

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

February 4, 2021

The Honorable Alejandro Mayorkas
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas,

We are conducting oversight of President Biden's use of executive action to stop construction of the border wall and how this decision impacts the duty of the Department of Homeland Security (DHS) to protect our border. This potentially dangerous action not only harms our national security and thwarts the will of Congress, but also leaves American citizens living near the southwest border vulnerable to activities involving cartels and smugglers.

Since taking office, President Biden has used an unprecedented number of executive actions to bypass Congress.¹ On the day he was inaugurated, President Biden signed a proclamation stopping construction of the border wall for 60 days.² This is particularly concerning since Congress agreed in December 2020 that \$1,375,000,000 be appropriated "for the construction of [a] barrier system along the southwest border."³ In fact, every year since Fiscal Year 2018, Congress has provided funds for barriers and fencing along the southwest border, clearly signaling Congress's intent to secure the border with a physical barrier.⁴ The Government Accountability Office has concluded that, "Faithful execution of the law does not permit the president to substitute his own policy priorities for those that Congress has enacted

¹ See Aamer Madhani, *Biden Faces Scrutiny Over Reliance on Executive Orders*, ASSOCIATED PRESS, Jan. 28, 2021, available at <https://apnews.com/article/joe-biden-donald-trump-coronavirus-pandemic-immigration-environment-f5c48846c6db54ec0ddf0f3f62485b1e>.

² Proclamation by the President, *Emergency With Respect to the Southern Border of the United States And Redirection of Funds Diverted to Border Wall Construction*, Jan. 20, 2021, available at www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/

³ See Consolidated Appropriations Act, 2021, Public Law No. 116-260, p. 275-76, Dec. 27, 2020, available at <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf> ("... An amount equal to the amount made available in section 209(a)(1) of division D of the Consolidated Appropriations Act, 2020..."); see also Consolidated Appropriations Act, 2020, Public Law No. 116-93, Div. D, Sec. 209(a)(1), Dec. 16, 2019, available at <https://www.congress.gov/116/plaws/publ93/PLAW-116publ93.pdf>. ("\$1,375,000,000 for the construction of barrier system along the southwest border...").

⁴ See CRS, *DHS Border Barrier Funding*, Jan. 29, 2020, available at <https://crsreports.congress.gov/product/pdf/R/R45888>.

into law.”⁵ Unfortunately, in this case, President Biden has decided to use executive action to disregard the law passed by Congress and signed by President Trump.

The decision to pause border wall construction is particularly confounding given President Biden’s past support for the Secure Fence Act of 2006.⁶ Then-Senator Biden stated that the border fence would prevent “tons” of drugs from entering the country.⁷ This view is consistent with recent DHS findings. In October 2020, DHS stated that border barriers have “proved to be a critical component in gaining operational control of the border.”⁸ In many areas where the wall was constructed it resulted in a significant decrease in illegal entry while also saving taxpayer money by requiring less manpower.⁹

American citizens on the border have experienced firsthand the dangers posed by the lack of adequate physical barriers along the border. We have heard many accounts of those whose safety and security have been directly affected by the lack of a physical barrier. In one of many examples, a rancher and constituent of new Committee Member Representative Herrell, along the border in New Mexico, explained how an incomplete wall along his property has effectively become a funnel for thousands of migrants and smugglers. This has led to people crossing through his land, killing and stealing his livestock, and in one instance holding him at gunpoint and stealing his truck. Similar accounts from others who live in our border communities are unsettling and unacceptable.

In the wake of the Biden Administration’s decision to lighten border security and propose amnesty for illegal immigrants, numbers of illegal southern border crossings are steadily increasing.¹⁰ One media report found that, “smugglers are using Biden’s promises to restart asylum, legalize illegal immigrants and stop enforcement by Immigration and Customs Enforcement to encourage migrants to make the journey.”¹¹ This raises serious concerns about how the Biden Administration intends to secure the border, particularly since it decided to pause wall construction and divert the funds elsewhere.

In order for Committee Republicans to better understand the Biden Administration’s border security policies, please provide the following documents and information as soon as possible but no later than February 18, 2021:

1. All documents and communications related to President Biden’s decision to halt construction of the border wall for 60 days.

⁵ Letter from General Counsel, GAO, to OMB, Jan. 16, 2020, p.1, *available at* <https://www.gao.gov/assets/710/703909.pdf>.

⁶⁶ See Andrew Kaczynski, *Joe Biden Once Said a Fence was Needed to Stop ‘Tons’ of drugs from Mexico*, CNN, May 10, 2019, *available at* <https://www.cnn.com/2019/05/10/politics/kfile-biden-drugs-fence-2006/index.html>

⁷ *Id.*

⁸ Press Release, DHS, *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, Oct. 29, 2020, *available at* <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers#:~:text=CBP%20has%20seen%2079%25%20decrease,wall%20system%20in%20this%20area.>

⁹ *Id.*

¹⁰ See Adam Shaw & William La Jeunesse, *Migrant Numbers Increase Along US-Mexico Border as They Await Biden’s Immigration Action*, FOX NEWS, Feb. 2, 2021, *available at* <https://www.foxnews.com/politics/migrant-numbers-us-mexico-border-bidens-immigration-action>.

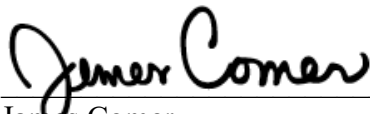
¹¹ *Id.*

2. All documents and communications related to the \$1.3 billion in funds specifically appropriated for construction of the border wall including but not limited to any repurposing of these funds.
3. All documents and communications related to the Department of Homeland Security's plan to ensure effective border security and safety of Americans living in border regions, particularly in those areas where construction of physical barriers was halted, including what additional resources will be necessary due to the halt in construction.
4. All documents sufficient to show a full accounting of funds appropriated to the Department of Homeland Security for the "construction of barrier system along the southwest border" for FY2018, FY2019, FY2020, and FY2021, including funds obligated, where and how they were obligated, and what appropriated money remains to be obligated.
5. All documents and communications from January 20, 2021 to present related to any of the following along the southwestern border: a) increased illegal entries, b) drug trafficking, c) firearms trafficking, d) violent incidents involving American citizens.

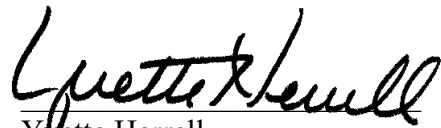
In addition, please make arrangements to schedule the briefing on these matters no later than February 11, 2021. To schedule the briefing or ask any follow-up or related questions, please contact Committee on Oversight and Reform Republican staff at (202) 225-5074.

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

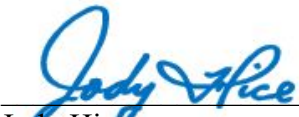
Sincerely,



James Comer
Ranking Member
Oversight and Reform Committee



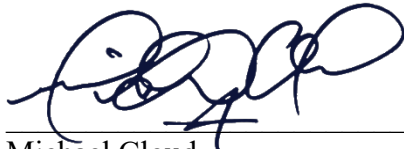
Yvette Herrell
Member of Congress



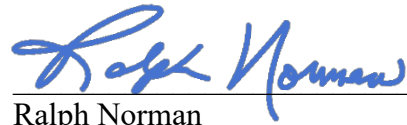
Jody Hice
Ranking Member
Subcommittee on Government Operations



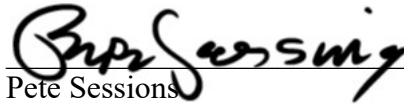
Glenn Grothman
Ranking Member
Subcommittee on National Security



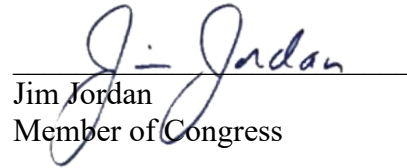
Michael Cloud
Ranking Member
Subcommittee on Economic and
Consumer Policy



Ralph Norman
Ranking Member
Subcommittee on Environment



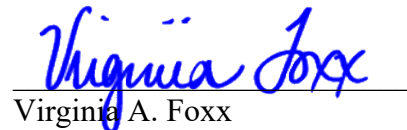
Pete Sessions
Ranking Member
Subcommittee on Civil Rights and
Civil Liberties



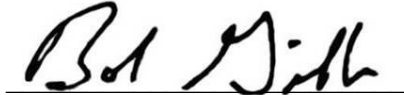
Jim Jordan
Member of Congress



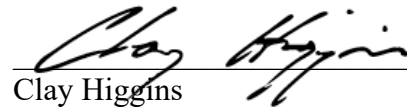
Paul A. Gosar, D.D.S.
Member of Congress



Virginia A. Foxx
Member of Congress



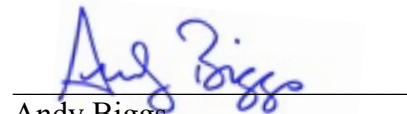
Bob Gibbs
Member of Congress



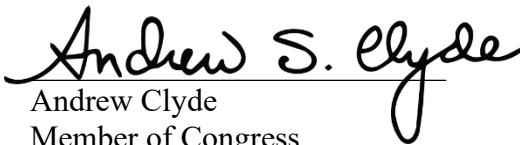
Clay Higgins
Member of Congress



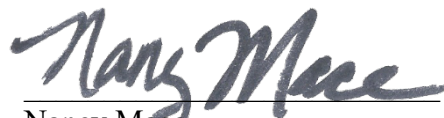
Fred Keller
Member of Congress



Andy Biggs
Member of Congress



Andrew Clyde
Member of Congress



Nancy Mace
Member of Congress



Scott Franklin
Member of Congress



Jake LaTurner
Member of Congress



Pat Fallon
Member of Congress



Byron Donalds
Member of Congress

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Gerald E. Connolly, Chairman
Subcommittee on Government Operations

The Honorable Stephen F. Lynch, Chairman
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman
Subcommittee on Economic and Consumer Policy

The Honorable Jamie Raskin, Chairman
Subcommittee on Civil Rights and Civil Liberties

The Honorable Ro Khanna, Chairman
Subcommittee on Environment