



## DEPARTMENT OF HOMELAND SECURITY

### Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, As Amended

**AGENCY:** Office of the Secretary, (DHS).

**ACTION:** Notice of determination.

**SUMMARY:** The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Starr County, Texas.

**DATES:** This determination takes effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**SUPPLEMENTARY INFORMATION:** Important missions of the Department of Homeland Security (“DHS”) include border security. Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS’s border security mission. One of those authorities is section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”). Pub. L. 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, Pub. L. 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, Pub. L. 109-367, sec. 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Pub. L. 110-161, Div. E, Title V, sec. 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) 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

called on the Secretary to construct reinforced fencing on the southwest border and provide 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 I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

## **DETERMINATION AND WAIVER:**

### **Section 1**

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of "high illegal entry." As of early August 2023, Border Patrol had encountered over 245,000 such entrants attempting to enter the United States between ports of entry in the Rio Grande Valley Sector in Fiscal Year 2023.

Therefore, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will take immediate action to construct barriers and roads. Construction will be funded by a fiscal year 2019 appropriation through which Congress appropriated funds for the construction border barrier in the Rio Grande Valley, and DHS is required to use those funds for their appropriated purpose. This project is consistent with DHS's plan to fulfill the requirements of President Biden's Proclamation (Proclamation No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021)), which ended the diversion of funds for border wall from military projects or other sources while calling for the expenditure of any funds Congress appropriated for barrier construction consistent with their appropriated purpose. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. Such areas are not located within any of the areas identified in section 231 of title II of division A of the Fiscal Year 2019 DHS Appropriations Act. *See* Pub. L. 116-6, Div. A, Title II, sec. 231.

### **Section 2**

As set forth in section 102(a) of IIRIRA, I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of "high illegal entry" (the "project areas"):

- Starting approximately one mile south of the Falcon Dam and extending southeast for approximately two miles.
- Starting at the southeast boundary of the Arroyo Morteros Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending southeast for approximately one mile.
- Starting at the northernmost boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending north for approximately one mile.
- Starting at the eastern boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending east for approximately one-half mile.
- Starting one-half mile south of the intersection of Perez Road and U.S. Highway 83 and generally following the Rio Grande River to approximately one-quarter mile south and east of the intersection of Leos Road and U.S. Highway 83.
- Starting approximately three-quarters of a mile southeast of the intersection of North Redwoods Street and U.S. Highway 83 and extending southeast to the northwest boundary of the Los Velas West Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- Starting approximately one-tenth (0.1) of a mile south of the intersection of Trophy Street and Moonbeam Street and extending east to approximately one mile south of the intersection of Los Olmitos Road and Farm to Market Road 1430.

- Starting approximately one mile south of the intersection of Los Olmitos Road and Farm to Market Road 1430 and extending southeast to the northwest boundary of the La Casita East Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- Starting approximately one mile south of the intersection of Mission Street and Old Military Highway and extending southeast for approximately one and three-quarters miles.
- Starting at the northeast boundary of the Villareales Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending east to the western boundary of the of the Cuevitas Tract of the Lower Rio Grande Valley National Wildlife Refuge.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but 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) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.)); the Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 et seq.)); the National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113-287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 et seq., now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 et seq.)); the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.); the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.); the Clean Air Act (42 U.S.C. 7401 et seq.); the Archeological Resources Protection Act (Pub. L. 96-95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa et seq.)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Noise Control Act (42 U.S.C. 4901 et seq.); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.); the Archaeological and Historic Preservation Act (Pub. L. 86-523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Pub. L. 113-287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 et seq., now codified at 54 U.S.C. 312502 et seq.)); the Antiquities Act (formerly codified at 16 U.S.C. 431 et seq., now codified 54 U.S.C. 320301 et seq.); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 et seq., now codified at 54 U.S.C. 3201-320303 & 320101-320106); the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.); the National Wildlife Refuge System Administration Act (Pub. L. 89-669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd-668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84-1024, 70 Stat. 1119 (Aug. 8, 1956) (16 U.S.C. 742a, et seq.)); the Fish and Wildlife Coordination Act (Pub. L. 73-121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 et seq.)); the National Trails System Act (16 U.S.C. 1241 et seq.); the Administrative Procedure Act (5 U.S.C. 551 et seq.); the Eagle Protection Act (16 U.S.C. 668 et seq.); the Native American Graves Protection and

Repatriation Act (25 U.S.C. 3001 et seq.); the American Indian Religious Freedom Act (42 U.S.C. 1996); and the Federal Land Policy and Management Act (Pub L. 94-579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 et seq.)).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

**Alejandro N. Mayorkas,**

*Secretary.*

*U.S. Department of Homeland Security.*

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