

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

May 10, 2021

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Dodaro,

Since the beginning of his presidential campaign, former President Trump repeatedly used racist, xenophobic rhetoric to falsely justify the needless, costly construction of a wall along the U.S.-Mexico border. In an effort to expedite construction of the border wall, the Trump administration's Department of Homeland Security blatantly abused its sweeping and potentially unconstitutional authority¹ to waive all laws and legal requirements standing in the way. Before President Trump took office, this waiver authority had only been used seven times in its history. The Trump administration used it 29 times.²

The laws that the Trump administration waived included critical environmental and public health protections—like the Endangered Species Act, Clean Water Act, and Clean Air Act—and Native American cultural resource protections. They ripped through pristine landscapes like Organ Pipe Cactus National Monument, literally bulldozed and blasted sacred Native American sites, and drained the fragile desert ecosystem of vital groundwater resources. This careless, lawless action inflicted catastrophic harm on border lands and communities, much of which is irreversible.

The Trump administration also waived the National Environmental Policy Act which requires federal agencies, such as the Department of Homeland Security and its component U.S. Customs and Border Protection (CBP), to assess the impact of their proposed actions on natural and cultural resources, consider public input, and identify potential ways to mitigate these impacts. These laws generally provide a mechanism for stakeholders, such as affected tribes, community members, and local governments, to provide input prior to a proposed action taking place.

¹ The REAL ID Act of 2005 amended section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by expanding the authority of the Secretary of Homeland Security to waive all legal requirements, as determined to be necessary, in the Secretary's sole discretion, to ensure expeditious construction of barriers and roads along the border. Pub. L. No. 104-208, div. C, tit. I, subtit. A, § 102(c), 110 Stat. 3009, 3009-555, as amended by Pub. L. No. 109-13, div. B, tit. I, § 102, 119 Stat. 231, 306 (classified, as amended, at 8 U.S.C. § 1103 note).

² Federal Register search conducted March 26, 2021,

<https://www.federalregister.gov/documents/search?conditions%5Bagencies%5D%5B%5D=homeland-security-department&conditions%5Bterm%5D=%22Determination+Pursuant+to+Section+102%22>

When operating under this waiver authority, CBP claims to prepare Environmental Stewardship Plans (ESPs) that summarize the natural and cultural resource surveys conducted during project planning and estimate the potential environmental impacts of border wall construction. During construction, CBP is supposed to assign environmental monitors to ensure implementation of any mitigation measures in the ESPs and report on any deviations. According to CBP, ESPs are very similar in approach and content to traditional National Environmental Policy Act documents and were created to fulfill the Secretary of Homeland Security's commitment to responsible environmental stewardship.³

Nevertheless, affected stakeholders, such as the Tohono O'odham Nation, have reported irreparable harm to natural and cultural resources, such as Quitobaquito Springs and other sacred sites from border wall construction—even with CBP's assessments.⁴ Additionally, in February 2021, a coalition of nearly 70 environmental groups, civil-rights organizations, and tribal entities sent a report to members of Congress and the Biden administration describing, among other impacts, ongoing negative effects on wildlife migration for endangered species, such as the jaguar and Sonoran pronghorn, due to completed sections of the border wall.⁵

To further assist us with understanding the processes CBP followed to assess potential impacts on natural and cultural resources when constructing portions of the border wall under the Secretary's waiver authority, we request that GAO examine:

- (1) the amount, type, and location of physical barriers constructed along the southern U.S. under the waiver process over the last 10 years;
- (2) the extent to which CBP assessed potential impacts to natural and cultural resources prior to the construction of physical barriers along the southern U.S. border over the last 10 years;
- (3) the extent to which CBP's assessments aligned with those of stakeholders, including but not limited to Tribal groups, community members, federal agency scientists, and environmental organizations; and
- (4) options, if any, for mitigating identified natural and cultural resource impacts of physical barriers on tribal and federal lands along the southern U.S. border.

Thank you for your attention to this request. Please contact the Oversight & Investigations Subcommittee staff at (202) 225-6065 with any questions.

³ Customs and Border Protection, *CBP Environmental Documents*, accessed March 10, 2021, <https://www.cbp.gov/about/environmental-management-sustainability/cbp-environmental-documents>; and *Environmental Stewardship Plans and Environmental Stewardship Summary Reports*, accessed March 10, 2021, <https://www.cbp.gov/about/environmental-management-sustainability/documents/esp-essr>.

⁴ The Honorable Ned Norris, Jr., Chairman of the Tohono O'odham Nation of Arizona, *Destroying Sacred Sites and Erasing Tribal Culture: The Trump Administration's Construction of the Border Wall*, Testimony before the U.S. House of Representatives Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States, 116th Congress, 2nd sess., February 26, 2020.

⁵ Loader, Mandy, "Wildlife, rights coalition asks Biden to remove miles of Arizona's border wall" *Arizona Daily Star*, March 1, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Raúl M. Grijalva". The signature is written in a cursive style with a large, stylized initial "R".

Raúl M. Grijalva
Chair
Committee on Natural Resources