

## **The Restrictions Against Illegitimate Declarations for Emergency Re-appropriations Act of 2019 (RAIDER Act of 2019)**

***President Donald Trump (2/1/2019): "I think there's a good chance we will have to do that" said of a national emergency declaration that would potentially bypass Congress to fund his wall.***

**The National Emergencies Act** The statute states that the President is “authorized to declare such national emergency” and that the President must specify “the provisions of law under which he proposes that he, or other officers will act.”<sup>1</sup> However, short of a requirement that the President specify provisions of law, there is no language within the statute itself that either defines or restricts the President’s ability to declare the emergency. Specifically, the statute states:

- 50 USC 1621(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency,...

A declaration could then trigger authorities allowing the President to effectively raid accounts Congress appropriated for Military Construction (MilCon), U.S. Army Corps of Engineers (USACE), and possibly other accounts. This authority has only been used in limited circumstances, for overseas military bases in conflict areas.

**The RAIDER Act stops the President’s possibly unlawful use of the National Emergencies Act to build his wall:** This legislation would bar the transfer of any funding from USACE or MilCon accounts to acquire land and construct President Trump’s border wall following any potential emergency declaration, unless specifically authorized by Congress. It does not amend or otherwise alter underlying authority of the National Emergencies Act or Presidential authority.

**Any declaration of a national emergency is not based in reality:** The undocumented population in 2016 was lower than any time since 2004. Since the early 2000s, southern border apprehensions have dropped 81 percent, and the total for fiscal year 2017 was the lowest since 1971. Meanwhile 80-90% of dangerous drug interdictions occur at ports of entry. The significant increasing trend is that of families seeking asylum at the southern border, not new national security threats necessitating an emergency.

**Accounts Threatened by the raid on Congressional Appropriations:** President Trump is threatening to take funds from critical disaster recovery, flood protection, and military construction projects in states across the country. Around \$35 billion in funding through FY 2018 is subject to raiding.

- *Military Construction:* Approximately \$12 billion in unobligated accounts for base projects that have been budgeted and appropriated through FY 2018 but not yet begun. Recent FY2019 MilCon appropriations mean the true total is even higher.
- *United States Army Corps of Engineers—Civil Works:* Up to \$23 billion in unobligated projects across the United States at the end of FY 2018 in the construction account alone, but the USACE money that could be raided to build the wall is not limited to unobligated funds. The amount from the USACE account could be well beyond \$37.7 billion if the Secretary of the Army terminates or defers projects where money has been obligated.

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<sup>1</sup> 50 USC 1631