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Border-Wall: Environmental Groups File U.S. District Court (District of Columbia) Action Against Department of Homeland Security Challenging Environmental Waivers

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The Center for Biological Diversity, Defenders of Wildlife, and Animal Legal Defense Fund (collectively “CBD”) filed an October 17th Complaint for Declaratory and Injunctive Relief (“Complaint”) challenging the issuance of environmental waivers by the United States Department of Homeland Security (“DHS”) that exempt:

1. Construction of approximately 6.6 miles of border walls and associated infrastructure in Cameron County, Texas
2. Construction of approximately 18 miles of border walls and associated infrastructure in Hidalgo County, Texas

The waivers are stated to be related to:

1. National Environmental Policy Act
2. Endangered Species Act
3. National Wildlife Refuge System Administration Act
4. Various other statutory requirements

DHS is stated to have invoked authority under Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended.

CBD argues in the Complaint that the environmental waivers are ultra vires and unlawful because they allegedly exceed the limited grant of authority for such waivers contained in this section of the statute. They allege that:

... any interpretation of Section 102 that would sanction the issuance of the Lower Rio Grande Valley Border Wall Waivers would render this statutory provision so broad and unbounded in scope that it would run afoul of Constitutional principles including the Take Care Clause, the Separation of Powers Doctrine, the Non-Delegation Doctrine, and the Presentment Clause.

CBD further argues that:

1. Waivers potentially applicable to such projects under Section 102 have already been completed.
2. The current projects do not fall within the scope of projects mandated by Section 102(3).
3. Even if the waiver was applicable to these projects it is invalid because DHS allegedly failed to consult with stakeholders regarding the waivers.
4. The waivers violate the United States Constitution provisions, including Take Care Clause, Separation of Powers Doctrine, the Non-Delegation Doctrine, and the Presentment Clause.

The Complaint requests that the United States District Court set aside and vacate the waivers and enjoin DHS from implementing the border wall projects until it complies with all laws that would apply absent the waivers.

A copy of the Complaint can be found [here](#).