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11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 OAKLAND DIVISION

15
 16 STATE OF CALIFORNIA, et al.,
 17 *Plaintiffs,*
 18 v.
 19 DONALD J. TRUMP, in his official capacity
 as President of the United States of America,
 20 et al.,
 21 *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.

1 **INTEREST OF AMICUS CURIAE**

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

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

17 **FACTUAL BACKGROUND**

18 Military construction is funded through a painstaking, time-consuming process. By statute, no
19 funds may be appropriated for military construction unless “specifically authorized by law.” 10 U.S.C.
20 § 114(a)(6). The process of seeking such authorization starts on the ground, with engineering staff
21 evaluating the need for new or rehabilitated facilities.¹ Identified construction needs in each military
22 branch then pass through a multilayered chain of evaluation and prioritization before being submitted to
23 the Office of the Secretary of Defense, which further narrows the projects for which funding will be
24 requested.² Legislation for construction project appropriation is then considered by congressional

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26 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>.

27 ² *See id.* at 6-11.

28 (continued on next page)

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

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

15 In early 2019, when President Trump declared a national emergency and signaled his intention to
16 divert military construction funding to fund a border wall, IAVA grew concerned about the potential
17 impacts on military servicemembers, veterans, and their families.⁸ Those concerns became reality when,
18 on September 4, 2019, the Pentagon released a list of military construction projects that are being
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20 ³ See *id.* at 11.

21 ⁴ *Id.* at 1.

22 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.

23 ⁶ Aaron Gregg & Erica Werner, *Pentagon Has Warned of Dire Outcomes If Military Projects*
24 *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.

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

27 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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1 deferred so that \$3.6 billion in funding can be diverted to the border wall.⁹ As discussed below, each of
2 these projects would improve safety, quality of life, or work environment for military service members
3 and their families—improvements that will not be made if the Administration’s diversion of funds is
4 permitted to proceed.

5 **ARGUMENT**

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

11 **I. DIVERTING DEFENSE FUNDS TO THE BORDER THREATENS THE SAFETY OF** 12 **SERVICE MEMBERS AND DIMINISHES THEIR QUALITY OF WORK LIFE**

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

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

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26 ⁹ Claudia Grisales, *These are the Military Projects Losing Funding to Trump’s Border Wall*,
27 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-constructio](https://www.npr.org/2019/09/04/757463817/these-are-the-11-border-projects-getting-funds-intended-for-military-constructio).

28 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.*

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

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

- 7 • ***A special operations joint parachute-rigging facility in Baumholder, Germany.*** Parachute-
8 rigging is among the most important jobs for keeping special operators safe, but the current
9 facilities in Germany are “substandard, severely undersized[,] and poorly configured.”¹⁴ The
10 planned diversion delays the construction of a new anti-terrorism/force protection compliant
11 facility to support the operations, training, and deployment of forces.¹⁵
- 12 • ***Two special operations maintenance hangars in Okinawa, Japan and two operations and***
13 ***warehouse facilities in Honshu, Japan.*** Dilapidated and abandoned infrastructure is evident
14 on all too many bases in Japan, where decades-old buildings await funding for
15 improvements. These include warehouses, hangars, and other facilities at the Kadena and
16 Yokota Air Bases, which are critical for the day-to-day work that keeps the military ready to
17 fight.¹⁶
- 18 • ***Munitions structures and truck unload facilities in Japan.*** Working with munitions and
19 unloading truck cargo are among the more dangerous non-combat jobs performed in the
20 military. Kadena Air Base, the largest and most active U.S. Air Force base in East and
21 Southeast Asia, requires replacement munitions structures, and its truck unloading facilities
22 currently fail to meet resiliency standards. These deficiencies, which would be addressed
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24 ¹³ *Id.* (ellipsis in original).

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

27 ¹⁵ *Id.* at 200.

28 ¹⁶ Grisales, *supra* note 9.

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

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

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

14 **II. DIVERTING DEFENSE FUNDS TO THE BORDER WALL ENDANGERS THE WELL-** 15 **BEING OF SERVICE MEMBERS’ FAMILIES**

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

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

25 ¹⁷ *Id.* at 67.

26 ¹⁸ *Id.* at 7.

27 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-](https://www.nytimes.com/2019/09/05/us/trump-border-wall-military-families.html?auth=login-email&login=email)
28 [border-wall-military-families.html?auth=login-email&login=email](https://www.nytimes.com/2019/09/05/us/trump-border-wall-military-families.html?auth=login-email&login=email).

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

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1 **III. CANCELATION 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.").

1 DATED: October 21, 2019

Respectfully submitted,

2 IRAQ AND AFGHANISTAN VETERANS OF
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