

Revoking Section 102 of the Real ID Act of 2005: A Step Towards Environmental Justice & Protecting Critical Waterways

More than just a geographic feature or an international boundary, the Rio Grande is central to our daily lives. We depend on it for drinking, farming, and recreation. The respect of existing federal regulations are vital for its environmental protection, as well as ensuring the health and safety of American communities near the border. Therefore, rescinding or revoking Section 102 of the Real ID Act (PL 109-13) is necessary to prevent the sidestepping of critical federal environmental regulations for the sake of expediting border wall construction along the Rio Grande.

Rio Grande International Study Center Policy Priorities

Section 102 of the Real ID Act (Public Law 109-13) grants the Secretary of Homeland Security undue authority to waive dozens of necessary federal legal requirements to expedite the construction of border barriers and roads on or near the US/Mexico border. Though waivers have been invoked during previous administrations in pursuit of national security, they come with tremendous threats to environmental and community safety.

Federal action to revoke Section 102 of the Real ID Act is imperative to reinstate necessary environmental and public health protections. Only through ensuring that any construction project along the southern border undergoes proper environmental review can the government prevent irreversible damage to ecosystems and biodiversity, safeguard the well-being of Americans, and protect property rights. Furthermore, revoking Section 102 aligns with critical broader efforts to combat climate change and enhance resilience among vulnerable communities, ensuring that infrastructure projects—including border security measures—are environmentally sustainable and climate-conscious.

“They didn’t pay for damages. They didn’t pay for a drop of water use. In Mission, Texas, the Border Wall builders took our land and destroyed our yards, neighborhoods, peace, and quality of life, as they squandered our most precious resource on the ground, that they didn’t pay for, to reduce the dust of the mess that they’re making.”

- Mariana Trevino Wright, Executive Director of the National Butterfly Center

Impact on Communities

- **Exacerbates Poverty Rates:** Low-income and communities of color near the border are disproportionately harmed by the issuance of waivers under Section 102 of the Real ID Act. Research shows that border communities, often characterized by higher rates of poverty and limited access to resources, bear the brunt of environmental and health consequences resulting from expedited wall construction. Waivers have hindered efforts to build climate-resilient infrastructures and ecosystems, putting communities at greater risk of climate change impacts. These waivers happen nowhere else in the United States, except on the border
- **Destroys Cultural Heritage:** Bypassing federal environmental regulations for construction often occurs on the ancestral lands of indigenous peoples, leading to a permanent loss of important cultural sites and violating property rights due to inadequate consultation or consent.
- **Disrupts Water Flows and Loss of Critical Ecosystems:** Much of the habitat slated for border wall construction in Texas, for example, is an increasingly rare and unique type of ecosystem known as the Tamaulipan Thornscrub, a habitat found nowhere else in the United States that—once bulldozed—will take over 500 years to return to its original state. Furthermore, expedited construction without environmental plans and protections in place disrupts natural water flow patterns, causes habitat fragmentation, and threatens native ecosystems.
- **Threatens Endangered Species:** Studies indicate over 90+ endangered and vulnerable species, including the Jaguarundi (*Herpailurus yaguarondi*) and the Ocelot (*Leopardus pardalis*), are currently impacted by border wall construction due to blocked migration routes and fragmented habitats.

In short, expedited border wall construction through this waiver directly undermines community wellbeing, as well as climate resilience and environmental justice efforts.



Path of destruction on Public Lands, Laredo, Texas, 2020

Why Federal Action is Necessary

As long as Section 102 of the Real ID Act waiver remains in effect, the shadow of border wall construction will always loom large, threatening irreparable harm to our environment, indigenous lands, and the very fabric of our communities. These waivers stand as an open door for unchecked development that disregard the ecological balance and cultural heritage crucial to borderlands identity.

We urge Congress and the Senate to collaborate with the Department of Homeland Security and the Biden administration and reconsider these actions by taking into account the full cost of this waiver, including significant environmental justice implications and harm to hardworking Americans and families living in border communities. A comprehensive border security approach that respects the rights and well-being of all individuals and preserves the natural beauty of the shared environment that supports our communities and economies is essential.

Hospitalized South Texas Landowner Acquiesces to Border Demands, Construction Left Abandoned as Project Grinds to a Halt

During hospitalization for COVID-19, Juan Vargas signed the papers to allow the Army Corp of Engineers access to his river-adjacent ranch, after fighting a year-long battle, determined not to let his family go through the same thing. Originally, the Engineers had claimed that they would sample the soil and remove some light brush, but that could not have been further from the truth.



The military mowed down centuries-old mesquite trees, leveled out a cliff, and created a road through his property, a far cry from their initial statement.

After the change in administration in 2020, construction halted and the devastation stayed on Vargas' land. They abandoned the project and never even paid for damages. Vargas' land is family-owned, home to several historic ruins established in 1850, and known for its rich ecological diversity, including Texas persimmons, hackberries, exotic deer, and the occasional jaguarundi.

Jerry Vargas, Juan's son and the current steward of the property, had this to say, *"It's a pretty peaceful place. We never even lock our doors. There's no mass invasion. The only thing that's dangerous in this area, is the Border Patrol infringing on our rights."*

Picture: Laredo Morning Times

Family Farm & Livelihood in Jeopardy Due to Federal Government Overreach

Joseph Hein has bred and sold Appaloosa horses from his property, Rancho Santo Niño, for over 40 years, and the land has been in his family for generations. His Rio Grande adjacent property offers accessible water for his horses, but pressures from the federal government aim to cut him off from the river, which jeopardizes his business and could force him to sell his horses, taking away income from this hard-working, family-run farm and simultaneously raising their property taxes, because they no longer qualify for an agricultural tax exemption.



In his lifetime, he has never thought of the property as unsafe. “Do you think I would bring my daughters if it was dangerous out here?”

Hein is a farmer, like so many Americans; the only difference is his land is by the border. Why should that make his rights any different on his private property that his family has owned for generations?

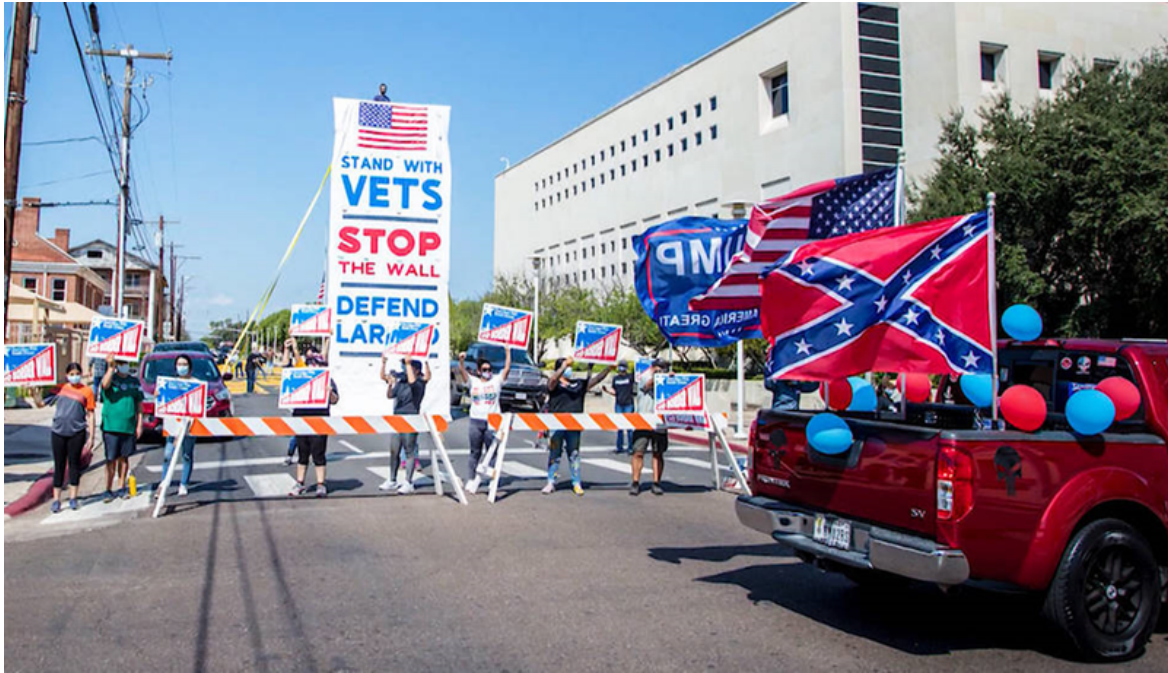
Picture: Michael Gonzalez for the Texas Tribune

Recommendations

Immediate Revocation of Section 102 of the Real ID Act: The complete revocation is necessary to dismantle a misplaced legal foundation allowing for the circumvention of environmental, public health, and indigenous peoples’ rights protections in border wall construction.

Strengthen Community Consultation Processes: Enact legislation that mandates meaningful consultation with local communities, indigenous groups, and environmental stakeholders before initiating any construction projects affecting their regions. This would ensure that those most directly impacted by border policies have a say in decisions that affect their lives and natural surroundings.

Understand and Integrate Environmental Justice Concerns under NEPA: DHS should conduct comprehensive Environmental Impact Statements that address potential disproportionate effects on marginalized communities, incorporating community knowledge through participatory assessments. Training for DHS staff on environmental justice principles is crucial for integrating these considerations into NEPA processes. Additionally, DHS should also introduce a policy that enhances the integration of environmental justice considerations in NEPA processes, requiring comprehensive impact assessments that include cumulative impacts on marginalized communities.



Veterans United Against the Wall, Sept. 2020

About the Rio Grande International Study Center

Founded in 1994, the [Rio Grande International Study Center \(RGISC\)](#) is an environmental advocacy group whose mission is to protect and preserve our only source of drinking water, the Rio Grande, and our regional environment for present lives and future generations. Focus areas include water security, river restoration, air quality, habitat protection, community engagement, and climate justice. We seek to protect our South Texas region from the impacts of climate change by restoring nature and natural systems. Since our founding 30 years ago, RGISC has unapologetically worked to bring impacted voices to the decision-making table using science, cultural organizing, and creative actions. We have catapulted Laredo into the national spotlight through our advocacy efforts on ethylene oxide emissions, single-use plastics, and border wall construction. For more information, please contact: **Martin Castro**, Watershed Science Director, martin@rgisc.org, or **Allison Guzman**, Justice40 Program Manager, allison@rgisc.org, or call (956) 718-1063.

About the WECR Caucus

RGISC is a core member of the [Water Equity & Climate Resilience \(WECR\) Caucus](#). Anchored by PolicyLink, the WECR Caucus is a national network of nearly 70 organizations centering frontline communities of color and low-income communities in working to achieve water equity and climate justice through federal and state policy advocacy, centering the voices and solutions of communities most affected by water challenges and the climate crisis. For more information, contact: **Yasmin Zaerpoor**, Director of Water Equity & Climate Resilience, PolicyLink, yasmin@policylink.org.