

No. 19-17501

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SIERRA CLUB, ET AL.,
Plaintiffs-Appellees,

V.

DONALD J. TRUMP, ET AL.,
Defendants-Appellants.

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

No. 4:19-cv-00892

The Honorable Haywood S. Gilliam, Jr., Judge

**AMICUS BRIEF OF THE STATES OF CALIFORNIA, COLORADO,
HAWAII, MARYLAND, NEW MEXICO, NEW YORK, OREGON,
VIRGINIA, AND WISCONSIN IN SUPPORT OF PLAINTIFFS-
APPELLANTS' MOTION TO LIFT STAY PENDING APPEAL**

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INTERESTS OF AMICI AND INTRODUCTION

The Amici States of California, Colorado, Hawaii, Maryland, New Mexico, New York, Oregon, and Wisconsin, and the Commonwealth of Virginia have a significant interest in the outcome of Plaintiffs-Appellants’ (“*Sierra Club* Plaintiffs”) emergency motion for relief from the district court’s stay, particularly given the unique posture of this case. The district court granted declaratory relief to both the *Sierra Club* Plaintiffs and the Amici States, finding that Defendants’ diversion of \$3.6 billion in military construction funds under 10 U.S.C. § 2808 toward construction of a border wall was unlawful. However, the court denied the Amici States’ request for injunctive relief on the ground that such relief would be “duplicative” of the *Sierra Club* Plaintiffs’ injunction. Ex. 1, *California v. Trump*, Case No. 19-cv-872 (N.D. Cal.) (“*States* case”), ECF No. 257 (“Order”). Further, as this Court recognized in its order denying the *Sierra Club* Plaintiffs’ original emergency motion, the Western District of Texas had issued an injunction precluding Defendants from using the § 2808 funds at issue for border wall construction beyond that authorized by Congress. Order re Emergency Mot. for Stay 2 [Dkt. 12]. However, the Fifth Circuit has stayed that injunction. *El Paso Cty. v. Trump*, Case No. 19-51144 [Doc. 00515264406] (5th Cir. Jan. 8, 2020). Thus, the resolution of the pending motion will impact whether the Amici States are protected against the irreparable harm threatening them.

The States agree with the *Sierra Club* Plaintiffs that the district court's stay of its injunction here is legally erroneous. As this Court is aware, the *Sierra Club* Plaintiffs previously obtained a permanent injunction preventing Defendants from using other funds that they transferred under *separate* statutory authority relating to DoD's drug interdiction efforts. *Sierra Club v. Trump*, No. 19-cv-892 (N.D. Cal.), ECF No. 185. This Court denied Defendants' motion to stay that injunction. *Sierra Club v. Trump*, 929 F.3d 670 (9th Cir. 2019). Defendants then sought relief from the Supreme Court, which granted a stay of the injunction in a one-paragraph order, stating only that "the Government has made a sufficient showing at this stage that the [Sierra Club] plaintiffs have no cause of action to obtain review of the Acting Secretary's compliance with Section 8005." *Trump v. Sierra Club*, 140 S. Ct. 1 (2019) (mem.).

In its stay order, the Supreme Court did not address § 2808. And neither the Supreme Court nor the Fifth Circuit's order address the threats to public health and safety and loss of tens of millions of dollars in state tax revenue created by Defendants' cancellation of military construction projects under that authority. All of these points weigh heavily against a stay here. Accordingly, as detailed below, the district court's stay of the injunction protecting the Sierra Club and the States was unjustified.

ARGUMENT

The Amici States concur with—and need not repeat—the *Sierra Club* Plaintiffs’ arguments about the merits of their claim. Amici States focus instead on the final two stay factors: (1) injury to other parties interested in the proceeding (here, the States); and (2) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). These factors support granting the *Sierra Club* Plaintiffs’ motion and lifting the stay.

I. THE STAY SUBSTANTIALLY INJURES AMICI STATES

A. Amici States Will Lose Tens of Millions of Tax Dollars from Cancellation of Military Construction Projects

Defendants’ actions will seriously harm the fiscs of Colorado, Hawaii, Maryland, New Mexico, New York, Oregon, Virginia, and Wisconsin (“MILCON States”).¹ *See, e.g., Texas v. United States*, 809 F.3d 134, 152-53 (5th Cir. 2015), *aff’d by equally divided court*, 136 S.Ct. 2271 (2016) (per curiam) (recognizing financial harms to states by federal actions that cause “a major effect on the states’ fiscs” and harms to state sovereignty by “federal interference with the enforcement of state law.”).

¹ California does not assert financial harm, though Defendants’ actions will harm California’s environmental and sovereign interests, *infra* § I.B, and will harm public health and safety in the State, *infra* § II.A.

Defendants intend to divert all funding from 19 separate military construction projects within these States. Ex. 2, *States* case, ECF No. 207-1. Unrebutted evidence demonstrates that Defendants’ diversion of funds from these projects will cause lost sales for contractors and subcontractors for the projects, for various firms in the supply chains, and for companies selling goods and services to individuals hired to work directly on the projects or at some point in the supply chain. Ex. 3, Reaser Decl. ¶ 18, *States* case, ECF No. 220-3. This lost business activity would have created tax revenues for the MILCON States. Defendants’ actions will reduce the tax revenues of these states and their municipalities by over \$36 million. *Id.* ¶ 20.²

Such decreases in tax revenues are cognizable harms. *See, e.g., Wyoming v. Oklahoma*, 502 U.S. 437, 447 (1992) (standing for Wyoming arose from its loss of specific tax revenues); *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1198 (9th Cir. 2004) (recognizing financial harm from, *inter alia*, decreased tax revenue “due to impaired vehicular movement and commerce” caused by federal plan to develop and rehabilitate a former military base even where harm could not be quantified);

² In addition to tax revenues, the construction projects cancelled by Defendants would have generated \$366 million in direct and inter-state benefits to the MILCON States’ economies even when offsetting the economic benefits that would result from the border barrier construction in New Mexico and California. *Id.* ¶ 18. These financial losses are also clearly relevant to the broader public interest. *See infra* § II.A.

City of Oakland v. Lynch, 798 F.3d 1159, 1164 (9th Cir. 2015) (recognizing “[a]n expected loss of tax revenue” as harm).

These harms are irreparable and, thus, justify lifting the stay. This Court recently affirmed in *California v. Azar* that “[economic] harm . . . is irreparable [where] the states will not be able to recover monetary damages” to compensate for financial losses. 911 F.3d 558, 581 (9th Cir. 2018). Without an injunction, Defendants would be free to redirect the funds previously slated for military construction projects in the MILCON States, six of which have January 2020 award dates, toward border wall construction. Moreover, once those funds have been obligated for border barrier construction, “the federal courts are without authority to provide monetary relief.” *City of Houston v. HUD*, 24 F.3d 1421, 1428 (D.C. Cir. 1994). Therefore, without an injunction, even if the MILCON States ultimately prevail on the appeal they face a substantial risk of being forever deprived of the tax revenue that would be lost by the unlawful diversions. *See id.* Lifting the stay is necessary to ensure the MILCON States’ interests in these funds are protected for the duration of the appeal.

B. Proceeding with Construction of Defendants’ Border Barriers Pending Appeal Will Harm California’s and New Mexico’s Sovereign Interests in Enforcing Their State Laws

The district court’s stay also undermines California’s and New Mexico’s sovereign interests. Defendants cite § 2808’s clause authorizing military

construction projects “without regard to any other provision of law,” *see States* case, ECF No. 236 at 25, to refuse to comply with any environmental laws—including those adopted and enforced by California and New Mexico—in constructing border barriers, despite the fact that Congress has specifically mandated that these kind of state laws typically apply to major federal construction projects.

Both California and New Mexico have implemented numerous laws to protect their natural resources and environments, and public health. *See, e.g.*, Porter-Cologne Water Quality Control Act, Cal. Water Code §§ 13000-16104; California Endangered Species Act, Cal. Fish and Game Code §§ 2050-2089.26; N.M. Const., art. XX, § 21; N.M. Admin. Code §§ 20.2.23.6, 108-113. Congress has decreed that federal construction projects are normally subject to these laws. *See, e.g.*, 33 U.S.C. §§ 1323(a), 1341(a) (requiring federal agencies to comply with state law standards concerning water quality and to obtain certification from a state agency demonstrating that compliance); 42 U.S.C. § 7418(a) (requiring federal agencies to comply with state law standards concerning air quality); Cal. Water Code §§ 13050(c), 13260 (imposing requirements on “persons” including the United States before discharging waste into state waters); Ex. 4, *States* case, ECF No. 220 at 21-26. Defendants, however, plan to construct border barriers using unlawfully

diverted military construction funds without following California's and New Mexico's environmental laws. *See* Ex. 5, *States* case, ECF No. 212-2 at 9.

A state suffers irreparable harm when prevented from enforcing its laws. *Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers). States possess undeniable sovereign interests in their “power to create and enforce a legal code,” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982), including codes protecting the natural resources and public health within their borders, *see Maine v. Taylor*, 477 U.S. 131, 151 (1986). Federal actions that unlawfully impede or prevent states from enforcing their laws undermine state sovereign interests and inflict irreparable injury to those states. *See, e.g., New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *Kansas v. United States*, 249 F.3d 1213, 1227-28 (10th Cir. 2001) (harm from federal agency action that undermines state’s “sovereign interests and public policies” is irreparable). Accordingly, Defendants’ proposed course of action—to proceed with construction of border barriers in disregard of California’s and New Mexico’s environmental laws—will inflict an irreparable injury on those states.

II. THE STAY HARMS THE PUBLIC INTEREST

A. Cancelling Military Construction Projects Will Harm Public Health and Safety

Defendants' planned cancellation of over 120 military construction projects, 19 of which are located within the Amici States, will also put public health and safety at risk. *See* Ex. 2, *States* case, ECF No. 207-1. When originally seeking funding for these projects, DoD explained that they were necessary to prevent specific public health and safety harms. Ex. 6, Plaintiffs' RJN Exs. 2-19, *States* case, ECF No. 220-5. Because of the district court's stay, the retrofits, upgrades, and other important changes for which Congress appropriated funds will not occur, and those serious health and safety concerns will remain unaddressed. For example, Defendants cancelled two projects totaling \$41 million to construct new hazardous materials warehouses at Naval Stations in Virginia to replace existing World War II-era facilities not equipped for storing such materials. *Id.* RJN Exs. 15, 17. As a consequence, Virginia residents face an increased risk of harms from the release of hazardous materials. Virginia residents will face additional risks as a result of the funding diversions because the Navy will no longer be able to build a nuclear containment shop and new ship maintenance facility to replace a facility the Navy itself described as presenting "severe life safety and environmental concerns" and a "high risk environment." *Id.* RJN Ex. 18 at 2. And residents of Hawaii will face increased risks due to cancellation of a \$26.5 million project to

improve security at an access point to a Marine Corps Base that, according to the Marine Corps, is needed to comply with current anti-terrorism and force protection standards. *Id.* RJN Ex. 5.

In addition, the California Air National Guard will lose funding for an \$8 million facility that would have housed a C-130J flight simulator to provide enhanced training to flight crews that regularly combat massive wildfires in California. Ex. 7, Green Decl. ¶¶ 6-9, 15-16, 18-25, *States* case, ECF No. 220-2. In a state that faces increasing threats due to wildfires, the elimination of this enhanced training will expose Californians and their communities to significant health and safety risks. *Id.* ¶¶ 8, 25.

As district court amicus the Iraq and Afghanistan Veterans of America rightly observed, these cancelled projects “would have significantly improved the safety of our service members” and “provid[ed] the military with a work environment that is worthy of their service.” Ex. 8, *States* case, ECF No. 232, at 6-7. Because their cancellation puts public health and safety at risk, the public interest weighs heavily in favor of lifting the stay.

B. Proceeding with Construction for Which Congress Explicitly Denied Funding Harms the Public’s Interest in Protecting Congress’s Power of the Purse

Finally, the federal government’s interest in enforcing immigration laws, no matter how important, cannot outweigh the public’s interest in safeguarding the

judgments made by Congress in the appropriations process and the structural separation of powers protections that are the foundation of our Constitution.

It is the “exclusive province of the Congress not only to formulate the legislative policies and mandate programs and projects, but also to establish their relative priority for the Nation.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978). The Constitution arms Congress with the power to set those priorities through the “straightforward and explicit command” in the Appropriations Clause that “no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.” *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990) (quoting U.S. Const. art. I, § 9, cl. 7). Then-Judge Kavanaugh described the Appropriations Clause as a “bulwark of the Constitution’s separation of powers ... particularly important as a restraint on Executive Branch officers: If not for the Appropriations Clause, the executive would possess an unbounded power over the public purse of the nation; and might apply all its monied resources at his pleasure.” *Dep’t of the Navy v. Fed. Labor Relations Auth.*, 665 F.3d 1339, 1347 (D.C. Cir. 2012) (internal quotations omitted); *see also United States v. McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016) (noting that the Appropriations Clause “plays a critical role in the Constitution’s separation of powers among the three branches of government and the checks and balances between them.”).

The Appropriations Clause’s check on unilateral executive spending “assure[s] that public funds will be spent according to the letter of the difficult judgments reached by the Congress as to the common good, and not according to the individual favor of Government agents.” *Richmond*, 496 U.S. at 428. Congress’s judgment here was clear: Congress specifically considered and rejected the Administration’s repeated requests to spend billions of dollars toward the construction of a border wall across the southwest border. *See* Order 2. Instead, Congress agreed to appropriate only \$1.375 billion for pedestrian border barrier funding in the FY 2019 Consolidated Appropriations Act (“CAA”) to be built solely in a specified area in Texas and subject to congressionally prescribed limitations. Pub. L. No. 116-6, §§ 230-32, 133 Stat. 13, 28 (2019). By diverting funds from military construction projects that Congress specifically *chose* to fund, toward construction of a wall across the southern border that Congress *declined* to fund, the President “reject[ed] the policy judgment made by Congress” and impermissibly substituted “his own policy judgment” based “on the same conditions [Congress] evaluated when it passed [the CAA].” *Clinton v. City of New York*, 524 U.S. 417, 443-44 (1998).

This subversion of separation of powers principles is profoundly adverse to the public interest. That is, if “the decision to spend [is] determined by the Executive alone, without adequate control by the citizen’s Representatives in

Congress, liberty is threatened.” *City of New York*, 524 U.S. at 451 (Kennedy, J., concurring); *Sierra Club*, 929 F.3d at 704 (“The Appropriations Clause is a vital instrument of separation of powers, which has as its aim the protection of individual rights and liberties—not merely separation for separation’s sake.”). An injunction, therefore, is necessary to preserve the core fabric of our Constitution, and the individual rights and liberty that its structure guarantees.

CONCLUSION

Amici States request that this Court grant the *Sierra Club* Plaintiffs’ motion and lift the stay.

Dated: January 9, 2020

Respectfully submitted,

s/ Heather C. Leslie

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because it contains 2,599 words excluding the parts exempted by Fed. R. App. P. 32(f). I also certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it because it uses a proportionately spaced Times New Roman font and has a typeface of 14 points.

Dated: January 9, 2020

s/ Heather C. Leslie

Heather C. Leslie

CERTIFICATE OF SERVICE

I certify that on January 10, 2020, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: January 9, 2020

s/ Heather C. Leslie

Heather C. Leslie

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. [19-cv-00872-HSG](#)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTIONS FOR PARTIAL SUMMARY
JUDGMENT AND DENYING
DEFENDANTS' MOTIONS FOR
PARTIAL SUMMARY JUDGMENT**

Re: Dkt. No. 220, 236

SIERRA CLUB, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. [19-cv-00892-HSG](#)

Re: Dkt. Nos. 210, 236

Pending before the Court are cross-motions for partial summary judgment in two related cases, *State of California v. Trump*, No. 19-cv-00872-HSG, and *Sierra Club v. Trump*, No. 19-cv-00892-HSG.¹ Plaintiffs in both cases challenge Defendants' proposed reallocation of \$3.6 billion in military construction funds under 10 U.S.C. § 2808 ("Section 2808") to build a wall along the southern border of the United States. Section 2808 is just one of several alternative sources of

¹ Plaintiffs in *State of California v. Trump* are a coalition of nine states, including California, Colorado, Hawaii, Maryland, New Mexico, New York, Oregon, Wisconsin, and the Commonwealth of Virginia ("State Plaintiffs"). Plaintiffs in *Sierra Club v. Trump* include the Sierra Club and the Southern Border Communities Coalition ("Sierra Club Plaintiffs"). Because Plaintiffs' motions for summary judgment overlap considerably, the Court refers collectively to both State and Sierra Club Plaintiffs in this order as "Plaintiffs," unless otherwise specified. Defendants in both cases include President Donald J. Trump and certain of his cabinet members, in their official government capacities. The Court refers to them collectively as "Defendants" in this order to avoid confusion in light of the apparent conflict between the Executive and Legislative branches of the government in these cases.

1 funding that Defendants identified for border construction after Congress appropriated only
 2 \$1.375 billion for that purpose in the Consolidated Appropriations Act of 2019 (“CAA”), far less
 3 than the \$5.7 billion the President ultimately requested. *Compare California*, 19-cv-00872-HSG,
 4 Dkt. No. 59-4, Ex. 25, with CAA, Pub. L. No. 116-6, 133 Stat. 13 (2019). Plaintiffs assert that
 5 Defendants’ reliance on Section 2808—like Defendants’ other alternative funding plans—
 6 improperly circumvents the CAA and Congress’ appropriations power under the Constitution.²
 7 Plaintiffs therefore seek declaratory and injunctive relief, prohibiting Defendants from using funds
 8 under Section 2808 to build border barriers.

9 As the Court has previously explained, these two cases are not about—and the Court offers
 10 no opinion regarding—whether the challenged border barrier construction plan is sound policy.
 11 *See City and County of San Francisco v. United States Citizenship and Immigration Services*, No.
 12 19-17213, (9th Cir. Dec. 5, 2019), Dkt. No. 27 at 2–3 (Bybee, J., concurring) (explaining that
 13 “even as we are embroiled in these controversies, no one should mistake our judgments for our
 14 policy preferences,” and that “our thoughts on the efficacy of the one approach versus the other
 15 are beside the point, since our business is not to judge the wisdom of the National Government’s
 16 policy” (quotation omitted)); *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (indicating that the
 17 Supreme Court “express[ed] no view on the soundness of the policy” at issue there); *In re Border*
 18 *Infrastructure Envtl. Litig.*, 284 F. Supp. 3d 1092, 1102 (S.D. Cal. 2018) (noting that the court
 19 “cannot and does not consider whether underlying decisions to construct the border barriers are
 20 politically wise or prudent”).³ Neither does the Court here address any of the other sources of
 21 funding that Defendants have identified to pay for the border barrier construction. Rather, the
 22 issues currently before the Court are narrow: whether Defendants’ proposed plan for funding
 23

24 ² The Appropriations Clause of the Constitution provides that “No Money shall be drawn from the
 Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art I, § 9, cl. 7.

25 ³ There also appears to be no dispute between the Executive and Congress that at least some
 26 border barrier construction is warranted, as Congress has historically appropriated funds for this
 27 purpose. For fiscal year 2018, for example, Congress appropriated \$1.571 billion for physical
 28 barriers and associated technology along the southwest border. *See California*, No. 19-cv-00872-
 HSG, Dkt. No. 161; *see also* Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, div. F,
 tit. II, § 230(a) 132 Stat. 348 (2018). And even for fiscal year 2019, the Administration initially
 requested \$1.6 billion for border barrier construction, *see California*, No. 19-cv-00872-HSG, Dkt.
 No. 112-1, Ex. 51 at 58, and Congress appropriated \$1.375 billion, *see CAA*, 133 Stat. 13.

border barrier construction under Section 2808 (1) exceeds the Executive Branch’s statutory and constitutional authority; (2) is arbitrary and capricious under the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*, (“APA”); and (3) violates the National Environmental Policy Act (“NEPA”).

Nevertheless, the Court assesses these issues against a complicated and unprecedented backdrop. As an initial matter, presidents have only invoked Section 2808 twice since it was enacted in 1982. *See* Michael J. Vassalotti & Brendan W. McGarry, *Military Construction Funding in the Event of a National Emergency*, Cong. Research Serv., IN11017 (Jan. 11, 2019) at 2–3; Jennifer K. Elsea, Edward C. Lieu, & Jay B. Sykes, *Can the Department of Defense Build the Border Wall*, Cong. Research Serv., LSB10242 (Feb. 18, 2019) at 3–4. Of the military construction projects funded through Section 2808, only one was located in the United States, and that project related to securing facilities holding weapons of mass destruction shortly after the 9/11 attacks. *See, e.g.*, Vassalotti, at 1–3; *see also Sierra Club*, 19-cv-00892-HSG, Dkt. No. 236-5, Ex. 5. And critically, a president has never before invoked Section 2808 to secure funding for projects that Congress specifically declined to fund in its appropriations judgment. *Id.* Yet here the President has been explicit in his intention to obtain funds for border barrier construction, with or without Congress. *See, e.g., California*, 19-cv-00872-HSG, Dkt. No. 59-4, Exs. 13, 21; *Sierra Club*, 19-cv-00892-HSG, Dkt. No. 36-3, Ex. C. Accordingly, the President invoked Section 2808 the day after Congress passed the CAA, which provided limited funding for, and contained restrictions regarding funding for, border barrier construction. *See* CAA, § 230(a)(1), 133 Stat. at 28.

The Court heard argument on these motions on November 20, 2019. *See California*, 19-cv-00872-HSG, Dkt. No. 250; *Sierra Club*, 19-cv-00892-HSG, Dkt. No. 248. After carefully considering the parties’ arguments, the Court **GRANTS IN PART** Sierra Club Plaintiffs’ partial motion for summary judgment; **GRANTS IN PART** State Plaintiffs’ partial motion for summary judgment; and **DENIES** Defendants’ motions.

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I. BACKGROUND

A. Factual Background

The Court has detailed the lengthy history of these cases in its prior orders, and incorporates the factual background in full. *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 144. The Court also briefly summarizes and notes subsequent factual developments as relevant to this order.

i. Emergency Declaration

Following the longest partial government shutdown in the nation’s history, Congress passed the CAA on February 14, 2019, making available \$1.375 billion “for the construction of primary pedestrian fencing, including levee pedestrian fencing, in the Rio Grande Valley Sector.” *See CAA*, § 230(a)(1), 133 Stat. at 28. On February 15, 2019, the President signed the CAA into law. *See generally id.* That same day, the President invoked his authority under the National Emergencies Act (“NEA”), Pub. L. 94–412, 90 Stat. 1255 (1976) (codified as amended at 50 U.S.C. §§ 1601–51), and declared that “a national emergency exists at the southern border of the United States.” *See Proclamation No. 9844*, 84 Fed. Reg. 4,949 (Feb. 15, 2019) (“Proclamation No. 9844”). The proclamation further “declar[ed] that this emergency requires use of the Armed Forces,” and made available “the construction authority provided in [S]ection 2808.” *Id.* When announcing the proclamation, the President explained that he initially “went through Congress” for the \$1.375 billion in funding, but was “not happy with it.” *See California*, No. 19-cv-00872-HSG, Dkt. No. 59-4, Ex. 50.

Since that time, Congress has sought to terminate the national emergency on two separate occasions. On March 14, 2019, Congress passed a joint resolution to terminate the emergency declaration. *See H.R.J. Res. 46*, 116th Cong. (2019). On March 15, 2019, the President vetoed the joint resolution. *See Veto Message to the House of Representatives for H.J. Res. 46*, The White House (Mar. 15, 2019), <https://www.whitehouse.gov/briefings-statements/veto-message-house-representatives-h-j-res-46/>. Congress failed to override the President’s veto. *See 165 Cong. Rec. H2799, H2814–15* (2019). On September 27, 2019, Congress passed a second joint resolution to terminate the emergency declaration. *See S.J. Res. 54*, 116th Cong. (2019). And on

October 15, 2019, the President vetoed the second joint resolution. *See S.J. Res. 54 Veto Message*, The White House (Oct. 15, 2019), <https://www.whitehouse.gov/presidential-actions/s-j-res-54-veto-message/> (“S.J. Res. 54 Veto Message”). Again, Congress failed to override the veto. *See S.J. Res. 54*, 116 Cong. (2019). Congress has an ongoing obligation to consider whether to terminate the emergency every six months, but the President’s declaration of a national emergency remains in effect.⁴ *See* 50 U.S.C. § 1622(a)–(b).

ii. Military Construction Funds and Diverted Projects

On February 11, 2019, prior to the President’s proclamation and invocation of Section 2808, the Chairman of the Joint Chiefs of Staff submitted a preliminary assessment to the Acting Secretary of Defense regarding whether and how military construction projects could support the use of the armed forces in addressing a national emergency at the southern border. *See California*, No. 19-cv-00872-HSG, Dkt. No. 212 (“Administrative Record” or “AR”)⁵ at 119–124. The memorandum explained that the Department of Homeland Security (“DHS”) identified specific geographic areas in which border barriers could allow Department of Defense (“DoD”) personnel and resources “to be employed more efficiently” and “reduce DHS requirements for DoD support.” *Id.* However, although the President authorized use of military construction funds under Section 2808 in his February 15 proclamation, Defendants did not exercise this authority for several months.

Instead, in the intervening months, the Chairman of the Joint Chiefs of Staff submitted a supplemental assessment on May 6, 2019, regarding military construction projects at the southern

⁴ Under the NEA as initially drafted in 1976, the national emergency would have ended once Congress passed the first joint resolution. The NEA did not require a presidential signature on the joint resolution, nor was it subject to a presidential veto, until the Supreme Court ruled in *INS v. Chadha* that the president must have the power to approve or veto such congressional acts. *See* 462 U.S. 919, 944–58 (1983).

⁵ The parties do not oppose the Court’s consideration of the administrative record, *see California*, No. 19-cv-00872-HSG, Dkt. Nos. 212-2, 212-3, 212-4, or the Plaintiffs’ request to take judicial notice of various documents. The Court finds it may take judicial notice of documents from the administrative record and Plaintiffs’ requests that are cited in this order, all of which are: (1) statements of government officials or entities that are not subject to reasonable dispute; or (2) other public records and government documents available on reliable internet sources, such as government websites. *See DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 763 n.5 (9th Cir. 2018) (taking “judicial notice of government documents, court filings, press releases, and undisputed matters of public record”).

border. *See* AR at 59–70. In the updated memorandum, the Chairman again concluded that such construction “can reasonably be expected to support the use of the armed forces by enabling more efficient use of DoD personnel, and may ultimately reduce the demand for military support over time.” *See id.* at 60. The Chairman explained that although “any border barrier construction supports the use of the armed forces on the border to some extent,” the Joint Chiefs prioritized fifteen projects, totaling \$3.6 billion. *See id.* at 63. On May 15, 2019, Defendants informed the Court that the Under Secretary of Defense had identified existing military construction project funding to divert for border barrier construction pursuant to Section 2808, but that the Acting Secretary of Defense had “not yet decided to undertake or authorize any barrier construction projects under § 2808.” *See California*, 19-cv-00872-HSG, Dkt. No. 151 at 3.

Then on September 3, 2019, the Secretary of Defense announced that he had decided to authorize eleven specific border barrier construction projects in California, Arizona, New Mexico, and Texas, pursuant to Section 2808. *See California*, 19-cv-00872-HSG, Dkt. Nos. 206, 206-1, Ex. 1. In doing so, he reiterated that these projects “will reduce the demand for DoD personnel and assets to other high-traffic areas on the border without barriers.” *See id.*, Dkt. No. 206-1, Ex. 1. He concluded that “[i]n short, these barriers will allow DoD to provide support to DHS more efficiently and effectively.” *Id.*

Collectively, the eleven projects total \$3.6 billion and include 175 miles of border barrier construction across four states. *Id.* These projects fall into three categories:

- Two projects on the Barry M. Goldwater Range military installation in Arizona;
- Seven projects on federal public domain land that is under the jurisdiction of the Department of the Interior; and
- Two projects on non-public land that would need to be acquired through either purchase or condemnation before construction could begin.

See id., Dkt. Nos. 206 at 2–4, 206-1, Ex. 1. The Secretary of Defense authorized the Secretary of the Army “to expeditiously undertake the eleven border barrier military construction projects,” including taking the necessary steps to acquire the public domain and non-public land as part of “the Army’s real property inventory, either as a new military installation or as part of an existing

1 military installation.” *See id.*, Dkt. No. 206-1, Ex. 1 at 1; *see also* AR at 3–6, 9–10, 30–31. That
2 same day, in a briefing on the use of Section 2808, DoD representatives explained that the \$3.6
3 billion would “all go to adding significantly new capabilities to DHS’s ability to prevent illegal
4 entry.” *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 210-2, Ex. 17 at 5.

5 Two days later, on September 5, 2019, the Secretary of Defense identified which military
6 construction projects DoD intended to defer in order to fund the border barrier construction
7 projects. *See California*, 19-cv-00872-HSG, Dkt. Nos. 207, 207-1, Ex. 1. In total, the Secretary
8 of Defense authorized diverting funding from 128 military construction projects, domestically and
9 abroad. *See id.*, Dkt. No. 207-1, Ex. 1. Sixty-four of the defunded military construction projects
10 are located within the United States; and nineteen projects, totaling over \$500 million, are within
11 Plaintiff States California, Colorado, Hawaii, Maryland, New Mexico, Oregon, Virginia, and
12 Wisconsin. *See id.*; *see also id.*, No. 19-cv-00872-HSG, Dkt. No. 220-5, Exs. 2–19.

13 The Secretary of Defense explained that he sought to identify projects for defunding and
14 deferral based on the projects’ timing, and thus the 128 projects “are not scheduled for award until
15 fiscal year 2020 or later.” *See* AR at 13. Doing so, he stated, would “provide [DoD] time to work
16 with [Congress] to determine opportunities to restore funds for these important military
17 construction projects” *California*, 19-cv-00872-HSG, Dkt. No. 206-2, Ex. 2 at 2; *cf.* S. 1790,
18 116th Cong. § 2906 (“Replenishment of Certain Military Construction[] Funds”). The deferred
19 projects include rebuilding hazardous materials warehouses at Norfolk and the Pentagon;
20 replacing a daycare facility for servicemembers’ children at Joint Base Andrews, which reportedly
21 suffers from “sewage backups, flooding, mold and pests”; and improving security to comply with
22 anti-terrorism and force protection standards at Kaneohe Bay. *See Sierra Club*, No. 19-cv-00892-
23 HSG, Dkt. No. 202-1, Ex. 1; *id.*, Dkt. No. 210-2, Ex. 18; *see also California*, No. 19-cv-00872-
24 HSG, Dkt. No. 232 (Brief of *Amici Curiae* Iraq and Afghanistan Veterans of America) (“IAVA
25 Brief”).

26 In accordance with the Secretary of Defense’s directive, the Secretary of the Army has
27 taken steps over the past few months to obtain administrative jurisdiction over some of the land
28 for the border barrier construction projects. On October 7, 2019, the Secretary of the Interior

announced the transfer of approximately 560 acres of federal lands to the Department of the Army for a period of three years for border barrier construction in Arizona, California, and New Mexico. *See California*, No. 19-cv-00872-HSG, Dkt. No. 220-5, Ex. 1. Additionally, on October 8, 2019, the Secretary of the Army issued General Order No. 2019-36, which automatically assigns all land transferred to the Army for Section 2808 border barrier construction projects to the U.S. Army Garrison Fort Bliss, Texas, irrespective of the location of the land. *See id.*, Dkt. No. 236-7, Ex. 7.

During the hearing on the motions for partial summary judgment, Defendants' counsel also represented to the Court that there have been two contracts awarded related to the border barrier construction projects. *See California*, No. 19-cv-00872-HSG, Dkt. No. 254 at 81:2–24. The first contract relates to the projects on the Barry M. Goldwater Range, in Arizona: that contract was awarded on November 6, 2019, and ground disturbing activity was anticipated to start no earlier than November 27, 2019. *Id.* The second contract relates to a project in San Diego County, California: that contract was awarded on November 19, 2019, and ground disturbing activity was anticipated to start no earlier than December 9, 2019. *Id.*

B. Procedural History

Following the passage of the CAA and the President's national emergency declaration in February 2019, the State and Sierra Club Plaintiffs filed suit challenging Defendants' anticipated diversion of federal funds for border barrier construction pursuant to several statutory provisions. These include reallocating funds from the Treasury Forfeiture Fund; DoD's Appropriations Act of 2019 under Section 8005 and 10 U.S.C. § 284; and DoD appropriations for military construction projects under Section 2808. *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 36-7, Ex. G at 2–4; *see also id.*, Dkt. No. 64-8, ¶¶ 5–6.

The Court first preliminarily enjoined Defendants' use of funds for two border barrier construction projects in New Mexico and Arizona under Section 8005. *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 144. The Court reasoned that Plaintiffs were likely to show that (1) the language and purpose of Section 8005 precluded Defendants' transfer and use of funds for construction of border barriers because Congress had already explicitly denied those requested funds; (2) the need for such funds was not unforeseen as the Administration had requested such

1 funding as early as 2018; and (3) Defendants’ proposal likely would violate the Constitution’s
2 separation of powers principles to the extent it bypassed Congress’ appropriations authority. *Id.*
3 At the time, Sierra Club Plaintiffs also sought a preliminary injunction to preclude Defendants’
4 proposed use of Section 2808. *See id.*, Dkt. No. 29 at 13–15, 23–25. However, the Court found
5 that Plaintiffs could not show irreparable harm as needed to warrant an injunction because as of
6 May 2019, Defendants had not yet made a final decision as to whether to use Section 2808 funds.
7 *Id.*, Dkt. No. 144 at 51–53.

8 The Court subsequently affirmed its ruling on Defendants’ use of Section 8005, granting in
9 part the motions for partial summary judgment filed by California, New Mexico, and the Sierra
10 Club Plaintiffs, and denying Defendants’ motions for partial summary judgment. *See California*,
11 No. 19-cv-00872-HSG, Dkt. No. 185; *Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 185. The
12 Court entered a permanent injunction, prohibiting Defendants from taking any action to construct
13 a border barrier in the six sectors that Defendants identified in New Mexico, Arizona, and
14 California, using funds reprogrammed by DoD under Section 8005. *Sierra Club*, No. 19-cv-
15 00892-HSG, Dkt. No. 185 at 10.

16 Following the Court’s summary judgment orders, Defendants filed an emergency
17 application with the Ninth Circuit for a stay of the injunction. On July 3, 2019, the Ninth Circuit
18 motions panel denied the stay application, finding that Defendants’ border barrier construction
19 was not authorized by any statutory appropriation, such that the proposed reprogramming and use
20 of these funds violated the Appropriations Clause. *See Sierra Club v. Trump*, 929 F.3d 670, 676–
21 77 (9th Cir. 2019). The motions panel further held—over Defendants’ objection—that Plaintiffs
22 have an equitable cause of action to challenge Defendants’ funding proposal as unconstitutional,
23 and that Plaintiffs satisfied any “zone of interests” test that may apply to their claim. *See id.* at
24 694–704; *see also* Section III.A below.

25 On July 26, 2019, the Supreme Court stayed the permanent injunction pending resolution
26 of the government’s appeal before the Ninth Circuit and any subsequent writ of certiorari. *See*
27 *Trump v. Sierra Club*, 140 S. Ct. 1 (2019). In the one-paragraph decision, the Supreme Court
28 stated that “the Government has made a sufficient showing at this stage that the plaintiffs have no

1 cause of action to obtain review of the Acting Secretary’s compliance with Section 8005.” *Id.*
2 The Supreme Court, however, provided no further explication of its reasoning, and the appeal
3 before the Ninth Circuit regarding Section 8005 remains pending.

4 In the interim, the parties agreed to stay the summary judgment briefing schedule as to
5 Section 2808 and the Treasury Forfeiture Fund until the Acting Secretary of Defense and U.S.
6 Customs and Border Protection (“CBP”), respectively, reached a final decision to fund specific
7 barrier construction projects under these provisions. *See California*, No. 19-cv-00872-HSG, Dkt.
8 Nos. 199, 200; *Sierra Club*, No. 19-cv-00892-HSG, Dkt. Nos. 191, 197. Because the Secretary of
9 Defense has since announced his authorization for border barrier construction projects pursuant to
10 Section 2808, as detailed in Section I.A.ii above, the parties now move for partial summary
11 judgment as to this proposal.

12 II. LEGAL STANDARD

13 Summary judgment is proper when a “movant shows that there is no genuine dispute as to
14 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).
15 A fact is “material” if it “might affect the outcome of the suit under the governing law.” *Anderson*
16 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute is “genuine” if there is evidence
17 in the record sufficient for a reasonable trier of fact to decide in favor of the nonmoving party. *Id.*
18 But in deciding if a dispute is genuine, the court must view the inferences reasonably drawn from
19 the materials in the record in the light most favorable to the nonmoving party, *Matsushita Elec.*
20 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88 (1986), and “may not weigh the evidence
21 or make credibility determinations,” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997),
22 *overruled on other grounds by Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008). If a court
23 finds that there is no genuine dispute of material fact as to only a single claim or defense or as to
24 part of a claim or defense, it may enter partial summary judgment. Fed. R. Civ. P. 56(a).

25 III. DISCUSSION

26 A. Plaintiffs’ Cause of Action

27 As a threshold matter, Defendants contend that Plaintiffs lack a cause of action through
28 which they may challenge the proposed use of military construction funds under Section 2808.

1 They argue that Plaintiffs may not seek equitable relief through an implied cause of action under
2 the Constitution, and that Plaintiffs fall outside the zone of interests protected by Section 2808 and
3 the CAA. As Defendants acknowledge, they raised the same arguments before this Court and the
4 Ninth Circuit motions panel in the context of Plaintiffs' challenge to funding a border wall using
5 Section 8005. In response, the Ninth Circuit engaged in a detailed discussion—and rejection—of
6 each point, concluding that "Plaintiffs have an avenue for seeking relief." *See Sierra Club*, 929
7 F.3d at 694–704; *see also Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 245 (Brief of *Amici*
8 *Curiae* Federal Courts Scholars).

9 *First*, the Ninth Circuit held that Plaintiffs could challenge the reprogramming of funds
10 under Section 8005 "through an equitable action to enjoin unconstitutional official conduct."
11 *Sierra Club*, 929 F.3d at 694. Plaintiffs' argument there, as here, is that Defendants' attempt to
12 reprogram funds for border barrier construction violates the Appropriations Clause, and thus
13 separation of powers principles, because "Defendants lack any background constitutional authority
14 to appropriate funds." *See id.* at 696. The Ninth Circuit confirmed that such a claim is
15 "fundamentally a constitutional one," and "Plaintiffs may seek equitable relief to remedy an
16 alleged constitutional violation." *Id.* at 695–97. That Defendants rely on Section 8005 (or here,
17 Section 2808) as the basis for their efforts to reallocate funds for border barrier construction does
18 not convert a constitutional claim into a statutory one. *See id.* at 697 ("It cannot be that simply by
19 pointing to any statute, governmental defendants can foreclose a constitutional claim.").

20 *Second*, the Ninth Circuit expressed "doubt[]" that any zone of interests test applies to
21 Plaintiffs' equitable cause of action to enjoin a violation of the Appropriations Clause." *Id.* at 700.
22 A zone of interests test is used "to 'determine, using traditional tools of statutory interpretation,
23 whether a legislatively conferred cause of action encompasses a particular plaintiff's claim.'" *Id.*
24 (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127 (2014)). The
25 test "ask[s] whether the plaintiff's 'interests fall within the zone of interests protected by the law
26 invoked.'" *Id.* (quoting *Lexmark*, 572 U.S. at 129). The Ninth Circuit highlighted the problems
27 with applying a zone of interests test to Plaintiffs' constitutional claim: "[W]here the very claim is
28 that no statutory or constitutional provision authorized a particular governmental action, it makes

little sense to ask whether any statutory or constitutional provision was written for the benefit of any particular plaintiffs.” *Id.* at 701 (emphasis omitted). Moreover, “[b]ecause the Constitution was not created by any act of Congress, it is hard to see how the zone of interests test would even apply.” *Id.* at 702. Thus, the Court concluded that “it is likely sufficient here that Plaintiffs would be concretely injured by the alleged Appropriations Clause violation, and that no zone of interests test applies to their claim.” *Id.* at 701.

Third, even if a zone of interests test *did* apply to such a constitutional claim, the Ninth Circuit explained that the proper inquiry is whether Plaintiffs fall within the zone of interests of the constitutional provision, and not the statute Defendants raise in defense. *Id.* at 703–04. The Court explained that “individuals, too, are protected by the operations of separation of powers and checks and balances,” and thus, Plaintiffs’ contention “that their rights or liberties were infringed by a violation of the Appropriations Clause . . . falls within any zone of interests required to enforce that clause’s provisions.” *Id.* at 704 (quotation omitted).

i. *Miller v. Gammie*

Defendants urge the Court to disregard the Ninth Circuit’s reasoning in light of the Supreme Court’s opinion staying the permanent injunction as to Section 8005. *See Trump*, 140 S. Ct. at 1. Defendants argue that the “Supreme Court decision sends a strong signal” that they ultimately will prevail on the claim that their exercise of authority under Section 8005 may not be challenged by these Plaintiffs. *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 236 at 11. This claimed “strong signal” is based on a sentence in the Supreme Court’s stay order stating that “the Government has made a sufficient showing at this stage that the plaintiffs have no cause of action to obtain review of the Acting Secretary’s compliance with Section 8005.” *See Trump*, 140 S. Ct. at 1.⁶ However, notwithstanding Defendants’ characterization of this “signal,” the Court may not

⁶ The October 15, 2019, veto message went further, claiming that the proclamation itself “has withstood judicial challenge in the Supreme Court.” *See* S.J. Res. 54 Veto Message. This is inaccurate: the injunction that was the subject of the stay involved a funding source that did not depend on the emergency declaration, and the validity of the proclamation has never been addressed by the Ninth Circuit or the Supreme Court. *See Sierra Club*, 929 F.3d at 686 (explaining that the Ninth Circuit’s opinion “does not address any sources of funds Defendants might use to build a border barrier except those reprogrammed under section 8005”), 679, & n.1 (explaining that DoD’s proposed use of funds reprogrammed under Section 8005 to provide

so readily disregard the Ninth Circuit’s opinion. The Ninth Circuit has cautioned that only in cases of “clear irreconcilability” can district courts “consider themselves bound by the intervening higher authority and reject the prior opinion of [the Ninth Circuit] as having been effectively overruled.” *Miller v. Gammie*, 335 F.3d 889, 899–900 (9th Cir. 2003) (en banc). “This is a high standard,” which “requires [the district court] to look at more than the surface conclusions of the competing authority.” *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 979 (9th Cir. 2013) (quotation omitted).

At this stage, the Court can only speculate regarding the reasoning underlying the stay, including what it means for how the Supreme Court may ultimately assess the merits of these two cases.⁷ As Justice Breyer explained, “[t]his case raises novel and important questions about the ability of private parties to enforce Congress’ appropriations power.” *Trump*, 140 S. Ct. 1 (Breyer, J., concurring in part and dissenting in part). Because the Supreme Court opinion does not address these questions directly, the Court cannot find that it is “clearly irreconcilable with the reasoning or theory” in the Ninth Circuit panel opinion. *See Miller*, 335 F.3d at 899; *accord Close v. Sotheby’s, Inc.*, 894 F.3d 1061, 1074 (9th Cir. 2018) (holding that even where a prior panel opinion’s “reasoning would be suspect today, [] it is not clearly irreconcilable with intervening higher authority”); *Doe v. Trump*, 284 F. Supp. 3d 1182, 1184–85 (W.D. Wash. 2018) (“[T]his court is not at liberty to simply ignore binding Ninth Circuit precedent based on Defendants’ divination of what the Supreme Court was thinking when it issued the stay orders . . .”). The Ninth Circuit’s opinion in *Sierra Club v. Trump* therefore controls this Court’s analysis.

ii. Zone of Interests

Following the Ninth Circuit’s reasoning, as it must, the Court finds that Plaintiffs may challenge Defendants’ funding for border barrier construction under Section 2808. As with their

support for other agencies under section 284 “does not require the declaration of a national emergency”).

⁷ During oral argument on the motions, counsel for Defendants also acknowledged that he did not know the precise grounds on which the Supreme Court stayed the permanent injunction. Counsel opined that the majority could have “meant there is not a cause of action period, or there’s not a cause of action for these plaintiffs because of the zone of interests test” applicable to their claim. *See California*, No. 19-cv-00872-HSG, Dkt. No. 254 at 53:17–20.

challenge to Defendants’ use of funds under Section 8005, Plaintiffs’ claim that Defendants’ use of military construction authority under Section 2808 violates the Appropriations Clause is “fundamentally a constitutional” claim. *See Sierra Club*, 929 F.3d at 696–97. And to the extent Plaintiffs must fall within the zone of interests of the Appropriations Clause to assert this claim, *see id.* at 703–04, the Court finds this “low bar” easily satisfied here. *See Cook v. Billington*, 737 F.3d 767, 771 (D.C. Cir. 2013) (Kavanaugh, J.) (“A plaintiff with Article III standing satisfies the requirement unless his interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.” (quotation omitted)).

The Court first looks to the fundamental interests protected by the Appropriations Clause, and observes that the importance of those interests cannot be overstated. The Appropriations Clause “is particularly important as a restraint on Executive Branch officers: If not for the Appropriations Clause, the Executive would possess an unbounded power over the public purse of the nation; and might apply all its monied resources at his pleasure.” *U.S. Dep’t of Navy v. Fed. Labor Relations Auth.*, 665 F.3d 1339, 1347 (D.C. Cir. 2012) (Kavanaugh, J.) (quotation omitted). As such, members of the public, and not just Congress, have an interest in ensuring that the Constitution’s checks on executive power are upheld. As the Ninth Circuit noted, “[t]he Appropriations Clause is a vital instrument of separation of powers, which has as its aim the protection of individual rights and liberties—not merely separation for separation’s sake.” *Sierra Club*, 929 F.3d at 704. Both State and Sierra Club Plaintiffs assert that if Defendants proceed with their proposed spending plan in contravention of Congress’ appropriations judgment, they will suffer injury to their “environmental, professional, aesthetic, and recreational interests.” *Id.* In short, the Court finds that Plaintiffs have a cause of action to challenge Defendants’ invocation of Section 2808 as unconstitutional, and proceeds to analyze this claim below.

B. Section 2808

The Ninth Circuit’s opinion in *Sierra Club v. Trump* further guides the Court’s analysis of Plaintiffs’ constitutional claim. *See Sierra Club*, 929 F.3d at 689–92. Plaintiffs’ claim—and the legal theory undergirding both cases—is that Defendants seek to circumvent Congress’

1 appropriations power, and its judgment to provide the Administration with limited funds for
2 specified and limited border barrier construction, by seeking funding through alternative channels.
3 Defendants' counsel characterized the Administration's approach as "a full-court press," meaning
4 they are using any means that they contend are available to them to fund a border wall. *See*
5 *California*, No. 19-cv-00872-HSG, Dkt. No. 254 at 73:5–19. Although Plaintiffs appear to
6 challenge all funding for border barrier construction outside of the CAA, for purposes of this
7 order, Defendants contend that in Section 2808, Congress allowed Defendants to make this
8 reallocation from existing military construction projects to the border barrier construction.
9 Because Congress only exercises its appropriations power through statutes, the Ninth Circuit
10 accordingly focused its analysis on the text and purpose of Defendants' asserted defense. *Sierra*
11 *Club*, 929 F.3d at 689–92. The critical inquiry, therefore, is whether Section 2808 authorizes this
12 reallocation. If it does not, "then Defendants are acting outside of any statutory appropriation and
13 are therefore spending funds contrary to Congress's appropriations decisions." *Id.* at 689. The
14 Court therefore analyzes whether Defendants' conduct falls within the statutory authority provided
15 by Section 2808.

16 Under Section 2808, the Secretary of Defense may use funds previously appropriated for
17 other projects in limited circumstances where three factors are satisfied: (1) there is a national
18 emergency that requires use of the armed forces, and (2) "military construction projects" are
19 (3) "necessary to support such use of the armed forces." *See* 10 U.S.C. § 2808(a). Plaintiffs
20 challenge all three conditions, arguing that Defendants fail to satisfy any of them.

21 **i. Justiciability**

22 As a threshold matter, Defendants assert that the Court may not assess whether they have
23 satisfied the statute's requirements, because their decision to undertake military construction
24 pursuant to Section 2808 was entirely committed to agency discretion. *See Sierra Club*, No. 19-
25 cv-00892-HSG, Dkt. No. 236 at 15–16, 19–20. Defendants reason that there is no meaningful
26 standard against which the Court can determine whether the President or Secretary of Defense
27 exceeded the authority granted by Congress by declaring a national emergency that required use of
28 the armed forces; authorizing use of Section 2808; or undertaking military construction projects

under Section 2808. *Id.* In short, Defendants contend that the President and Secretary of Defense have unreviewable discretion, under both the NEA and Section 2808, to determine whether an emergency exists that meets the statutory criteria. Plaintiffs indicated during oral argument that they are not challenging the President’s emergency declaration per se, but rather whether it meets the statutory criteria for an emergency under Section 2808. *See California*, No. 19-cv-00872-HSG, Dkt. No. 254 at 12:6–16:12. The Court addresses that narrow challenge as part of its statutory analysis in Section III.B.ii. Here, however, the Court cabins its analysis to Defendants’ argument that their invocation of Section 2808 itself is committed to agency discretion by law, and as such, is nonjusticiable. *See* 5 U.S.C. § 701(a)(2). The Court disagrees that its ability to review Defendants’ conduct is so circumscribed.

As the Ninth Circuit has repeatedly held, “[t]he default rule is that agency actions are reviewable under federal question jurisdiction, pursuant to 28 U.S.C. § 1331 . . . even if no statute specifically authorizes judicial review.” *See Perez v. Wolf*, No. 18-35123, 2019 WL 6224421, at *5 (9th Cir. Nov. 11, 2019) (quoting *ANA Int’l, Inc. v. Way*, 393 F.3d 886, 890 (9th Cir. 2004)). A decision is generally committed to agency discretion by law, and thus not subject to judicial review, when a court would have “no meaningful standard against which to judge the agency’s exercise of discretion.” *Id.* at *5 (quotation omitted). This is rare. “Only where there is truly ‘no law to apply’ ha[s] [the Ninth Circuit] found an absence of meaningful standards of review.” *Id.* at *6 (quoting *Spencer Enterprises, Inc. v. United States*, 345 F.3d 683, 688 (9th Cir. 2003)). Courts must assess “the language of the statute and whether the general purposes of the statute would be endangered by judicial review.” *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1068 (9th Cir. 2015) (quotation omitted).

Engaging in this exercise, the Ninth Circuit recently explained that “courts routinely treat discretion-laden standards as providing ‘law to apply.’” *Perez*, 2019 WL 6224421, at *8–*9 (collecting cases). In *Perez v. Wolf*, the Ninth Circuit held that U-Visa determinations made by the United States Citizenship and Immigration Service (“USCIS”) are subject to judicial review because the statutory framework provides a meaningful standard against which to assess the agency’s exercise of discretion. *Id.* at 15–16. The statutory provision requires that a U-Visa

1 applicant:

2 (1) has suffered “substantial physical or mental abuse” as a result of
3 having been a victim of qualifying criminal activity; (2) “possesses
4 information” about qualifying criminal activity; and (3) “has been
5 helpful, is being helpful, or is likely to be helpful” to an authority
6 “investigating or prosecuting” qualifying criminal activity.

7 *Id.* at *8 (citing 8 U.S.C. § 1101(a)(15)(U)(i)). Although terms such as “substantial” and “helpful”
8 contain an element of subjectivity, the Ninth Circuit nevertheless found that they constituted “law
9 to apply.” *Id.*

10 The Court finds that Section 2808 likewise provides “meaningful standards” for reviewing
11 Defendants’ compliance with its conditions. The diversion of funds from existing military
12 construction projects is only authorized for (1) “military construction projects” that are
13 (2) “necessary to support such use of the armed forces.” *See* 10 U.S.C. § 2808(a). Congress
14 defined military construction as “any construction, development, conversion, or extension of any
15 kind carried out with respect to a military installation, whether to satisfy temporary or permanent
16 requirements, or any acquisition of land or construction of a defense access road.” *Id.* § 2801(a).
17 And Congress defined “military installation,” in turn, as “a base, camp, post, station, yard, center,
18 or other activity under the jurisdiction of the Secretary of a military department or, in the case of
19 an activity in a foreign country, under the operational control of the Secretary of a military
20 department or the Secretary of Defense, without regard to the duration of operational control.” *Id.*
21 § 2801(c)(4). Section 2808 therefore establishes statutory standards that constrain its use. And
22 applying these standards to determine “whether the reprogramming of funds is consistent with the
23 Appropriations Clause and [Section 2808] . . . is a familiar judicial exercise.” *See Sierra Club*,
24 929 F.3d at 687 (quotation omitted).

25 That the statute conditions authorization on the existence of a national emergency and the
26 use of the armed forces does not, on its own, convert the legal exercise of statutory interpretation
27 into a purely political one. The Ninth Circuit’s opinion in *United States v. Spawr Optical*
28 *Research, Inc.*, is illustrative. In *Spawr*, President Gerald Ford relied on the continued existence
of two national emergencies to forbid the shipment of certain strategic items to foreign countries

under the Trading with the Enemy Act (“TWEA”). 685 F.2d 1076, 1079–80 (9th Cir. 1982). During a national emergency, TWEA empowered the president to “regulate, . . . prevent or prohibit . . . any exportation of . . . or transactions involving[] any property in which any foreign country . . . has any interest.” 50 U.S.C. § 4305(b)(1)(B). The Ninth Circuit distinguished between “the essentially political questions surrounding the declaration or continuance of a national emergency,” on the one hand, and the legal question of “whether the actions taken pursuant to a national emergency comport with the power delegated by Congress,” on the other. *See Spawr*, 685 F.2d at 1080–81. The Ninth Circuit held that courts “are free to review” whether the Executive Branch has legal authority to act, and went on to determine whether the regulations at issue were rationally related to the emergencies. *See id.* at 1081 (concluding that “President Ford’s effort to limit the exportation of strategic items clearly had a rational relationship to the prevention of aggression and armed conflict”).

The Court fully appreciates that “[n]ational-security policy is the prerogative of the Congress and President,” and that their military judgments are due deference. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1861 (2017); *see also Rostker v. Goldberg*, 453 U.S. 57, 66 (1981) (acknowledging “a healthy deference to legislative and executive judgments in the area of military affairs”). But “the judiciary appropriately exercises its constitutional function where the question is whether Congress or the Executive is aggrandizing its power at the expense of another branch.” *Sierra Club*, 929 F.3d at 687 (quotation omitted). As the Ninth Circuit explained, “‘courts cannot avoid their responsibility merely because the issues have political implications.’” *Id.* (quoting *Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012)). The Court accordingly may, and must, determine whether Defendants have exceeded the limits set by Congress regarding spending under Section 2808, while affording both branches due deference. As summarized by the Ninth Circuit in another case in which the Executive Branch invoked national security concerns in support of its nonjusticiability argument:

To declare that courts cannot even look to a statute passed by Congress to fulfill international obligations turns on its head the role of the courts and our core respect for a co-equal political branch, Congress. Interpreting and applying [the statute at issue] does not

prevent the military from planning and building bases. It requires only that the executive take into account certain procedural obligations, required by Congress, before it takes steps forward. The courts may then look to whether the executive complied with its obligations. We may consider national security concerns with due respect when the statute is used as a basis to request injunctive relief. This is not a grim future, and certainly no grimmer than one in which the executive branch can ask the court for leave to ignore acts of Congress.

Ctr. for Biological Diversity v. Mattis, 868 F.3d 803, 825–26 (9th Cir. 2017).

ii. Statutory Interpretation

Having found that Section 2808 provides meaningful standards against which the Court may analyze Defendants’ conduct under the statute, the Court reviews their compliance with those standards. The Court provided its initial impression as to Defendants’ compliance with Section 2808 in its preliminary injunction order in *Sierra Club v. Trump*. See *Sierra Club*, 19-cv-00892-HSG, Dkt. No. 144 at 42–46. At the time, the Court expressed reservations that “border barrier construction could reasonably constitute a ‘military construction project’ such that Defendants’ invocation of Section 2808 would be lawful,” and also raised concerns that Defendants’ interpretation of Section 2808 would cede unbounded authority to Defendants to redirect military construction funds. See *id.* at 42–43. Now that Defendants have specified how they intend to use Section 2808, the Court confirms its preliminary analysis, finding that the eleven border barrier projects are not “military construction projects” that are “necessary to support such use of the armed forces.” See 10 U.S.C. § 2808(a).

a. Emergency Requiring Use of the Armed Forces

Sierra Club Plaintiffs alone challenge the President’s February 15 declaration of a national emergency to the extent that the President simultaneously concluded that this emergency required use of the armed forces.⁸ See *Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 210 at 9–11. *Sierra Club* Plaintiffs couch this as a statutory condition, and thus as a matter of statutory interpretation under Section 2808 rather than one of policy or politics. The Court is not persuaded.

⁸ State Plaintiffs, on the other hand, explicitly note that for purposes of their motion for partial summary judgment they are not challenging the President’s declaration of a national emergency. See *California*, No. 19-cv-00872-HSG, Dkt. No. 220 at 8.

Sierra Club Plaintiffs assert that there is no true emergency at the southern border, and that even if there were, DHS, not DoD, has jurisdiction over protecting the nation's borders. In support of their challenge, Sierra Club Plaintiffs point to the text of the proclamation itself, which states in relevant part:

[R]ecent 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 . . . [T]he 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.

Proclamation No. 9844. Plaintiffs contend that “unarmed parents and children seeking refuge do not require a military response.” *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 210 at 11. Plaintiffs also point to comments made by DoD officials outside the proclamation that the situation at the border is “not a military threat.” *See, e.g., id.*, Dkt. No. 210-2, Ex. 15 at 50–52 (Acting U.S. Secretary of Defense Shanahan and General Joseph Dunford concurring that the “situation on the southern border” is a “security challenge” and “not a military threat”); Ex. 16 at 2 (Admiral Michael M. Gilday, Operations Director of the Joint Staff, stating that “[n]one of the capabilities that we are providing are combat capabilities” and “[i]t’s not a war zone along the border”). Rather, in Plaintiffs’ view, Defendants are using DoD’s temporary and limited support of DHS—the civilian agency that Congress has tasked with border security and immigration enforcement—to justify funding the border barriers that DHS has sought to build. *See, e.g.*, 6 U.S.C. §§ 202, 251; 8 U.S.C. §§ 1103(a)(5), (a)(10).

At bottom, Plaintiffs’ theory is premised on the idea that the proclamation was designed solely to avoid Congress’ appropriations judgment and that the emergency is a convenient pretext. The Court acknowledges that both the timing and nature of the emergency raise obvious questions. The Administration repeatedly and unsuccessfully sought appropriations from Congress for border barrier construction. When Congress and the President could not agree on such funding, the President suggested his willingness to declare a national emergency if Congress refused to appropriate the money he requested. *See, e.g., California*, 19-cv-00872-HSG, Dkt. No. 59-4, Ex.

21. When asked about his threshold for declaring an emergency, the President stated, “[m]y threshold will be if I can’t make a deal with people that are unreasonable.” *See* George Sargent, *Trump: I have the ‘absolute right’ to declare a national emergency if democrats defy me*, Wash. Post (Jan. 9, 2019), <https://tinyurl.com/y5f5eqwg>. And the President then declared the national emergency one day after Congress passed the CAA, which limited appropriations for border barrier construction. *See* Proclamation No. 9844. In announcing the national emergency declaration, the President explained, “I could do the wall over a longer period of time. I didn’t need to do this. But I’d rather do it much faster. . . . And I think that I just want to get it done faster, that’s all.” *See California*, No. 19-cv-00872-HSG, Dkt. No. 59-4, Ex. 50.

All this said, there is no precedent for a court overriding a President’s discretionary judgment as to what is and is not an emergency. That one of the conditions to invoke Section 2808 is that the emergency require use of the armed forces does not alter the nature of the inquiry. Sierra Club Plaintiffs are still asking the Court to evaluate the “policy choice[] and value determination[]” underlying the President’s emergency proclamation. *Japan Whaling Ass’n v. Am. Cetacean Soc.*, 478 U.S. 221, 230 (1986). Plaintiffs have not cited, and the Court has not found, any case in which a court has assessed the nature and validity of an emergency proclamation. *Cf. California*, No. 19-cv-00872-HSG, Dkt. No. 254 at 12:6–16:12. To the contrary, as discussed in Section III.B.i above, the Ninth Circuit has characterized “the declaration or continuance of a national emergency” as an “essentially political question[].” *Spawr*, 685 F.2d at 1080–81. The Court accordingly finds that whether the national emergency truly exists, and requires use of the armed forces, are nonjusticiable political questions.

The Court nevertheless acknowledges the significant constitutional tension inherent in the President’s invocation of a national emergency under the NEA for the avowed purpose of accessing money to fund projects that Congress expressly considered and declined to fund. It is apparent that at the time Congress enacted the NEA it did not envision the statute would (or even could) be used to circumvent the will of Congress. As the Court previously explained, Congress initially reserved the right to terminate a national emergency with a simple majority and without the opportunity for a presidential veto. *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 144 at

13–14, & n.8; *see also id.*, Dkt. No. 219 at 10–15 (Brief of *Amici Curiae* Brennan Center for Justice and the Cato Institute) (“Brennan Center Brief”). Thus, prior to the Supreme Court’s opinion in *INS v. Chadha*, it would have been impossible for the President to use the NEA to somehow bypass the will of a congressional majority. *See* 462 U.S. at 944–58; *see also Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 219 (Brennan Center Brief) at 15 (“The notion that Congress intended the NEA as an affirmative delegation of unlimited discretion to the president—one that would allow the president to circumvent the will of Congress on specific policy proposals—is contradicted by this and every other aspect of the legislative history.”).

Still, Congress is not without recourse. Under the NEA, “[a]ny national emergency declared by the President in accordance with this subchapter shall terminate if . . . there is enacted into law a joint resolution terminating the emergency.” 50 U.S.C. § 1622(a)(1). Moreover, the NEA not only allows, but in fact obligates, Congress to “consider a vote on a joint resolution to determine whether that emergency shall be terminated” every six months. *See id.* § 1622(b). Congress thus has the authority to monitor and if needed, reverse, the President’s determination that circumstances at the southern border constitute a national emergency. That Congress has so far been unable to override the President’s veto with a two-thirds majority vote does not somehow transform this fundamentally political question into a legal one. Because the national emergency remains in effect, the Court may not opine as to whether the President properly invoked the NEA by declaring a national emergency requiring the use of the armed forces at the southern border.

b. Military Construction Project

Next, the parties disagree as to whether the border barrier construction projects constitute “military construction projects” for purposes of Section 2808.⁹ As noted above, Congress defined the term “military construction” to “include[] any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy

⁹ During the hearing, Sierra Club Plaintiffs explained that they are not challenging whether the two projects on the Barry M. Goldwater Range, an existing military installation, constitute military construction for purposes of Section 2808. *See California*, No. 19-cv-00872-HSG, Dkt. No. 254 at 85:12–19. Defendants have identified these two projects as Yuma Project 2 and Yuma Project 10/27. But Plaintiffs still challenge whether any of the eleven projects are necessary to support use of the armed forces. *See* Section III.B.ii.c.

temporary or permanent requirements, or any acquisition of land or construction of a defense access road” 10 U.S.C. § 2801(a). Because it is apparent that border barrier construction constitutes “construction,” the critical question before the Court is whether the eleven proposed projects are being “carried out with respect to a military installation.” *Id.*; *see also id.* § 2801(b) (“A military construction project includes all military construction work . . . necessary to produce a complete and useable facility or a complete and usable improvement to an existing facility.”).

A “military installation,” in turn, “means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department” *Id.* § 2801(c)(4). Defendants do not attempt to characterize the projects as either a “base, camp, post, station, yard, [or] center.” *See id.* § 2801(c)(4). Instead, they reason that the 175 miles of proposed border barrier construction fall within the “other activity” definition because DoD has obtained—or will obtain—administrative jurisdiction over the land for these projects and assign it to Fort Bliss in Texas. *See California*, No. 19-cv-00872-HSG, Dkt. No. 236-7, Ex. 7 (General Order No. 2019-36). By obtaining administrative jurisdiction over the land in this way, they conclude, all eleven projects will be part of an existing military installation. *Id.* In other words, Defendants contend that “military installation” is “inclusive of [any] activities under the jurisdiction of the Secretary of a military department.” *See id.*, Dkt. No. 236 at 13. The Court finds several flaws with this expansive interpretation.

First, Defendants’ interpretation requires the Court to disregard the plain language of the statute. Defendants would have the Court transform the definition of “military installation” to include not just “other activity,” but “any activity” under military jurisdiction. That simply is not what the statute says.¹⁰ As the Supreme Court has noted, when interpreting a statute, context matters. *See, e.g., McDonnell v. United States*, 136 S. Ct. 2355, 2368 (2016) (“[W]e look to the

¹⁰ In its opposition to Sierra Club Plaintiffs’ motion for a preliminary injunction as to Section 2808, *see Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 64 at 21–23, Defendants initially posited that the as-yet unidentified border barrier projects would fall within the “other activity” category. Applying traditional tools of statutory construction, the Court explained that “a base, camp, post, station, yard, [and] center” are all discrete and traditional military locations, and “other activity” must refer to similar locations. The Court incorporates that reasoning again here, in all respects. *See id.*, Dkt. No. 144 at 44–45.

context in which the words appear.”); *see also ASARCO, LLC v. Celanese Chem. Co.*, 792 F.3d 1203, 1210 (9th Cir. 2015) (“[T]he plain language of a statute should be enforced according to its terms, in light of its context.”). And here, as the Court cautioned before, the terms “base, camp, post, station, yard, [or] center” are not mere surplusage to ignore, but rather supply meaning and provide boundaries to the term “other activity.” *See, e.g., McDonnell*, 136 S. Ct. at 2369 (explaining that canons of construction are “wisely applied . . . to avoid the giving of unintended breadth to the Acts of Congress” (quotation omitted)); *Yates v. United States*, 135 S. Ct. 1074, 1087 (2015) (“Had Congress intended ‘tangible object’ in § 1519 to be interpreted so generically as to capture physical objects as dissimilar as documents and fish, Congress would have had no reason to refer specifically to ‘record’ or ‘document.’ The Government’s unbounded reading of ‘tangible object’ would render those words misleading surplusage.”); *CSX Transp., Inc. v. Ala. Dept. of Revenue*, 562 U.S. 277, 295 (“We typically use *ejusdem generis* to ensure that a general word will not render specific words meaningless.”). Defendants do not even attempt to explain how the proposed projects are similar in nature or scope to “a base, camp, post, station, yard, [or] center,” 10 U.S.C. § 2801(c)(4), and the Court finds that they are not.

Rather than engaging with the text of the statute, Defendants rely heavily on the Supreme Court’s decision in *United States v. Apel*, 571 U.S. 359, 368 (2014). There, the Supreme Court noted that “‘military duty’ and ‘military protection’ are synonymous with the exercise of military jurisdiction,” and that the term “‘military installation’ is used [that way] elsewhere in federal law.” *Id.* (emphasis omitted). The Supreme Court, however, was not analyzing the definition of military installations under Section 2808 or 10 U.S.C. § 2801(c)(4). The case involved an entirely different statute under Title 18, which imposed a criminal fine on anyone who reentered a “military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation” after being removed. *See* 18 U.S.C. § 1342. The question before the Court in *Apel* was whether a public easement on an Air Force base was still considered part of the military installation. The Court rejected “[t]he use-it-or-lose-it rule” that § 1342 only applied where the military had exclusive use, possession, or control over the property in question. *Apel*, 571 U.S. at 372. In doing so, the Court cited the language of 10 U.S.C. § 2801(c)(4), but did not engage in any

1 analysis of its possible limitations. *See id.* at 368. Indeed, to the extent *Apel* provides any insight
2 for the interpretation of Section 2808, it is simply that statutes must be read in context, and with an
3 eye toward common sense. *Id.* at 369–72.

4 Defendants also suggest that Congress intended “military installation” in Section 2808 to
5 be read broadly because elsewhere it defined the term differently. Under 10 U.S.C. § 2687(g)(1),
6 for example, Congress defined “military installation” in the context of base closures to “mean[] a
7 base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the
8 jurisdiction of the Department of Defense,” but excluded “any facility used primarily for civil
9 works, rivers and harbors projects, or flood control projects.” *Id.* The Court acknowledges that
10 Congress may provide different definitions in different statutes, but this does not open the door to
11 a limitless definition of military installation in Section 2808. Again, part of the inquiry is context
12 and congressional intent, but Defendants do not engage with either.

13 *Second*, Defendants’ interpretation would grant them essentially boundless authority to
14 reallocate military construction funds to build anything they want, anywhere they want, provided
15 they first obtain jurisdiction over the land where the construction will occur. Although Defendants
16 attempt to reassure the Court that they “are *not* arguing that the entire southern U.S. border”
17 constitutes a military installation for purposes of Section 2808, *see California*, No. 19-cv-00872-
18 HSG, Dkt. No. 236 at 13, there is nothing in their interpretation to preclude them from doing so.
19 When asked during the hearing whether Defendants’ reading of Section 2808 had a limiting
20 principle, counsel could not articulate one. *See id.*, Dkt. No. 254 at 62:21–64:3.

21 The scale of what is possible under this reading is immense. The eleven projects at issue
22 in the instant motions are illustrative. Defendants acknowledge that nine of the proposed projects
23 are on federal public domain or non-public land, not previously under military jurisdiction. *See*
24 *id.*, Dkt. Nos. 206 at 2–4, 206-1, Ex. 1. These nine projects, which cover 140 of the 175 total
25 miles of border barrier construction at issue, are located on land spanning several hundred miles in
26 Arizona, California, New Mexico, and Texas. But Fort Bliss, the military installation to which
27 Defendants will administratively assign the land, is located near El Paso, Texas. Defendants
28 suggest that projects located several hundred miles away from Fort Bliss are nevertheless “carried

out with respect to [that] military installation,” provided Defendants complete the right paperwork. *See* 10 U.S.C. § 2801(a).¹¹ Under this interpretation, construction can be considered “carried out with respect to a military installation” even if it is otherwise wholly unrelated to the installation’s functions, purpose, or even geography. Indeed, Defendants do not offer any substantive connection between the proposed construction here and Fort Bliss. Instead they acknowledge that the construction sites are assigned administratively to Fort Bliss “for real property accountability purposes.” *See California*, No. 19-cv-00872-HSG, Dkt. No. 251 at 4; *see id.*, Dkt. No. 251-1 at ¶¶ 7–11. They further state that “Fort Bliss is the largest, most capable Active Army installation in the vicinity of the southern border.” *Id.* The Court is not persuaded that Congress intended “military construction” to have no stronger connection to a military installation than Defendants’ own administrative convenience. If this were true, Defendants could redirect billions of dollars from projects to which Congress appropriated funds to projects of Defendants’ own choosing, all without congressional approval (and in fact directly *contrary* to Congress’ decision not to fund these projects). Elevating form over substance in this way risks “the Executive [] aggrandizing its power at the expense of [Congress].” *Sierra Club*, 929 F.3d at 687 (quotation omitted).

Third, Defendants’ interpretation contravenes clear congressional intent to limit—not expand—executive emergency powers. The NEA was passed in 1976 as a reform measure, following concern about the duration of the national emergencies that presidents had declared historically, and the scope of their related emergency powers. *See* L. Elaine Halchin, *National Emergency Powers*, Cong. Research Serv., 98-505 (Aug. 5, 2019). For example, an emergency declaration that was issued at the start of the Korean War in 1950 was still being used decades

¹¹ The Court notes that in an August 21, 2019, “Action Memo,” the Assistant Secretary of Defense, Homeland Defense and Global Security said that in order for border barrier projects to constitute military construction projects, a military department would need to report the land in its inventory “either as its own installation or as part of an existing, *nearby* military installation.” AR at 3 (emphasis added). Defendants now contend that this common-sense “nearby” condition is not actually a formal requirement of the statute. *See California*, No. 19-cv-00872-HSG, Dkt. No. 251 at 3–4. Even if that is technically true, the Court finds it plain that Defendants’ characterization of the breadth of the asserted power to cobble together far-flung parcels as part of one “military installation” goes far beyond any historical example they cite. *See id.*, Dkt. No. 249 at 7–8 (citing auxiliary landing field located 40 miles away from main military installation as an example of a “geographically separated location[] . . . part of, but physically separate from” that installation).

1 later with respect to the Vietnam War. *Id.* at 7. In 1973, there were four national emergencies still
 2 in effect from 1933, 1950, 1970, and 1971. *See id.* The Senate, therefore, created a special
 3 committee, known as the Special Committee on National Emergencies and Delegated Emergency
 4 Powers, to evaluate this issue. *See id.* at 7–8. Through its work, the Committee identified 470
 5 provisions of federal law that granted the president extensive emergency powers. *See id.* at 8.

6 The Committee developed legislation—the NEA—to limit the scope of such emergency
 7 powers. In support of the NEA, the Committee explained the need to place limits on the
 8 presidential use of emergency powers:

9
 10 Right now, hundreds of emergency statutes confer enough authority
 11 on the President to rule the country without reference to normal
 12 constitutional process. Revelations of how power has been abused by
 13 high government officials must give rise to concern about the
 14 potential exercise, unchecked by the Congress or the American
 people, of this extraordinary power. The National Emergencies Act
 would end this threat and [e]nsure that the powers now in the hands
 of the Executive will be utilized only in time of genuine emergency
 and then only under safeguards providing for Congressional review.

15 *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 219 (Brennan Center Brief) at 12–13 (quoting
 16 *The National Emergencies Act (Public Law 94-412)*, *Source Book: Legislative History, Text, and*
 17 *Other Documents* (1976) (“NEA Source Book”). In its report, the Committee noted that “[t]he
 18 National Emergencies Act is not intended to enlarge or add to Executive power. Rather the statute
 19 is an effort by the Congress to establish clear procedures and safeguards for the exercise by the
 20 President of emergency powers conferred upon him by other statutes.” *Id.* at 14 (quoting *NEA*
 21 *Source Book*).

22 In keeping with this narrower view of executive emergency powers, Section 2808 has
 23 rarely been used, and never to fund projects for which Congress withheld appropriations. Rather,
 24 Section 2808 has been used to build projects like aircraft hangars, barracks, airfield runways,
 25 detention facilities, logistics hubs, and waste water treatment plants. *See Vassalotti*, at 2–3.
 26 Defendants’ invocation of Section 2808 for border barrier construction, in conflict with Congress’
 27
 28

judgment on those projects, is simply unprecedented, contrary to the Administration's claims.¹² This, on its own, is enough to warrant close scrutiny: "When an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, we typically greet its announcement with a measure of skepticism." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014) (quotation omitted). Put simply, the Court does not find that Section 2808 was intended to be used to resolve policy disputes with Congress or to provide the Executive Branch with unchecked power to transform the responsibilities assigned by law to a civilian agency into military ones by reclassifying large swaths of the southern border as "military installations." Such an interpretation defies both the text and spirit of the statute. The Court, therefore, finds that the border barrier construction projects, with the exception of the two projects on the Barry M. Goldwater range, are not "carried out with respect to a military installation" within the meaning of Section 2808.

c. Necessary to Support Use of the Armed Forces

Even assuming the border barrier construction could somehow be considered military construction for purposes of Section 2808, the parties also disagree as to whether the proposed projects are necessary to support the use of the armed forces. Defendants rely on a lengthy administrative record, which, they say, explains why the projects are necessary to provide such support. But even crediting all facts in the administrative record, and giving due deference to the strategic and military determinations in it, the Court finds that Defendants have not established that the projects are necessary to support the use of the armed forces.

The problem is twofold. Inherent in Defendants' argument and the administrative record is that the proposed border barrier projects are intended to support and benefit DHS, a civilian agency, rather than the armed forces. And although the administrative record explains why such

¹² Compare S.J. Res. 54 Veto Message ("Proclamation 9844 was neither a new nor novel application of executive authority. Rather it is the sixtieth Presidential invocation of the [NEA]. It relies upon the same statutory authority used by both of the previous two Presidents to undertake more than 18 different military construction projects from 2001 through 2013."), with *Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 219 (Brennan Center Brief) at 20 ("Perhaps most significantly, in none of these cases did presidents invoke emergency powers to take action after Congress had explicitly considered and rejected legislation to authorize such action.").

border barrier projects may be beneficial to DHS’s mission, Defendants have not established that they are in fact *necessary to support the use of the armed forces*—which is the statutory limitation set by Congress. The Court discusses each issue in turn.

On April 4, 2018, the President directed the Secretary of Defense to support DHS “in securing the southern border and taking other necessary actions” due to “[t]he crisis at our southern border.” *See California*, 19-cv-00872-HSG, Dkt. No. 59-4, Ex. 27. The President further empowered the Secretary of Defense to “request use of National Guard personnel to assist” as needed. *Id.* As of August 13, 2019, DoD had approximately 5,500 personnel supporting DHS in its “border security mission.” *See* AR at 1, 45. DoD personnel are generally serving in “support roles that relieve DHS personnel of non-law enforcement duties,” such as “logistics, planning, and intelligence analysis” and “monitoring and detection support” through “operating mobile surveillance cameras units or providing aerial reconnaissance.” *Id.* at 42. DHS stated that the proposed border barrier projects that DHS recommended to DoD would “give a distinct and enduring advantage to [U.S. Border Patrol] as a force multiplier,” and would “likely reduce DHS’s reliance on DoD for force protection, surveillance support, engineering support, air support, logistical support, and strategic communications assistance.” *Id.* at 43 (quotation omitted). In sum, the Chairman of the Joint Chiefs of Staff and DHS summarized that the projects would “allow DoD to provide support to DHS more efficiently and effectively.” *See id.* at 48; *see also id.* at 59–71.

The administrative record therefore illustrates that the border barrier construction projects are intended to benefit DHS and its subagencies, including CBP and U.S. Border Patrol (“USBP”). The record explains that physical barriers, such as those proposed, may “[i]mprove CBP’s detection, identification, classification, and response capabilities,” AR at 4; “[r]educe vulnerabilities in key border areas and the time it takes for Border Patrol agents to apprehend illegal migrants,” *id.*; “reduce the challenges to CBP,” *id.* at 61; “serve to channel illegal immigrants towards locations that are operationally advantageous to DHS,” *id.*; “reduce the enforcement footprint and compress USBP operations,” *id.* at 43; “enable CBP agents to focus less on the rugged terrain,” *id.* at 69; and as noted above, “give a distinct and enduring advantage to

1 USBP as a force multiplier,” *id.* at 43; *see also id.* at 121–24. As DoD representatives have
2 forthrightly explained, funding under Section 2808 would “all go to adding significantly new
3 capabilities to DHS’s ability to prevent illegal entry.” *See Sierra Club*, No. 19-cv-00892-HSG,
4 Dkt. No. 210-2, Ex. 17 at 5.

5 That the border barrier projects would benefit DHS is unsurprising, as Congress
6 empowered that agency to “[s]ecur[e] the borders, territorial waters, ports, terminals, waterways,
7 and air, land, and sea transportation systems of the United States.” 6 U.S.C. § 202; *see also* 8
8 U.S.C. §§ 1103(a)(5) (charging the Secretary of Homeland Security with “the power and duty to
9 control and guard the boundaries and borders of the United States”). But this is a *civilian* agency,
10 and not part of the armed forces. The commission of these responsibilities to DHS is no secret:
11 the entire reason for the longest shutdown of the Federal government in history was that the
12 President sought over \$5 billion in appropriations to *DHS* for these exact projects, and Congress
13 exercised its constitutional prerogative to decline to authorize that spending. Put another way, the
14 entire dispute in this case arises from the Executive’s efforts to find other ways to help DHS do
15 what Congress directly said it would not authorize when it rejected the Executive’s DHS budget
16 request.

17 Defendants suggest that the assistance to DHS is merely a byproduct of helping DoD. *See*,
18 *e.g.*, *California*, No. 19-cv-00872-HSG, Dkt. No. 249 at 10. Yet the administrative record
19 suggests that the proposed projects may actually *reduce* DHS’s need for DoD support. *See, e.g.*,
20 AR at 4 (noting that the projects “could ultimately reduce the demand for DoD support at the
21 southern border over time”). As the President put it, “[i]f we had a wall, we don’t need the
22 military because we’d have a wall.” *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 210-2, Ex.
23 13 at 5. Defendants do not explain how the projects are necessary to support the use of the armed
24 forces while simultaneously obviating the need for those forces. This appears to defy the purpose
25 of Section 2808, which specifically refers to construction that is necessary to support the use of the
26 armed forces, not to construction that the armed forces will not use once constructed. Again,
27 Defendants’ argument proves too much. Under their theory, any construction could be converted
28 into military construction—and funded through Section 2808—simply by sending armed forces

1 temporarily to provide logistical support to a civilian agency during construction. But Congress,
2 and not Defendants, holds the power of the purse. The Court declines to interpret Section 2808 to
3 provide the Secretary of Defense with almost limitless authority to use billions of dollars of its
4 appropriations to build projects for the benefit of DHS, even when Congress specifically declined
5 to give DHS itself the funds to build those projects. *See, e.g., Util. Air Regulatory Grp.*, 573 U.S.
6 at 324 (“We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast
7 economic and political significance.” (quotation omitted)).

8 The administrative record also fails to establish that the border barrier construction projects
9 are “*necessary* to support [] use of the armed forces.” *See* 10 U.S.C. § 2808(a) (emphasis added).
10 The Oxford English Dictionary defines “*necessary*” as “[i]ndispensable, vital, essential.” *See*
11 *Necessary*, OXFORD ENGLISH DICTIONARY ONLINE (last visited Nov. 20, 2019); *accord* MERRIAM-
12 WEBSTER ONLINE DICTIONARY (defining “*necessary*” as “absolutely needed: required”) (last
13 visited Nov. 20, 2019). Yet Defendants simply contend that the projects will “allow DoD to
14 provide support to DHS more efficiently and effectively.” *See* AR at 48. Even accepting this
15 conclusion as true, promoting efficiency and efficacy is not tantamount to necessity, given the
16 nature of the construction at issue. And the Court declines Defendants’ invitation to blur this
17 distinction. There is simply nothing in the record before the Court indicating that the eleven
18 border barrier projects—however helpful—are necessary to support the use of the armed forces.

19 The Court does not lightly reach the conclusion that the record does not support
20 Defendants’ claim of necessity here. The undersigned deeply respects the work of the United
21 States armed forces, and understands and is grateful for the innumerable sacrifices made by
22 military women and men, and their families, in service of our country. *See California*, No. 19-cv-
23 00872-HSG, Dkt. No. 232 (IAVA Brief) at 9 (“Service members are used to discomfort. They
24 signed up to endure hardships so that the rest of American society could live freely and
25 comfortably. . . . But they should never be asked to work in unnecessarily unsafe or harmful
26 conditions, or to wait even longer for basic facilities that are already long overdue.”). And the
27 Court has no doubt that Congress shares this respect and gratitude. Were this case about
28 constructing hangars for storage of aircraft used in “aerial reconnaissance,” or building a control

center for “operating mobile surveillance camera units,” AR at 42, the circumstances likely would be very different.

But the Court cannot blind itself to the plain reality presented in this case: the border barrier projects Defendants now assert are “necessary to support the use of the armed forces” are the very same projects Defendants sought—and failed—to build under DHS’s civilian authority, because Congress would not appropriate the requested funds. Even where review is “deferential,” courts “are ‘not required to exhibit a naiveté from which ordinary citizens are free.’” *See Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019) (quoting *United States v. Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977) (Friendly, J.)); *see also Karnoski v. Trump*, 926 F.3d 1180, 1202 (9th Cir. 2019) (“Of course, deference does not mean abdication.”) (quotation omitted). DoD officials have forthrightly acknowledged that the border barrier projects are intended to fulfill the President’s priorities. During a congressional hearing on the reprogramming of funds for border barrier construction, Acting U.S. Secretary of Defense Shanahan explained that “given a legal order from the commander in chief, we are executing on that order.” *See* John Wagner, Paul Sonne, and Dan Lamothe, *Pentagon announces \$1 billion transfer for border barriers, angering Democrats*, Wash. Post (March 26, 2019), <https://tinyurl.com/y2njmvsk>. Similarly, when asked during the hearing about prioritizing the border wall over military readiness and modernization, U.S. Army Secretary Esper said “I’m saying that the Department of Defense made decisions based on what the president set as priorities, and we are following through. We are executing.” *Id.*

The parties do not suggest that additional factfinding would buttress or clarify the rationale or need for the projects. The Court therefore finds that the projects are not necessary to support the use of the armed forces. As the Supreme Court has explained, “[r]egardless of how serious the problem an administrative agency seeks to address, . . . it may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000) (quotation omitted).

Accordingly, taking into account the totality of the record, the Court finds that Defendants have not satisfied the mandatory conditions set by Congress in Section 2808, and that they thus are not authorized to redirect military construction funds to the eleven border barrier projects they have

1 identified.

2 **C. APA**

3 State Plaintiffs further contend that Defendants' conduct is reviewable as unlawful under
4 the APA. Plaintiffs first suggest that by failing to comply with the statutory conditions in Section
5 2808, Defendants have acted "in excess of statutory jurisdiction, authority, or limitations, or short
6 of statutory right." *See* 5 U.S.C. § 706(2)(C). Such arguments, however, collapse into the same
7 analysis of Section 2808 that the Court detailed in Section III.B above. *See Sierra Club*, 929 at
8 689–92. The Ninth Circuit acknowledged when analyzing Section 8005 that "Plaintiffs either
9 have an equitable cause of action to enjoin a constitutional violation, or they can proceed on their
10 constitutional claims under the Administrative Procedure Act, or both." *Id.* at 676–77. However,
11 the analysis—whether under the Constitution or the APA—remains the same. *Id.*¹³

12 State Plaintiffs also make a second and distinct claim that Defendants have violated the
13 APA's prohibition on arbitrary and capricious agency action. *See California*, No. 19-cv-00872-
14 HSG, Dkt. No. 220 at 13–15. Plaintiffs argue that in identifying and reallocating funds from 128
15 existing military construction projects, Defendants did not "address any of the harms to public
16 health and safety" that would result from defunding those projects. *Id.* at 13. The Court finds this
17 argument meritless. "The scope of review under the 'arbitrary and capricious' standard is narrow
18 and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n of*
19 *U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Rather, "the agency must
20 examine the relevant data and articulate a satisfactory explanation for its action including a
21 rational connection between the facts found and the choice made." *Id.* (quotation omitted). Here,
22 the administrative record provides such an explanation, indicating that Defendants identified
23 projects for defunding to "provide [DoD] time to work with [Congress] to determine opportunities
24 to restore funds for these important military construction projects" *California*, No. 19-cv-

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¹³ Although *Sierra Club* Plaintiffs do not raise an independent claim under the APA, they note, as the Ninth Circuit has recognized, that the Court may consider their claim challenging the use of military construction funds either as an equitable action to enjoin unconstitutional conduct or under the APA as final agency action that violates the Constitution. *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 210 at 21–22 (citing *Sierra Club*, 929 at 676–77).

00872-HSG, Dkt. No. 206-2, Ex. 2 at 2. For the same reasons discussed above, it is not the Court's task to decide whether it finds the substance of Defendants' rationale for defunding or delaying these projects persuasive or wise, and State Plaintiffs' disagreement with that rationale does not make the decision arbitrary and capricious.

D. National Environmental Policy Act

Plaintiffs also seek a declaratory judgment deeming unlawful Defendants' failure to comply with NEPA before undertaking the proposed military construction projects under Section 2808.¹⁴ NEPA is intended "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." 42 U.S.C. § 4321. Under NEPA, federal agencies must assess the environmental impact of agency actions that "significantly affect[] the quality of the human environment." *Id.* § 4332(C). Where an agency's project "might significantly affect environmental quality," NEPA compels preparation of an Environmental Impact Statement ("EIS"). *See WildEarth Guardians v. Provencio*, 923 F.3d 655, 669 (9th Cir. 2019). Plaintiffs contend that Defendants were required to prepare an EIS for the proposed border barrier construction projects, but failed to do so here.

In response, Defendants point to the language of Section 2808, which by its terms, authorizes "the Secretary of Defense, without regard to any other provision of law, [to] undertake military construction projects" 10 U.S.C. § 2808. The Secretary of Defense mirrored this language in directing the Secretary of the Army "to expeditiously undertake the eleven border

¹⁴ State Plaintiffs also attempt to expand their NEPA cause of action to include the land transfer from the Department of the Interior for the proposed border barrier construction projects, but their complaint does not assert such a claim. *See California*, No. 19-cv-00872-HSG, Dkt. No. 47 at ¶¶ 392–99. Rather, their NEPA claim explicitly states that "Defendant DHS is in violation of NEPA and the APA because it failed to prepare an [Environmental Impact Statement] concerning border wall development projects that will have adverse effects on the environment" *Id.* at ¶ 397. Even reading the complaint liberally, the operative complaint does not "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *See Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968 (9th Cir. 2006) (holding district court did not err in finding plaintiff failed to provide adequate notice of her claims where she presented specific factual grounds for those claims for first time on summary judgment) (quotation omitted). The Court may not now grant summary judgment as to a claim that State Plaintiffs never asserted until their motion for summary judgment, when they never sought leave to amend the complaint. *See Wasco Prod., Inc. v. Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) ("Simply put, summary judgment is not a procedural second chance to flesh out inadequate pleadings." (quotation omitted)).

1 barrier military construction projects,” and “to do so without regard to any other provision of law
2 that may impede the expeditious construction of such projects in response to the national
3 emergency.” *See California*, No. 19-cv-00872-HSG, Dkt. No. 206-1, Ex. 1 at 1. The Court finds
4 that the language in Section 2808 is clear on its face, and permits the Secretary of Defense, if
5 properly acting within his authority under Section 2808, to undertake military construction
6 projects without regard to NEPA.

7 Plaintiffs attempt to restrict this “notwithstanding” language by divorcing Defendants’
8 ability to re-prioritize military construction projects from their ability to actually construct those
9 projects. Plaintiffs urge that only the former power to “restructur[e] construction priorities” may
10 be undertaken “without regard to any other provision of law.” *See, e.g., Sierra Club*, No. 19-cv-
11 00892-HSG, Dkt. No. 210 at 19–20. The Court finds no evidence for this reading, as the statute
12 permits the Secretary to “undertake military construction projects,” not just to prioritize them.

13 Plaintiffs next contend that the Court should still read the “notwithstanding” language
14 narrowly because had Congress intended to waive NEPA’s requirements, the statute would have
15 included language that the projects be undertaken “without delay” or “expeditiously.” *Id.* at 20.
16 However, there are no magic words constraining Congress’ ability to empower Defendants to
17 proceed without consideration of NEPA or other laws. Rather, the Court must “tak[e] into account
18 the whole of the statutory context in which [the notwithstanding clause] appears.” *See United*
19 *States v. Novak*, 476 F.3d 1041, 1046 (9th Cir. 2007). Here, Plaintiffs’ argument is belied by the
20 statutory prerequisite that there be a declaration of war or a national emergency before Section
21 2808 may be used for military construction. Such a condition, by its nature, normally would
22 require speed. The Court finds it unreasonable to conclude that in the face of war or a national
23 emergency, Congress would require Defendants to engage in the time-intensive EIS process prior
24 to undertaking projects “necessary to support [] use of the armed forces.” *See* 10 U.S.C. § 2808.
25 Plaintiffs’ concern that Section 2808 would “empower[] the Secretary of Defense to build almost
26 anything, anywhere,” *see Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 210 at 21, ignores the
27 conditions discussed in Section III.B.ii above. Section 2808 has limits. It may only be invoked in
28 the event of war or a national emergency, and the Secretary of Defense still must establish that the

proposal is a military construction project necessary to support the use of the armed forces.

This does not, however, end the inquiry. To be sure, had Defendants acted within their authority under Section 2808 in proposing the eleven border barrier construction projects, the Court finds that their conduct likely would not violate NEPA. But the Court has already found that Defendants have not properly invoked Section 2808, so that the “without regard to any other provision of law” language is not triggered. Put another way, the question of whether Defendants are required to comply with NEPA with respect to the eleven projects is derivative of the parties’ Section 2808 arguments. The Court does not understand Defendants to suggest that any authority other than Section 2808 excuses them from complying with NEPA as to these projects. The Court thus need not reach whether a proper invocation of Section 2808 could theoretically still require compliance with NEPA under different circumstances.¹⁵

E. Injunctive Relief

Having found that Defendants’ intended use of military construction funds under Section 2808 is unlawful, the Court next considers Plaintiffs’ request for injunctive relief. It is a well-established principle of equity that a permanent injunction is appropriate when: (1) a plaintiff will “suffer[] an irreparable injury” absent an injunction; (2) available remedies at law are “inadequate;” (3) the “balance of hardships” between the parties supports an equitable remedy; and (4) the public interest is “not disserved.” *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). Defendants do not challenge whether the available remedies at law are inadequate. *See, e.g., Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 236 at 28–34. The Court thus addresses the remaining factors.

i. Irreparable Injury

The State Plaintiffs identify several theories of irreparable injury that will occur in the absence of an injunction, including environmental and financial harm, as well as harm to their

¹⁵ State Plaintiffs appear to seek reconsideration of the Court’s prior order regarding whether Defendants violated NEPA for purposes of Section 8005 and 10 U.S.C. § 284. *See California*, No. 19-cv-00872-HSG, Dkt. No. 220, at 5, 19–20, & n.3. State Plaintiffs acknowledge that they do so to preserve this issue for appeal. *Id.* at 5, n.3. The Court declines to reconsider its prior order given Plaintiffs have failed to provide any new law or factual evidence warranting further analysis.

ability to enforce state laws concerning the protection of environmental and natural resources. The Sierra Club Plaintiffs, in turn, identify aesthetic and recreational harm, as well as organizational harm to their missions in diverting resources to respond to Defendants' proposed projects. The Court recognizes that these injuries are distinct, and first addresses the Sierra Club Plaintiffs' alleged injuries. Because, as explained more fully below, the Court finds that Sierra Club Plaintiffs have established that a permanent injunction is warranted as to all eleven proposed projects, the Court denies State Plaintiffs' duplicative request for a permanent injunction as moot.

a. Aesthetic and Recreational Harm

Sierra Club Plaintiffs contend that absent a permanent injunction Defendants' conduct will irreparably harm their members' aesthetic and recreational interests as the construction "will impede [their] ability to enjoy, work, and create in the wilderness areas they have used for years along the U.S.-Mexico border." *See Sierra Club*, 19-cv-00892-HSG, Dkt. No. 210 at 26. As this Court has previously noted, "it is well-established in the Ninth Circuit that an organization can demonstrate irreparable harm by showing that the challenged action will injure its members' enjoyment of public land. *See id.*, Dkt. No. 144 at 49 (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). And here, Plaintiffs provide declarations from their members detailing how Defendants' eleven proposed border barrier construction projects will harm their ability to recreate in and otherwise enjoy public land along the border. *See, e.g., id.*, Dkt. No. 210-1, Exs. 1–19.

In response, Defendants attempt to minimize Plaintiffs' injuries by arguing that many of the challenged construction projects are surrounded by private land or are in areas previously disturbed by at least some border barrier construction. *See id.*, Dkt. Nos. 236 at 28–31, 236-6, Ex. 6. Defendants further suggest that any access limitations imposed by the new construction would be de minimis, especially as to the two projects on the Barry M. Goldwater Range, where only a third of the miles scheduled for construction are accessible to the public. *See id.*, Dkt. No. 236 at 30. Defendants conclude that Plaintiffs' asserted harm is thus little more than their subjective opinion about whether a border wall would be unsightly. *Id.* The Court is not persuaded.

As an initial matter, the Ninth Circuit has "never required a plaintiff to show that he has a

1 right of access to the site on which the challenged activity is occurring, or that he has an absolute
2 right to enjoy the aesthetic or recreational activities that form the basis of his concrete interest.”
3 *Cantrell v. City of Long Beach*, 241 F.3d 674, 681 (9th Cir. 2001). In *Cantrell*, for example, the
4 Ninth Circuit credited birdwatchers’ allegations that they would suffer harm from the defendant’s
5 construction, which would hinder them from viewing birds and nests on a naval station from
6 publicly accessible locations. Such an approach is sensible as “an area can be observed and
7 enjoyed from adjacent land,” such that plaintiffs may still suffer injury to their aesthetic and
8 recreational interests even when not physically *on* the affected land. *See id.* Here too, Plaintiffs
9 have explained that the proposed projects may be seen from miles away, and affect their
10 recreational and aesthetic interests, even when they are not standing directly on the areas proposed
11 for construction. *See, e.g., Sierra Club*, 19-cv-00892-HSG, Dkt. No. 210-1, Ex. 4; *id.*, Ex. 9.

12 Defendants’ reliance on *Center for Food Safety v. Vilsack* does not undermine the
13 significance of Plaintiffs’ injury. Defendants point to a sentence in a footnote that states “a
14 plaintiff may establish standing to seek injunctive relief yet fail to show the likelihood of
15 irreparable harm necessary to obtain it.” 636 F.3d 1166, 1171, n.6 (9th Cir. 2011). This point is
16 true as far as it goes, but the plaintiffs in *Vilsack* had only raised possible concerns about genetic
17 contamination, not a likelihood of injury. *Id.* at 1173. In *Vilsack*, the plaintiffs suggested that the
18 defendants’ genetically modified sugar beets could cross-pollinate with their crops, causing injury.
19 *See id.* at 1172. The Ninth Circuit explained that the undisputed evidence, however, indicated that
20 the defendants’ plants were “biologically incapable of flowering or cross-pollinating” in a way
21 that could affect the plaintiffs’ plants. *Id.* at 1173. Because the alleged harm was a biological
22 impossibility, the Ninth Circuit found that there was no likelihood of irreparable injury warranting
23 an injunction.

24 Here, in contrast, Plaintiffs have detailed the harm that would result if the border barrier
25 construction projects continue. Defendants’ argument in response is that the land for the
26 challenged projects “is already heavily disturbed with border infrastructure” as much of the land
27 occupies existing “law enforcement corridors.” *Sierra Club*, 19-cv-00892-HSG, Dkt. No. 236 at
28 28. But as the Court has previously explained, Defendants’ proposal would significantly alter the

existing landscape, and even the proposed changes to the existing infrastructure are substantial. *See id.*, Dkt. No. 144 at 50.

The Court is also not persuaded that the preexistence of some construction means Plaintiffs here cannot suffer an injury from additional construction. Defendants do not cite a case that warrants such a sweeping limitation. In *Gallatin Wildlife Association v. U.S. Forest Services*, the plaintiffs sought to enjoin sheep grazing that had occurred for the past 150 years. *See* No. cv 15-27-BU-BMM, 2015 WL 4528611, at *4 (D. Mont. July 27, 2015). The court found that the plaintiffs had “failed to demonstrate that allowing the domestic grazing to occur this year will cause any new harm to the landscape that has not already occurred in the past 150 years.” *Id.* That the sheep had grazed in the area before was not itself decisive; instead, the court considered the nature and scale of their continued and additive effect on the land at issue. And in *Center for Biological Diversity v. Hays*, the court found that the plaintiffs had not established irreparable injury where the land at issue could not be used for recreational purposes at all due to the scale of preexisting dead trees that threatened the safety of visitors. No. 2:15-cv-01627-TLN-CMK, 2015 WL 5916739, at *1, *10 (E.D. Cal. Oct. 8, 2015). The plaintiff’s interest in studying these trees was thus irrelevant as he could not access them regardless of the defendant’s conduct. *Id.*

In sum, the Court finds that the funding and construction of these border barrier projects, if indeed barred by law, cannot be easily remedied after the fact. To the contrary, as the Ninth Circuit has acknowledged, “[t]he harm here, as with many instances of this kind of harm, is irreparable for the purposes of the preliminary injunction analysis.” *See League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 764 (9th Cir. 2014). Accordingly, the Court finds that Sierra Club Plaintiffs have established irreparable injury to their aesthetic and recreational interests in the absence of a permanent injunction.

b. Organizational Harm

Sierra Club Plaintiffs further contend that Defendants’ conduct has irreparably harmed the missions and activities of the Southern Border Communities Coalition (“SBCC”) and its member organizations, which include the Texas Civil Rights Project (“TCRP”), Southwest Environmental Center (“SWEC”), and American Friends Service Committee (“AFSC”). Each has had to divert

resources to combat the impact of the proposed construction.

The Supreme Court has recognized that an organization may suffer harm if the challenged conduct frustrates its activities and drains its resources. *See, e.g., Havens Realty Corp. v. Coleman*, 455 U.S. 363, 377–79 (1982). In *Havens Realty*, a nonprofit corporation challenged the defendants’ alleged “racial steering” practices, in which real estate brokers encouraged racial segregation by directing members of racial or ethnic groups to buildings or neighborhoods occupied primarily by members of the same race or ethnic group. *Id.* at 367, & n.1. The organization’s “purpose was to make equal opportunity in housing a reality” *Id.* at 368 (quotation omitted). The Supreme Court explained that the organization’s need to divert resources “to identify and counteract” the defendants’ discriminatory practices “constitute[d] far more than simply a setback to the organization’s abstract social interests” in equal access to housing. *See id.* at 379–80. Similarly, in *National Council of La Raza v. Cegavske*, the Ninth Circuit further recognized that an organization may establish concrete harm if the defendant’s conduct changes “business as usual” for the organization, such that resources spent to counter a defendant’s conduct “would have [been] spent on some other aspect of their organizational purpose . . . or any other activity that advances their goals.” 800 F.3d 1032, 1040 (9th Cir. 2015) (quotation omitted). In *Cegavske*, the Ninth Circuit acknowledged that had the state complied with the National Voter Registration Act, the organization could have spent its resources elsewhere, such as increasing its voter education efforts, rather than on voter registration drives in communities where the defendant should have offered voter registration opportunities. *Id.*; *accord Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012).

That is precisely what Plaintiffs have established here, as Defendants’ conduct has significantly altered “business as usual” for the Plaintiff organizations, and will continue to do so without a permanent injunction:

- SBCC’s “principal goals are to protect human rights, dignity, and safety” in the border regions of the United States. *Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 210-1, Ex. 7 at 41–46. SBCC has spent considerable time and resources advocating against appropriations for border barrier construction and in urging

1 Congress to terminate the national emergency. As a result, SBCC has diverted
2 time and resources away from its “other initiatives, including Border Patrol
3 accountability, community engagement on local health and education issues,
4 and public education about immigration policies more broadly.” *Id.* at 45.

- 5 • TCRP has diverted resources to protect Texas landowners in Laredo who are at
6 risk of having their non-public property condemned for the border barrier
7 construction projects, *id.*, Ex. 6 at 35–39. They have staged events to educate
8 communities about these projects and their rights, are working to create a
9 network of advocates for this work. Because of this work, TCRP has had to
10 divert time and resources away from their other projects to protect border
11 communities outside of Laredo.
- 12 • SWEC’s mission is to “reverse the accelerating loss of plants and animals
13 worldwide through protection and restoration of native wildlife and their
14 habitats in the southwest.” *Id.*, Ex. 3 at 16–17. Though based in New Mexico,
15 its restoration and education work extends into Eastern Arizona and West
16 Texas. However, in light of the proposed border barrier projects, SWEC has
17 significantly reduced its restoration work to divert resources to monitor
18 construction and educate members and the public about the proposed
19 construction and its likely impact.
- 20 • AFSC works with migrant communities in San Diego and El Centro to
21 document abuses by law enforcement and collaborate with community groups
22 to address local issues. *Id.*, Ex. 13 at 74–75. However, if the border barrier
23 projects in these areas proceed, they will have to decrease the time and
24 resources they spend on their other services, including know-your-rights
25 trainings and leadership development courses, so they can monitor the
26 construction and provide outreach resources to the affected communities.

27 Defendants counter that Plaintiffs’ missions as public advocacy groups have not been
28 injured, and more critically still, that Plaintiffs have not established any nexus between their injury

1 and Defendants' conduct. Defendants first contend that the organizations may continue their
2 advocacy work in the face of the border barrier projects, but as the Ninth Circuit recognized in
3 *Cegavske*, it is enough that these organizations "would have spent [resources] on some other
4 aspect of their organizational purpose . . . or any other activity that advances their goals," in the
5 absence of the border barrier construction projects. *See* 800 F.3d at 1040. Here, the Plaintiff
6 organizations have spent resources creating new education, outreach, and monitoring programs
7 related to the construction projects, rather than on other activities related to their respective
8 missions. Defendants' suggestion that there is no nexus between Plaintiffs' harm and Defendants'
9 conduct is similarly unavailing. The organizations work in and with border communities to
10 protect and restore the environment, as is the case with SWEC, and promote the safety of border
11 communities, as is the case with SBCC, TCRP, and AFSC. But because the organizations believe
12 the border barrier projects impede these respective missions, they have altered "business as usual"
13 to combat these projects and educate others about them. Defendants' blanket conclusion that the
14 border barrier construction projects "in no way impede or disrupt their day-to-day activities,"
15 *Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 247 at 24, simply is not supported by the record.
16 The Court finds that Sierra Club Plaintiffs have thus established irreparable injury to their
17 organizational missions in the absence of a permanent injunction.

18 **i. Balance of Equities and Public Interest**

19 The parties all acknowledge that when the government is a party to a case in which a
20 preliminary injunction is sought, the balance of the equities and public interest factors merge. *See*
21 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). And in these cases, the
22 parties' asserted injuries collapse into the equities they assert.

23 According to Defendants, these factors tilt in their favor, because they have "compelling
24 interests in safety and in the integrity of our borders," and "in ensuring that [the country's]
25 military forces are properly supported and have the necessary resources to ensure mission
26 success." *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. No. 236 at 33. As the Court has
27 previously acknowledged, "the public has a 'weighty' interest 'in efficient administration of the
28 immigration laws at the border.'" *See E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779

(9th Cir. 2018) (quoting *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)).

Yet Defendants' argument again fails to recognize that Congress has already engaged in the difficult balancing of Defendants' proffered interests and the need for border barrier construction in passing the CAA. *See* CAA, § 230(a)(1), 133 Stat. 13. Defendants have not pointed to any factual developments that were not before Congress and that may have altered its judgment to appropriate just \$1.375 billion in funding for limited border barrier construction. The Court appreciates the complexity of the policy judgments at hand, and further understands that Defendants may strongly disagree with Congress' determination. But the Court has found that Defendants do not have the statutory authority under Section 2808 to redirect military construction funds for the planned border barrier construction. And as such, Defendants have not identified a mechanism by which they may override Congress' appropriations judgment. As the Court explained in its orders related to Section 8005, "Defendants' position on these factors boils down to an argument that the Court should not enjoin conduct found to be unlawful because the ends justify the means. No case supports this principle." *See Sierra Club*, 19-cv-00892-HSG, Dkt. No. 185 at 8. The Court finds that "the public [] has an interest in ensuring that statutes enacted by their representatives are not imperiled by executive fiat," *E. Bay Sanctuary Covenant*, 932 F.3d at 779, and that these constitutional separation of powers principles outweigh Defendants' concerns about the efficiency of DHS. Accordingly, the Court follows the Ninth Circuit's reasoning that the public interest "is best served by respecting the Constitution's assignment of the power of the purse to Congress, and by deferring to Congress's understanding of the public interest as reflected in its repeated denial of more funding for border barrier construction." *Sierra Club*, 929 F.3d at 677.

In his concurrence in the landmark 1952 case of *Youngstown Sheet and Tube Co. v. Sawyer*, which addressed the scope of executive power during a time of war on the Korean Peninsula, Justice Frankfurter articulated a principle that remains as important today as it was then:

It is one thing to draw an intention of Congress from general language and to say that Congress would have explicitly written what is inferred, where Congress has not addressed itself to a specific situation. It is quite impossible, however, when Congress did

specifically address itself to a problem, as Congress did to that of seizure [of steel mills by the President], to find secreted in the interstices of legislation the very grant of power which Congress consciously withheld. To find authority so explicitly withheld is not merely to disregard in a particular instance the clear will of Congress. It is to disrespect the whole legislative process and the constitutional division of authority between President and Congress.

343 U.S. 579, 610 (Frankfurter, J., concurring).

After a lengthy legislative process, Congress specifically declined to provide the funding sought by the Executive for the border barrier construction at issue in this case. The Executive has made plain its determination to nonetheless proceed with the construction by any means necessary, notwithstanding Congress' contrary exercise of its constitutionally-absolute power of the purse. As Justice Frankfurter explained long ago, that position both disregards the clear will of Congress and disrespects the whole legislative process and the separation of powers enshrined in the Constitution. Because the Court finds Defendants' proposed use of funds under Section 2808 unlawful, the Court finds that the balance of hardships and public interest favor Plaintiffs, and counsel in favor of a permanent injunction.¹⁶

IV. STAY PENDING APPEAL

Federal Rule of Civil Procedure 62(c) authorizes a district court to stay enforcement of a permanent injunction pending appeal. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotation omitted). Rather, the decision to grant or deny a stay is committed to the district court's discretion. *Id.* In determining whether to issue a stay, a court examines several factors including: (1) whether the applicant has made a strong showing that he is likely to succeed on the merits of the appeal; (2) whether the applicant will be irreparably injured absent a stay; (3) whether a stay will substantially injure the non-moving party; and (4) where the public interest lies. *See Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011).

¹⁶ The Court further notes that on December 10, 2019, the United States District Court for the Western District of Texas also entered an order permanently enjoining "agency head Defendants Mark T. Esper, Chad F. Wilf, Todd, T. Semonite, David Bernhardt, and Steven T. Mnuchin . . . from using § 2808 funds beyond the \$1.375 billion in the 2019 Consolidated Appropriations Act for border wall construction." *See El Paso County v. Trump*, No. 3:19-cv-0066-DB (W.D. Tex.), Dkt. No. 136 at 21.

1 Although the Court has considered similar factors as part of its permanent injunction
2 analysis above, the Supreme Court's stay of this Court's prior injunction order appears to reflect
3 the conclusion of a majority of that Court that the challenged construction should be permitted to
4 proceed pending resolution of the merits. Accordingly, the Court finds in its discretion that the
5 lengthy history of this action; the prior appellate record; and the pending appeal before the Ninth
6 Circuit on the merits of Plaintiffs' Section 8005 claim, which will address several of the threshold
7 legal and factual issues raised in this order, warrant a stay of the permanent injunction pending
8 appeal. Plaintiffs may, of course, petition the Ninth Circuit to lift this stay.

9 **V. CERTIFICATION FOR APPEAL**

10 Given the parties' express request to certify for appeal the Court's prior orders regarding
11 Section 8005, the Court also considers whether certification is appropriate here. Appellate courts
12 generally only have jurisdiction to hear appeals from final orders. *See* 28 U.S.C. § 1291. Federal
13 Rule of Civil Procedure 54(b) allows for a narrow exception to this final judgment rule, permitting
14 courts to "direct entry of a final judgment as to one or more, but fewer than all, claims or parties
15 only if the court expressly determines that there is no just reason for delay." Entry of judgment
16 under Rule 54(b) thus requires: (1) a final judgment; and (2) a determination that there is no just
17 reason for delay of entry. *See Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d 565, 574 (9th Cir.
18 2018) (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7–8 (1980)). The Court finds
19 both requirements satisfied here.

20 **A. Finality of Judgment**

21 A final judgment is "a decision upon a cognizable claim for relief" that is "an ultimate
22 disposition of an individual claim entered in the course of a multiple claims action." *Curtiss-*
23 *Wright Corp.*, 446 U.S. at 7. The Court finds this requirement satisfied because the Court's award
24 of partial summary judgment in this order is "an ultimate disposition" of Plaintiffs' claims related
25 to Defendants' purported reliance on Section 2808 for border barrier construction.

26 **B. No Just Reason for Delay**

27 As the Ninth Circuit has explained, "[j]udgments under Rule 54(b) must be reserved for
28 the unusual case in which the costs and risks of multiplying the number of proceedings and of

overcrowding the appellate docket are outbalanced by pressing needs of the litigants for an early and separate judgment as to some claims or parties.” *Morrison-Knudsen Co. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981). Accordingly, an explanation of findings “should include a determination whether, upon any review of the judgment entered under the rule, the appellate court will be required to address legal or factual issues that are similar to those contained in the claims still pending before the trial court.” *Id.* at 965. “The greater the overlap the greater the chance that [the Court of Appeals] will have to revisit the same facts—spun only slightly differently—in a successive appeal.” *Wood v. GCC Bend, LLC*, 422 F.3d 873, 882 (9th Cir. 2005). “[P]lainly, sound judicial administration does not require that Rule 54(b) requests be granted routinely.” *Id.* at 879 (quotation omitted).

As with its partial summary judgment order related to Section 8005, the Court finds there is no just reason for delay under the circumstances. Whether Defendants’ actions comport with the statutory requirements of Section 2808 and whether Defendants’ actions comport with the remaining statutory requirements related to the outstanding claims are distinct inquiries, largely based on distinct law. The Court therefore finds that “sound judicial administration” is best served by the Court certifying this judgment for appeal, in light of the undisputedly significant interests at stake in this case. *See Wood*, 422 F.3d at 879.

VI. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiffs’ motions for partial summary judgment and **DENIES** Defendants’ motions for partial summary judgment. Specifically, the Court **GRANTS** Plaintiffs’ request for declaratory judgment that Defendants’ intended use of military construction funds under Section 2808 for the eleven border barrier construction projects that the Secretary of Defense identified as Yuma Project 2; Yuma Project 10/27; Yuma Project 3; Yuma Project 6; San Diego Project 4; San Diego Project 11; El Paso Project 2; El Paso Project 8; Laredo Project 5; Laredo Project 7; El Centro Project 5; and El Centro Project 9, is unlawful. *See Sierra Club*, No. 19-cv-00892-HSG, Dkt. Nos. 201, 201-1, & Ex. 1. The Court **DENIES** Plaintiffs’ request for declaratory judgment and injunctive relief concerning Defendants’ (1) invocation of Section 2808 beyond these projects; (2) reliance on

Section 2808 to excuse them from complying with NEPA as to the eleven proposed projects; and (3) decision to defer outstanding military construction projects.

The terms of the permanent injunction are as follows: Defendants Mark T. Esper, in his official capacity as Secretary of Defense; and Chad F. Wolf, in his official capacity as Acting Secretary of Homeland Security (collectively, “Defendants”), and all persons acting under their direction, are permanently enjoined from using military construction funds appropriated for other purposes to build a border wall in the areas Defendants have identified as Yuma Project 2; Yuma Project 10/27; Yuma Project 3; Yuma Project 6; San Diego Project 4; San Diego Project 11; El Paso Project 2; El Paso Project 8; Laredo Project 5; Laredo Project 7; El Centro Project 5; and El Centro Project 9. Nevertheless, as discussed in Section IV above, the Court exercises its discretion to **STAY** the permanent injunction pending appeal.

The Clerk is directed to enter final judgment in favor of Plaintiffs and against Defendants with respect to Defendants’ purported reliance on Section 2808 to fund border barrier construction. This judgment will be certified for immediate appeal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: 12/11/2019



HAYWOOD S. GILLIAM, JR.
United States District Judge

EXHIBIT 2

EXHIBIT 1

2808 Deferrals in United States Territories (\$ in thousands)

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
PUERTO RICO	Arroyo	January 2021	Readiness Center	2018	30,000
	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

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
		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
		April 2020	2nd Radio BN Complex, Phase 2	2019	25,650
NORTH CAROLINA	Camp Lejeune, North Carolina	January 2020	Ambulatory Care Center Addition/Alteration	2018	15,300
		Previously cancelled	Butner Elementary School Replacement	2016	32,944
		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

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	Sigonella	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
	Sliac 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
Grand Total					1,836,755

EXHIBIT 3

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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

**DECLARATION OF ALISON LYNN
REASER IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT
REGARDING SECTION 2808 AND
NEPA**

Judge: Honorable Haywood S. Gilliam,
Jr.

Trial Date: None Set

Action Filed: February 18, 2019

1 I, ALISON LYNN REASER, declare as follows:

2 1. I have personal knowledge of all the facts stated herein. This declaration is based
3 on my personal knowledge, my review of publicly-available documents, and the knowledge and
4 expertise I have acquired in the course of over 40 years as a trained business and academic
5 economist, including analysis of the economic impacts of defense expenditures and military
6 construction. If called and sworn as a witness, I could and would testify competently to the
7 matters set forth herein.

8 **Qualifications and Background**

9 2. I have a B.A., M.A., and Ph.D. in Economics, all awarded by the University of
10 California Los Angeles. Since 2009, I have been the Chief Economist for the Fermanian Business
11 and Economic Institute (FBEI), a strategic unit of the Fermanian School of Business at Point
12 Loma Nazarene University (PLNU), and have taught as an Adjunct Professor of Economics in the
13 MBA program at PLNU. Attached hereto as Exhibit A is a true and correct copy of my
14 curriculum vitae.

15 3. Previously, from 1996 through 2009, I served as Chief Economist for Barnett
16 Banks, Inc. (acquired by Bank of America) and Bank of America's Investment Strategies Group.
17 Prior to that, from 1992 through 1996, I served as the Chief Economist for First Interstate Bank
18 (acquired by Wells Fargo Corporation), where I served in various other economic and managerial
19 roles beginning in 1974.

20 4. I currently serve as a member of the California Chamber of Commerce Economic
21 Advisory Council. I have recently served (through the end of 2018) as the Chair of the California
22 State Treasurer's Council of Economic Advisors, as well as the National Association for Business
23 Economics Foundation. I previously served as Chair of the California State Controller's Council
24 of Economic Advisors and as the President of the National Association for Business Economics.

25 5. In my current role at PLNU, I serve as the director and principal economist for the
26 FBEI. The Institute does consulting for companies, non-profit organizations, and government
27 entities. Its purpose is to provide objective and actionable economic analysis, forecasts, and
28 recommendations to entities that may not have a full staff of in-house economists. We study

1 issues such as the impact of the military on the region, water, homelessness, utilities, land use,
2 housing policy, tourism, and transportation. I give frequent presentations on the economic
3 outlook, covering the global, U.S., financial markets, and regional economies.

4 6. From July 1, 2018 to June 30, 2019, I was interviewed 185 times by 27 sources
5 (newspapers, TV, radio/podcasts, and internet) regarding my work. Some of these interviews
6 were disseminated across multiple platforms, resulting in nearly 300 total media reports. I am a
7 member of the CNBC Federal Reserve Forecasting Panel, comprised of Wall Street analysts, the
8 Wall Street Journal Panel of Economic Forecasters, and the Economic Outlook Forecast Panel for
9 the National Association for Business Economics.

10 7. Beginning in 2012 and annually each year since, I have authored an Economic
11 Impact Study calculating the economic impacts of all the spending from the Department of
12 Defense that flows into San Diego. This comes in various channels, including payrolls of U.S.
13 Navy and Marine Corps personnel, defense contracts, grants, and retirement benefits. During the
14 past two years, I have also included spending linked to the Department of Veterans Affairs and
15 the U.S. Coast Guard. This study includes a full analysis of the multiplier or ripple effects as
16 defense dollars spread through supply chains of defense contractors and others who support
17 various programs and military activities, as well as the effects on consumer spending. I have
18 mapped the effects into the total impact on gross regional product (GRP), personal income, and
19 jobs for the entire San Diego region (San Diego County). The study is sponsored by the non-
20 profit San Diego Military Advisory Council (SDMAC), which is funded by various companies
21 and other organizations. The study is widely respected as the authoritative document on the
22 impact of military spending in the region and is regarded as a model of how such studies should
23 be done. U.S. Navy and Marine Corps leadership in San Diego, Department of Defense officials
24 in Washington, and political leaders in Congress and in California view the document as highly
25 credible and valuable.

26 8. The annual economic impact of military spending discussed above in Paragraph 7
27 includes the effects of military construction as a vital element. I have also authored a separate
28

1 study focusing exclusively on military construction spending, along with another report which
2 analyzed a major development project tied to a new military facility.

3 **Methodology**

4 9. Before drafting this declaration, I reviewed the list of military construction
5 projects announced by the Department of Defense from which funding is being diverted under 10
6 U.S.C. § 2808 towards construction of border barriers along the southern border of the United
7 States. I identified a total of nineteen projects that are within the jurisdictions of the plaintiff
8 states in the above-captioned matter. Nine of these twenty plaintiff states have projects targeted
9 for funds diversion: California, Colorado, Hawaii, Maryland, New Mexico, New York, Oregon,
10 Virginia, and Wisconsin (the States). Information provided by counsel for the State of Virginia
11 indicated that the Pentagon Metro Entrance Facility project in Virginia was unlikely to be
12 constructed as intended before defendants' diversion of funds. The counsel for the State of
13 Oregon also indicated that the project to replace the fuel facilities at Klamath Falls Airport was
14 unlikely to go forward. These two projects were therefore excluded from my analysis. Seventeen
15 projects in the States were therefore analyzed, which represented a total value of defunded
16 projects equal to \$493 million. For each of those projects, I reviewed the Department of Defense
17 form 1391 (1391 form), which contains basic information regarding each project.

18 10. I also reviewed the list prepared by the Department of Defense of proposed barrier
19 borders to be constructed with the funds diverted under 10 U.S.C. § 2808. Offsetting positive
20 impacts on the States from border barrier building were based on information from this report.

21 11. All of the estimated costs for each project as identified in the 1391 forms were
22 carefully analyzed. The timing of fund expenditure was based on the timeframes identified for
23 construction in each 1391 form. Construction expenditures were allocated to the appropriate
24 industry or type of firm except in cases where it appeared likely that some items would have to be
25 sourced primarily out of state. In addition to the expenditure amounts included in the construction
26 dollar totals, two other types of effects were included. First, expenditures on equipment, furniture,
27 or other items that are contingent on the project's completion were included in the analysis since
28 these spending benefits would also be lost. These amounts were identified in the 1391 forms and

1 cited as being appropriated under separate bills. Second, where operations were scheduled or
2 targeted to be expanded following the construction project's completion, the annual impact on
3 direct military payrolls in terms of lost jobs and incomes was modeled.

4 12. The economic benefits of spending from construction of the proposed border
5 barriers was based on the gross contract totals supplied by the Department of Defense noted in
6 Paragraph 10 above. This affected two of the nine States analyzed: California and New Mexico.
7 All construction was assumed to take place in 2020. The amounts of construction materials
8 sourced within each state was estimated. Labor costs were based on their typical share of contract
9 totals in similar projects.

10 13. The IMPLAN® model was used to analyze the total economic impact of military
11 expenditure changes. This is a model widely used by economists to evaluate the various ripple or
12 multiplier effects of an increase in spending on a region's sales, output, income, employment, and
13 local tax revenues. These ripple effects encompass two stages: supply chain and consumer effects.
14 The supply chain effects reflect the impact on other businesses when a local firm has to purchase
15 additional goods or services to support its own increase in sales or activity. The consumer effects
16 refer to the increase in household outlays due to the gain in jobs and income created by the direct
17 impact of the increase in spending as well as the effects along the supply chain. I have used this
18 model frequently in studies of various issues involving regional economies and have utilized it in
19 all of the reports I have prepared on the impact of defense spending.

20 14. For this analysis, I built models to analyze the effects of proposed changes in
21 spending for each of the nine states paired with each of the other eight states. For each state,
22 models were built for each year between 2020 and 2022 where spending would be impacted. A
23 total of 171 models were built. This process allowed me to assess not only the direct effects of
24 changes in a given state, but also the feedback effect of other states as their spending was
25 impacted.

26 15. The diversion of funds from military construction projects located outside of the
27 plaintiff states would also have economic ripple effects on the plaintiff states. However, my
28 analysis conservatively included only projects within the plaintiff states' boundaries because the

1 diversion of those projects would have primary effects on the plaintiff states. Because the
2 secondary effects of defendants' diversion of military construction projects located in other states
3 and countries were not considered in my analysis, the actual economic harm resulting from all of
4 defendants' diversion of military construction projects would be greater than represented in this
5 declaration. Those secondary effects, as well as the secondary effects of the projects considered in
6 this analysis, would be felt in all of the plaintiff states as well as the states not involved in this
7 action.

8 16. The use of the IMPLAN® involves five primary steps. First, spending for a project
9 is allocated over time. For example, in the case of the Space Control Facility in Colorado
10 proposed for defunding, the utilities and basic infrastructure would be installed before the
11 building of the facility would begin. Second, the geographic direction of project dollars is
12 determined. For example, in the case of the C-130J Flight Simulator Facility at the Channel
13 Islands Air National Guard Station in California, the flight simulator would be built out of state.
14 In contrast, construction dollars on various projects, such as for the Cyber Operations Facility in
15 Hampton, Virginia, would typically be directed to firms within the state. Third, the spending on
16 various projects is divided across different industries, such as construction firms, suppliers of
17 electronics equipment, or providers of communications systems. Fourth, the impact of these
18 dollars across the economy is modeled based on the historical relationships tracked by the U.S.
19 Bureau of Economic Analysis and included in the IMPLAN® Model. For example, in a given
20 state, a certain fraction of construction dollars is typically subcontracted out to other firms while
21 other parts are spent on different types of building materials. The IMPLAN® Model also includes
22 the historical data on the number of workers and wages used in the various industries that might
23 be affected in supply chains and is used to estimate the impact on consumer spending for various
24 goods and services that would typically occur in a given state. Fifth, the total effects of changes in
25 the initial contract dollars, changes across various supply chains, and effects on consumer
26 spending are summed to determine the total effects on jobs, income, GRP, and state and local
27 taxes.

Economic Impacts on the States

19. Across 2020-2022, the gross regional product (GRP) of the States would be reduced by \$165 million as a result of this diversion of military funds. Total personal income losses would total \$97 million. Excluding California from this analysis, the GRP losses and personal income reductions within the remaining states affected – Colorado, Hawaii, Maryland, New Mexico, New York, Oregon, Virginia, and Wisconsin – would be \$416 million and \$273 million, respectively. California would see economic benefits from building of the proposed border barriers only in 2020. By 2021 it would experience economic losses, including a small

1 number of jobs. The loss of employment for all nine States in 2021 would reach nearly 1,600
2 jobs.

3 20. The tax revenues for state and local governments, through taxes on personal
4 income, retail sales, corporate profits, and other sources, for the States of Colorado, Hawaii,
5 Maryland, New Mexico, New York, Oregon, Virginia, and Wisconsin would be reduced by over
6 \$36 million as a result of defendants' diversions from the military construction projects.

7 21. Among all the States, California is the only state that would see net benefits to its
8 economy and tax revenues as a result of the diversions over the 2020-2022 period. This is because
9 only one project in California, the construction of a C-130J Flight Simulator Facility at the
10 Channel Islands Air National Guard Station, would be defunded at a total cost of \$8.0 million.
11 That loss is outweighed by the economic benefits resulting from the proposed border barrier
12 construction in the state. However, the net benefits from the border barrier building would only
13 occur in 2020, with economic losses following in 2021 and 2022.

14 22. Colorado faces the defunding of one project, a Space Control Facility at the
15 Peterson Air Force Base, at a cost of \$8.0 million. This would lead to a net loss of \$37 million in
16 business sales over the 2020-22 period, while its GRP would lose over \$25 million. Personal
17 income would be reduced by \$18 million and employment would be reduced by 82 jobs in 2020,
18 growing to an impact of 129 jobs in 2022. The state would receive over \$1.0 million less in state
19 and local tax revenues.

20 23. Hawaii faces the defunding of two projects: a consolidated training facility at the
21 Joint Base Pearl Harbor-Hickam and security improvements at the Mokapu Gate at the Marine
22 Corps base at Kaneohe Bay, at a total cost of \$32 million. As a result, Hawaii would see a net loss
23 of \$48 million in business sales over the 2020-22 period, while its GRP would lose \$27 million.
24 Personal income would be reduced by \$17 million and employment in 2020 would be adversely
25 affected with 163 fewer jobs. The state would receive \$2.5 million less in state and local tax
26 revenues.

27 24. Maryland faces the defunding of three projects: an expansion of cantonment area
28 roads at Fort Meade, construction of a hazardous cargo loading and unloading pad and explosive

1 ordinance disposal training range at Joint Base Andrews, and construction of a child development
2 center at Joint Base Andrews, at a total cost of \$66.5 million. Maryland would see a net loss of
3 \$123 million in business sales over the 2020-22 period, while its GRP would lose \$63 million.
4 Personal income would be reduced by \$42 million and employment in 2020 would be adversely
5 affected with 319 fewer jobs, while employment would be reduced by 326 jobs in 2021. The state
6 would receive over \$5.0 million less in state and local tax revenues.

7 25. New Mexico faces the defunding of two projects: the construction of an air combat
8 training facility for unmanned vehicles at Holloman Air Force Base and an Information Systems
9 Facility at White Sands Missile Range, at a total cost of \$125 million. Even with the economic
10 boost from construction of the proposed border barriers the state would receive, New Mexico
11 would see a net loss of nearly \$165 million in business sales over the 2020-22 period, while its
12 GRP would lose \$70 million. Personal income would be reduced by \$39 million and employment
13 in 2020 would be adversely affected by close to 450 fewer jobs, while employment would be
14 reduced by over 300 jobs in 2021. The state would receive nearly \$9 million less in state and local
15 tax revenues.

16 26. New York faces the defunding of two projects: an Engineering Center and Parking
17 Structure, both at the U.S. Military Academy at West Point, at a total cost of \$160 million. New
18 York would see a net loss of \$260 million in business sales over the 2020-22 period, while its
19 GRP would lose close to \$150 million. Personal income would be reduced by more than \$100
20 million and employment in 2020 would be adversely affected with over 1,000 fewer jobs, while
21 employment would be reduced by about 400 jobs in 2021. The state would receive \$13 million
22 less in state and local tax revenues.

23 27. Excluding the project to replace the fuel facilities at Klamath Falls Airport, Oregon
24 faces the defunding of the construction of an indoor small arms training range at the Klamath
25 Falls International Airport, at a total cost of \$8 million. This would result in a net loss of \$13
26 million in total business sales in the 2020-22 period and \$7 million in GRP. The state's personal
27 income would be down by \$5 million, while the state would also see the loss of about 70 jobs in
28 2020. The state would receive about \$0.6 million less in state and local tax revenues.

29. Wisconsin faces the defunding of one project, the construction of an indoor small arms training range at Truax Field, at a total cost of \$8 million. This would result in a net loss of \$16 million in total business sales and over \$8 million in GRP over the 2020-22 period. The state's personal income would be down by about \$6 million, while it would also see the loss of about 75 jobs in 2020. The state would receive about \$0.6 million less in state and local tax revenues.

Dated this 11th day of October, 2019 at San Diego, California.

Alison Lynn Reaser
Alison Lynn Reaser, Ph.D.

EXHIBIT 4

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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 MOTION AND MOTION
FOR PARTIAL SUMMARY JUDGMENT
REGARDING SECTION 2808 AND
NEPA; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Date: November 20, 2019
Time: 10:00 am
Judge: Honorable Haywood S. Gilliam,
Jr.
Trial Date: None Set
Action Filed: February 18, 2019

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1 Secretary of Homeland Security's authority under section 102 of the Illegal Immigrant
2 Responsibility and Immigrant Reform Act (IIRIRA) (8 U.S.C. 1103 note) in order to expedite
3 construction of the barriers constructed pursuant to Section 284. States PI Reply, ECF 112, 16-17.
4 Section 102(c)(1) explicitly states that the waiver authority is limited to barriers constructed
5 "under this section," meaning section 102 of IIRIRA. Since the barriers at issue are being
6 constructed by DoD pursuant to a different statutory provision, any waiver issued by DHS under
7 IIRIRA would be inapplicable and DoD must comply with NEPA. *See* Determination Pursuant to
8 Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as
9 Amended, 84 Fed. Reg. 17,185, 17,187 (Apr. 24, 2019); 84 Fed. Reg. 21,800-01 (May 15, 2019);
10 *see also* PI RJN Exs. 34-35; Second Decl. of Kenneth P. Rapuano, ECF No. 143-1.

11 With respect to Defendants' multifaceted scheme to build the border barrier projects under
12 § 2808, the obligation to conduct environmental review under NEPA falls on two agencies. First,
13 DoD should have prepared an environmental impact statement concerning the construction of the
14 border barrier projects. On February 15, 2019, President Trump declared a national emergency
15 and stated his intent to use up to \$3.6 billion to build border barriers under Section § 2808. PI
16 RJN Ex. 28. This proposal crystalized on September 3, 2019 when the Secretary of Defense
17 authorized and identified the location of 11 border barrier projects in California, Arizona, New
18 Mexico, and Texas under § 2808. Sept. 3 Notice. This was a major federal action requiring DoD
19 to engage in a public environmental review process. DoD violated NEPA by failing to conduct
20 any such review.

21 Second, DOI should have complied with NEPA before transferring land to DoD. A decision
22 to transfer jurisdiction over land to another agency to enable construction is a "major federal
23 action[]" significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). In
24 *Anacostia Watershed Soc. v. Babbitt*, 871 F.Supp. 475, 481-483 (D.C. Cir. 1994), the Court held
25 the National Park Service (NPS) violated NEPA by failing to conduct environmental review
26 before transferring jurisdiction of National Parks land to the District of Columbia. The Court
27 rejected the NPS's attempt to classify the transfer as a "mere paper transaction." *Id.* at 481. The
28 NPS knew the District of Columbia planned to develop a theme park on the transferred land and

1 thus “had sufficient information regarding potential environmental effects” to “comply with
2 NEPA before making its decision to transfer jurisdiction.” *Id.* at 483. Here, the intent to build
3 border barriers on the land transferred from DOI to DoD is well known and therefore DOI had
4 sufficient information regarding the potential effects of the border barrier projects to comply with
5 NEPA before making its decision to transfer jurisdiction. Thus, DOI also violated NEPA.

6 Defendants argue § 2808 authorizes the Secretary of Defense to undertake military
7 construction projects without complying with NEPA. 2808 AR at 9 (the Secretary of Defense
8 authorized and directed the Acting Secretary of the Army to construct the border barriers
9 “without regard to any other provision of law,” including NEPA). Regardless of whether or not
10 this language exempts the Secretary of Defense from complying with NEPA in some
11 circumstances, it cannot excuse NEPA compliance here where the border barrier projects cannot
12 be built under § 2808 for all the reasons described above. Further, even if this Court found the
13 proposed border barriers could be built under § 2808 and DoD was exempt from NEPA, DOI
14 would still need to comply with NEPA. The plain language of § 2808 does not extend the ability
15 to take action “without regard to any other provision of law” to DOI. The States are thus entitled
16 to summary judgment with respect to NEPA.

17 **III. THIS COURT SHOULD ENJOIN DEFENDANTS’ USE OF § 2808 TO DEFUND MILITARY**
18 **CONSTRUCTION PROJECTS IN THE STATES AND CONSTRUCT BORDER BARRIERS IN**
19 **CALIFORNIA AND NEW MEXICO**

20 **A. Defendants’ Actions Irreparably Harm the States**

21 California and New Mexico have been and will further be irreparably harmed in two ways
22 from the border barriers built under § 2808. First, by constructing the border barriers without
23 complying with state environmental laws, Defendants will and already have harmed those states’
24 sovereign interests. Second, Defendants’ construction activities and border barriers will
25 irreparably injure wildlife and plants in the sensitive desert environments where the barriers are to
26 be constructed.

27 In addition, New Mexico, Colorado, Hawaii, Maryland, New York, Oregon, Virginia, and
28 Wisconsin face irreparable harm from Defendants’ unlawful diversion of funds from military

1 construction projects that would otherwise bring valuable financial benefits, including lost tax
2 revenue, directly to those states.

3 **1. Construction and Operation of Defendants' Border Barriers Harm**
4 **California's and New Mexico's Sovereign Interests in Enforcing**
5 **Their State Laws**

6 Defendants' diversion of funds, border barrier construction, and disregard for
7 environmental law undermine California's and New Mexico's sovereign interests in enforcing
8 state laws, and these injuries to the States' "sovereign interests and public policies" constitute
9 irreparable harm. *Kansas v. United States*, 249 F.3d 1213, 1227-28 (10th Cir. 2001); *see also*
10 *Brackeen v. Bernhardt*, 937 F.3d 406, 424 (5th Cir. 2019) (holding if federal authorities
11 "promulgated a rule binding on states without the authority to do so, then State Plaintiffs have
12 suffered a concrete injury to their sovereign interest.").

13 **a. Defendants' Actions Prevent California from Enforcing Its**
14 **Laws**

15 California has many laws designed to protect the State's water and air quality; wildlife,
16 land, and other environmental resources; and public health. *See, e.g.*, Porter-Cologne Water
17 Quality Control Act, Cal. Water Code §§ 13000-16104; California Endangered Species Act, Cal.
18 Fish and Game Code §§ 2050-2089.26. Defendants' unlawful diversion of funds to construct the
19 California Projects and refusal to comply with these environmental laws that apply to their
20 actions prevent California from exercising its sovereign right to enforce these laws.

21 **(1) Water Quality Laws**

22 Construction of the California Projects will involve dredge and fill activities that could
23 impair water quality in violation of federal and state law. Ordinarily, before such dredge and fill
24 activities can proceed, federal officials must obtain certification of compliance with California's
25 water quality standards. Cal. Water Code § 13260 (imposing requirements on "persons" prior to
26 discharging waste); *id.* § 13050(c) (defining "person" to include "the United States, to the extent
27 authorized by federal law"); *see also* 33 U.S.C. § 1341(a)(1) (requiring *state* water quality
28 certification as part of *federal* permit). Indeed, as required by federal and state law, federal
officials have previously sought such certifications for construction projects in the project areas.

App'x of Decs. Re: Env't'l Harms ISO Partial MSJ on 2808 and NEPA (2808 Env. App'x) Ex. 2 (Dunn Decl. ¶¶ 11-13); Ex. 3 (Gibson Decl. ¶ 12). Further, under the *federal* Clean Water Act, Defendants must adopt water-pollution-mitigation measures to obtain a *state* permit certification from a California regional water board. 33 U.S.C. § 1341(a)(1); 2808 Env. App'x Ex. 2 (Dunn Decl. ¶¶ 8-10, 21); Ex. 3 (Gibson Decl. ¶¶ 9-11, 19). The conditions and mitigation measures imposed during the state permit and certification process are a primary means by which California implements its water quality objectives and enforces its water quality laws. *Id.*

By disregarding environmental law, Defendants undermine California's sovereign interests "in the conservation, control, and utilization of the water resources of the state" and in protecting "the quality of all the waters of the state . . . for use and enjoyment by the people of the state." Cal. Water Code § 13000. Defendants' actions are particularly injurious because the California Projects "pose a high risk for storm water run-off impacting . . . water quality during the construction phase." 2808 Env. App'x Ex. 2 (Dunn Decl. ¶ 20); Ex. 3 (Gibson Decl. ¶ 18).

(2) Air Quality Laws

Defendants also would ordinarily be required to ensure the California Projects conform to California's air quality standards by complying with the federal Clean Air Act as set forth in California's State Implementation Plan (SIP). 42 U.S.C. § 7506(c)(1). The Clean Air Act prohibits federal agencies from engaging in, supporting, or financing any activity that does not conform to a SIP. 40 C.F.R. § 93.150(a). "Conformity" violations include "caus[ing] or contribut[ing] to any new violation of any standard," "increas[ing] the frequency or severity of any existing violation of any standard in any area," or "delay[ing] timely attainment of any standard . . . in any area." 42 U.S.C. § 7506(c)(1)(B)(i)-(iii). These safeguards prevent federal agencies from interfering with states' abilities to comply with the Clean Air Act. *Id.*

But for the funding diversion and Defendants' failure to comply with environmental law, the local air districts with jurisdiction over the California Project areas would enforce rules to reduce the amount of fine particulate matter generated from Defendants' construction activities, by requiring Defendants to develop and implement a dust control plan. Pls.' RJN ISO 284 MSJ, [ECF No. 176-3] ("284 RJN") Ex. 4; 2808 RJN Ex. 20; 42 U.S.C. §§ 7418(a); 7506(c)(1); 40

C.F.R. § 52.220(c)(345)(i)(E)(2); 75 Fed. Reg. 39,366 (July 8, 2010). In addition to protecting Californians by supporting federal health standards, these rules mitigate blowing dust that can cause additional acute regional or local health problems. 284 RJN Ex. 5. Thus, by proceeding with the unlawfully funded construction without complying with California's laws, Defendants will impair California's sovereign interests in protecting its environment and public health.

(3) Endangered Species Laws

Finally, but for Defendants' diversion of funds under § 2808 and refusal to comply with environmental law, Defendants could not build the California Projects without ensuring the project "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species." 16 U.S.C. § 1536(a)(2). Compliance with this provision would protect species threatened, endangered, or of special concern under California law and allow California to continue implementing habitat conservation agreements with federal agencies that impose limitations on habitat-severing projects like the California Projects. 284 RJN Ex. 6; 2808 Env. App'x Ex. 1 (Clark Decl. ¶¶ 22, 34, 36-37). Defendants' disregard for these protections undermines California's ability to enforce the California Endangered Species Act and "the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat." Cal. Fish & Game Code § 2052.

b. Defendants' Actions Prevent New Mexico from Enforcing its Laws

New Mexico also has enacted and enforces environmental laws to protect its air quality and wildlife. By using the disputed funds to construct the New Mexico Projects without complying with these laws, Defendants impair New Mexico's "protection of the state's beautiful and healthful environment," which is "of fundamental importance to the public interest, health, safety and the general welfare." N.M. Const., art. XX, § 21.

(1) Air Quality Laws

El Paso Project 2, a portion of which falls within Luna County, would normally be subject to a dust control plan that New Mexico adopted under the Clean Air Act. 284 RJN Ex. 7; 40

1 C.F.R. § 51.930(b); N.M. Admin. Code §§ 20.2.23.108-113. The plan “limit[s] human-caused
2 emissions of fugitive dust into the ambient air by ensuring that control measures are utilized to
3 protect human health and welfare.” N.M. Admin. Code § 20.2.23.6. Defendants’ unlawful funds
4 transfer and disregard of environmental law would thus impair New Mexico’s ability to vindicate
5 its sovereign interest in protecting human health and welfare.

6 **(2) Wildlife Corridors and Endangered Species Laws**

7 Defendants’ § 2808 funding diversion, refusal to comply with environmental law, and
8 resulting construction also will impede New Mexico’s ability to implement its Wildlife Corridors
9 Act, which aims to protect large mammals’ habitat corridors from human-caused barriers such as
10 roads and walls, 2019 N.M. Laws Ch. 97, and requires New Mexico agencies to create a “wildlife
11 corridors action plan” to protect species’ habitat. Supp. PI RJN [ECF No. 112-1] Ex. 53. Several
12 important wildlife corridors run through, or adjacent to, the New Mexico Projects including in
13 Hidalgo and Luna Counties. 2808 Env. App’x Ex. 5 (Traphagen Decl. ¶¶ 19, 22-24). Pronghorn
14 antelope, mule deer, mountain lions, and bighorn sheep are all “large mammals” protected under
15 the Act. 2019 N.M. Laws Ch. 97 § 2.B. The New Mexico Projects will completely block habitat
16 corridors for these species and impair New Mexico’s ability to protect these important corridors.
17 2808 Env. App’x Ex. 5 (Traphagen Decl. ¶ 23).

18 Further, the New Mexico Projects will harm species that New Mexico’s laws were enacted
19 to protect such as the white-sided jackrabbit and the Mexican wolf, which is endangered under
20 both New Mexico and federal endangered species acts. *See* N.M. Stat. Ann. § 17-2-41; 2808 Env.
21 App’x Ex. 5 (Traphagen Decl. ¶¶ 16-19, 24). The New Mexico Projects will bisect important
22 wildlife habitats, impairing the access of the Mexican Wolf and other endangered species to those
23 habitats. *Id.* Ex. 4 (Nagano Decl. ¶ 25); Ex. 5 (Traphagen Decl. ¶¶ 18-19, 23-24). Absent a ruling
24 in the States’ favor and issuance of an injunction, New Mexico’s sovereign ability to enforce
25 these laws and protect these interests will be impaired.

1 **c. Defendants Irreparably Harm California's and New Mexico's**
 2 **Sovereign Interests by Preventing Them from Enforcing State**
 3 **Laws**

4 There is irreparable harm whenever a government cannot enforce its own laws. *Maryland v.*
 5 *King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers). States possess undeniable
 6 sovereign interests in their “power to create and enforce a legal code,” *Alfred L. Snapp & Son,*
 7 *Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982), including codes protecting the natural
 8 resources and public health within their borders. *See also Maine v. Taylor*, 477 U.S. 131, 151
 9 (1986) (the State “retains broad regulatory authority to protect the health and safety of its citizens
 10 and the integrity of its natural resources.”). Courts recognize that these sovereign interests are
 11 undermined where federal action impedes enforcement of state statutes. *See, e.g., State of Alaska*
 12 *v. U.S. Dept. of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) (holding states have sovereign
 13 interests in enforcing state consumer protection laws impeded by federal actions). And any time a
 14 state is prevented “from effectuating statutes enacted by representatives of its people, it suffers a
 15 form of irreparable injury” separate from any injury to the persons or things those statutes are
 16 designed to protect. *New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345,
 17 1351 (1977) (Rehnquist, J., in chambers).

18 Defendants argue § 2808 authorizes the Secretary of Defense to undertake military
 19 construction projects without following environmental laws. 2808 AR at 4. In addition to being
 20 wrong for the reasons described above, this position also impedes the States’ ability to enforce
 21 and effectuate duly enacted state environmental laws protecting the States, their residents, and
 22 their wildlife from Defendants’ construction projects—which will result in nearly 58 linear miles
 23 of permanent border wall in California and New Mexico. Defendants’ use of § 2808 to effectuate
 24 their plan and override otherwise applicable state laws infringes on the States’ sovereign interests
 25 and causes irreparable harm as a result.

26 **2. Construction and Operation of Defendants’ Border Barriers Harm**
 27 **California's and New Mexico's Environment, Wildlife, and Natural**
 28 **Resources**

 The California and New Mexico Projects will also irreparably harm protected wildlife and
 other natural resources within those states. The Projects pose a threat of demonstrable harm to

1 Dated: October 11, 2019

Respectfully submitted,

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ATTESTATION OF SIGNATURES

I, Heather C. Leslie, hereby attest, pursuant to Local Civil 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.

/s/ Heather C. Leslie
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EXHIBIT 5



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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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Case 4:19-cv-00872-HSG Document 212-2 Filed 09/16/19 Page 10 of 54

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

UNCLASSIFIED//FOUO

EXHIBIT 6

XAVIER BECERRA
Attorney General of California
ROBERT W. BYRNE
SALLY MAGNANI
MICHAEL L. NEWMAN
Senior Assistant Attorneys General
MICHAEL P. CAYABAN
CHRISTINE CHUANG
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Attorneys for Plaintiff State of California

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

**PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT REGARDING SECTION
2808 AND NEPA**

Date: November 20, 2019
Time: 10:00 am
Judge: Honorable Haywood S. Gilliam,
Jr.
Trial Date: None Set
Action Filed: February 18, 2019

1 Plaintiffs hereby respectfully request, pursuant to Federal Rule of Evidence 201, that this
2 Court take judicial notice of the following documents.

- 3 1. Attached hereto as **Exhibit 1** is a true and correct copy of a press release from the
4 United States Department of the Interior, Bureau of Land Management regarding the
5 Secretary of the Interior's transfer of the jurisdiction of land to the Department of the
6 Army. As of October 7, 2019, this press release is posted on the Bureau of Land
7 Management's website, at [https://www.blm.gov/press-release/interior-secretary-](https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army)
8 [transfers-five-parcels-land-department-army](https://www.blm.gov/press-release/interior-secretary-transfers-five-parcels-land-department-army).
- 9 2. Attached hereto as **Exhibit 2** is a true and correct copy of the Department of Defense
10 (DoD) form 1391 for construction of the C-130J Flight Simulator Facility at the
11 Channel Islands Air National Guard Station in California. The Department of Defense
12 submitted this form to Congress in support of DoD's request for funding for this
13 project.
- 14 3. Attached hereto as **Exhibit 3** is a true and correct copy of the DoD form 1391 for
15 construction of the Space Control Facility at the Peterson Air Force Base in Colorado.
16 The Department of Defense submitted this form to Congress in support of DoD's
17 request for funding for this project.
- 18 4. Attached hereto as **Exhibit 4** is a true and correct copy of the DoD form 1391 for
19 construction of the Consolidated Training Facility at the Joint Base Pearl Harbor-
20 Hickam in Hawaii. The Department of Defense submitted this form to Congress in
21 support of DoD's request for funding for this project.
- 22 5. Attached hereto as **Exhibit 5** is a true and correct copy of the DoD form 1391 for
23 construction of security improvements at Mokapu Gate at Kaneohe Bay in Hawaii. The
24 Department of Defense submitted this form to Congress in support of DoD's request for
25 funding for this project.
- 26 6. Attached hereto as **Exhibit 6** is a true and correct copy of the DoD form 1391 for
27 construction of the Cantonment Area roads at Fort Meade in Maryland. The Department
28

of Defense submitted this form to Congress in support of DoD's request for funding for this project.

7. Attached hereto as **Exhibit 7** is a true and correct copy of the DoD form 1391 for construction of the PAR Relocate Haz Cargo Pad and EOD Range at Joint Base Andrews in Maryland. The Department of Defense submitted this form to Congress in support of DoD's request for funding for this project.
8. Attached hereto as **Exhibit 8** is a true and correct copy of the DoD form 1391 for construction of a child development center at Joint Base Andrews in Maryland. The Department of Defense submitted this form to Congress in support of DoD's request for funding for this project.
9. Attached hereto as **Exhibit 9** is a true and correct copy of the DoD form 1391 for construction of the MQ-9 FTU Ops Facility at Holloman Air Force Base in New Mexico. The Department of Defense submitted this form to Congress in support of DoD's request for funding for this project.
10. Attached hereto as **Exhibit 10** is a true and correct copy of the DoD form 1391 for construction of the Information Systems Facility at White Sands in New Mexico. The Department of Defense submitted this form to Congress in support of DoD's request for funding for this project.
11. Attached hereto as **Exhibit 11** is a true and correct copy of the DoD form 1391 for construction of the Engineering Center and Parking Structure at the U.S. Military Academy in New York. The Department of Defense submitted this form to Congress in support of DoD's request for funding for this project.
12. Attached hereto as **Exhibit 12** is a true and correct copy of the DoD form 1391 for construction of an indoor range at Klamath Falls International Airport. The Department of Defense submitted this form to Congress in support of DoD's request for funding for this project.
13. Attached hereto as **Exhibit 13** is a true and correct copy of the DoD form 1391 for construction of replacement fuel facilities at the Klamath Falls International Airport.

1 The Department of Defense submitted this form to Congress in support of DoD's
2 request for funding for this project.

3 14. Attached hereto as **Exhibit 14** is a true and correct copy of the DoD form 1391 for
4 construction of a cyber ops facility at Joint Base Langley-Eustis in Virginia. The
5 Department of Defense submitted this form to Congress in support of DoD's request for
6 funding for this project.

7 15. Attached hereto as **Exhibit 15** is a true and correct copy of the DoD form 1391 for
8 construction to replace a hazardous materials warehouse in Norfolk, Virginia. The
9 Department of Defense submitted this form to Congress in support of DoD's request for
10 funding for this project.

11 16. Attached hereto as **Exhibit 16** is a true and correct copy of the DoD form 1391 for
12 construction at the Pentagon Metro Entrance Facility at the Pentagon in Virginia. The
13 Department of Defense submitted this form to Congress in support of DoD's request for
14 funding for this project.

15 17. Attached hereto as **Exhibit 17** is a true and correct copy of the DoD form 1391 for
16 construction to replace a hazardous materials warehouse in Portsmouth, Virginia. The
17 Department of Defense submitted this form to Congress in support of DoD's request for
18 funding for this project.

19 18. Attached hereto as **Exhibit 18** is a true and correct copy of the DoD form 1391 for
20 construction of a ships maintenance facility in Portsmouth, Virginia. The Department of
21 Defense submitted this form to Congress in support of DoD's request for funding for
22 this project.

23 19. Attached hereto as **Exhibit 19** is a true and correct copy of the DoD form 1391 for
24 construction of a small arms range at Truax Field in Wisconsin. The Department of
25 Defense submitted this form to Congress in support of DoD's request for funding for
26 this project.

27 20. Attached hereto as **Exhibit 20** is a true and correct copy of the San Diego Air Pollution
28 Control District's Fugitive Dust Control Rule. As of October 8, 2019, this document is

1 posted on the San Diego Air Pollution Control District's website at:

2 https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Rules_and_Regulations/Prohibition
3 [s/APCD_R55.pdf](https://www.sdapcd.org/content/dam/sdc/apcd/PDF/Rules_and_Regulations/Prohibition).

4 21. Attached hereto as **Exhibit 21** is a true and correct copy of the Congressional Research
5 Service's Report entitled "The Trump Administration's 'Zero Tolerance' Immigration
6 Enforcement Policy" dated July 20, 2018.

7 Each of these exhibits is a matter of public record and is therefore subject to judicial notice.
8 Fed. R. Evid. 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (a court may
9 judicially notice matters of public record unless the matter is a fact subject to reasonable dispute).

10 **Exhibits 1-21** are judicially noticeable because government memoranda, bulletins, letters,
11 statements and opinions are matters of public record appropriate for judicial notice. *See Brown v.*
12 *Valoff*, 422 F.3d 926, 933 n.9 (9th Cir. 2005) (judicially noticing an administrative bulletin);
13 *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (court may take judicial
14 notice of records and reports of state administrative bodies), *overruled on other grounds by*
15 *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991); *Interstate Nat. Gas. Co. v.*
16 *S. Cal. Gas. Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (judicially noticing government agency
17 records and reports); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 520 nn.5, 8, 11 (N.D.
18 Cal. 2017) (taking judicial notice of government memoranda and letters).

19 **Exhibits 1 and 20** are judicially noticeable because they are posted on official government
20 websites. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (judicially
21 noticing information contained on a government website); *Paralyzed Veterans of America v.*
22 *McPherson*, No. C 06-4670 SBA, 2008 WL 4183981, at *5 (N.D. Cal. Sept. 9, 2008) (finding
23 that courts commonly take judicial notice of information and documents on government websites,
24 citing cases from various jurisdictions). Thus, the statements of government departments and
25 agencies contained within these exhibits are not subject to reasonable dispute, as the statements
26 "can be accurately and readily determined from sources whose accuracy cannot reasonably be
27 questioned." Fed. R. Evid. § 201(b)(2).

1 Dated: October 11, 2019

Respectfully submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 ROBERT W. BYRNE
5 SALLY MAGNANI
6 MICHAEL L. NEWMAN
7 Senior Assistant Attorneys General
8 MICHAEL P. CAYABAN
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18 Deputy Attorneys General
19 *Attorneys for Plaintiff State of California*
20
21
22
23
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25
26
27
28

EXHIBIT 2

1. COMPONENT ANG	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE Feb 2018	
3. INSTALLATION AND LOCATION CHANNEL ISLANDS ANG STATION, CALIFORNIA		4. PROJECT TITLE CONSTRUCT C-130J FLIGHT SIMULATOR FACILITY		
5. PROGRAM ELEMENT 54332F	6. CATEGORY CODE 171-212	7. PROJECT NUMBER DJCF149001	8. PROJECT COST(\$000) \$8,000	
9. COST ESTIMATES				
ITEM	U/M	QUANTITY	UNIT COST	COST (\$000)
C-130J FLIGHT SIMULATOR TRAINING FACILITY	SM	985		4,082
CONSTRUCT FLIGHT SIMULATOR (171212)	SM	985	4,144	(4,082)
SUPPORTING FACILITIES				3,122
UTILITIES	LS			(494)
PAVEMENTS	LS			(336)
SITE IMPROVEMENTS	LS			(346)
COMMUNICATIONS SUPPORT	LS			(99)
FIRE PROTECTION SUPPORT	LS			(1,481)
SEISMIC CONDITIONS	LS			(247)
SUSTAINABILITY AND ENERGY MEASURES	LS			(119)
SUBTOTAL				7,204
CONTINGENCY (5%)				360
TOTAL CONTRACT COST				7,564
SUPERVISION, INSPECTION AND OVERHEAD (6%)				453
TOTAL REQUEST				8,017
TOTAL REQUEST (ROUNDED)				8,000
10. Description of Proposed Construction: Construct a C-130-J Simulator Facility utilizing conventional design and construction methods to accommodate the mission of the facility. Facility shall be designed as permanent construction in accordance with the DoD Unified Facilities Criteria. The facility should be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special construction requirements: Simulator will require high bay construction with specialized flooring. To the greatest extent possible interior spaces shall be open office configuration with demountable partitions and systems furniture/prewired workstations. Exterior work includes: all necessary exterior utilities, sidewalks, paved areas, fire protection, site work, communications support and parking area. Air Conditioning: 350 KW.				
11. REQUIREMENT: 985 SM ADEQUATE: 0 SM SUBSTANDARD: 0 SM PROJECT: C-130J Flight Simulator Training Facility (New Mission) REQUIREMENT: The installation requires a properly sited, adequately sized and appropriately configured flight simulator facility house a six-axis flight simulator to train aircrews to fly the 8 PAA C-130J aircraft assigned to the 146th Airlift Wing. Functional areas include a two-story high bay in which to house flight simulator, briefing rooms, administrative areas for training and support staff, equipment and maintenance rooms, storage spaces, communications room supporting simulator operations, mechanical and electrical utility rooms and latrine facilities. CURRENT SITUATION: Air Mobility Command is establishing C-130J Aircraft Flight Simulator Training Program and selected Channel Islands Air National Guard Station to receive the equipment for this function. The installation does not have a facility that can be modified to accommodate a flight simulator. Crews currently perform training and meet qualification requirements by either flying existing based aircraft or performing temporary duty at an installation that has an appropriate simulator device.				

1. COMPONENT ANG	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE Feb 2018
3. INSTALLATION AND LOCATION CHANNEL ISLANDS ANG STATION, CALIFORNIA		
5. PROJECT TITLE CONSTRUCT C-130J FLIGHT SIMULATOR FACILITY		7. PROJECT NUMBER DJCF149001
12. SUPPLEMENTAL DATA:		
a. Estimated Design Data:		
(1) Status:		
(a) Date Design Started		DEC 2017
(b) Parametric Cost Estimates used to develop costs		NO
(c) Percent Complete as of Jan 2018		6%
* (d) Date 35% Designed		MAR 2018
(e) Date Design Complete		JUL 2018
(f) Type of Design Contract		IDIQ
(g) Energy Study/Life-Cycle analysis was/will be performed		YES
(2) Basis:		
(a) Standard or Definitive Design -		NO
(b) Where Design Was Most Recently Used -		N/A
(3) Total Cost (c) = (a) + (b) or (d) + (e):		(\$000)
(a) Production of Plans and Specifications		370
(b) All Other Design Costs		180
(c) Total		550
(d) Contract		550
(e) In-House		
(4) Contract Award (Month/Year)		DEC 2018
(5) Construction Start		FEB 2019
(6) Construction Completion		JAN 2020
* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability.		
b. Equipment associated with this project will be provided from other appropriations:		YES
EQUIPMENT NOMENCLATURE C-130J Flight Simulator	PROCURING APPROPRIATION 3010	FY APPROPRIATED OR REQUESTED 2018
		COST (\$000) 30,000
POINT OF CONTACT: NGB / A4AD (240) 612-8070		

EXHIBIT 3

(2)

1. COMPONENT ANG		FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE May 2017	
3. INSTALLATION AND LOCATION PETERSON AFB, COLORADO			4. PROJECT TITLE SPACE CONTROL FACILITY		
5. PROGRAM ELEMENT C5116F	6. CATEGORY CODE 141-454	7. PROJECT NUMBER TDKA169004	8. PROJECT COST(\$000) \$8,000		
9. COST ESTIMATES					
ITEM	U/M	QUANTITY	UNIT COST	COST (\$000)	
SPACE CONTROL FACILITY	SM	1,124		5,354	
OPERATIONAL AREA (141454)	SM	1,096	4,822	(5,285)	
HAZARDOUS STORAGE (442257)	SM	28	2,465	(69)	
SUPPORTING FACILITIES	LS			1,672	
UTILITIES	LS			(394)	
EQUIPMENT PAD	SM	2,090	172	(359)	
PAVEMENTS	SM	2,090	110	(230)	
SITE IMPROVEMENTS	LS			(525)	
COMM SUPPORT	LS			(164)	
SUSTAINABILITY AND ENERGY MEASURES	LS			196	
SUBTOTAL				7,222	
CONTINGENCY (5%)				361	
TOTAL CONTRACT COST				7,583	
SUPERVISION, INSPECTION AND OVERHEAD (6%)				454	
TOTAL REQUEST				8,037	
TOTAL REQUEST (ROUNDED)				8,000	
<p>10. Description of Proposed Construction: Construct a Space Control Facility utilizing conventional design and construction methods. Facilities will be designed as permanent construction in accordance with the DoD Unified Facilities Criteria (UFC) 1-200-01, General Building Requirements and UFC 1-200-02, High Performance and Sustainable Building Requirements. This facility will be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special Construction Requirements: Provide for open floor plan with Secure Compartmentalized Information Facility (SCIF) space capable of accommodating 88 personnel. Exterior site improvements, equipment pad, utility services, roadways, sidewalks, parking lots, access pavements, drainage, fencing, and gates. HAZMAT Storage to include space for fuel storage, used oil depositary and flammable storage locker. Facility and equipment require Protection Level 3. Air Conditioning: 175 KW.</p>					
<p>11. REQUIREMENT: 1,124 SM ADEQUATE: 0 SM SUBSTANDARD: 0 SM <u>PROJECT:</u> Space Control Facility (New Mission) <u>REQUIREMENT:</u> The Colorado Air National Guard requires adequately sized and properly configured space to support a Space Control Squadron functions in accordance with force structure changes identified by the FY18 Program Action Memorandum. The facility must provide adequate space to support the squadron's operations, maintenance, security, command and administration, and storage areas. Facility must have an unobstructed view of the southern horizon. <u>CURRENT SITUATION:</u> A new Space Control Squadron will be created in Colorado, most likely at Peterson AFB. The squadron does not currently exist and there are no adequate facilities located at either Peterson or Buckley AFBs for this space control squadron. The only solution that meets all mission requirements is to construct a new facility on Peterson AFB. <u>IMPACT IF NOT PROVIDED:</u> Unable to beddown the space control mission and equipment, with operational and strategic mission impacts due to inadequate facilities.</p>					

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE May 2017																																
3. INSTALLATION AND LOCATION PETERSON AFB, COLORADO																																			
5. PROJECT TITLE SPACE CONTROL FACILITY		7. PROJECT NUMBER TDKA169004																																	
<p><u>ADDITIONAL:</u> Sustainable principles, to include Life Cycle cost effective practices, will be integrated into the design, development, and construction of the project in accordance with Executive Order 13423, 10 USC 2802 (c) and other applicable laws and Executive Orders. An economic analysis is being prepared comparing the alternatives of new construction, and status quo operation. Based on the net present values and benefits of the respective alternatives, new construction will be the most cost efficient alternative over the life of the project.</p> <table border="1"> <thead> <tr> <th>CatCode</th> <th>Requirement</th> <th>Adequate</th> <th>Substandard</th> </tr> </thead> <tbody> <tr> <td>141-454 SPECIAL OPERATIONS</td> <td>1,096 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>132-133 EQUIPMENT PAD</td> <td>6,271 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>852-262 NON-ORGANIZATIONAL VEHICLE PKN</td> <td>1,923 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>852-261 OPERATIONAL VEHICLE PARKING</td> <td>167 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>442-257 BASE HAZARDOUS STORAGE</td> <td>28 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> </tbody> </table> <table> <tr> <td>OPERATIONAL AREA (141454)</td> <td>1,096 SM = 11,800 SF</td> </tr> <tr> <td>HAZARDOUS STORAGE (442257)</td> <td>28 SM = 300 SF</td> </tr> <tr> <td>EQUIPMENT PAD</td> <td>2,090 SM = 2,500 SY</td> </tr> <tr> <td>PAVEMENTS</td> <td>2,090 SM = 2,500 SY</td> </tr> </table>				CatCode	Requirement	Adequate	Substandard	141-454 SPECIAL OPERATIONS	1,096 SM	0 SM	0 SM	132-133 EQUIPMENT PAD	6,271 SM	0 SM	0 SM	852-262 NON-ORGANIZATIONAL VEHICLE PKN	1,923 SM	0 SM	0 SM	852-261 OPERATIONAL VEHICLE PARKING	167 SM	0 SM	0 SM	442-257 BASE HAZARDOUS STORAGE	28 SM	0 SM	0 SM	OPERATIONAL AREA (141454)	1,096 SM = 11,800 SF	HAZARDOUS STORAGE (442257)	28 SM = 300 SF	EQUIPMENT PAD	2,090 SM = 2,500 SY	PAVEMENTS	2,090 SM = 2,500 SY
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1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE May 2017
3. INSTALLATION AND LOCATION PETERSON AFB, COLORADO		
5. PROJECT TITLE SPACE CONTROL FACILITY		7. PROJECT NUMBER TDKA169004
12. SUPPLEMENTAL DATA: a. Estimated Design Data: (1) Status: (a) Date Design Started NOV 2016 (b) Parametric Cost Estimates used to develop costs No (c) Percent Complete as of Jan 2017 10% * (d) Date 35% Designed APR 2017 (e) Date Design Complete NOV 2017 (f) Type of Design Contract IDIQ (g) Energy Study/Life-Cycle analysis was/will be performed No (2) Basis: (a) Standard or Definitive Design - No (b) Where Design Was Most Recently Used - (3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000) (a) Production of Plans and Specifications 240 (b) All Other Design Costs 480 (c) Total 720 (d) Contract 720 (e) In-House (4) Contract Award (Month/Year) MAR 2018 (5) Construction Start JUN 2018 (6) Construction Completion AUG 2019 * Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability. b. Equipment associated with this project will be provided from other appropriations: N/A POINT OF CONTACT: NGB/A4AD (240) 612-8083		

EXHIBIT 4

3

1. COMPONENT AIR FORCE RESERVE	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. DATE MAY 2017
3. INSTALLATION AND LOCATION JOINT BASE PEARL HARBOR-HICKAM, HI		
4. PROJECT TITLE CONSOLIDATED TRAINING FACILITY		5. PROJECT NUMBER KNMD624007
12. SUPPLEMENTAL DATA: A. DESIGN DATA (Estimated)		
1. STATUS		
a. Date Design Started:		Sep 2017
b. Parametric estimates have been used to develop project cost.		
c. Percentage Complete as of January 1, 2016		35%
d. Date Design 35% Complete		Dec 2017
e. Date Design Complete - (If design-build, construction complete)		Sep 2019
2. BASIS		
a. Standard or Definitive Design - Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Where Design Was Most Recently Used <u>N/A</u>		
3. COST (Total) = c = a + b or d + e		
		(\$495)
a. Production of Plans and Specifications (35% design)		(294)
b. All Other Design Costs (Design-build)		(201)
c. Total		(495)
d. Contract (A-E)		()
e. In-house (management)		()
4. CONSTRUCTION AWARD /START / COMPLETION		
		Aug 2018 / Sep 2018 / Sep 2019
B. EQUIPMENT ASSOCIATED WITH THIS PROJECT WHICH WILL BE PROVIDED FROM OTHER APPROPRIATIONS:		
Equipment <u>Nomenclature</u>	Procuring <u>Appropriation</u>	Fiscal Year <u>Appropriated Or Requested</u>
Furniture / Storage Equipment	3740	FY 2018
Interior Design Services	3740	FY 2018
Communications Equipment	3740	FY 2018
		Cost <u>(\$000)</u>
		350
		200
		65

1. COMPONENT AIR FORCE RESERVE	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. DATE MAY 2017
3. INSTALLATION AND LOCATION JOINT BASE PEARL HARBOR-HICKAM, HI		
11. PERSONNEL STRENGTH AS OF JAN 2017		
	PERMANENT (ARTs, AGRs, Non-ART Civilians) <u>TOTAL</u> <u>OFFICER</u> <u>ENLISTED</u> <u>CIVILIAN</u>	GUARD/RESERVE <u>TOTAL</u> <u>OFFICER</u> <u>ENLISTED</u>
AUTHORIZE	<u>L</u> 44 5 32 7	393 62 331
D ACTUAL	38 9 27 2	490 89 401
12. RESERVE UNIT DATA		
<u>UNIT DESIGNATION</u>	<u>AUTHORIZED</u>	<u>STRENGTH</u> <u>ACTUAL</u>
624 Aeromed STG Squadron	81	97
624 Civil Engineer Squadron	139	129
647 Security Forces Squadron	0	6
624 Regional Support Group	43	51
647 Force Support Squadron	0	4
701 Combat Operations Squadron	20	15
713 Combat Operations Squadron	21	19
15 Wing WG	0	27
AFR West Recruit Squadron	3	3
HQ AF Reserve / PACAF	1	53
IR Read and Integ Organization	4	4
48 Aerial Port Squadron	125	120
Total	442	528
13. MAJOR EQUIPMENT AND AIRCRAFT		
<u>TYPE</u>	<u>AUTHORIZED</u>	<u>ASSIGNED</u>
Non -Flying Unit -Civil Engineering, Aerial Port, and Medical Support Unit		

1. COMPONENT AIR FORCE RESERVE	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. DATE MAY 2017
3. INSTALLATION AND LOCATION: JOINT BASE PEARL HARBOR-HICKAM, HI		
4. PROJECT TITLE: CONSOLIDATED TRAINING FACILITY		5. PROJECT NUMBER KNMD624007
<u>JOINT USE CERTIFICATION:</u> This facility can be used by other components on an "as available" basis; however, the scope of the project is based on Air Force Reserve requirements.		

EXHIBIT 5

4

1. Component NAVY		FY 2018 MILITARY CONSTRUCTION PROGRAM		2. Date 23 MAR 2018	
3. Installation(SA) & Location/UIC: M00318 MARINE CORPS BASE HAWAII KANE OHE BAY, HAWAII			4. Project Title Mokapu Gate Entry Control AT/FP Compliance		
5. Program Element 0216496M	6. Category Code 87210	7. Project Number P877	8. Project Cost (\$000) 26,492		
9. COST ESTIMATES					
Item	UM	Quantity	Unit Cost	Cost (\$000)	
MOKAPU GATE ENTRY CONTROL AT/FP COMPLIANCE	LS			9,560	
ECP OVER WATCH TOWER CC73025	EA	1	1,353,295.69	(1,350)	
ECP GENERATOR/TOILET/COMM BUILDING CC73025 (431SF)	m2	40	30,846.43	(1,230)	
PERIMETER GATE GENERATOR/TOILET/COMM BLDG (430SF) CC73025 (431SF)	m2	40	28,529.6	(1,140)	
ECP GATE HOUSE & GUARD BOOTH CANOPY CC73025	EA	1	971,860.08	(970)	
ECP GATE/CONTROLS HOUSE CC73025 (118SF)	m2	11	58,406.09	(640)	
PERIMETER GATE/CONTROLS HOUSE CC73025 (118SF)	m2	11	58,406.09	(640)	
ECP POV SEARCH CANOPY CC73025	EA	1	625,411.07	(630)	
ECP OVER WATCH STATION CC73025	EA	1	410,277.41	(410)	
ECP GUARD BOOTH CC73025	EA	1	83,808.87	(80)	
BUILT-IN EQUIPMENT	LS			(700)	
SPECIAL COSTS	LS			(1,660)	
OPERATION & MAINTENANCE SUPP INFO (OMSI)	LS			(110)	
SUPPORTING FACILITIES				14,190	
SITE PREPARATIONS	LS			(1,860)	
PAVING AND SITE IMPROVEMENTS	LS			(3,190)	
ANTI-TERRORISM/FORCE PROTECTION	LS			(1,840)	
ELECTRICAL UTILITIES	LS			(6,860)	
MECHANICAL UTILITIES	LS			(430)	
DEMOLITION	LS			(10)	
SUBTOTAL				23,750	
CONTINGENCY (5%)				1,190	
TOTAL CONTRACT COST				24,940	
SIOH (6.2%)				1,550	
SUBTOTAL				26,490	
TOTAL REQUEST ROUNDED				26,490	

1. Component NAVY		FY 2018 MILITARY CONSTRUCTION PROGRAM		2. Date 23 MAR 2018	
3. Installation(SA) & Location/UIC: M00318 MARINE CORPS BASE HAWAII KANEHOE BAY, HAWAII			4. Project Title Mokapu Gate Entry Control AT/FP Compliance		
5. Program Element 0216496M		6. Category Code 87210	7. Project Number P877	8. Project Cost (\$000) 26,492	
<p>Site preparation includes site clearing and grubbing work and earthwork for the project.</p> <p>Paving and site improvements include asphalt-concrete roadways and parking area (approximately 15 stalls), concrete roadway crossing, concrete sidewalks and ramps, landscaping, chain-link fence and gates, and site demolition.</p> <p>Anti-Terrorism/Force Protection (Outside) improvements include mechanical vehicle barriers, a POV search pad, earth berms at the POV search area, vehicle barrier curbs, bollards, and movable barriers for the center separation wall.</p> <p>Electrical utilities include primary electrical distribution, secondary electrical distribution, transformer, area lighting, and exterior telecommunications infrastructure.</p> <p>Mechanical utilities include potable water and fire protection water distribution systems, gravity sanitary sewer systems, and a sanitary sewer pump station and force main.</p> <p>Demolition includes restroom/equipment room Building #1188 (10.87 M2) and gate control Building #886 (5.02 M2) to be demolished after the new gate/controls house at the perimeter gate is completed.</p> <p>Facilities will be designed to meet or exceed the useful service life specified in DoD Unified Facility Criteria. Facilities will incorporate features that provide the lowest practical life cycle cost solutions satisfying the facility requirements with the goal of maximizing energy efficiency.</p>					
11. Requirement: Adequate: Substandard: PROJECT: Construct entry control point, perimeter gate improvements, and supporting facilities to comply with current AT/FP standards. The entry control point facilities will include a new gate/control house with canopy, over watch tower, generator/toilet/communications building, privately-owned-vehicle (POV) inspection area with canopy, and over watch station. (Current Mission)					

1. Component NAVY		FY 2018 MILITARY CONSTRUCTION PROGRAM		2. Date 23 MAR 2018																					
3. Installation(SA) & Location/UIC: M00318 MARINE CORPS BASE HAWAII KANE OHE BAY, HAWAII			4. Project Title Mokapu Gate Entry Control AT/FP Compliance																						
5. Program Element 0216496M	6. Category Code 87210	7. Project Number P877	8. Project Cost (\$000) 26,492																						
(B) Date 35% Design or Parametric Cost Estimate complete 03/2017 (C) Date design completed 09/2017 (D) Percent completed as of September 2016 15% (E) Percent completed as of January 2017 15% (F) Type of design contract Design Bid Build (G) Parametric Estimate used to develop cost Yes (H) Energy Study/Life Cycle Analysis performed Yes 2. Basis: (A) Standard or Definitive Design No (B) Where design was previously used No 3. Total Cost (C) = (A) + (B) = (D) + (E): (A) Production of plans and specifications \$1,320 (B) All other design costs \$944 (C) Total \$2,264 (D) Contract \$1,848 (E) In-house \$416 4. Contract award: 08/2018 5. Construction start: 09/2018 6. Construction complete: 03/2020 B. Equipment associated with this project which will be provided from other appropriations: <table border="1"> <thead> <tr> <th>Equipment</th> <th>Procuring</th> <th>FY Approp</th> <th></th> </tr> <tr> <th>Nomenclature</th> <th>Approp</th> <th>or Requested</th> <th>Cost (\$000)</th> </tr> </thead> <tbody> <tr> <td>C4I, IT</td> <td>O&MMC</td> <td>2020</td> <td>172</td> </tr> <tr> <td>PSE</td> <td>O&MMC</td> <td>2020</td> <td>212</td> </tr> <tr> <td>Smart Grid Equipment</td> <td>PMC</td> <td>2020</td> <td>30</td> </tr> </tbody> </table>						Equipment	Procuring	FY Approp		Nomenclature	Approp	or Requested	Cost (\$000)	C4I, IT	O&MMC	2020	172	PSE	O&MMC	2020	212	Smart Grid Equipment	PMC	2020	30
Equipment	Procuring	FY Approp																							
Nomenclature	Approp	or Requested	Cost (\$000)																						
C4I, IT	O&MMC	2020	172																						
PSE	O&MMC	2020	212																						
Smart Grid Equipment	PMC	2020	30																						
JOINT USE CERTIFICATION:																									
The Director Land Use and Military Construction Branch, Installations and Logistics Department, Headquarters Marine Corps certifies that this project has been considered for joint use potential. Unilateral Construction is recommended. This is an installation utility/infrastructure project and does not qualify for joint use at this location, however, all tenants on this installation will benefit from this project.																									
Activity POC: Project Development Lead Phone No: (808) 257-3687																									

EXHIBIT 6

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1. COMPONENT Army		FY 2021 MILITARY CONSTRUCTION PROJECT DATA			2. DATE 13 APR 2018 02 SEP 2014	
3. INSTALLATION AND LOCATION Fort George G Meade Maryland				4. PROJECT TITLE Cantonment Area Roads		
5. PROGRAM ELEMENT	6. CATEGORY CODE 851 10	7. PROJECT NUMBER 86767	8. PROJECT COST (\$000) 16,500			
9. COST ESTIMATES						
ITEM		UM	QUANTITY	UNIT COST	COST(\$000)	
PRIMARY FACILITY					9,994	
Roads, Surfaced		SY	80,643	118.28	(9,539)	
Sustainability/Energy Measures		LS	--	--	(260)	
Antiterrorism Measures		LS	--	--	(195)	
SUPPORTING FACILITIES					4,986	
Electric Service		LS	--	--	(680)	
Paving, Walks, Curbs And Gutters		LS	--	--	(974)	
Storm Drainage		LS	--	--	(2,226)	
Site Imp(816) Demo(290)		LS	--	--	(1,106)	
ESTIMATED CONTRACT COST					14,980	
CONTINGENCY (5.00%)					749	
SUBTOTAL					15,729	
SUPERVISION, INSPECTION & OVERHEAD (5.70%)					897	
TOTAL REQUEST					16,626	
TOTAL REQUEST (ROUNDED)					16,500	
INSTALLED EQT-OTHER APPROPRIATIONS					(0)	
10. Description of Proposed Construction Construct additional road surface by widening the travel lanes of Cooper Avenue from Rockenbach Road to Mapes Road. Increase transit lanes from two to four lanes. Similarly widen Reece Road from Cooper Avenue to the point east of Rose Street to adjoin the new four lane road from the Access Control Point at the Reece gate. Increase the travel lanes of Rose Street from two to four lanes. Facilities will be designed to a minimum life of 40 years in accordance with DoD's Unified Facilities Criteria (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance.						
11. REQ: 1,504,240 SY ADQT: 827,410 SY SUBSTD: 551,608 SY						
PROJECT: Widen existing two lane roadways to four lanes and modify existing intersections to establish continuity of travel.						
REQUIREMENT: Improve the timely, efficient and safe transit within the cantonment area. Connect the three primary east-west roads on the installation with a primary route, of similar capacity, to maintain traffic flow.						
CURRENT SITUATION: Daily traffic counts measured at the ACPs can exceed 53,000 vehicles. Traffic						

EXHIBIT 7

6

1. COMPONENT AIR FORCE		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE	
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND				4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE		
5. PROGRAM ELEMENT 41319		6. CATEGORY CODE 112-211		7. RPSUID/PROJECT NUMBER 1377/AJXF163002		8. PROJECT COST (\$000) 37,000
9. COST ESTIMATES						
ITEM				U/M	QUANTITY	COST (\$000)
PRIMARY FACILITIES						12,704
ACCESS TAXIWAY (112-211)				SM	28,533	(6,620)
HAZARDOUS CARGO PAD (116-662)				SM	7,791	(1,808)
HCP/TAXIWAY PAVED SHOULDERS (116-642)				SM	24,682	(3,850)
EOD PROFICIENCY RANGE (831-173)				SM	37	(196)
SUSTAINABILITY/ENERGY MEASURES				LS		(230)
SUPPORTING FACILITIES						20,476
ACTIVE/PASSIVE BARRIERS				EA	2	(181)
PERIMETER FENCING				LS		(759)
LIGHTING				LS		(1,314)
ACCESS ROAD				LS		(766)
UTILITIES				LS		(2,117)
SITE PREPARATION				LS		(15,339)
SUBTOTAL						33,180
CONTINGENCY (5.0%)						1,659
TOTAL CONTRACT COST						34,839
SUPERVISION, INSPECTION AND OVERHEAD (5.7%)						1,986
TOTAL REQUEST						36,825
TOTAL REQUEST (ROUNDED)						37,000
10. Description of Proposed Construction: Construct a Hazardous Cargo Pad (HCP) and Access Taxiway that complies with Airfield and Explosive Safety criteria. Construct Explosive Ordnance Disposal (EOD) proficiency range and supporting infrastructure in compliance with AF standards for safe training of EOD technicians and maintaining EOD qualifications. Add to and alter base perimeter fencing and install security/traffic control barriers. HCP consists of a concrete aircraft parking apron, asphalt shoulders, aircraft grounding system, and aircraft tie down points. HCP also requires a concrete access taxiway with asphalt shoulders. Project also includes site preparation, airfield taxiway and HCP lighting and markings, HCP and EOD range access roads, site improvements, necessary utilities rerouting and installation, airfield storm drainage features, required demolition, and all other necessary work. All work will utilize economical design and construction methods to accommodate the mission of the facilities and will be compatible with applicable DoD, Air Force, and base design standards. Facilities will be designed as permanent construction in accordance with DoD Unified Facilities Criteria (UFC) 1-200-01, General Building Requirements and UFC 1-200-02, High Performance and Sustainable Building Requirements. This project will comply with DoD antiterrorism/force protection requirements per UFC 4-010-01.						

DD FORM 1391, DEC 99

Previous editions are obsolete.

1. COMPONENT AIR FORCE	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE	
5. PROGRAM ELEMENT 41319	6. CATEGORY CODE 112-211	7. RPSUID/PROJECT NUMBER 1377/AJXF163002	8. PROJECT COST (\$000) 37,000	
<p>11. Requirement: 7791 SM Adequate: 0 SM Substandard: 0 SM</p> <p>PROJECT: Relocate Hazardous Cargo Pad and Explosive Ordnance Disposal Proficiency Range</p> <p>REQUIREMENT A hazardous cargo pad is required to load/unload explosives or other dangerous materials on cargo aircraft. This mission requires a location that meets both Airfield and Explosive Safety requirements. The pad will be sited to accommodate 30,000 pounds of net explosive weight (NEW). The taxiway provides aircraft access to the cargo pad. Pavement will be medium load with tie down anchors and grounding points. Maintaining qualified EOD technicians necessitates construction of an appropriately sited proficiency range.</p> <p>CURRENT SITUATION: The Secretary of the Air Force approved basing the PAR program at Joint Base Andrews (JBA), MD pending National Environmental Policy Act analysis. As a direct result of this bed down, the existing HCP and JADOC Satellite sites at JBA were displaced to allow construction of the new PAR Complex. The JADOC Satellite site construction caused relocation of the EOD Proficiency Range site. Siting the EOD range next to the HCP and the new Munitions Storage Area (MSA) makes the most functional sense as it allows for overlap of the explosive quantity-distance arcs associated with those facilities.</p> <p>IMPACT IF NOT PROVIDED: A temporary HCP will provided on taxiway Charlie for use during the construction of the new HCP (limited to 450 pound NEW, far below the required 30,000 pound NEW). Failing to replace the HCP will cause JBA to have enduring systemic weaknesses in its ability to support required military activities. Lack of an EOD proficiency range will adversely impact EOD training and force training to be accomplished at an off-base location at an increased cost.</p> <p>ADDITIONAL: This project meets the criteria/scope specified in Air Force Handbook 32-1084, Facility Requirements, UFC 3-260-01, Airfield and Heliport Planning and Design. An analysis of reasonable options for accomplishing this project indicates construction of the HCP on the selected southeast corner of the airfield will economically meet mission needs. The economic analysis of reasonable options for this project (status quo, and various new construction options) indicated new construction is required to meet mission needs. The analysis concluded that construction on the south east side of the airfield provided the greatest cost benefit without adversely impacting airfield safety. This option requires land acquisition and restrictive easements included in an FY18 MILCON, AJXF163002A - PAR Land Acquisition/Easement. Significant supporting facility costs are associated with development of off base land.</p> <p>Base Civil Engineer (11 CES/CC): 301-981-7281.</p> <p>Access Taxiway 28,533 SM equals 307,015 SF Pa ed Shoulders 24,682 SM equals 265,578 SF EOD Range 37 SM equals 398 SF</p>				

1. COMPONENT AIR FORCE	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND		4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE	
5. PROGRAM ELEMENT 41319	6. CATEGORY CODE 112-211	7. RPSUID/PROJECT NUMBER 1377/AJXF163002	8. PROJECT COST (\$000) 37,000
<p>This design shall conform to criteria established in the Air Force Corporate Facilities Standards (AFCFS), the Installation Facilities Standards (IFS) [if available], but will not employ a standard facility design because there is no applicable standard facility design for this project and there is no applicable standard design from AFCEC.</p> <p>Sustainable principles, to include Life Cycle cost-effective practices, will be integrated into the design, development, and construction of the project and will follow the guidance detailed in the AF Sustainable Design and Development Implementing Guidance Memorandum (dated June 2, 2011) in accordance with applicable laws and Executive Orders. 11th Wing Base Civil Engineer: Comm:. 301-981-7281.</p> <p>JOINT USE CERTIFICATION: This facility can be used by other components on an as available basis; however, the scope of the project is based on Air Force requirements.</p>			

DD FORM 1391, DEC 99

Previous editions are obsolete.

1. COMPONENT AIR FORCE	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE																										
3. INSTALLATION AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE PAR RELOCATE HAZ CARGO PAD AND EOD RANGE																											
5. PROGRAM ELEMENT 41319	6. CATEGORY CODE 112-211	7. PROJECT NUMBER 1377/AJXF163002	8. PROJECT COST (\$000) 37,000																											
<p>12. SUPPLEMENTAL DATA: This design shall conform to criteria established in the Air Force Corporate Facilities Standards (AFCFS), the Installation Facilities Standards (IFS) [if available], but will not employ a standard facility design because there is no AF standard facility design for this project and there is no applicable standard design from AFCEC.</p> <p>a. Estimated Design Data:</p> <p>(1) Status:</p> <table> <tr> <td>(a) Date Design Started</td> <td>01-NOV-17</td> </tr> <tr> <td>(b) Parametric Cost Estimates used to develop costs</td> <td>YES</td> </tr> <tr> <td>* (c) Percent Complete as of 01 JAN 2018</td> <td>15%</td> </tr> <tr> <td>* (d) Date 35% Designed</td> <td>30-MAR-18</td> </tr> <tr> <td>(e) Date Design Complete</td> <td>03-SEP-18</td> </tr> <tr> <td>(f) Energy Study/Life-Cycle analysis was/will be performed</td> <td>NO</td> </tr> </table> <p>(2) Basis:</p> <table> <tr> <td>(a) Standard or Definitive Design -</td> <td>NO</td> </tr> <tr> <td>(b) Where Design Was Most Recently Used -</td> <td></td> </tr> </table> <p>(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)</p> <table> <tr> <td>(a) Production of Plans and Specifications</td> <td>2,220</td> </tr> <tr> <td>(b) All Other Design Costs</td> <td>1,110</td> </tr> <tr> <td>(c) Total</td> <td>3,330</td> </tr> <tr> <td>(d) Contract</td> <td>2,775</td> </tr> <tr> <td>(e) In-house</td> <td>555</td> </tr> </table> <p>(4) Construction Contract Award 19 SEP</p> <p>(5) Construction Start 19 OCT</p> <p>(6) Construction Completion 21 OCT</p> <p>* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope, cost and executability.</p> <p>b. Equipment associated with this project provided from other appropriations: N/A</p>					(a) Date Design Started	01-NOV-17	(b) Parametric Cost Estimates used to develop costs	YES	* (c) Percent Complete as of 01 JAN 2018	15%	* (d) Date 35% Designed	30-MAR-18	(e) Date Design Complete	03-SEP-18	(f) Energy Study/Life-Cycle analysis was/will be performed	NO	(a) Standard or Definitive Design -	NO	(b) Where Design Was Most Recently Used -		(a) Production of Plans and Specifications	2,220	(b) All Other Design Costs	1,110	(c) Total	3,330	(d) Contract	2,775	(e) In-house	555
(a) Date Design Started	01-NOV-17																													
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(a) Standard or Definitive Design -	NO																													
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(a) Production of Plans and Specifications	2,220																													
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(c) Total	3,330																													
(d) Contract	2,775																													
(e) In-house	555																													

EXHIBIT 8

7

1. COMPONENT AIR FORCE		FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE	
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND				4. PROJECT TITLE CHILD DEVELOPMENT CENTER		
5. PROGRAM ELEMENT 41976	6. CATEGORY CODE 740-884	7. RPSUID/PROJECT NUMBER 1377/AJXF093005		8. PROJECT COST (\$000) 13,000		
9. COST ESTIMATES						
ITEM		U/M	QUANTITY	UNIT	COST (\$000)	
PRIMARY FACILITIES					7,466	
CHILD DEVELOPMENT CENTER		SM	2,711	2,700	(7,320)	
SUSTAINABILITY AND ENERGY MEASURES		LS			(146)	
SUPPORTING FACILITIES					4,328	
UTILITIES		LS			(500)	
PAVEMENTS		LS			(700)	
SITE IMPROVEMENTS		LS			(800)	
COMMUNICATION SUPPORT		LS			(275)	
PLAYGROUND AREA		LS			(650)	
DEMOLITION		SM	2,065	350	(723)	
STORM WATER MANAGEMENT		LS			(230)	
UTILITIES CONNECTION FEE		LS			(250)	
CAMERA/SECURITY SYSTEM		LS			(200)	
SUBTOTAL					11,794	
CONTINGENCY (5.0%)					590	
TOTAL CONTRACT COST					12,384	
SUPERVISION, INSPECTION AND OVERHEAD (5.7%)					706	
TOTAL REQUEST					13,089	
TOTAL REQUEST (ROUNDED)					13,000	
EQUIPMENT FROM OTHER APPROPRIATIONS (NON-ADD)					(1,550.0)	
10. Description of Proposed Construction: Construct a Child Development Center (CDC) utilizing economical design and construction methods in accordance with Joint Base Andrews' (JBA) Architectural Compatibility Plan to accommodate the mission of the facility. The facility should be compatible with applicable DoD, Air Force, and base design standards to include UFC 4-740-14, Design: Child Development Centers and Section 01 10 10, Design Requirements For A Child Development Center. In addition, local materials and construction techniques shall be used where cost effective. Includes pick-up/drop-off area, reception area, lobby area, multi-purpose rooms, administrative space, access road, parking, outdoor fenced playground areas, restrooms, storage rooms, kitchen and equipment, space for walk-in freezer and refrigeration units, camera/security system, utility spaces, utilities, site preparation, landscaping, storm water management, electrical, communications, gas, water and sewer utilities and connection fees, fire detection & suppression systems and all other associated support necessary to provide a complete and useful facility. Integrates facility space to accommodate the Family Childcare Center. Demolishes existing CDC facility (building 4575) totaling 2065 SM. Facilities will be designed as permanent construction in accordance with the DoD Unified Facilities Criteria (UFC) 1-200-01, General Building Requirements and UFC 1-200-02, High Performance and Sustainable Building Requirements. This project						

1. COMPONENT AIR FORCE	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)			2. DATE
3. INSTALLATION, SITE AND LOCATION JOINT BASE ANDREWS-NAVAL AIR FACILITY WASHINGTON ANDREWS SITE # 1 MARYLAND			4. PROJECT TITLE CHILD DEVELOPMENT CENTER	
5. PROGRAM ELEMENT 41976	6. CATEGORY CODE 740-884	7. RPSUID/PROJECT NUMBER 1377/AJXF093005	8. PROJECT COST (\$000) 13,000	
<p>Base Civil Engineer: Comm 301- 981-7281. Child Development Center: 2,711 SM = 29,181 SF Demo 2,065 SM Child Development Center = 22,227 SF JOINT USE CERTIFICATION: This facility can be used for other components on an "as available" basis; however, the scope of the project is based on Air Force requirements.</p>				

EXHIBIT 9

8

1. COMPONENT AIR FORCE			FY 2019 MILITARY CONSTRUCTION PROGRAM						2. DATE (YYYYMMDD) 20171219		
3. INSTALLATION AND LOCATION HOLLOMAN AIR FORCE BASE NEW MEXICO						4. COMMAND AIR COMBAT COMMAND			5. AREA CONSTRUCTION COST INDEX 0.99		
6. PERSONNEL		(1) PERMANENT			(2) STUDENTS			(3) SUPPORTED			TOTAL
		OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN	
a. AS OF	30-Sep-17	333	2741	522	0	60	0	96	359	226	4,337
b. END FY	2020	322	2495	464	0	60	0	96	359	226	4,022
7. INVENTORY DATA (\$000)											
a. TOTAL ACREAGE		58,723									
b. INVENTORY TOTAL AS OF		30-Sep-17									
c. AUTHORIZATION NOT YET IN INVENTORY		45,050									
d. AUTHORIZATION REQUESTED IN THIS PROGRAM (FY 2017)		85,000									
e. PLANNED IN NEXT FOUR PROGRAM YEARS (FY 2018-2021)		0									
f. REMAINING DEFICIENCY		213,250									
g. GRAND TOTAL		4,345,138									
8. PROJECTS REQUESTED IN THIS PROGRAM (FY 2017)											
a. CATEGORY		b. COST (\$000)					c. DESIGN STATUS				
(1) CODE	(2) PROJECT TITLE	(3) SCOPE					(1) START (2) COMPLETE				
149511	MQ-9 FTU OPS FACILITY	19,702 SM					85,000 01/19 03/21				
		TOTAL					85,000				
9. FUTURE PROJECTS IN NEXT FOUR PROGRAM YEARS											
FUTURE PROJECTS TOTAL 0											
R&M UNFUNDED REQUIREMENT (\$M)											
TOTAL 29.4											
10. MISSION OR MAJOR FUNCTIONS											
AIR COMBAT COMMAND INSTALLATION SUPPORTING T-38 TALON DEPOT MAINTENANCE; MQ-1 PREDATOR AND MQ-9 REAPER FORMAL TRAINING UNITS; F-16 FORMAL TRAINING UNIT; GERMAN AIR FORCE TORNADO FIGHTER SQUADRON; QF-4/QF-16 FULL SCALE AERIAL TARGETS MISSION; 10-MILE TEST TRACK (AFMC), ARMY AIR AND THE WAR RESERVE MATERIAL (WRM) BARE BASE SUPPORT GROUP.											
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES (FY 2017-2021)											
a. Air Pollution											
b. Water Pollution											
c. Occupational Safety and Health											
d. Other Environmental											
OUTSTANDING DEFICIENCIES TOTAL 0											

DD Form 1390, JUL 1999

PREVIOUS EDITION IS OBSOLETE.

1. COMPONENT AIR FORCE	FY 2019 MILITARY CONSTRUCTION PROJECT DATA	2. DATE
3. INSTALLATION AND LOCATION HOLLOMAN AIR FORCE BASE, HOLLOMAN SITE #1 NEW MEXICO		
4. PROJECT TITLE MQ-9 FTU OPS FACILITY		5. PROJECT NUMBER 2352/KWRD163000
<p>Squadrons (6th, 9th and 29th) to each have five FGCS, six simulators, four classified training classrooms, twenty classified brief/debrief rooms, a secure server room, classified student study/mission planning rooms and adequate space for squadron administrative functions for 120 personnel and 32 contractors. Additionally, 16th Training Squadron, 429th Air Combat Training Squadron and support contractors must be collocated with the Attack Squadrons to maximize efficiencies throughout the full duration of the syllabus.</p> <p><u>CURRENT SITUATION:</u> The 2008 RPA beddown hinged on use of vacant facilities at the time in order meet CSAF-directed aircrew production. B302, a 1943-vintage Sqd Ops, was used to house the MQ-1 Predator FTU (6 RS) with only minor modifications. The 6th ATKS is now transitioning to the MQ-9 without facility modifications. B302 is in a severe state of disrepair, including bat infestation, sink holes and is only partially covered by functional fire alarms. The 50-person ACMU currently operates out of B303 (2,727 sf) maintaining all mobile (current) and fixed (future) GCS equipment. The space in B318 renovated during the beddown to house the 9th and 29th Attack Squadrons, while in good physical condition, has become extremely limited in mission capability by the stand-up of an informal "International Schoolhouse", focused on training aircrews from partner nations, such as: Italy, UK and France. Expansion capability adjacent to B318 is not possible in the near future due to environmental contamination present on the site. MQ-9 formal training sorties are currently flown from Mobile Ground Control Stations (MGCS) located within a fenced compound, but will transition to FGCS equipment in 2020/2021. This conversion will free up the existing MGCS equipment to be transferred to forward locations as the equipment was designed to operate. The Block 50 FGCS is 30% larger than previous versions, rendering the space renovated during initial beddown to house the 9th/29th ATKS useless. Additionally, the MQ-9 FTU is the only combat airframe FTU operating 100% in an Unclassified environment, while the airframe's mission is conducted nearly exclusively in a Top Secret environment. Not only does this fact limit the ability to train aircrews to realistically train for their future mission, it also prevents the MQ-9 FTU from participating in electronically-linked training scenarios with other airframes/resources from other training units around the globe (via Distributed Mission Operations). Most importantly, a classified environment enables the use of Link-16 and Blue Force Tracker to provide significantly enhanced safety in the airspace and on the ranges. Link-16 allows aircraft to see each other even with radar outages – enhancing flight safety by providing adequate de-confliction. Blue Force Tracker allows MQ-9 aircrew to see JTAC position on the ground – enhancing life-safety by verifying JTAC position prior to employing live/inert weapons. Academic portions of the formal training syllabus are routinely held in a relocatable trailer. The trailer was originally purchased to provide swing space during the execution of initial beddown renovations in B318, but recurring explosive growth and the lack of fixed space alternatives has driven the continued use of the trailer with no end to the requirement in sight. Additionally, there are insufficient classrooms to execute the syllabus optimally. Likewise, the FTU squadrons currently operate in a severe shortage of brief/debrief spaces dispersed throughout the existing facilities. While this shortfall could be addressed through scheduling in a traditional FTU, the MQ-9 training flow requires students to rotate through "sorties" flying an aircraft already airborne during and after their mission. While one aircrew is flying the aircraft for a training sortie, the last aircrew to fly the aircraft is debriefing their mission and the next aircrew is briefing for their mission to follow. This cyclical flow requires reliable availability of brief/debrief rooms to enable smooth transition between flights. Lastly, students currently have no access to classified mission planning/study space. This limits their ability to focus on the classified aspects of the training requirements of the syllabus. These critical facility condition, capacity and classification shortfalls severely limit the overall effectiveness and efficiency of the FTU in performing its core task of generating properly trained aircrews to feed CAF demands.</p> <p><u>IMPACT IF NOT PROVIDED:</u> If properly configured MQ-9 FTU facilities are not provided, the quantity and/or timeliness of aircrew produced will be less than HHQ expects while artificially increasing PERSTEMPO to make up for lack of appropriate equipment and facilities. Low quantity and late graduations negatively impact US power projection for multiple CCDRs. Additionally, due to the lack of secure operational spaces, the newly trained aircrews will continue to be thrust into Top Secret environments with little to no experience operating in these types of situations. Additionally, failure to enable use of Link-16 and BFT will inhibit improvements to safety margins in airspace and ranges.</p> <p><u>ADDITIONAL:</u> This project meets the criteria/scope in Air Force Manual 32-1084, Facility Requirements. A preliminary analysis of alternatives indicates that constructing a new facility to house MQ-9 FTU Operations is the only feasible option. This is a new mission beddown (MQ-9) specific to the mission and no other suitable facilities exist on Holloman AFB. A certification of exception is being prepared. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development, and construction of the project. Base Civil Engineer: Comm. (575) 572-3071; (MQ-9 Ops Facility: 19702 SM = 212,000 SF)</p> <p><u>JOINT USE CERTIFICATION:</u> This facility can be used by other components on an "as available" basis; however, the scope of this project is based on Air Force requirements.</p>		

EXHIBIT 10

(9)

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1. COMPONENT ARMY		FY 2019 MILITARY CONSTRUCTION PROGRAM						2. DATE 01 FEB 2018			
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico			4. COMMAND US Army Installation Management Command						5. AREA CONSTRUCTION COST INDEX 0.95		
6. PERSONNEL STRENGTH:		(1) PERMANENT			(2) STUDENTS			(3) SUPPORTED			(4) TOTAL
		OFFICER	ENLIST	CIVIL	OFFICER	ENLIST	CIVIL	OFFICER	ENLIST	CIVIL	
A. AS OF 31 OCT 2017		64	61	1830	0	0	0	466	1178	3668	7,267
B. END FY 2023		73	155	1695	0	0	0	466	1178	3326	6,893
7. INVENTORY DATA (\$000)											
A. TOTAL AREA..... 936,364 ha (2,313,797 AC)											
B. INVENTORY TOTAL AS OF 05 JUL 2017..... 4,354,107											
C. AUTHORIZATION NOT YET IN INVENTORY..... 221,182											
D. AUTHORIZATION REQUESTED IN THE FY 2019 PROGRAM..... 40,000											
E. AUTHORIZATION INCLUDED IN THE FY 2020 PROGRAM..... 0											
F. PLANNED IN NEXT THREE YEARS (NEW MISSION ONLY)..... 0											
G. REMAINING DEFICIENCY..... 75,730											
H. GRAND TOTAL..... 4,691,019											
8. PROJECT APPROPRIATIONS REQUESTED IN THE FY 2019 PROGRAM:											
CAT							COST	DESIGN STATUS			
CODE	PROJECT TITLE	SCOPE/UM					(\$000)	START	COMPLETE		
13115	Information Systems Facility	56,268.00/SF (5227.47/m2)					40,000	06/2017	10/2018		
TOTAL							40,000				
9. FUTURE PROJECT APPROPRIATIONS:											
CATEGORY							COST				
CODE	PROJECT TITLE						(\$000)				
A. INCLUDED IN THE FY 2020 PROGRAM: NONE											
B. PLANNED NEXT THREE PROGRAM YEARS (NEW MISSION ONLY): NONE											
C. DEFERRED SUSTAINMENT, RESTORATION, AND MODERNIZATION (SRM): N/A											
10. MISSION OR MAJOR FUNCTIONS:											
White Sands Missile Range (WSMR), birthplace of America's missile and space activity, provides Army, Navy, Air Force, Department of Defense (DoD), and other organizations with high quality services for experimentation, test, research, assessment, development, and training in support of the Nation. WSMR always provides the best value; focusing on affordability and stewardship of resources, providing results that consistently exceed expectations while providing a high quality of life for our service members, civilians, and families.											
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES:											
(\$000)											
A. AIR POLLUTION 0											
B. WATER POLLUTION 0											
C. OCCUPATIONAL SAFETY AND HEALTH 0											

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1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA			2. DATE 01 FEB 2018	
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico				4. PROJECT TITLE Information Systems Facility		
5. PROGRAM ELEMENT 72896A		6. CATEGORY CODE 13115		7. PROJECT NUMBER 33584		8. PROJECT COST (\$000) Approp 40,000
9. COST ESTIMATES						
ITEM		UM (M/E)	QUANTITY	UNIT COST	COST(\$000)	
PRIMARY FACILITY					30,124	
13115 Information Systems Facility		m2 (SF)	5,227 (56,268)	3,707	(19,376)	
81160 Redundant Power		LS	--	--	(1,598)	
13120 Communications Center		m2 (SF)	185.81 (2,000)	5,294	(984)	
88020 IDS Installation		LS	--	--	(104)	
89220 EMCS Connection		LS	--	--	(52)	
Total from Continuation page(s)					(8,010)	
SUPPORTING FACILITIES					6,141	
Electric Service		LS	--	--	(522)	
Water, Sewer, Gas		LS	--	--	(77)	
Paving, Walks, Curbs And Gutters		LS	--	--	(161)	
Storm Drainage		LS	--	--	(240)	
Site Imp(3,658) Demo(462)		LS	--	--	(4,120)	
Information Systems		LS	--	--	(1,021)	
ESTIMATED CONTRACT COST					36,265	
CONTINGENCY (5.00%)					1,813	
SUBTOTAL					38,078	
SUPV, INSP & OVERHEAD (5.70%)					2,170	
TOTAL REQUEST					40,248	
TOTAL REQUEST (ROUNDED)					40,000	
INSTALLED EQT-OTHER APPROP					(13,360)	
10. Description of Proposed Construction Construct an Information Systems Facility (ISF) and a Communications Center with redundant power, an Intrusion Detection System (IDS) and connection to the Energy Monitoring and Control System (EMCS). The facilities will have state of the art network systems, telephonic, voice, and enterprise storage equipment to support installation wide communication network services. The project includes administrative offices, laboratory space, a server farm area, enterprise storage systems, telephone switch room, information assurance secure operations center, customer support branch, data center Non-classified Internet Protocol Router (NIPR) Network space, Network Operations Center (NOC), secure room with vault for Outside Plant (OSP), Red NOC, Communications Security (COMSEC), Technical Support Network(TSN) data center, computer help desk, Secure Video Teleconferencing Center (VTC), telecommunications center, building information systems, Secret Internet Protocol Router (SIPR) Network data center, reception area, conference room, battery storage area, break room and, rest rooms. Heating and air conditioning will be provided by self-contained system. Measures in accordance with the Department of Defense (DoD) Minimum Antiterrorism for Buildings standards will be provided. Comprehensive building and furnishings related interior design services are required. Access for individuals with disabilities will be provided. Cyber Security Measures will be incorporated into this project. Sustainability/Energy measures will be provided. Facilities will be designed to a minimum life of 40 years in accordance with DoD's Unified Facilities Criteria (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance. Demolish 2						

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 01 FEB 2018	
3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico			4. PROJECT TITLE Information Systems Facility		
5. PROGRAM ELEMENT 72896A	6. CATEGORY CODE 13115	7. PROJECT NUMBER 33584	8. PROJECT COST (\$000) Approp 40,000		
9. COST ESTIMATES (CONTINUED)					
ITEM		UM (M/E)	QUANTITY	UNIT COST	COST (\$000)
PRIMARY FACILITY (CONTINUED)					
00000 Cybersecurity Measures		LS	--	--	(750)
Sustainability/Energy Measures		LS	--	--	(416)
Antiterrorism Measures		LS	--	--	(416)
Building Information Systems		LS	--	--	(6,428)
				Total	8,010
DESCRIPTION OF PROPOSED CONSTRUCTION: (CONTINUED)					
buildings at White Sands Missile Range, NM (Total 2,061 m2/22,180 SF). Air Conditioning (Estimated 2,198 kW/625 Tons).					
11. REQ: 5,312 m2 ADQT: 85 m2 SUBSTD: NONE					
PROJECT: Construct an Information Systems Facility at White Sands Missile Range (WSMR), New Mexico. (Current Mission)					
REQUIREMENT: This project is required to provide WSMR with an adequate ISF necessary to provide a mission essential operational interaction affecting a 24-hour Information Technology and Information Management (IT/IM) between Command, tenants, and Other Government Agency (OGA) partners. The facility includes space for a command center for operations support, system and network administrators, operations floor, technical laboratory, Multi-service Technical Control Facility (MTCF), Defense Switched Network (DSN), operations center, administrative offices, customer service center, technical assistance for IT and land mobile radios. The facility also serves the Installation as a Docking Station (IAADS) in its baseline services. The ISF will contain a Network Operations Center (NOC), technical laboratory, Video Teleconferencing (VTC), classroom(s), training room(s), conference room(s) and offices.					
CURRENT SITUATION: Currently the ISF occupies both limited and fragmented space in ten separate buildings located at WSMR. Each assigned building has undergone varying levels of retrofit to accommodate the current ISF mission. None of which have been successful for long-term planning. The cooling systems are highly inefficient and inadequate, partly due to the necessary alterations of past floor plans to accommodate equipment expansions throughout the years. The heating system is limited in that the temperature control in the personnel areas cannot be maintained at comfortable limits without overheating equipment areas. Hazardous materials like asbestos and lead are dealt with on a case-by-case basis. Existing building design lacks appropriate workstation space and circulation, is encumbered with safety concerns including poor air quality and limited reliable electrical redundancy, no grounding/bonding/shielding, and noncompliance with the Americans with Disabilities Act (ADA). Assigned geographically separated space cannot provide the operational synergy required for 24-hour information management and the necessary workforce fusion required for network defense.					
IMPACT IF NOT PROVIDED: If this project is not provided, the WSMR ISF operations, situational awareness, and security of information and information systems may be compromised due to the inability to provide complete and continuous surveillance and response measures. The inability to expand and support existing and future network systems will negatively effect DoD efforts relating to IT/IM and information security. As					

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3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico			4. PROJECT TITLE Information Systems Facility		
5. PROGRAM ELEMENT 72896A	6. CATEGORY CODE 13115	7. PROJECT NUMBER 33584	8. PROJECT COST (\$000) Approp 40,000		
IMPACT IF NOT PROVIDED: (CONTINUED)					
<p>new military technologies and operational concepts grow and mature WSMR will need to position itself to process and transport vast amounts of electronic test data more reliably, efficiently, faster, and securely. The risk to the segment of the Global Information Grid (GIG) will affect the integrity and reliability of the global networks, adversely affecting field commanders' capability to reach-back which is a vital mission requirement for the warfighter. Secure and reliable information may not be readily available to installation and field commanders and will compromise the integrity and confidentiality of information systems available to the warfighter.</p> <p><u>ADDITIONAL:</u> Required assessments have been made for supporting facilities and the project is not in a 100-year floodplain in accordance with Executive Order 11988. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. The Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships) certifies that this project has been considered for joint use potential. The facility will be available for use by other components. A parametric cost estimate based upon project engineering design was used to develop this budget estimate. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development and construction of the project and will follow the guidance detailed in the Army Sustainable Design and Development Policy - complying with applicable laws and executive orders.</p>					
12. SUPPLEMENTAL DATA:					
A. Estimated Design Data:					
(1) Status:					
(a) Date Design Started.....					JUN 2017
(b) Percent Complete as of January 2018.....					35.00
(c) Date 35% Designed.....					JAN 2018
(d) Date Design Complete.....					OCT 2018
(e) Parametric Cost Estimating Used to Develop Costs..					YES
(f) Type of Design Contract: Design-bid-build					
(g) An energy study and life cycle cost analysis will be documented during the final design.					
(2) Basis:					
(a) Standard or Definitive Design: YES					
(b) Where Design Was Most Recently Used:					
(c) Percentage of Design utilizing Standard Design ...					50
(3) Total Design Cost (c) = (a)+(b) OR (d)+(e): (\$000)					
(a) Production of Plans and Specifications.....					2,160
(b) All Other Design Costs.....					1,440

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3. INSTALLATION AND LOCATION White Sands Missile Range New Mexico			4. PROJECT TITLE Information Systems Facility		
5. PROGRAM ELEMENT 72896A	6. CATEGORY CODE 13115	7. PROJECT NUMBER 33584	8. PROJECT COST (\$000) Approp 40,000		
12. SUPPLEMENTAL DATA (CONTINUED..)					
A. Estimated Design Data: (CONTINUED..)					
(c) Total Design Cost.....					3,600
(d) Contract.....					2,880
(e) In-house.....					720
(4) Construction Contract Award.....					APR 2019
(5) Construction Start.....					JUN 2019
(6) Construction Completion.....					JUN 2021
B. Equipment associated with this project which will be provided from other appropriations:					
Equipment Nomenclature	Procuring Appropriation	Fiscal Year Appropriated Or Requested	Cost (\$000)		
Equipment	OPA	2020	130		
IDS Equipment	OPA	2020	100		
Electronic Access Control	OPA	2020	100		
Clean Agent Supp System w/ VES	OPA	2020	100		
UPS Equipment	OPA	2020	40		
Info Sys - ISC	OPA	2020	2,532		
Info Sys - PROP	RDT&E	2020	10,358		
Total			13,360		
Installation Engineer: Phone Number: 575-678-2252					

EXHIBIT 11

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 11 APR 2019 29 AUG 2017	
3. INSTALLATION AND LOCATION West Point Military Reservation New York			4. PROJECT TITLE Engineering Center and Parking Structure		
5. PROGRAM ELEMENT	6. CATEGORY CODE 171 38	7. PROJECT NUMBER 78804	8. PROJECT COST (\$000) 197,000		
9. COST ESTIMATES					
ITEM		UM	QUANTITY	UNIT COST	COST(\$000)
PRIMARY FACILITY					161,225
Instructional Building		SF	136,000	667.63	(90,797)
Parking Structure		EA	450	43,736	(19,681)
Rock Removal		LS	--	--	(45,221)
Guard Booth		SF	100	2,770	(277)
Cyber Security		LS	--	--	(1,065)
Total from Continuation page					(4,184)
SUPPORTING FACILITIES					16,616
Electric Service		LS	--	--	(2,680)
Water, Sewer, Gas		LS	--	--	(744)
Steam And/Or Chilled Water Distribution		LS	--	--	(1,939)
Paving, Walks, Curbs And Gutters		LS	--	--	(1,771)
Storm Drainage		LS	--	--	(1,548)
Site Imp(7,333) Demo(369)		LS	--	--	(7,702)
Information Systems		LS	--	--	(232)
ESTIMATED CONTRACT COST					177,841
CONTINGENCY (5.00%)					8,892
SUBTOTAL					186,733
SUPERVISION, INSPECTION & OVERHEAD (5.70%)					10,644
TOTAL REQUEST					197,377
TOTAL REQUEST (ROUNDED)					197,000
INSTALLED EQT-OTHER APPROPRIATIONS					(53,214)
10. Description of Proposed Construction This is an incrementally funded project. Congress initially authorized the project in FY2019 as two separate projects, PN 78804, Engineering Center (authorized at \$95M) and PN 78805, Parking Structure (authorized at \$65M). A second funding increment of \$37M will be requested in FY2022. Construct an Engineering Center to provide a state-of-the-art collaborative educational space in support of multi-disciplinary project based engineering education for science, technology, engineering and mathematics (STEM). Construct a Parking Structure for faculty and staff to support the academic program within the central Cadet Zone. Primary facility includes an instructional building with space for mission-critical laboratories and laboratory support; project fabrication areas; and space for project display, collaborative effort, and capstone work. The instructional building will also contain conference rooms, spray booths, double height space (high bay) with overhead lift capability, and a loading dock. A guard booth supports the building and multi-story parking structure equipped with electronic security system. Significant rock removal is required. Project includes cyber security measures, a mass notification system, information systems, fire detection system (smoke detection) and sprinklers, building information systems, intrusion detection system (IDS) installation, and energy monitoring control systems (EMCS) connection to the installation central system. Sustainability/energy measures will be provided. Measures in accordance with the Department of Defense (DoD) Minimum					

1. COMPONENT Army		FY 2019 MILITARY CONSTRUCTION PROJECT DATA		2. DATE 11 APR 2019 29 AUG 2017	
3. INSTALLATION AND LOCATION West Point Military Reservation New York			4. PROJECT TITLE Engineering Center and Parking Structure		
5. PROGRAM ELEMENT	6. CATEGORY CODE 171 38	7. PROJECT NUMBER 78804	8. PROJECT COST (\$000) 197,000		
9. COST ESTIMATES (CONTINUED)					
ITEM		UM	QUANTITY	UNIT COST	COST (\$000)
PRIMARY FACILITY (CONTINUED)					
Sustainability/Energy Measures		LS	--	--	(1,107)
Antiterrorism Measures		LS	--	--	(1,110)
Building Information Systems		LS	--	--	(1,967)
				Total	4,184
<p>Antiterrorism for Buildings standards to include a fence will be provided. Supporting facilities include utilities (electric, water, sewer, gas); paving, parking, walks, curbs and gutters; storm drainage; vehicular drives; site improvements to include extension of existing historic pedestrian walk and stone retaining walls; relocation of existing passive and active barriers; landscaping; signage; and information systems. Heating and air conditioning will be provided by self-contained systems. The project will include a solar array on the roof, electric service, outdoor security lighting, electric car charging stations, Common Access Card (CAC) readers enabled control access gates, fire protection (to include additional fire hydrants), an elevator and stairs. Access for individuals with disabilities will be provided. Comprehensive building and furnishings related interior design services are required. Facility shall be constructed to standards for historically significant facilities. Operations and maintenance manuals will be provided. Facilities will be designed to a minimum life of 40 years in accordance with DoD's Unified Facilities Criteria (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance. Demolish 5 buildings at West Point Military Reservation, NY (14,700 Total SF). Air Conditioning (Estimated 600 Tons).</p>					
11. REQ: 136,000 SF		ADQT:	NONE	SUBSTD:	33,201 SF
<p>PROJECT: Construct an Engineering Center and multi-level parking structure at West Point Military Reservation, New York. (Current Mission)</p> <p>REQUIREMENT: This project is required to provide flexible multi-disciplinary project based educational space for science, engineering, technology and mathematics (STEM) that achieves compliance with academic standards. The facility is required to compete with peer institutions for recruitment of STEM students and, in particular, highly recruited minority candidates. This project will provide open, unstructured project areas, high-bay space, collaborative workspaces and laboratories essential for project-based learning. By bringing the engineering and cyber programs from several different academic buildings into one, cross-disciplinary collaboration and project-based education will be brought up to 21st Century practices. High-bay space and overhead lift capability will allow Cadets to work on projects exceeding 8ft and to work thru the winter months. Open and unstructured project areas will</p>					

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3. INSTALLATION AND LOCATION West Point Military Reservation New York		4. PROJECT TITLE Engineering Center and Parking Structure	
5. PROGRAM ELEMENT	6. CATEGORY CODE 171 38	7. PROJECT NUMBER 78804	8. PROJECT COST (\$000) 197,000

REQUIREMENT: (CONTINUED)

allow proper materials handling capabilities. A proper loading dock, adjacencies for rapid fabrication, and visibility into fabrication and project spaces will cut down life, health, safety challenges. This project will provide air handling and fume ventilation for application of coatings, glues, paints and chemical treatments. There are no alternate permanent facilities, either adequate or available, which could be used to support this mission. Parking and circulation studies conducted by the Garrison indicate the need to eliminate existing parking due to antiterrorism force protection violations; the need to restrict vehicle access within the academic campus for safety and security purposes; and the need to provide additional parking for staff and faculty. The location along Thayer Road will support the parking demands of faculty and staff, and accommodate displaced parking to be removed in accordance with minimum antiterrorism force protection standards.

CURRENT SITUATION:

Currently, neither adequate existing permanent facilities nor buildings of opportunity are available at West Point to support compliance with engineering academic standards and the requirements to turn out high caliber, Army ready Soldiers. As functions and requirements have changed, existing facilities have become inadequate for the success of the program mission. Functions are scattered throughout the buildings, so preferred adjacencies, utilities, climate control, ceiling height and material handling capacity are not available. Adequate facilities for the support of project-based learning and Cyber Security Studies do not exist, and there are on-going issues with water infiltration, insufficient provision of air and circulation, inflexibility of layout spaces, and difficulty in providing new utilities. Existing laboratories have insufficient headroom and separation of functions, and classrooms need additional audio visual infrastructure and blackboard/chalkboard surfaces. Parking within the academic campus area is critically short, and does not meet the requirement of numerous faculty and staff that work within this area. Additionally, much of the parking is in violation of Antiterrorism force protection standards, and needs to be relocated. The structure will enable the required 450 parking spaces to fit within the dense urban campus, minimize the amount of land needed, and account for the steep slopes. The steep terrain and rock conditions will require extensive rock blasting and removal/disposal.

IMPACT IF NOT PROVIDED:

If this project is not provided, West Point's engineering education facilities will fail to meet the standards set by peer Universities (Mission failure), Cadet injury, potential loss of Engineering Accreditation (Mission failure), and loss of prime Collegiate recruits (Mission failure). The quality of the engineering education at West Point would be deteriorated, particularly as compared to peer and near-peer institutions. The nationally-ranked engineering programs absolutely require this modernization to maintain the edge, and a failure to act will have a significant negative impact on the accession of trained engineers and cyber-security personnel into the Army as cadets and potential Cadets choose other academic majors and other universities. Further, recruiting of new cadets,

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5. PROGRAM ELEMENT	6. CATEGORY CODE 171 38	7. PROJECT NUMBER 78804	8. PROJECT COST (\$000) 197,000		
<p>IMPACT IF NOT PROVIDED: (CONTINUED)</p> <p>particularly those not familiar with West Point, such as under-represented groups, would be negatively impacted as the deteriorated existing facility looks progressively less competitive with peer institutions. If the project does not include parking, a gross deficit in parking throughout the academic campus will continue to be a critical issue at the installation. The need for faculty and staff parking within the campus will necessitate the continued use of parking on and adjacent to Thayer and Mahan Halls. This will prolong violations of minimum antiterrorism force protection standards. Distant parking lots are beyond the acceptable distance to principal buildings per international building codes.</p> <p>ADDITIONAL:</p> <p>Required assessments have been made for supporting facilities and the project is not in a 100-year floodplain in accordance with Executive Order 11988. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. A parametric cost estimate based upon project engineering design was used to develop this budget estimate. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development and construction of the project and will follow the guidance detailed in the Army Sustainable Design and Development Policy - complying with applicable laws and executive orders.</p> <p style="text-align: right;">Installation Engineer: Mr. Matthew Talaber Phone Number: 845-938-3415</p>					

EXHIBIT 12

(12)

1. COMPONENT ANG		FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE May 2017	
3. INSTALLATION AND LOCATION KLAMATH FALLS INTERNATIONAL AIRPORT, OREGON			4. PROJECT TITLE CONSTRUCT INDOOR RANGE		
5. PROGRAM ELEMENT 52276F	6. CATEGORY CODE 179-475	7. PROJECT NUMBER KJAQ159096	8. PROJECT COST(\$000) \$8,000		
9. COST ESTIMATES					
ITEM	U/M	QUANTITY	UNIT COST	COST (\$000)	
CONSTRUCT INDOOR RANGE	SM	1,142		6,018	
SMALL ARMS RANGE (179-475)	SM	975	5,490	(5,353)	
COMBAT ARMS TRNG & MAINT (171-476)	SM	167	3,983	(665)	
SUPPORTING FACILITIES				1,000	
UTILITIES AND COMMUNICATIONS SUPPORT	LS			(500)	
SITE IMPROVEMENTS	LS			(250)	
PAVEMENTS	LS			(250)	
SUSTAINABILITY AND ENERGY MEASURES	LS			150	
SUBTOTAL				7,168	
CONTINGENCY (5%)				358	
TOTAL CONTRACT COST				7,526	
SUPERVISION, INSPECTION AND OVERHEAD (6%)				451	
TOTAL REQUEST				7,977	
TOTAL REQUEST (ROUNDED)				8,000	
10. Description of Proposed Construction: Construct a small arms indoor range and CATM training & maintenance facility utilizing conventional design and construction methods to accommodate the mission of the facility. Facility shall be designed as permanent construction in accordance with the DOD Unified Facilities Criteria. The facility should be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special construction requirements: Use modular small arms range construction to the maximum extent possible. all necessary exterior utilities, access pavements, fire protection, site work, and support. Provide utility connections for modular small arms range equipment components. Provide doors to ensure ease of access to modular small arms range equipment to facilitate maintenance. Air Conditioning: 105 KW.					
11. REQUIREMENT: 1,143 SM ADEQUATE: 0 SM SUBSTANDARD: 0 SM PROJECT: Small Arms Range/CATM Training (Current Mission) REQUIREMENT: The installation requires an adequately sized, properly configured, and correctly sited small arms range to train and certify security forces, battlefield airmen, and mobility personnel in accordance with AFI 36-2226. The facility will house a MCSATS (Modular Containerized Small Arms Training Set) for a total of 12 to 14 firing lanes. A combat arms training and maintenance (CATM) facility, to provide classroom training space, administrative space, and arms cleaning and inspection areas for members using the small arms range. The ANG has both members that are required to perform armed duties in-garrison and others only in contingency operations on both pistol and rifle in accordance with AFI 36-2226, Table 2-1. CURRENT SITUATION: The installation does not have an organic small arms range capability. Drill status members cannot be qualified on base during their 2-days-per-month drill attendance. Work-arounds include traveling off-site at considerable expense per qualification. Given the new course of fire includes a full 8-hour firing day, plus pre-firing classroom familiarization training, combat arms training can occupy the majority of a drill weekend, leaving no time for other functional or ancillary training. On base training is considered the preferred course of action because it minimizes impacts to					

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE May 2017
3. INSTALLATION AND LOCATION KLAMATH FALLS INTERNATIONAL AIRPORT, OREGON		
5. PROJECT TITLE CONSTRUCT INDOOR RANGE		7. PROJECT NUMBER KJAJ159096
12. SUPPLEMENTAL DATA:		
a. Estimated Design Data:		
(1) Status:		
(a) Date Design Started		JAN 2017
(b) Parametric Cost Estimates used to develop costs		No
(c) Percent Complete as of Jan 17		6%
* (d) Date 35% Designed		SEP 2017
(e) Date Design Complete		DEC 2017
(f) Type of Design Contract		IDIQ
(g) Energy Study/Life-Cycle analysis was/will be performed		No
(2) Basis:		
(a) Standard or Definitive Design -		No
(b) Where Design Was Most Recently Used -		
(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)		
(a) Production of Plans and Specifications		400
(b) All Other Design Costs		300
(c) Total		700
(d) Contract		700
(e) In-House		
(4) Contract Award (Month/Year)		APR 2018
(5) Construction Start		MAY 2018
(6) Construction Completion		JUL 2019
* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability.		
b. Equipment associated with this project will be provided from other appropriations:		N/A
POINT OF CONTACT: NGB/A4AD (240) 612-4498		

EXHIBIT 13

1. Component DEFENSE (DLA)		FY 2016 MILITARY CONSTRUCTION PROGRAM						2. Date FEBRUARY 2015	
3. Installation And Location AIR NATIONAL GUARD KLAMATH FALLS INTERNATIONAL AIR PORT, OREGON				4. Command DEFENSE LOGISTICS AGENCY				5. Area Construction Cost Index 1.11	
6. PERSONNEL ANG FACILITY		(1) PERMANENT		(2) STUDENTS		(3) GUARD/RESERVE		(4) TOTAL	
		OFF	ENL	CIV	OFF	ENL	CIV	OFF	ENL
a. ACTUAL AS OF									
b. AUTHORIZED									
7. INVENTORY DATA (\$000)									
A. TOTAL ACREAGE									
B. INVENTORY TOTAL AS OF									
C. AUTHORIZED NOT YET IN INVENTORY									
D. AUTHORIZATION REQUESTED IN THIS PROGRAM									
E. AUTHORIZATION INCLUDED IN FOLLOWING PROGRAM									
F. PLANNED IN NEXT THREE YEARS									
G. REMAINING DEFICIENCY									
H. GRAND TOTAL									
8. PROJECTS REQUESTED IN THIS PROGRAM:									
a. CATEGORY				b. COST		c. DESIGN STATUS			
(1) CODE	(2) PROJECT TITLE	(3) SCOPE		(\$000)	(1) START mm/yy	(2) COMPLETE mm/yy			
126	Replace Fuel Facilities	2 OL		2,500	10/10	12/14			
9. FUTURE PROJECTS									
a. INCLUDED IN FOLLOWING PROGRAM									
CATEGORY CODE	PROJECT NUMBER	PROJECT TITLE			COST (\$000)				
		None							
b. PLANNED IN NEXT FOUR YEARS									
CATEGORY CODE	PROJECT NUMBER	PROJECT TITLE			COST (\$000)				
		None							
10. MISSION OR MAJOR FUNCTION									
<p>These fuel facilities provide essential storage and distribution systems to support the mission of assigned Air National Guard units and transient aircraft at Klamath Falls International Airport (IAP), Oregon.</p> <p>Deferred sustainment, restoration, and modernization for fuel facilities at this location is \$0.4 million.</p>									
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES:									
A. AIR POLLUTION									
B. WATER POLLUTION									
C. OCCUPATIONAL SAFETY AND HEALTH									

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1. Component DEFENSE (DLA)	FY 2016 MILITARY CONSTRUCTION PROJECT DATA		2. Date FEBRUARY 2015
3. Installation and Location AIR NATIONAL GUARD KLAMATH FALLS, KINGSLEY FIELD, OREGON		4. Project Title REPLACE FUEL FACILITIES	
5. Program Element 0702976S	6. Category Code 126	7. Project Number DESC14U2	8. Project Cost (\$000) 2,500
<p>IMPACT IF NOT PROVIDED: Loading and unloading of refueler tank trucks will continue to be a lengthy, inefficient operation. The environment and operators will be at risk due to lack of adequate containment surfaces and operating from a facility that does not have all the current DoD safety features.</p> <p>ADDITIONAL: This project meets all applicable DoD criteria. The Defense Logistics Agency certifies that this facility has been considered for joint use, as applicable, by other components. Mission requirements, operational considerations, and location are incompatible with use by the other components.</p>			
12. Supplemental Data:			
A. Estimated Design Data:			
1. Status			
(a) Date Design Started:			10/10
(b) Parametric Cost Estimate Used to Develop Costs (Yes/No):			No
(c) Percent Complete as of February 2015:			95
(d) Date 35 Percent Complete:			03/11
(e) Date Design Complete:			12/14
(f) Type of Design Contract:			D/B/B
2. Basis			
(a) Standard or Definitive Design:			No
(b) Date Design was Most Recently Used:			N/A
3. Total Cost (c) = (a) + (b) or (d) + (e) (\$000)			
(a) Production of Plans and Specifications:			100
(b) All Other Design Costs:			100
(c) Total:			200
(d) Contract:			150
(e) In-House:			50
4. Contract Award:			03/16
5. Construction Start:			04/16
6. Construction Complete:			06/17
B. Equipment associated with this project that will be provided from other appropriations:			
<u>PURPOSE</u>	<u>APPROPRIATION</u>	<u>FISCAL YEAR REQUIRED</u>	<u>AMOUNT (\$000)</u>
Environmental Remediation	DWCF	2016	50
Point of Contact is DLA Civil Engineer at 703-767-2326			

EXHIBIT 14

14

1. COMPONENT ANG	FY 2019 GUARD AND RESERVE MILITARY CONSTRUCTION				2. DATE Feb 2018
3. INSTALLATION AND LOCATION JOINT BASE LANGLEY-EUSTIS, HAMPTON					4. AREA CONSTR COST INDEX .91
5. FREQUENCY AND TYPE OF UTILIZATION 192nd Fighter Wing					
6. OTHER ACTIVE/GUARD/RESERVE INSTALLATIONS WITHIN 15 MILES RADIUS					
7. PROJECTS REQUESTED IN THIS PROGRAM					
CATEGORY CODE	PROJECT TITLE	SCOPE	COST \$(000)	DESIGN STATUS START COMPLETE	
171-447	Construct Cyber Ops Facility	966 SM (10,400 SF)	10,000	Sep 17	Oct 18
8. STATE RESERVE FORCES FACILITIES BOARD RECOMMENDATION The Board recommendations are:					
				04 Feb 16 (Date)	
9. LAND ACQUISITION REQUIRED				None (Number of Acres)	
10. PROJECTS PLANNED IN NEXT FOUR YEARS					
CATEGORY CODE	PROJECT TITLE	SCOPE	COST \$(000)		
R&M Unfunded Requirement: \$0					

1. COMPONENT ANG	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)		2. DATE Feb 2018																
3. INSTALLATION AND LOCATION JOINT BASE LANGLEY-EUSTIS, VIRGINIA																			
5. PROJECT TITLE CONSTRUCT CYBER OPS FACILITY		7. PROJECT NUMBER MUHJ179000																	
<p>As a tenant unit on an Active Duty base with a TFI agreement, the 192d FW does not have the ability to allocate buildings on Joint Base Langley-Eustis. The host 633d ABW does not currently have the availability in any building that would meet the COS mission requirements. In order for the unit to attain operating capability, temporary leased space has been obtained off base. Continued use of that space is costly, and it involves an increased security risk, which is not appropriate to continue.</p> <p><u>IMPACT IF NOT PROVIDED:</u> The 185th COS will be unable to reach Full Operating Capability (FOC) without a facility that includes the required SCIF space from which to operate. Having the required SCIF space is necessary for the team to receive the intel and perform the training required to perform in the cyber mission space. The squadron is required for the ANG to meet their USCC mobilization requirements. Not having a facility that enables the unit to reach FOC risks the ANG being unable to fulfill their obligation to USCC. Continued use of leased space is costly and represents an enhanced security risk.</p> <p><u>ADDITIONAL:</u> Sustainable principles, to include Life Cycle cost effective practices, will be integrated into the design, development and construction of the project in accordance with Executive Order 13423, 10 USC 2802(c) and other applicable laws and Executive Orders. An economic analysis is being prepared comparing the alternatives of new construction, revitalization, leasing and status quo operation. This project is considered capitalization based on the following rule from ANGETL 17-06: New Construction.</p> <table border="0"> <thead> <tr> <th>CatCode</th> <th>Requirement</th> <th>Adequate</th> <th>Substandard</th> </tr> </thead> <tbody> <tr> <td>171-447 RES FORCES COMM/ELECTRONIC TRN</td> <td>455 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> <tr> <td>171-447 RES FORCES COMM/ELECTRONIC TRN</td> <td>511 SM</td> <td>0 SM</td> <td>0 SM</td> </tr> </tbody> </table> <table border="0"> <tr> <td>CONSTRUCT CYBER ADMINISTRATION (171447)</td> <td>455 SM = 4,900 SF</td> </tr> <tr> <td>CONSTRUCT CYBER SCIF (171447)</td> <td>511 SM = 5,500 SF</td> </tr> </table>				CatCode	Requirement	Adequate	Substandard	171-447 RES FORCES COMM/ELECTRONIC TRN	455 SM	0 SM	0 SM	171-447 RES FORCES COMM/ELECTRONIC TRN	511 SM	0 SM	0 SM	CONSTRUCT CYBER ADMINISTRATION (171447)	455 SM = 4,900 SF	CONSTRUCT CYBER SCIF (171447)	511 SM = 5,500 SF
CatCode	Requirement	Adequate	Substandard																
171-447 RES FORCES COMM/ELECTRONIC TRN	455 SM	0 SM	0 SM																
171-447 RES FORCES COMM/ELECTRONIC TRN	511 SM	0 SM	0 SM																
CONSTRUCT CYBER ADMINISTRATION (171447)	455 SM = 4,900 SF																		
CONSTRUCT CYBER SCIF (171447)	511 SM = 5,500 SF																		

1. COMPONENT ANG	FY 2019 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE Feb 2018
3. INSTALLATION AND LOCATION JOINT BASE LANGLEY-EUSTIS, VIRGINIA		
5. PROJECT TITLE CONSTRUCT CYBER OPS FACILITY		7. PROJECT NUMBER MUHJ179000
12. SUPPLEMENTAL DATA:		
a. Estimated Design Data:		
(1) Status:		
(a) Date Design Started	SEP 2017	
(b) Parametric Cost Estimates used to develop costs	No	
(c) Percent Complete as of Jan 2018	6%	
* (d) Date 35% Designed	APR 2018	
(e) Date Design Complete	OCT 2018	
(f) Type of Design Contract	Standard	
(g) Energy Study/Life-Cycle analysis was/will be performed	YES	
(2) Basis:		
(a) Standard or Definitive Design -	No	
(b) Where Design Was Most Recently Used -		
(3) Total Cost (c) = (a) + (b) or (d) + (e): (\$000)		
(a) Production of Plans and Specifications	\$470	
(b) All Other Design Costs	\$270	
(c) Total	\$740	
(d) Contract	\$740	
(e) In-House		
(4) Contract Award (Month/Year)	FEB 2019	
(5) Construction Start	APR 2019	
(6) Construction Completion	JAN 2020	
* Indicates completion of Project Definition with Parametric Cost Estimate which is comparable to traditional 35% design to ensure valid scope and cost and executability.		
b. Equipment associated with this project will be provided from other appropriations:		N/A
POINT OF CONTACT: NGB / A4AD (240) 612-8070		

EXHIBIT 15

15

1. Component DEFENSE (DLA)	FY 2018 MILITARY CONSTRUCTION PROJECT DATA	2. Date May 2017		
3. Installation and Location NORFOLK NAVAL STATION, NORFOLK, VA		4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE		
5. Program Element 0702976S	6. Category Code 44130	7. Project Number DDNV1801	8. Project Cost (\$000) 18,500	
9. COST ESTIMATES				
Item	U/M	Quantity	Unit Cost	Cost (\$000)
PRIMARY FACILITIES.....	-	-	-	8,894
HAZMAT WAREHOUSE & ADMIN NAVSTA (CC 44130).....	SF	35,904	207	(7,432)
GAS CYLINDER STORAGE SHED NAVSTA (CC 44135).....	SF	13,000	95	(1,235)
FORKLIFT STORAGE SHED (CC 44135).....	SF	682	268	(183)
GATE HOUSE NAVSTA (CC 73025).....	SF	100	440	(44)
SUPPORTING FACILITIES.....	-	-	-	7,774
SITE PREP, PAVING & IMPROVEMENTS.....	LS	-	-	(2,797)
SPECIAL FOUNDATIONS.....	LS	-	-	(2,038)
SITE UTILITIES.....	LS	-	-	(1,891)
DEMOLITION.....	LS	-	-	(1,048)
SUBTOTAL.....	-	-	-	16,668
CONTINGENCY (5%)	-	-	-	833
ESTIMATED CONTRACT COST	-	-	-	17,501
SUPERVISION, INSPECTION & OVERHEAD (SIOH) (5.7%)..	-	-	-	998
TOTAL.....	-	-	-	18,499
TOTAL (ROUNDED)	-	-	-	18,500
EQUIPMENT FROM OTHER APPROPRIATIONS	-	-	-	(1,670)
10. Description of Proposed Construction:				
Construct a non-combustible Hazardous Materials (HAZMAT) Warehouse. It will include sufficient clear stacking height storage, concrete floors at dock height, weather-sealed truck doors, loading docks with dock levelers, shipping and receiving areas, admin office space, restrooms with lockers, employee lunch/break/training room, and utility spaces. The project will also include a gas cylinder storage shed with forklift storage and charging capability. Supporting facilities include site improvements, dumpster enclosures, utilities, fire protection, storm drainage, site information systems, site lighting, paving (access roadways, hardstand aprons, parking), fencing, walks, landscaping, and related improvements. Provide aboveground fire protection water storage tank(s) and associated fire pumps, piping, etc. Site work includes improvements to parking areas to replace displaced parking.				
Demolition at NAVSTA Norfolk includes a portion of existing warehouse CEP-156 (approx. 110,668 SF, FCI=67), the adjacent gatehouse CEP-180 (approx. 108 SF, FCI=76) and the existing gas cylinder storage shed (Shed X380, approx. 67,300 SF, FCI=64). The existing warehouse will return to the host installation for reuse.				
11. REQUIREMENT: 105,600 Square Feet (SF) ADEQUATE: 0 SF SUBSTANDARD: 201,792 SF				
PROJECT: Construct modern hazmat warehouse with appropriate administrative areas, gas cylinder storage and forklift storage and charging facilities. (C)				

1. Component DEFENSE (DLA)		FY 2018 MILITARY CONSTRUCTION PROJECT DATA		2. Date May 2017	
3. Installation and Location NORFOLK NAVAL STATION, NORFOLK, VA			4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE		
5. Program Element 0702976S		6. Category Code 44130		7. Project Number DDNV1801	
				8. Project Cost (\$000) 18,500	
2. Basis (a) Standard or Definitive Design: (b) Date Design was Most Recently Used:					No N/A
3. Total Cost (c) = (a)+(b) or (d)+(e) (\$000) (a) Production of Plans and Specifications (b) All Other Design Costs (c) Total (d) Contract (e) In-House					1,150 650 1,755 1,432 323
4. Contract Award					06/18
5. Construction Start					07/18
6. Construction Complete					05/20
B. Equipment associated with this project that will be provided from other appropriations:					
<u>PURPOSE</u>		<u>APPROPRIATION</u>		<u>FISCAL YEAR REQUIRED</u>	
				<u>AMOUNT (\$000)</u>	
Furniture		DWCF		2018	
Security/Access Control System		DWCF		2018	
Rack System & MHE		DWCF		2018	
Info Sys		DWCF		2018	
Point of Contact is DLA Civil Engineer at 703-767-2326					

EXHIBIT 16

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1. COMPONENT WHS		FY 2017 MILITARY CONSTRUCTION PROJECT DATA			2. DATE Feb 2016
3. INSTALLATION AND LOCATION Pentagon Reservation			4. PROJECT TITLE Pentagon Metro Entrance Facility		
5. PROGRAM ELEMENT	6. CATEGORY CODE 144 13	7. PROJECT NUMBER 80916	8. PROJECT COST (\$000) 12,111		
9. COST ESTIMATES					
ITEM	UM	QUANTITY	UNIT COST	COST(\$000)	
PRIMARY FACILITY					
Entrance Screening Facility	SF	10,400	431.9	9,358	
Existing Canopy Removal/Modifications	SF	9,125	155	(4,493)	
Fixed Equipment	LS	--	--	(1,414)	
Security Equipment Infrastructure	LS	--	--	(538)	
Intrusion Detection Infrastructure	LS	--	--	(1,584)	
Total from Continuation page(s)				(28)	
SUPPORTING FACILITIES					
Electric Service	LS	--	--	679	
Steam And/Or Chilled Water Distribution	LS	--	--	(74)	
Paving, Walks, Curbs And Gutters	LS	--	--	(271)	
Site Imp(244) Demo()	LS	--	--	(39)	
Antiterrorism Measures	LS	--	--	(244)	
Info Systems	LS	--	--	(32)	
ESTIMATED CONTRACT COST					
				10,037	
CONTINGENCY (10.00%)				1,004	
SUBTOTAL				11,041	
SUPERVISION, INSPECTION & OVERHEAD (5.70%)				629	
DESIGN/BUILD - DESIGN COST (4.0000%)				442	
TOTAL REQUEST				12,111	
TOTAL REQUEST (ROUNDED)				12,200	
INSTALLED EQT - OTHER APPROPRIATIONS				2,324	
10. Description of Proposed Construction					
<p>Construct a new Pedestrian Access Control Point (PACP) for employee screening at the Pentagon Metro Entrance. This addition to the existing building will include all required security equipment and systems; anti-terrorism/force protection (AT/FP); intrusion detection system, information system (IT/communications); safety and surveillance measures; screening and unauthorized personnel and hazardous materials detection capabilities; systems commissioning; utility services; lighting, heating, ventilation and air conditioning; interior renovations; demolition; and site work for conformance with Homeland Security Presidential Directive (HSPD) -12, Pentagon Integrated Security Master Plan (ISMP), Pentagon Exterior Standards, Architectural Barriers Act (ABA), Historical Preservation, Green Build/Leadership in Energy and Environmental Design (LEED) Silver, Sustainability and Energy Policy Act features, Unified Facilities Criteria (UFC) and all applicable Federal, State and local codes and requirements. The new employee screening facility will provide increased throughput capacity to safely and efficiently handle the large daily volume of Pentagon employees and badged personnel traffic using the Pentagon Metro Entrance and to decrease threats and risks to the attending police officers.</p> <p>Interior renovations to the existing Metro Entrance screening area will be required for integration and efficient functioning of the new employee screening</p>					

1. COMPONENT WHS	FY 2017 MILITARY CONSTRUCTION PROJECT DATA		2. DATE Feb 2016
3. INSTALLATION AND LOCATION Pentagon Reservation		4. PROJECT TITLE Pentagon Metro Entrance Facility	
5. PROGRAM ELEMENT	6. CATEGORY CODE 144 13	7. PROJECT NUMBER 80916	8. PROJECT COST (\$000) 12,111

IMPACT IF NOT PROVIDED: (CONTINUED)

Pentagon access control points. This project is also needed to complete integration with the new Metro Entrance Visitor Screening Facility for maximum operational efficiency.

ADDITIONAL:

All applicable Federal, State, local codes, regulations and criteria will be integrated into this project including all applicable Pentagon standards. The Director WHS certifies that this project has been considered for joint use potential. The facility will be available for use by other components.

1. COMPONENT Washington Headquarters Services		FY 2017 MILITARY CONSTRUCTION PROGRAM						2. DATE Feb 2016			
3. INSTALLATION AND LOCATION Pentagon Reservation (Raven Rock Mountain Complex)				4. COMMAND OSD/DAM				5. AREA CONSTRUCTION COST INDEX 1.14			
6. PERSONNEL		(1) PERMANENT			(2) STUDENTS			(3) SUPPORTED			(4) TOTAL
		OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN	OFFICER	ENLISTED	CIVILIAN	
a. AS OF 30 Sep 2015											23,000
b. END FY 2020											23,000
7. INVENTORY DATA (\$000)											
a. TOTAL ACREAGE											
b. INVENTORY TOTAL AS OF 30 Sep 2014											
c. AUTHORIZATION NOT YET IN INVENTORY											
d. AUTHORIZATION REQUESTED IN THIS PROGRAM)							8,105				
e. AUTHORIZATION INCLUDED IN FOLLOWING PROGRAM							0				
f. PLANNED IN NEXT THREE PROGRAM YEARS							0				
g. REMAINING DEFICIENCY							0				
h. GRAND TOTAL							8,105				
8. PROJECTS REQUESTED IN THIS PROGRAM											
a. CATEGORY				b. COST (\$000)							
(1) CODE	(2) PROJECT TITLE		(3) SCOPE			DESIGN START		STATUS COMPLETE			
13290	Upgrade IT Facilities Infrastructure		4,000 SF		8,105	03/2015		04/2019			
9. FUTURE PROJECTS N/A											
10. MISSION OR MAJOR FUNCTIONS Raven Rock Mountain Complex provides an enduring platform from where DOD can execute its mission essential functions in support of continuity of operations.											
11. OUTSTANDING POLLUTION AND SAFETY DEFICIENCIES											
				(\$000)							
A. Air Pollution				0							
B. Water Pollution				0							
C. Occupational Safety and Health				0							

1. COMPONENT WHS		FY 2017 MILITARY CONSTRUCTION PROJECT DATA		2. DATE Feb 2016
3. INSTALLATION AND LOCATION Pentagon Reservation (Raven Rock Mountain Complex			4. PROJECT TITLE Upgrade IT Facilities Infrastructure-RRMC	
5. PROGRAM ELEMENT	6. CATEGORY CODE 132 90	7. PROJECT NUMBER 87744	8. PROJECT COST (\$000) 8,105	

PROJECT: (CONTINUED)

REQUIREMENT:

Provide adequate information systems infrastructure both classified and unclassified and to meet the site's mission. Centrally located Telecommunication Rooms paired with upgraded cabling plant will require less maintenance, provide more accessibility to IT personnel, and provide for additional information throughput to serve a greater user population with increasing bandwidth needs.

CURRENT SITUATION:

The facility currently has an IT infrastructure with inadequate capacity to serve current data needs and a layout that is inefficient and requires multiple hops which causes signal degradation and slow network speed. Additionally the lack of dedicated IT rooms on each floor of the main facility causes maintenance personnel to take an average of eight (8) hours per service ticket to track down and resolve problems with cabling not being properly routed, and equipment spread throughout the facility often in tenant spaces that should be centrally located for ease of access. The unnecessary complexity and inadequate capacity of the current infrastructure and equipment access constraints require work-arounds and delay both the information systems operators and end users. This could be eliminated by a more modern, higher capacity, information systems infrastructure.

IMPACT IF NOT PROVIDED:

If this project is not constructed site information systems users will not have the bandwidth available to efficiently perform their missions nor will information systems personnel have the ability to effectively upgrade proponent sponsored equipment as data needs continue to increase to meet user needs. Trouble-shooting delays will continue to result from the unnecessary complexity of the existing system.

ADDITIONAL:

All applicable codes will be integrated into this project. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required antiterrorism protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. The Director WHS certifies that this project has been considered for joint use potential. Mission requirements, operational considerations, and location are incompatible with user by other components. Sustainable principles, to include life cycle cost effective practices, will be integrated into the design, development and construction of the project.

EXHIBIT 17

1. Component DEFENSE (DLA)		FY 2018 MILITARY CONSTRUCTION PROJECT DATA		2. Date May 2017	
3. Installation and Location NORFOLK NAVAL SHIPYARD, PORTSMOUTH, VA			4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE		
5. Program Element 0702976S		6. Category Code 44130		7. Project Number DDNV1802	
				8. Project Cost (\$000) 22,500	
9. COST ESTIMATES					
Item		U/M	Quantity	Unit Cost	Cost (\$000)
PRIMARY FACILITIES		-	-	-	11,916
HAZMAT WAREHOUSE & ADMIN NNSY (CC 44130)		SF	52,500	207	(10,878)
GAS CYLINDER STORAGE SHED NNSY (CC 44135).....		SF	9,000	95	(855)
FORKLIFT STORAGE SHED (CC 44135).....		SF	682	268	(183)
SUPPORTING FACILITIES		-	-	-	8,287
SITE PREP, PAVING & IMPROVEMENTS		LS	-	-	(2,797)
SPECIAL FOUNDATIONS.....		LS	-	-	(2,551)
SITE UTILITIES		LS	-	-	(1,891)
DEMOLITION		LS	-	-	(1,048)
SUBTOTAL		-	-	-	20,203
CONTINGENCY (5%)		-	-	-	1,010
ESTIMATED CONTRACT COST		-	-	-	21,213
SUPERVISION, INSPECTION & OVERHEAD (SIOH) (5.7%)..		-	-	-	1,209
TOTAL		-	-	-	22,422
TOTAL (ROUNDED)		-	-	-	22,500
EQUIPMENT FROM OTHER APPROPRIATIONS		-	-	-	(1,670)
10. Description of Proposed Construction:					
Construct a non-combustible Hazardous Materials (HAZMAT) Warehouse. It will include sufficient clear stacking height storage, concrete floors at dock height, weather-sealed truck doors, loading docks with dock levelers, shipping and receiving areas, admin office space, restrooms with lockers, employee lunch/break/training room, and utility spaces. The project will also include a gas cylinder storage shed with forklift storage and charging capability. Supporting facilities include site improvements, dumpster enclosures, utilities, fire protection, storm drainage, site information systems, site lighting, paving (access roadways, hardstand aprons, parking), fencing, walks, landscaping, and related improvements. Provide aboveground fire protection water storage tank(s) and associated fire pumps, piping, etc. Site work includes improvements to parking areas to replace displaced parking.					
Relocate ready service lockers (RSL's) and demolish gas cylinder storage shed (Shed 1567, approx. 15,400 SF, FCI=76) and a shed area office (approx. 96 SF).					
11. REQUIREMENT: 105,600 Square Feet (SF) ADEQUATE: 0 SF SUBSTANDARD: 201,792 SF					
PROJECT: Construct a modern hazmat warehouse with appropriate administration areas, gas cylinder storage and forklift storage & charging facilities. (C)					

1. Component DEFENSE (DLA)		FY 2018 MILITARY CONSTRUCTION PROJECT DATA		2. Date May 2017	
3. Installation and Location NORFOLK NAVAL SHIPYARD, PORTSMOUTH, VA			4. Project Title REPLACE HAZARDOUS MATERIALS WAREHOUSE		
5. Program Element 0702976S		6. Category Code 44130		7. Project Number DDNV1802	
				8. Project Cost (\$000) 22,500	
2. Basis (a) Standard or Definitive Design: (b) Date Design was Most Recently Used:					No N/A
3. Total Cost (c) = (a)+(b) or (d)+(e) (\$000) (a) Production of Plans and Specifications (b) All Other Design Costs (c) Total (d) Contract (e) In-House					1,391 735 2,126 1,803 323
4. Contract Award					06/18
5. Construction Start					07/18
6. Construction Complete					05/20
B. Equipment associated with this project that will be provided from other appropriations:					
<u>PURPOSE</u>		<u>APPROPRIATION</u>	<u>FISCAL YEAR REQUIRED</u>	<u>AMOUNT (\$000)</u>	
Furniture		DWCF	2018	65	
Security/Access Control System		DWCF	2018	100	
Rack System & MHE		DWCF	2018	1,500	
Info Sys		DWCF	2018	5	
Point of Contact is DLA Civil Engineer at 703-767-2326					

EXHIBIT 18

1. Component NAVY	FY 2019 MILITARY CONSTRUCTION PROGRAM			2. Date 05 FEB 2018
3. Installation (SA) & Location/UIC: N32443 NAVAL SUPPORT STATION NREFK NSY PORTSMOUTH, VIRGINIA			4. Project Title Ships Maintenance Facility	
5. Program Element 0703676N	6. Category Code 21357	7. Project Number P256	8. Project Cost (\$000) 26,120	
9. COST ESTIMATES				
Item	UM	Quantity	Unit Cost	Cost (\$000)
SHIPS MAINTENANCE FACILITY (370,989SF)	m2	34,466		23,080
ELECTRIC/ELECTRONICS SHOP CC21357 (370,989SF) (RENOVATE)	m2	34,466	543.52	(18,730)
ANTI-TERRORISM/FORCE PROTECTION	LS			(3,020)
BUILT-IN EQUIPMENT	LS			(150)
SPECIAL COSTS	LS			(950)
OPERATION & MAINTENANCE SUPP INFO (OMSI)	LS			(230)
SUPPORTING FACILITIES				450
PAVING AND SITE IMPROVEMENTS	LS			(30)
ELECTRICAL UTILITIES	LS			(220)
MECHANICAL UTILITIES	LS			(40)
ENVIRONMENTAL MITIGATION	LS			(160)
SUBTOTAL				23,530
CONTINGENCY (5%)				1,180
TOTAL CONTRACT COST				24,710
SIOH (5.7%)				1,410
SUBTOTAL				26,120
TOTAL REQUEST ROUNDED				26,120
TOTAL REQUEST				26,120
EQUIPMENT FROM OTHER APPROPRIATIONS (NON ADD)				(1,384)
10. Description of Proposed Construction:				
<p>Converts the fifth and sixth floor in Building #510 to accommodate the relocation of the nuclear containment and life raft shops. The altered floor plan will include shop equipment areas, maintenance space, pallet racks, fire rated walls around storage areas, administrative office, break room, personnel support areas, bathrooms, and a conference room. Existing stairwells, from ground floor to sixth floor will be repaired to meet code requirements. All non-code compliant combustible construction throughout the building will be removed and the egress deficiency on the third floor will be corrected. Code compliant fire alarm/mass notification, standpipe and sprinkler systems will be installed throughout the facility. Progressive collapse retrofits are included.</p>				

1. Component NAVY		FY 2019 MILITARY CONSTRUCTION PROGRAM		2. Date 05 FEB 2018							
3. Installation(SA) & Location/UIC: N32443 NAVAL SUPPORT STATION NREK NSY PORTSMOUTH, VIRGINIA			4. Project Title Ships Maintenance Facility								
5. Program Element 0703676N	6. Category Code 21357	7. Project Number P256	8. Project Cost (\$000) 26,120								
<p>CURRENT SITUATION:</p> <p>Building #510 was constructed in 1957. The building has been cited for a number of life safety violations. These violations include having no sprinkler protection, inadequate fire alarm placement, lack of a mass notification system and inadequate egress. Most of the occupants on fifth and sixth floors have been relocated into trailers. Current mitigation includes roving fire watches on each floor, 24 hours per day, seven days a week, by existing shop personnel, thus reducing available manpower for ship maintenance and repair activities.</p> <p>The most efficient use of the vacant space in building #510 would be the relocation of the nuclear containment and life raft shops from an existing facility. This existing facility has severe life safety and environmental concerns that would require significantly more funding to repair than Building #510.</p> <p>The shipyard has the only life raft inspection, repairs and certification facility for the east coast, servicing life rafts from Navy and Coast Guard ships. This represents an annual work load of 750 raft inspections, repairs and certifications per year, with 50-100 rafts in active maintenance at any time.</p> <p>IMPACT IF NOT PROVIDED:</p> <p>The nuclear containment and life raft shops will stay in their existing facility, resulting in increased risk to critical ship maintenance activities. Approximately 330 personnel, working more than 256,000 man-hours annually, will remain in a high risk environment, with continuing significant rework, higher stress, and additional operating costs due to inadequate working environment. Shop operations will continue to require the rental of a portable sixty ton HVAC system to provide the minimum required climate control for the shops required to operate under specified temperature and/or humidity levels. Even with the temporary climate control, this facility still routinely operates at high summertime temperatures and/or high humidity. The result is negative impacts on availability schedules due to rework, and time delays caused by equipment overheating and failed seams on the contaminated materials containment bags and enclosures.</p>											
<p>12. Supplemental Data:</p> <p>A. Estimated Design Data:</p> <p>1. Status:</p> <table border="0"> <tr> <td>(A) Date design or Parametric Cost Estimate started</td> <td>09/2016</td> </tr> <tr> <td>(B) Date 35% Design or Parametric Cost Estimate complete</td> <td>02/2017</td> </tr> <tr> <td>(C) Date design completed</td> <td>11/2018</td> </tr> </table>						(A) Date design or Parametric Cost Estimate started	09/2016	(B) Date 35% Design or Parametric Cost Estimate complete	02/2017	(C) Date design completed	11/2018
(A) Date design or Parametric Cost Estimate started	09/2016										
(B) Date 35% Design or Parametric Cost Estimate complete	02/2017										
(C) Date design completed	11/2018										

EXHIBIT 19

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE AUG 14, 2018
3. INSTALLATION AND LOCATION DANE COUNTY REGIONAL-TRUAX FIELD, WISCONSIN		4. PROJECT TITLE CONSTRUCT SMALL ARMS RANGE
5. PROGRAM ELEMENT 52276F	6. CATEGORY CODE 179-475	7. PROJECT NUMBER XGFG179036
8. PROJECT COST(\$000) \$8,000		

9. COST ESTIMATES				
ITEM	U/M	QUANTITY	UNIT COST	COST (\$000)
CONSTRUCT SMALL ARMS RANGE	SF	12,300		6,021
SMALL ARMS RANGE (179475)	SF	10,500	510	(5,355)
COMBAT ARMS TRNG & MAINT (171476)	SF	1,800	370	(666)
SUPPORTING FACILITIES				1,000
UTILITIES AND COMMUNICATIONS SUPPORT	LS			(500)
SITE IMPROVEMENTS	LS			(250)
PAVEMENTS	LS			(250)
SUSTAINABILITY AND ENERGY MEASURES	LS			150
SUBTOTAL				7,171
CONTINGENCY (5%)				359
TOTAL CONTRACT COST				7,530
SUPERVISION, INSPECTION AND OVERHEAD (6%)				451
TOTAL REQUEST				7,981
TOTAL REQUEST (ROUNDED)				8,000

10. Description of Proposed Construction: Construct a small arms range and CATM training & maintenance facility utilizing conventional design and construction methods to accommodate the mission of the facility. Facility shall be designed as permanent construction in accordance with the DOD Unified Facilities Criteria. The facility should be compatible with applicable DoD, Air Force, and base design standards. In addition, local materials and construction techniques shall be used where cost effective. This project will comply with DoD antiterrorism/force protection requirements per unified facilities criteria. Special construction requirements: all necessary exterior utilities, access pavements, fire protection, site work, and support. Provide utility connections for modular small arms range equipment components.
Air Conditioning: 30 Tons.

11. REQUIREMENT: 12,300 SF ADEQUATE: 0 SF SUBSTANDARD: 0 SF
PROJECT: Small Arms Range/CATM Training (Current Mission)
REQUIREMENT: The installation requires an adequately sized, properly configured, and correctly sited small arms range to train and certify security forces, battlefield airmen, and mobility personnel in accordance with AFI 36-2226. The facility will house a MCSATS (Modular Containerized Small Arms Training Set) for a total of 12 to 14 firing lanes. A combat arms training and maintenance (CATM) facility, to provide classroom training space, administrative space, and arms cleaning and inspection areas for members using the small arms range. The ANG has both members that are required to perform armed duties in-garrison and others only in contingency operations on both pistol and rifle in accordance with AFI 36-2226, Table 2-1.
CURRENT SITUATION: The installation does not have an organic small arms range capability. Drill status members cannot be qualified on base during their 2-days-per-month drill attendance. Work-arounds include traveling off-site at considerable expense per qualification. Given the new course of fire includes a full 8-hour firing day, plus pre-firing classroom familiarization training, combat arms training can occupy the majority of a drill weekend, leaving no time for other functional or ancillary training. On base training is considered the preferred course of action because it minimizes impacts to drill time. The ANG's 89 wings each have Airmen who need to qualify on rifle or pistol. However, most ANG bases have too little real estate to support enclosed outdoor firing ranges due to the sizable

1. COMPONENT ANG	FY 2018 MILITARY CONSTRUCTION PROJECT DATA (computer generated)	2. DATE AUG 14, 2018												
3. INSTALLATION AND LOCATION DANE COUNTY REGIONAL-TRUAX FIELD, WISCONSIN														
5. PROJECT TITLE CONSTRUCT SMALL ARMS RANGE	7. PROJECT NUMBER XGFG179036													
<p>surface danger zone behind the target line; units seek indoor ranges to minimize the range footprint, maximize training efficiency for drill status Airmen and CATM instructors, and allow required Security Forces "night" firing by using low light levels inside the indoor range. In an NGB/A4S study which considered the cost of travel and lost time, this site had the third highest cost-per-qualification in the ANG, at more than \$1,116 per student qualified.</p> <p><u>IMPACT IF NOT PROVIDED:</u> Installation personnel will continue to travel considerable distances to qualify on weapons, negatively affecting all wing readiness and severely degrading their wartime mission. The installation will have to continue to travel over 5 hours round trip, plus 4 hours of training forces the unit to stay over night near the range, costing \$15K annually. Safety, security, and physical protection of Wing personnel is hampered, endangering both life and property. Additionally, installation security forces will not have adequate training and qualifications which reduces overall base security and also endangers both life and property. Accept risk to the deployment mission and the protection of valuable mobility aircraft on site due to inadequate training.</p> <p><u>ADDITIONAL:</u> The ANG currently has 28 installations with a small-arms range. An additional 24 ANG installations are units hosted on an installation with an operational small arms range, leaving 46 installations which lack organic range capability. This project will construct a facility to provide a modular small arms range plus provide classroom and weapons maintenance/administrative space. This project is considered capitalization based on the following rule from ANGETL 17-06: New Construction.</p> <table border="1"> <thead> <tr> <th>CatCode</th> <th>Requirement</th> <th>Adequate</th> <th>Substandard</th> </tr> </thead> <tbody> <tr> <td>179-475 SMALL ARMS RANGE SYSTEM</td> <td>10,500 SF</td> <td>0 SF</td> <td>0 SF</td> </tr> <tr> <td>171-476 COMBAT ARMS TRNG & MAINT</td> <td>1,800 SF</td> <td>0 SF</td> <td>0 SF</td> </tr> </tbody> </table> <p>SMALL ARMS RANGE (179475) 10,500 SF = 975 SM COMBAT ARMS TRNG & MAINT (171476) 1,800 SF = 167 SM</p>			CatCode	Requirement	Adequate	Substandard	179-475 SMALL ARMS RANGE SYSTEM	10,500 SF	0 SF	0 SF	171-476 COMBAT ARMS TRNG & MAINT	1,800 SF	0 SF	0 SF
CatCode	Requirement	Adequate	Substandard											
179-475 SMALL ARMS RANGE SYSTEM	10,500 SF	0 SF	0 SF											
171-476 COMBAT ARMS TRNG & MAINT	1,800 SF	0 SF	0 SF											

EXHIBIT 7

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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

**DECLARATION OF COLONEL
WILLIAM GREEN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT re: SECTION
2808 AND NEPA**

Date: November 20, 2019
Time: 10:00 am
Judge: Honorable Haywood S. Gilliam,
Jr.
Trial Date: None Set
Action Filed: February 18, 2019

1 I, Col. William Green, declare as follows:

2 1. I have personal knowledge of each fact stated in this declaration, and if called as a
3 witness could competently testify thereto.

4 2. I am a Colonel with the California Air National Guard (ANG) and currently serve as
5 the California ANG's Director of Operations. In this capacity, I advise the Adjutant General and
6 other California Military Department senior leaders on federal issues affecting the State of
7 California. Additionally, I advise the Commander of the California ANG on the readiness of over
8 4800 military and civilian personnel across five wings and ensure that they are postured and
9 prepared to support national defense requirements and emergency response, relief and recovery
10 operations throughout the State of California. I am also a command pilot with more than 6000
11 military and civilian flying hours in the C-130J, WC130J, EC-130J, B-787, S80, B727, T-38, T-
12 37 and T-41 aircraft. I have accrued over 400 combat hours in the tactical environment in support
13 of multiple deployments. I have served as a C-130J Instructor Pilot and a C-130J Command
14 Evaluator Pilot. I am also an instructor and designated Subject Matter Expert with respect to the
15 Modular Aerial Fire Fighting System (MAFFS).

16 3. The California ANG is a component of the California National Guard, a federally
17 funded California military force that is part of the National Guard of the United States. The
18 California National Guard is the second largest National Guard force in the United States with a
19 total authorized strength of over 23,000 soldiers and airmen. The Constitution of the United
20 States charges the National Guard with dual federal and state missions.

21 4. The California ANG is comprised of citizen airmen that fill the ranks of five air
22 wings strategically positioned across California to support the state and nation in times of need.
23 The California ANG's highly specialized servicemen and women leverage a variety of aviation
24 platforms and combat tested expertise to perform a full spectrum of missions. Their missions
25 include providing homeland air defense for all of the Western United States and providing direct
26 support to combatant commanders overseas, as well as assisting in search and rescue missions
27 along the Pacific Coast and combatting wildfires throughout the state of California and throughout
28 the United States.

1 5. The California ANG's 146th Airlift Wing is part of the reserve component of the
2 United States Air Force supporting Air Mobility Command and is headquartered at the Channel
3 Islands Air National Guard Base (ANGB) in Port Hueneme, California. The 146th Airlift Wing is
4 a combat ready organization prepared to support the U.S. and allied forces, as well as provide
5 disaster response, humanitarian relief, and large scale aerial firefighting capabilities to the state of
6 California and the nation.

7 6. The 146th Airlift Wing employs the Lockheed C-130J "Super Hercules" aircraft. The
8 146th Airlift Wing's tactical airlift mission is one of the most training-intensive in the Mobility Air
9 Forces.

10 7. In addition to standard military flight training, the 146th Airlift Wing is responsible to
11 train to its demanding aerial firefighting mission. The 146th Airlift Wing is one of only four units
12 in the country equipped with MAFFS, an integrated airborne delivery system for battling large
13 fires. The MAFFS modules, which are loaded into the cargo bays of the C-130J aircraft, are
14 capable of discharging 3,000 gallons of water or fire retardant in less than five seconds, covering
15 an area a quarter mile long by 100 feet, specializing in large fire containment operations.

16 8. As part of the California ANG's function in responding to state emergencies, the 146th
17 Airlift Wing is frequently called-up to combat wildfires in California and the western United
18 States. Over the past six years, they have been activated 11 times, performing over 775 fire drops
19 supporting efforts to combat 45 different wildfires. These have included large and increasingly
20 common destructive incidents in California, such as the Rim, Thomas, Mendocino Complex, Carr
21 and recent Woolsey fires. The 2018 fire season was the largest and most destructive in California
22 history.

23 9. With the exception of flights within combat zones where anti-aircraft defenses are
24 present, the firefighting mission presents the greatest risk to the 146th Airlift Wing C-130J
25 aircrew. This is because the firefighting mission requires the C-130J pilots to fly aircraft at lower
26 than standard altitudes, slow air speeds and nonstandard configurations in order to deliver
27 retardant in the prescribed manner. Additionally, these flights often take place in mountainous
28

1
2 terrain with reduced visibility and rapidly changing weather conditions. The mission also requires
3 California C-130J flight crews to train and operate with civil agency partners that fly dissimilar
4 aircraft, such as the United States Forest Service (USFS) and the California Department of
5 Forestry and Fire Protection (CalFire).

6 10. I am familiar with the training requirements for airmen piloting the C-130J aircraft.
7 In addition to monthly ground and in-flight training, C-130J aircrew are required to participate in
8 at least one week of refresher simulator training emphasizing complex emergency procedures,
9 challenging and unusual aircraft maneuvers and crew coordination at a certified C-130J flight
10 simulator on annual basis. Aircrew from the 146th Airlift Wing currently travel to Keesler Air
11 Force Base in Biloxi, Mississippi, at an approximate cost of \$360,000 annually, to accomplish
12 this simulator training.

13 11. C-130J flight crews also participate in an annual, one-week training course relating to
14 firefighting missions. This one-week training course, which includes flight training and water
15 drops, is coordinated with the USFS. Similar to actual firefighting missions, the training often
16 takes place over mountainous terrain, at lower-than-normal altitudes and at slow air speeds.

17 12. Rising aircraft sustainment costs, extensive flight training requirements and limited
18 military budgets inspired military acquisition of the C-130J flight simulators, which are designed
19 to provide realistic training at a fraction of the cost of actual aircraft flight operations.

20 13. Flight simulators have been installed or programmed for installation at all C-130J
21 mobility air bases to meet current and future training demands. Based on currently scheduled
22 installation dates, in 2022, Channel Islands ANGB will be the only remaining C-130J base in the
23 Mobility Air Forces without a flight simulator.

24 14. The C-130J flight simulator is designed to provide the majority of all initial, mission,
25 continuation and upgrade C-130J training. Command training managers estimate that on site
26 simulators account for approximately 40% of all training requirements previously conducted in
27 the aircraft alone. This reduced training demand on the aircraft has resulted in increased
28 availability for required maintenance and operational missions.

1
2 15. During the FY2019 budgeting cycle, after undergoing the lengthy process to evaluate
3 and prioritize proposed military construction projects, Congress appropriated \$8,000,000 for the
4 purpose of constructing a facility at the Channel Islands ANGB to house a C-130J flight simulator,
5 which was secured by the U.S. Air Force's Air Mobility Command at a cost of
6 \$29,000,000. Initial efforts by California ANG to secure the simulator began over ten years ago.

7 16. The California ANG anticipates delivery of the C-130J flight simulator at the
8 Channel Islands ANGB in March 2022. However, the Channel Islands ANGB cannot receive a
9 fully functional simulator unless and until the simulator facility is constructed.

10 17. Access to the flight simulator at the Channel Islands ANGB is essential because it
11 would provide the 146th Airlift Wing's flight crews with realistic flight training opportunities
12 without the expense or risks associated with flight training in the aircraft. In fact, the simulator
13 was specifically designed to provide the most realistic training simulation of all critical mission
14 sets for two California C-130J units. It is fully reconfigurable to support both the tactical airlift
15 mission of the 146th Airlift Wing at Channel Islands Air National Guard Station, as well as the
16 aerial refueling mission of the 129th Rescue Wing at Moffett Field in Sunnyvale, California. It is
17 also scheduled to be modified in 2024, to network with other flight simulators around the world
18 allowing aircrew at Channel Islands ANGB to participate in large, complex integrated training
19 scenarios and exercises without ever leaving home station. It can also be used to train aircrew
20 whenever new software modifications are employed on the aircraft.

21 18. Finally, the flight simulator at the Channel Islands ANGB would include an enhanced
22 software suite that simulates aerial firefighting, one of California's most critical domestic threats.
23 This training capability is significant because, as noted, the firefighting mission is extremely
24 challenging and the threat of large wild fires remains high. The flight simulator would enable the
25 California ANG to provide its C-130J flight crews with firefighting-specific training in
26 circumstances that simulate these dangerous conditions. Importantly, the California ANG would
27 be able to augment its annual week-long aerial firefighting training program, greatly enhancing
28 mission proficiency and thereby improving the California ANG's ability to safely and effectively
respond to wildfire threats.

1
2 19. With the availability of higher-paying commercial aviation jobs, it is becoming
3 increasingly difficult for the California ANG to retain aircrew with the requisite experience
4 necessary to participate safely in its firefighting mission. The availability of enhanced aerial
5 firefighting training in a flight simulator is particularly important to the California ANG because
6 it would allow the 146th Airlift Wing to introduce aerial firefighting training to all of its air crews,
7 regardless of experience, in a safe, efficient and effective manner. With additional training
8 opportunities made possible through the use of a flight simulator, it would also accelerate the
9 development of crews with less firefighting experience, which helps offset the loss of experienced
10 aerial firefighters leaving the organization for careers with commercial airlines.

11 20. Recently, the California Military Department was advised that \$8,000,000 in funds to
12 construct a C-130J Simulator Facility at the Channel Islands ANGB were being diverted to other
13 executive branch projects.

14 21. Over the past several years, large, rapidly-moving wildfires have become increasingly
15 common in California. Aircraft equipped with firefighting systems, such as the C-130J equipped
16 with the MAFFS, have proven to be essential tools in protecting Californians and their
17 communities by slowing the spread of these massive wildfires. Use of aerial firefighting tools aid
18 firefighters on the ground attempting to contain these fires and often give citizens needed time to
19 escape dangerous areas. Aerial firefighting has saved lives and property.

20 22. The additional simulator training was intended to ensure mission preparedness and
21 minimize the costs and risks associated with the robust flight training requirements associated
22 with the tactical combat airlift mission. The availability of a C-130J flight simulator at the
23 Channel Islands ANGB would have permitted the California ANG to provide its aircrews with
24 more combat mission training and more training specific to firefighting missions throughout the
25 year.

26 23. As a consequence of the decision to defund the project to construct the facility that is
27 needed to house the C-130J flight simulator, the California ANG's C-130J flight crews will not
28 receive the intended benefits of the additional simulator training throughout the year and the 146th

1 Airlift Wing's flight crews will receive less training in aerial firefighting than they would have
2 following receipt of the simulator.

3 24. Also, because the availability of flight simulator training would have offset the loss
4 of experienced aerial firefighters to the commercial airlines, the defunding of the flight simulator
5 facility would also make it more difficult for the 146th Airlift Wing to maintain its current level
6 of aerial firefighting experience potentially impacting its ability to meet increasing mission
7 demands.

8 25. Accordingly, the defunding of this project will have significant negative impacts on
9 the Channel Island ANGB's operations, placing at risk the California ANG's ability to maintain
10 its current level of effectiveness in responding to the growing threat of California wildfires and
11 causing a potential increased risk to public health and safety of Californians and their
12 communities.

13 I declare under penalty of perjury that the foregoing is true and correct and that this
14 declaration was executed on October 10, 2019, in Port Hueneme, California.

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17 WILLIAM C. GREEN, Jr., Colonel CA ANG
18 Director of Operations
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EXHIBIT 8

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UNITED STATES DISTRICT COURT
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

BRIEF OF IRAQ AND AFGHANISTAN
VETERANS OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

Summary Judgment Hearing: Nov. 20, 2019
Time: 10:00 a.m.

INTEREST OF AMICUS CURIAE

Iraq and Afghanistan Veterans of America (“IAVA”) submits this brief as *amicus curiae* on behalf of Plaintiffs. IAVA is the leading non-profit devoted to the interests of the post-9/11 generation of veterans, with 425,000 members comprising mostly veterans of the wars in Iraq and Afghanistan, including service members still on active duty. IAVA’s membership also includes active-duty service members, military spouses and dependents, and veterans who served domestically or during other conflicts.

IAVA’s membership is diverse and represents the full spectrum of political persuasions. IAVA will not opine about the merits of the national policy to build a border wall, the existence of a national emergency, or the constitutionality of the President’s declaration. IAVA instead writes to provide its unique perspective on the impact of the President’s decision to divert funding from much-needed military construction projects. This diversion of funds to build a border wall exacerbates a longstanding military construction budget crunch, with profound consequences for military service members and families. It endangers the wellbeing of currently serving military members and their families and diminishes their quality of life. For that reason, IAVA opposes the diversion of military construction funding to the border wall.

FACTUAL BACKGROUND

Military construction is funded through a painstaking, time-consuming process. By statute, no funds may be appropriated for military construction unless “specifically authorized by law.” 10 U.S.C. § 114(a)(6). The process of seeking such authorization starts on the ground, with engineering staff evaluating the need for new or rehabilitated facilities.¹ Identified construction needs in each military branch then pass through a multilayered chain of evaluation and prioritization before being submitted to the Office of the Secretary of Defense, which further narrows the projects for which funding will be requested.² Legislation for construction project appropriation is then considered by congressional

¹ Lynn M. Williams, Cong. Research Serv., *Military Construction: Process, Outcomes, and Frequently Asked Questions* 5-6 (May 16, 2018), <https://fas.org/sgp/crs/natsec/R44710.pdf>.

² See *id.* at 6-11.

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committees and subcommittees before it reaches a vote by Congress.³ Even for the highest-priority projects, it can take “three or more years” before an identified need makes it into a budget request, and years longer for “congressional authorization and appropriations, implementation of the federal contracting process, and the physical construction of the project.”⁴

The perpetual problem of underfunded military construction has been exacerbated by the Budget Control Act of 2011, which passed to avert a government shutdown and has been amended in response to subsequent budget impasses. That Act places spending limits on defense discretionary budget authority.⁵ Military construction funding is being depleted year after year to meet those spending caps. As a result, the living and working conditions of service members and their families have already “been neglected in favor of other priorities,” and “many construction projects are long overdue.”⁶ Indeed, as recently as last June, the Director of the White House’s Office of Management and Budget complained that the Senate Appropriations Committee’s proposal would not “fully fund[] military construction projects” and would thus “delay[] critical resources to complete high-priority budgets . . . put[ting] the burden on future budgets to make up the difference.”⁷

In early 2019, when President Trump declared a national emergency and signaled his intention to divert military construction funding to fund a border wall, IAVA grew concerned about the potential impacts on military servicemembers, veterans, and their families.⁸ Those concerns became reality when, on September 4, 2019, the Pentagon released a list of military construction projects that are being

³ See *id.* at 11.

⁴ *Id.* at 1.

⁵ See generally Budget Control Act of 2011 (as amended), P.L. No. 112-25, P.L. No. 112-240, P.L. No. 113-67, P.L. No. 114-74, P.L. No. 115-123, & P.L. No. 116-37.

⁶ Aaron Gregg & Erica Werner, *Pentagon Has Warned of Dire Outcomes If Military Projects Canceled for Wall Don’t Happen*, Washington Post (Sept. 18, 2019), https://www.washingtonpost.com/business/economy/pentagon-has-warned-of-dire-outcomes-if-military-projects-canceled-for-wall-dont-happen/2019/09/18/03e99ac6-d988-11e9-ac63-3016711543fe_story.html.

⁷ Letter from Mick Mulvaney, Director of the Office of Management and Budget, to Sen. Richard Shelby 2 (June 18, 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/06/Shelby-MilCon.pdf>.

⁸ See generally Brief of Iraq and Afghanistan Veterans of America as *Amicus Curiae*, *El Paso County v. Donald J. Trump*, No. 3:19-cv-66-DB (W.D. Tex. filed May 3, 2019), ECF 61-1.

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deferred so that \$3.6 billion in funding can be diverted to the border wall.⁹ As discussed below, each of these projects would improve safety, quality of life, or work environment for military service members and their families—improvements that will not be made if the Administration’s diversion of funds is permitted to proceed.

ARGUMENT

Putting aside the wisdom of the Administration’s policies at the Southern border, these decisions must not come at the expense of U.S. service members or their families. The Department of Defense is reprogramming funding that was intended to keep military service members and their families safe—both at home and abroad—and to improve the quality of their lives. Our American heroes, who have already sacrificed so much, should not bear these costs of the political dispute over building the wall.

I. DIVERTING DEFENSE FUNDS TO THE BORDER THREATENS THE SAFETY OF SERVICE MEMBERS AND DIMINISHES THEIR QUALITY OF WORK LIFE

Even the limited publicly available information shows that the Administration’s planned funding diversions places service members in harm’s way. These consequences begin at home, where service members at U.S. military bases keep the world’s greatest fighting force ready to face an array of complex threats. The Administration’s proposal diverts much-needed funds to address outdated and unsafe conditions at critical sites. The following are just a few examples of deferred military construction that will make service members stationed in the United States less safe:

- ***Unsafe weapons construction and maintenance.*** Soldiers at an ammunition plant in Indiana currently work in violation of Army safety standards while handling and storing explosives. The \$16 million required to revamp the rail holding area, allowing for safer storage of munitions, has been diverted to the border wall. Similarly, without needed maintenance for weapons facilities in Alabama, troops there continue to face an increased risk of accidents due to what the Pentagon has deemed “unnecessary movement of artillery pieces.”¹⁰

⁹ Claudia Grisales, *These are the Military Projects Losing Funding to Trump’s Border Wall*, National Public Radio (Sept. 4, 2019), <https://www.npr.org/2019/09/04/757463817/these-are-the-11-border-projects-getting-funds-intended-for-military-construction>.

¹⁰ Gregg & Werner, *supra* note 6.

- 1 • ***Dangerously outdated vehicle and aircraft facilities.*** Diverted funding also means
2 cancellation of construction projects for maintenance buildings at Fort Huachuca in Arizona
3 that date as far back as the 1930s. The current facilities do not meet Army standards for
4 military vehicle testing and maintenance, requiring service members to work in “unsafe”
5 facilities that “jeopardize personnel health, security and safety.” In New Orleans, diversion
6 of funding to the border wall delays replacement of an aircraft parking ramp abutting a public
7 roadway. Service members and even civilians passing by the military base currently face
8 what the Air Force has called an “unacceptable risk” of harm from an explosive accident.
9 Similarly delayed are proposed repairs to sinking concrete parking slabs inside aircraft
10 shelters, which are causing pipes and electrical wiring to pull loose and increasing the risk of
11 fires and explosions.¹¹
- 12 • ***Displaced facilities for specialized training.*** Another casualty is a \$37 million specialized
13 Air Force facility in Maryland for unloading hazardous cargo and a range for bomb-defusing
14 training—which has been deferred, even though it was made necessary by the relocation of
15 an aircraft hangar to hold President Trump’s new, bigger Air Force One plane.
- 16 • ***Inadequate aviation facilities.*** New Mexico’s Holloman Air Force Base has halted plans for
17 a new training facility for drone pilots, whose existing facility suffers from sink holes and a
18 bat infestation. Without repair, that facility also cannot be operated at the classified level, so
19 that trainees cannot use safety systems designed to prevent aircraft from crashing into each
20 other and to alert pilots about the location of ground-based personnel. The Hill Air Force
21 Base in Utah has similarly been deprived of the \$28 million required to build a new control
22 center designed to replace two “dilapidated WWII-era” warehouses, one used for air traffic
23 control and one for mission control. Those warehouses have been labeled “structurally
24 deficient,” due in part to “roof leaks from failing asbestos panel roof systems.”¹²
- 25 • ***Service members will be denied basic living necessities and emergency services.*** For
26 instance, the Air Force needs \$41 million to replace a failing central heat power plant boiler

27 ¹¹ *Id.*

28 ¹² *Id.*

at Eielson Air Force Base in Alaska, where winter temperatures reach 65 degrees below zero. And at the Marine Corps Air Station Beaufort in South Carolina, diverted funds would have been used to build a satellite fire station—without which, the Pentagon warns, “personnel . . . will continue to work from a significantly undersized and unsafe facility.”¹³

Service members overseas will also be affected by the deferral of numerous projects that would have significantly improved their safety and well-being:

- ***A special operations joint parachute-rigging facility in Baumholder, Germany.*** Parachute-rigging is among the most important jobs for keeping special operators safe, but the current facilities in Germany are “substandard, severely undersized[,] and poorly configured.”¹⁴ The planned diversion delays the construction of a new anti-terrorism/force protection compliant facility to support the operations, training, and deployment of forces.¹⁵
- ***Two special operations maintenance hangars in Okinawa, Japan and two operations and warehouse facilities in Honshu, Japan.*** Dilapidated and abandoned infrastructure is evident on all too many bases in Japan, where decades-old buildings await funding for improvements. These include warehouses, hangars, and other facilities at the Kadena and Yokota Air Bases, which are critical for the day-to-day work that keeps the military ready to fight.¹⁶
- ***Munitions structures and truck unload facilities in Japan.*** Working with munitions and unloading truck cargo are among the more dangerous non-combat jobs performed in the military. Kadena Air Base, the largest and most active U.S. Air Force base in East and Southeast Asia, requires replacement munitions structures, and its truck unloading facilities currently fail to meet resiliency standards. These deficiencies, which would be addressed

¹³ *Id.* (ellipsis in original).

¹⁴ Dep’t of Defense, *Fiscal Year (FY) 2019 Budget Estimates* 201 (Feb. 2018), https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2019/budget_justification/pdfs/07_Military_Construction/21-Military_Construction_Defense-Wide_Consolidated.pdf.

¹⁵ *Id.* at 200.

¹⁶ Grisales, *supra* note 9.

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absent the planned funding diversions, lessen the base's capability to provide adequate support to regional flying missions.¹⁷

- ***Working dog treatment facility replacement in Guantanamo Bay.*** Working dogs are an essential part of the mission in Guantanamo, including for detecting and locating weapons and explosives and conducting searches. The dogs, moreover, become like family to their service-member handlers. The treatment facility is necessary not only to ensure that working dogs receive proper veterinary and surgical care, including for dogs suffering from combat wounds and post-traumatic stress, but also for the prevention of zoonotic disease.¹⁸

All of these projects would have significantly improved the safety of our service members. They also would have had the important added benefit of providing the military with a work environment that is worthy of their service. Any working professional can appreciate the improvement to effectiveness and morale that results from improved working conditions. The Administration's proposed funding diversions would force the U.S. military to do without those improvements.

II. DIVERTING DEFENSE FUNDS TO THE BORDER WALL ENDANGERS THE WELL-BEING OF SERVICE MEMBERS' FAMILIES

The disastrous consequences of deferring military construction in favor of the border wall do not end there—the planned funding diversions would also harm the health and welfare of service members' families. Service members and their families, already asked to sacrifice for the good of their country on a daily basis, would be forced to continue doing so with substandard healthcare. And their children, who often share those sacrifices as they follow their parents to military bases both here and abroad, would not get the help they need to ensure the schools they attend are safe and effective.

For example, the list of projects to be deferred includes an ambulatory care facility at Camp Lejeune, North Carolina, that would have helped address the problem of medical and dental care “provided in ‘substandard, inefficient, decentralized and uncontrolled facilities.’”¹⁹ Those facilities—

¹⁷ *Id.* at 67.

¹⁸ *Id.* at 7.

¹⁹ Gregg & Werner, *supra* note 6.

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1 already suffering from storm damage in the aftermath of 2018's hurricane season—serve not just
2 military service members, but others entitled to healthcare in the military system, including military
3 families. According to the Pentagon itself, not funding the Camp Lejeune project “will result in
4 compromised readiness, uncoordinated care delivery, and inappropriate use of medical resources.”²⁰

5 There are also two dining facilities on the list of canceled projects: one in Puerto Rico and
6 another in San Antonio.²¹ Without access to dining facilities on base, service members often only have
7 access to fast food, leaving them with few if any healthy and affordable options.

8 Worse still, the list of canceled projects includes *nine different schools*, including a
9 daycare/preschool in Maryland, three elementary schools in Germany, one elementary school in the
10 United States, one elementary school in Japan, an elementary/middle/high school in the United
11 Kingdom, a middle school in Kentucky, and a high school in Japan. These schools all suffer from
12 varied states of disrepair and overcrowding. The current middle school at Joint Base Andrews in
13 Maryland, which has a waitlist of 115 children, suffers from mold and pest infestations as well as
14 sewage backups and heating and ventilation failures.²² The middle school at Fort Campbell in Kentucky
15 is not only undersized and inadequate to serve the current student population, but also suffers from leaks
16 and a broken heating system in certain classrooms.²³ And Bechtel Elementary School in Germany,
17 described as “in failing condition,” does not meet U.S. fire suppression standards and needs extensive
18 infrastructure work ranging from electrical branch circuits to lighting to plumbing and piping.²⁴ Each of
19 these construction projects would help military families, especially those stationed overseas in areas
20 where local schools might not cater to English speakers or an American teaching style.

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23 ²⁰ *Id.*

24 ²¹ Grisales, *supra* note 9.

25 ²² *Id.*

26 ²³ *Id.*; see also Helene Cooper, *No New School at Fort Campbell: The Money Went to Trump's*
27 *Border Wall*, The New York Times (Sept. 5, 2019), <https://www.nytimes.com/2019/09/05/us/trump-border-wall-military-families.html?auth=login-email&login=email>.

28 ²⁴ *Fiscal Year (FY) 2019 Budget Estimates*, *supra* note 14, at 92-93.

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1 **III. CANCELTATION OF THIS FUNDING WILL TRICKLE DOWN: FUTURE REQUIRED**
2 **MILITARY CONSTRUCTION MUST NOW BE DELAYED IN FAVOR OF**
3 **RESURRECTING THESE PROJECTS**

4 In order for service members and their families to be made whole, the President's diversion of
5 funding should be cancelled, and these projects reinstated. Even if Congress decides to fund these
6 projects again in later years, that would lead to the deferral of other high-priority military construction
7 even further down the line.²⁵ A quick restoration of funding by this Court would allow the Department
8 of Defense to get this much-needed military construction back on track.

9 Service members are used to discomfort. They signed up to endure hardships so that the rest of
10 American society could live freely and comfortably. And they are used to seeing dilapidated buildings
11 and living and working in substandard conditions. But they should never be asked to work in
12 unnecessarily unsafe or harmful conditions, or to wait even longer for basic facilities that are already
13 long overdue. That is the result of the funding diversions, and this Court should bear that result in mind
14 as it considers the issues before it.

15 **CONCLUSION**

16 This Court's decision will have an outsized impact on the lives of military service members and
17 their families. Those men and women, who swear an oath to support and defend the Constitution of the
18 United States dutifully execute all lawful orders, even when they are asked to put themselves in harm's
19 way. But they should not needlessly be placed in harm's way, nor should their quality of life be
20 unnecessarily impacted, through the deferral of already-stretched military construction budgets in favor
21 of an unrelated political policy. For these reasons, IAVA respectfully asks this Court to take heed of the
22 impacts on military service members and their families as it considers Plaintiffs' motion for summary
23 judgment.

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27 ²⁵ See Williams, *supra* note 1, at 17 ("A newly identified requirement may be assessed as having
28 a higher priority than projects already in the planning process. Therefore, some construction, while
worthy, may be deferred to later years.").

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Respectfully submitted,

2 IRAQ AND AFGHANISTAN VETERANS OF
3 AMERICA

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