



Insight

Key Elements of Trump's Declaration of a National Emergency

GORDON GRAY | FEBRUARY 15, 2019

President Trump has taken the extraordinary step of invoking statutory war powers to deploy troops and build barriers at the southern U.S. border. The president invoked authorities established under the [National Emergencies Act](#), which “lives” in Title 50 of the U.S. Code and is the body of U.S. law governing war and national defense. Essentially, the National Emergencies Act gives the president extraordinary authorities to carry out certain functions principally related to national defense matters. Those specific authorities are littered throughout U.S. law, and the National Emergencies Act is essentially the “on” switch for those presidential powers.

The Act requires that the president specifically cite the authorities invoked under a given emergency. In this instance, the president has invoked his authority to [call up and deploy](#) members of the military's Ready Reserves, seize private lands (which is within the federal government ordinary authority), and [repurpose military construction](#) funding, all in furtherance of mitigating a declared “emergency concerning the southern border of the United States.”

Of particular interest to many observers is the president's invocation of 10 U.S.C. 2808, which provides for “Construction authority in the event of a declaration of war or national emergency.” Essentially, the president can redirect funding provided by Congress for military projects to build walls and barriers on the southern border. The relevant statutory language is provided below in full:[\[1\]](#)

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

(b) When a decision is made to undertake [military construction](#) projects authorized by this section, the Secretary of Defense shall notify, in an electronic medium pursuant to [section 480 of this title](#), the [appropriate committees of Congress](#) of the decision and of the estimated [cost](#) of the [construction](#) projects, including the [cost](#) of any real estate action pertaining to those [construction](#) projects.

(c) The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added [Pub. L. 97–214](#), §2(a), July 12, 1982, [96 Stat. 157](#); amended [Pub. L. 115–91](#), div. B, title XXVIII

, §2801(a)(6), Dec. 12, 2017, 131 Stat. 1841.)

Essentially, the president has militarized his southern border policy, and federal law provides the president with unique authorities over military matters. According to the White House, this authority will allow the president to repurpose \$3.6 billion of funding provided by Congress for Military Construction (MilCon) projects. For context, this sum would constitute over one-third of the \$10.3 billion MilCon funding enacted for FY2019.

At least 16 states have filed suit in federal court to contest the legality of the president's course of action.

[1] <https://www.law.cornell.edu/uscode/text/10/2808>