



U.S. House of Representatives

COMMITTEE ON THE BUDGET

Washington, DC 20515

June 21, 2022

The Honorable Shalanda D. Young
Director
Office of Management and Budget
725 17th Street N.W.
Washington, D.C. 20503

Dear Director Young:

On January 20, 2021, President Biden released a proclamation declaring, “It shall be the policy of my Administration that no more American taxpayer dollars be diverted to construct a border wall.”¹ Unfortunately, this statement and subsequent actions of this Administration have resulted in two predictable outcomes: first, **a clear illegal impoundment and violation of the Impoundment Control Act of 1974**; second, the worst border crisis the nation has ever seen—only seven months into fiscal year (FY) 2022, U.S. Customs and Border Protection (CBP) has experienced almost 1.5 million encounters.² April was the highest month in history, with 260,450—a 776 percent increase from two years ago.

Under the Impoundment Control Act of 1974, the President may withhold funds in limited circumstances. **Funds may not be withheld for policy reasons.** On June 15, 2021, the Government Accountability Office (GAO) concluded that halting funds for the construction of the border wall was, at that time, serving as a “programmatically delay.” However, GAO made it very clear in its analysis that border wall construction funds could not be withheld for policy reasons and must be prudently obligated. Since that time, the Administration has shown zero intent to construct the border wall, which Congress specifically provided appropriations for on a bipartisan basis, and which were signed into law. **Programmatic delays are only programmatic delays if the funds are eventually used for their intended purpose.**

According to GAO’s “Principles of Federal Appropriations Law,” in examining programmatic delays “intent is a relevant factor.”³ Moreover, GAO has previously stated, “[t]here must be ... evidence of an intention to refrain from obligating or expending available budget authority...”.⁴ Several actions taken by President Biden and this Administration indicate that the Biden

¹ 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, The White House Briefing Room, January 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/>.

² Nationwide Encounters, U.S. Customs and Border Protection, May 17, 2022, <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

³ Principles of Federal Appropriations Law: Fourth Edition, Chapter 2, p. 2-50, GAO Office of the General Counsel, <https://www.gao.gov/assets/2019-11/675709.pdf>.

⁴ B-200685, GAO, December 23, 1980, <https://www.gao.gov/products/b-200685>.

Administration absolutely has no intent to prudently obligate these congressionally appropriated funds to construct the border wall. These actions include:

- August 5, 2020 – President Biden stated, “[t]here will not be another foot of wall constructed...”⁵
- January 20, 2021 – President Biden issued a proclamation halting construction of the border wall and began withholding funds appropriated for the border wall. GAO acknowledged that by issuing this proclamation “President Biden announced a policy choice.”⁶
- March 21, 2021 – Deadline under the proclamation for the Administration to develop a plan to redirect border wall funding and repurpose contracts. After repeated requests, to date, no information or report has been provided to this Committee regarding these plans.
- May 28, 2021 – The President’s FY 2022 budget request proposed a rescission of prior year appropriations for border wall construction.
- July 23, 2021 – The Department of Homeland Security (DHS) announced the cancellation of two border wall contracts funded by FY 2020 appropriations for DHS.⁷
- October 8, 2021 – DHS announced the cancellation of additional border wall contracts.⁸
- March 28, 2022 – The President’s FY 2023 budget request proposed: (1) making unobligated balances of previously appropriated border wall funds available for additional purposes including “...the construction and improvement of roads along the southwest border, the removal and eradication of vegetation along the southwest border..., remediation and environmental mitigation, including scientific studies...”; (2) the cancellation of previously appropriated funds for border wall construction; and (3) providing authority for the DHS Secretary to transfer up to \$225 million in unobligated balances available from previous appropriation acts provided for “U.S. Customs and Border Protection – Procurement, Construction, and Improvements” to the Department of the Interior or the U.S. Forest Service for environmental and other mitigation projects or activities.⁹

Under President Trump, 453 miles of border wall were constructed and plans for nearly 300 more miles were set to be built until they were halted by the Biden Administration. The Biden Administration’s decision to discontinue construction of the border wall is inconsistent with congressional intent. Since 2017, Congress has appropriated \$5.4 billion specifically for construction of the border wall in multiple laws on a bipartisan basis. These include:

⁵ Biden Would End Border Wall Construction, But Wouldn’t Tear Down Trump’s Additions, NPR, August 5, 2020, <https://www.npr.org/2020/08/05/899266045/biden-would-end-border-wall-construction-but-wont-tear-down-trump-s-additions>.

⁶ B-333110, Office of Management and Budget and U.S. Department of Homeland Security – Pause of Border Barrier Construction and Obligations, GAO, June 15, 2021, <https://www.gao.gov/assets/b-333110.pdf>.

⁷ Biden Administration Terminates Two Border Wall Contracts in Texas, CNN, July 23, 2021, <https://www.cnn.com/2021/07/23/politics/border-wall-contracts/index.html> and DHS to Cancel Laredo Sector Border Barrier Contracts, U.S. Department of Homeland Security, July 23, 2021, <https://www.dhs.gov/news/2021/07/23/dhs-cancel-laredo-sector-border-barrier-contracts>.

⁸ Biden Administration Canceling More Border Wall Contracts, CNN, October 8, 2021, <https://www.cnn.com/2021/10/08/politics/border-wall-contracts-canceled-biden-administration/index.html> and DHS to Terminate Border Barrier Contracts in Laredo and Rio Grande Valley, U.S. Department of Homeland Security, October 8, 2021, <https://www.dhs.gov/news/2021/10/08/dhs-terminate-border-barrier-contracts-laredo-and-rio-grande-valley>.

⁹ The President’s Fiscal Year 2023 Budget, March 28, 2022, p. 530, https://www.whitehouse.gov/wp-content/uploads/2022/03/appendix_fy2023.pdf.

- Public Law 115-14, Consolidated Appropriations Act, 2018,
- Public Law 116-6, Consolidated Appropriations Act, 2019,
- Public Law 116-93, Consolidated Appropriations Act, 2020, and
- Public Law 116-260, Consolidated Appropriations Act, 2021.

On March 31st of this year, you testified before the House Committee on the Budget on the President’s FY 2023 budget request. In that hearing, you were asked what the Administration was spending the billions of congressionally appropriated border wall funds on, and you replied that the Administration was using the funds for “environmental restoration” and “community consultation.”¹⁰ If this is what is holding up construction of the border wall, exacerbating the current crisis at the southern border, you should be forthcoming with the evidence of this sort of activity. Since withholding funds from the border wall, the Office of Management and Budget (OMB) has failed to demonstrate to Congress and the American people any evidence of the “environmental restoration” and “community consultation” supposedly being done—an alarming lack of transparency and accountability on the part of the Administration. This critical information is important because GAO stated in its legal decision on border wall appropriations that, “funding will be obligated for new construction projects once statutory prerequisites have been satisfied.”¹¹

The Administration is continuing to willfully ignore congressional intent by withholding the funds that remain unobligated. **Further, the continued withholding of these funds with no plan or evidence of expenditure suggests an illegal impoundment and violation of the Impoundment Control Act of 1974.**

This illegal action has real consequences. Earlier this month, 12 Members of the U.S. House of Representatives—including 11 Members who serve on the House Committee on the Budget—traveled to McAllen, Texas to see the border crisis first-hand. The delegation’s trip confirmed the devastating impact of the Administration’s continued policy decision to refuse to use congressionally appropriated funds to construct a border wall and secure the nation’s border while it spends billions to house, transport, and care for illegal immigrants.

During that visit to the border by House Republicans, we heard and saw how:

- Portions of the \$350 million worth of unused border wall materials are sitting stacked 20 feet high — just down the street from where that same border wall could be used to prevent illegal immigrants, drugs, and weapons from entering our country.
- Border Patrol agents are working around the clock to deal with a massive influx of illegal immigrants, with the Rio Grande Valley (RGV) Sector by far the busiest and Border Patrol experiencing 10,000 encounters with illegal immigrants each week forcing more than 50 percent of its staff to be repositioned off of direct patrols to help with processing illegal immigrants.

¹⁰ House Committee on the Budget Hearing on The President’s FY 2023 Budget, March 29, 2022, <https://budget.house.gov/legislation/hearings/president-s-fiscal-year-2023-budget>.

¹¹ B-333110, Office of Management and Budget and U.S. Department of Homeland Security-Pause of Border Barrier Construction and Obligations, GAO, June 15, 2021, <https://www.gao.gov/assets/b-333110.pdf>.

- Cartels are making \$32 million per day trafficking illegal immigrants.
- President Biden’s decision to halt wall construction has made it nearly impossible to make even simple repairs to existing barriers, like gating off tunnels being built under the wall by cartels.
- Texas is spending \$2.5 million per day to pick up the tab for Biden’s decision to halt wall construction and the federal government’s failure to secure our border.

One thing was made very clear by DHS and Texas officials during the delegation trip: ***border walls work***. If OMB plans to continue with its “programmatic delay” and refuse to spend funding for border wall construction on border wall construction, at the very minimum, the American people deserve answers to the following questions:

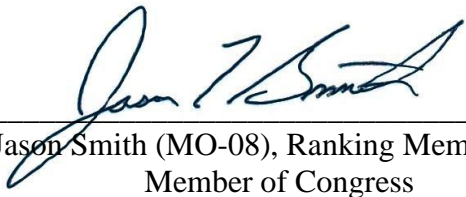
- 1) On what date did this Administration begin its “environmental restoration” and “community consultation” activities? At the start of that process, how long did the Administration project its “programmatic delay” would last?
- 2) What progress has been made with the “environmental restoration” and “community consultation” activities?
 - a. How many “restorations” and “consultations” have been completed to date? How many remain?
 - b. How much does it cost the taxpayer to fund these activities?
 - c. Which specific budget accounts fund these efforts?
 - d. How much funding appropriated for the border wall has been spent on “environmental restoration” and “community consultation”?
 - e. Who in the community is the Administration consulting and how close in proximity do they live to the border wall construction area?
 - f. What are specific examples of feedback the Administration has received to date from community stakeholders?
 - g. What exactly in the environment is the Administration restoring? Please provide specific examples.
 - h. What is the Administration’s current projection of when its “environmental restoration” and “community consultation” activities will conclude?
- 3) How are the Administration’s “environmental restoration” and “community consultation” activities addressing the border crisis and protecting Americans from that crisis?
- 4) Is there a time limit on how long the Administration can conduct programmatic reviews that are pausing congressional appropriated funds from being used for their intended and authorized purposes?

It has been well over a year since the Biden Administration halted funding for construction of the border wall. Although the Administration claims it is complying with various statutory requirements


for “environmental restoration” and “community consultation,” the continued withholding of funds clearly appears to be a policy decision of the Biden Administration which has resulted in the worst border crisis this country has ever experienced. The Administration’s lack of transparency, in addition to its failure to answer repeated inquiries by Congress, indicate that the Administration in fact has absolutely no intent to spend these funds as required by law and is therefore **a clear violation of the Impoundment Control Act of 1974.**

Thank you and we look forward to your response on this critical issue.

Sincerely,




Jason Smith (MO-08), Ranking Member
Member of Congress



Chris Jacobs (NY-27)
Member of Congress




Trent Kelly (MS-01)
Member of Congress




Michael C. Burgess, M.D. (TX-26)
Member of Congress




Tom McClintock (CA-04)
Member of Congress




Earl L. “Buddy” Carter (GA-01)
Member of Congress




Glenn Grothman (WI-06)
Member of Congress



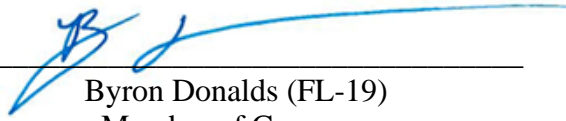
Ben Cline (VA-06)
Member of Congress



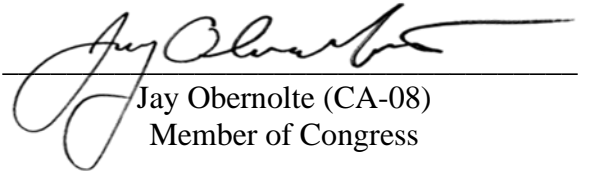
Lloyd Smucker (PA-11)
Member of Congress



Lauren Boebert (CO-03)
Member of Congress



Byron Donalds (FL-19)
Member of Congress



Jay Obernolte (CA-08)
Member of Congress



Randy Feenstra (IA-04)
Member of Congress



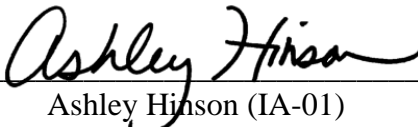
Mike Carey (OH-15)
Member of Congress



Bob Good (VA-05)
Member of Congress



John Joyce, M.D. (PA-13)
Member of Congress



Ashley Hinson (IA-01)
Member of Congress