

441 G St. N.W.  
Washington, DC 20548

B-333110

June 2, 2021

The Honorable Jason Smith  
Republican Leader  
Committee on the Budget  
House of Representatives

Subject: *Update on Decision regarding Border Wall Pause and the Impoundment Control Act*

Thank you for your letter requesting a status update on GAO's legal decision on whether the border wall pause violates the Congressional Budget and Impoundment Control Act of 1974 (ICA).<sup>1</sup> As you know, GAO has a longstanding, deliberative process by which we issue our legal decisions. We reach our conclusions after careful research and independent analysis of statutory and case law as well as consideration of analogous precedent and legal principles. We apply the law to specific and particular facts, which are unique to each case. Receiving input from relevant agencies is an important part of our process of developing facts and ensuring we understand the agency's legal justification for its actions. As such, we solicited and received timely responses from the Office of Management and Budget (OMB) and the Department of Homeland Security (DHS), consistent with the deadlines we established for OMB and DHS. Our legal decision on this matter is currently being developed in accordance with this longstanding practice.

The Comptroller General has a number of statutory responsibilities under the ICA, and it is our practice to investigate potential impoundments and to report to Congress as necessary. For example, we started looking into the matter of a potential improper impoundment of amounts appropriated for Ukraine security assistance in August 2019, when we became aware of the issue. Pursuant to our role under the ICA and in accordance with our process, we issued a decision in January 2020.<sup>2</sup> Similarly here, we began researching the potential issue of ICA compliance with regard to the border wall pause, once we became aware of the matter in January 2021. And, our decision on whether the pause violates the ICA is currently being developed through our deliberative process, as described above.

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<sup>1</sup> Pub. L. No. 93-344, title X, § 1012, 88 Stat. 297, 333–34 (July 12, 1974); 2 U.S.C. §§ 681-688.

<sup>2</sup> B-331564, Jan. 16, 2020.

If you have any questions, please contact Shirley Jones, Managing Associate General Counsel for Appropriations Law, at (202) 512-8156, or Shari Brewster, Assistant General Counsel for Appropriations Law, at (202) 512-6398.

Sincerely,

A handwritten signature in cursive script that reads "Thomas H. Armstrong".

Thomas H. Armstrong  
General Counsel

cc: The Honorable Trent Kelly  
The Honorable Tom McClintock  
The Honorable Glenn Grothman  
The Honorable Lloyd Smucker  
The Honorable Chris Jacobs  
The Honorable Michael C. Burgess M.D.  
The Honorable Earl L. "Buddy" Carter  
The Honorable Ben Cline  
The Honorable Lauren Boebert  
The Honorable Randy Feenstra  
The Honorable Bob Good  
The Honorable Ashley Hinson  
The Honorable Jay Obernolte