

# **EXHIBIT 2**

### THIRD DECLARATION OF KENNETH P. RAPUANO

I, KENNETH P. RAPUANO, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)). Among other duties, which are generally reflected in Department of Defense (DoD) Directive 5111.13, I am responsible for developing, coordinating, and overseeing implementation of DoD policy for plans and activities related to defense support of civil authorities. On April 5, 2018, the Secretary of Defense designated the ASD(HD&GS) to manage the then-newly established DoD Border Security Support Cell. The DoD Border Security Support Cell is the focal point and integrator for all requests for assistance, taskings, and information related to DoD support pursuant to the President's April 4, 2018, memo, "Securing the Southern Border of the United States."

2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

#### 10 U.S.C. § 284(b)(7)

3. To date, the Acting Secretary of Defense has authorized \$2.5 billion in border barrier construction support to DHS under 10 U.S.C. § 284(b)(7). The Acting Secretary of Defense does not intend, and is not currently planning, to provide additional border barrier construction support to DHS under § 284(b)(7) during the next six months.

4. In paragraph 8 of my second declaration, I stated that the Under Secretary of Defense (Comptroller)/Chief Financial Officer initiated the reprogramming to transfer funds on May 10, 2019. The reprogramming actions that initiated the transfer actually occurred on May 9, 2019. See Exhibit A, attached hereto which is an updated and signed version of the transfer notice that was provided to Congress on May 10, 2019. This exhibit replaces Exhibit C to my second declaration dated May 13, 2019.

5. On May 6, 2019, the Chairman of the Joints Chiefs of Staff submitted an assessment to the Acting Secretary of Defense addressing whether and how military construction projects could support the use of the armed forces in addressing the national emergency at the southern border. This internal assessment provides the Acting Secretary of Defense with information and recommendations about specific border barrier construction projects identified by the Department of Homeland Security. The Chairman's assessment analyzes various factors and is intended to inform the Acting Secretary's determination whether specific barrier construction projects are necessary to support the use of the armed forces and which specific projects to undertake. The Acting Secretary of Defense has taken no action on the assessment and has not yet decided to undertake or authorize any barrier construction projects under section 2808.

6. On May 6, 2019, the Under Secretary of Defense (Comptroller)/Chief Financial Officer identified existing unawarded military construction projects of sufficient value to provide up to \$3.6 billion of funding for potential border barrier construction pursuant to section 2808. The

Comptroller reviewed the pool of current unawarded military construction projects with award dates after September 30, 2019. As directed by the Acting Secretary of Defense, the Comptroller excluded from consideration military housing, barracks, or dormitory projects, as well as military construction projects that already have been awarded. The Acting Secretary of Defense has taken no action on this information and has not yet decided to undertake or authorize any barrier construction projects under section 2808

7. The Acting Secretary of Defense is not expected to make a decision regarding any projects under section 2808 prior to May 22, 2019.

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I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 15, 2019

  
KENNETH P. RAPUANO

# **EXHIBIT A**

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-02 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)						
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i

This reprogramming action is submitted because these actions use general and special transfer authority. This reprogramming action provides funding in support of higher priority items, based on unforeseen military requirements, than those for which originally appropriated; and is determined to be necessary in the national interest. It meets all administrative and legal requirements, and none of the items has previously been denied by the Congress.

**Part I** of this reprogramming action transfers \$818.465 million between Fiscal Year (FY) 2019 Defense appropriations. This reprogramming action uses \$818.465 million of general transfer authority pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

**Part II** of this reprogramming action transfers \$681.535 million between FY 2019 Title IX, Overseas Contingency Operations (OCO) Defense appropriations. This reprogramming action uses \$681.535 million of special transfer authority pursuant to section 9002 of Title IX, OCO, of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019 and section 1512 of Public Law 115-232, the John S. McCain National Defense Authorization Act for FY 2019.

### PART I

**FY 2019 REPROGRAMMING INCREASE:** **+818,465**

**Drug Interdiction and Counter-Drug Activities, Defense, 19/19** **+818,465**

**Budget Activity 01: Counter-Narcotics Support**

238,306	238,306	+818,465	1,056,771
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**Explanation:** Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S. Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

Approved (Signature and Date)

*Elaine McCusker*

*5/9/19*

<b>Subject:</b> Support for DHS Counter-Drug Activity Reprogramming Action						<b>DoD Serial Number:</b> FY 19-02 RA		
<b>Appropriation Title:</b> Various Appropriations						<b>Includes Transfer?</b> Yes		
<b>Component Serial Number:</b>	<i>(Amounts in Thousands of Dollars)</i>							
	<b>Program Base Reflecting Congressional Action</b>		<b>Program Previously Approved by Sec Def</b>		<b>Reprogramming Action</b>		<b>Revised Program</b>	
<b>Line Item</b>	<b>Quantity</b>	<b>Amount</b>	<b>Quantity</b>	<b>Amount</b>	<b>Quantity</b>	<b>Amount</b>	<b>Quantity</b>	<b>Amount</b>
<b>a</b>	<b>b</b>	<b>c</b>	<b>d</b>	<b>e</b>	<b>f</b>	<b>g</b>	<b>h</b>	<b>i</b>
<b><u>FY 2019 REPROGRAMMING DECREASES:</u></b>						<b><u>-818,465</u></b>		
<b><u>ARMY DECREASES</u></b>						<b><u>-35,959</u></b>		
<b><u>Reserve Personnel, Army, 19/19</u></b>						<b><u>-10,599</u></b>		
<b><u>Budget Activity 01: Reserve Component Training and Support</u></b>								
	4,873,661		4,873,661		-10,599		4,863,062	
<b><u>Explanation:</u></b> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.018 million) and Continuation Pay (CP) (\$-5.581 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<b><u>National Guard Personnel, Army, 19/19</u></b>						<b><u>-25,360</u></b>		
<b><u>Budget Activity 01: Reserve Component Training and Support</u></b>								
	8,980,394		8,980,394		-25,360		8,955,034	
<b><u>Explanation:</u></b> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-14.503 million) and Continuation Pay (CP) (\$-10.857 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<b><u>NAVY DECREASES</u></b>						<b><u>-129,251</u></b>		
<b><u>Military Personnel, Navy, 19/19</u></b>						<b><u>-88,503</u></b>		
<b><u>Budget Activity 01: Pay and Allowances of Officers</u></b>								
	8,840,745		8,840,745		-33,002		8,407,743	
<b><u>Explanation:</u></b> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-25.496 million) and Continuation Pay (CP) (\$-7.506 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								
<b><u>Budget Activity 02: Pay and Allowances of Enlisted</u></b>								
	19,702,868		19,702,868		-55,501		19,647,367	
<b><u>Explanation:</u></b> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-37.733.million) and Continuation Pay (CP) (\$-17.768 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.								



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	Includes Transfer? Yes

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
Line Item								
a	b	c	d	e	f	g	h	i

**Military Personnel, Marine Corps, 19/19****-36,653****Budget Activity 01: Pay and Allowances of Officers**

3,065,655

3,065,655

**-12,030**

3,053,625

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-12.030 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

**Budget Activity 02: Pay and Allowances of Enlisted**

9,517,117

9,517,117

**-24,623**

9,492,494

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-23.287 million) and Continuation Pay (CP) (\$-1.336 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

**Reserve Personnel, Navy, 19/19****-4,095****Budget Activity 01: Reserve Component Training and Support**

2,064,037

2,064,037

**-4,095**

2,059,942

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-2.923 million) and Continuation Pay (CP) (\$-1.172 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

**AIR FORCE DECREASES****-402,255****Military Personnel, Air Force, 19/19****-45,249****Budget Activity 01: Pay and Allowances of Officers**

9,773,411

9,771,327

**-45,249**

9,726,078

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-30.785 million) and Continuation Pay (CP) (\$-14.464 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.

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Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i
<b><u>Reserve Personnel, Air Force, 19/19</u></b>						<b><u>-4,835</u></b>	
Budget Activity 01: Reserve Component Training and Support							
		1,885,498		1,885,498		-4,835	1,880,663
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-4.274 million) and Continuation Pay (CP) (\$-0.561 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							
<b><u>National Guard Personnel, Air Force, 19/19</u></b>						<b><u>-8,571</u></b>	
Budget Activity 01: Reserve Component Training and Support							
		3,761,744		3,761,744		-8,571	3,753,173
<p><u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-5.220 million) and Continuation Pay (CP) (\$-3.351 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system.</p>							
<b><u>Aircraft Procurement, Air Force 19/21</u></b>						<b><u>-57,000</u></b>	
Budget Activity 05: Modification of In-service Aircraft							
E-3		116,865		116,865		-57,000	59,865
<p><u>Explanation:</u> Funds are available due to schedule delays in the Diminishing Manufacturing Sources Replacement of Avionics for Global Operations and Navigation (DRAGON) integration. DRAGON integration is delayed for two primary reasons. First, aircraft have been available for Programmed Depot Maintenance (PDM) at a slower than planned rate. Second, block 40/45 upgrades, which are still ongoing, must be completed before DRAGON integration. Therefore, funds for DRAGON integration are early to need.</p>							
<b><u>Missile Procurement, Air Force 19/21</u></b>						<b><u>-76,900</u></b>	
Budget Activity 02: Other Missiles							
Predator Hellfire Missile	3,437	288,765	3,437	288,765	-	-23,000	3,437 265,765
<p><u>Explanation:</u> Funds are available due to contract savings from all variants that provide precision kill capabilities. Savings are attributed to negotiated lower unit costs per missile system.</p>							



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a	b	c	d	e	f	g	h	i

**Budget Activity 03: Modification of In-service Missiles**

Minuteman III Modifications	124,592	124,592	-24,300	100,292
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Explanation: Funds are available due to a slip in the production schedule to FY 2020 for the Launch Control Block Upgrade program due to late design changes to the Journal Memory Loader and Printer.

Air Launch Cruise Missile (ALCM)	47,632	47,632	-29,600	18,032
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Explanation: Funds are available due to contract savings from reduced guided missile flight controller modification requirements; and due to lack of executable requirements for Support Equipment and Low Cost Mods in FY 2019.

**Space Procurement, Air Force, 19/21****-209,700****Budget Activity 01: Space Procurement, AF**

Evolved Expendable Launch Capability

659,981	659,981	-44,900	615,081
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Explanation: Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) launch capability mission integration required to launch this mission for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.

Evolved Expendable Launch Vehicle (Space)

5	954,555	5	954,555	-1	-164,800	4	789,755
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Explanation: Funds are available due to the Space Test Program (STP)-4 satellite provider termination of the Robotic Servicing of Geosynchronous Satellites (RSGS) spacecraft. There is no longer a need for the National Security Space Launch (NSSL) service for this satellite, meaning the mission has been removed from the official launch mission manifest. The next possible launch Space Vehicle host is outside the 24-month planning cycle, therefore these funds are early to need.

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a	b	c	d	e	f	g	h i
<b><u>DEFENSE-WIDE DECREASES</u></b>						<b><u>-251,000</u></b>	
<b><u>Chemical Agent and Munitions Destruction, Defense, 19/20</u></b>						<b><u>-251,000</u></b>	
<b><u>Budget Activity 02: Chem Agents -RDT&amp;E</u></b>							
		886,728		886,728		-251,000	635,728
<p><u>Explanation:</u> Funds are available due to unexecuted prior year funding plus current year appropriation that was found to be more than sufficient to cover the Assembled Chemical Weapons Alternative (ACWA) program's funding needs in FY 2019. Funds are available based on reduced projected costs in FY 2019 (to include additional destruction technologies at Blue Grass Chemical Agent-Destruction Pilot Plant (BCAPP) and at the Pueblo Chemical Agent-Destruction Pilot Plant (PCAPP). Due to cost avoidance that will be gained by shortening schedules at both sites, the ACWA program has an asset. This does not inhibit the ability to pursue efforts/technologies to accelerate the destruction of the remaining U.S. chemical weapons stockpile.</p>							

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<b>Appropriation Title:</b> Various Appropriations						<b>Includes Transfer?</b> Yes	
<b>Component Serial Number:</b>	<i>(Amounts in Thousands of Dollars)</i>						
	<b>Program Base Reflecting Congressional Action</b>		<b>Program Previously Approved by Sec Def</b>		<b>Reprogramming Action</b>		<b>Revised Program</b>
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<b>a</b>	<b>b</b>	<b>c</b>	<b>d</b>	<b>e</b>	<b>f</b>	<b>g</b>	<b>h</b>

**PART II**

**FY 2019 REPROGRAMMING INCREASE:** **+681,535**

**Drug Interdiction and Counter-Drug Activities, Defense, 19/19** **+681,535**

**Budget Activity 01: Counter-Narcotics Support**

238,306	1,056,771	+681,535	1,738,306
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**Explanation:** Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S.Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation.

**FY 2019 REPROGRAMMING DECREASES:** **-681,535**

**Afghanistan Security Forces Fund, 19/20** **-604,000**

**Budget Activity 06: Afghan National Army**

1,639,993	1,639,993	-279,000	1,360,993
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**Budget Activity 07: Afghan National Police**

726,264	726,264	-117,200	609,064
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**Budget Activity 08: Afghan Air Force**

1,728,263	1,728,263	-71,900	1,656,363
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**Budget Activity 09: Afghan Special Security Forces**

825,480	825,480	-135,900	689,580
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**Explanation:** Funds are available from the Afghanistan Security Forces Fund (ASFF) due to forward funding of Afghan National Defense and Security Forces (ANDSF) requirements in the FY 2018/2019 ASFF appropriation and from cost savings identified during a comprehensive contract management review conducted by the Commander, Combined Security Transition Command – Afghanistan (CSTC-A) from



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a		b	c	d	e	f	g	h	i

September 2018 through March 2019. The revised funding levels allow the CSTC-A to provide full support to the ANDSF sustainment, infrastructure, equipment, and training and operations requirements.

**Operation and Maintenance, Defense-Wide, 19/20**

**-77,535**

Defense Security Cooperation Agency

Budget Activity 04: Administration and Servicewide Activities

1,262,434

1,262,434

**-77,535**

1,184,899

Explanation: Funds are available from the Coalition Support Fund (CSF) due to no projected claims for reimbursements from key cooperating nations. The Department has preserved some CSF for projected Coalition Readiness Support Program requirements and Jordan border security reimbursements.