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www.afgazad.com

afgazad@gmail.com

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By Patrick Martin
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Pentagon begins second phase of diverting funds to Trump's border wall

Secretary of Defense Mark Esper announced Tuesday he had approved the diversion of funds from as many as 127 military projects to fund the construction of parts of the wall on the US-Mexico border demanded by President Trump.

Esper formally notified both the Senate and the House of Representatives that the Pentagon was shifting funds appropriated by Congress for other purposes and using them to fund a project that Congress has refused to support. The action is in direct defiance of the US Constitution, which forbids the expenditure of funds except as directed by Congress, the branch of government that holds the “power of the purse.”

During his 2016 election campaign, Trump had demagogically promised audiences at his campaign rallies that Mexico would pay for the wall, a pledge that was never taken seriously by his inner circle and which the Mexican government flatly rebuffed.



Soldiers secure concertina wire to the existing border fence near the World Trade International Bridge in Laredo, Texas, April 11, 2019. (Sgt. Andrew S. Valles/Army)

Trump was unable to obtain funding for the wall from a Republican-controlled Congress during his first two years, but after Democrats won control of the House in 2018, he tried to force through funding for the wall with an unprecedented 35-day federal shutdown.

The Democrats claimed that Trump had backed down by agreeing to an end to the shutdown, only to have the president issue an executive order declaring a national emergency on the US-Mexico border and directing the Treasury and the Department of Defense to shift \$6.7 billion in funds already appropriated by Congress to pay for the building of the wall.

After Congress passed a resolution of disapproval of the declaration of a national emergency, Trump vetoed it, and the Democratic-controlled House could not muster a two-thirds majority to overturn it.

No one in the Democratic congressional leadership suggested that Trump's open defiance of the Constitution was an impeachable offense. On the contrary, they warned that a future Democratic president might imitate Trump's rule by decree, using the same executive powers to impose measures related to gun control or climate change without congressional consent.

Rather than move immediately to impeachment, which would clearly have been warranted, the House Democrats joined in filing a series of lawsuits with state and local governments, civil rights and civil liberties groups, and property owners whose land would be seized for building the wall.

The Treasury and Pentagon acted first to repurpose \$600 million in asset forfeitures by drug dealers and \$2.5 billion from Defense Department counter-drug activities, because these were at least tangentially related to the US-Mexico border and provided a more plausible legal argument for the administration in the courts.

A lawsuit against the initial combined \$3.1 billion in spending, brought by the American Civil Liberties Union, the Sierra Club and the Southern Border Communities Coalition, resulted in a federal district court issuing an order to halt construction of the wall until a full argument on the merits could be held.

The Ninth Circuit Court of Appeals refused to overturn this stay, but the US Supreme Court, by a 6–3 vote, lifted the injunction in late July, allowing the Trump administration to begin construction while the litigation continues. The first \$3.1 billion in contracts were immediately issued, but the work undertaken so far has been limited to strengthening barriers where they already exist.

The next stage in Trump’s end run around Congress is to shift another \$3.6 billion appropriated for the Pentagon to the building of the wall. These funds are being taken from military construction projects both abroad and at home, so there is no question of any similarity in purpose, the argument used to justify the use of the drug-interdiction funds.

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Here Trump’s defiance of the Constitution and its reservation of spending power to Congress is direct and flagrant, but no legal challenge could begin until the Pentagon designated which projects would be deferred or delayed and actually began to transfer the funds. An initial list of hundreds of projects totaling \$12.9 billion was prepared in the spring, but this has been whittled down in the course of intensive lobbying by both Democrats and Republicans in Congress, all seeking to preserve the flow of funds to military projects in their districts.

The Democratic response to Esper’s order has been to attack Trump from the right, accusing him of weakening the military by shifting Pentagon funds to building the wall. House Speaker Nancy Pelosi issued a statement Tuesday evening saying, “The Administration’s irresponsible decision to transfer funds from appropriated U.S. military construction makes America less safe and dishonors the Constitution.”

In a conference call to the Democratic caucus, Pelosi said, “My view of it is that stealing money from military construction, at home and abroad, will undermine our national

security, quality of life and morale of our troops, and that indeed makes America less safe.”

Senate Minority Leader Chuck Schumer cited the cutoff of funds for a construction project at the US Military Academy at West Point, calling it “a slap in the face to the members of the armed forces who serve our country that President Trump is willing to cannibalize already allocated military funding to boost his own ego and for a wall he promised Mexico would pay to build.”

Representative Debbie Wasserman Schultz, who heads an Appropriations subcommittee on military construction, declared, “President Trump is about to weaken our national security by stealing billions of dollars from our military, including training and intelligence funds from our soldiers ... I reminded his Administration today that I will not support this theft from our military.”

Senator Jack Reed, the senior Democrat on the Senate Armed Services Committee, condemned Trump for “misusing defense dollars in this manner.” In a statement, he wrote, “Clearly, this administration is trying to circumvent Congressional authority and this ill-advised attempt should be legally challenged and struck down by the courts.”

It is notable that even when a Democrat, like Senator Reed, raises the question of the constitutionality of Trump’s action, there is no suggestion that the president has committed an offense for which he should be impeached. Above all else, the Democrats want to insure that any opposition to Trump’s trampling on the Constitution should be limited to the courts, to avoid any broader involvement of the American population, which would threaten to escape the control of the ruling elite.

The details of which projects are to be deferred have not yet been made public, although each congressman and senator has been informed of the impact on their district. According to press reports, perhaps the greatest impact could be felt in Puerto Rico, which accounts for 80 percent of the Army National Guard construction funding on the initial list drawn up by the Pentagon.

This would continue the pattern already demonstrated by the Department of Homeland Security shifting \$155 million in funds from disaster relief—including ongoing recovery efforts in Puerto Rico from the effects of Hurricane Maria—to pay for more widespread and longer detentions of immigrants and refugees at the US-Mexico border.

The author also recommends: 5 September 2019