

DHS Secretary Signs Waiver for Border Construction Projects in San Diego

WASHINGTON – Secretary of Homeland Security John Kelly signed a waiver [Wednesday on July 26](#) to waive certain laws, regulations and other legal requirements to ensure the expeditious construction of barriers and roads in the vicinity of the international border near San Diego, ~~California-CA~~. [This waiver is pursuant to authority granted to the Secretary of Homeland Security by Congress and covers a variety of environmental, natural resource, and land management laws.](#)

The waiver covers [certain](#) border infrastructure projects in the United States Border Patrol's San Diego Sector, one of the busiest Sectors in the nation. In fiscal year 2016 alone, the United States Border Patrol apprehended over 31,000 illegal aliens and seized approximately 9,167 pounds of marijuana and approximately 1,317 pounds of cocaine in the San Diego Sector.

The San Diego Sector remains an area of high illegal entry for which there is an immediate need to improve current infrastructure and construct additional border barriers and roads. To begin to meet the need for additional border infrastructure within the San Diego Sector, DHS will [immediately](#) implement various border infrastructure projects. These projects will focus on an approximately 15-mile segment of the border within the San Diego Sector that starts at the Pacific Ocean and extends eastward, [to approximately](#) ~~(b) (7)(E)~~ east of what is known as Border Monument ~~(b) (7)(E)~~.

Congress provided the Secretary of Homeland Security with a number of authorities necessary to carry out DHS's border security mission, ~~including other border security provisions~~. One of these authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, [as amended](#) ("IIRIRA"). [Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 \(Sept. 30, 1996\) \(8 U.S.C. 1103 note\), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 \(May 11, 2005\) \(8 U.S.C. 1103 note\), as amended by the Secure Fence Act of 2006, Public Law 109-367, § 3, 120 Stat. 2638 \(Oct. 26, 2006\) \(8 U.S.C. § 1103 note\), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090 \(Dec. 26, 2007\).](#)

Section 102(a) of IIRIRA provides~~s~~ that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress has called for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that the Secretary, in his sole discretion, determines necessary to ensure the expeditious construction of [the](#) barriers and roads authorized by section 102 of IIRIRA. ~~The waiver covers environmental, archeological laws.~~

[The Department of Homeland Security U.S. Customs and Border Protection](#) continues to implement President Trump's Executive Order 13767 - also known as Border Security and Immigration Enforcement Improvements – and continues to take steps to immediately plan, design and construct a physical wall along the southern border, using appropriate materials and technology to most effectively achieve complete operational control of the southern border. [While the waiver eliminates DHS' obligation to comply with various laws with respect to covered projects, DHS remains committed to environmental stewardship with respect to these projects. At the same time, CBP is committed to environmental and cultural stewardship while performing our core missions and as we begin border infrastructure construction projects, DHS CBP intends to for](#) ~~has been coordinating and consulting, and intends to~~

Commented [FMF(1): Don't think we need long citation for press release.

~~continue doing so, and works hand in hand with other federal and tribal, state resource, and local agencies to ensure that impacts to the environment, wildlife, and cultural and historic artifacts are analyzed and minimized, to the extent possible, as well as non-governmental organizations, to fulfill environmental compliance regulations and to ensure protection of the Nation's natural and cultural resources. Additionally, CBP works diligently to integrate responsible environmental practices— including incorporating sustainable practices— into all aspects of our decision making and operations.~~

The Department has exercised the waiver authority in Section 102 of IIRIRA on five previous occasions from 2005 to 2008.

More information about the waiver can be found **HERE (HYPERLINK)**

Commented [FMF(2): I suggest this language based upon my understanding of DHS/CBP's intent with respect to environmental stewardship post-waiver. Also based in part on press release from 2008 waiver. (b) (7)(E)