



**U.S. House of Representatives**  
COMMITTEE ON THE BUDGET  
Washington, DC 20515-6065

November 9, 2023

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

Dear Comptroller General Dodaro:

We are writing you today to request that the Government Accountability Office (GAO) reevaluate the legality of the Biden Administration’s withholding of congressionally appropriated funds for construction of physical barriers at the U.S. Southwest border.

As you are aware, President Biden issued a Proclamation on his first day in office, January 20, 2021, which resulted in withholding congressionally appropriated funds for construction of the border wall. This Proclamation stated “[i]t shall be the policy of my Administration that no more American taxpayer dollars be diverted to construct a border wall.”<sup>1</sup>

GAO issued an opinion in June 2021, finding the Biden Administration’s withholding of these funds was a “programmatically delay,” and therefore did not violate the Congressional Budget and Impoundment Control Act of 1974 (ICA).<sup>2</sup> To date, many of these congressionally appropriated funds have been withheld for over 1,000 days, bringing into question at which point GAO would consider a “programmatically delay” to become unlawful.

In the concluding paragraph of the June 2021 opinion, GAO recommended:<sup>3</sup>

“To facilitate Congress’s oversight of executive spending on border barrier construction, Congress should consider requiring OMB and DHS to submit a timeline detailing the planned uses and timeframes for obligation and expenditure of DHS’s barrier appropriations. Having detailed information about the timeframes for spending these funds will help assure Congress that executive action is aligned with the policies and priorities it established in the legislative process.”

The House Committee on the Budget followed your recommendation and sent several letters to the Biden Administration and the Department of Homeland Security (DHS) requesting funding details on DHS accounts allocated to construction of new border barriers.<sup>4</sup> Unfortunately, the Committee has not received a response to

<sup>1</sup> Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction, White House Briefing Room, Jan 20, 2021, <https://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/>.

<sup>2</sup> Press Statement On Appropriations Law Decision Regarding Border Wall, GAO, June 15, 2021, <https://www.gao.gov/press-release/press-statement-appropriations-law-decision-regarding-border-wall>.

<sup>3</sup> Office of Management and Budget and U.S. Department of Homeland Security—Pause of Border Barrier Construction and Obligations, GAO Decision, June 15, 2021, <https://www.gao.gov/assets/b-333110.pdf>.

<sup>4</sup> House Budget Chairman Jodey Arrington Demands Answers on Fiscal Cost of Biden Border Failures, Nov 3, 2023, <https://budget.house.gov/press-release/house-budget-chairman-jodey-arrington-demands-answers-on-fiscal-cost-of-biden-border-failures>.

any of these requests. We are sure you would agree, it is completely unacceptable that the Biden Administration would refuse to be transparent with this information and blatantly ignore official requests from Congress.

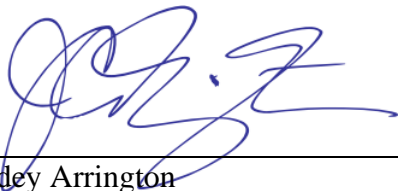
Then last month, in a surprising acknowledgment of the need to address the border crisis, the Secretary of Homeland Security waived 26 federal laws to permit additional border wall construction in southern Texas, a move that was completely counter to the Biden Administration’s original Proclamation on the border. DHS announced in the Federal Register “that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads.”<sup>5</sup> This announcement also stated “[t]here 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...”<sup>6</sup> President Biden also recently admitted that “[t]he money was appropriated for the border wall...there’s nothing under the law other than they have to use the money for what it was appropriated for. I can’t stop that.”<sup>7</sup>

Due to the duration of how long these congressionally appropriated funds have been withheld, the refusal of the Administration to respond to official requests from Congress for more information (per your recommendation), and the recent announcement by the Secretary of Homeland Security to waive various environmental laws to restart construction of approximately 20 miles of the border wall in Texas, we call into question the legality of the Biden Administration’s decision to withhold these funds. Therefore, please provide answers to the following questions:

1. Does GAO still maintain the Biden Administration’s withholding of congressionally appropriated funds for border wall construction did not violate the Congressional Budget and Impoundment Control Act of 1974?
2. Does the October 5, 2023, decision by DHS to waive legal requirements to ensure the expeditious construction of barriers and roads change GAO’s opinion on the legality of withholding these funds?
3. Has GAO received any additional documents or information related to the Administration’s withholding of border wall construction funds since GAO’s original opinion? If so, please provide those documents and information to the Committee.

This information is necessary to advance our oversight and to inform potential legislation. We look forward to hearing from you on this important issue. If you have any questions regarding this request, please contact Eric Davis or Mary Popadiuk of the Committee Staff at 202-226-7270.

Sincerely,



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Jodey Arrington  
Chairman  
House Budget Committee



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Jack Bergman  
Chair of the Oversight Task Force  
House Budget Committee

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<sup>5</sup> Federal Register Vol. 88, No. 192, Thursday, Oct 5, 2023, <https://www.govinfo.gov/content/pkg/FR-2023-10-05/pdf/2023-22176.pdf>.

<sup>6</sup> Ibid.

<sup>7</sup> Biden argues his hands were tied with border wall funds, The Hill, Oct 5, 2023, <https://thehill.com/homenews/administration/4240303-biden-argues-his-hands-were-tied-with-border-wall-funds/>.