l. Wildlife Ref. Syst. Imp. Act 1997: , , , , , SD2, , , , , SD3, , , , , , , , , , , , , , , , , , PSC, , ,

27) Reclamation Proj. Act 1939 [part]: , , , , , , Cal, , , , , SL, , Yu, CP, Im1, TC, , , , , , , , , YI, , , , , ,

28) Nat'l Fish & Wildlife Act 1956: , , , 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,

29) Fish & Wildlife Coord. 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,

30) Wild Horse & Burro Act: , , , , , SD2, , , , , SD3, SL, LD, Yu, CP, Im1, TC, , , , , VM, SD4, Im2, LDE, YI, , , PSC, , ,

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31) Nat'l. Def. Authoriz. Act FY 2001 [part]: , , , , , SD2, , , , , SD3, ,

32) Adm. Procedure 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,

33) Otay Mountain Wilderness Act: , , , , i1, SD2, , , , , SD3, ,

34) California Desert Prot. Act [part]: , , , , i1, SD2, , , , , SD3, , , , , Im1, , , , , , , SD4, Im2, , , , , , , ,

35) Pres. Procl. Organ Pipe Cactus NM: , , , , i1, , , , , , , , , , CP, , , , , , , , , , , , , , , , ,

36) Nat'l. Park Service Organic Act: , , , , i1, , , , , , , , , , CP, , , , , , , , , , , , , , PSC, , ,

37) Nat'l. Park Service Gen'l. Auth. Act: , , , , i1, , , , , , , , , , CP, , , , , , , , , , , , , , PSC, , ,

38) Nat'l. Parks & Rec. Act 1978 [part]: , , , , i1, , , , , , , , , , CP, , , , , , , , , , , , , , , , ,

39) Arizona Desert Wilderness Act [part]: , , , , i1, , , , , , , , , , CP, , , , , , , , , , , , , , , , ,

40) Rivers & Harbors Act 1899: , , , H1, i1, SD2, Cal, , Cam, H2, SD3, SL, , Yu, CP, Im1, TC, St1, SH, HC, SHC, VM, , , LDE, YI, St2, , PSC, WZ, St3,

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41) Eagle Prot. Act: , , , 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,

42) Native Am. Graves Prot. & Rep. Act: , , , 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,

43) Am. Indian Religious Freedom Act: , , , 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, ,

44) Religious Freedom Restoration Act: , , , H1, i1, SD2, Cal, ,

45) Nat'l. Forest Manag. Act 1976: , , , , i1, , , , , , , , , , CP, , , , , , , , , , , , , , PSC, , ,

46) Mult. Use & Sustained Yield Act 1960: , , , , i1, , , , , , , , , , CP, , , , , , , , , , , , , , PSC, , ,

47) Fed. Grant/Coop. Agreement Act 1977: , , , H1, ,

48) Military Lands Withdrawal Act 1999: , BGR, , , , , , , , , , SL, , Yu, , , , , , , , , , , , , , , , , ,

49) Sikes Act: , BGR, , , , , , , , , , SL, , Yu, , , , , , , , , , , , , , , , , ,

50) authoriz. for Pres. Procl. Coronado NM: , , , , , , , , , , , , , , CP, , , , , , , , , , , , , , PSC, , ,

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51) Establishment Coronado NM: , , , , , , , , , , , , , , CP, , , , , , , , , , , , , , PSC, , ,

52) Contracts: competition req.: , i2, , , ,

53) Task & delivery order contracts: , i2, , , ,

54) Cost/pricing data: , i2, , , ,

55) Contracts: , i2, , , ,

56) Lowest Price Tech. Acceptable Source: , i2, , , ,

57) Consolidation of contract req.: , i2, , , , i3

58) Documentation: , i2, , , ,

59) Exercise of options: , i2, , , ,

60) Design-build selection procedures: , i2, , , ,

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61) Exp. of project wage determinations:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i2,	,	,	,	i3
62) bonds, etc. (formerly Miller Act 1935):	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i2,	,	,	,	
63) Arizona Wilderness Act 1984 [part]:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	PSC,	,	,	
64) Laws affecting nat'l forest lands:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	PSC,	,	,	
65) Protection of nat'l forests:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	PSC,	,	,	
66) Full and open competition:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
67) Req. for multiple award contracts:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
68) Use of noncompetitive procedures:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
69) Planning and solicitation requirements:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
70) Design-build selection procedures:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
71) Req. cost/pricing data & certification:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
72) General authority (Contracts):	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
73) Guidance on use of contracts:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
74) Orders:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
75) Advertising req. for purchases/sales:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
76) Contractor past performance:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
77) Procurement notice:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
78) Lowest price technically acceptable:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
79) Awards or contracts:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
80) Contract bundling:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
81) Additional powers:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
82) Government Contracting Programs:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
83) Multiple award preference:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3
84) Ordering:	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	,	i3

Border wall east of San Luis, Arizona (Jan. 2013).

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

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