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# **Military Funding for Border Barriers: Catalogue of Interagency Decisionmaking**

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## **Military Funding for Border Barriers: Catalogue of Interagency Decisionmaking**

The Department of Defense (DOD, or the Department) has contributed \$6.1 billion to the construction of new and replacement barriers along the U.S.-Mexico border in support of the Department of Homeland Security (DHS) by invoking a mixture of statutory and nonstatutory authorities. Congressional concerns surrounding the use of these authorities and the further possibility that DOD's actions may jeopardize legislative control of appropriations has generated interest about the decisionmaking process that drove the Department's funding decisions.

DOD has not generally made internal and interagency communications related to these processes directly available to congressional staff. However, various letters, memoranda, and explanatory declarations from key decisionmakers have been released into the public record (primarily as the result of ongoing litigation) that provide a more complete picture of the issues the Department considered, along with its final determinations on border barrier funding.

This report provides a chronological summary of internal and interagency communications related to DOD's border wall funding processes since approximately April 2018 as described chiefly through court exhibits and declarations in legal proceedings. Due to the technical difficulty of accessing legal records, CRS has made all relevant open source materials accessible to congressional staff via hyperlinks. A comprehensive set of legal citations has also been provided in the accompanying tables.

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## Background

In an Executive Order (E.O. 13767) released during President Donald Trump’s first week in office, on January 25, 2017, he declared, “It is the policy of the executive branch to . . . secure the southern border of the United States through the immediate construction of a physical wall on the southern border . . . [and] ‘Wall’ shall mean a contiguous, physical or other similarly secure, contiguous, and impassable physical barrier.”<sup>1</sup> The Trump Administration has consistently pursued the deployment of fencing, walls, and other barriers along the U.S.-Mexico border as a high priority.

On April 4, 2018, the President, citing “a drastic surge of activity on the southern border,” directed the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security to coordinate action on securing the U.S. southern border “to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country.”<sup>2</sup> The President further directed DOD to mobilize the National Guard to support DHS at the border and to develop a plan for tapping additional military resources using executive authorities.

Later that year, as part of budget negotiations over a FY2019 appropriations package, the Administration submitted a supplemental request of \$5.7 billion for “construction of a steel barrier for the Southwest border.”<sup>3</sup> The new funding request became the focal point of a partial government shutdown that began on December 22, 2018, and lasted 35 days, the longest on record.<sup>4</sup>

Unsatisfied with the negotiated agreement—which provided \$1.375 billion of the Administration’s supplemental \$5.7 billion request—President Trump declared a national state of emergency and undertook a series of executive actions that redirected \$6.1 billion in DOD funds for border barrier construction using a combination of authorities. The Administration’s plans were described in a fact sheet entitled, *President Donald J. Trump’s Border Security Victory* (hereinafter referred to as the *factsheet*), and included

- \$2.5 billion in defense funds authorized under (nonemergency authority of) 10 U.S.C. §284—*Support for counterdrug activities and activities to counter transnational organized crime.*
- \$3.6 billion in defense funds authorized under (emergency authority of) Title 10 U.S.C. §2808—*Construction authority in the event of a declaration of war or national emergency.*

This report is intended to provide a chronological summary of internal and interagency communication related to DOD’s execution of President Trump’s border wall funding plan. The information provided here has been drawn chiefly from court exhibits and declarations in ongoing

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<sup>1</sup> White House Executive Order 13767, *Border Security and Immigration Enforcement Improvements*, January, 25, 2017. Available at <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>.

<sup>2</sup> White House, Presidential Memoranda, *Presidential Memorandum for the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security*, April 4, 2018. Available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-attorney-general-secretary-homeland-security/>.

<sup>3</sup> See Letter to Senator Richard Shelby, Chairman of Committee on Appropriations, U.S. Senate, from Office of Management and Budget, January 6, 2019. Available at <https://www.whitehouse.gov/wp-content/uploads/2019/01/Final-Shelby-1-6-19.pdf>.

<sup>4</sup> CRS Legal Sidebar LSB10242, *Can the Department of Defense Build the Border Wall?*, by Jennifer K. Elsea, Edward C. Liu, and Jay B. Sykes.

legal proceedings. CRS has not independently authenticated the sworn declarations and accompanying documents submitted by litigants as part of legal proceedings.<sup>5</sup>

## Summary of 10 U.S.C. §284 Internal and Interagency Correspondence

A declaration in court records describing communications with DOD suggests that DOD anticipated the use of 10 U.S.C. §284 to fund border barrier projects in early 2018 when the Under Secretary of Defense (Comptroller) temporarily froze \$947 million in unobligated funds from the defense Drug Interdiction and Counter-Drug Activities account for possible construction of barriers on the Southwest Border. The frozen FY2018 appropriations were released beginning in July 2018, the final quarter of FY2018.<sup>6</sup>

### 10 U.S.C. §284

10 U.S.C. §284 authorizes the Secretary of Defense to provide support to federal departments (and other specified entities) engaged in counterdrug activities or to counter transnational organized crime. The authority specifies 10 types of authorized domestic support, including the “construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.” DOD has funded support under this statute with the use of a “Drug Interdiction and Counter-Drug Activities” transfer account.

In April 2018, DOD created a new office within the Department called the *border security support cell* with responsibility for coordinating and managing all border related issues.<sup>7</sup> Assistant Secretary of Defense for Homeland Defense and Global Security, (ASD[HD&GS]) Kenneth Rapuano led the effort.<sup>8</sup>

In a letter to DOD dated February 25, 2019, following the release of the Administration’s *factsheet* plan, DHS formally requested that

the Defense Department support its ability to impede and deny illegal entry and drug smuggling activities along the southwest U.S.-Mexico border by assisting with the construction (or replacement) of fences, roads, and lighting.<sup>9</sup> DHS specifically requested that DOD fund a total of 11 border barrier projects on federal lands.

In a written reply dated March 25, 2019, to Acting Secretary of Homeland Security Kirstjen Nielsen, Acting Secretary of Defense Patrick Shanahan affirmed that the U.S. Army Corps of

<sup>5</sup> CRS draws no definitive conclusions about whether actions or policy decisions were carried out as described on the dates noted in the documents.

<sup>6</sup> See **Table 1** (CRS Compilation), *Declaration of Paul Arcangeli*. “[Conveying DOD’s response to a request for information by the House Armed Services Committee.] The primary factor that led to curtailed support in FY18 was a combination of a continuing resolution, followed by DoD Comptroller withholding over 84% (\$947 million) of CD [counter-drug] appropriated funds for distribution until the 4<sup>th</sup> Quarter for possible use in supporting Southwest Border construction last fiscal year. The funding was ultimately released beginning in July, but the uncertainty generated caused planning, Congressional notification, and execution deadlines to be missed.”

<sup>7</sup> See **Table 1** (CRS Compilation), *Declarations of Kenneth Rapuano (First Declaration, April 25, 2019)*. “The DoD Border Security Support Cell is the focal point and integrator for all requests for assistance, taskings, and information related to DoD support pursuant to the President’s April 4, 2018, memo, *Securing the Southern Border of the United States*.”

<sup>8</sup> See **Table 1** (CRS Compilation), *Declarations of Kenneth Rapuano (Sixth Declaration, September 30, 2019)*.

<sup>9</sup> See **Table 2** (Chronology of 10 U.S.C. 284 Decisionmaking), DHS Letter to DOD, February 25, 2019.

Engineers (USACE) would undertake the planning and construction of approved projects and, upon completion, hand over custody of all new infrastructure to DHS.<sup>10</sup>

Between March and April 2019, DOD approved \$2.5 billion for seven of the border barrier projects requested by DHS and funded them in two tranches drawn from reprogrammed defense program savings.<sup>11</sup> DOD completed a transfer of \$1 billion for three projects (El Paso Sector Project 1 and Yuma Sector Projects 1-2) on March 26, 2019.<sup>12</sup> On May 9, 2019, the Department completed a second transfer of \$1.5 billion for four additional projects (El Centro Sector Project 1 and Tucson Sector Projects 1-3).<sup>13</sup>

The obligation of these funds was temporarily suspended by court injunctions between May and July 2019 issued in a lawsuit that challenged the legal basis of DOD's reprogramming actions. On July 26, 2019, the U.S. Supreme Court lifted the lower court's injunction, allowing work to once again proceed.<sup>14</sup> Litigation in this case (and related) lawsuits remains ongoing.

In August 2019, DHS notified DOD that new estimates indicated construction costs would be lower than first projected, resulting in an overall funding surplus. DHS requested the anticipated savings be applied to the execution of three additional projects. DOD approved the request but later terminated the plan after savings proved insufficient.<sup>15</sup>

On September 30, 2019, DOD announced the transfer of an additional \$129 million in expiring FY2019 appropriations drawn from counternarcotics accounts that Military Departments determined were excess to need. The Department also stated USACE would require an additional \$90 million in FY2020 funds for the management and oversight of border barrier projects underway.<sup>16</sup> Unlike the Administration's use of the previous \$2.5 billion in transfers, which derived largely from defense program savings drawn from *non-drug* related appropriations, the Administration plans to fund the anticipated costs in FY2020 from appropriations made directly to the counternarcotic account.

## Summary of 10 U.S.C. §2808 Internal and Interagency Correspondence

Unlike DOD's use of 10 U.S.C §284 transfer authority, which the Department began executing almost immediately following the release of the President's *factsheet*, its determination to exercise emergency statute 10 U.S.C. §2808 was the result of approximately eight months of additional deliberations.

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<sup>10</sup> See **Table 2** (Chronology of 10 U.S.C. 284 Decisionmaking), DOD Letter to DHS, March 25, 2019.

<sup>11</sup> One project (Yuma 2) was later cancelled as the result of contract negotiations. See DOD letter to DHS, April 18, 2019. Available at [https://www.crs.gov/Products/Documents/10.USC.284\\_2019-04-18\\_DOD.to.DHS/pdf](https://www.crs.gov/Products/Documents/10.USC.284_2019-04-18_DOD.to.DHS/pdf).

<sup>12</sup> Funds were transferred in stages to Army Operation and Maintenance account for use by the Army Corps of Engineers, the agency responsible for managing border barrier project execution. See **Table 1** (CRS Compilation), *Tranche 1 Reprogrammings*. See also **Table 1** (CRS Compilation), *Declarations of Kenneth Rapuano (First Declaration, April 25, 2019; paragraph 6)*.

<sup>13</sup> See **Table 1** (CRS Compilation), *Tranche 2 Reprogrammings*. See also **Table 1** (CRS Compilation), *Declarations of Kenneth Rapuano (Second Declaration, May 13, 2019; paragraph 6-8)*.

<sup>14</sup> See **Table 2** (Chronology of 10 U.S.C. 284 Decisionmaking), U.S. Supreme Court, July 26, 2019.

<sup>15</sup> See **Table 1** (CRS Compilation), *Declarations of Kenneth Rapuano (Fifth Declaration, September 13, 2019; paragraph 3-4)*.

<sup>16</sup> See **Table 1** (CRS Compilation), *Declarations of Kenneth Rapuano (Sixth Declaration, September 30, 2019; paragraph 4)*.

These deliberations included two assessments by the Chairman of the Joint Chiefs of Staff (CJCS) to determine whether the construction of border barriers qualified as a legitimate use under the requirements of 10 U.S.C. §2808. The statute specifies that new construction must support the use of armed forces mobilized to address a national emergency declared by the President.

On February 11, 2019, CJCS provided a preliminary assessment to the Acting Secretary of Defense that broadly assessed the utility of physical barriers on DHS operations, as well as ongoing demand for DOD support. The report acknowledged empirical challenges associated with quantifying the effectiveness of physical barriers on migration flows “because reliable data is scarce and opinions are divergent,” but pointed to anecdotal and historical evidence to suggest that barriers might reasonably be expected to reduce the demand for DOD resources 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.<sup>17</sup>

**10 U.S.C. §2808 (excerpted)**

“(a) 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.”

On February 18, 2019, following the release of the Administration’s *factsheet* plan, DOD requested that DHS provide a prioritized list of projects along with a supplemental analysis explaining how the construction would support military personnel pursuant to 10 U.S.C. §2808.<sup>18</sup> DHS responded in March with the detailed information, characterizing the projects as force multipliers for mobilized DOD personnel:

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 accompanies [sic] roads and technology will allow DoD to focus its efforts on a smaller, more focused area.<sup>19</sup>

In April 2019, having received the list of DHS projects, the Secretary of Defense requested the CJCS conduct a second, more detailed analysis of proposed construction and return with a recommendation on how to proceed.<sup>20</sup> Concurrently, the Secretary directed the Under Secretary of Defense (Comptroller) to begin identifying \$3.6 billion in existing military construction projects that might be deferred by use of the emergency authority under the statute.<sup>21</sup>

<sup>17</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), Chairman of the Joint Chiefs of Staff letter to Secretary of Defense, February 11, 2019.

<sup>18</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), DOD letter to DHS on February 18, 2019.

<sup>19</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), DHS letter to DOD on March 20, 2019.

<sup>20</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), Secretary of Defense Memorandum to Chairman of the Joint Chiefs of Staff, April 11, 2019.

<sup>21</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), Secretary of Defense Memorandum to DOD Comptroller, April 11, 2019.



In a memorandum report dated May 2019, CJCS General Joseph Dunford delivered his final assessment to Acting Secretary of Defense Shanahan.<sup>22</sup> The report's methodology was based on the presumption that while any barrier construction along the border could reasonably be expected to create "ripple effects" that would support the use of the armed forces, projects more beneficial than others should be prioritized, based on factors identified by DOD.<sup>23</sup> The analysis assessed border barrier projects DHS had requested under 10 U.S.C. §2808, as well as those projects not funded by previous transfers under 10 U.S.C. §284. Though the CJCS team considered the type of land associated with each project area (federal or private), it developed a prioritization scheme that was missing key details related to land jurisdiction.<sup>24</sup> As a consequence, the CJCS' final recommendations were later revised and included in an action memorandum to the Secretary of Defense on August 21, 2019.<sup>25</sup>

On September 3, 2019, Secretary of Defense Mark Esper, having determined that border barrier construction would serve as a "force multiplier" for reducing DHS's demand for DOD personnel and assets, directed the Acting Secretary of the Army to proceed with the construction of 11 DHS border barrier projects, and the deferral of approximately 127 existing military construction projects (\$3.6 billion).<sup>26</sup>

In a public briefing later that day, DOD officials described a plan for deferring in stages, otherwise authorized military construction projects under 10 U.S.C. §2808 authority. Those military construction projects located at non-U.S. locations (\$1.8 billion) would be deferred first, followed later by projects within the U.S. (\$1.8 billion). Officials stated

The intent is prioritizing funds in this manner is to provide time to work with Congress to determine opportunities to restore funds, as well as work with our allies and partners on improving burden sharing for overseas construction projects.<sup>27</sup>

USACE has noted that the pace for obligating military construction (MILCON) funds for border barrier construction projects will be highly dependent on project location, since land must first be

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<sup>22</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), Chairman of the Joint Chiefs of Staff to Acting Secretary of Defense, May 6, 2019.

<sup>23</sup> CJCS considered the DHS prioritization scheme, but adopted the Joint Staff's own formulation based on factors that included DHS preference for prioritization; migration flows; available military personnel and resources; and land type (jurisdiction).

<sup>24</sup> See **Table 1** (CRS Compilation), *Compilation of CJCS Assessments (Necessity of Border Barriers: Summary of Supporting Analysis [begins on pdf page 33])*. Refer to pdf page 34-35 for the following passage:

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.... 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 administrative jurisdiction of certain Federal lands could not be transferred to a Military Department.

<sup>25</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), Chairman ASD (HD&GS) Kenneth Rapuano Action Memorandum to Secretary of Defense, August 21, 2019 (approved on September 3, 2019). Of the 11 projects DOD selected for execution, 7 were located (in whole or in part) on land under the jurisdiction of the Department of the Interior (DOI) that required an administrative transfer to the Department of Defense before construction could proceed.

<sup>26</sup> See **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), Chairman Secretary of Defense Memorandum to Military Departments, September 3, 2019.

<sup>27</sup> Department of Defense transcripts, *DOD Briefing on Use of 2808 MILCON Funds for Construction of the Border Wall*, September 3, 2019. Available at <https://www.defense.gov/Newsroom/Transcripts/Transcript/Article/1952191/dod-briefing-on-use-of-2808-milcon-funds-for-construction-of-the-border-wall/>.

administratively transferred to the Department of the Army before work can proceed.<sup>28</sup> Construction on land that currently falls under the jurisdiction of DOD can be undertaken relatively quickly, since the military effectively manages the parcels.<sup>29</sup> Projects in locations that fall under one or more other federal jurisdictions may be delayed while transfers are negotiated.<sup>30</sup> Projects on private land are expected to take the longest to complete, since the government must first obtain administrative jurisdiction of the land by either purchase or condemnation.<sup>31</sup>

On September 18, 2019, Department of the Interior (DOI) issued Public Land Orders that transferred jurisdiction of land required for five of projects for a period of three years to DOD.<sup>32</sup>

## Detailed Chronologies and Selected Documents

This section provides a detailed overview of key documents related to the Administration’s use of 10 U.S.C. 284 and 10 U.S.C. 2808 to fund border barriers. The tables that follow each include a summary of source documents, citations, and links that allow readers to access the associated materials directly. (Due to technical considerations, documents are only made available to congressional users.)

**Table 1**, *CRS Document Compilations*, contains a collection of reference documents that CRS has compiled for the convenience of users. These include court declarations that do not fit neatly into a chronological framework and documents that describe activities that may be grouped as a single action (e.g., multiple reprogramming actions on the same date for an identical purpose).<sup>33</sup> Where **Table 1** documents are cited elsewhere in this report, they are identified by the record’s “Short Title” shown in the indicated column.

**Table 2**, *Chronology of 10 U.S.C. 284 Decisionmaking*, and **Table 3**, *Chronology of 10 U.S.C. 2808 Decisionmaking*, summarize actions related to each respective authority. The separate tables reflect the fact that interagency decisionmaking has generally operated along separate tracks; deliberations related to 10 U.S.C. 2808 were kept separate from correspondence related to 10 U.S.C. 284.

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<sup>28</sup> See **Table 1** (CRS Compilation), *Declarations of Glenn Goddard (First Declaration, September 3, 2019)*. See also **Table 3** (Chronology of 10 U.S.C. 2808 Decisionmaking), ASD (HD&GS) Kenneth Rapuano Action Memorandum to Secretary of Defense, August 21, 2019 (approved on 9/3/2019).

<sup>29</sup> Two projects—Yuma 2 and Yuma 10/27—lie on the Barry M. Goldwater Range (BMGR) under the jurisdiction of the Department of the Navy. Collectively, the cost of both projects is estimated \$567 million.

<sup>30</sup> DOD approved seven projects on federal lands. These projects include Yuma 3 (\$630 million); San Diego 4 (\$67 million); Yuma 6 (\$65 million); El Paso 2 (\$476 million); El Paso 8 (\$164 million); San Diego 11 (\$57 million); El Centro 9 (\$286 million).

<sup>31</sup> El Centro 5 (\$20 million) and Laredo 7 (\$1.268 billion) lie on nonfederal land.

<sup>32</sup> Bureau of Land Management, Department of the Interior press release, *Secretary of the Interior Transfers Jurisdiction of Five Parcels of Land to the Department of the Army to Secure the Southwest Border*, September 18, 2019. Available at <https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army>.

<sup>33</sup> CRS compilations of court documents may not contain all accompanying exhibits and supporting evidence.



**Table I. CRS Document Compilations**

<b>Authority</b>	<b>Short Title</b>	<b>Descriptions</b>	<b>Citation</b>	<b>Link</b>
<b>10 U.S.C. 2808</b>	Declarations of Glenn Goddard	Declarations of Brigadier General Glenn A. Goddard, Deputy Director for Military Programs at the U.S. Army Corps of Engineers.	Notice of Decision By The Department Of Defense To Authorize Border Barrier Projects, Ex. 3, California v. Trump, No. 19-cv-00872 (N.D. Cal. Sept. 3, 2019), ECF. No. 206-3.	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Glenn.Goddard/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Glenn.Goddard/pdf</a>
	DOI Public Land Orders	DOI issues five Public Land Orders transferring administrative jurisdiction of federal lands for a period of three years to the Army for construction of border barrier projects (El Paso 2, El Paso 8, San Diego 4, Yuma 3, Yuma 6).	U.S. Department of the Interior, Bureau of Land Management, "San Diego Project 4, San Diego County, CA (Public Land Order 7883, Sept. 18, 2019); El Paso Project 8, Hidalgo County, NM (Public Land Order No. 7884, Sept. 18, 2019); El Paso Project 2, Luna and Hidalgo Counties (Public Land Order No. 7885, Sept. 18, 2019); Yuma Project 6, Imperial County, CA, and Yuma County, AZ (Public Land Order 7886, Sept. 18, 2019); Yuma Project 3, Yuma County, AZ (Public Land Order 7887, Sept. 18, 2019)." Public Land orders and associated maps are available at <a href="https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army">https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army</a> .	<a href="https://www.crs.gov/Products/Documents/compilation_09-18-2019_DOI.to.Public_public.land.orders/pdf">https://www.crs.gov/Products/Documents/compilation_09-18-2019_DOI.to.Public_public.land.orders/pdf</a>
	Compilation of CJCS Assessments	Preliminary, Final, and Summary of CJCS Assessments of use of 10 U.S.C. 2808 for DHS proposed projects	For CJCS preliminary Assessment, see Notice of Filing of Administrative Record for Border Barrier Projects, Ex. 2 at 119, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2. For CJCS Final Assessment and Summary of CJCS Final Assessment, see Notice of Filing of Administrative Record for Border Barrier Projects, Ex. 2 at 59, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/compilation_10.USC.2808.CJCS.Assessments/pdf">https://www.crs.gov/Products/Documents/compilation_10.USC.2808.CJCS.Assessments/pdf</a>
<b>10. U.S.C. 284</b>	Declarations of Eric McFadden	Court declarations of Eric M. McFadden, Commanding Officer for Task Force Barrier, U.S. Army Corps of Engineers, South Pacific Division.	Defendants' Motion for Partial Summary Judgement, Ex. 12, Sierra Club v. Trump, No. 19-cv-00892 (N.D. Cal. June 19, 2019), ECF. No. 181-12 ("Declaration of Eric M. McFadden"); Motion for Partial Summary Judgement, Ex. 13, Sierra Club v. Trump, No. 19-cv-00892 (N.D. Cal. June 19, 2019), ECF. No. 181-13 Second Declaration of Eric M. McFadden").	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Eric.McFadden.declarations/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Eric.McFadden.declarations/pdf</a>

Authority	Short Title	Descriptions	Citation	Link
	Declarations of Kenneth Rapuano	Court declarations of Kenneth P. Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)) and director of the DOD Border Security Support Cell.	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 2, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10; Second Declaration of Kenneth P. Rapuano, Ex. 1, California v. Trump, No. 19-cv-00872 (N.D. Cal. May 13, 2019), ECF. No. 143-1 ("Second Declaration of Kenneth P. Rapuano"); Defendants' Response to the Court's May 13, 2019, Order, Ex. 2, California v. Trump, No. 19-cv-00872 (N.D. Cal. May 15, 2019), ECF. No. 151-2 ("Third Declaration of Kenneth P. Rapuano"); Notice of Decision by the Department of Defense to Authorize Border Barrier Projects, Ex. 1 at 2, California v. Trump, No. 19-cv-00872 (N.D. Cal. Aug. 27, 2019), ECF. No. 204-1 ("Fourth Declaration of Kenneth P. Rapuano"); Supplemental Notice regarding Decision by the Department of Defense to Authorize Additional Border Barrier Projects, Ex. 1 at 2, California v. Trump, No. 19-cv-00872 (N.D. Cal. Sept. 13, 2019), ECF. No. 210-1 ("Fifth Declaration of Kenneth P. Rapuano").	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Kenneth.Rapuano/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Kenneth.Rapuano/pdf</a>
	Declarations of Paul Arcangeli	Staff Director of the House Armed Services Committee cites a DOD response on April 25, 2019, to a congressional inquiry.	Declaration of Paul Arcangeli, U.S. House of Representatives v. Mnuchin, No. 19-CV-00969 (D.D.C. May 16, 2019), ECF. No. 47.	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Paul.Arcangeli/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Paul.Arcangeli/pdf</a>
	Tranche I Reprogrammings	On March 25, 2019, the DOD Comptroller notified Congress of internal reprogramming actions that transferred \$1 billion in FY2019 defense program savings to border barrier projects using a combination of general transfer authorities and statute 10 U.S.C. 284. These actions included <ul style="list-style-type: none"> <li>• Notification of Prior-Approval Reprogramming Action FY 19-01-RA (from DOD program savings to</li> </ul>	Under Secretary of Defense (Comptroller), Reprogramming Action (FY 19-01 RA; FY 19-11 IR), March 25, 2019. Also available at <a href="https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2019/">https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2019/</a> .	<a href="https://www.crs.gov/Products/Documents/compilation_03-25-2019_DOD.to.Congress_Notification.of.Tranche.I.R.reprogrammings/pdf">https://www.crs.gov/Products/Documents/compilation_03-25-2019_DOD.to.Congress_Notification.of.Tranche.I.R.reprogrammings/pdf</a>

Authority	Short Title	Descriptions	Citation	Link
	Tranche 2 Reprogrammings	<p>defense Drug Interdiction account);</p> <ul style="list-style-type: none"> <li>• Notification of Internal Reprogramming Action FY 19-11 IR (from defense Drug Interdiction account to Army Operation and Maintenance (O&amp;M) 2019/2019 appropriation).</li> </ul> <p>On May 9, 2019, the DOD Comptroller notified Congress of internal reprogramming actions that transferred \$1.5 billion in FY2019 defense program savings to border barrier projects using a combination of general transfer authority, special transfer authority, and statute 10 U.S.C. 284. These actions included</p> <ul style="list-style-type: none"> <li>• Notification of Prior-Approval Reprogramming Action FY 19-02-RA (from DOD program savings to defense Drug Interdiction account);</li> <li>• Notification of Internal Reprogramming Action FY 19-16 IR (from defense Drug Interdiction account to Army Operation and Maintenance (O&amp;M) 2019/2019 appropriation).</li> </ul> <p>Discrete files available at <a href="https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2019/">https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2019/</a>.</p>	Under Secretary of Defense (Comptroller), Reprogramming Action (FY 19-01 RA; FY 19-11 IR), May 9, 2019. Also available at <a href="https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2019/">https://comptroller.defense.gov/Budget-Execution/ReprogrammingFY2019/</a> .	<a href="https://www.crs.gov/Products/Documents/compilation_10.USC.284_05-09-2019_DOD.to.Congress_Notification.of.Tranche.2.Reprogrammings/pdf">https://www.crs.gov/Products/Documents/compilation_10.USC.284_05-09-2019_DOD.to.Congress_Notification.of.Tranche.2.Reprogrammings/pdf</a>

**Notes:** CJCS = Chairman of the Joint Chiefs of Staff; DOD = Department of Defense; DOI = Department of the Interior; USACE = U.S. Army Corps of Engineers.

**Table 2. Chronology of 10 U.S.C. 284 Decisionmaking**

Month	Date	From	To	Description	Citation	Link
Apr	4/4/2018	President	DOD, DHS, U.S. Attorney General	The president directs the SecDef to activate National Guard and assist DHS in securing the southern border.	White House Presidential Memoranda, Presidential Memorandum for the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security, April 4, 2018.	<a href="https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-attorney-general-secretary-homeland-security/">https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-defense-attorney-general-secretary-homeland-security/</a>
	4/5/2018	SecDef	ASD(HD&GS)	SecDef directs ASD (HD&GS) to lead newly established DOD Border Security Support Cell, the coordinating body for all wall-related issues	CRS was unable to retrieve this document, which was referenced in Court Declarations of Kenneth Rapuano. See CRS Compilation, "Declarations of Kenneth Rapuano (First Declaration, Paragraph 1)."	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Kenneth.Rapuano/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Kenneth.Rapuano/pdf</a>
Feb	2/15/2019	Presidential <i>factsheet</i>		President Donald J. Trump's Border Security Victory	White House Fact Sheet, President Donald J. Trump's Border Security Victory, February 15, 2019.	<a href="https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-border-security-victory/">https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-border-security-victory/</a>
	2/25/2019	DHS	DOD	DHS requests assistance from DOD pursuant to 10 U.S.C. 284 to assist with the construction of fences, roads, and lighting for a prioritized list of 11 border projects in the El Centro, Yuma, Tucson, and El Paso sectors.	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 6, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-02-25_DHS.to.DOD/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-02-25_DHS.to.DOD/pdf</a>
Mar	3/25/2019	DOD	DHS	DOD affirms to DHS that it would undertake Yuma Sector Projects 1-2 and El Paso Sector Project 1, which involves constructing 57 miles of 18-	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 17, California v. Trump, No. 19-cv-00872 (N.D.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_DOD.to.DHS/pdf</a>

Month	Date	From	To	Description	Citation	Link
				foot-high pedestrian fencing, constructing and improving roads, and installing lighting.	Cal. Apr. 25, 2019), ECF. No. 89-10.	
		DOD Comptroller	Congress	DOD Comptroller submits to Congress the first tranche of \$1 billion (for Yuma and El Paso Sector Projects): <ul style="list-style-type: none"> <li>• Notification of Prior-Approval Reprogramming Action FY 19-01-RA (from DOD program savings to defense Drug Interdiction account);</li> <li>• Notification of Internal Reprogramming Action FY 19-11 IR (from defense Drug Interdiction account to Army Operation and Maintenance (O&amp;M) 2019/2019 appropriation).</li> </ul>	See CRS Compilation "Tranche I Reprogrammings."	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_DOD.Comptroller.to.Congress/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_DOD.Comptroller.to.Congress/pdf</a>
			OMB	DOD Comptroller requests reprogramming approval from the U.S. Office of Management and Budget (OMB).	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 23, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_DOD.Comptroller.to.OMB/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_DOD.Comptroller.to.OMB/pdf</a>
		SecDef	DOD Comptroller	SecDef directs internal reprogramming of \$1 billion from the fiscal year 2019 Army military personnel appropriations to the "Drug Interdiction and Counter-Drug Activities Defense" appropriation, "without regard to comity-based DOD policies that prescribe prior approval from congressional committees."	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 20, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_SecDef.to.DOD.Comptroller/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-03-25_SecDef.to.DOD.Comptroller/pdf</a>
			SecArmy	SecDef identifies the U.S. Army Corps of Engineers (USACE) as the construction agent and directs	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 93, El Paso Cty. v. Trump, No.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-03-">https://www.crs.gov/Products/Documents/10.USC.284_2019-03-</a>

Month	Date	From	To	Description	Citation	Link
				construction to begin as quickly as possible on Yuma Sector Projects 1 and 2 and El Paso Sector Project 1, consistent with applicable law.	19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	25_SecDef.to.SecArmy/pdf
	3/26/2019	Congress	DOD	Both the House Armed Services Committee (HASC) and House Appropriations Committee (HAC) deny reprogramming action; DOD completes transfer of first tranche.	Chairman Adam Smith, House Armed Services Committee, Letter to Under Secretary of Defense, Comptroller and Chief Financial Officer David L. Norquist, March 26, 2019; Chairman Peter Visclosky, Defense Subcommittee, House Committee on Appropriations, Letter to Under Secretary of Defense, Comptroller and Chief Financial Officer David L. Norquist, March 26, 2019.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-03-26_Congress.to.DOD/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-03-26_Congress.to.DOD/pdf</a>
	3/29/2019	DHS	DOD	DHS submits to DOD a modification request (1 of 2) for the three projects (Yuma Sector Projects 1-2 and El Paso Sector Project 1) approved on March 25 <sup>th</sup> . The modifications include that all fencing for the three projects be constructed with a 5-foot anti-climb steel plate and a 30-foot bollard be constructed for El Paso Project 1.	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 29, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-03-29_DHS.to.DOD/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-03-29_DHS.to.DOD/pdf</a>
Apr	4/5/2019	DHS	DOD	Modification Request (2 of 2)	CRS was unable to retrieve this document, which was referenced in a letter on 4/9/2019 from DOD to DHS. (Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 32, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10).	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-04-09_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-04-09_DOD.to.DHS/pdf</a>



Month	Date	From	To	Description	Citation	Link
	4/9/2019	DOD	DHS	DOD approves DHS modifications requests for the 30-foot steel bollard with anti-climb plate for Yuma Sector Project 1 and El Paso Sector Project 1 and an 18-foot steel bollard with anti-climb plate for Yuma Sector Project 2.	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 32, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-04-09_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-04-09_DOD.to.DHS/pdf</a>
	4/12/2019	DHS	DOD	DHS requests to terminate Yuma Sector Project 2 contracts.	CRS was unable to retrieve this document, which was referenced in a letter on 4/18/2019 from DOD to DHS. (Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 43, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10).	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-04-18_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-04-18_DOD.to.DHS/pdf</a>
	4/18/2019	DOD	DHS	DOD approves this modification (de-scoping). DOD would use the funds that were approved for Yuma Sector Project 2 to fund additional miles of the 30-foot bollard fencing for the El Paso Sector Project 1.	Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Ex. 10 at 43, California v. Trump, No. 19-cv-00872 (N.D. Cal. Apr. 25, 2019), ECF. No. 89-10.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-04-18_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-04-18_DOD.to.DHS/pdf</a>
May	5/9/2019	DOD	DHS	DOD approves four additional projects: El Centro Sector Project 1, Tucson Sector Projects 1-3. These projects would entail constructing 78.25 miles of 30-foot pedestrian fencing, constructing roads, and installing lighting.	Second Declaration of Kenneth P. Rapuano, Ex. 1, California v. Trump, No. 19-cv-00872 (N.D. Cal. May 13, 2019), ECF. No. 143-1.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-05-09_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-05-09_DOD.to.DHS/pdf</a>
		SecDef	Comptroller	SecDef directs second tranche of internal reprogramming (\$1.5 billion) into the "Drug Interdiction and Counter-Drug Activities Defense" appropriation for El Centro Sector Project 1 and Tucson Sector Projects 1-3.	Second Declaration of Kenneth P. Rapuano, Ex. 1, California v. Trump, No. 19-cv-00872 (N.D. Cal. May 13, 2019), ECF. No. 143-1.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-05-09_SecDef.to.Comptroller/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-05-09_SecDef.to.Comptroller/pdf</a>

Month	Date	From	To	Description	Citation	Link
		DOD Comptroller	Congress	DOD notifies Congress of second tranche of \$1.5 billion (for Tucson 1-3 and El Centro 1) reprogrammings: <ul style="list-style-type: none"> <li>• Prior-Approval Reprogramming Action FY 19-02-RA (from DOD program savings to Drug Interdiction and Counter Drug Activities, Defense);</li> <li>• Internal Reprogramming Action FY 19-16 IR (from defense Drug Interdiction account to Army O&amp;M 2019/2019 appropriation).</li> </ul>	See CRS Compilation "Tranche 2 Reprogrammings."	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-05-09_DOD.Comptroller.to.Congress/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-05-09_DOD.Comptroller.to.Congress/pdf</a>
	5/24/2019	Court Action		Sierra Club v. Trump: preliminary injunction bars transfer of \$1 billion (first reprogramming tranche).	Sierra Club v. Trump, No. 19-cv-00892, 2019 U.S. Dist. LEXIS 88210 (N.D. Cal. May 24, 2019).	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-05-24_Court.Action/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-05-24_Court.Action/pdf</a>
		USACE		USACE halts all actions related to executing Tranche 1 reprogramming funds for border barrier projects (El Paso 1 and Yuma 1).	See CRS Compilation "Declarations of Eric McFadden (First Declaration, paragraph 11)."	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Eric.McFadden.declarations/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Eric.McFadden.declarations/pdf</a>
Jun	6/28/2019	Court Action		Sierra Club v. Trump: permanent injunction bars transfer of reprogrammed Tranche 1 and Tranche 2 funds (\$2.5 billion).	Sierra Club v. Trump, No. 19-cv-00892, 2019 U.S. Dist. LEXIS 108933 (N.D. Cal. June 28, 2019).	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-06-28_Court.Action/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-06-28_Court.Action/pdf</a>
		USACE		USACE halts all actions related to executing Tranche 2 reprogramming funds for border barrier projects (Tucson 1-3 and El Centro 1).	See CRS Compilation "Declarations of Eric McFadden (Second Declaration, paragraph 11)."	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Eric.McFadden.declarations/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Eric.McFadden.declarations/pdf</a>
Jul	7/26/2019	U.S. Supreme Court		U.S. Supreme Court stays permanent injunction pending appeal (including potential review by Supreme Court).	Trump v. Sierra Club, No. 19A60, 2019 U.S. LEXIS 4491 (July 26, 2019), available at <a href="https://www.supremecourt.gov/opinions/18pdf/19a60_o75p.pdf">https://www.supremecourt.gov/opinions/18pdf/19a60_o75p.pdf</a> .	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-07-26_U.S..Supreme.Court/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-07-26_U.S..Supreme.Court/pdf</a>

Month	Date	From	To	Description	Citation	Link
Aug	8/16/2019	DHS	DOD	DHS requests that DOD modify the projects by adding additional mileage to the following projects: 8 miles to Yuma Sector Project 3, 1.1 miles to Yuma Sector Project 4, and 2.5 miles to Yuma Sector Project 5, based on anticipated project savings.	Notice of Decision by the Department of Defense to Authorize Border Barrier Projects, Ex. 1 at 13, California v. Trump, No. 19-cv-00872 (N.D. Cal. Aug. 27, 2019), ECF. No. 204-1.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-08-16_DHS.to.DOD/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-08-16_DHS.to.DOD/pdf</a>
	8/22/2019	ASD(HD&GS)	SecDef	Assistant Secretary of HDGS recommends for SecDef to disapprove Yuma Project 3 modification (due to location being interspersed with 31 miles of 10 U.S.C. 2808 proposed construction) and approve Yuma Sector Projects 4 and 5, and additionally, Tucson Sector Project 4 (14.4 miles).	Notice of Decision by the Department of Defense to Authorize Border Barrier Projects, Ex. 1 at 5, California v. Trump, No. 19-cv-00872 (N.D. Cal. Aug. 27, 2019), ECF. No. 204-1.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-08-22_ASD.HDGS.to.SecDef/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-08-22_ASD.HDGS.to.SecDef/pdf</a>
	8/26/2019	DOD	DHS	DOD confirms modifications of 20 miles in Yuma Sector Projects 4 and 5 and additional mileage in Tucson Sector Project 4 (subject to availability of funds).	Notice of Decision by the Department of Defense to Authorize Border Barrier Projects, Ex. 1 at 11, California v. Trump, No. 19-cv-00872 (N.D. Cal. Aug. 27, 2019), ECF. No. 204-1.	<a href="https://www.crs.gov/Products/Documents/10.USC.284_2019-08-26_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.284_2019-08-26_DOD.to.DHS/pdf</a>
			SecDef	USACE	SecDef directs USACE to use excess funds to undertake construction of Yuma Sector Projects 4 and 5 and Tucson Sector Project 4 projects (rejecting DHS request for Yuma Sector Project 3 and Tucson Sector Project 5).	Notice of Decision by the Department of Defense to Authorize Border Barrier Projects, Ex. 1 at 9, California v. Trump, No. 19-cv-00872 (N.D. Cal. Aug. 27, 2019), ECF. No. 204-1.

Month	Date	From	To	Description	Citation	Link
Sep	9/13/2019	DOD	Court Declaration	DOD declares that, due to shortfall in anticipated project savings, it no longer intends to undertake the following new projects: Yuma Sector Project 4 and 5 and Tucson Sector Project 4.	See CRS Compilation "Kenneth Rapuano Declarations." (Fifth Declaration, paragraph 4).	<a href="https://www.crs.gov/Products/Documents/compilation_Declarations.of.Kenneth.Rapuano/pdf">https://www.crs.gov/Products/Documents/compilation_Declarations.of.Kenneth.Rapuano/pdf</a>

**Notes:** ASD(HD&GS) = Assistant Secretary of Defense for Homeland Defense and Global Security; Congress = typically, congressional defense committees and/or public website accessible to same; CJCS = Chairman of the Joint Chiefs of Staff; DOD = Department of Defense; DHS = Department of Homeland Security; DOI = Department of the Interior; SecDef = Secretary of Defense; USACE = U.S. Army Corps of Engineers.

**Table 3. Chronology of 10 U.S.C. 2808 Decisionmaking**

Month	Date	From	To	Description	Citation	Link
Feb	2/11/2019	CJCS	SecDef	CJCS provides a preliminary assessment of DOD support for military construction projects on the Southern Border.	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 119, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.USC.2808_2019-02-11_CJCS.to.SecDef/pdf">https://www.crs.gov/Products/Documents/10.USC.2808_2019-02-11_CJCS.to.SecDef/pdf</a>
	2/15/2019	Presidential Proclamation		Presidential declaration of national emergency and use of armed forces (10 U.S.C. 2808 invoked)	The White House, "Proclamation No. 9844 Declaring a National Emergency Concerning the Southern Border of the United States," 84, No. 34 Federal Register 4949, February 20, 2019.	<a href="https://www.crs.gov/Products/Documents/10.USC.2808_2019-02-15_Presidential.Proclamation/pdf">https://www.crs.gov/Products/Documents/10.USC.2808_2019-02-15_Presidential.Proclamation/pdf</a>
	2/18/2019	DOD	DHS	DOD requests DHS to provide a prioritized list of border construction projects and asks the agency to provide analysis explaining how it would support deployed troops.	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 91, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.USC.2808_2019-02-18_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.USC.2808_2019-02-18_DOD.to.DHS/pdf</a>
Mar	3/18/2019	DOD	Congress	DOD provides a "Fact Sheet on Section 2808 Funding Pool" with list of potentially affected military construction projects.	Department of Defense, Fact Sheet on Section 2808 Funding Pool, March 18, 2019.	<a href="https://www.crs.gov/Products/Documents/10.USC.2808_2019-03-18_DOD.to.Congress/pdf">https://www.crs.gov/Products/Documents/10.USC.2808_2019-03-18_DOD.to.Congress/pdf</a>
	3/20/2019	DHS	DOD	DHS provides to DOD the prioritized list of border projects in the San Diego, El Centro, Yuma, Laredo, and El Paso Sectors.	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 100, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.USC.2808_2019-03-20_DHS.to.DOD/pdf">https://www.crs.gov/Products/Documents/10.USC.2808_2019-03-20_DHS.to.DOD/pdf</a>

Month	Date	From	To	Description	Citation	Link
<b>Apr</b>	4/11/2019	SecDef	CJCS	SecDef directs CJCS to conduct a detailed assessment of DHS projects and other border-related analysis by May 10, 2019. The assessment is a follow-up of the CJCS's preliminary assessment submitted on February 10, 2019.	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 97, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-04-11_SecDef.to.CJCS/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-04-11_SecDef.to.CJCS/pdf</a>
			DOD Comptroller	SecDef directs the DOD Comptroller (in consultation with others) to identify \$3.6 billion in existing military construction projects potentially subject to 10 U.S.C. 2808 by May 10, 2019.	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 94, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-04-11_SecDef.to.DOD.Comptroller/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-04-11_SecDef.to.DOD.Comptroller/pdf</a>
<b>May</b>	5/6/2019	CJCS	SecDef	CJCS submits final assessment on border barrier projects, concluding that all 11 projects under consideration are necessary to support use of the armed forces	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 59, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-05-06_CJCS.to.SecDef/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-05-06_CJCS.to.SecDef/pdf</a>
	5/23/2019	DOD	Congress	DOD provides update to 10 U.S.C. 2808 Funding Pool award dates.	Department of Defense, (10 U.S.C. 2808 Funding Pool) Awarded Projects as of May 23, 2019.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-05-23_DOD.to.Congress/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-05-23_DOD.to.Congress/pdf</a>
<b>Aug</b>	8/21/2019	ASD(HD&GS)	SecDef	Recommendation to approve funding for all 11 projects under consideration. Memo provides a roadmap summarizing necessary actions. (Approved on 9/3/19)	Notice of Filing of Administrative Record for Border Barrier Project, Ex. 2 at 1, El Paso Cty. v. Trump, No. 19-CV-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-08-21_ASD.HD.GS.to.SecDef/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-08-21_ASD.HD.GS.to.SecDef/pdf</a>
<b>Sep</b>	9/3/2019	DOD	Congress	DOD notifies both the House and Senate Committees on Armed Services of its intent to undertake the 11 military construction	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-</a>



Month	Date	From	To	Description	Citation	Link
				projects along the border pursuant to 10 U.S.C. 2808 actions. DOD provides the committees with the list of deferred military construction projects and describes additional selection criteria applied. The deferred projects outside of the United States would be prioritized for execution, and the total amount will be split 50%-50% with domestic projects (\$1.8 billion U.S. and \$1.8 billion non-U.S.).	13, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	03_DOD.to.Congress/pdf
			DHS	DOD notifies DHS that it has authorized and directed construction of the 11 requested border projects.	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 26, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_DOD.to.DHS/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_DOD.to.DHS/pdf</a>
			DOI	DOD notifies DOI of pending request of emergency withdrawal of all public lands required for 11 border barrier projects. (Forthcoming request by Secretary of the Army.)	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 30, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_DOD.to.DOI/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_DOD.to.DOI/pdf</a>
		SecDef	Comptroller	SecDef provides notification of DOD's approval to undertake 11 military construction projects with an estimated cost of \$3.6 billion.	Notice of Filing of Administrative Record for Border Barrier, Ex. 2 at 82, El Paso Cty. v. Trump, No. 19-cv-00066 (W.D. Tex. Sept. 13, 2019), ECF. No. 123-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_SecDef.to.Comptroller/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_SecDef.to.Comptroller/pdf</a>
			Military Departments	SecDef directs Acting Secretary of the Army to undertake 11 projects, estimated at (\$3.6 billion, beginning immediately with Yuma Sector Projects 2 and 10/27, located on the Barry Goldwater Range under the	Notice of Decision by the Department of Defense to Authorize Border Barrier Projects, Ex. 1 at 2, California v. Trump,	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_SecDef.to.MilitaryDepartments/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-03_SecDef.to.MilitaryDepartments/pdf</a>

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	9/18/2019	DOI		jurisdiction of the Navy; to be followed by the subsequent border sector projects: Yuma Sector 3 and 6, El Paso 2 and 8, San Diego 4 and 11, El Centro 5 and 9, and Laredo 7.	No. 19-cv-00872 (N.D. Cal. Sept. 3, 2019), ECF. No. 206-1.	
		DOI		Decision Memorandum signed by Secretary of the Interior David Bernhardt summarizing legal considerations related to DOD emergency land withdrawal requests pursuant to the Federal Land Policy and Management Act (FLMPMA). The memorandum concludes that extraordinary measures are merited and approves DOD application for parcels (described in Appendix).	Defendants' Reply for Motion for Partial Summary Judgment Regarding Border Barrier Projects Undertaken and Opposition to Plaintiffs' Motion for Partial Summary Judgment, Ex. 2 at 2, California v. Trump, No. 19-cv-00872 (N.D. Cal. Nov. 08, 2019), ECF. No. 249-2.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-18_DOI/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-18_DOI/pdf</a>
		DOI	Public	DOI issues Public Land Orders, providing public notification of the transfer of federal lands (the jurisdiction of land required for El Paso Sector Projects 2 and 8; San Diego Sector Project 4; and Yuma Sector Projects 3 and 6) to the Department of the Army for three years.	Bureau of Land Management official website, "Secretary of the Interior Transfers Jurisdiction of Five Parcels of Land to the Department of the Army to Secure the Southwest Border," September 18, 2019. (See related content available at <a href="https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army">https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army</a> ).	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-18_DOI.to.Public/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-09-18_DOI.to.Public/pdf</a>
Oct	10/11/2019	Court Action		El Paso County vs. Trump: court rules use of 10 U.S.C. 2808 and 284 is unlawful.	El Paso Cty. v. Trump, No. 19-cv-00066, 2019 U.S. Dist. LEXIS 177047	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-10-11_Court.Action/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-10-11_Court.Action/pdf</a>

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Nov	11/14/2019	DOD	Congress	DOD sends detailed justification plans (DD Form 1391) for military construction projects funded by 10 U.S.C. 2808 (compilation) to congressional defense committees.	(W.D. Tex. Oct. 11, 2019). Department of the Army, FY2020 Justification Data Submitted to Congress (1391), November 2019.	<a href="https://www.crs.gov/Products/Documents/10.US.C.2808_2019-11-14_DOD.to.Congress/pdf">https://www.crs.gov/Products/Documents/10.US.C.2808_2019-11-14_DOD.to.Congress/pdf</a>

**Notes:** ASD(HD&GS) = Assistant Secretary of Defense for Homeland Defense and Global Security; Congress = typically, congressional defense committees and/or public website accessible to same; CJCS = Chairman of the Joint Chiefs of Staff; DOD = Department of Defense; DHS = Department of Homeland Security; DOI = Department of the Interior; SecDef = Secretary of Defense; USACE = U.S. Army Corps of Engineers.

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