

The Defense Department and 10 U.S.C. 284: Legislative Origins and Funding Questions

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Introduction

On February 15, President Donald J. Trump confirmed recent [reports](#) that described the Administration's consideration of Department of Defense (DOD) authorities and funds to emplace physical barriers along the U.S.-Mexico border. A White House [fact sheet](#) detailed the potential availability of up to \$8.1 billion "to build the border wall"—including, among other [authorities](#) and [funding sources](#), "up to \$2.5 billion under the Department of Defense funds transferred for Support for Counterdrug Activities (Title 10 United States Code, section 284)."

The full title of the referenced [authority](#) is "Support for Counterdrug Activities and Activities to Counter Transnational Organized Crime." It is one of several DOD authorities to conduct counterdrug missions. In the context of Administration priorities along the southern border, this authority has gained [congressional attention](#) because its use is not contingent on the declaration of a national emergency.

What Does 10 U.S.C. 284 Authorize?

10 U.S.C. 284 authorizes the Secretary of Defense to provide specified support to other federal departments or agencies, as well as state, local, tribal, or foreign law enforcement agencies, to conduct counterdrug activities or to counter transnational organized crime. The authority specifies 10 types of authorized domestic support, including the "construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States." According to Joint Chiefs of Staff [guidance](#) issued in 2014, such activities encompass "engineering support" for mobility and counter-mobility purposes and are limited to the southern border.

Other authorized domestic support activities include the maintenance, repair, or upgrading of certain equipment; transportation of personnel; establishment and operation of certain bases or training facilities; counterdrug or counter-transnational organized crime training; detection, monitoring, and communication of the movement of air, sea, and surface traffic near U.S. boundaries; establishment of command, control, communications, and computer networks for interoperability; provision of linguist and intelligence analysis services; and aerial and ground reconnaissance.

How Did 10 U.S.C. 284 Come to Exist?

The authority traces its origins to Section 1004 of the FY1991 National Defense Authorization Act (NDAA; [P.L. 101-510](#)). The original provision authorized DOD to support the "construction of roads and fences and installation of

lighting to block drug smuggling corridors across international boundaries of the United States."

Enactment of Section 1004 fit within the context of U.S. government-wide efforts to combat drugs in the 1980s—and congressional desire to assign DOD a key role. In 1988, for example, the FY1989 NDAA [mandated](#) DOD to serve as the "single lead agency ... for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States."

DOD's role in counternarcotics has long been a source of policy debate, raising questions over the use of the military to perform law enforcement functions, concerns regarding the [use of force](#) along the southern border, and the impact of such efforts on military readiness. In part due to lingering questions over whether the authorities in Section 1004 should be made permanent, Congress, for more than two decades, mandated the authority to sunset unless explicitly reauthorized.

Although Section 1004 continued to be reauthorized over the years, it was not until the FY2017 NDAA ([P.L. 114-328](#)) that Congress codified the provisions of Section 1004. The current law, which does not sunset, incorporates a key change made to its scope in the FY2015 NDAA ([P.L. 113-291](#)): it authorizes DOD to support efforts to combat transnational organized crime, in addition to drugs.

How Are Activities Authorized by 10 U.S.C. 284 Funded?

10 U.S.C. 284 does not address the availability of funds. DOD's counterdrug activities, including those carried out pursuant to 10 U.S.C. 284, are funded out of the "Drug Interdiction and Counter-Drug Activities" central transfer account (CTA) in annual DOD appropriations for Defense-wide operations and maintenance (O&M).

For FY2019, Defense appropriations (Division A; [P.L. 115-245](#)) provided a total of \$881.5 million to this CTA, excluding \$152.1 million in overseas contingency operations (OCO) counterdrug funding (primarily for activities in Afghanistan). This amount is above the President's FY2019 base budget [request](#) of \$787.5 million—including \$130.3 million for domestic support (the President requested an additional \$152.1 million in OCO counterdrug funding).

Counterdrug funding through the CTA is disbursed through the Office of the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats. Requests for domestic counterdrug support are fielded by U.S. Northern Command (USNORTHCOM), while Joint Task Force North (JTF-N) plans and coordinates domestic counterdrug support missions.

Outlook

In light of President Trump's [memorandum of April 4, 2018](#), instructing the Secretary of Defense to support Department of Homeland Security (DHS) efforts to secure the southern border, the House Armed Services Committee held a [hearing](#) on January 29 on the topic. In [congressional testimony](#), Under Secretary of Defense John Rood stated that 10 U.S.C. 284 has not been used by DOD to support DHS to harden ports of entry or to lay concertina wire between them. A [DOD press release](#) from February 15 stated that if DHS were to request support pursuant to 10 U.S.C. 284, it would "review and respond appropriately to any request for assistance received." Questions related to DOD's counterdrug authorities and funding remain and may include the following:

- How might the role and scope of active duty military and National Guard personnel along the border evolve with the invocation of 10 U.S.C. 284 or other authorities available to DOD to conduct counterdrug missions? What role might defense contractors play?
- How does the border mission fit within DOD's priorities for counterdrug programming? If funding were reprogrammed or diverted from other DOD priorities in order to fund engineering projects along the southern border, what current counterdrug activities would be affected?
- In addition to FY2019 funds appropriated in DOD's counterdrug CTA, what additional amounts may be available for the purposes of 10 U.S.C. 284 through reprogramming or transfers? How might the FY2020 budget request for DOD counterdrug activities be affected by the President's February 15 announcement?