

Nos. 19-17501, 19-17502, 20-15044

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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SIERRA CLUB, et al.,  
*Plaintiffs-Appellees,*

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,  
*Defendants-Appellants.*

STATE OF CALIFORNIA, et al.,  
*Plaintiffs-Appellees/ Cross-Appellants,*

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,  
*Defendants-Appellants/ Cross-Appellees.*

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On Appeal from the United States District Court  
for the Northern District of California

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**APPELLANTS' EXCERPTS OF RECORD**  
**VOLUME 2 OF 3, pp. 49-226**

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## INDEX

<u>Clerk's Record No.</u>	<u>Document Description</u>	<u>Page</u>
	[Volume 1 of 3, pp. 1-48]	
259	Judgment, filed Dec. 11, 2019	ER1
257	Order Granting In Part And Denying In Part Plaintiffs' Motions For Partial Summary Judgment And Denying Defendants' Motions For Partial Summary Judgment, filed Dec. 11, 2019	ER2
	[Volume 2 of 3, pp. 49-226]	
260	Notice of Appeal, filed Dec. 13, 2019	ER49
[259 in <i>California v. Trump</i>	Notice of Appeal, filed Dec. 13, 2019]	ER51
[262 in <i>California v. Trump</i>	Notice of Cross-Appeal, filed Jan. 7, 2020]	ER53
249	Defendants' Response To The Court's November 20, 2019 Order Requesting Additional Information About Military Installations, filed Nov. 25, 2019	ER60
249-1	Exh. 1: Second Declaration of Alex A. Beehler, filed Nov. 25, 2019	ER66



Exhibits to Motion for Partial  
Summary Judgment Regarding  
Border Barrier Projects  
Undertaken Pursuant to 10 U.S.C.  
§ 2808 and Opposition to Plaintiffs'  
Motion for Partial Summary Judgment

236-5	Exh. 5: Deputy Secretary of Defense Memorandum for Secretary of the Army, dated Dec. 4, 2001, filed Oct. 25, 2019	ER71
236-7	Exh. 7: Army General Order No. 2019-36, dated Oct. 8, 2019, filed Oct. 25, 2019	ER74
236-9	Exh. 9: Third Declaration of Millard F. Lemaster, dated Oct. 23, 2019, filed Oct. 25, 2019	ER76
206	Notice Of Filing Of Administrative Record For Border Barrier Projects Undertaken Pursuant To 10 U.S.C. § 2808, filed Sept. 16, 2019	ER81
206-1	Certification of Administrative Record, dated Sept. 13, 2019, filed Sept. 16, 2019	ER83
206-2	Administrative Record, Part 1, pp. 1-54, filed Sept. 16, 2019	ER84
206-3	Administrative Record, Part 2, pp. 55-73, filed Sept. 16, 2019	ER138
206-4	Administrative Record, Part 3, pp. 74-143 filed Sept. 16, 2019	ER157

[Volume 3 of 3, pp. 227-432]

26	First Amended Complaint For Declaratory And Injunctive Relief, filed March 18, 2019	ER227
[47 in <i>California v. Trump</i>	First Amended Complaint For Declaratory And Injunctive Relief, filed March 13, 2019]	ER267
	District Court Docket Entries, <i>Sierra Club v. Trump</i> , No. 4:19-cv-00892-HSG	ER349
	District Court Docket Entries, <i>California v. Trump</i> , No. 4:19-cv-00872-HSG	ER386

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

SIERRA CLUB, *et al.*,  
Plaintiffs,  
v.  
DONALD J. TRUMP, *et al.*,  
Defendants.

No. 4:19-cv-00892-HSG

**NOTICE OF APPEAL**

1 PLEASE TAKE NOTICE that all Defendants in the above-captioned case hereby appeal  
2 to the United States Court of Appeals for the Ninth Circuit from the Court's Order and Judgment  
3 Granting In Part and Denying In Part Plaintiffs' Motions for Partial Summary Judgment and  
4 Denying Defendants' Motions For Partial Summary Judgment (ECF Nos. 258, 259).

5  
6 DATE: December 13, 2019

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15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
16 **OAKLAND DIVISION**

17 STATE OF CALIFORNIA, *et al.*,  
18 Plaintiffs,  
19  
20 v.  
21 DONALD J. TRUMP, *et al.*,  
22 Defendants.

No. 4:19-cv-00872-HSG

**NOTICE OF APPEAL**

1 PLEASE TAKE NOTICE that all Defendants in the above-captioned case hereby appeal  
2 to the United States Court of Appeals for the Ninth Circuit from the Court's Order and Judgment  
3 Granting In Part and Denying In Part Plaintiffs' Motions for Partial Summary Judgment and  
4 Denying Defendants' Motions For Partial Summary Judgment (ECF Nos. 257, 258).

5  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**STATE OF CALIFORNIA et al.;**

Plaintiffs,

**v.**

**DONALD J. TRUMP, in his official  
capacity as President of the United States of  
America et al.;**

Defendants.

Case No. 4:19-cv-00872-HSG

**PLAINTIFF STATES OF CALIFORNIA,  
COLORADO, HAWAII, MARYLAND,  
NEW MEXICO, NEW YORK, OREGON,  
VIRGINIA, AND WISCONSIN'S  
NOTICE OF CROSS-APPEAL**

Judge: The Honorable Haywood S.  
Gilliam, Jr.

Trial Date: None set

Action Filed: February 18, 2019

PLEASE TAKE NOTICE THAT Plaintiff States of California, Colorado, Hawaii, Maryland, New Mexico, New York, Oregon, and Wisconsin, and the Commonwealth of Virginia (Plaintiff States) hereby cross-appeal to the United States Court of Appeals for the Ninth Circuit from this Court's Order Granting in Part and Denying in Part Plaintiffs' Motions for Partial Summary Judgment and Denying Defendants' Motions for Partial Summary Judgment (ECF No. 257) and the associated Judgment (ECF No. 258) insofar as this Court denied Plaintiff States' requests for relief.

Plaintiff States' Representation Statement, required by Federal Rule of Appellate Procedure, Rule 12(b), and Ninth Circuit Rule 3-2(b), is attached to this Notice of Cross-Appeal.

Dated: January 7, 2020

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**ATTESTATION OF SIGNATURES**

I, Heather C. Leslie, hereby attest, pursuant to Civil Local Rule 5-1(i)(3) of the Northern District of California that concurrence in the filing of this document has been obtained from each signatory hereto.

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## REPRESENTATION STATEMENT

Plaintiff States provide this Representation Statement as required by Federal Rule of Appellate Procedure, Rule 12(b), and Ninth Circuit Rule 3-2(b). The Office of the Attorney General, for the State of California, represents Plaintiff the State of California in this matter.

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10 The United States Department of Justice represents the Defendants in this matter, including:  
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13 Secretary of Defense; Ryan D. McCarthy, in his official capacity as Secretary of the Army;  
14 Thomas B. Modly, in his official capacity as Acting Secretary of the Navy; Barbara M. Barrett, in  
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<sup>1</sup> As required by Rule 25(d) of the Federal Rules of Civil Procedure and Rule 43 (c)(2) of the Federal Rules of Appellate Procedure, the list of Defendants has been updated to reflect that Mark T. Esper replaced Patrick M. Shanahan as the Secretary of Defense, Ryan D. McCarthy replaced Mark T. Esper as Secretary of the Army, Thomas B. Modly replaced Richard V. Spencer as Acting Secretary of the Navy, Barbara M. Barrett replaced Matthew Donovan who replaced Heather Wilson as the Secretary of the Air Force, and Chad F. Wolf replaced Kevin K. McAleenan who replaced Kirstjen M. Nielsen as the Acting Secretary of Homeland Security.

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

No. 4:19-cv-00892-HSG

**DEFENDANTS' RESPONSE TO  
THE COURT'S NOVEMBER 20,  
2019 ORDER REQUESTING  
ADDITIONAL INFORMATION  
ABOUT MILITARY  
INSTALLATIONS**

Defendants hereby submit the following response to the questions posed by the Court about military installations during the November 20, 2019 hearing in the above-captioned cases.

### **1. The Process and Authority for Establishing a Military Installation**

The process of establishing a military installation involves two steps. First, the Department of Defense (DoD) must obtain jurisdiction over the land where the installation will be located. Second, DoD must designate the land as part of either a new or existing military installation in accordance with DoD's internal policies and regulations. *See* Second Declaration of Alex A. Beehler ¶¶ 3–7 (Exhibit 1).

With respect to the first step, DoD must bring the real property on which the installation will be located “under the jurisdiction of the Secretary of a military department.” 10 U.S.C. § 2801(c)(4) (defining “military installation” as “a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department”); Second Beehler Decl. ¶ 4. For the border barrier projects at issue in these cases, the authorization in 10 U.S.C. § 2808 for DoD to engage in “military construction” includes “any acquisition of land.” 10 U.S.C. § 2801(a); Second Beehler Decl. ¶ 4.b.i.<sup>1</sup> Pursuant to this authority, DoD is acquiring jurisdiction over the land for the § 2808 border barrier projects through a combination of (1) transfers of administrative jurisdiction over federal land from other federal agencies; and (2) negotiated purchases or condemnation of non-federal land. *See* Defs.’ Motion for Summary Judgment (ECF No. 236 at 8–9, 14–15 in No. 19-cv-872; ECF No. 236 at 8–9, 18–19 in No. 19-cv-892).

The process required to bring land under the jurisdiction of a military department varies depending on the type of land at issue. *See* Second Beehler Decl. ¶ 4. For federal land that can be transferred under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.*, the military department submits a withdrawal application to the Department of the Interior (DoI) in

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<sup>1</sup> In addition to § 2808, DoD has other statutory authorities to acquire real property. *See, e.g.*, 10 U.S.C. § 2663 (land acquisition authorities); 10 U.S.C. § 18233 (authorization to acquire land for reserve components); John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, Div. B, 132 Stat. 1636 (Aug. 13, 2018) (annual authorization for military departments to undertake military construction projects and land acquisition).

accordance with 43 U.S.C. § 157 or 43 C.F.R. § 2310. *See* Second Beehler Decl. ¶ 4.a.i. If the application is granted, DoI withdraws the land from other forms of use under the public land laws and transfers administrative jurisdiction to the requesting military department by publication of a Public Land Order. *See id.*; *see also* Public Land Order Nos. 7883–87, 84 Fed. Reg. 50063–65 (Sept. 24, 2019).<sup>2</sup> For federal land subject to the Federal Property and Administrative Services Act, as amended, 40 U.S.C. §§ 101 *et seq.*, the transfer of custody and accountability among agencies occurs by the General Services Administration (GSA) executing a letter effectuating transfer. *See* Second Beehler Decl. ¶ 4.a.ii; *see also* 40 U.S.C. § 521 (“The Administrator of General Services shall . . . provide for the transfer of excess property . . . among federal agencies”); 41 C.F.R. § 102-75.175 (requiring GSA approval “[b]efore property can be transferred among Federal agencies”); 41 C.F.R. § 102-75.1285 (GSA transfers property “via letter assigning ‘custody and accountability’ for the property to the requesting agency. Title to the property is held in the name of the United States; however, the requesting agency becomes the landholding agency. . . .”). For property not already owned by the United States, the process for bringing real property under the jurisdiction of the Secretary of a military department begins by obtaining ownership over the real property in the name of the United States. *See* Second Beehler Decl. ¶ 4.b. Real property not owned by the United States may be acquired by a military department in the name of the United States through purchase, donation, exchange, or condemnation. *See id.* ¶ 4.b.ii. Once the military department acquires the real property, the military department has administrative jurisdiction and real property accountability on behalf of the U.S. Government. *See id.* ¶ 4.b.iii.

After DoD obtains administrative jurisdiction over the land, in order to manage and account for the real property under its jurisdiction, the military department may either designate the property as a new military installation or assign the property to an existing installation. *See* Second Beehler Decl. ¶ 5 (citing Chapter 159 of Title 10 U.S. Code and DoD Directive 4165.06, *Real Property*). Under

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<sup>2</sup> While the DoI may withdraw Federal land and transfer jurisdiction in accordance with FLPMA, 43 U.S.C. § 1714, withdrawals of Federal land greater than 5,000 acres in the aggregate for any one defense project or facility, including transfers of administrative jurisdiction to a military department require an Act of Congress. *See* 43 U.S.C. § 156.



1 Army procedures established by General Orders No. 2019-01, *Assignment of Functions and Responsibilities*  
2 *Within Headquarters, Department of the Army*, such organizational designations relating to installations are  
3 directed by a General Order signed by the Secretary of the Army and registered in the DoD official  
4 real property database of record as required by DoD policy. *See* Second Beehler Decl. ¶ 6; *see also*  
5 General Order No. 2019-36, Assignment of Southwest Border Sites (ECF No. 236-7 in No. 19-cv-  
6 872; ECF No. 236-7 No. 19-cv-892).

## 7           **2.       Geographically Separate Sites of a Military Installation**

8           The Court also asked about the authority for two references in the Administrative Record  
9 stating that land DoD acquires for a military installation is designated either “as its own installation or  
10 as part of an existing, nearby military installation.” *See* AR at 3, 40 (ECF No. 212 in 19-CV-872; ECF  
11 No. 206 in 19-CV-892). There is no legal, regulatory, or policy requirement for geographically separate  
12 sites to be assigned to a “nearby” military installation. Second Beehler Decl. ¶ 8. Nor is there any  
13 legal, regulatory, or policy requirement for all the sites or lands that comprise a given military  
14 installation to be located in the same State or within a certain distance of other sites associated with  
15 the military installation. *Id.* In the Secretary of Defense’s September 3, 2019, memorandum to the  
16 Secretary of the Army (AR at 9–10), the Secretary of Defense directed the Department of the Army  
17 to “add such land to the Department of the Army’s real property inventory, either as a new installation  
18 or as part of an existing military installation,” without conditions on the location of the existing  
19 installation to which the land could be added. *Id.*

20           The Department of the Army, on behalf of the United States, owns and uses many parcels of  
21 land that are not contiguous to other portions of a military installation and that are not considered  
22 separate military installations. Second Beehler Decl. ¶ 9. The same is true for other military  
23 departments. *Id.* Such locations are referred to as “sites.” *Id.* DoD Instruction 4165.14, *Real Property*  
24 *Inventory (RPI) and Forecasting*, defines a site as a “physical (geographic) location that is, or was owned  
25 by, leased to, or otherwise possessed by a DoD Component on behalf of the United States. Each site  
26 (except for leased) is assigned to a single installation.” *Id.* A site may exist as “land only, where there  
27 are no facilities present,” “facility or facilities only, where the underlying land is neither owned nor  
28 controlled by the government,” or “land and the facilities thereon.” *Id.*

Each site is assigned to a military installation for real property accountability purposes and is considered part of that installation, even if located remotely from the Army Garrison. Second Beehler Decl. ¶ 10. The Garrison is the Army organizational unit that is responsible for installation management across the installation sites. *Id.* (citing Army Regulation 405-70, *Utilization of Real Property*). Sites can be in States other than the one in which the Army Garrison unit is located, and the distance between various sites can vary significantly. *Id.* For example, Fort Campbell is located in both Kentucky and Tennessee; the Green River Test Complex site in Utah is part of White Sands Missile Range in New Mexico; the Special Forces site in Key West, Florida, is part of Fort Bragg, North Carolina; six different Navy Outlying Landing Field sites in Alabama are part of Naval Air Station Whiting Field, Florida; a new National Geospatial Intelligence Agency West Campus being constructed in Missouri is part of Scott Air Force Base, Illinois; the Pentagon Reservation includes the Pentagon building and Mark Center in Virginia as well as the Raven Rock Complex in Maryland and Pennsylvania; and among other Army examples, Fort Carson, Fort Belvoir, Fort Bliss, Joint Base Lewis McChord, Fort Benning, Fort Greely, and Fort Detrick all include various geographically separate sites. *Id.*

The § 2808 project locations were assigned to Fort Bliss because it is the largest, most capable active Army installation in the vicinity of the southern border. Second Beehler Decl. ¶ 11. Fort Bliss has a sizable existing installation management office with experience addressing various land management issues and experience working with the U.S. Army Corps of Engineers on military construction projects. *Id.* The Department of the Army also determined that it is more efficient for command of all the real property associated with the projects undertaken pursuant to § 2808 to be vested in one Army installation, given the similar nature and scope of all such § 2808 projects. *Id.* In addition, Fort Bliss has an existing support relationship with the U.S. Border Patrol, which maintains a regional office on the installation. *Id.*

1 DATE: November 25, 2019

Respectfully submitted,

2  
3 JAMES M. BURNHAM  
Deputy Assistant Attorney General

4 ALEXANDER K. HAAS  
5 Director, Federal Programs Branch

6 ANTHONY J. COPPOLINO  
7 Deputy Director, Federal Programs Branch

8 /s/ Andrew I. Warden  
9 ANDREW I. WARDEN (IN #23840-49)  
Senior Trial Counsel

10 KATHRYN C. DAVIS  
11 MICHAEL J. GERARDI  
12 LESLIE COOPER VIGEN  
RACHAEL WESTMORELAND  
13 Trial Attorneys  
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16 Tel.: (202) 616-5084  
Fax: (202) 616-8470  
17 *Attorneys for Defendants*

# EXHIBIT 1

## SECOND DECLARATION OF ALEX A. BEEHLER

I, Alex A. Beehler, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of the Army (Installations, Energy and Environment). Among other duties, which are generally reflected in General Orders No. 2019-01, “Assignment of Functions and Responsibilities Within Headquarters, Department of the Army,” I am responsible for developing and overseeing policies and programs that include military construction, management of real property and installations, real estate contracting, environmental compliance and conservation, and oversight of all execution functions performed by the U.S. Army Corps of Engineers related to the Army’s military construction, real property, real estate, and environmental programs.
2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

### *Process for Designating Real Property as a Military Installation*

3. A military installation is defined at 10 U.S.C. § 2801(c)(4) as “a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control.”
4. The process of real property becoming part of a military installation begins with identifying the military requirement for real property, followed by the legal and administrative actions necessary to bring that real property “under the jurisdiction of the Secretary of a military department,” in accordance with 10 U.S.C. § 2801.
  - a. For property already owned by the United States, the steps and mechanisms for bringing real property under the jurisdiction of the Secretary of a Military Department depend on whether the property is subject to the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. § 1714, or subject to the Federal Property and Administrative Services Act of 1949 (Property Act), 40 U.S.C. §§ 101 *et seq.*
    - i. For land available for transfer under the FLPMA, the Military Department submits a withdrawal application to the Department of the Interior in accordance with 43 U.S.C. § 157 or 43 C.F.R. Subpart 2310. The Department of the Interior then acts on this application by withdrawing the land from other forms of use under the public land laws and transfers administrative jurisdiction to the requesting Military Department by publication of a Public Land Order in the Federal Register.

- ii. For land governed by the Property Act, the transfer of custody and accountability among agencies occurs by the General Services Administration (GSA) executing a letter effectuating transfer pursuant to 40 U.S.C. § 521 and in accordance with the Federal Management Regulation, 41 C.F.R. Subchapter C.
- b. For property not already owned by the United States, the process for bringing real property under the jurisdiction of the Secretary of a Military Department begins by obtaining ownership over the real property in the name of the United States.
  - i. Because “[n]o military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law,” the Military Department must first identify the land acquisition authority. 10 U.S.C. § 2664; *see* 10 U.S.C. § 2802(a) (“The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects, land acquisitions, and defense access road projects . . . as are authorized by law.”). In this case, 10 U.S.C. § 2808 provides the requisite legal authorization because it authorizes military construction, and the definition of “military construction” in § 2808 includes “any acquisition of land.” 10 U.S.C. § 2801(a).
  - ii. Real property not owned by the United States may be acquired by a Military Department in the name of the United States through purchase, donation, exchange, or condemnation.
  - iii. Once the Military Department acquires the real property, the Military Department has administrative jurisdiction and real property accountability on behalf of the U.S. Government.
5. In order to manage and account for real property under its jurisdiction consistent with Chapter 159 of Title 10 U.S. Code and DoD Directive 4165.06, *Real Property*, the Military Department may either designate the property as a new military installation or assign the property to an existing military installation.
6. Under Army procedures established by General Orders No. 2019-01, *Assignment of Functions and Responsibilities Within Headquarters, Department of the Army*, such organizational designations relating to installations are directed by General Orders signed by the Secretary of the Army and registered in the DoD official real property database of record as required by DoD policy.
7. In this instance, the Army assigned the real property brought under the jurisdiction of the Secretary for these military construction projects to Fort Bliss, Texas, through General Orders 2019-36, October 8, 2019, signed by the Secretary of the Army.



*Geographically Separate Sites of a Military Installation*

8. There is no legal, regulatory, or policy requirement for geographically separate sites to be assigned to a “nearby” military installation. Nor is there any legal, regulatory, or policy requirement for all the sites or lands that comprise a given military installation to be located in the same State or within a certain distance of other sites associated with the military installation. In the Secretary of Defense’s September 3, 2019, memorandum to the Secretary of the Army, the Secretary of Defense directed the Department of the Army to “add such land to the Department of the Army’s real property inventory, either as a new installation or as part of an existing military installation,” without conditions on the location of the existing installation to which the land could be added.
9. The Department of the Army, on behalf of the United States, owns and uses many parcels of land that are not contiguous to other portions of a military installation and that are not considered separate military installations. The same is true for other Military Departments. Such locations are referred to as “sites.” DoD Instruction 4165.14, *Real Property Inventory (RPI) and Forecasting*, defines a site as a “physical (geographic) location that is, or was owned by, leased to, or otherwise possessed by a DoD Component on behalf of the United States. Each site (except for leased) is assigned to a single installation.” A site may exist as “land only, where there are no facilities present,” “facility or facilities only, where the underlying land is neither owned nor controlled by the government,” or “land and the facilities thereon.”
10. Each such site is assigned to a military installation for real property accountability purposes and is considered part of that installation, even if located remotely from the Army Garrison. The Garrison is the Army organizational unit that is responsible for installation management across the installation sites. *See* Army Regulation 405-70, *Utilization of Real Property*. Sites can be in States other than the one in which the Army Garrison unit is located, and the distance between various sites can vary significantly. For example, Fort Campbell is located in both Kentucky and Tennessee; the Green River Test Complex site in Utah is part of White Sands Missile Range in New Mexico; the Special Forces site in Key West, Florida, is part of Fort Bragg, North Carolina; six different Navy Outlying Landing Field sites in Alabama are part of Naval Air Station Whiting Field, Florida; a new National Geospatial Intelligence Agency West Campus being constructed in Missouri is part of Scott Air Force Base, Illinois; the Pentagon Reservation includes the Pentagon building and Mark Center in Virginia as well as the Raven Rock Complex in Maryland and Pennsylvania; and among other Army examples, Fort Carson, Fort Belvoir, Fort Bliss, Joint Base Lewis McChord, Fort Benning, Fort Greely, and Fort Detrick all include various geographically separate sites.

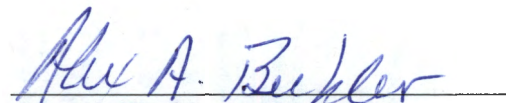
*Decision to Designate Section 2808 Project Locations as Part of Fort Bliss*

11. Fort Bliss is the largest, most capable Active Army installation in the vicinity of the southern border. Fort Bliss has a sizable existing installation management office with

experience addressing various land management issues and experience working with the U.S. Army Corps of Engineers on military construction projects. The Department of the Army also determined that it is more efficient for command of all the real property associated with the projects undertaken pursuant to Section 2808 to be vested in one Army installation, given the similar nature and scope of all such Section 2808 projects. In addition, Fort Bliss has an existing support relationship with the U.S. Border Patrol, which maintains a regional office on the installation.

\*\*\*

I hereby declare under penalty of perjury that the foregoing is true and correct.

  
Alex A. Beehler

Executed on November 25, 2019



# EXHIBIT 5



DEPUTY SECRETARY OF DEFENSE  
1010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1010

4 DEC 2001

MEMORANDUM FOR SECRETARY OF THE ARMY

SUBJECT: Emergency Construction Authority to Reduce the Risk from Terrorist  
Attacks on Weapons of Mass Destruction Stockpiles at Various Installations

Pursuant to the National Emergencies Act, 50 U.S.C. 1601 *et seq.*, the President has signed an Executive Order, dated November 16, 2001, invoking the emergency construction authority of 10 U.S.C. 2808 to approve military construction projects not otherwise authorized by law.

In accordance with that authority, I approve the Department of the Army's request for authority to carry out certain emergency construction projects at various installations.

The use of the Army Materiel Command to accomplish the subject emergency construction, pursuant to 10 U.S.C. 2851, "Supervision of military construction projects," is approved.

A handwritten signature in black ink, reading "Paul W. Fawcett", is located in the lower right quadrant of the page. The signature is written in a cursive style with a large, looping initial "P".

1. COMPONENT ARMY		FY 2002 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 10 OCT 2001	
3. INSTALLATION AND LOCATION US Various Locations US Various			4. PROJECT TITLE Security Measures for WMD		
5. PROGRAM ELEMENT	6. CATEGORY CODE 872	7. PROJECT NUMBER 57747	8. PROJECT COST (\$000) Auth 35,000 Approp		
9. COST ESTIMATES					
ITEM		U/M	QUANTITY		
<u>PRIMARY FACILITY</u>					30,500
Sec Measures-Pine Bluff Ars, AR		LS	--	--	(4,000)
Sec Measures-Newport CD, IN		LS	--	--	(9,400)
Sec Measures-Bluegrass AD, KY		LS	--	--	(1,400)
Sec Measures-Aberdeen PG, MD		LS	--	--	(10,000)
Sec Measures-Umatilla AD, OR		LS	--	--	(5,700)
<u>SUPPORTING FACILITIES</u>					
ESTIMATED CONTRACT COST					30,500
CONTINGENCY PERCENT (5.00%)					1,525
SUBTOTAL					32,025
SUPERVISION, INSPECTION & OVERHEAD (5.70%)					1,825
DESIGN/BUILD - DESIGN COST					1,150
TOTAL REQUEST					35,000
TOTAL REQUEST (ROUNDED)					35,000
INSTALLED EQT-OTHER APPROPRIATIONS					(0)
10. Description of Proposed Construction Construct security measures at Pine Bluff Arsenal, Arkansas; Newport Chemical Depot, Indiana; Bluegrass Army Depot, Kentucky; Aberdeen Proving Ground, Maryland; and Umatilla Army Depot, Oregon. These security measures will safeguard existing stockpiles of weapons of mass destruction (WMD), and will include such items as security fencing, gates, protective barriers, guard buildings, access roads, exterior lighting, storage igloos, and intrusion detection systems (installation only).					
11. REQ: 1 EA ADQT: NONE SUBSTD: NONE					
PROJECT: Construct emergency security measures for weapons of mass destruction at various US locations pursuant to 10 USC 2808.					
REQUIREMENT: US WMD stockpile locations need a higher level of security to prevent attack and incursion.					
CURRENT SITUATION: A recent security assessment has validated an immediate need for increased security measures at Army installations in the US with WMD stockpiles.					
IMPACT IF NOT PROVIDED: If this project is not provided, weapons of mass destruction stockpiles will remain at an increased risk of attack and incursion.					

# EXHIBIT 7

\*GO 2019-36

GENERAL ORDERS }

NO. 2019-36 }

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
WASHINGTON, DC, 8 October 2019

### ASSIGNMENT OF SOUTHWEST BORDER SITES

1. Effective 8 October 2019, upon transfer of administrative jurisdiction to the Department of the Army, the Southwest Border sites as designated by the Secretary of Defense for the border barrier military construction projects pursuant to Title 10, United States Code, Section 2808 are assigned to U.S. Army Garrison Fort Bliss, Texas (Installation Code 48125). Exercise of all necessary authority, direction, and command and control over the Southwest Border sites assigned to Fort Bliss will be in accordance with Army Regulation 600-20.
2. U.S. Army Materiel Command is designated the Real Property Accountable Organization for the Southwest Border sites and shall promptly register the sites, as they are acquired, in the Army Accountable Property System of Record as required by Department of Defense Instruction 4165.14.

[DAMO-FMI]

  
Ryan D. McCarthy  
Secretary of the Army

DISTRIBUTION: This publication is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

ER075

# EXHIBIT 9

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,  
Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,  
Defendants.

No. 4:19-cv-00872-HSG

SIERRA CLUB, *et al.*,  
Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,  
Defendants.

No. 4:19-cv-00892-HSG

**THIRD DECLARATION OF MILLARD F. LEMASTER**

I, Millard F. LeMaster, declare as follows:

1. I am the Deputy Chief, United States Border Patrol Strategic Planning and Analysis Directorate (SPAD), U.S. Customs and Border Protection (CBP), an agency of the

ER077

Department of Homeland Security. I have held this position since February 2018. Over the course of my career I have served in multiple roles within the United States Border Patrol (USBP). I entered on duty with USBP in 2000. In that time I have served as a frontline Border Patrol Agent for five years, a Supervisory Border Patrol Agent for two different USBP Stations over the course of four years, and a second line supervisor in the field (Field Operations Supervisor, Watch Commander, and Deputy Patrol Agent In Charge) for two years until promotion to USBP Headquarters. Over the course of more than five years at the headquarters level I have served as an Assistant Chief, Associate Chief, and finally as the Deputy Chief for SPAD.

2. In my current position I am personally aware of the apprehension statistics and drug seizure statistics for the USBP, including apprehensions and drug seizures within the USBP's Yuma, San Diego, El Paso, El Centro, and Laredo Sectors.
3. The statements in this declaration are based on my personal knowledge and information that I have received in my official capacity.
4. Between October 1, 2018 and August 31, 2019, the USBP apprehended over 67,000 people attempting to enter the United States between border crossings in the Yuma Sector. In that same time period, there were over 800 drug events between border crossings in the Yuma Sector, through which the USBP seized over 3,000 pounds of marijuana, over 30 pounds of heroin, over 980 pounds of methamphetamine, and over 43 pounds of fentanyl.
5. Between October 1, 2018 and August 31, 2019, the USBP apprehended over 54,000 people attempting to enter the United States between border crossings in the San Diego Sector. In that same time period, there were over 380 drug events between border



crossings in the San Diego Sector, through which the USBP seized over 2,500 pounds of marijuana, over 1,200 pounds of cocaine, over 250 pounds of heroin, over 3,500 pounds of methamphetamine, and over 100 pounds of fentanyl.

6. Between October 1, 2018 and August 31, 2019, the USBP apprehended over 175,000 people attempting to enter the United States between border crossings in the El Paso Sector. In that same time period, there were over 440 drug events between border crossings in the El Paso Sector, through which the USBP seized over 10,000 pounds of marijuana, over 120 pounds of cocaine, over 25 pounds of heroin, over 300 pounds of methamphetamine, and approximately two pounds of fentanyl.
7. Between October 1, 2018 and August 31, 2019, the USBP apprehended over 32,000 people attempting to enter the United States between border crossings in the El Centro Sector. In that same time period, there were over 195 drug events between border crossings in the El Centro Sector, through which the USBP seized over 190 pounds of marijuana, over 60 pounds of cocaine, over 100 pounds of heroin, over 2,500 pounds of methamphetamine, and over 39 pounds of fentanyl.
8. Between October 1, 2018 and August 31, 2019, the USBP apprehended over 35,000 people attempting to enter the United States between border crossings in the Laredo Sector. In that same time period, there were over 300 drug events between border crossings in the Laredo Sector, through which the USBP seized over 34,000 pounds of marijuana, over 520 pounds of cocaine, over 25 pounds of heroin, and over 530 pounds of methamphetamine.
9. This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 23rd day of October, 2019.

A handwritten signature in black ink, appearing to read 'M. LeMaster', with a large, sweeping flourish at the end.

Millard F. LeMaster  
Deputy Chief  
Strategic Planning and Analysis Directorate  
United States Border Patrol

JAMES M. BURNHAM  
Deputy Assistant Attorney General  
ALEXANDER K. HAAS  
Director, Federal Programs Branch  
ANTHONY J. COPPOLINO  
Deputy Director, Federal Programs Branch  
ANDREW I. WARDEN (IN #23840-49)  
Senior Trial Counsel  
KATHRYN C. DAVIS  
MICHAEL J. GERARDI  
LESLIE COOPER VIGEN  
RACHAEL WESTMORELAND  
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*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG

No. 4:19-cv-00892-HSG

**NOTICE OF FILING OF  
ADMINISTRATIVE RECORD  
FOR BORDER BARRIER  
PROJECTS UNDERTAKEN  
PURSUANT TO 10 U.S.C. § 2808**

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Defendants hereby submit the Administrative Record and Certification of the Administrative Record supporting the supporting the Secretary of Defense's decision to authorize eleven border barrier projects pursuant to 10 U.S.C. § 2808.

DATE: September 16, 2019

Respectfully submitted,

JAMES M. BURNHAM  
Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Director, Federal Programs Branch

ANTHONY J. COPPOLINO  
Deputy Director, Federal Programs Branch

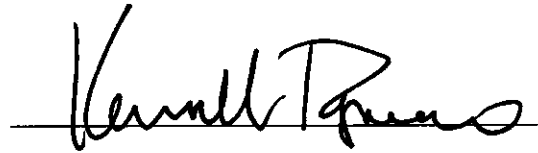
/s/ Andrew I. Warden  
ANDREW I. WARDEN (IN #23840-49)  
Senior Trial Counsel

KATHRYN C. DAVIS  
MICHAEL J. GERARDI  
LESLIE COOPER VIGEN  
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Washington, D.C. 20530  
Tel.: (202) 616-5084  
Fax: (202) 616-8470  
*Attorneys for Defendants*

**CERTIFICATION OF ADMINISTRATIVE RECORD**

I, KENNETH P. RAPUANO, Assistant Secretary of Defense for Homeland Defense and Global Security, certify that, to the best of my knowledge, the Administrative Record attached to this filing is a true, correct, and complete copy of the documents upon which the Secretary of Defense based his decision to authorize the funding and construction of eleven border barrier projects pursuant to 10 U.S.C. § 2808.

DATE: September 13, 2019

A handwritten signature in black ink, appearing to read "Kenneth P. Rapuano", written over a horizontal line.

KENNETH P. RAPUANO  
Assistant Secretary of Defense for  
Homeland Defense and Global Security



## ACTION MEMO

AUG 21 2019

Prepared by: [REDACTED]

OUSD(P)

OASD(HD&amp;GS)

Phone Number: [REDACTED]

FOR: SECRETARY OF DEFENSE

FROM: Kenneth P. Rapuano, Assistant Secretary of Defense, Homeland Defense &amp; Global Security

SUBJECT: Military Construction Pursuant to 10 U.S.C. § 2808

**PURPOSE:** To obtain (1) your determination that constructing eleven border barrier projects is necessary to support the use of the armed forces in connection with the national emergency at the southern border, (2) your approval to undertake the eleven border projects, and (3) your authorization to notify Congress of the decision to undertake the eleven border projects.

**COORDINATION:** This action was coordinated with the Secretaries of the Military Departments, Acting USD(C)/CFO, USD(A&S), OGC, and the Joint Staff.

**BLUF:** This memorandum recommends that you determine that construction of eleven border barrier military construction (MILCON) projects costing approximately \$3.6B (TAB E) is necessary to support the use of the armed forces in connection with the national emergency at the southern border and that you approve undertaking those projects.

**DISCUSSION:** On April 4, 2018, the President directed the Secretary of Defense to support the Department of Homeland Security (DHS) in securing the southern border, and to take other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country. Since April 4, 2018, DHS has submitted 29 separate requests for DoD support regarding the crisis at the southern border, and DoD currently has approximately 5,540 personnel supporting DHS's border security mission.

Statutory Authority

- On February 15, 2019, the President declared a national emergency in accordance with the National Emergencies Act and determined that the crisis at the southern border is a national emergency that requires the use of the armed forces (TAB F).
- This declaration made available 10 U.S.C. § 2808, which authorizes the Secretary of Defense, without regard to any other provision of law, to undertake MILCON projects not otherwise authorized by law that are necessary to support the use of the armed forces in connection with the national emergency.
- To satisfy the requirements of 10 U.S.C § 2808, the border barriers must be MILCON projects, and you must determine that these MILCON projects are necessary to support the use of the armed forces in connection with the national emergency (TAB G).
  - To be MILCON, the construction or acquisition of land must be with respect to a military installation in accordance with 10 U.S.C. § 2801(a). Within the United States, a military installation means "a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department."



SD CA		DSD SA	[REDACTED]
SD SMA		DSD SMA	
SD MA		DSD MA	
CoS		DSD CA	
SD Action Grp		ESB Rvw	[REDACTED]
ES		ESD	
ESR			



OSD008866-19/CMD010951-19

OFFICE OF THE  
SECRETARY OF DEFENSE

2019 AUG 21 PM 3: 54



- Based on the facts and analysis presented below and in TABs G, H, I, and J, you may find that these 11 projects are MILCON projects necessary to support the use of the armed forces in connection with the national emergency.

#### Border Barrier Projects as MILCON Projects

- With the exception of Yuma Project 2 (\$40M) and Yuma Project 10/27 (\$527M), which fall on approximately 33 miles of land on the Barry M. Goldwater Range (BMGR) in Arizona under the administrative jurisdiction of the Secretary of the Navy, the remaining proposed border barrier projects are on non-DoD Federal land or non-Federal land.
- In order for the remaining border barrier projects to constitute MILCON projects:
  - the Federal landholding agency (primarily the Department of the Interior (DOI) or elements of DOI) must transfer administrative jurisdiction over the Federal land to the Secretary of a Military Department;
  - the Secretary of a Military Department must acquire the non-Federal land through purchase or condemnation; and
  - the Secretary of a Military Department must accept custody and accountability over the land (both Federal and non-Federal) and report the land in the Military Department's inventory, either as its own installation or as part of an existing, nearby military installation.
- There are two types of Federal land – public domain lands and normal Federal property.
- *Public Domain Lands:* DOI may transfer administrative jurisdiction of public domain lands to DoD through either new withdrawal or emergency withdrawal procedures. New withdrawal procedures may take between 12 and 24 months (due to DOI's legal requirement to comply with certain environmental and other laws), while emergency withdrawals could be accomplished within 1 month.
  - The Department of the Army may only submit a withdrawal application to DOI after SecDef makes a decision to undertake specific MILCON projects pursuant to Section 2808. DoD, through OUSD(P) and the U.S. Army Corps of Engineers (USACE), is working with DOI to describe the land needed for each proposed project and to develop four applications for emergency withdrawal to be submitted to DOI shortly after your decision to undertake specific Section 2808 projects.
- *Normal Federal Property:* For those non-DoD lands that are ordinary Federal property, the Federal landholding agency may transfer administrative jurisdiction to the Secretary of a Military Department within a few weeks of identifying the property. This transfer would occur through the General Services Administration, pursuant to the Federal Property Act.
- *Non-Federal Land:* The Department of the Army may acquire the lands required for projects on non-Federal land through voluntary purchase or condemnation, which USACE indicates would take 12 to 24 months, depending on the number of property owners and the owners' willingness to sell.

#### Necessity of Border Barriers

- A more detailed explanation as to why these border barrier projects are necessary to support the use of the armed forces can be found at TAB H.
- At the request of then-Acting Secretary Shanahan, then-Secretary of Homeland Security Nielsen provided a prioritized list (TAB I) of border barrier construction projects (in 15 segments) that DHS



assessed would improve the effectiveness and efficiency of armed forces personnel supporting DHS in securing the southern border.

- DHS's letter explained that it had identified 12 capabilities required to achieve operational control of the border, the most important of which is impeding and denying unlawful entry, primarily through the use of artificial barriers.
- Based on this DHS list, then-Acting Secretary Shanahan instructed the CJCS to assess whether and how construction of these projects, as well as projects identified by DHS for construction under 10 U.S.C. § 284 that have not yet been approved for funding by DoD, could support the use of the armed forces. He also directed the USD(C) to identify \$3.6 billion that could be used to source Section 2808 projects. The CJCS concluded that all of the DHS identified construction projects are necessary to support the use of the armed forces in connection with the national emergency at the southern border (TAB J).
- In developing this assessment, the CJCS consulted with DHS, including Customs and Border Protection (CBP) and the U.S. Border Patrol (USBP); U.S. Northern Command; and USACE and determined that border barriers:
  - Improve CBP's detection, identification, classification, and response capabilities;
  - Reduce vulnerabilities in key border areas and the time it takes for Border Patrol agents to apprehend illegal migrants; and
  - Serve as a force multiplier to allow military personnel to cover other areas in support of the detection and monitor mission.
- The CJCS's assessment also determined that the construction of border barriers would:
  - Make migration flows more predictable by channeling illegal migrants towards points of legal entry, improving CBP force allocation, and reducing the need for low-density/high-demand DoD aviation assets;
  - Allow DoD to re-prioritize its force laydown in support of DHS/CBP; and
  - Enable more effective and efficient use of DoD personnel, which could ultimately reduce the demand for DoD support at the southern border over time.

#### Determinations

- Based on the information and analysis above and at TABs H, I, and J, you may determine that the border barrier construction projects at TAB E, and associated acquisition of land and transfer of administrative jurisdiction, are MILCON projects necessary to support the use of the armed forces in connection with the national emergency declared by the President on February 15, 2019. The memorandum at TAB A would memorialize this decision and direct implementing actions.
- Section 2808 authorizes the SecDef to undertake military construction "without regard to any other provision of law" that would prevent an expeditious response to the national emergency. Such provisions of law include, but are not limited to, environmental, historic preservation, and contracting laws.
- If you determine that the above construction projects and associated acquisition of land and transfer of administrative jurisdiction are MILCON projects necessary to support the use of the armed forces, you will need to sign notification letters to the Acting Secretary of Homeland Security (TAB C) and the Secretary of the Interior (TAB D).



- The letter to the Acting Secretary of Homeland Security notifies DHS of your decision to undertake 11 border barrier military construction projects necessary to support the use of the armed forces in response to the February 15, 2019, national emergency.
- The letter to the Secretary of the Interior notifies DOI of your decision to undertake certain border barrier military construction projects necessary to support the use of the armed forces on lands currently held by DOI or its agencies, and requests DOI's assistance to transfer administrative jurisdiction over those lands expeditiously to the Secretary of the Army.
  - The Department of the Army, through USACE, will work with DOI to describe the necessary lands, determine the appropriate transfer mechanism (emergency withdrawal or Federal Property Act transfer), and develop and submit the application and requisite information.
  - After the Secretary of the Interior approves the emergency withdrawal by signing a public land order transferring administrative jurisdiction to the Department of the Army (or transfers jurisdiction pursuant to the Federal Property Act), the Department of the Army will accept custody of and accountability for the land and add the land to its real property inventory as either a new military installation or as part of an existing military installation, consistent with Section 2801, as outlined in TAB G.
- **Congress:** You are required to notify the congressional defense committees of the specific MILCON projects you decide to undertake under Section 2808 and their associated cost. The letters at TAB B notify the committees of your decision.
  - There already are congressional efforts to restrict use of Section 2808 to build border barriers, and a decision to undertake border barrier projects under Section 2808 will likely renew and invigorate those efforts (TAB K).
  - Although not required by Section 2808, DoD committed to informing the congressional defense committees of the specific MILCON projects that would be deferred in order to make funds available for border barrier MILCON projects under Section 2808. There will be separate guidance to the Comptroller regarding engagement with Congress on deferred MILCON projects.
- **Funding:** The DUSD(C) provided you a package that identified existing MILCON projects that the Department could defer to fund up to \$3.6B in Section 2808 MILCON projects should you decide to undertake those projects. In compiling this package, the DUSD(C) relied on DoD Components to prioritize projects with award dates in fiscal year 2020 or later, the deferral of which would have a minimal effect on Component readiness. The DUSD(C) did not consider any family housing, barracks, or dormitory projects for deferral.
  - As will be detailed in a separate package, the Comptroller will prioritize deferred MILCON projects to ensure that, initially, only funds associated with projects outside of the United States will be provided to the Department of the Army for construction of Section 2808 projects.
- **Litigation:** The Secretary of Defense (in his official capacity) is a defendant in multiple lawsuits challenging, among other matters, the President's declaration of national emergency and the use of Section 2808. The plaintiffs seek an injunction to halt all activity under Section 2808.
  - The Government has notified all courts in which a challenge to Section 2808 is pending that the Department has not made any decision to undertake any projects under Section 2808. The Government agreed to notify those courts as soon as a decision is made. The Office of General Counsel, through the Department of Justice (DOJ), will provide such notification. DOJ will



share the specific MILCON projects to be undertaken along with any other publicly available information about the projects.

- DOJ has requested that DoD share the funding sources with the courts and the parties as soon as possible in order to avoid additional lawsuits and narrow the scope of the litigation.

## RECOMMENDATIONS:

- 1) Determine that 11 border barrier projects (TAB E) and associated acquisition of land and transfer of jurisdiction are MILCON projects necessary to support use of the armed forces in connection with the February 15, 2019, national emergency requiring use of the armed forces, and decide to undertake those projects as authorized by 10 U.S.C. § 2808.

Approve: *WHe* 9/3/19 Disapprove: \_\_\_\_\_ Other: \_\_\_\_\_

- 2) Notify Congress of your decision to undertake military construction projects under 10 U.S.C. § 2808 by signing the congressional notification letters at TAB B.
- 3) Sign the memorandum at TAB A:
  - a. Documenting and implementing your decision to undertake 11 military construction projects necessary to support the use of the armed forces in connection with the national emergency.
  - b. Authorizing and directing the Acting Secretary of the Army to:
    - i. Expeditiously undertake the 11 border barrier military construction projects, and as authorized by Section 2808, do so without regard to any other provision of law that could impede such expeditious construction in response to the national emergency;
    - ii. Immediately proceed to construct the projects on BMGR, where the land is already under the jurisdiction of the Secretary of the Navy (constructing the remaining projects as the necessary real property is under the administrative jurisdiction of the Department of the Army and reflected in its records as a military installation);
    - iii. Immediately apply for and accept administrative jurisdiction of real property from other Federal departments and agencies, including DOI, and to acquire non-Federal real property necessary to undertake the specified military construction projects; and
    - iv. Add such land to the Department of the Army's real property inventory, either as a new installation or as part of an existing military installation, consistent with DoD Instruction (DoDI) 4165.14, "Real Property Inventory (RPI) and Forecasting," and DoDI 4165.71, "Real Property Acquisition."
  - c. Directing the Secretary of the Navy, as the land holding agency for BMGR, to ensure USACE has the access and information necessary to undertake the military construction projects at BMGR; and
  - d. Directing the Acting USD(C)/CFO to ensure that up to \$3.6B in unobligated MILCON funds are available to undertake such military construction projects.
- 4) Sign the letter at TAB C notifying the Acting Secretary of Homeland Security of your decision.

- 5) Sign the letter at TAB D requesting assistance from the Secretary of the Interior for the transfer of administrative jurisdiction of non-DoD Federal land.

Attachments:

- TAB A – Memorandum – Guidance for Undertaking MILCON Projects Pursuant to Section 2808 of Title 10, U.S. Code
- TAB B – Congressional Notification Letters
- TAB C – Letter Notifying Acting Secretary of Homeland Security
- TAB D – Letter Requesting Assistance from DOI for Transfer of Administrative Jurisdiction
- TAB E – Border Barrier Project List
- TAB F – President’s Declaration of National Emergency
- TAB G – Paper on Section 2808 of Title 10, U.S. Code.
- TAB H – Summary of Analysis and Justification of the Necessity of Border Barriers to Support Use of the Armed Forces
- TAB I – Letter from the Secretary of Homeland Security on Recommended 2808 Border Barrier Projects
- TAB J – CJCS Assessment of 2808 Border Barrier Projects
- TAB K – Statement of Administration Policy on Border Barrier Related Matters
- TAB L – Coordination

**TAB**

**A**

ER091





SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
ACTING UNDER SECRETARY OF DEFENSE  
(COMPTROLLER)/CHIEF FINANCIAL OFFICER

SUBJECT: Guidance for Undertaking Military Construction Projects Pursuant to Section 2808 of Title 10, U.S. Code

On February 15, 2019, in accordance with the National Emergencies Act, the President declared that a national emergency exists at the southern border requiring the use of the armed forces. This declaration made available, among other statutes, 10 U.S.C. § 2808, which authorizes the Secretary of Defense, without regard to any other provision of law, to undertake military construction projects not otherwise authorized by law that are necessary to support the use of the armed forces in connection with the national emergency.

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

I therefore authorize and direct the Acting Secretary of the Army to expeditiously undertake the eleven border barrier military construction projects specified in the attachment, and, as authorized by section 2808, to do so without regard to any other provision of law that could impede such expeditious construction in response to the national emergency. Such laws include, but are not limited to, the National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, the Clean Water Act, and provisions in Chapter 137 ("Procurement Generally") of title 10, U. S. Code. The Acting Secretary of the Army shall immediately apply for and accept administrative jurisdiction of real property from other Federal departments and agencies, including DOI, and acquire the non-Federal real property necessary to undertake the specified military construction projects. Once the Department of the Army obtains administrative jurisdiction of the requisite land, the Acting Secretary of the Army shall add such land to the Department of the Army's real property inventory, either as a new installation or as part of an existing military installation, consistent with DoD Instruction (DoDI) 4165.14, "Real Property Inventory (RPI) and Forecasting," and DoDI 4165.71, "Real Property Management."



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The Acting Secretary of the Army is directed to immediately proceed to construct 33 miles of border barrier on the Barry M. Goldwater Range (BMGR), identified as Yuma 10/27 and Yuma 2, to the extent the land is already under the jurisdiction of the Secretary of the Navy. As the land holding agency for BMGR, the Secretary of the Navy shall ensure USACE has the access and information necessary to undertake these military construction projects on BMGR. The Acting Secretary of the Army shall proceed with construction of the remaining projects as soon as the requisite land is under the administrative jurisdiction of the Department of the Army and reflected in its records as a military installation.

I further authorize and direct the Acting Under Secretary of Defense (Comptroller)/Chief Financial Officer to ensure that up to \$3.6 billion in unobligated military construction funds are available for the purpose of undertaking the eleven specified military construction projects. As will be detailed in separate guidance, the Comptroller will prioritize deferred military construction projects to ensure that, initially, only funds associated with projects outside of the United States will be provided to the Department of the Army for construction of section 2808 projects.

The Secretaries of the other Military Departments will assist the Acting Secretary of the Army with any staffing shortfalls related to undertaking these tasks.



Attachment:  
As stated

cc:  
Chairman, Joint Chiefs of Staff  
Under Secretary of Defense (Policy)  
Under Secretary of Defense (Acquisition & Sustainment)  
General Counsel of the Department Of Defense  
Assistant Secretary of Defense for Legislative Affairs  
Assistant to the Secretary of Defense for Public Affairs  
Commander, U.S. Army Corps of Engineers



### List of Proposed Border Barrier Projects

**Yuma Project 2 (\$40M):** Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 197, for a total of approximately 1.5 - 2 miles.

**Yuma Project 10/27 (\$527M):** Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3 (\$630M):** Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4 (\$67M):** Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6 (\$65M):** Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2 (\$476M):** Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8 (\$164M):** Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11 (\$57M):** Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5 (\$20M):** Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7 (\$1,268M):** Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9 (\$286M):** Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.



**TAB**

**B**



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

The Honorable James Inhofe  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

On February 15, 2019, the President issued a proclamation declaring that a national emergency exists along the southern border of the United States that requires the use of the armed forces. In order to provide additional authority to the Department of Defense as part of the Federal Government's response to this national emergency, the President further made available, in accordance with Section 301 of the National Emergencies Act (50 U.S.C. 1631), the authority provided in Section 2808 of Title 10, U.S. Code.

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

Accordingly, I have authorized and directed the Acting Secretary of the Army to undertake these 11 projects expeditiously, and, as authorized by Section 2808, to do so without regard to any other provision of law that may impede the expeditious construction of such projects in response to the national emergency. A description of and the estimated cost for each project, including the cost of any associated real estate actions, can be found in the enclosure.

I have further authorized and directed the Acting Under Secretary of Defense (Comptroller)/Chief Financial Officer to ensure that up to \$3.6 billion in unobligated military construction funds are available for the purpose of undertaking the specified military construction projects. The funds being made available are associated only with deferred military construction projects that are not scheduled for award until fiscal year 2020 or later and do not include any family housing, barracks, or dormitory projects. Furthermore, I have directed the Acting Under Secretary of Defense (Comptroller) to prioritize deferred military construction projects such that, initially, only funds associated with deferred military construction projects outside of the United States will be made available to the Department of the Army. This will

ER096

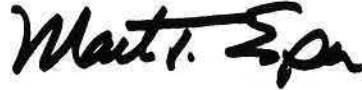


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provide for approximately \$1.8 billion of the required funds. The remaining \$1.8 billion associated with deferred military construction projects located in the United States (including U.S. territories) will be made available to the Secretary of the Army when it is needed for obligation. My intent in prioritizing funds in this manner is to provide time to work with you to determine opportunities to restore funds for these important military construction projects as well as to work with our allies and partners in improving cost burden sharing for the overseas construction projects.

I am sending an identical letter to the other Congressional defense committees.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark T. Esper".

Enclosure:

As stated

cc:

The Honorable Jack Reed  
Ranking Member



## List of Military Construction Projects

**Yuma Project 2 (\$40M):** Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 297, for a total of approximately 1.5-2 miles.

**Yuma Project 10/27 (\$527M):** Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3 (\$630M):** Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4 (\$67M):** Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6 (\$65M):** Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2 (\$476M):** Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8 (\$164M):** Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11 (\$57M):** Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5 (\$20M):** Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7 (\$1,268M):** Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9 (\$286M):** Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.





SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

The Honorable Adam Smith  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

On February 15, 2019, the President issued a proclamation declaring that a national emergency exists along the southern border of the United States that requires the use of the armed forces. In order to provide additional authority to the Department of Defense as part of the Federal Government's response to this national emergency, the President further made available, in accordance with Section 301 of the National Emergencies Act (50 U.S.C. 1631), the authority provided in Section 2808 of Title 10, U.S. Code.

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

Accordingly, I have authorized and directed the Acting Secretary of the Army to undertake these 11 projects expeditiously, and, as authorized by Section 2808, to do so without regard to any other provision of law that may impede the expeditious construction of such projects in response to the national emergency. A description of and the estimated cost for each project, including the cost of any associated real estate actions, can be found in the enclosure.

I have further authorized and directed the Acting Under Secretary of Defense (Comptroller)/Chief Financial Officer to ensure that up to \$3.6 billion in unobligated military construction funds are available for the purpose of undertaking the specified military construction projects. The funds being made available are associated only with deferred military construction projects that are not scheduled for award until fiscal year 2020 or later and do not include any family housing, barracks, or dormitory projects. Furthermore, I have directed the Acting Under Secretary of Defense (Comptroller) to prioritize deferred military construction projects such that, initially, only funds associated with deferred military construction projects outside of the United States will be made available to the Department of the Army. This will

ER099

provide for approximately \$1.8 billion of the required funds. The remaining \$1.8 billion associated with deferred military construction projects located in the United States (including U.S. territories) will be made available to the Secretary of the Army when it is needed for obligation. My intent in prioritizing funds in this manner is to provide time to work with you to determine opportunities to restore funds for these important military construction projects as well as to work with our allies and partners in improving cost burden sharing for the overseas construction projects.

I am sending an identical letter to the other Congressional defense committees.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt T. Espo". The signature is written in a cursive, slightly slanted style.

Enclosure:

As stated

cc:

The Honorable William M. "Mac" Thornberry  
Ranking Member



## List of Military Construction Projects

**Yuma Project 2 (\$40M):** Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 297, for a total of approximately 1.5-2 miles.

**Yuma Project 10/27 (\$527M):** Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3 (\$630M):** Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4 (\$67M):** Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6 (\$65M):** Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2 (\$476M):** Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8 (\$164M):** Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11 (\$57M):** Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5 (\$20M):** Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7 (\$1,268M):** Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9 (\$286M):** Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.





SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

The Honorable Richard C. Shelby  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

On February 15, 2019, the President issued a proclamation declaring that a national emergency exists along the southern border of the United States that requires the use of the armed forces. In order to provide additional authority to the Department of Defense as part of the Federal Government's response to this national emergency, the President further made available, in accordance with Section 301 of the National Emergencies Act (50 U.S.C. 1631), the authority provided in Section 2808 of Title 10, U.S. Code.

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

Accordingly, I have authorized and directed the Acting Secretary of the Army to undertake these 11 projects expeditiously, and, as authorized by Section 2808, to do so without regard to any other provision of law that may impede the expeditious construction of such projects in response to the national emergency. A description of and the estimated cost for each project, including the cost of any associated real estate actions, can be found in the enclosure.

I have further authorized and directed the Acting Under Secretary of Defense (Comptroller)/Chief Financial Officer to ensure that up to \$3.6 billion in unobligated military construction funds are available for the purpose of undertaking the specified military construction projects. The funds being made available are associated only with deferred military construction projects that are not scheduled for award until fiscal year 2020 or later and do not include any family housing, barracks, or dormitory projects. Furthermore, I have directed the Acting Under Secretary of Defense (Comptroller) to prioritize deferred military construction projects such that, initially, only funds associated with deferred military construction projects outside of the United States will be made available to the Department of the Army. This will

ER102



provide for approximately \$1.8 billion of the required funds. The remaining \$1.8 billion associated with deferred military construction projects located in the United States (including U.S. territories) will be made available to the Secretary of the Army when it is needed for obligation. My intent in prioritizing funds in this manner is to provide time to work with you to determine opportunities to restore funds for these important military construction projects as well as to work with our allies and partners in improving cost burden sharing for the overseas construction projects.

I am sending an identical letter to the other Congressional defense committees.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Spahn". The signature is fluid and cursive, with the first name "Mark" being more prominent.

Enclosure:

As stated

cc:

The Honorable Patrick J. Leahy  
Vice Chairman

## List of Military Construction Projects

**Yuma Project 2 (\$40M):** Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 297, for a total of approximately 1.5-2 miles.

**Yuma Project 10/27 (\$527M):** Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3 (\$630M):** Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4 (\$67M):** Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6 (\$65M):** Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2 (\$476M):** Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8 (\$164M):** Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11 (\$57M):** Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5 (\$20M):** Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7 (\$1,268M):** Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9 (\$286M):** Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.





SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

The Honorable Nita M. Lowey  
Chairwoman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Madam Chairwoman:

On February 15, 2019, the President issued a proclamation declaring that a national emergency exists along the southern border of the United States that requires the use of the armed forces. In order to provide additional authority to the Department of Defense as part of the Federal Government's response to this national emergency, the President further made available, in accordance with Section 301 of the National Emergencies Act (50 U.S.C. 1631), the authority provided in Section 2808 of Title 10, U.S. Code.

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

Accordingly, I have authorized and directed the Acting Secretary of the Army to undertake these 11 projects expeditiously, and, as authorized by Section 2808, to do so without regard to any other provision of law that may impede the expeditious construction of such projects in response to the national emergency. A description of and the estimated cost for each project, including the cost of any associated real estate actions, can be found in the enclosure.

I have further authorized and directed the Acting Under Secretary of Defense (Comptroller)/Chief Financial Officer to ensure that up to \$3.6 billion in unobligated military construction funds are available for the purpose of undertaking the specified military construction projects. The funds being made available are associated only with deferred military construction projects that are not scheduled for award until fiscal year 2020 or later and do not include any family housing, barracks, or dormitory projects. Furthermore, I have directed the Acting Under Secretary of Defense (Comptroller) to prioritize deferred military construction projects such that, initially, only funds associated with deferred military construction projects outside of the United States will be made available to the Department of the Army. This will

provide for approximately \$1.8 billion of the required funds. The remaining \$1.8 billion associated with deferred military construction projects located in the United States (including U.S. territories) will be made available to the Secretary of the Army when it is needed for obligation. My intent in prioritizing funds in this manner is to provide time to work with you to determine opportunities to restore funds for these important military construction projects as well as to work with our allies and partners in improving cost burden sharing for the overseas construction projects.

I am sending an identical letter to the other Congressional defense committees.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Spitzer". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Enclosure:

As stated

cc:

The Honorable Kay Granger  
Ranking Member



## List of Military Construction Projects

**Yuma Project 2 (\$40M):** Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 297, for a total of approximately 1.5-2 miles.

**Yuma Project 10/27 (\$527M):** Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3 (\$630M):** Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4 (\$67M):** Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6 (\$65M):** Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2 (\$476M):** Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8 (\$164M):** Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11 (\$57M):** Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5 (\$20M):** Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7 (\$1,268M):** Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9 (\$286M):** Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.

**TAB**

**C**





SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

The Honorable Kevin McAleenan  
Acting Secretary of Homeland Security  
Washington, DC 20528

Dear Mr. Secretary:

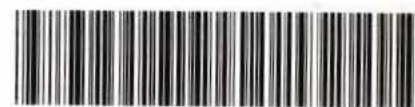
The Department of Defense appreciates that the Department of Homeland Security (DHS) confronts a continuing crisis at the southern border. On February 15, 2019, the President declared that a national emergency exists at the southern border that requires the use of the armed forces, making available certain emergency authorities, including 10 U.S.C. § 2808.

Section 2808 provides that, in the event of a declaration by the President of a national emergency requiring the use of the armed forces, "the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces."

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

I therefore have authorized and directed the Acting Secretary of the Army to undertake expeditiously the border barrier military construction projects specified in the enclosure and, as authorized by Section 2808, to do so without regard to any other provision of law that could impede such expeditious construction in response to the national emergency. The Secretary of the Army will immediately apply for and accept administrative jurisdiction of real property from other Federal departments and agencies, including DHS and DOI, and acquire non-Federal real property necessary to undertake the specified military construction projects.

I have directed the Acting Secretary of the Army to immediately proceed to construct 33 miles of border barrier on the Barry M. Goldwater Range (BMGR), identified as Yuma 10/27 and Yuma 2, to the extent the land is already under the jurisdiction of the Secretary of the Navy. The Acting Secretary of the Army will proceed with construction of the remaining projects as



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ER109

soon as the requisite land is under the administrative jurisdiction of the Department of the Army and reflected in its records as a military installation.

The Acting Secretary of the Army and the Commander, U.S. Army Corps of Engineers, are authorized to coordinate directly with the Department of Homeland Security, Department of the Interior, and Department of Justice, including any of their components, on any matters required to execute these projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark T. Egan". The signature is fluid and cursive, with the first name "Mark" and last name "Egan" being the most legible parts.

Enclosure:  
As stated



### **List of Military Construction Projects**

**Yuma Project 2 (\$40M):** Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 197, for a total of approximately 1.5-2 miles.

**Yuma Project 10/27 (\$527M):** Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3 (\$630M):** Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4 (\$67M):** Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6 (\$65M):** Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2 (\$476M):** Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8 (\$164M):** Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11 (\$57M):** Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5 (\$20M):** Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7 (\$1,268M):** Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9 (\$286M):** Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.

**TAB**

**D**

ER112





SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

The Honorable David Bernhardt  
Secretary of the Interior  
Washington, DC 20240

Dear Mr. Secretary:

On February 15, 2019, the President declared that a national emergency exists at the southern border that requires the use of the armed forces, making available certain emergency authorities, including 10 U.S.C. § 2808.

Section 2808 provides that, in the event of a declaration by the President of a national emergency requiring the use of the armed forces, "the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the Military Departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces."

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

I therefore authorized and directed the Acting Secretary of the Army to undertake expeditiously the border barrier military construction projects specified in the enclosure, including the acquisition of lands and transfer of administrative jurisdiction, as authorized by section 2808, and to do so without regard to any other provision of law that could impede the expeditious construction of such projects in response to the national emergency. Section 2808 provides the Department with the legal authority required to acquire the land necessary to undertake the military construction projects that I have determined are necessary to support the use of the armed forces in connection with the February 15, 2019 declaration of national emergency.

Several of these 11 border barrier military construction projects have portions that are on two types of Federal land: public domain lands governed by section 204 of the Federal Land



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ER113

Policy and Management Act (title 43, U.S. Code, section 1714) and Federal property governed by the Federal Property and Administrative Services Act (40 U.S.C. 571, et seq.). The USACE has been working with the DOI and its agencies to describe in sufficient detail the land needed for these projects (and the appropriate transfer method) so that the Department of the Army may expeditiously obtain administrative jurisdiction over such lands and reflect the lands in its records as a military installation.

Utilizing the authority provided to the Secretary of Defense in section 2808 to undertake, without regard to any other provision of law, military construction projects necessary to support the use of the armed forces in connection with the national emergency, I have directed the Acting Secretary of the Army to request from DOI emergency withdrawal of all public lands required for these projects from all public land laws and transfer of administrative jurisdiction of such lands to the Secretary of the Army. I have further directed the Acting Secretary of the Army, with respect to property governed by the Federal Property and Administrative Services Act, to request that the Federal land holding agency, through the General Services Administration, expeditiously and without charge transfer administrative jurisdiction over such lands to the Acting Secretary of the Army.

My points of contact are Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security, and Lieutenant General Todd Semonite, Commander, U.S. Army Corps of Engineers.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark T. Egan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Enclosure:  
As stated



**TAB**

**E**

ER115

## List of Military Construction Projects

**Yuma Project 2** (\$40M): Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 297, for a total of approximately 1.5-2 miles.

**Yuma Project 10/27** (\$527M): Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3** (\$630M): Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4** (\$67M): Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6** (\$65M): Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2** (\$476M): Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8** (\$164M): Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11** (\$57M): Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5** (\$20M): Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7** (\$1,268M): Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9** (\$286M): Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.

**TAB**

**F**



DECLARING A NATIONAL EMERGENCY CONCERNING THE SOUTHERN BORDER  
OF THE UNITED STATES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The current situation at the southern border presents a border security and humanitarian crisis that threatens core national security interests and constitutes a national emergency. The southern border is a major entry point for criminals, gang members, and illicit narcotics. The problem of large-scale unlawful migration through the southern border is long-standing, and despite the executive branch's exercise of existing statutory authorities, the situation has worsened in certain respects in recent years. In particular, recent years have seen sharp increases in the number of family units entering and seeking entry to the United States and an inability to provide detention space for many of these aliens while their removal proceedings are pending. If not detained, such aliens are often released into the country and are often difficult to remove from the United States because they fail to appear for hearings, do not comply with orders of removal, or are otherwise difficult to locate. In response to the directive in my April 4, 2018, memorandum and subsequent requests for support by the Secretary of Homeland Security, the Department of Defense has provided support and resources to the Department of Homeland Security at the southern border. Because of the gravity of the current emergency situation, it is necessary for the Armed Forces to provide additional support to address the crisis.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), hereby declare that



a national emergency exists at the southern border of the United States, and that section 12302 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretaries of the military departments concerned, subject to the direction of the Secretary of Defense in the case of the Secretaries of the Army, Navy, and Air Force. To provide additional authority to the Department of Defense to support the Federal Government's response to the emergency at the southern border, I hereby declare that this emergency requires use of the Armed Forces and, in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), that the construction authority provided in section 2808 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

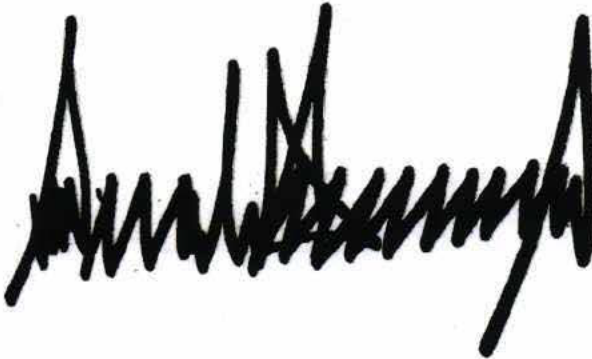
I hereby direct as follows:

Section 1. The Secretary of Defense, or the Secretary of each relevant military department, as appropriate and consistent with applicable law, shall order as many units or members of the Ready Reserve to active duty as the Secretary concerned, in the Secretary's discretion, determines to be appropriate to assist and support the activities of the Secretary of Homeland Security at the southern border.

Sec. 2. The Secretary of Defense, the Secretary of the Interior, the Secretary of Homeland Security, and, subject to the discretion of the Secretary of Defense, the Secretaries of the military departments, shall take all appropriate actions, consistent with applicable law, to use or support the use of the authorities herein invoked, including, if necessary, the transfer and acceptance of jurisdiction over border lands.

Sec. 3. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of February, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.

A large, bold, handwritten signature in black ink, appearing to be 'Donald Trump', is centered on the page.

**TAB**

**G**

ER121



## 10 U.S.C. § 2808

### Construction Authority in the Event of a Declaration of War or a National Emergency

- “In the event of a declaration of war or the *declaration* by the President of a *national emergency* in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) *that requires use of the armed forces*, the *Secretary of Defense*, *without regard to any other provision of law*, *may undertake military construction projects*, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law *that are necessary to support such use of the armed forces*. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.”

#### Section 2808 Is Only Available:

1. In the event of a declaration of a national emergency that requires use of the armed forces and that specifically makes Section 2808 available;
2. For construction that is military construction as defined in 10 U.S.C. § 2801; and
3. If the Secretary of Defense determines that the military construction projects are necessary to support the use of the armed forces in connection with the national emergency requiring use of the armed forces.

#### National Emergency Declaration

- In a proclamation dated February 15, 2019, the President declared “that *a national emergency exists* at the southern border of the United States . . . . To provide additional authority to the Department of Defense to support the Federal Government's response to the emergency at the southern border, I hereby declare that *this emergency requires use of the Armed Forces* and, in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), that *the construction authority provided in section 2808 of title 10, United States Code is invoked and made available*, according to its terms, to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.”
- The February 15, 2019, proclamation is a declaration of a national emergency that requires use of the armed forces and that specifically makes Section 2808 available.

#### Border Barrier Projects Are Military Construction Projects

- As defined in Section 2801 of Title 10, U.S. Code:
  - Military construction “as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind *carried out with respect to a military installation*, whether to satisfy temporary or permanent requirements, or *any acquisition of land* or construction of a defense access road (as described in section 210 of title 23).”
  - “The term ‘*military installation*’ means a base, camp, post, station, yard, center, or other activity *under the jurisdiction of the Secretary of a military department* or, in the case of an activity in a foreign country, under the operational control of the



Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control."

- The authority provided by Section 2808 to undertake a military construction project includes the authority to acquire the land necessary to undertake that project. Section 2808 authorizes the Secretary of Defense to "undertake **military construction** projects, not otherwise authorized by law that are necessary to support such use of the armed forces." Because Section 2801 of Title 10, U.S. Code, defines **military construction** as including "any acquisition of land or construction of a defense access road," the military construction authority provided by Section 2808 also authorizes the associated land acquisition.
- In order for a border barrier construction project to be a military construction project, the project must be "carried out with respect to a military installation." Therefore, prior to awarding a contract for construction of a border barrier:
  - For lands under the jurisdiction of another Federal department or agency, that Federal landholding agency must transfer administrative jurisdiction over the Federal land to the Secretary of a Military Department;
  - For non-Federal lands, the Secretary of a Military Department must acquire the non-Federal land through purchase or condemnation; and
  - Once transferred or acquired, the Secretary of a Military Department must accept custody and accountability over the land and report the land in its inventory, either as a new installation or as part of an existing, nearby military installation.

*Border Barrier Military Construction Projects Are Necessary to Support the Use of the Armed Forces in Connection with the National Emergency*

The decision whether to undertake a specific military construction project under Section 2808 is vested in the Secretary of Defense and is based on the Secretary's professional judgment that undertaking a military construction project is necessary to support the use of the armed forces.

**TAB**

**H**



**TAB H – Necessity of Border Barriers**  
**Summary of Supporting Analysis**

- This document summarizes analysis provided by the Chairman of the Joint Chiefs of Staff (CJCS) and the Department of Homeland Security (DHS) and provides further context from the Office of the Under Secretary of Defense for Policy supporting a decision to undertake the eleven specified military construction projects pursuant to 10 U.S.C. § 2808.
- Section 2808 authorizes the Secretary of Defense to undertake military construction projects that are necessary to support the use of the armed forces in connection with a declaration of national emergency requiring use of the armed forces. A description of Section 2808's requirements can be found at Tab G.
- Since April 4, 2018, there have been **29** requests for assistance from the Department of Homeland Security (DHS) for DoD support at the southern border, and DoD currently has approximately 5,540 personnel supporting DHS's border security mission. The number of migrant apprehensions by U.S. Border Patrol for Fiscal Year (FY) 2019 through July 2019 (760,370) has already exceeded the total number of apprehensions in FY 2018 (396,579) and FY 2017 (303,916).
  - Customs and Border Protection (CBP) expects another 100,000 apprehensions in August 2019.
- The high number of monthly apprehensions places a considerable strain on CBP detention facilities and personnel. Approximately 40 percent of U.S. Border Patrol (USBP) agents are assigned to processing and detention duties during every 8-hour shift, with another 54 percent of agents performing other administrative duties and training or operating in an off-duty status. This leaves approximately 6 percent of USBP personnel for operations and patrols across the entire 1,954-mile southern border – or approximately 330 agents for each 8-hour shift.
- The USBP's role in CBP's border security mission is to gain, maintain, and expand operational control of the U.S. border between ports of entry. According to DHS, operational control between ports of entry is achieved by establishing situational awareness of the border area, developing the capability to impede and deny illegal entry, and effectively delivering an appropriate law enforcement response and resolution to illicit activity.
- According to DHS, each DoD person deployed in support of DHS "frees up" a CBP agent to be employed in a direct law enforcement capacity in areas of heavy cross-border activity. As such, DoD deployments in support of DHS at the southern border have primarily been oriented towards support roles that relieve DHS personnel of non-law enforcement duties (e.g., logistics, planning, and intelligence analysis) or that provide monitoring and detection support (i.e., operating mobile surveillance camera units or providing aerial reconnaissance).
- Physical barriers like pedestrian fencing are the primary means by which DHS has sought to deter, contain, channel, or interdict illicit activity. DHS has identified 12 capabilities required to achieve operational control of the southern border and has ranked impeding and denying unlawful entry, provided primarily by **artificial barriers**, as the **most important of these critical capabilities**.
  - As noted in the CJCS assessment, a 2007 Congressional Research Service Report determined that fencing or a wall is critical to the detection and identification of illegal entry, particularly in urban areas.



- Barriers are the capability most frequently identified by CBP field commanders as necessary to establish operational control at the border.
- For example, DHS has opined that physical barriers prevent incursions into the communities, businesses, and other sensitive areas proximate to the border; reduce the enforcement footprint and compress USBP operations; increase vanishing times or eliminate “quick” vanishing times (i.e., the time it takes for illegal border crossers to disappear into the surrounding environment and evade apprehension); and provide a force multiplier effect by increasing the efficacy and efficiency of DoD resources.
- There is historical evidence tending to show that physical barriers have been effective along the southern border.
  - In 1992, the San Diego Sector was the epicenter of illegal immigration and narcotics trafficking. During Operation Gatekeeper, DoD provided personnel and technology and constructed roads and barriers. By 2010, apprehensions were down 88 percent in the Sector. By 2015, apprehensions were down 95 percent from 1992 levels.
  - In 1993, a similar strategy was employed by DoD as part of Operation Hold the Line in the El Paso Sector. By 2015, apprehensions were down 95 percent from 1993 apprehension levels.
- DHS states that “the border barrier projects that DHS recommends that DoD undertake pursuant to 10 U.S.C. § 2808 will fundamentally change the border dynamic, give a distinct and enduring advantage to USBP as a force multiplier, and provide agents capabilities to respond more quickly to illicit activities.”
  - Moreover, DHS finds that the construction of border barriers will “likely reduce DHS’s reliance on DoD for force protection, surveillance support, engineering support, air support, logistical support, and strategic communications assistance.”

### **Recommendations of the CJCS**

- Building on the above analysis, the CJCS analyzed the construction projects proposed by DHS for construction under 10 U.S.C. 284 and Section 2808 in order to determine which projects could best support use of the armed forces in addressing the national emergency at the southern border. The CJCS analysis identified and considered four key factors: DHS’s prioritization of projects, current migrant flows as measured by monthly apprehensions in each CBP sector, current deployment of military personnel and support missions by CBP sector, and the type of land (Federal or private) upon which the proposed projects are expected to be undertaken.
  - The type of land was considered because, at the time of the CJCS analysis, the understanding was that construction could begin more quickly on Federal land than on private land. A delay in constructing border barriers could adversely affect the government’s ability to re-prioritize DoD support and concentrate CBP resources.
  - The CJCS assessment, however, was developed prior to notice from DHS that it lacked the authority to transfer administrative jurisdiction of the necessary lands and subsequent consultation with the Department of the Interior (DOI) regarding the time required and limitations on transferring such jurisdiction. Before consulting with DOI, it was understood that acquiring private land, and subsequently building border barrier on such land, would take longer than building on Federal land.
  - After consultation with DOI, it also became apparent that there was considerably more private land on the DHS prioritized list than originally understood, and that the



administrative jurisdiction of certain Federal lands could not be transferred to a Military Department. The detailed analysis of each project below incorporates this updated information from DOI.

- Although the CJCS found that, in general, barrier construction in one CBP sector has ripple effects across all other sectors, given finite resources, certain construction projects are more beneficial than others in supporting the use of the armed forces.
  - To that end, the CJCS independently re-prioritized DHS's list of requested border barrier projects based on the factors listed above. The following eleven projects would cost an estimated \$3.6 billion. The apprehension figures in the chart below are current through July 31, 2019.

JS Rank	CBP Border Group Priority	Sector / Project	Miles	Apprehension FY19TD (FY18 Total)	Military Personnel in Sector / MSC Sites	Land Type	Projected Cost (\$M)
1	8	El Paso 8 Sect. 1 & 2	12	167,395 (31,561)	1,512 / ■	Non-Fed	\$164M
2	30	El Paso 2	24			FED	\$476M
3	4	San Diego 4 Sect. 1 & 2	3.5	51,296 (38,591)	237 / ■	FED	\$67M
4	11	San Diego 11	3			Non-Fed	\$57M
5	10/27	Yuma 10/27	31	65,362 (26,244)	338 / ■	FED	\$527M
6	6	Yuma 6 Sect. 1 & 2	3			FED	\$65M
*NR	10	Yuma 2	2			FED	\$40M
**NR	27	Yuma 3	31			FED	\$630M
7	7	Laredo 7	52	32,717 (32,641)	304 / ■	Non-Fed	\$1,268M
8	5	El Centro 5	1	30,464 (29,230)	102 / ■	Non-Fed	\$20M
9	9	El Centro 9	12			Non-Fed	\$286M
Total Projects: 11; Total Miles: 175; Total Cost: \$3.6B							

\* Yuma 2 was not included in the CJCS priority ranking; however, like Yuma 10/27, Yuma 2 is entirely on the Barry M. Goldwater Range.

\*\*Yuma 3 was not included in the CJCS priority ranking due to expected availability of funds for construction under Section 2808. The CJCS assessment did confirm that the border project was necessary to support the use of the armed forces.

### **Assessment by CBP Sector**

All information on the deployment of military personnel is current as of August 13, 2019. There are 2,979 active duty personnel and 2,802 National Guard personnel deployed at the southern border. Active-duty and National Guard support is being provided in all nine CBP Sectors.

For the active duty component of DoD support, 679 personnel are undertaking logistics, transportation, maintenance, and analyst support as a backfill for National Guard personnel in support of CBP's Operation Guardian Support (CBP's named mission for securing the southwest border). There are also 300 active duty personnel providing support at CBP detention facilities at the southern border, including by providing transportation support (160 personnel) and assisting with welfare checks and migrant feeding (100 personnel). The remaining 40 active-duty personnel provide command and control for this support. All other active duty personnel providing support in the CBP Sectors listed below are undertaking detection and monitoring, force protection, engineering, and command and control missions.

National Guard personnel are undertaking aerial support, infrastructure and maintenance support, detection and intelligence support, and logistics support missions. The Texas National Guard is also providing additional support at detention centers and at ports of entry in Texas, as highlighted below.

- **El Paso Sector Projects:**

- The El Paso Sector has the largest presence of military personnel. There are **877** active-duty and **635** National Guard Service members in this sector. The active duty forces include a crisis response force and associated UH-60 helicopter crews stationed at Fort Bliss on a 48-hour prepare-to-deploy order in support of DHS and crews associated with an additional four UH-60 helicopter crews and one UH-72 helicopter crew undertaking detection and monitoring missions. The crisis response force is deployable across the Southwest Border. The 635 National Guard personnel in this Sector also include 386 Texas National Guard personnel deployed in support of CBP detention operations and operations at ports of entry.
- The El Paso Sector has a significant number of deployed mobile surveillance camera sites ■■■ due to the rugged terrain, which limits visibility, and the sparse existing pedestrian fencing, which limits CBP's ability to monitor large areas and respond quickly.
- The El Paso Sector has the second largest number of apprehensions of any CBP sector.
- The first project (El Paso 8 Section 1 and El Paso 8 Section 2) are expected to channel migrants to the Antelope Wells port of entry and increase what are currently fast vanishing times due to the proximity of Highway 81. Further, the rugged terrain on both sides of the border presents hazards for both migrants and CBP agents, which a barrier would mitigate by discouraging border crossings in this area.
- The second project (El Paso 2) comprises 24 miles of non-contiguous barrier, including sections near the Antelope Wells port of entry. Although a lower priority for CBP, the CJCS concluded that packaging this project with the other two El Paso Sector projects would best support the use of the armed forces by bolstering the effectiveness of the first two projects in this high-apprehension sector.
- The CJCS assesses that the additional fencing contemplated for the El Paso Sector will lessen the high level of need for DoD to operate mobile surveillance camera sites.



- The additional fencing contemplated for the El Paso Sector may also allow DoD to focus monitoring and detection assets on unfenced areas within the El Paso Sector or in other CBP Sectors.
- The CJCS noted that Operation Hold the Line, which surged personnel, technology, and physical barriers in the El Paso Sector, helped to substantially decrease the number of apprehensions between 1993 and 2015.

- **San Diego Sector Projects:**

- There are **179** active duty and **58** National Guard personnel in the San Diego Sector. They operate [REDACTED] mobile surveillance camera sites in the sector.
- Apprehensions in the San Diego Sector are increasing, with the number of apprehensions in FY 2019 (**51,296**) already exceeding those in FY 2018 (38,581).
- The San Diego Sector is particularly challenging for migrant interdiction due to the highly urbanized and highly mountainous areas within the Sector, both of which allow for quick vanishing times.
- The first San Diego Sector project (San Diego 4 Section 1 and San Diego 4 Section 2) would add pedestrian fencing in rugged terrain east of the highly urbanized areas of Otay Mesa and Chula Vista. The second project (San Diego 11) would add new secondary pedestrian fencing on either side of the Tecate port of entry, which is also in an area of rugged terrain where migrants have access to Highway 94.
- The CJCS assesses that the projects contemplated for the San Diego Sector are expected to channel migrants to existing ports of entry, thereby reducing the need for DoD detection and monitoring between ports of entry.
- The additional fencing contemplated for the San Diego Sector may also allow DoD to focus monitoring and detection assets on unfenced areas within the San Diego Sector or in other CBP Sectors.
- The CJCS noted that Operation Gatekeeper, like Operation Hold the Line, introduced border barriers to the San Diego Sector in 1992, helping to decrease apprehensions 95 percent by 2015.

- **Yuma Sector Projects:**

- There are currently **244** active duty military personnel and **94** National Guard personnel deployed in the Yuma Sector. Most are operating [REDACTED] mobile camera systems.
- Apprehensions are on the rise in this Sector. So far in FY 2019, there have been **65,362** apprehensions. In all of FY 2018, there were 31,393 total apprehensions.
- Yuma 10/27 and Yuma project 2 are located on the Barry M. Goldwater Range. It is an active DoD military installation largely under the administrative control of the Department of the Navy. Construction of additional border barriers on the Barry M. Goldwater Range will impede the passage of migrants onto a live-fire range and otherwise divert migrants to ports of entry.
- Yuma project 2 and Yuma project 3 were requested as part of DHS's request for DoD to build border barrier under Section 284 but not approved, and were excluded from the Joint Staff border barrier assessment.



- Additional fencing in the Yuma Sector will reduce the need for DoD to operate mobile surveillance camera sites that monitor unlawful crossings in the area and allow such assets to be reallocated elsewhere.
- The additional fencing contemplated for the Yuma Sector may also allow DoD to focus monitoring and detection assets on unfenced areas within the Yuma Sector or in other CBP Sectors.
- **Laredo Sector and El Centro Sector Projects:**
  - There are currently **511** active duty military personnel and **390** National Guard personnel deployed in the Laredo Sector. Of the **390** National Guard personnel, there are **70** Texas National Guard personnel deployed in the Laredo Sector in support of CBP detention operations and operations at ports of entry. Active duty personnel operate ■■■ mobile surveillance camera sites in the Laredo Sector. There are also two UH-72 helicopter crews performing detection and monitoring missions in the Laredo Sector.
  - Apprehensions are up slightly in this Sector. So far in FY 2019, there have been **32,717** apprehensions. They have already exceeded the total number of apprehensions in FY 2018 (32,641).
  - There are currently **46** active duty personnel and 56 National Guard personnel deployed in the El Centro Sector. Active duty personnel also operate ■■■ mobile surveillance camera sites in this sector.
  - Apprehensions are on the rise in this Sector. So far in FY 2019 there have been **30,464** apprehensions. In all of FY 2018, the total number of apprehensions were 29,230.
  - Additional fencing in these sectors would reduce the need for DoD support to DHS in these areas and enable DoD to redirect personnel and assets to other areas without barriers.

### **Determinations**

- The forgoing data and analysis provide a basis for concluding that, in accordance with Section 2808, the above eleven MILCON projects are necessary to support the use of the armed forces in connection with the national emergency declared by the President on February 15, 2019. The memorandum at TAB A memorializes and implements this determination.
  - DoD has long provided support to DHS in executing its border enforcement and security mission, but the need for such support has become more acute given the significant increase in border crossing apprehensions. This history of DoD support, and the more acute crisis, has been outlined in congressional testimony (e.g., DASD Salesses testimony before the House of Representatives Committee on Homeland Security's Border Security, Facilitation, and Operations Subcommittee on June 20, 2019).
  - The eleven projects are necessary to support the use of the armed forces because, as the forgoing analysis demonstrates, the construction of such physical barriers will deter illegal entry, increase the vanishing time of illegal border crossers, and channel migrants to points of entry, all of which will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers or, if the surplus DoD personnel are no longer needed, to other national defense missions.
  - Although these projects may reduce the overall need for DoD support on the border, they likely will not eliminate it. Instead, they will allow DoD to meet DHS's needs with fewer



personnel and resources. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

**TAB**

**I**

Secretary

U.S. Department of Homeland Security  
Washington, DC 20528



Homeland  
Security

March 20, 2019

The Honorable Patrick M. Shanahan  
Secretary of Defense (acting)  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Acting Secretary Shanahan:

Thank you for the ongoing support provided by the dedicated men and women of the Department of Defense (DoD) in helping to secure the Nation's borders during this time of National Emergency. Border Security is National Security. DoD's contributions to the national effort to address the historic surge in illegal migration along the southwest border are of the utmost importance now and will continue to be going forward. I cannot overstate my appreciation for your support.

This letter provides the following information regarding your request of February 18, 2019, to support your evaluation of the use of authorities under 10 U.S.C § 2808:

- A prioritized list of proposed border construction projects that will improve the effectiveness and efficiency of DoD personnel supporting Customs and Border Protection (CBP) in securing the southern border;
- A description of the prioritization methodology and supporting statistics; and
- Our analysis of the impact of construction on the effectiveness and efficiency of the border security mission.

On February 15, 2019, the President issued a *Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States*. The proclamation states that "the current situation at the southern border presents a border security and humanitarian crisis that threatens core national security interests and constitutes a national emergency." In order to provide "additional authority to the Department of Defense to support the Federal Government's response to the emergency at the southern border," the President declared "that this emergency requires use of the Armed Forces and, in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), that the construction authority provided in section 2808 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments."



OSD002762-19/CMD003393-19

The Honorable Patrick M. Shanahan  
Page 2

The Department of Homeland Security (DHS) continues to face a surge of migrant activity at the border as well as drug and human trafficking. This surge, including the recent phenomenon of large groups of migrants organized into caravans, has placed a tremendous strain on CBP's limited resources. Apprehending and addressing the humanitarian issues presented by these large groups pulls frontline personnel away from regular border enforcement activity, thereby placing border security at risk. Further, this surge is diverting critical homeland security resources away from high priority threats and hampering our efforts to stop transnational criminal organizations (TCO) from compromising our Nation's security. In response to recent requests for assistance from my Department, DoD has provided services and resources to improve national security by aiding the border security mission.

DoD has provided critical support to the border security mission which has been instrumental in making both agents and troops on the ground more efficient by providing the crucial situational awareness. This situational awareness makes agents and troops more effective by allowing DHS and DoD to focus resources in areas with greater threats. The engineering support DoD provides is essential to designing and constructing roads for improved access both to, and laterally along the border. DoD has provided support with other projects such as construction of infrastructure that impedes and denies the illegal entrants the ability to enter the United States easily. DoD protection support assists as a force multiplier by providing a visual deterrent to contemplated hostile actions by bad actors against CBP personnel and deters attempted breaches of the international boundary.

DHS continues to need support from the armed forces to accomplish our Homeland Security mission. To enhance the effectiveness and efficiency of the armed forces support, I recommend construction to extend the border barrier system.

Prioritized List of Proposed Construction Projects that DHS Believes Will Improve the Effectiveness and Efficiency of DoD Personnel Supporting CBP in Securing the Southern Border:

*Project Areas*

Priority projects in order of effectiveness:

- San Diego Sector Priority 4:
  - Approximately 1.5 miles of new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE) extending east.
  - Approximately 2 miles of new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE extending east.
- El Centro Sector Priority 5:
  - Approximately 1 mile of new secondary pedestrian fence system starting 0.5 mile west of Calexico West POE extending 1 mile east of the Calexico West POE.



The Honorable Patrick M. Shanahan  
Page 3

- Yuma Sector Priority 6:
  - Approximately 1 mile new primary pedestrian fence system starting at Andrade POE and extending half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile.
  - Approximately 2 miles new secondary pedestrian fence system starting half mile east of monument marker 208 and extending east to the Colorado River then resuming on the east side of the Colorado river and extending south for approximately one mile.
- Laredo Sector Priority 7:
  - Approximately 52 miles new primary pedestrian fence system starting extending from Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.
- El Paso Sector Priority 8:
  - Approximately 6 miles new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extends 2 miles east of monument marker 63.
  - Approximately 6 miles new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extends 2 miles east of monument marker 63.
- El Centro Sector Priority 9:
  - Approximately 12 miles new secondary pedestrian fence system starting 1.5 miles west of monument marker 223 and ending at monument marker 221 and resumes 1 mile east of Calexico West POE and extends for 3 miles.
- Yuma Sector Priority 10 & 27:
  - Approximately 31 miles new secondary pedestrian fence system on the Barry M. Goldwater Range.
- Yuma Sector Priority 10:
  - Approximately 0.5 miles new primary pedestrian fence system starting 6 miles north of the San Luis POE and extends south approximately a half mile.
  - Approximately 7 miles new primary pedestrian fence system in place of existing vehicle barriers starting 6 miles south of monument marker 206 and extending 8 mile south along the Colorado River.
  - Approximately 20 miles new and replacement secondary pedestrian fence system starting at monument marker 209 extending to half mile east of monument marker 208 and resuming 1 mile south of monument marker 206.
- San Diego Sector Priority 11:
  - Approximately 3 miles new secondary pedestrian fence system starting 2 miles west of Tecate POE and extends to 1.5 miles east of Tecate POE.
- Laredo Sector Priority 12:
  - Approximately 75 miles new primary pedestrian fence system starting 1 mile North East of Laredo – Texas Mexican Railway International Bridge POE and extends 75 miles south.

The Honorable Patrick M. Shanahan  
Page 4

DHS has determined that border barriers are most effective when constructed as part of a system, anchored by the barrier, such as pedestrian fencing, which includes a linear ground detection system, and complemented with lighting with imbedded cameras and roads. In areas protected by both primary and secondary barriers, the road sits between the physical barriers. These interdependent investments are engineered to alter the border environment in support of achieving operational control of the border and defending national security by achieving two objectives.

- Prevent and deter people from attempting illegal entry by convincing would-be entrants through visual indices that they cannot successfully cross through the system without being immediately detected and apprehended; and
- Contain and deny those who remain undeterred and prevent them from passing through the system or enforcement zone, thereby enabling U.S. Border Patrol (USBP) agents to bring the cross-border incursion to a successful law enforcement resolution.

This comprehensive system has proven extremely effective in deterring and impeding illegal crossings into the United States. For the first quarter of Fiscal Year 2019, San Diego, the only area with a robust system described above, interdicted known cross-border illicit activity 95 percent of the time. To that end, DHS recommends that DoD construct border barrier systems to include, and within the Project Areas set forth above: (1) new primary and/or secondary pedestrian fencing that includes a linear ground detection system; (2) replacement of existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing; (3) roads; and (4) lighting with imbedded cameras.

The new pedestrian fencing includes a linear ground detection system, which is intended to, among other functions, alert USBP agents when individuals attempt to damage, destroy or otherwise harm the barrier. The road construction includes the construction of new roads and the improvement of existing roads. The recommended lighting has an imbedded camera that works in conjunction with the pedestrian fence, and it must be supported by grid power.

Given DHS's experience and technical expertise, DHS plans to coordinate closely with DoD throughout project planning and execution on such matters as design specifications, barrier alignment and location, and other aspects of project planning and execution to support barrier construction. DHS requests the opportunity to provide concurrence on final barrier alignments and designs. As much of the proposed construction is new rather than replacement, this coordination will be especially critical to ensure USBP and DoD requirements can be met to the extent possible without adversely impacting local communities.

#### Prioritization and Sequencing Methodology

As a component of CBP, the USBP conducts its mission between POEs in varied and diverse operational environments. In so doing, the USBP has identified 12 master capabilities, executed through a combination of personnel, infrastructure, and technology, as a requirement to achieving operational control of the border. It is important to note that gaining operational control of the border will reduce DHS's requirement for DoD support.

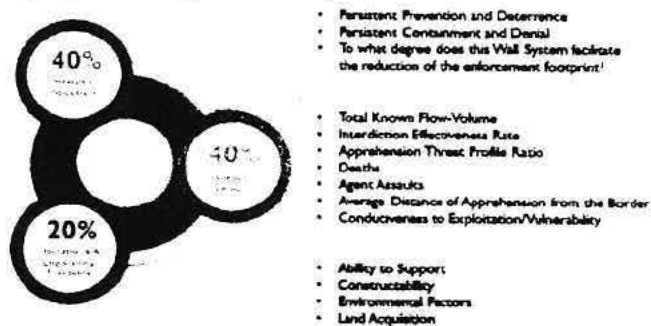


The Honorable Patrick M. Shanahan  
Page 5

The most important of these critical capabilities is impeding and denying (I&D) unlawful entry, provided primarily through the use of man-made barriers like pedestrian fencing for the purpose of deterring, containing, and/or interdicting illicit activity. The USBP has utilized barriers to successfully support its mission for many years. In order to deploy I&D capability where it would have the greatest positive impact to border security, and by extension, national security, and to ensure the deployments addressed current threats, USBP developed a prioritization methodology to inform barrier investments.

The methodology prioritizes barrier requirements by assessing variables in three pillars — *Strategic Objectives, Border Census, Construction and Engineering Feasibility* — and relies on the subject matter expertise of seasoned agents and field commanders. The process does not base priorities on any single variable, such as apprehensions or vanishing point, which is the amount of time someone crossing the border unlawfully generally has before they have access to shelter and/or transport. Instead, it considers the cumulative scoring across all three pillars as well as information provided through operational review. The result is a comprehensive decision support methodology that is both iterative and evolving; considering the latest available data and incorporating past lessons learned.

Figure 1: Three pillars for prioritizing barrier requirements



Information for each pillar was gathered by each of USBP's Sectors — which delineate a geographical area of responsibility — using: field surveys, strategic assessment of the operational need, and impact of investments; quantitative data on border activity derived from Sector field operations; and feasibility assessments developed by subject matter experts. Each border segment was scored across these three pillars, using quantitative and qualitative input and pillar weightings as defined by CBP subject matter experts.

The tool output results in a complete list of I&D priorities across the southwest border. The list is reviewed and validated by a panel of experts who make the final recommendation to the Chief of the U.S. Border Patrol. The projects identified in this letter are highest priority projects, as developed from the prioritization methodology, for which another funding source has not already been identified.

The Honorable Patrick M. Shanahan  
Page 6

### Impacts of Construction on the Effectiveness and Efficiency of the Border Security Mission

As DHS works to reduce the flow of illegal immigration and the corresponding strain on the immigration system, evidence over the last few decades demonstrates that physical barriers deter illegal immigration, channel migrants to POEs or areas where they can be apprehended more easily, and allow USBP to cover greater stretches of land with fewer agents. This, in turn, allows USBP agents to engage in other critical activities, including drug interdiction activities at POEs.

Following the construction of border barriers in San Diego, Yuma, and Tucson, the number of illegal crossings and apprehensions in each area dropped appreciably. By contrast, areas without physical barriers saw an increase in apprehensions during the same timeframe. For example, following the construction of barriers in San Diego, apprehensions in San Diego decreased by 95 percent. Tucson Sector, by contrast, did not receive a barrier and saw a significant increase in apprehensions. In 1992, Tucson Sector apprehended approximately 71,000 individuals. By 2000, apprehensions in that sector had increased by 768 percent to over 616,000. Such a dramatic shift in apprehensions clearly show the impact barriers have on the flows of illegal crossings.

Relatedly, physical barriers assist CBP with channeling migrants to POEs, where they can be processed based on available resources or to areas of the border where they can be apprehended more easily. This is especially true for family units and Unaccompanied Alien Children, who often do not have the ability to attempt to breach the border barrier. This channeling function helps ease the strain on CBP and Immigration and Customs Enforcement detention capacity and allows USBP to more effectively and strategically deploy its resources to maximize apprehensions.

The physical barrier, along with the corresponding infrastructure and technology, increases USBP's interdiction effectiveness rate — that is, the rate at which USBP apprehends aliens that have illegally crossed the border. Barriers along the southern border, such as a steel bollard wall, are most effective when constructed with complementary investments in technology and lighting to alert agents of approaches or attempts to breach the wall, in conjunction with a road or other form of infrastructure that allows USBP to respond more quickly when the sensor is triggered.

### DoD's Support to DHS and Reasons Why Barrier Construction Will Help The Armed Forces

USBP has relied on DoD to accept and execute critical missions that work towards achieving improved national security. Currently, DoD provides a wide range of support functions in support of CBP. One of its critical support functions is aviation support, which provides increased detections of illegal entries and increased situational awareness, resulting in improved operational control of the border, all of which assists troops and USBP agents on the ground. It also increases the effectiveness of agents and troops on the ground, thereby allowing DHS and DoD to better focus resources. DoD air support has also been used to move CBP personnel to rapidly respond to migrant movements.



The Honorable Patrick M. Shanahan  
Page 7

In addition to air support, DoD monitors remote video surveillance system cameras and conducts radio communications with agents in the field. This, along with the vegetation removal provided by DoD, maintains clear fields of vision, increasing the safety of troops and USBP agents, which reduces transnational criminal illicit activity. Similarly, DoD assists with infrastructure maintenance and was critical in quickly deploying concertina wire when needed — this engineering work impedes and denies the ability to enter the United States illegally. DoD likewise assists with motor transport operations and maintenance to increase vehicle readiness rates. DoD provides numerous types of administrative support which increases the operational effectiveness of USBP and improves national security. DoD assists with observation and monitoring at checkpoints and setting up, maintaining, and monitoring ground imaging sensors with USBP agents. Finally, DoD provides medical support and protection to CBP.

In general, the missions that DoD has accepted at our request can be classified in two broad categories. First, some of the DoD's support provides critical assistance at a time when it's most needed, but does nothing to fundamentally change the dynamic that creates the need for military assistance (i.e. surveillance).

The second category of support received by DoD facilitates a fundamental and enduring change to the USBP's operational capability as well as to the border environment. This type of support, once completed, allows USBP agents to achieve their mission in specific geographic areas with either no military support or with significantly reduced support in those areas. For example, large sections of the San Diego Sector's barrier system (to include the physical barriers, roads, lights, earth work, etc.) were constructed by military units. These enduring border enhancements fundamentally changed the border dynamic so profoundly that the USBP has since been able to manage border security in that targeted area without comparable military personnel support.

The border barrier projects that DHS recommends that DoD undertake pursuant to 10 U.S.C. § 2808 will fundamentally change the border dynamic, give a distinct and enduring advantage to USBP as a force multiplier, and provide agents capabilities to respond more quickly to illicit activities. The construction of the above listed projects will improve the effectiveness and efficiency of DoD personnel by allowing DoD and CBP to shift away from responding to frequent, low risk border incursions and instead concentrate a smaller, more focused set of supporting resources on monitoring, tracking, and responding to high risk activities being undertaken by TCO.

Because the requested projects will serve as force multiplier, it will also likely reduce DHS's reliance on DoD for force protection, surveillance support, engineering support, air support, logistical support, and strategic communications assistance. In other words, providing border barriers and the accompanying roads and technology will allow DoD to focus its efforts on a smaller, more focused area.

The Honorable Patrick M. Shanahan  
Page 8

Conclusion

The 10 U.S.C. § 2808 support actions being recommended by DHS today will fundamentally change the border dynamic and, as required by 10 U.S.C. § 2808, and will improve the effectiveness and efficiency of DoD personnel supporting CBP. The recommended projects facilitate the accomplishment of the border security mission by reducing the amount of support that the military would otherwise need to provide and by allowing the military to reduce the geographical and materiel scope of its support and concentrate its capabilities in ever-decreasing geographical areas.

Best Regards,



Kirstjen M. Nielsen  
Secretary

**TAB**

**J**





**UNCLASSIFIED**  
**CHAIRMAN OF THE JOINT CHIEFS OF STAFF**  
 WASHINGTON, DC 20318-9999

CM-0112-19  
 6 May 2019

**INFO MEMO**

**FOR: ACTING SECRETARY OF DEFENSE**

DepSec Info \_\_\_\_\_

**FROM: General Joseph F. Dunford Jr., CJCS** *JFD*

**SUBJECT: (U) Assessment of Whether the Construction of Barriers at the Southern Border Is Necessary to Support the Use of Armed Forces in Securing the Border**

• **(U) Summary.**

- (U) In response to your tasking memo dated April 11, 2019, this memorandum provides the Joint Staff's views on whether and how military construction projects could support the use of the armed forces in addressing the national emergency at the southern border.
- (U) Our analysis validates and expands upon the Preliminary Assessment that I provided you on February 11, 2019. The Preliminary Assessment's main findings remain valid, and form the underlying basis of analysis upon which this current assessment was built.
- (U) Based on the findings of the Preliminary Assessment and this analysis, I have concluded that military construction projects can support the use of the armed forces at the southern border. The following analysis will demonstrate how.

• **(U) Assessment Considerations.** In conducting this assessment, we considered the following factors:

- (U) The 2808 projects as proposed by the Department of Homeland Security (DHS) in their March 20, 2019 response to your February 18, 2019 request to then Secretary Nielsen (contained in Appendix 1).
- (U) The 284 projects as requested by DHS in their February 25, 2019 request for assistance (RFA), including the projects selected by you for construction in tranche 1 (contained in Appendix 1).
- (U) The projects DHS plans to complete using their FY19 appropriations and Treasury asset forfeiture funds (TFF).
- (U) Border barrier construction analysis performed by DHS and included in their March 20, 2019 response, and contained in DHS' Border Security Improvement Plan, January 4, 2018, Appendix B, US Border Patrol (USBP) Impedance and Denial Prioritization Strategy.
- (U) Past and current DoD support to DHS at the southern border.

• **(U) Consultations.** The Joint Staff consulted with DHS, Customs and Border Protection (CBP), USBP, U.S. Northern Command (USNORTHCOM), and the US Army Corps of Engineers (USACE).

SD CA	DSD SA	
SD SMA	DSD SMA	
SD MA	DSD MA	
CoS	DSD CA	
SD Action Gp	ESB Rvw	
ESR	ESD	



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- (U) Current Situation. Since my preliminary assessment in February, the situation at the border has continued to deteriorate. The following information is taken from DHS statistics, and the USBP Operations and Intelligence briefing to J35 on April 29, 2019.
  - (U) Statistics for USBP apprehensions at the southern border between ports of entry (POE) include single adults, unaccompanied children, and family units. The number of apprehensions between POEs increased from 47,984 in January 2019, to 66,884 in February 2019, to 92,607 in March 2019. For context, the total USBP apprehensions between POEs in March 2016, 2017, and 2018 combined was 113,259.<sup>1</sup>
  - (U) Of the 92,607 USBP apprehensions in March 2019, 62,507 were unaccompanied children and family units, or 63% of the total.<sup>2</sup> Of those, 83% came from the northern triangle countries of Honduras, El Salvador, and Guatemala.<sup>3</sup>
  - (U) USBP FY19 apprehensions through March 2019 is 361,087. USBP apprehensions for all of FY18 was 396,579<sup>4</sup>, and FY17 was 303,916<sup>5</sup>.
  - (U) The sectors with the highest apprehension totals in FY19 through March 2019 are Rio Grande Valley (136,675) and El Paso (71,063). Yuma, San Diego, and Tucson all had approximately 32,000 apprehensions.<sup>6</sup>
  - (U) CBP anticipates April 2019 numbers to approach 100,000. While apprehensions typically decrease in the summer months, CBP anticipates approximately 4,000-5,000 apprehensions per month per sector through the summer. This is in keeping with historical averages and trends over the past 5 years.
  - (U) Recent surge in monthly apprehension levels have placed considerable strain on CBP detention facilities, and CBP has had to dedicate more agents to migrant processing. Approximately 40% of USBP agents are assigned to processing and detention duties every shift, with another 54% conducting administrative duties, training, or off duty. This leaves approximately 6% for operations and patrol, which equates to 330 agents to cover all 9 sectors per 8 hour shift, or 37 per sector per 8 hour shift.<sup>7</sup>
- (U) Summary of Conclusions in Preliminary Assessment. The following summarizes the key conclusions from the Preliminary Assessment.
  - (U) "Military construction projects can reasonably be expected to support the use of the armed forces by enabling the more efficient use of DoD personnel, and may ultimately reduce the demand for military support over time. The construction of

<sup>1</sup> Statistics taken from CBP's Southwest Border Migration Statistics website, <https://www.cbp.gov/newsroom/stats/sw-border-migration>

<sup>2</sup> <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>

<sup>3</sup> USBP Threat Brief: Southwest Border, USBP Intelligence Division, briefing to J35, April 29, 2019.

<sup>4</sup> <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2018>

<sup>5</sup> <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017>

<sup>6</sup> <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>

<sup>7</sup> "Border Patrol: Issues Related to Agent Deployment and Strategy Immigration Checkpoints," US Government Accountability Office Report 18-50, Nov 2017; Border Patrol Manning Document, ODASD(HDI&DSCA) 24 April 2019.



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physical barriers should reduce the challenges to CBP and, therefore, can be reasonably expected to reduce DHS requirements for DoD support.”<sup>8</sup>

- (U) “DHS cites a number of positive operational impacts of physical barriers. In general, physical barriers: contain incursions to the immediate border protecting communities; effectively reduce the enforcement footprint and compress USBP operations to the immediate border area; improve the ability to detect, identify, classify, and respond to illegal activity; physically deny terrain and increase vanishing times; provide a force multiplication effect by allowing an agent to cover a greater area of patrol more effectively.”<sup>9</sup>
- (U) The Preliminary Assessment concluded four main ways how military construction projects at the southern border can support the use of the armed forces.
  - (U) “Constructing physical barriers in areas where military personnel are deployed could allow those forces to be re-prioritized to other mission in support of DHS.”<sup>10</sup> Additionally, they could allow the DoD to re-prioritize military personnel to other NDS priority missions.
  - (U) “According to DHS, over time military construction projects along the southern border may allow for a reduction of the Title 10 force footprint and a reallocation of National Guard personnel as CBP adjusts its force allocation across the southern border to account for changes created in the flow of illegal immigration.”<sup>11</sup>
  - (U) “Border barrier projects undertaken in areas where DoD personnel are not currently deployed could also support the use of armed forces along the southern border.” Specifically, “barriers aid in directing migrant flow, assisting in making illegal immigration flows more predictable, and serve to channel illegal immigrants towards locations that are operationally advantageous to DHS,” such as ports of entry that is safer and more orderly for both the migrants and DHS agents.<sup>12</sup>
  - (U) “Military efforts to improve existing barriers have already had a positive impact on the use of the armed forces at the southern border.”<sup>13</sup> This will be expanded upon in the following analysis.
- (U) Project Analysis Approach. Considering the above conclusions in the Preliminary Assessment, the team identified four key factors with which to conduct this analysis. These additional factors, as requested by you for us to consider, are necessary to determine which

<sup>8</sup> Preliminary Assessment, 11 Feb 2019, pg 6.

<sup>9</sup> Preliminary Assessment, 11 Feb 2019, pg 3.

<sup>10</sup> Ibid, 4.

<sup>11</sup> Ibid, 5.

<sup>12</sup> Ibid, 5-6.

<sup>13</sup> Ibid, 6.



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construction projects could best support the armed forces in addressing the national emergency at the southern border. The four factors are described below.

- (U) First, we considered DHS's prioritization of projects<sup>14</sup>. DHS conducted an exhaustive analysis of Impedance and Denial (I&D) Strategy as contained in Appendix B to the DHS Border Security Improvement Plan. I&D remains a priority capability gap for USBP. As a mechanism for informing investment decisions, USBP developed a tool to score and rank each potential I&D investment across three pillars: ability to achieve USBP strategic objectives; analysis of border census data; operational and engineering feasibility of each project. Each potential I&D investment project (a total of 197 individual border segments of varying lengths across the nine southern border sectors) was scored across these three pillars, resulting in a comprehensive list of 33 border groups. These border groups, ranked 1-33, contain all 197 individual segments. DHS' recommended 2808 projects are all highly ranked, contained in border groups 4-12 (with two projects in priority 27 and 30). For context projects in border groups 1-3 are all in Rio Grande Valley Sector, many of which planned to be executed using DHS appropriations.
- (U) Second, the team considered current migrant flow as measured by monthly apprehensions in the sectors corresponding to the recommended construction projects<sup>15</sup>. History has shown migrants flows to be variable, however since the current requests for DoD support are based in large part on current and projected near future migrant flows, their inclusion for analysis was key.
- (U) Third, the team considered current troop dispositions and support missions per CBP border sector. DoD personnel are currently performing a wide range of tasks and missions, and number approximately 4,500. T32 ground support is designed to alleviate non-operational tasks from CBP agents, freeing up more to perform law enforcement duties at the border. T32 aviation support assists CBP in detection and monitoring of migrants. T10 support is primarily in a detection and monitoring role through the mobile surveillance camera (MSC) site operators. Since the inception of this mission in mid-February 2019, DoD MSC sites have assisted CBP in 7,690 migrant apprehensions, and the seizure of 2,232 lbs of illicit drugs. T10 personnel have also helped harden multiple POEs and install over 100 miles of concertina wire. Near future T10 support will also include assisting CBP in their migrant processing mission.
- (U) Finally, the team considered the type of land (federal or private) upon which the proposed projects were to be undertaken. Additional processing is required by DHS to procure land or obtain approval to construct projects on private land. This process can vary by project, by state, and by sector, which can increase the time to the start construction. The team considered the temporal implications of federal versus private land, and the impact of a potential delay in the ability to re-prioritize DoD support and concentrate CBP resources.

<sup>14</sup> DHS Border Group prioritization and analysis methodology contained in the DHS Border Security Improvement Plan (BSIP), 4 January 2018, Appendix B, U.S. Border Patrol Impedance and Denial Prioritization Strategy.

<sup>15</sup> While the analysis used in USBP I&D Strategy included an assessment of migrant flow, however that flow has shifted significantly since that assessment, this assessment considered current and projected migrant flow as a standalone factor. All apprehension data taken from the official DHS US CBP Southwest Border Migration statistics website (<https://www.cbp.gov/newsroom/stats/sw-border-migration>).



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- **(U) Summary of Project Analysis by Sector.**
  - (U) In general, construction projects in one sector of the border have ripple effects across all other sectors. This recognition drives our conclusion that any border barrier construction supports the use of the armed forces on the border to some extent, regardless of where the construction occurs relative to the current location of DoD operations. However, given finite resources, certain construction projects are more beneficial than others. To that end, you asked that I identify factors that would inform your determination that construction is necessary to support the use of the armed forces, to include providing you which specific projects to undertake. The below section summarizes the findings of our analysis and presents our recommended prioritized list of projects. The complete sector by sector analysis of each project is included in Appendix 2.
  - (U) The results of our analysis considering all recommended 2808 projects and remaining 284 projects are presented in Table 1 below. We considered the CBP Border Group Priority, apprehensions, DoD force disposition, and land type. The table, prioritized by Joint Staff rank, displays the Border Group Priority of each project, the length in miles of each project, the apprehension totals for the associated sector, DoD force totals per sector, land type for each project, and projected cost of each project. We prioritized the projects in El Paso Sector first (3 total), followed by projects in San Diego Sector (3 total), Yuma Sector projects third (6 total), the Laredo Sector project fourth (1 total), and El Centro Sector projects fifth (2 total). As requested, we also considered cost of each project, arriving at a recommended project list of 15 total projects, for 169 miles, totaling \$3.6B.

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IS Rank	CBP Border Group Priority	Sector / Project	Miles	Apprehension FY19TD (FY18 Total)	Troops in Sector / MSC Sites	Lead Type	Projected Cost (\$M)
1	8	EPT 8 Proj 1	6	71,063 (31,561)	1,363 / [REDACTED]	FED	\$123M
2	8	EPT 8 Proj 2	6			FED	\$147M
3	30	EPT 2 (284)	24			FED	\$492M
4	4	SDC 4 Proj 1	1.5	31,071 (38,591)	166 / [REDACTED]	FED	\$31M
5	4	SDC 4 Proj 2	2			FED	\$41M
6	11	SDC 11	3			FED	\$62M
7	10/27	YUM 10/27	31	31,393 (26,244)	197 / [REDACTED]	FED	\$527M
8	6	YUM 6 Proj 1	1			FED	\$21M
9	10	YUM 10 Proj 1, 2, 3	27.5			FED	\$594M
10	10	YUM 6 Proj 2	2			PRI	\$49M
11	7	LRT 7	52	18,120 (32,641)	403 / [REDACTED]	PRI	\$1274M
12	5	ELC 5	1	18,492 (29,230)	246 / [REDACTED]	PRI	\$25M
13	9	ELC 9	12			PRI	\$294M
Total Projects: 15; Total Miles: 169; Total Cost: \$3.6B							

Table 1. Recommend 2808/284 Project List 1.

- **(U) Overall Conclusion.** Based on this analysis, I have concluded that military construction projects are necessary to support the use of the armed forces. Construction of these projects will support those forces by enabling more efficient use of DoD personnel, and may ultimately reduce the demand for military support over time. Although military construction projects along the southern border may not alleviate all DHS requirements for DoD support, construction of the barrier systems should reduce the challenges to CBP and, therefore, can be reasonably expected to reduce DHS requirements for DoD support over time.
- **(U) Recommendation.** Consider the above analysis and recommended project list in making your decision as to whether construction projects are necessary to support the use of the armed forces at the southern border.

Prepared By: [PreparedBy]



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**UNCLASSIFIED//FOR OFFICIAL USE ONLY****Appendix 1 – 284 and 2808 Project Lists**

- **(U) Proposed Construction Projects under DHS, 284, and 2808 Authorities Considered in this Assessment**
  - (U) Construction projects under 284 authority as requested by DHS in their February 25, 2019 RFA. DHS requested DoD assist in the execution of 11 construction projects pursuant to authority under 10 U.S.C. 284. The total list contains 11 projects, all on federal property. You approved the three highest priority projects (Yuma 1 and 2, El Paso 1) on March 25, 2019, and modifications to those projects on April 9, 2019. The next four projects requested in the DHS RFA (El Centro 1, Tucson 1-3) have been proposed for construction using a second tranche of funding pursuant to Section 284 authority. The remaining four projects included in the DHS RFA (Tucson 4, Yuma 3, El Paso 2, and Tucson 5) have been included for consideration in this assessment, and are outlined in Table 2 below.
  - (U) Construction projects under 2808 authority as provided by DHS in their March 20, 2019 response to A/SD (Table 3). DHS requested an additional 10 projects be considered pursuant to authority under 10 U.S.C 2808. Of the 10 projects, five are on private land, and five are on federal land.
  - (U) DHS Construction Projects. Additionally, DHS has planned ten projects using their FY17/18 appropriations (three in Rio Grande Valley Sector, two in San Diego Sector, two in El Paso Sector, two in El Centro Sector, and one in Tucson Sector). DHS has also planned an additional four projects using their FY19 appropriations and Treasury Forfeiture Fund (TFF), all in Rio Grande Valley Sector and on private land.

CBP 284 Projects For Consideration in 2808 Assessment – February 25, 2019 DHS RFA					
284 Memo Pri	Border Group Priority	Sector	Projects	Land Type	Notes
8	22	TCA 4	1	DHS	For Considered in 2808 Assessment
9	27	YUM 3	1	DHS	
10	30	EPT 2	1	DHS	
11	31	TCA 5	1	DHS	
Total For Consideration: 4 Projects, 4 segments, 3 Sectors					

Table 2. Proposed Projects under 284 Authority

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CBP Prioritized 2808 Projects – March 20, 2019 DHS Memo					
2808 Memo Pri	Border Group Priority	Sector	Segments	Land Type	Troops in Sector / MSCs
1	4	SDC 4	2	FED	166 / 13
2	5	ELC 5	1	PRI	246 / 5
3	6	YUM 6	2	FED/PRI	197 / 14
4	7	LRT 7	1	PRI	403 / 10
5	8	EPT 8	2	FED	1,363 / 34
6	9	ELC 9	1	PRI	246 / 5
7	10/27	YUM 10	1	FED	197 / 14
8	10	YUM 10	3	FED	197 / 14
9	11	SDC 11	1	FED	166 / 13
10	12	LRT 12	1	PRI	403 / 10
Total For Consideration: 10 Projects, 15 segments, 5 Sectors					

Table 3. Proposed Projects under 2808 Authority



**UNCLASSIFIED//FOR OFFICIAL USE ONLY**Appendix 2 – (U) Project Analysis by Sector

- (U) El Paso Sector Projects: Joint Staff Priority 1-3
  - (U) Border Group Priority 8 project includes 12 total miles of new primary and secondary pedestrian fencing in vicinity of Antelope Wells POE. Additionally as requested, we also considered El Paso 2 (Border Group Priority 30) from the 284 RFA which includes 24 miles of vehicle barrier replacement on federal land. Although prioritized 30 of 33, the additive effect of replacing ineffective vehicle barriers with 36 miles of pedestrian fencing in the second highest apprehension sector is why we grouped these projects together. All of these projects are on federal land.
  - (U) USBP apprehensions in El Paso Sector currently rank second only behind Rio Grande Valley sector, with FY19 to date (71,063) already eclipsing FY17 and FY18 combined total (56,754). Priority 8 is expected to channel migrants to the Antelope Wells POE, and increase vanishing time associated with proximity to highway 81. The rugged terrain on both sides of the border presents numerous hazards for both migrants and agents; channeling migrants to the POE increases the safety of all personnel. Additionally, El Paso 2 from 284 RFA (Priority 30) the new pedestrian fencing in numerous non-contiguous locations along the border, including in vicinity of Antelope Wells POE, will decrease locations through which migrants can easily cross.
  - (U) The DoD currently has a total of 1,363 personnel in El Paso Sector (1,144 Title 10 and 219 Title 32). This total includes the Title 10 forces associated with RFA 7 Crisis Response Force, stationed at Fort Bliss on a 48hr prepare to deploy order. El Paso Sector also has the highest total number of MSC sites at [REDACTED]. Due to the rugged terrain presenting limited visibility, limited existing pedestrian fencing, and difficulty in CBP's ability to both monitor wide areas and respond quickly, more MSC sites are required to augment CBP in vicinity of these projects. Additional fencing in this sector will reduce the areas that migrants can cross easily, lessening the areas CBP needs to continuously monitor, thus reducing high level of need for DoD to operate MSC sites and enabling CBP agents to concentrate on smaller geographic areas. DoD personnel also recently completed hardening of the Antelope Wells POE, potentially increasing the effectiveness these proposed projects.
  - (U) For historical context, in 1993, El Paso recorded approximately 285,000 migrant apprehensions. Operation Hold the Line infused personnel, technology, and physical barriers and by 1994 had reduced apprehensions by 72%. By 2015, apprehensions were down to 14,495, an overall reduction of 95% from 1993 levels. These projects are anticipated to contribute to the same effect of reducing overall between POE apprehensions.
- (U) San Diego Sector Projects: Joint Staff Priority 4-6
  - (U) Border Group Priority 4 project includes 3.5 miles of new primary and new secondary pedestrian fencing system in vicinity of the Otay Mesa POE. Border Group Priority 11 project includes 3 miles of new secondary pedestrian fencing system in vicinity of the Tecate POE. All of these projects are on federal land.
  - (U) USBP apprehensions in San Diego Sector have increased from FY17 to current, with FY19 apprehensions to date (31,071) set to eclipse FY18 total (38,591). San



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Diego Sector is challenging due to the interspersed of highly urbanized areas and highly mountainous areas, presenting a low vanishing time in both types of terrain. Priority 4 is intended to add pedestrian fencing to rugged terrain east of the highly urbanized areas of Otay Mesa and Chula Vista. This terrain presents challenges both in detection and monitoring and apprehensions, creating a low vanishing time environment. Priority 11 adds new secondary pedestrian fencing on either side of the Tecate POE. While not highly urbanized north of Tecate, the terrain is rugged and migrants have access to highway 94, decreasing vanishing time.

- (U) The DoD currently has a total of 166 personnel (105 title 10 and 61 title 32), and operates [REDACTED] mobile surveillance camera (MSC) sites in San Diego Sector. These projects are designed to channel migrants to existing POEs, reducing the need for DoD detection and monitoring between the POEs. This would also enable CBP agents to focus less on the rugged terrain to other areas presenting low vanishing time.
- (U) For historical context, in 1992, San Diego was the epicenter of illegal migration and drug trafficking, with apprehensions exceeding 560,000. Through Operation Gatekeeper, similar to Operation Hold the Line in El Paso, apprehension levels declined to 26,290 in 2015, a 95% decrease from the 1992 levels.
- (U) Yuma Sector Projects: Joint Staff Priority 7-10
  - (U) In the Yuma Sector, DHS recommended construction of multiple segments in three Border Group Priorities. Priority 6 (2 segments) includes 3 miles of new primary and secondary pedestrian fencing in vicinity of the Andrade POE and along the Colorado River (segment 1 is on federal land, but segment 2 is on private land). Priority 10/27 includes 31 miles of new secondary pedestrian fencing on the Barry M. Goldwater Range. Priority 10 (3 segments) includes a total of 27 miles in vicinity of San Luis POE and along the Colorado River. Additionally, as requested, we included Yuma 3 (Border Group Priority 27) from the 284 RFA which includes 31 miles of vehicle barrier replacement in the Cabeza Prieta National Wildlife Refuge. Priority 10/27, 10, and Yuma 3 are all on federal land.
  - (U) Based on the remote location not near an urban area or highway, low Border Group Priority, and OSD analysis of Yuma 3 included in the 284 assessment, we did not include Yuma 3 in our Joint Staff prioritized list of construction projects.
  - (U) USBP apprehensions in Yuma Sector for FY19 to date (31,393) have already eclipsed FY18 total (26,244) and are on pace to eclipse FY18 and FY17 combined (39,091). Priority 6 and Priority 10 projects are intended to increase vanishing times associated with the urbanized areas near Yuma, San Luis, and proximity to interstate 8. Priority 10/27 along the Barry M. Goldwater range are expected to reduce the need for CBP patrols and limit potential impact to military training. However, impact to military training over the past five years has been negligible, as only 195 sorties out of a total of 255,732 sorties have been impacted (<0.1%) with only one training event cancelled.
  - (U) The DoD currently has a total of 197 personnel (103 title 10 and 93 title 32), and operates [REDACTED] MSC sites in Yuma Sector. Yuma Sector presents diverse challenges including very remote sections, and urbanized sections along the Colorado River.



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These projects are designed to focus migrants towards the POEs, enabling CBP to concentrate its agents and reduce the overall need for DoD support.

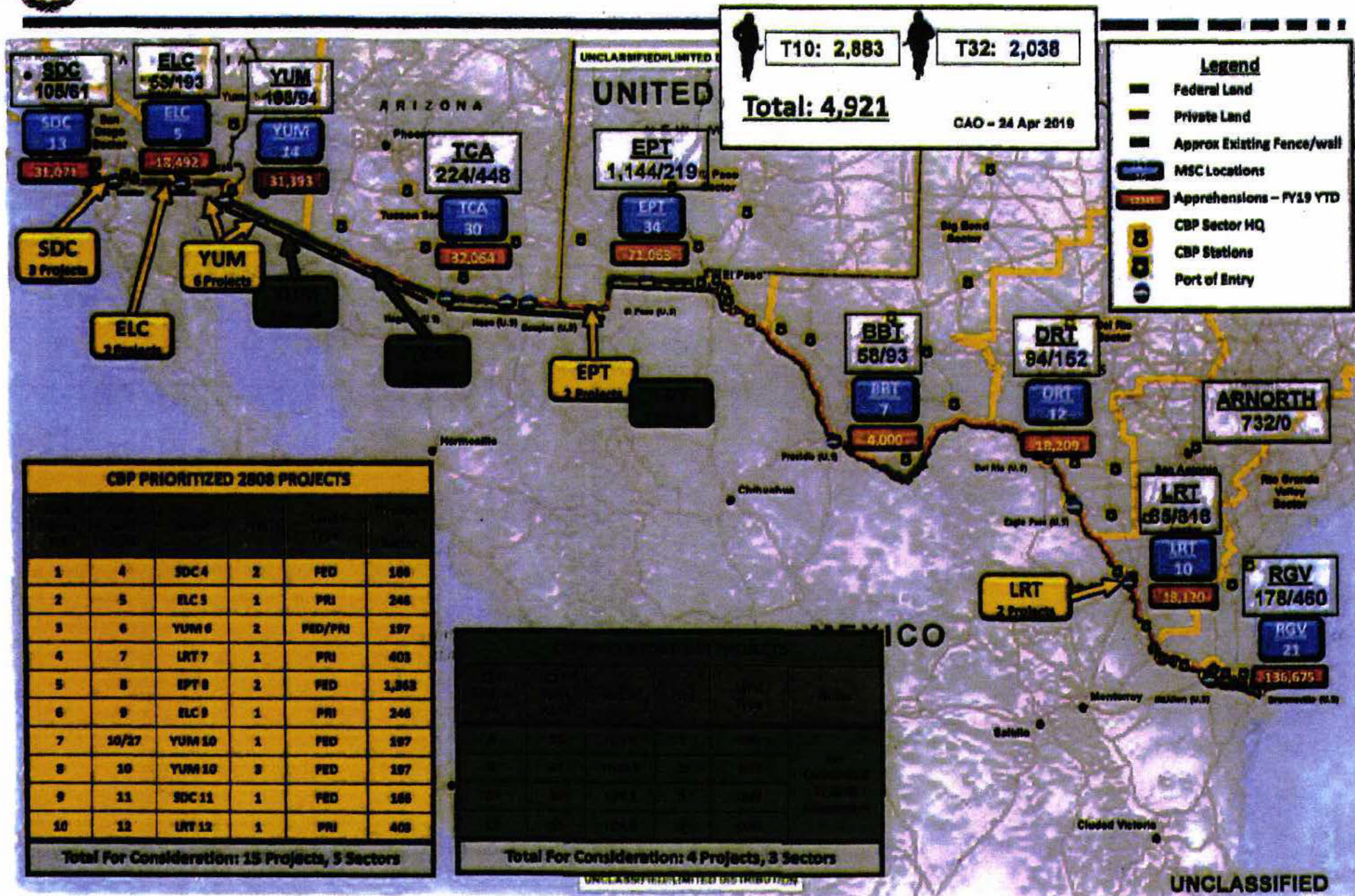
- (U) Laredo Sector Projects: Joint Staff Priority 11.
  - (U) Border Group Priority 7 includes 52 miles of new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE and extending north along the Rio Grande River. Border Group Priority 12 includes 75 miles of new primary pedestrian fence system starting from the Laredo-Texas Mexican Railway International Bridge POE and extending south. Both projects are on private land. Due to the cost of both of these projects, the Border Group Priorities, and the land status, the Joint Staff recommends Priority 7 only to maximize ability to construct projects in other sectors.
  - (U) USBP apprehensions in Laredo Sector in FY19 to date (18,120) are on pace to eclipse FY18 total (32,641). Based on the DHS construction projects in the Rio Grande Valley Sector, DHS anticipates migrant flows and illicit drug traffic to shift to areas in vicinity of Laredo. Therefore, construction projects are necessary in order to mitigate potential future increased migrant and drug flows.
  - (U) The DoD currently has 403 personnel (85 title 10 and 318 title 32), with [REDACTED] MSC sites in the sector. DoD personnel recently completed hardening of the Laredo-Columbia Solidarity POE. Overall the terrain in this sector is flat, and the Rio Grande River section associated with Priority 7 affords numerous crossing sites. Building Priority 7 would enable DoD personnel and CBP agents to focus on lower vanishing time areas associated with Laredo city.
- (U) El Centro Sector Projects: Joint Staff Priority 12-13
  - (U) Border Group Priority 5 includes 1 mile of new secondary pedestrian fence system at the Calexico West POE. Border Group Priority 9 includes 12 miles of new secondary pedestrian fence system in vicinity of Calexico West POE. Both projects are on private land.
  - (U) USBP apprehensions in El Centro Sector have also increased from FY17, with FY19 apprehensions to date (18,492) on pace to eclipse FY18 total (29,230). The highly dense urban area of Mexicali is directly across the border south of the Calexico West POE. According to USBP, El Centro has the lowest vanishing time of any sector along the southern border, and in vicinity of the Calexico West POE in particular. The urban areas of Calexico, El Centro, and access to numerous highways and interstate 8 present numerous apprehension challenges. Priority 5 and 9 are intended to channel migrants to the POE, reducing the numerous vanishing time threats along this section of border.
  - (U) The DoD currently has a total of 246 personnel (53 title 10 and 193 title 32), and operates [REDACTED] MSC sites in El Centro Sector. Due to the flat terrain in this area, fewer MSC sites are able to cover a wider section of terrain. Additional fencing in this sector would enable DoD personnel to prioritize sectors with higher migrant apprehension rates.



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# SWB 2808 Authority Construction Projects Overview



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# San Diego/El Centro/Yuma Sector Analysis

CBP PRIORITIZED 2808 PROJECTS					
Project #	Project Name	Project Type	Project Status	Project Location	Project Description
1	4	SDC 4	2	FED	166
2	5	ELC 5	1	PRI	254
3	6	YUM 6	2	FED/PRI	197
4	9	ELC 9	1	PRI	254
5	10/27	YUM 10	1	FED	197
6	10	YUM 10	3		
7	11	SDC 11	1	FED	166

Project #	Project Name	Project Type	Project Status	Project Location	Project Description
1	4	SDC 4	2	FED	166
2	5	ELC 5	1	PRI	254
3	6	YUM 6	2	FED/PRI	197
4	9	ELC 9	1	PRI	254
5	10/27	YUM 10	1	FED	197
6	10	YUM 10	3		
7	11	SDC 11	1	FED	166

**Legend**

- Federal Land
- Private Land
- Appropriated Existing Fence/Wall
- MSC Locations
- Appropriations - FY19 YTD
- CBP Sector HQ
- CBP Stations
- Port of Entry

Yuma Sector

El Centro Sector

Tucson Sector

Total 197  
103/94

YUM  
14

31,393

YUM - 6  
3.0 miles of New PRI/SEC  
Ped Fence System IVO  
Andrade POE

YUM - 10  
8 Segments, 27.5 miles  
of New PRI/SEC and  
Replace Ped Fence  
System IVO San Luis POE

YUM - 10/27  
3.1 miles of New SEC  
Fence System IVO

Total 284  
53/193

ELC  
5

18,492

ELC - 9  
12.0 miles of  
New SEC Ped  
Fence System  
IVO Calexico POE

ELC - 5  
1.0 mile of New  
SEC Ped Fence  
System IVO  
Calexico POE

SDC - 11  
3.0 miles of New  
SEC Ped Fence  
System IVO  
Tucson POE

SDC - 4  
2.8 miles of New  
PRI/SEC Ped Fence  
System IVO Olay  
Mission POE

Total 166  
105/61

SDC  
13

31,071





## El Paso Sector Analysis

CBP PRIORITIZED 2808 PROJECTS					
State	County	City or Town	Superior Project	Land Type	Tracts in District
5	8	EPT 8	2	FED	1,363

[illegible]

## El Paso Sector

**Total 1,383**

1-144V219

34

71-083

El Paso

**EPT - 8**

**2 Segments, 6 miles of  
New PRI/SEC Pad Fence  
System IVO Antelope  
Wells DOE**

### Legend

**Federal Land**

Debusky and

**Approx Existing Fence/Wall**

MacIntyre

**STATIONER**

### Apprehensions

### CBP Sector H

### CBP Stations

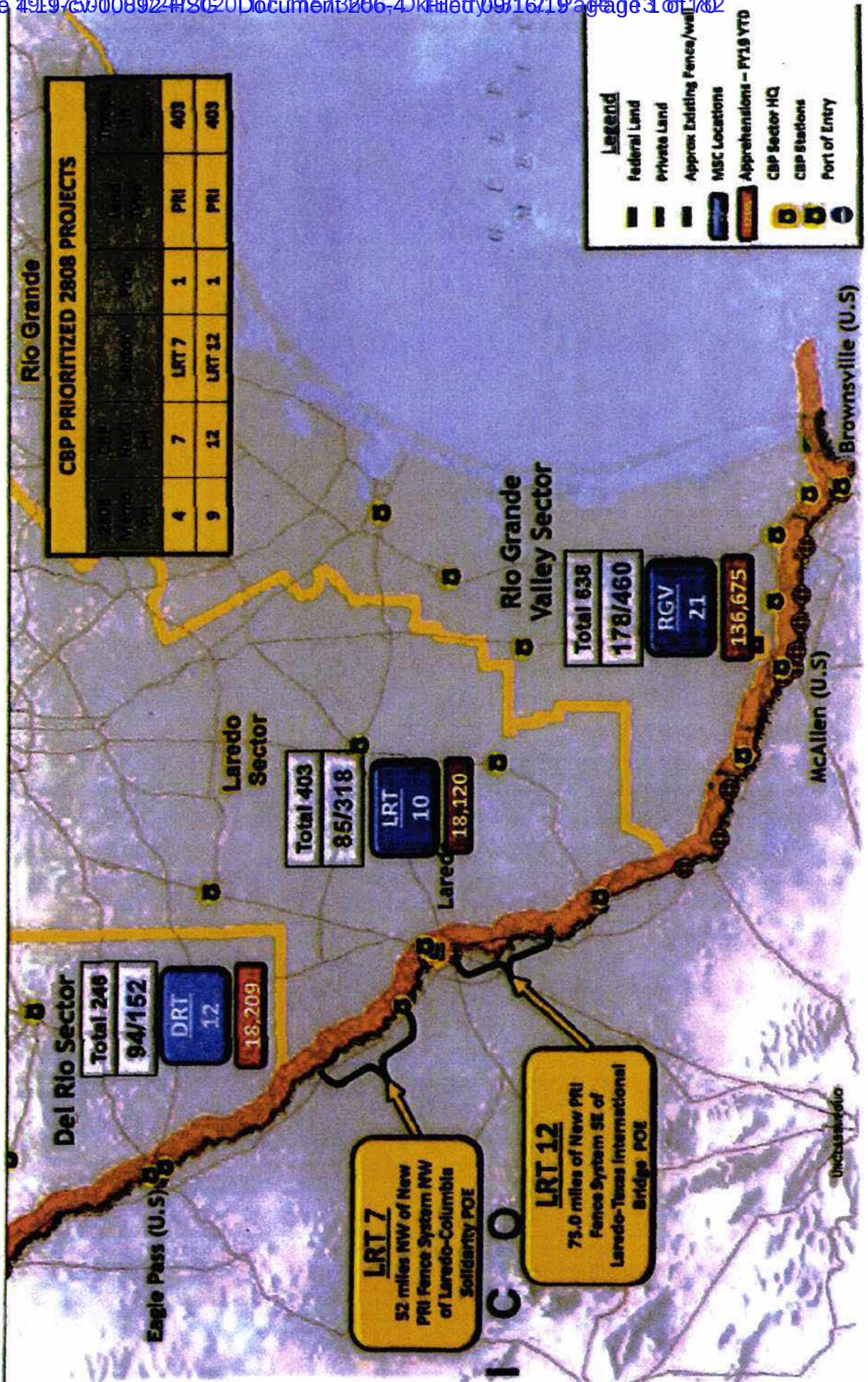
Port of Entry



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# Del Rio/Laredo/Rio Grande Sector Analysis



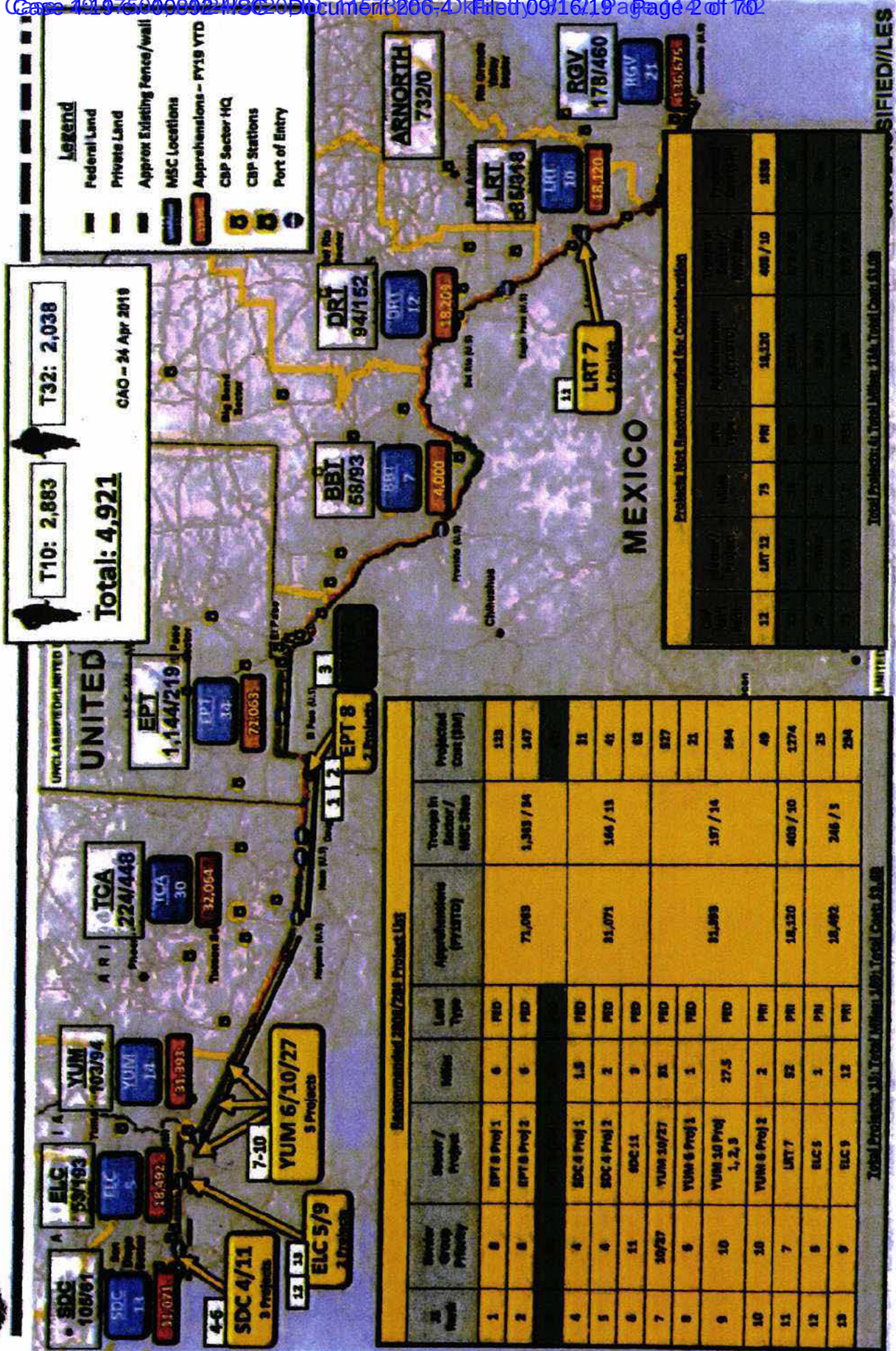
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# SWB 2808 Recommended Construction Priorities

Case 1:19-cv-00092-LJP Document 1-1 Filed 09/16/19 Page 2 of 702





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**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

July 9, 2019  
(House Rules)

## **STATEMENT OF ADMINISTRATION POLICY**

### **H.R. 2500 – National Defense Authorization Act for Fiscal Year 2020**

(Rep. Smith, D-WA)

The National Defense Authorization Act (NDAA) plays an essential role in securing our national security interests, and the Administration supports enactment of an NDAA for the 59th consecutive year. While the Administration appreciates the House Armed Services Committee's (Committee) investments in key national security priorities and its support for the men and women of the Armed Forces and their families, H.R. 2500 includes a number of provisions that raise deep concerns.

The level of funding that would be authorized by the bill—a total of \$733 billion for national defense—is \$17 billion below the Fiscal Year (FY) 2020 Budget request and would not fully support critical national security priorities. The Administration is also concerned about the bill's allocation of funds between base national defense and Overseas Contingency Operations (OCO) accounts—an allocation that exceeds the discretionary cap in place under current law. As outlined in the Budget request, the Administration prefers to limit base national defense funding to the current law's discretionary cap, while using both OCO and emergency funding to provide the additional necessary resources to support the National Defense Strategy (NDS). This approach is vital to ensuring that the Nation has the funding necessary to defend itself without another budget agreement or legislation increasing the discretionary cap.

The Administration also has significant concerns about several provisions of H.R. 2500. These provisions would pose serious challenges to continued execution of the NDS and the 2018 Nuclear Posture Review (NPR); impair the President's authorities, prerogatives, and responsibilities as Commander in Chief; impede efforts to ensure border security; undermine the Nation's defense posture; and harm the warfighter.

If H.R. 2500 were presented to the President in its current form, his advisors would recommend that he veto it.

**Modification and Clarification of Construction Authority in the Event of a Declaration of War or National Emergency (Section 2802).** The Administration strongly objects to section 2802 because it would significantly curtail the authority of the Department of Defense (DOD) under 10 U.S.C. 2808 by imposing spending caps, limiting the source of funds, constraining the Secretary of Defense's ability to waive laws that impede expeditious response to an emergency, and imposing burdensome congressional reporting requirements. Section 2808 was originally enacted to allow for the adjustment of military construction priorities in the event of a declaration of war or national emergency and this section would greatly restrict that ability.



**Modification and Technical Correction of Authority for Deployment of Members of the Armed Forces to the Southern Land Border of the United States (Section 1044).** The Administration strongly objects to this provision's 30-day advanced certification and notification requirements. The requirement would limit the Secretary of Defense's ability to use this authority to respond in a timely manner to emerging U.S. Customs and Border Protection requests for assistance. Furthermore, a requirement to give Congress advance notice of military deployments would contravene the President's constitutional authority as Commander in Chief.

**Prohibition on Use of Department of Defense Funds for Construction of a Wall, Fence, or Other Physical Barrier Along the Southern Border of the United States (Sections 1046 and 2801).** The Administration strongly objects to these provisions because they would prohibit the use of all DOD funds to design or carry out a project to construct, replace, or modify a wall, fence, or other physical barrier along the international border between the United States and Mexico, increasing risk to our homeland security. Additionally, these provisions would leave the Secretary of Defense unable to effectively support use of the Armed Forces in connection with the ongoing national emergency.

**Modification of Authority to Provide Support to Other Agencies for Counterdrug Activities and Activities to Counter Transnational Organized Crime (Section 1011).** The Administration strongly objects to this provision, which would remove DOD's authority to support United States law enforcement agencies by constructing fences to block drug smuggling corridors across international borders of the United States. The provision would also require detailed congressional notification prior to providing any support to other United States departments and agencies. Specifically, it would significantly impede DOD's ability to provide ongoing, real-time, and mission-critical linguist and intelligence analysis services; transportation of personnel, supplies, and equipment involved in active Federal investigations; the detection and monitoring of United States inbound suspect aerial and surface traffic; as well as aerial and ground reconnaissance support to law enforcement partners.

**Limitation on General and Special Transfer Authority (Sections 1001 and 1512).** The Administration strongly objects to the bill's significant recommended reductions to the DOD's general and special transfer authorities. Specifically, section 1001 of the bill would limit DOD's base budget general transfer authority to \$1 billion in FY 2020, \$4 billion below the Budget request. The Administration also objects to section 1001(c) because removing DOD's authority to reprogram resources in support of the Drug Interdiction and Counter-Drug Activities would unduly restrict the Secretary of Defense's ability to support United States interagency efforts to combat transnational criminal organizations and the influx of opioids and other dangerous narcotics that kill tens of thousands of Americans each year. Section 1512 of the bill would limit OCO special transfer authority to \$0.5 billion in FY 2020, \$4 billion below the FY 2020 Budget request. Limiting DOD's transfer authorities would severely constrain DOD's ability to shift funds between accounts to meet unforeseen or emerging military requirements.

**Reprioritization of Military Construction Funding to Unrequested Projects (Section 4601).** The Administration objects to the bill's proposed realignment of military construction funding from priority projects to other projects not included in the FY 2020 Budget request. Contrary to the Administration's fiscally responsible policy to fully fund projects, the bill proposes to incrementally fund 20 military construction projects, effectively creating an unfunded obligation of \$1.4 billion needed to fully fund these projects over time. In addition, the bill would divert \$1 billion requested in the FY 2020 Budget to fully fund priority projects, or from rescissions of prior year funds, to other unrequested projects.

**TAB**

**L**

ER162



**Policy Coordination Sheet****Subject:** Military Construction Pursuant to 10 U.S.C. § 2808**Control Number:** \*USP000120-19\*

<b>Title/Organization</b>	<b>Name</b>	<b>Coordination Requested</b>	<b>Coordination Received</b>
Acting, Secretary of the Army	Ryan McCarthy	12 Aug 2019	16 Aug 2019
Secretary of the Navy	HON Richard Spencer	12 Aug 2019	19 Aug 2019
Performing the Duties of the Under Secretary of the Air Force	John P. Roth	12 Aug 2019	16 Aug 2019
Under Secretary of Defense Comptroller/Chief Financial Officer	Elaine McCusker	12 Aug 2019	16 Aug 2019
Under Secretary of Defense for Acquisition and Sustainment	HON Ellen Lord	12 Aug 2019	17 Aug 2019
General Counsel	Paul Ney	12 Aug 2019	16 Aug 2019
Chairman, Joint Chiefs of Staff	Gen Joseph Dunford, Jr.	12 Aug 2019	19 Aug 2019
Principal Deputy Assistant Secretary of Defense for Legislative Affairs	Jamie J. Miller	12 Aug 2019	15 Aug 2019

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SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/3/19

MEMORANDUM FOR ACTING UNDER SECRETARY OF DEFENSE  
(COMPTROLLER)/CHIEF FINANCIAL OFFICER

SUBJECT: Military Construction Necessary to Support the Use of the Armed Forces in  
Addressing the National Emergency at the Southern Border

On February 15, 2019, in accordance with the National Emergencies Act, the President declared that a national emergency exists at the southern border requiring the use of the armed forces. This declaration made available, among other statutes, 10 U.S.C. § 2808, which authorizes the Secretary of Defense, without regard to any other provision of law, to undertake military construction projects not otherwise authorized by law that are necessary to support the use of the armed forces in connection with the national emergency.

Based on analysis and advice from the Chairman of the Joint Chiefs of Staff and input from the Commander, U.S. Army Corps of Engineers, the Department of Homeland Security (DHS), and the Department of the Interior and pursuant to the authority granted to me in Section 2808, I have determined that 11 military construction projects (as listed in Attachment A) along the international border with Mexico, with an estimated total cost of \$3.6 billion, are necessary to support the use of the armed forces in connection with the national emergency. These projects will deter illegal entry, increase the vanishing time of those illegally crossing the border, and channel migrants to ports of entry. They will reduce the demand for DoD personnel and assets at the locations where the barriers are constructed and allow the redeployment of DoD personnel and assets to other high-traffic areas on the border without barriers. In short, these barriers will allow DoD to provide support to DHS more efficiently and effectively. In this respect, the contemplated construction projects are force multipliers.

To undertake these Section 2808 border barrier military construction projects, I approve the use of unobligated military construction funds within the total \$3.6 billion amount appropriated for military construction projects listed in the attachments to the memorandum, and direct you to make these funds available in the manner outlined below to the Acting Secretary of the Army. Funding from projects that are outside of the United States (\$1.8 billion detailed in Attachment B) should be immediately provided to the Acting Secretary of the Army for Section 2808 execution. Funding associated with military construction projects located in the United States (including U.S. territories) (\$1.8 billion detailed in Attachment C) should be provided to the Acting Secretary of the Army once it is needed for obligation.

*Matt T. Egan*

Attachments:  
As stated

ER165



OSD009322-19/CMD011529-19



cc:

Chief Management Officer of the Department of Defense  
Secretaries of the Military Departments  
Chairman of the Joint Chiefs of Staff  
Under Secretaries of Defense  
Chief of the National Guard Bureau  
Commanders of the Combatant Commands  
General Counsel of the Department of Defense  
Director of Cost Assessment and Program Evaluation  
Inspector General of the Department of Defense  
Director of Operational Test and Evaluation  
Chief Information Officer of the Department of Defense  
Assistant Secretary of Defense for Legislative Affairs  
Assistant to the Secretary of Defense for Public Affairs  
Director of Net Assessment  
Directors of Defense Agencies  
Directors of DoD Field Activities  
Office of the Director of National Intelligence

**TAB A**

ER167

## List of Military Construction Projects

**Yuma Project 2 (\$40M):** Replacement of one segment of primary pedestrian fencing on the Barry M. Goldwater Range starting 2.5 miles east of Border Monument 198 and extending east to Border Monument 297, for a total of approximately 1.5-2 miles.

**Yuma Project 10/27 (\$527M):** Construction of approximately 31 miles of a new secondary pedestrian fence system on the Barry M. Goldwater Range.

**Yuma Project 3 (\$630M):** Replacement of 31 miles of vehicle barriers with new pedestrian fencing, beginning approximately 0.4 miles east of the Barry M. Goldwater Range and continuing for approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.

**San Diego Project 4 (\$67M):** Construction of 1.5 miles of a new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE), extending east, and construction of 2 miles of a new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE, extending east.

**Yuma Project 6 (\$65M):** Construction of approximately 1 mile of a new primary pedestrian fence system starting at Andrade POE and extending a half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile; and construction of 2 miles of a new secondary pedestrian fence system starting a half mile east of monument marker 208 and extending east to the Colorado River, and then resuming on the east side of the Colorado river and extending south for approximately one mile.

**El Paso Project 2 (\$476M):** Replacement of 23.51 miles of vehicle barriers with new pedestrian fencing in noncontiguous segments within Hidalgo and Luna Counties, New Mexico.

- The first segment begins approximately 5.1 miles east of the New Mexico/Arizona Border, continuing east for 4.55 miles.
- The second segment begins approximately 3 miles west of the Antelope Wells POE to 3 miles east of the POE for 6.12 miles.
- The third segment begins approximately 20 miles west of the Columbus POE, extending west for 12.84 miles.

**El Paso Project 8 (\$164M):** Construction of approximately 6 miles of a new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63; and construction of approximately 6 miles of a new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extending 2 miles east of monument marker 63.

**San Diego Project 11 (\$57M):** Construction of approximately 3 miles of a new secondary pedestrian fence system starting 2 miles west of the Tecate POE and extending to 1.5 miles east of the Tecate POE.

**El Centro Project 5 (\$20M):** Construction of approximately 1 mile of a new secondary pedestrian fence system starting 0.5 mile west of the Calexico West POE, extending 1 mile east of the Calexico West POE.

**Laredo Project 7 (\$1,268M):** Construction of approximately 52 miles of a new primary pedestrian fence system starting from the Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.

**El Centro Project 9 (\$286M):** Construction of approximately 12 miles of a new secondary pedestrian fence system, starting 1.5 miles west of monument marker 223 and ending at monument marker 221, and resuming 1 mile east of the Calexico West POE and extending east for 3 miles.



**TAB B**

ER169

## Attachment B - 2808 Deferrals Outside of the United States (\$ in thousands)

State/Country Title	Location Title	Award Date	Line Item Title	Fiscal Year Enactment	Amount
BAHRAIN ISLAND	SW Asia	February 2020	Fleet Maintenance Facility & TOC	2019	26,340
BELGIUM	Chievres AB	September 2020	Europe West District Superintendent's Office	2019	14,305
BULGARIA	Nevo Selo Fos	October 2020	EDI: Ammunition Holding Area	2019	5,200
CUBA	Guantanamo Bay	February 2020	Working Dog Treatment Facility Replacement	2019	9,080
ESTONIA	Unspecified Estonia	December 2020	EDI: SOF Operations Facility	2019	6,100
		December 2020	EDI: SOF Training Facility	2019	9,600
GERMANY	Baumholder	April 2021	SOF Joint Parachute Rigging Facility	2019	11,504
	East Camp Grafenwoehr	January 2020	Mission Training Complex	2019	31,000
	Panzer Kaserne	June 2021	MARFOREUR HQ Modernization and Expansion	2019	43,950
	Ramstein AB	September 2020	37 AS Squadron Operations/AMU	2017	13,437
		September 2020	EDI - KMC DABS-FEV/RH Storage Warehouses	2019	119,000
	Spangdahlem AB	July 2020	F/A-22 Low Observable/Composite Repair Fac	2017	18,000
		August 2021	EIC - Site Development and Infrastructure	2017	43,465
		March 2020	Spangdahlem Elementary School Replacement	2018	79,141
		March 2020	Upgrade Hardened Aircraft Shelters for F/A-22	2017	2,700
	Stuttgart	June 2022	Robinson Barracks Elem. School Replacement	2018	46,609
	Weisbaden	December 2022	Clay Kaserne Elementary School	2019	56,048
	Wiesbaden Army Airfield	November 2019	Hazardous Material Storage Building	2017	2,700
GREECE	Souda Bay	November 2019	EDI: Marathi Logistics Support Center	2019	6,200
		October 2019	EDI: Joint Mobility Processing Center	2019	41,650
HUNGARY	Kecskemet AB	October 2020	ERI: Airfield Upgrades	2018	12,900
		October 2020	ERI: Construct Parallel Taxiway	2018	30,000
		April 2020	ERI: Increase POL Storage Capacity	2018	12,500
ITALY	Signonella	August 2020	EDI: P-8A Taxiway and Apron Upgrades	2019	66,050
JAPAN	Camp Mctureous	April 2020	Bechtel Elementary School	2019	94,851
	Iwakuni	March 2020	Fuel Pier	2019	33,200
		January 2020	Construct Bulk Storage Tanks PH 1	2018	30,800
	Kadena AB	June 2020	Truck Unload Facilities	2019	21,400
		May 2020	SOF Maintenance Hangar	2018	3,972
		May 2020	SOF Maintenance Hangar	2017	42,823
		January 2020	APR - Replace Munitions Structures	2017	19,815
	Yokota AB	February 2020	C-130J Corrosion Control Hangar	2017	23,777
		January 2020	Construct CATM Facility	2017	8,243
		December 2019	Hangar/Aircraft Maintenance Unit	2018	12,034
		December 2019	Hangar/AMU	2017	39,466
		December 2019	Operations and Warehouse Facilities	2018	8,590
		December 2019	Operations and Warehouse Facilities	2017	26,710
	Yokosuka	March 2020	Kinnick High School Inc 1	2019	40,000
KOREA	Camp Tango	December 2020	Command and Control Facility	2019	17,500
	Kunsan AB	December 2019	Unmanned Aerial Vehicle Hangar	2018	53,000
LUXEMBOURG	Sanem	April 2021	ERI: ECAOS Deployable Airbase System Storage	2018	67,400
NORWAY	Rygge	November 2020	ERI: Replace/Expand Quick Reaction Alert Pad	2018	10,300
POLAND	Poland	September 2020	EDI: Staging Areas	2019	34,000
		September 2020	EDI: Staging Areas	2019	17,000
		June 2020	EDI: Ammunition Storage Facility	2019	52,000
		April 2020	EDI: Rail Extension and Railhead	2019	6,400
	Powidz Air Base	November 2020	EDI: Bulk Fuel Storage	2019	21,000
ROMANIA	Mihail Kogalniceanu	November 2019	EDI: Explosives & Ammo Load/Unload Apron	2019	21,651
SLOVAKIA	Malacky	December 2020	EDI - Regional Munitions Storage Area	2019	59,000
		February 2020	ERI: Increase POL Storage Capacity	2018	20,000
		November 2019	ERI: Airfield Upgrades	2018	4,000
	Sliaac Airport	November 2019	ERI: Airfield Upgrades	2018	22,000
SPAIN	Rota	January 2020	EDI: Port Operations Facilities	2019	21,590
TURKEY	Incirlik AB	August 2020	OCO: Relocate Base Main Access Control Point	2018	14,600
UNITED KINGDOM	Croughton RAF	January 2020	Croughton Elem/Middle/High School Replacement	2017	71,424
		October 2019	Main Gate Complex	2017	16,500
	Menwith Hill Station	February 2020	RAFMH Main Gate Rehabilitation	2018	11,000
	Royal Air Force Fairford	November 2019	EIC RC-135 Infrastructure	2018	2,150
		November 2019	EIC RC-135 Intel and Squad Ops Facility	2018	38,000
		November 2019	EIC RC-135 Runway Overrun Reconfiguration	2018	5,500
	Raf Fairford	September 2020	EDI - Munitions Holding Area	2019	19,000
		September 2020	EDI - Construct DABS-FEV Storage	2019	87,000
WORLDWIDE CLASSIFIED	Classified Location	January 2020	TACMOR - Utilities and Infrastructure Support	2019	18,000
WW unspecified	WW unspecified	February 2021	Planning and Design	2018	13,580
<b>Grand Total</b>					<b>1,836,755</b>

**TAB C**



## Attachment C - 2808 Deferrals in United States Territories

State/Country Title	Location Title	Award Date	Line Item Title	Fiscal Year Enactment	Amount	
GUAM	Joint Region Marianas	December 2020	Earth Covered Magazines	2019	52,270	
		September 2020	PRTC Roads	2016	2,500	
		July 2020	Water Well Field	2018	56,088	
		June 2020	Navy-Commercial Tie-In Hardening	2018	37,180	
		March 2020	Machine Gun Range	2019	50,000	
		February 2020	APR - Munitions Storage Igloos, Ph 2	2017	35,300	
		February 2020	Hayman Munitions Storage Igloos MSA 2	2019	9,800	
		January 2020	APR - SATCOM C4I Facility	2017	14,200	
		January 2021	Readiness Center	2018	30,000	
PUERTO RICO	Camp Santiago	March 2021	Company Headquarters Bldg -Transient Training	2018	47,000	
		March 2021	Dining Facility, Transient Training	2018	13,000	
		September 2020	Engineering/Housing Maintenance Shops (DPW)	2018	11,000	
		September 2020	Maneuver Area Training Equipment Site	2018	80,000	
		September 2020	National Guard Readiness Center	2018	50,000	
		September 2020	Power Substation/Switching Station Building	2018	18,500	
		Gurabo	January 2021	Vehicle Maintenance Shop	2018	28,000
		Punta Borinquen	December 2019	Ramey Unit School Replacement	2018	61,071
		San Juan	January 2021	Aircraft Maintenance Hangar (AASF)	2018	64,000
	VIRGIN ISLANDS	St. Croix	January 2021	Vehicle Maintenance Shop	2018	20,000
St. Thomas		September 2020	Power Substation/Switching Station Building	2018	3,500	
		September 2020	National Guard Vehicle Maintenance Shop Add/A	2018	3,875	
Grand Total					687,284	

## Attachment C - 2808 Deferrals in the 50 United States (\$ in thousands)

State/Country	Title	Location	Title	Award Date	Line Item Title	Fiscal Year	Enactment	Amount
ALABAMA		Anniston Army Depot		March 2020	Weapon Maintenance Shop	2019		5,200
ALASKA		Eielson AFB		February 2021	Repair Central Heat/Power Plant Boiler PH 4	2018		41,000
				January 2020	Repair Central Heat & Power Plant Boiler Ph3	2016		34,400
				January 2020	Eielson AFB Improved CATM Range	2019		19,000
		Fort Greely		January 2021	Missile Field #1 Expansion	2019		8,000
ARIZONA		Fort Huachuca		May 2020	Ground Transport Equipment Building	2018		30,000
CALIFORNIA		Channel Islands ANG		July 2020	Construct C-130J Flight Simulator Facility	2019		8,000
COLORADO		Peterson AFB		September 2020	Space Control Facility	2018		8,000
FLORIDA		Tyndall AFB		January 2020	Fire/Crash Rescue Station	2018		17,000
HAWAII		Joint Base Pearl Harbor-Hickam		September 2020	Consolidated Training Facility	2018		5,500
		Kaneohe Bay		May 2020	Security Improvements Mokapu Gate	2018		26,492
INDIANA		Crane Army Ammunition Plant		March 2020	Railcar Holding Area	2019		16,000
		Hulman Regional Airport		February 2020	Construct Small Arms Range	2018		8,000
KENTUCKY		Fort Campbell, Kentucky		February 2020	Ft Campbell Middle School	2019		62,634
LOUISIANA		Joint Reserve Base New Orleans		January 2020	NORTHCOM - Construct Alert Apron	2019		15,000
				January 2020	NORTHCOM - Construct Alert Facilities	2019		24,000
MARYLAND		Fort Meade		June 2020	Cantonment Area Roads	2019		16,500
		Joint Base Andrews		June 2020	PAR Relocate Haz Cargo Pad and EOD Range	2019		37,000
				January 2020	Child Development Center	2019		13,000
MISSISSIPPI		Jackson IAP		August 2020	Construct Small Arms Range	2018		8,000
NEW MEXICO		Holloman AFB		March 2020	MQ-9 FTU Ops Facility	2019		85,000
		White Sands		February 2020	Information Systems Facility	2019		40,000
NEW YORK		U.S. Military Academy		June 2020	Engineering Center	2019		95,000
				June 2020	Parking Structure	2019		65,000
NORTH CAROLINA		Camp Lejeune, North Carolina		April 2020	2nd Radio BN Complex, Phase 2	2019		25,650
				January 2020	Ambulatory Care Center Addition/Alteration	2018		15,300
		Fort Bragg		Previously cancelled	Butner Elementary School Replacement	2016		32,944
		Seymour Johnson AFB		April 2020	KC-46A ADAL for Alt Mission Storage	2018		6,400
OKLAHOMA		Tulsa IAP		May 2020	Construct Small Arms Range	2018		8,000
OREGON		Klamath Falls IAP		February 2020	Construct Indoor Range	2018		8,000
				January 2020	Replace Fuel Facilities	2016		2,500
SOUTH CAROLINA		Beaufort		April 2020	Laurel Bay Fire Station Replacement	2019		10,750
TEXAS		Fort Bliss		January 2020	Defense Access Roads	2018		20,000
		Joint Base San Antonio		February 2020	Camp Bullis Dining Facility	2018		18,500
UTAH		Hill AFB		August 2020	Composite Aircraft Antenna Calibration Fac	2019		26,000
				January 2020	UTTR Consolidated Mission Control Center	2018		28,000
VIRGINIA		Joint Base Langley-Eustis		January 2020	Construct Cyber Ops Facility	2019		10,000
		Norfolk		January 2020	Replace Hazardous Materials Warehouse	2018		18,500
		Pentagon		Previously cancelled	Pentagon Metro Entrance Facility	2017		12,111
		Portsmouth		January 2020	Replace Hazardous Materials Warehouse	2018		22,500
				January 2020	Ships Maintenance Facility	2019		26,120
WASHINGTON		Bangor		February 2021	Pier and Maintenance Facility	2019		88,960
WISCONSIN		Truax Field		March 2020	Construct Small Arms Range	2018		8,000
Grand Total								1,075,961

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SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

February 18, 2019

The Honorable Kirstjen M. Nielsen  
Secretary of Homeland Security  
Washington, D.C. 20528

Dear Secretary Nielsen:

On February 15, 2019, the President declared that a national emergency exists at the southern border of the United States that requires the use of the armed forces, making available certain emergency authorities, including title 10, U.S. Code, Section 2808.

Section 2808 provides that, in the event of a declaration by the President of a national emergency requiring the use of the armed forces, "the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces." I have not yet decided whether use of Section 2808 is necessary.

To inform my determination whether to exercise the authority provided by Section 2808 (i.e., whether military construction projects are necessary to support such use of the armed forces), and in light of the Department of Homeland Security's (DHS) expertise in border security, I request that you provide the following:

- A list of proposed border construction projects that DHS considers to be most effective in improving the effectiveness and efficiency of DoD personnel supporting CBP and securing the southern border. DoD requests that the list be prioritized in order of effectiveness;
- Any supporting data, statistics, and analysis used to create such a construction prioritized list; and
- Any other analysis that reflects how the proposed construction projects and border barriers in general will improve the effectiveness and efficiency of DoD personnel supporting CBP and of CBP personnel in securing the southern border.

I intend to use this information, and independent advice from the Chairman of the Joint Chiefs of Staff, to inform my final decision as to whether military construction projects are necessary to support such use of the armed forces in connection with this national emergency.

A handwritten signature in black ink, reading "Patrick M. Shanahan".

Patrick M. Shanahan  
Acting



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**SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000**

**MAR 25 2019**

**MEMORANDUM FOR SECRETARY OF THE ARMY**

**SUBJECT: Construction of Roads and Fences along the U.S. Southern Border in Support of the Department of Homeland Security**

On February 25, 2019 the Secretary of Homeland Security requested that the DoD provide support to the Department of Homeland Security's (DHS) effort to secure the southern border by blocking up to 11 drug-smuggling corridors along the border, through the construction of roads and fences and the installation of lighting.

Having determined that the requirements of title 10, U.S.C. section 284, have been satisfied, I have decided to provide up to \$1B of support for Yuma Sector Projects 1 and 2 and El Paso Sector Project 1, specifically by constructing 57 miles of new 18-foot pedestrian fencing, constructing and improving roads, and installing lighting.

I have directed the Under Secretary of Defense (Comptroller)/Chief Financial Officer to transfer \$1B into the Drug Interdiction and Counter-Drug Activities, Defense, account. That \$1B will be allocated to the Department of the Army with instructions to further allocate it to the U.S. Army Corps of Engineers to undertake the DHS priority projects identified above.

The U.S. Army Corps of Engineers will be the construction agent for this support and will take all necessary action to undertake construction this fiscal year. In light of the urgent and compelling nature of the crisis at the southern border, as described by the President, Secretary of Homeland Security, and other DHS officials, you should undertake construction as quickly as possible, consistent with applicable law.

As the proponent of the requested action, Customs and Border Protection will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

My point of contact is Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security.

Patrick M. Shanahan  
Acting

cc:

Chairman of the Joint Chiefs of Staff  
Under Secretary of Defense (Comptroller) / Chief Financial Officer  
Under Secretary of Defense for Policy  
General Counsel of the Department of Defense  
Assistant Secretary of Defense for Legislative Affairs  
Assistant to the Secretary of Defense for Public Affairs  
Commander, U.S. Army Corps of Engineers

ER176



OSD001680-19/CMD003531-19



**SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000**

**APR 11 2019**

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF  
FINANCIAL OFFICER**

**SUBJECT: Preparing to Fund Military Construction Necessary to Support the Use of the Armed Forces in Addressing the National Emergency at the Southern Border**

On April 4, 2018, the President directed the Secretary of Defense to support the Department of Homeland Security (DHS) in securing the southern border, including assistance to stop the flow of deadly drugs and other contraband, gang members and other criminals, and other persons illegally entering the United States across the southern border of the United States. On February 15, 2019, the President declared that a national emergency exists at the southern border of the United States that requires the use of the armed forces, making available certain emergency authorities, including title 10, U.S.C., section 2808.

Section 2808 provides that in the event that the President declares a national emergency requiring the use of the armed forces, "the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces." I have not yet decided to undertake or authorize any barrier construction projects under section 2808.


I request that you identify, by May 10, 2019, existing military construction projects of sufficient value to provide up to \$3.6 billion of funding for my consideration. You are not to consider family housing, barracks, or dormitory projects; projects that have already been awarded; or projects that have fiscal year 2019 award dates.

I request that you consult with the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Policy, and the heads of other DoD Components as necessary to review the pool of unawarded military construction projects. Your evaluation of this pool of unawarded projects will rely heavily on prioritization from DoD Components. Your review should confirm that projects under consideration have award dates in fiscal year 2020 or later to minimize effects on readiness and to be consistent with the strategic approach in the National Defense Strategy.

ER177



Please be prepared to make the funds you have identified available if I determine that military construction is necessary to support the use of the armed forces in addressing this national emergency.

  
Patrick M. Shanahan  
Acting

cc:

Secretary of the Army

Secretary of the Navy

Secretary of the Air Force

Chairman, Joint Chiefs of Staff

Under Secretary of Defense (Acquisition and Sustainment)

Under Secretary of Defense (Policy)

Commander, U.S. Northern Command

General Counsel of the Department of Defense

Assistant Secretary of Defense (Legislative Affairs)

Assistant Secretary of Defense (Homeland Defense and Global Security)

Assistant to the Secretary of Defense for Public Affairs

Commander, U.S. Army Corps of Engineers

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**SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000**

**APR 11 2019**

**MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF**

**SUBJECT: Assessment of Whether Military Construction at the Southern Border Is Necessary to Support the Use of the Armed Forces in Addressing the National Emergency at the Southern Border**

On April 4, 2018, the President directed the Secretary of Defense to support the Department of Homeland Security (DHS) in securing the southern border, including assistance to reduce the flow of deadly drugs and other contraband, gang members and other criminals, and other persons illegally entering the United States across the southern border of the United States. On February 15, 2019, the President declared that a national emergency exists at the southern border of the United States that requires the use of the armed forces, making available certain emergency authorities, including title 10, U.S.C., section 2808.

Section 2808 provides that, in the event of a declaration by the President of a national emergency requiring the use of the armed forces, "the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces." I have not yet decided to undertake or authorize any barrier construction projects under section 2808.

No military construction funds may be obligated under section 2808 unless I determine that military construction projects are necessary to support the use of the armed forces in addressing the national emergency for which the armed forces are required. It is important that I have sufficient information upon which to make this determination. As such, by May 10, 2019, please prepare a detailed assessment, as a follow-up to your preliminary assessment of February 10, 2019, of whether and how military construction projects could support the use of the armed forces in addressing the national emergency at the southern border. In this assessment, please evaluate the following proposed construction projects:

- Projects identified by DHS in its March 20, 2019 response to my February 18, 2019 request (Attachment 1);
- DHS priority projects 4 through 11 identified in the February 25, 2019 DHS Request for Assistance Pursuant to 10 U.S.C. § 284 (Attachment 2); and
- Any other construction projects that you, or the Commander, U.S. Northern Command, believe could support the use of the armed forces in addressing the national emergency.

In making this assessment, you are requested to take into account the following:



- Any relevant DHS analysis on how such projects are expected to affect the employment of personnel along the southern border in support of the DHS border security mission, including data provided in the March 20, 2019 DHS response;
- Projects that DHS plans to complete with its 2019 appropriations and Treasury asset forfeiture funds;
- Projects that I have approved for support pursuant to 10 U.S.C. § 284 (Attachment 3);
- The nature and extent of past and current DoD support along the border (including DoD-authorized and DoD-funded National Guard support); and
- Any other relevant facts or information pertaining to how the proposed projects could support the use of the armed forces.

If possible, I also request that you assess the extent to which the proposed barrier construction projects may be expected to:

- Reduce the flow of contraband, criminals, and other persons illegally entering the United States across the southern border; and
- Divert flows of migrants to Ports of Entry or divert persons crossing the border illegally to other areas where Border Patrol agents could more successfully interdict them.

Also identify any factors that, in your military judgment, may be relevant to (1) my determination whether construction projects are necessary to support the use of the armed forces, and (2) which specific projects, if any, to undertake. Such factors may include, but are not limited to, location, land ownership, site characteristics, environmental considerations, and anticipated construction timelines.

In light of the President's April 4, 2019 proclamation and February 15, 2019 national emergency declaration, and given that defense support of civil authorities is a primary DoD mission in the 2018 National Defense Strategy, you should assume that DoD support to DHS at the southern border will continue past the end of fiscal year 2019.

You may consult with the other members of the Joint Chiefs of Staff and other DoD or DHS officials as necessary to formulate your military advice.



Patrick M. Shanahan  
Acting

Attachments:  
As stated

cc:

Secretary of the Army

Secretary of the Navy

Secretary of the Air Force

Under Secretary of Defense (Acquisition and Sustainment)

Under Secretary of Defense (Policy)

Under Secretary of Defense (Comptroller) / Chief Financial Officer

Commander, U.S. Northern Command

General Counsel of the Department of Defense

Assistant Secretary of Defense (Legislative Affairs)

Assistant Secretary of Defense (Homeland Defense and Global Security)

Assistant to the Secretary of Defense for Public Affairs

Commander, U.S. Army Corps of Engineers

Secretary

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

March 20, 2019

The Honorable Patrick M. Shanahan  
Secretary of Defense (acting)  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Acting Secretary Shanahan:

Thank you for the ongoing support provided by the dedicated men and women of the Department of Defense (DoD) in helping to secure the Nation's borders during this time of National Emergency. Border Security is National Security. DoD's contributions to the national effort to address the historic surge in illegal migration along the southwest border are of the utmost importance now and will continue to be going forward. I cannot overstate my appreciation for your support.

This letter provides the following information regarding your request of February 18, 2019, to support your evaluation of the use of authorities under 10 U.S.C § 2808:

- A prioritized list of proposed border construction projects that will improve the effectiveness and efficiency of DoD personnel supporting Customs and Border Protection (CBP) in securing the southern border;
- A description of the prioritization methodology and supporting statistics; and
- Our analysis of the impact of construction on the effectiveness and efficiency of the border security mission.

On February 15, 2019, the President issued a *Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States*. The proclamation states that "the current situation at the southern border presents a border security and humanitarian crisis that threatens core national security interests and constitutes a national emergency." In order to provide "additional authority to the Department of Defense to support the Federal Government's response to the emergency at the southern border," the President declared "that this emergency requires use of the Armed Forces and, in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), that the construction authority provided in section 2808 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments."



OSD002762-19/CMD003393-19

ER183



The Honorable Patrick M. Shanahan  
Page 2

The Department of Homeland Security (DHS) continues to face a surge of migrant activity at the border as well as drug and human trafficking. This surge, including the recent phenomenon of large groups of migrants organized into caravans, has placed a tremendous strain on CBP's limited resources. Apprehending and addressing the humanitarian issues presented by these large groups pulls frontline personnel away from regular border enforcement activity, thereby placing border security at risk. Further, this surge is diverting critical homeland security resources away from high priority threats and hampering our efforts to stop transnational criminal organizations (TCO) from compromising our Nation's security. In response to recent requests for assistance from my Department, DoD has provided services and resources to improve national security by aiding the border security mission.

DoD has provided critical support to the border security mission which has been instrumental in making both agents and troops on the ground more efficient by providing the crucial situational awareness. This situational awareness makes agents and troops more effective by allowing DHS and DoD to focus resources in areas with greater threats. The engineering support DoD provides is essential to designing and constructing roads for improved access both to, and laterally along the border. DoD has provided support with other projects such as construction of infrastructure that impedes and denies the illegal entrants the ability to enter the United States easily. DoD protection support assists as a force multiplier by providing a visual deterrent to contemplated hostile actions by bad actors against CBP personnel and deters attempted breaches of the international boundary.

DHS continues to need support from the armed forces to accomplish our Homeland Security mission. To enhance the effectiveness and efficiency of the armed forces support, I recommend construction to extend the border barrier system.

**Prioritized List of Proposed Construction Projects that DHS Believes Will Improve the Effectiveness and Efficiency of DoD Personnel Supporting CBP in Securing the Southern Border:**

***Project Areas***

Priority projects in order of effectiveness:

- San Diego Sector Priority 4:
  - Approximately 1.5 miles of new primary pedestrian fence system starting 3.6 miles east of the Otay Mesa Port of Entry (POE) extending east.
  - Approximately 2 miles of new secondary pedestrian fence system starting 3.6 miles east of the Otay Mesa POE extending east.
- El Centro Sector Priority 5:
  - Approximately 1 mile of new secondary pedestrian fence system starting 0.5 mile west of Calexico West POE extending 1 mile east of the Calexico West POE.

The Honorable Patrick M. Shanahan  
Page 3

- **Yuma Sector Priority 6:**
  - Approximately 1 mile new primary pedestrian fence system starting at Andrade POE and extending half mile west of monument marker 206, then resuming east of the Colorado River and extending south one mile.
  - Approximately 2 miles new secondary pedestrian fence system starting half mile east of monument marker 208 and extending east to the Colorado River then resuming on the east side of the Colorado river and extending south for approximately one mile.
- **Laredo Sector Priority 7:**
  - Approximately 52 miles new primary pedestrian fence system starting extending from Laredo-Columbia Solidarity POE North West for approximately 52 miles along the Rio-Grande River.
- **El Paso Sector Priority 8:**
  - Approximately 6 miles new primary pedestrian fence system in place of existing vehicle barriers starting 1.5 miles west of monument marker 64 and extends 2 miles east of monument marker 63.
  - Approximately 6 miles new secondary pedestrian fence system starting 1.5 miles west of monument marker 64 and extends 2 miles east of monument marker 63.
- **El Centro Sector Priority 9:**
  - Approximately 12 miles new secondary pedestrian fence system starting 1.5 miles west of monument marker 223 and ending at monument marker 221 and resumes 1 mile east of Calexico West POE and extends for 3 miles.
- **Yuma Sector Priority 10 & 27:**
  - Approximately 31 miles new secondary pedestrian fence system on the Barry M. Goldwater Range.
- **Yuma Sector Priority 10:**
  - Approximately 0.5 miles new primary pedestrian fence system starting 6 miles north of the San Luis POE and extends south approximately a half mile.
  - Approximately 7 miles new primary pedestrian fence system in place of existing vehicle barriers starting 6 miles south of monument marker 206 and extending 8 mile south along the Colorado River.
  - Approximately 20 miles new and replacement secondary pedestrian fence system starting at monument marker 209 extending to half mile east of monument marker 208 and resuming 1 mile south of monument marker 206.
- **San Diego Sector Priority 11:**
  - Approximately 3 miles new secondary pedestrian fence system starting 2 miles west of Tecate POE and extends to 1.5 miles east of Tecate POE.
- **Laredo Sector Priority 12:**
  - Approximately 75 miles new primary pedestrian fence system starting 1 mile North East of Laredo – Texas Mexican Railway International Bridge POE and extends 75 miles south.

The Honorable Patrick M. Shanahan  
Page 4

DHS has determined that border barriers are most effective when constructed as part of a system, anchored by the barrier, such as pedestrian fencing, which includes a linear ground detection system, and complemented with lighting with imbedded cameras and roads. In areas protected by both primary and secondary barriers, the road sits between the physical barriers. These interdependent investments are engineered to alter the border environment in support of achieving operational control of the border and defending national security by achieving two objectives.

- Prevent and deter people from attempting illegal entry by convincing would-be entrants through visual indices that they cannot successfully cross through the system without being immediately detected and apprehended; and
- Contain and deny those who remain undeterred and prevent them from passing through the system or enforcement zone, thereby enabling U.S. Border Patrol (USBP) agents to bring the cross-border incursion to a successful law enforcement resolution.

This comprehensive system has proven extremely effective in deterring and impeding illegal crossings into the United States. For the first quarter of Fiscal Year 2019, San Diego, the only area with a robust system described above, interdicted known cross-border illicit activity 95 percent of the time. To that end, DHS recommends that DoD construct border barrier systems to include, and within the Project Areas set forth above: (1) new primary and/or secondary pedestrian fencing that includes a linear ground detection system; (2) replacement of existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing; (3) roads; and (4) lighting with imbedded cameras.

The new pedestrian fencing includes a linear ground detection system, which is intended to, among other functions, alert USBP agents when individuals attempt to damage, destroy or otherwise harm the barrier. The road construction includes the construction of new roads and the improvement of existing roads. The recommended lighting has an imbedded camera that works in conjunction with the pedestrian fence, and it must be supported by grid power.

Given DHS's experience and technical expertise, DHS plans to coordinate closely with DoD throughout project planning and execution on such matters as design specifications, barrier alignment and location, and other aspects of project planning and execution to support barrier construction. DHS requests the opportunity to provide concurrence on final barrier alignments and designs. As much of the proposed construction is new rather than replacement, this coordination will be especially critical to ensure USBP and DoD requirements can be met to the extent possible without adversely impacting local communities.

#### Prioritization and Sequencing Methodology

As a component of CBP, the USBP conducts its mission between POEs in varied and diverse operational environments. In so doing, the USBP has identified 12 master capabilities, executed through a combination of personnel, infrastructure, and technology, as a requirement to achieving operational control of the border. It is important to note that gaining operational control of the border will reduce DHS's requirement for DoD support.

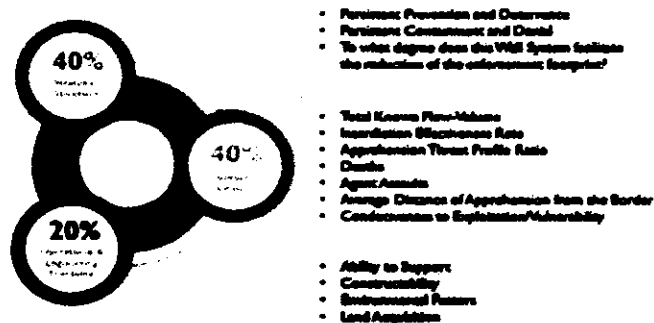


The Honorable Patrick M. Shanahan  
Page 5

The most important of these critical capabilities is impeding and denying (I&D) unlawful entry, provided primarily through the use of man-made barriers like pedestrian fencing for the purpose of deterring, containing, and/or interdicting illicit activity. The USBP has utilized barriers to successfully support its mission for many years. In order to deploy I&D capability where it would have the greatest positive impact to border security, and by extension, national security, and to ensure the deployments addressed current threats, USBP developed a prioritization methodology to inform barrier investments.

The methodology prioritizes barrier requirements by assessing variables in three pillars — *Strategic Objectives, Border Census, Construction and Engineering Feasibility* — and relies on the subject matter expertise of seasoned agents and field commanders. The process does not base priorities on any single variable, such as apprehensions or vanishing point, which is the amount of time someone crossing the border unlawfully generally has before they have access to shelter and/or transport. Instead, it considers the cumulative scoring across all three pillars as well as information provided through operational review. The result is a comprehensive decision support methodology that is both iterative and evolving; considering the latest available data and incorporating past lessons learned.

Figure 1: Three pillars for prioritizing barrier requirements



Information for each pillar was gathered by each of USBP's Sectors — which delineate a geographical area of responsibility — using: field surveys, strategic assessment of the operational need, and impact of investments; quantitative data on border activity derived from Sector field operations; and feasibility assessments developed by subject matter experts. Each border segment was scored across these three pillars, using quantitative and qualitative input and pillar weightings as defined by CBP subject matter experts.

The tool output results in a complete list of I&D priorities across the southwest border. The list is reviewed and validated by a panel of experts who make the final recommendation to the Chief of the U.S. Border Patrol. The projects identified in this letter are highest priority projects, as developed from the prioritization methodology, for which another funding source has not already been identified.

The Honorable Patrick M. Shanahan  
Page 6

### Impacts of Construction on the Effectiveness and Efficiency of the Border Security Mission

As DHS works to reduce the flow of illegal immigration and the corresponding strain on the immigration system, evidence over the last few decades demonstrates that physical barriers deter illegal immigration, channel migrants to POEs or areas where they can be apprehended more easily, and allow USBP to cover greater stretches of land with fewer agents. This, in turn, allows USBP agents to engage in other critical activities, including drug interdiction activities at POEs.

Following the construction of border barriers in San Diego, Yuma, and Tucson, the number of illegal crossings and apprehensions in each area dropped appreciably. By contrast, areas without physical barriers saw an increase in apprehensions during the same timeframe. For example, following the construction of barriers in San Diego, apprehensions in San Diego decreased by 95 percent. Tucson Sector, by contrast, did not receive a barrier and saw a significant increase in apprehensions. In 1992, Tucson Sector apprehended approximately 71,000 individuals. By 2000, apprehensions in that sector had increased by 768 percent to over 616,000. Such a dramatic shift in apprehensions clearly show the impact barriers have on the flows of illegal crossings.

Relatedly, physical barriers assist CBP with channeling migrants to POEs, where they can be processed based on available resources or to areas of the border where they can be apprehended more easily. This is especially true for family units and Unaccompanied Alien Children, who often do not have the ability to attempt to breach the border barrier. This channeling function helps ease the strain on CBP and Immigration and Customs Enforcement detention capacity and allows USBP to more effectively and strategically deploy its resources to maximize apprehensions.

The physical barrier, along with the corresponding infrastructure and technology, increases USBP's interdiction effectiveness rate — that is, the rate at which USBP apprehends aliens that have illegally crossed the border. Barriers along the southern border, such as a steel bollard wall, are most effective when constructed with complementary investments in technology and lighting to alert agents of approaches or attempts to breach the wall, in conjunction with a road or other form of infrastructure that allows USBP to respond more quickly when the sensor is triggered.

### DoD's Support to DHS and Reasons Why Barrier Construction Will Help The Armed Forces

USBP has relied on DoD to accept and execute critical missions that work towards achieving improved national security. Currently, DoD provides a wide range of support functions in support of CBP. One of its critical support functions is aviation support, which provides increased detections of illegal entries and increased situational awareness, resulting in improved operational control of the border, all of which assists troops and USBP agents on the ground. It also increases the effectiveness of agents and troops on the ground, thereby allowing DHS and DoD to better focus resources. DoD air support has also been used to move CBP personnel to rapidly respond to migrant movements.

The Honorable Patrick M. Shanahan

Page 7

In addition to air support, DoD monitors remote video surveillance system cameras and conducts radio communications with agents in the field. This, along with the vegetation removal provided by DoD, maintains clear fields of vision, increasing the safety of troops and USBP agents, which reduces transnational criminal illicit activity. Similarly, DoD assists with infrastructure maintenance and was critical in quickly deploying concertina wire when needed — this engineering work impedes and denies the ability to enter the United States illegally. DoD likewise assists with motor transport operations and maintenance to increase vehicle readiness rates. DoD provides numerous types of administrative support which increases the operational effectiveness of USBP and improves national security. DoD assists with observation and monitoring at checkpoints and setting up, maintaining, and monitoring ground imaging sensors with USBP agents. Finally, DoD provides medical support and protection to CBP.

In general, the missions that DoD has accepted at our request can be classified in two broad categories. First, some of the DoD's support provides critical assistance at a time when it's most needed, but does nothing to fundamentally change the dynamic that creates the need for military assistance (i.e. surveillance).

The second category of support received by DoD facilitates a fundamental and enduring change to the USBP's operational capability as well as to the border environment. This type of support, once completed, allows USBP agents to achieve their mission in specific geographic areas with either no military support or with significantly reduced support in those areas. For example, large sections of the San Diego Sector's barrier system (to include the physical barriers, roads, lights, earth work, etc.) were constructed by military units. These enduring border enhancements fundamentally changed the border dynamic so profoundly that the USBP has since been able to manage border security in that targeted area without comparable military personnel support.

The border barrier projects that DHS recommends that DoD undertake pursuant to 10 U.S.C. § 2808 will fundamentally change the border dynamic, give a distinct and enduring advantage to USBP as a force multiplier, and provide agents capabilities to respond more quickly to illicit activities. The construction of the above listed projects will improve the effectiveness and efficiency of DoD personnel by allowing DoD and CBP to shift away from responding to frequent, low risk border incursions and instead concentrate a smaller, more focused set of supporting resources on monitoring, tracking, and responding to high risk activities being undertaken by TCO.

Because the requested projects will serve as force multiplier, it will also likely reduce DHS's reliance on DoD for force protection, surveillance support, engineering support, air support, logistical support, and strategic communications assistance. In other words, providing border barriers and the accompanying roads and technology will allow DoD to focus its efforts on a smaller, more focused area.



The Honorable Patrick M. Shanahan  
Page 8

Conclusion

The 10 U.S.C. § 2808 support actions being recommended by DHS today will fundamentally change the border dynamic and, as required by 10 U.S.C. § 2808, and will improve the effectiveness and efficiency of DoD personnel supporting CBP. The recommended projects facilitate the accomplishment of the border security mission by reducing the amount of support that the military would otherwise need to provide and by allowing the military to reduce the geographical and materiel scope of its support and concentrate its capabilities in ever-decreasing geographical areas.

Best Regards,



Kirstjen M. Nielsen  
Secretary

Executive Secretary

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

February 25, 2019

MEMORANDUM FOR: CAPT [REDACTED]  
Executive Secretary  
Department of Defense (DoD)

FROM: Christina Bobb *Christina Bobb*  
Executive Secretary  
Department of Homeland Security (DHS)

SUBJECT: Request for Assistance Pursuant to 10 U.S.C. § 284

#### **I. Overview**

As the government department tasked with border security, the Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP), is requesting that the Department of Defense assist DHS in its efforts to secure the southern border. The Secretary has directed me to transmit this request for assistance to your attention. This memorandum supersedes the February 22, 2019 version.

In Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (IIRIRA), 8 U.S.C. § 1103 note, Congress has directed DHS to construct border infrastructure in areas of high illegal entry to deter illegal crossing of both drugs and people into the United States. Pursuant to Section 102, DHS has identified the areas set forth in Section II below as areas of high illegal entry where CBP must take action (the Project Areas).

Within the Project Areas, DHS is experiencing large numbers of individuals and narcotics being smuggled into the country illegally. The Project Areas are also used by individuals, groups, and transnational criminal organizations as drug smuggling corridors. Mexican Cartels continue to remain dominant in these areas, influencing and controlling narcotics and human smuggling operations, within their respective strongholds.

DHS must use its authority under Section 102 of IIRIRA to install additional physical barriers and roads in the vicinity of the United States border in order to deter and prevent illegal crossings within the Project Areas. The construction of border infrastructure within the Project Areas will support DHS's ability to impede and deny illegal entry and drug smuggling activities within the Project Areas.

[www.dhs.gov](http://www.dhs.gov)

ER191



Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 2

The Project Areas identified are adjacent to some of the most densely populated metropolitan areas of Mexico and are also home to some of the strongest and most violent drug cartels in the world. Deterring and preventing illegal cross-border activity will help stem the flow of illegal narcotics and entries in these areas. Similarly, the improved ability to impede, deny, and be mobile within the Project Areas creates a safer operational environment for law enforcement.

To support DHS's action under Section 102 of IIRIRA, DHS is requesting that DoD, pursuant to its authority under 10 U.S.C. § 284(b)(7), assist with the construction of fences roads, and lighting within the Project Areas to block drug-smuggling corridors across the international boundary between the United States and Mexico.

## **II. Capabilities Requested**

Within the Project Areas there is existing vehicle fence and dilapidated pedestrian fencing. Vehicle fencing is intended to stop vehicles from illegally entering the United States, but can be climbed over or under by individuals. Pedestrian fencing is intended to prevent and deter individuals and vehicles from illegally crossing into the United States.

DHS requests that DoD assist in the execution of projects, within the Project Areas set forth below, to: (1) replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing; (2) construct roads; and (3) install lighting.

The new pedestrian fencing includes a Linear Ground Detection System, which is intended to, among other functions, alert Border Patrol agents when individuals attempt to damage, destroy or otherwise harm the barrier. The road construction includes the construction of new roads and the improvement of existing roads. The lighting that is requested has an imbedded camera that works in conjunction with the pedestrian fence. The lighting must be supported by grid power.

The segments of fence within the Project Areas identified below are situated on federal property. DHS will be responsible for securing, to the extent required, any other real estate interest or instrument that is required for project execution. In the event a real estate interest or instrument that is needed for project execution cannot be obtained for a segment of fence within a Project Area in a time frame that is within the requirements of this request for assistance, the segment may be withdrawn from this request. In addition, DHS will be responsible for any applicable environmental planning and compliance to include stakeholder outreach and consultation associated with the projects.



Subject: Request for Assistance Pursuant to 10 U.S.C. § 284  
Page 3

**Project Areas:**

**II.A. El Centro Sector**

Within the United States Border Patrol El Centro Sector (El Centro Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 15 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below.

The specific Project Area identified below is located in Imperial County, California and has been identified by the Office of National Drug Control Policy (ONDCP) as a High Intensity Drug Trafficking Area (HIDTA). Multiple local transnational criminal organizations known for smuggling drugs into Calexico from Mexico using a variety of tactics, techniques, procedures, and varying concealment methods operate in this area, including *Cartel De Jalisco Nueva Generacion* (CJNG) as well as remnants of the *Beltran Leyva* Organization and *La Familia Michoacana* organizations. CJNG, based in Jalisco, was previously a faction of the *Sinaloa* Cartel. CJNG broke away from the *Sinaloa* Cartel and has become an established Mexican Cartel. The Mexican government has declared CJNG as one of the most dangerous cartels in the country.

Due to the close proximity of urban areas on both sides of the border, the El Centro Sector suffers from some of the quickest vanishing times – that is, the time it takes to illegally cross into the United States and assimilate into local, legitimate traffic. These quick vanishing times enable the illegal activities of transnational criminal organizations, whether they are smuggling people or narcotics.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 29,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Centro Sector. Also in fiscal year 2018, Border Patrol had approximately 200 separate drug-related events between border crossings in the El Centro Sector, through which it seized over 620 pounds of marijuana, over 165 pounds of cocaine, over 56 pounds of heroin, and over 1,600 pounds of methamphetamine.

The specific Project Area is as follows:

- *El Centro Project 1:*
  - The project begins approximately 10 miles west of the Calexico Port of Entry continuing west 15.25 miles in Imperial County.
  - Start coordinate: 32.63273, -115.922787; End coordinate: 32.652563, -115.662399

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

Page 4

## **II.B. Yuma Sector**

Within the United States Border Patrol Yuma Sector (Yuma Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 36 miles of existing vehicle barrier and approximately 6 miles of dilapidated pedestrian fencing with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Yuma County, Arizona.

Yuma County has been identified by the ONDCP as a HIDTA. Of particular note is the operation of the *Sinaloa* Cartel in this area. The *Sinaloa* Cartel continues to be the most powerful cartel in the country and controls illicit networks and operations in the United States. Despite the arrest of Joaquin "El Chapo" Guzman-Loera, its narcotics business has continued uninterrupted. As a result, there have been no significant changes within the *Sinaloa* Cartel's hierarchy, or any changes in the illicit operations conducted by the *Sinaloa* Cartel.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 26,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the Yuma Sector. Also during fiscal year 2018, Border Patrol had over 1,400 separate drug-related events between border crossings in the Yuma Sector, through which it seized over 8,000 pounds of marijuana, over 78 pounds of cocaine, over 102 pounds of heroin, over 1,700 pounds of methamphetamine, and over 6 pounds of fentanyl.

The replacement of ineffective pedestrian fencing in this area is necessary because the older, wire mesh design is easily breached and has been damaged to the extent that it is ineffective. Additionally, this area is notorious for border violence and narcotics smuggling. Furthermore, while the deployment of vehicle barrier in the Yuma Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States. Thus, in order to respond to these changes in tactics, DHS now requires pedestrian fencing.

The specific Project Areas are as follows:

- *Yuma Project 1:*
  - The project begins approximately 1 mile southeast of the Andrade Port of Entry continuing along the Colorado River for approximately 5 miles in Yuma County.
  - Start coordinate: 32.704197, -114.726013; End coordinate: 32.642102, -114.764632)

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284  
Page 5

- *Yuma Project 2:*
  - The project involves the replacement of two segments of primary pedestrian fencing in Yuma Sector for a total of approximately 6 miles. This includes approximately 2 miles of fencing along the Colorado River.
  - Start coordinate: 32.37755528, -114.4268201; End coordinate: 32.3579244, -114.3623999;
  - The project also includes replacement of primary pedestrian fencing approximately 17 miles east of the San Luis Port of Entry, on the Barry M Goldwater Range, continuing east for approximately 4 miles.
  - Start coordinate: 32.51419938, -114.8011175; End coordinate: 32.49350559, -114.8116619
- *Yuma Project 3:*
  - The project begins approximately 0.4 miles east of the Barry M. Goldwater Range continuing approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.
  - Start coordinate: 32.232935, -113.955211; End coordinate: 32.039033, -113.33411

### **III.C. Tucson Sector**

Within the United States Border Patrol Tucson Sector (Tucson Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 86 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Pima, Cochise, and Santa Cruz Counties, Arizona.

Pima, Cochise and Santa Cruz Counties have been identified by the ONDCP as a HIDTA. The *Sinaloa* Cartel relies on their local associates to coordinate, direct, and support the smuggling of illegal drugs and aliens from Mexico to the United States. Since Arizona is contiguous with the U.S.-Mexico International Boundary, the Tucson and Phoenix metropolitan areas are major trans-shipment and distribution points for contraband smuggling. Plaza bosses operate as a *Sinaloa* Cartel leader within their specific area of operation along the Sonora-Arizona corridor of the U.S.-Mexico International Boundary.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 52,000 apprehensions of illegal entrants attempting enter the United States between the border crossings in the Tucson Sector. Also in fiscal year 2018 Border Patrol had over 1,900 separate drug-related events between border crossings in the Tucson Sector, through which it seized over 1,600 pounds of marijuana, over 52 pounds of cocaine, over 48 pounds of heroin, over 902 pounds of methamphetamine, and over 11 pounds of fentanyl.



**Subject: Request for Assistance Pursuant to 10 U.S.C. § 284**

**Page 6**

In addition, the absence of adequate pedestrian fencing, either due to the presence of vehicle barrier only or ineffective pedestrian designs, in the Tucson sector continues to be particularly problematic as it pertains to the trafficking of illegal narcotics. Rival transnational criminal organizations frequently employ “rip crews” who leverage the remote desert environment and lack of infrastructure to steal one another’s illicit cargo resulting in increased border violence.

The terrain also provides high ground to scouts seeking to protect and warn smuggling loads being passed through the area. Transnational criminal organizations have successfully utilized this advantage in furtherance of their illicit activity and for this reason the area is in need of an improved capability to impede and deny illegal crossings or people and narcotics. In addition, the area hosts a number of tourist attractions that allow illegal activity to blend into legitimate activity; avoiding detection and evading interdiction.

The specific Project Areas are as follows:

- ***Tucson Project 1:***
  - The project includes replacement of two segments of vehicle barriers. The first segment begins approximately 2 miles west of the Lukeville Port of Entry continuing west approximately 30 miles.
  - Start coordinate: 32.038278, -113.331716; End coordinate: 31.890032, -112.850162
  - The second segment project begins approximately 3 miles east of the Lukeville Port of Entry and continues east approximately 8 miles in Pima County, Arizona.
  - Start coordinate: 31.8648, -112.76757; End coordinate: 31.823911, -112.634298
- ***Tucson Project 2:***
  - The project includes approximately 5 miles of primary pedestrian fence replacement around the Lukeville Port of Entry extending from approximately 2 miles west of the port to approximately 3 miles east of the port.
  - Start coordinate: 31.88999921, -112.850162; End coordinate: 31.8648, -112.76757

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284  
Page 7

- ***Tucson Project 3:***

- The project includes three segments of vehicle barrier replacement beginning approximately 18 miles west of the Naco Port of Entry and continuing to approximately 25 miles east of the Douglas Port of Entry (or approximately 5 miles west of the Arizona/New Mexico state line) for approximately 20 miles of non-contiguous vehicle barrier replacement in Cochise County, Arizona.
- Start coordinate: 31.333754, -110.253863; End coordinate: 31.333767, -110.250286;
- Start coordinate: 31.334154, -110.152548; End coordinate: 31.334137, -110.147464;
- Start coordinate: 31.333995, -109.453305; End coordinate: 31.332759, -109.129344

- ***Tucson Project 4:***

- The project begins approximately 9 miles east of the Nogales Port of Entry and continues eastward for approximately 30 miles with approximately 26 miles of non-contiguous vehicle barrier replacement in Santa Cruz and Cochise Counties, Arizona.
- Start coordinate: 31.333578, -110.79579; End coordinate: 31.333511, -110.775333;
- start coordinate: 31.33328, -110.70545; End coordinate: 31.333602, -110.288665)
- Note: An additional approximately 0.3 miles of new pedestrian fence could be built between the existing segmented vehicle barrier locations to fill existing gaps if appropriate real estate interest can be verified

- ***Tucson Project 5:***

- The project includes approximately 2 miles of vehicle barrier replacement beginning approximately 4.5 miles east of the Sasabe Port of Entry continuing east in six non-continuous segments for approximately 15 miles in Pima and Santa Cruz Counties, Arizona.
- Start Coordinate: 31.460175, -111.473171; End Coordinate: 31.459673, -111.471584;
- Start Coordinate: 31.453091, -111.450959; End Coordinate: 31.449633, -111.440132;
- Start Coordinate: 31.440683, -111.412054; End Coordinate: 31.437351, -111.40168;
- Start Coordinate: 31.423471, -111.358336; End Coordinate: 31.422541, -111.355444;
- Start Coordinate: 31.42221, -111.354379; End Coordinate: 31.421321, -111.351608;

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284  
Page 8

- Start Coordinate: 31.386813, -111.243966; End Coordinate: 31.385462, -111.239759)

#### **II.D. El Paso Sector**

Within the United States Border Patrol El Paso (El Paso Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 70 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Luna, Hidalgo and Doña Ana Counties, New Mexico. Luna, Hidalgo and Doña Ana Counties have been identified by the ONDCP as a HIDTA.

There are three specific transnational criminal organizations of interest operating in the El Paso Sector - the *Sinaloa* Cartel as well as remnants of the *Juarez* Cartel and the *Beltran Leyva* Organization. In the El Paso Sector the *Sinaloa* Cartel employs a variety of tactics, techniques and procedures depending upon the terrain and environment to move drugs across the border. While the *Sinaloa* Cartel has a strong presence and control of territories at the flanks of the Sector, it does not have full control of the territory throughout the El Paso Sector. The *Juarez* Cartel, traditionally a major trafficker of marijuana and cocaine, has become an active member in opium cultivation and heroin production.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 31,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Paso Sector. Also in fiscal year 2018, Border Patrol had over 700 separate drug-related events between border crossings in the El Paso Sector, through which it seized over 15,000 pounds of marijuana, over 342 pounds of cocaine, over 40 pounds of heroin, and over 200 pounds of methamphetamine.

Although the deployment of vehicle barrier in the El Paso Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States.

Thus, in order to respond to these changes in tactics, CBP now requires pedestrian fencing. Successfully impeding and denying illegal activities or transnational criminal organizations in this area is further complicated by the close proximity of New Mexico Highway 9 to the border. In some cases the highway is less than a half a mile, allowing illegal cross-border traffic to evade detection and apprehension and quickly vanish from the border area.



Subject: Request for Assistance Pursuant to 10 U.S.C. § 284  
Page 9

The specific Project Areas are as follows:

- ***El Paso Project 1:***
  - The project includes 46 miles of vehicle barrier replacement beginning approximately 17.5 miles west of the Columbus Port of Entry continuing east in non-contiguous segments to approximately 35 miles east of the Columbus Port of Entry within the Luna and Doña Ana Counties, New Mexico.
  - Start Coordinate: 31.7837, -107.923151; End Coordinate: 31.783689, -107.679049;
  - Start Coordinate: 31.783672, -107.573919; End Coordinate: 31.783741, -107.038154
- ***El Paso Project 2:***
  - The project includes 23.51 miles of Vehicle Barrier replacement in non-contiguous segments within Hidalgo and Luna Counties, New Mexico. The first segment begin approximately 5.1 miles east of the New Mexico/Arizona Border continuing east 4.55 miles.
  - Start Coordinate: 31.332323, -108.962631; End Coordinate: 31.332292, -108.885946;
  - The second segment begins approximately 3 miles west of the Antelope Wells Port of Entry to 3 miles east of the port of entry for 6.12 miles of Vehicle Barrier replacement.
  - Start Coordinate: 31.333368, -108.582412; End Coordinate: 31.333407, -108.47926;
  - The third segment begins approximately 20 miles west of the Columbus Port of Entry extending west 12.84 miles.
  - Start Coordinate: 31.783722, -108.182442; End Coordinate: 31.783708, -107.963193;

### **III. Technical Specifications**

As set forth above, DHS requires road construction, installation of lighting, and the replacement of existing vehicle barrier or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS will provide DoD with more precise technical specifications as contract and project planning moves forward.

Given DHS's experience and technical expertise, DHS plans to coordinate closely with DoD throughout project planning and execution, to include review and approval of design specifications, barrier alignment and location, and other aspects of project planning and execution.

**Subject: Request for Assistance Pursuant to 10 U.S.C. § 284**

**Page 10**

#### **IV. Sequencing**

The DHS request for assistance includes approximately 218 miles in which DHS requires road construction, the installation of lighting, and the replacement of existing vehicle fencing or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS requests that DoD's support under 10 U.S.C. § 284 address the requirements in order of priority as DoD resources allow. The DHS order of priority is as follows:

1. Yuma Sector Project 1
2. Yuma Sector Project 2
3. El Paso Sector Project 1
4. El Centro Sector Project 1
5. Tucson Sector Project 1
6. Tucson Sector Project 2
7. Tucson Sector Project 3
8. Tucson Sector Project 4
9. Yuma Sector Project 3
10. El Paso Sector Project 2
11. Tucson Sector Project 5

#### **V. Funding**

DHS requests that DoD provide the above-referenced border fences, roads, and lighting on a non-reimbursable basis as support to block drug smuggling corridors.

DHS will accept custody of the completed infrastructure and account for that infrastructure in its real property records.

DHS will operate and maintain the completed infrastructure.

#### **VI. Conclusion**

DHS requests DoD assistance under 10 U.S.C. § 284 to construct fences, roads, and to install lighting in order to block drug smuggling corridors in the Project Areas set forth above. The Projects Areas set forth above are also areas of high illegal entry under IIRIRA § 102(a), and the requested fences, roads, and lighting will assist in deterring illegal crossings in the Project Areas.

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## CHAIRMAN OF THE JOINT CHIEFS OF STAFF

WASHINGTON, DC 20318-9999

CM-0039-19

11 Feb 2019

## INFO MEMO

FOR: ACTING SECRETARY OF DEFENSE

DepSec Info \_\_\_\_\_

FROM: General Joseph F. Dunford, Jr., CJCS *4/20/210*

SUBJECT: (U//FOUO) Preliminary Assessment as to Whether Military Construction Projects on the Southern Border Could Support Use of the Armed Forces

- (U//FOUO) In response to our conversations and your follow-up written direction, this memorandum provides the Joint Staff's views on whether and how military construction projects on the southern border—in particular, physical barriers or improvements to existing barriers along parts of the border—could support the use of the armed forces in southern-border-related support of the Department of Homeland Security (DHS).
- (U//FOUO) Background. On April 4, 2018, the President directed the Department of Defense (DoD) to support DHS in securing the southern border of the United States, and to take other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into the United States. Since that date, DHS has submitted 16 separate requests for DoD support in securing the southern border. At its peak in mid-November 2018, DoD support included approximately 5,900 active duty (i.e., Title 10) military personnel and approximately 2,275 National Guard personnel serving in a Title 32 duty status who have been deployed across four southern border states. The National Guard forces are paid by DoD funds. In addition, the National Guard has executed 6,132 flight hours in support of U.S. Customs and Border Protection (CBP) in Texas, New Mexico, and Arizona.
- (U//FOUO) Current Situation. Of the 1,954 total border miles, 654 miles are currently fenced (354 miles are fenced with pedestrian fence only and an additional 300 miles are fenced with both vehicle and pedestrian fence), 127 miles are unsuitable for fencing, and 1,300 miles are unfenced. There are currently approximately 2,275 National Guard personnel serving in a Title 32 duty status deployed across nine CBP sectors along the southern border supporting CBP under CBP's Operation Guardian Support, performing various support roles such as logistics, planning, and intelligence analysis. There are currently 2,234 active duty military personnel deployed to the southern border. In addition, upon full implementation of the recently approved "detection and monitoring" Request for Assistance, an additional 1,167 active duty military personnel will be deployed across the same nine CBP sectors to operate mobile surveillance capability vehicles through September 30, 2019 and an additional 2,583 active-duty personnel will be deployed to emplace 167.5 miles of concertina wire on top of existing border barrier structures at various locations between ports of entry. While the actual number of active duty personnel will fluctuate based on operational needs and planned unit rotations, it is anticipated that approximately 5,400 active duty personnel will be deployed through March 31, 2019. According to DHS,

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each DoD person deployed “frees up” a CBP agent to be employed in a direct law enforcement capacity in areas of heavy cross-border illicit activity.

- (U//FOUO) Consultations. In making this preliminary assessment, the Joint Staff consulted with DHS, CBP, U.S. Northern Command, the National Guard Bureau, and the U.S. Army Corps of Engineers.
- (U//FOUO) DHS Approach to Border Security. The mission of CBP is to safeguard America’s borders, thereby protecting the public from dangerous people and materials while enhancing the Nation’s global economic competitiveness by enabling legitimate trade and travel. The U.S. Border Patrol’s (USBP’s) role in CBP’s border security mission is to gain, maintain, and expand operational control of the U.S. border between the ports of entry.<sup>1</sup> According to DHS, operational control is achieved by establishing situational awareness of the border area, developing the capability to impede and deny illegal entry, and effectively delivering an appropriate Law Enforcement Response and Resolution to illicit activity.<sup>2</sup> The ability to impede and deny illicit activity at the immediate border is the central element of operational control, and, over time, the USBP has learned that the most effective way to impede and deny illegal entry is through the use of border barriers.<sup>3</sup> USBP has also determined effectiveness of border barriers improves by including technological enhancements such as motion detection systems, lighting, and camera surveillance systems.
- (U//FOUO) Effectiveness of Border Barriers. Empirically, the effectiveness of border barriers, particularly those along the southern border of the United States, is challenging to quantify because reliable data is scarce and opinions are divergent. This is in no small part due to the fact that, according to the Institute for Defense Analyses, estimating the successful entry of illegal migrants into the United States between ports of entry is “...challenging because these actions are not directly observed or captured in any government administrative records.”<sup>4</sup> Moreover, “Historical measures such as the apprehension of illegal migrants and seizures of drugs do not answer the key question of whether more or less illegal entry is occurring nor do they inform the subsequent assessment of the effectiveness of law enforcement efforts designed to prevent this illegal entry.”<sup>5</sup> While many organizations have pointed out the need for better border security metrics, actual illegal migrant flow is estimated.<sup>6</sup> Despite these limitations, there remains substantial evidence, albeit largely anecdotal, that demonstrates the effectiveness of border barriers along the southern border, particularly when employed as part of a larger border security system.

<sup>1</sup> DHS Information Paper entitled, “Barriers and Border Security v2.”

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Bailey, John W. et. al., Assessing Southern Border Security, Institute for Defense Analyses, May 2016.

<sup>5</sup> Ibid.

<sup>6</sup> See Carla N. Argueta, Border Security Metrics between Ports of Entry, CRS Report No. R44386 (Washington, DC: Congressional Research Service, 2016), GAO Report 113-330T, and Bryan Roberts, Measuring the Metrics: Grading the Government on Immigration Enforcement, Bipartisan Policy Center, 2015.

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- (U) In a 2007 report, the Congressional Research Service (CRS) determined fencing or a wall to be critical to the detection and identification of illegal entry, particularly in urban areas.<sup>7</sup>
- (U) In 2008, retired Chief Ronald S. Colburn of the USBP's Yuma sector testified that fencing played a significant role in reducing arrests in the Yuma, Arizona area of responsibility from 138,000 in 2005 to about 8,300 in 2008.<sup>8</sup>
- (U) In 2017, Retired CBP Deputy Commissioner David V. Aguilar testified that, "Border Patrol agents and the Border Patrol as an organization agree that properly constructed, placed, and supported physical infrastructure is essential to border security."<sup>9</sup>
- (U//FOUO) According to DHS, USBP has utilized physical barriers to impede and deny illegal entry for many years, and barriers are the capability most frequently identified by field commanders as a requirement to establishing operational control.<sup>10</sup> Absent deterring or denying illegal entry entirely, a physical barrier forces the individuals seeking to enter illegally to operate in areas where interdiction favors law enforcement—meaning that it provides more time to execute a response.<sup>11</sup> Consequently, DHS cites a number of positive operational impacts of physical barriers. In general, physical barriers:<sup>12</sup>
  - (U//FOUO) Contain incursions to the immediate border protecting communities, businesses, and other sensitive environments.
  - (U//FOUO) Effectively reduce the enforcement footprint and compress USBP operations to the immediate border area.
  - (U//FOUO) Improve the ability to detect, identify, classify, and respond to illicit activity.
  - (U//FOUO) Physically deny terrain and increase vanishing times.
  - (U//FOUO) Reduce vulnerability in key border areas by eliminating "quick" vanishing times.
  - (U//FOUO) Provide a force multiplication effect by allowing an agent to cover a greater area of patrol more effectively.

<sup>7</sup> Blas Nuñez-Neto and Michael J. Garcia, *Border Security: The San Diego Fence*, CRS Report No. RS22026 (Washington, DC: Congressional Research Service, 2007).

<sup>8</sup> Ron Colburn, Written Testimony on Fencing along the Southwest Border (Washington, DC: U.S. Senate Committee on Homeland Security & Governmental Affairs, 2017).

<sup>9</sup> David V. Aguilar, Written Testimony on Fencing along the Southwest Border (Washington, DC: U.S. Senate Committee on Homeland Security & Governmental Affairs, 2017).

<sup>10</sup> DHS Impedance and Denial Operational Impacts Information Memo, dated 18 January 2019.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.



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- (U//FOUO) Examples of specific areas where barriers along the southern border have been effective include:<sup>13</sup>
  - (U//FOUO) San Diego, California: In 1992, San Diego was the epicenter of illegal immigration and the flow of narcotics into the United States; apprehensions for that year exceeded 560,000. Operation Gatekeeper infused personnel, technology, and tactical infrastructure (roads/barriers) and by 2010 had reduced apprehensions by 88 percent or 68,000. By 2015, apprehensions had further declined to 26,290—a 95 percent decrease over 1992 apprehension levels.
  - (U//FOUO) El Paso, Texas: In 1993, El Paso had experienced an increase in illegal immigration and apprehensions for the year that accounted for more than a quarter million persons (285,000). Operation Hold the Line initiated a similar strategy to that of Operation Gatekeeper in San Diego and, by 1994, had reduced apprehensions by 72 percent (79,000 persons). By 2015, USBP El Paso apprehended 14,495 persons, representing a 95 percent decrease over 1993 apprehension levels.
  - (U//FOUO) Tucson, Arizona: In 2000, Tucson had become the new epicenter for illegal immigration and narcotics flow as smugglers attempted to avoid operations in other areas of the country. In 2000, USBP Tucson apprehended 616,000 persons. As personnel, technology, and infrastructure were applied, apprehensions decreased as they did for San Diego and El Paso. In 2015, USBP Tucson apprehended 63,000 persons, representing a 90 percent decrease over year 2000 apprehension levels
- (U//FOUO) How Military Construction Projects Could Support the Use of the Armed Forces at the Southern Border. Based on the positive operational impacts of physical barriers, as noted above, there are several ways military construction projects at the southern border could support the use of the armed forces on the southern border in support of DHS.
  - (U//FOUO) Constructing physical barriers in areas where military personnel are deployed could allow those forces to be re-prioritized to other missions in support of DHS. Specifically, according to DHS, the following efficiencies could potentially be gained:
    - (U//FOUO) El Paso Sector: The rural areas of New Mexico in the El Paso Sector currently have limited detection capability and lack efficient law enforcement response times due to the lack of a physical barrier. The currently installed vehicle barrier prevents vehicles from driving through the remote desert, which was a regular occurrence prior to its construction. However, the vehicle barrier does not prevent pedestrian traffic from entering the United States illegally, and the El Paso Sector as a whole has recently seen a surge in illegal alien traffic. Currently, there are 115 military personnel deployed in New Mexico, and, in the near future, additional military personnel will be deployed to operate 12 mobile surveillance platforms. The deployment of 51 miles of barrier in this area would allow DoD resources to be employed more efficiently due to the physical barrier

<sup>13</sup> Each of the examples in this section are taken from the DHS Information Paper entitled, "Barriers and Border Security v2."

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preventing or redirecting those who would otherwise seek to enter the United States illegally in this area.

- (U//FOUO) Rio Grande Valley Sector: The Rio Grande Valley Sector (RGV) has the highest flow of illegal alien traffic on the southwest border. While portions of a physical barrier system have been constructed in this area, they are insufficient to impede and deny flow. Additional physical barriers in the RGV sector will address vulnerabilities—particularly in those areas where the adversary has short “vanishing times” and can quickly blend into legitimate traffic and avoid apprehension. There are currently 281 military personnel deployed in RGV, and, in the near future, additional military personnel will be deployed to operate 21 mobile surveillance platforms. The deployment of 85 miles of physical barrier in RGV sector would be a substantial contribution to the total 128-mile barrier requirement and would enable DoD resources to be used more efficiently in other remaining areas of concern.
- (U//FOUO) Yuma Sector: In the past, the Yuma Sector has been the location of increased traffic as a result of improved operational control in the San Diego and El Centro areas. Additionally, the recent threat created by the arrival of the Central American Caravan in early November has increased traffic in Yuma. Furthermore, an augmented deployment posture in the San Diego and El Centro Sectors will likely further push illicit cross-border traffic toward the Yuma Sector. While Yuma is more prepared to manage this eventuality than it was in the past, the lack of much needed infrastructure could put a strain on already limited resources. Currently, Border Patrol operations in the Yuma Sector are augmented with 84 military personnel, and the Yuma Sector has requested additional military personnel to operate 14 mobile surveillance platforms. The deployment of 13 miles of physical barrier would enable DoD resources to be deployed more efficiently. It could also allow fewer DoD resources to cover a given area, allowing the remainder to either be released or be re-deployed to other vulnerable areas in the Yuma Sector.
- (U//FOUO) In addition, according to DHS, over time, military construction projects along the southern border may allow for a reduction of the Title 10 force footprint and a reallocation of National Guard personnel as CBP adjusts its force allocations across the southern border to account for changes created in the flow of illegal immigration.
- (U//FOUO) Even border barrier projects undertaken in areas where DoD personnel are not currently deployed could also support the use of the armed forces along the southern border.
  - (U//FOUO) Physical barriers aid in directing migrant flow, assist in making illegal migration flows more predictable, and serve to channel illegal immigrants toward locations that are operationally advantageous to DHS. This could allow DHS to better manage the detection and apprehension of illegal aliens in priority regions with support mechanisms where DoD forces can be efficiently positioned to support CBP.

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- (U//FOUO) Filtering migrants to areas where CBP is best positioned to cope with the flow of illegal migrants, or ultimately forcing them to a port of entry, could allow for a more focused application of DoD medical support, if required at all.
- (U//FOUO) Improved predictability and stability of illegal migrant flows could also reduce the need for low-density/high-demand airlift assets currently deployed to the southern border as it could reduce or eliminate the need for CBP's quick reaction surge force.
- (U//FOUO) Finally, it is important to note that recent military efforts to improve existing barriers have already had a positive impact on the use of the armed forces along the southern border. In October 2018, DoD was directed to provide force protection to CBP personnel in the performance of their Federal functions at ports of entry. Hardened ports of entry established through military projects reduced challenges and threats to CBP personnel and have significantly reduced the need for DoD force protection.
- (U//FOUO) Conclusion. Military construction projects can reasonably be expected to support the use of the armed forces by enabling the more efficient use of DoD personnel, and may ultimately reduce the demand for military support over time. Although military construction projects along the southern border may not alleviate all DHS requirements for DoD support, the construction of physical barriers should reduce the challenges to CBP and, therefore, can be reasonably expected to reduce DHS requirements for DoD support.
- (U) This is a preliminary assessment. The Joint Staff is prepared to provide any additional input required for your final assessment.

COORDINATION: (U) NONE

Prepared by: Vice Admiral Michael M. Gilday, USN; Director, J-3; [REDACTED]

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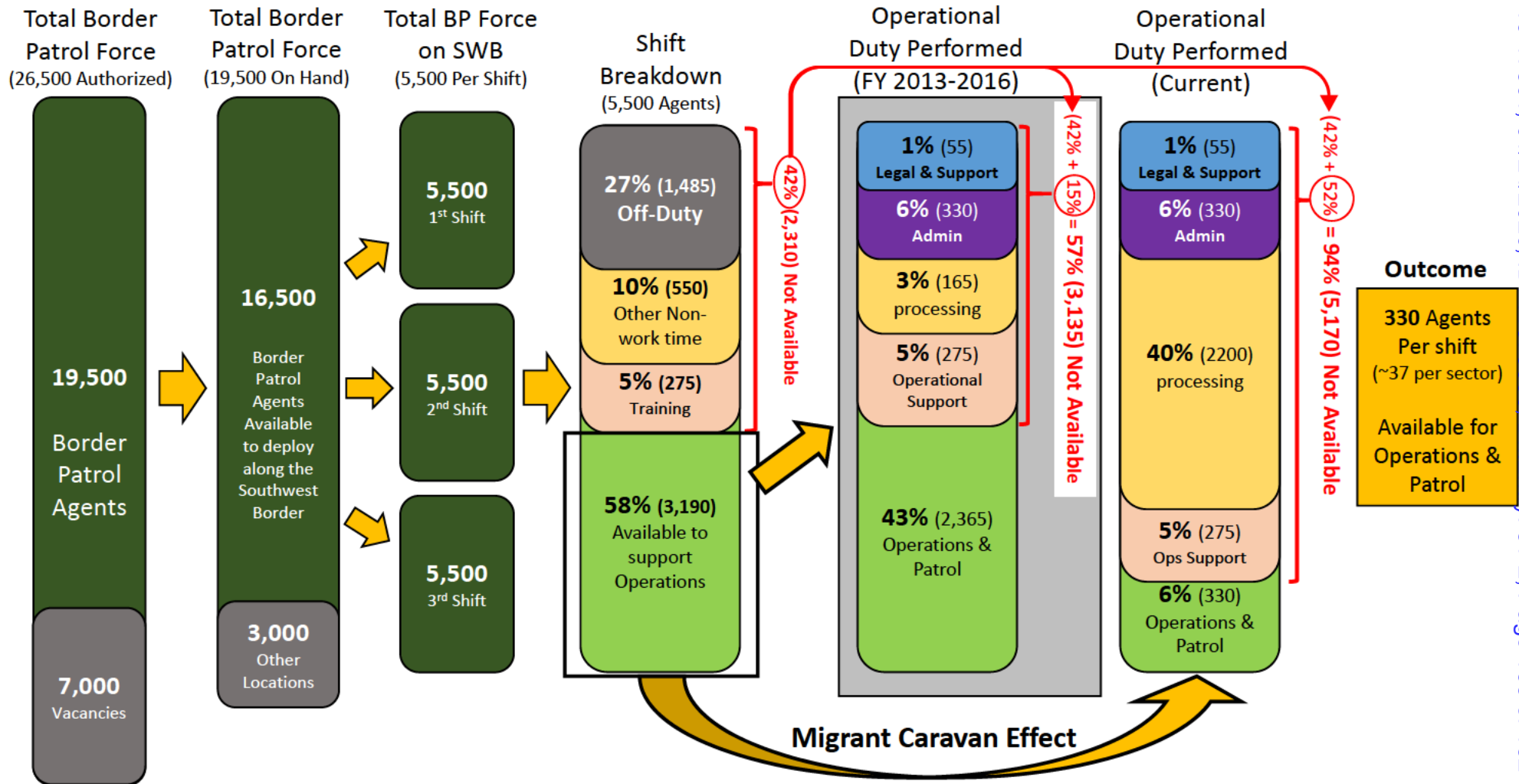
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# Border Patrol Manning Model Review

GAO Report: *Border Patrol – Issues Related to Agent Deployment Strategy and Immigration Checkpoints* Date: November 2017, GAO-18-50



Case: 19-17501, 01/24/2020, ID: 11573656, DktEntry: 31-2, Page 165 of 182

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Statement by  
Robert G. Salesses  
Deputy Assistant Secretary of Defense  
for Homeland Defense Integration and Defense Support of Civil Authorities  
Department of Defense

Before the 116th Congress  
Committee on Homeland Security  
Subcommittee on Border Security, Facilitation, and Operations  
U.S. House of Representatives  
June 20, 2019

## **Introduction**

Chairwoman Rice, Ranking Member Higgins, distinguished Members of the Subcommittee: Thank you for the opportunity to testify today on Department of Defense (DoD) support to Department of Homeland Security (DHS), Department of Health and Human Services (HHS), and Department of Justice (DOJ) missions related to the security of the southern border of the United States.

## **The Department of Defense Has a Long History of Supporting Border Security**

Using the substantial authorities Congress has provided, DoD has a long history of supporting efforts to secure U.S. borders.

### **Steady State**

Active-duty and National Guard personnel have supported Federal and State counterdrug activities (e.g., detection and monitoring of cross-border trafficking, aerial reconnaissance, transportation and communications support, and construction of fences and roads) beginning in the early 1990s. Most recently, U.S. Northern Command's Joint Task Force-North executed 53 counterdrug support missions in fiscal year (FY) 2017 and 23 missions in FY 2018. When the Secretary of Defense approved the four border States' plans for drug interdiction and counter-drug activities, DoD committed \$21 million in funds in FY 2017 and \$53 million in FY 2018.

When needed, DoD has provided planners to help DHS develop its Southern Border and Approaches Campaign (2014) and CBP's Crisis Migration Plan (2018).

DoD has also loaned facilities and special equipment, such as aerostats, ground surveillance radars, and ground sensors, to CBP.

### **Surge Support**

- *Post-9/11 (2002)*: 1,600 National Guard personnel were detailed to the U.S. Customs Service, the Immigration and Naturalization Service, and the Border Patrol at northern and southern borders.

- *2004-2005 – Operation WINTER FREEZE:* 129 Active-duty and National Guard personnel were deployed to northern border to interdict suspected transnational threats.
- *2006-2008 – Operation JUMP START:* 6,000 National Guard personnel were deployed at the southern border from 2006-2007 and 3,000 National Guard personnel from 2007-2008. National Guard personnel improved infrastructure at the southern border by building more than 38 miles of pedestrian fence, 96 miles of vehicle barrier, more than 19 miles of new all-weather road, and repairing more than 700 miles of roads.
- *2010-2017 – Operation PHALANX (2010-2017):* Up to 1,200 National Guard personnel were deployed at the southern border from 2010 to 2012 and 200-300 National Guard personnel at the southern border from 2013-2017, conducting detection and monitoring, aviation support, aerial reconnaissance, and analytical support missions.
- *2012-Present – Housing Support for Unaccompanied Alien Children.* DoD has provided temporary housing support to the Department of Health and Human Services (HHS), on a reimbursable basis, as part of the national response to the surge of unaccompanied alien children (UAC) at the U.S. southern border. Since 2012, DoD has provided DoD property for HHS to shelter nearly 16,000 UAC, who receive care, security, transportation, and medical services from HHS. Consistent with section 2815 of the National Defense Authorization Act for FY 2017 (Public Law 114-328), the Secretary of Defense has certified that providing this sheltering support to HHS will not negatively affect military training, operations, readiness, or other military requirements, including National Guard and Reserve readiness. A summary of this support is provided in the following table:



<b>DoD Installation</b>	<b>Duration</b>	<b># of UACs</b>
Lackland, AFB, TX	April 4-June 13, 2012	800
Lackland, AFB, TX	May 18-August 8, 2014	4,357
NAVBASE Ventura, CA	May 18-August 8, 2014	1,540
Ft. Sill, OK	May 18-August 8, 2014	1,861
Holloman AFB, NM	January 25-February 27, 2016	129
Ft. Bliss, TX	September 6, 2016-February 8, 2017	7,259
	<b>TOTAL</b>	<b>15,946</b>

DoD's presence and support at the southern border increases the effectiveness of CBP's border security operations, helps free up Border Patrol agents to conduct law enforcement duties, and enhances situational awareness to stem the tide of illegal activity along the southern border of the United States.

The numbers and types of migrants arriving at the southern border of the United States has exceeded the capacity of CBP, prompting the need for additional DoD support.

#### **The President Directed DoD to Support DHS**

Since April 2018, DoD support to DHS has been provided pursuant to the President's direction, including his April 4, 2018, Presidential memorandum, "Securing the Southern Border of the United States." In this memorandum, the President directed DoD to support DHS "in securing the southern border and taking other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country." The President also directed DoD to request use of National Guard personnel to assist in fulfilling this mission, including pursuant to Section 502 of Title 32, U.S. Code. Finally, the President directed the Secretary of Defense and the Secretary of Homeland Security, in coordination with the Attorney General, to determine what other resources and actions are necessary to protect our southern border, including Federal law enforcement and U.S. military resources.

## **DoD Works Closely With DHS**

Across the full-range of support that DoD has provided DHS – border security support, disaster support, special event security support, and support for protection of the President – DoD has worked closely with DHS as DHS develops its requests for DoD assistance as deliberately, expeditiously, and effectively as possible to meet mission needs.

DoD carefully considers all requests for assistance, including in order to determine whether DoD has the requested capabilities and resources and whether providing the requested assistance is consistent with applicable law. When a request is approved, DoD works with the requesting department or agency to select the right forces and resources to meet the requested mission needs. DoD has used the same process for every DHS request for assistance related to DHS's border security mission.

Specific DoD support is driven by DHS requirements. DoD, consistent with the President's order, statutory authority, and operational considerations, helps DHS develop requests that will meet DHS requirements while mitigating potential impacts on military readiness, to the extent practicable. Consistent with the law and the President's order, DoD support is currently being provided on a non-reimbursable basis, to the extent legally available. DoD support is also provided consistent with Section 275 of Title 10, U.S. Code, and the Posse Comitatus Act (Section 1535 of Title 18, U.S. Code), which do not permit direct participation by military personnel in a search, seizure, arrest, or other similar activity.

## **DoD Support**

### **April 2018 to September 2019 – Augmentation (Badges Back to the Border)**

- In support of CBP Operation Guardian Support, DoD has authorized National Guard personnel to support CBP in a duty status under Section 502 of Title 32, U.S. Code, with the consent of, and under the command and control of, their governors.
- Types of support: aviation; communications; fleet maintenance; intelligence analysis; planning; and surveillance.
- At its peak, on November 26, 2018, 2,295 National Guard personnel supported CBP Operation Guardian Support (369 in California; 603 in Arizona; 119 in New Mexico; and

1,204 in Texas). As of June 5, 2019, 1,776 National Guard personnel were supporting CBP Operation Guardian Support (137 in California; 550 in Arizona; 18 in New Mexico; and 1,227 in Texas).

#### June to December 2018 – Attorney Support for the Department of Justice

- DoD detailed 21 attorneys with criminal trial experience to the Department of Justice (DOJ) to serve as Special Assistant United States Attorneys (SAUSAs).
- This detail of DoD personnel was executed pursuant to the Economy Act and was on a fully reimbursable basis.

#### October 2018 to January 2019 – Enhanced Security of Ports of Entry

- Active-duty military personnel support to CBP Operation Secure Line. Active-duty military personnel were selected because the Secretary of Defense determined that such personnel were the best-suited and most readily available forces from the Total Force to provide the assistance requested by DHS.
- Types of support:
  - Military planning teams to coordinate operations, engineering, medical, and logistics support.
  - Medium-lift rotary-wing aviation support, on-call 24-hours a day, to supplement the movement of CBP quick-reaction force tactical personnel in and around locations determined by CBP day or night.
  - Strategic lift aviation support, available with 12-hour notification, to move up to 400 CBP personnel and equipment to a location determined by CBP.
  - Engineering capability support that can provide temporary vehicle barriers and pedestrian-style fencing at and around a port of entry (POE), including but not limited to: continuous anti-personnel intrusion fencing; one-way retractable vehicle anti-intrusion barricades; configurable pedestrian fencing; and fixed vehicle barricades. Based on an additional DHS request, concertina wire emplacement continued through March 2019. Ultimately, DoD personnel hardened 33 POEs and emplaced 200 miles of concertina wire.



- Deployable medical units to triage and treat, up to 1,000 personnel every 24 hours. Such units were prepared to stabilize and prepare injured personnel for commercial transport to civilian medical facilities, as necessary.
  - Temporary housing for up to 2,345 CBP personnel.
  - Loan of personnel protective equipment (e.g., helmets with face shields, hand-held shields, and shin guards) for 500 CBP personnel.
- At its peak, on November 7, 2018, 5,622 active-duty military personnel supported CBP Operation Secure Line.

#### November 2018 through March 2019 – Force Protection for CBP

- On November 20, 2018, the President authorized DoD to use military personnel to protect CBP personnel performing their Federal functions within property controlled by CBP at or adjacent to one or more designated POEs.
- Although DoD military personnel were prepared to protect CBP personnel, they were not required to do so.

#### February 2019 – Crisis Support

- The Acting Secretary of Defense approved a DHS request for support at CBP-designated POEs in the Del Rio and Laredo Sectors in Texas.
- Types of support:
  - Military protection of CBP personnel performing their Federal functions on property owned by CBP at or adjacent to one or more designated land POEs where caravan members presented a risk of disrupting or otherwise interfering with CBP's ability to carry out its Federal functions.
  - Immediate lifesaving medical care for CBP personnel and migrants pending expeditious movement to civilian medical facilities.
  - Placement of temporary vehicle barriers and pedestrian-style fencing and emplacement of concertina wire at and around CBP-designated POEs.
  - Medium-lift rotary-wing aircraft and support personnel for tactical movement of CBP personnel (24-hour on-call ability to employ two simultaneous lifts of six-to-eight personnel and associated equipment).

### March to September 2019 – Crisis Response Force

- The Acting Secretary of Defense approved a DHS request for crisis response support.
- Types of support:
  - On a contingency basis (i.e., available when needed), a medical response capability to treat up to 100 persons during a violent incident. DoD medical personnel would provide immediate life-saving care at the point-of-injury.
  - On a contingency basis, a minimum of two Military Police platoons, and not to exceed one Military Police company, capable of responding to multiple locations designated by CBP to provide force protection of CBP personnel performing their Federal functions on property owned by CBP at or adjacent to POEs.
  - One Military Police platoon to conduct, at a minimum, monthly exercises and training with CBP personnel.
  - Engineering support to: (a) emplace temporary vehicle barriers, temporary fencing, and concertina wire at and adjacent to CBP-designated POEs; and (b) harden land POEs at the southern border in Texas.
  - Medium-lift, rotary-wing aircraft and support personnel for the tactical movement of six to eight CBP personnel at and around POE locations designated by CBP.
  - Extension of DoD's loan of personnel protection equipment.

### January through September 2019 – Detection and Monitoring

- The Acting Secretary of Defense approved a DHS request for DoD detection and monitoring support.
- Type of support: mobile surveillance camera operators in 146 vehicles operating in Arizona, California, New Mexico, and Texas in all nine Border Patrol Sectors. In May 2019, the Acting Secretary of Defense approved a request to increase the number of mobile surveillance camera vehicles to 155.

### March through Present 2019 – Blocking Drug-Smuggling Corridors

- In accordance with Section 284(b)(7) of Title 10, U.S. Code, the Secretary of Defense may, in support of the counter-narcotics activities of Federal civilian law enforcement agencies, construct roads and fences, and install lighting, to block drug-smuggling corridors across the international boundaries of the United States.

- In March 2019, the Acting Secretary of Defense approved a DHS request to use this authority to block drug-smuggling corridors in the Yuma Sector in Arizona and the El Paso Sector in New Mexico, specifically by constructing 51 miles of fencing, constructing and improving roads, and installing lighting.
- In May 2019, the United States District Court for the Northern District of California issued a preliminary injunction prohibiting the use of the \$1 billion transferred pursuant to Section 8005 of the Department of Defense Appropriations Act, 2019, into the Defense Drug Interdiction and Counter-Drug Activities, Defense, account for construction under Section 284 of Title 10, U.S. Code (i.e., construction in the Yuma and El Paso CBP Sectors).
- In May 2019, the Acting Secretary of Defense authorized construction of an additional 78 miles of fencing pursuant to Section 284(b)(7) – this time to block drug-smuggling corridors in the El Centro Sector in California and the Tucson Sector in Arizona.
- In total, the Acting Secretary of Defense directed the transfer of \$2.5 billion into the Drug Interdiction and Counter-Drug Activities, Defense account to block drug-smuggling corridors designated by DHS along 129 miles and in four Sectors along the U.S. southern border (i.e., El Centro in California; Yuma and Tucson in Arizona; and El Paso in New Mexico).

#### June through September 2019 – Migrant Processing Support

- The Acting Secretary of Defense approved a DHS request for support with migrant processing.
- Types of support:
  - 160 licensed DoD military drivers to operate secure CBP vehicles to transport migrants from remote locations, POEs, and Border Patrol stations
  - 100 DoD military personnel to heat and distribute meals and conduct welfare checks.

#### May through September 2019 – Housing

- *Unaccompanied Alien Children*
  - DoD has agreed to support HHS by being prepared to provide capacity to temporarily house up to 5,000 UAC on DoD installations.
  - Consistent with Section 2815 of the National Defense Authorization Act for FY 2017 (Public Law 114-328), the Secretary of Defense is required to certify that providing this sheltering support to HHS would not negatively affect military training,



- operations, readiness, or other military requirements, including National Guard and Reserve readiness.
  - DoD is currently providing HHS with capacity to house approximately 1,400 UAC at Fort Sill, Oklahoma, consistent with Section 2815.
  - This support is provided on a reimbursable basis.
- *Adult Migrants*
  - The Acting Secretary of Defense approved a DHS request for support to shelter up to a total of 7,500 single migrant adults in CBP custody at six CBP-designated locations.

### **The President Declared a National Emergency**

On February 15, 2019, the President declared that “situation at the southern border presents a border security and humanitarian crisis that threatens core national security interests and constitutes a national emergency.” In support of this national emergency, the President invoked two statutory authorities:

- *Section 12302 of Title 10, U.S. Code*, which authorizes the Secretary of Defense to order to active duty up to 1,000,000 members of the Ready Reserve for up to 24 months.
- *Section 2808 of Title 10, U.S. Code*, which authorizes the Secretary of Defense to use unobligated military construction funds to undertake military construction projects, and to authorize the Secretaries of the Military Departments to undertake military construction projects, not otherwise authorized by law that are necessary to support the use of the armed forces in connection with the national emergency.

### **Conclusion**

Chairwoman Rice, Ranking Member Higgins, distinguished Members of the Committee: This ongoing, temporary DoD support is a continuation of DoD’s long history of supporting DHS and CBP in their mission to secure U.S. borders. Thank you for your continued support to DoD and the men and women of the U.S. Armed Forces.

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THE WHITE HOUSE

WASHINGTON

April 4, 2018

MEMORANDUM FOR THE SECRETARY OF DEFENSE  
THE ATTORNEY GENERAL  
THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Securing the Southern Border of the  
United States

1. The security of the United States is imperiled by a drastic surge of illegal activity on the southern border. Large quantities of fentanyl, other opioids, and other dangerous and illicit drugs are flowing across our southern border and into our country at unprecedented levels, destroying the lives of our families and loved ones. Mara Salvatrucha (MS-13) and other deadly transnational gangs are systematically exploiting our unsecured southern border to enter our country and develop operational capacity in American communities throughout the country. The anticipated rapid rise in illegal crossings as we head into the spring and summer months threatens to overwhelm our Nation's law enforcement capacities.

2. The combination of illegal drugs, dangerous gang activity, and extensive illegal immigration not only threatens our safety but also undermines the rule of law. Our American way of life hinges on our ability as a Nation to adequately and effectively enforce our laws and protect our borders. A key and undeniable attribute of a sovereign nation is the ability to control who and what enters its territory.

3. Our professional and dedicated U.S. Customs and Border Protection agents and officers, U.S. Immigration and Customs Enforcement officers, and other Federal, State, and local law enforcement personnel work tirelessly to defend our homeland against these threats. They risk their lives daily to protect the people of this country. Theirs is a record of dedication and sacrifice, meriting the unwavering support of the entire United States Government.

4. The situation at the border has now reached a point of crisis. The lawlessness that continues at our southern border

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is fundamentally incompatible with the safety, security, and sovereignty of the American people. My Administration has no choice but to act.

5. The Department of Defense currently assists other nations in many respects, including assisting with border security, but the highest sovereign duty of the President is to defend this Nation, which includes the defense of our borders.

6. The President may assign a mission to the Secretary of Defense to support the operations of the Department of Homeland Security in securing our southern border, including by requesting use of the National Guard, and to take other necessary steps to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into the country. The Secretary of Defense may use all available authorities as appropriate, including use of National Guard forces, to fulfill this mission. During the administrations of Presidents George W. Bush and Barack Obama, the National Guard provided support for efforts to secure our southern border. The crisis at our southern border once again calls for the National Guard to help secure our border and protect our homeland.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States, including section 502 of title 32, United States Code, and section 301 of title 3, United States Code, I hereby direct as follows:

Section 1. The Secretary of Defense shall support the Department of Homeland Security in securing the southern border and taking other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country. The Secretary of Defense shall request use of National Guard personnel to assist in fulfilling this mission, pursuant to section 502 of title 32, United States Code, and may use such other authorities as appropriate and consistent with applicable law.

Sec. 2. The Secretary of Homeland Security shall work with the Secretary of Defense to provide any training or instruction necessary for any military personnel, including National Guard units, to effectively support Department of Homeland Security personnel in securing the border.

Sec. 3. The Secretary of Defense and the Secretary of Homeland Security, in coordination with the Attorney General,

are directed to determine what other resources and actions are necessary to protect our southern border, including Federal law enforcement and United States military resources. Within 30 days of the date of this memorandum, the Secretary of Defense and the Secretary of Homeland Security, in coordination with the Attorney General, shall submit to the President a report detailing their findings and an action plan, including specific recommendations as to any other executive authorities that should be invoked to defend the border and security of the United States.

Sec. 4. Any provision of any previous proclamation, memorandum, or Executive Order that is inconsistent with the actions taken in this memorandum is superseded to the extent of such inconsistency.

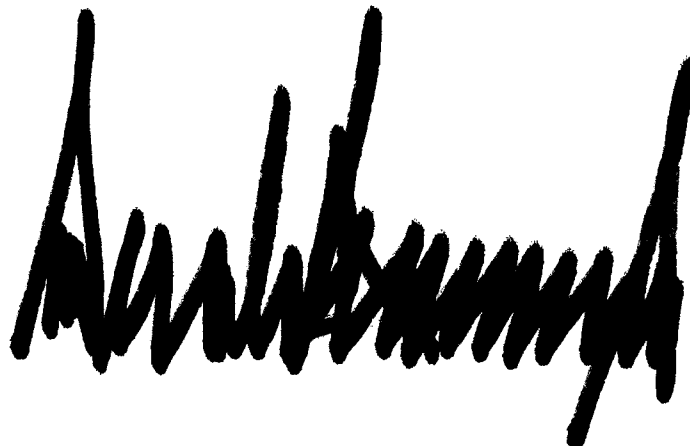
Sec. 5. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A large, bold, handwritten signature in black ink, appearing to be 'Donald Trump', is centered at the bottom of the page.

WASHINGTON, DC 20502

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04/11/18

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The Honorable James Mattis  
Secretary of Defense  
Washington, D.C. 20301

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