



Don't Raid Military Funds for a Wall. Raid Them for Health Care.

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When Donald Trump declared a national emergency, he opened a constitutional can of worms about what powers the president has to overrule Congress about budget matters. What is constitutionally clear is that since Congress alone can tax and spend, the president can only move already authorized money around to fund his wall. With the White House claiming the availability of \$8 billion in border funds, something else has to give.

The White House has identified \$3.6 billion in military construction funds, followed by \$2.5 billion in Department of Defense counterdrug funding, and \$600 million in Treasury funds, on top of the \$1.375 billion allocated by Congress as part of the funding deal to avoid another government shutdown.

Except for the \$1.375 billion allocated by Congress, all of that money would have otherwise been spent on something besides a wall.

Most of the funds the president might raid are for things that are either directly or indirectly related to our country's militaristic approaches to everything from drug policy to immigration. On first glance, this might not seem like such a bad thing.

While defunding many of these programs and projects may be the right thing to do, there are two problems with defunding them by repurposing the funds for a wall. The first is the dangerously authoritarian nature of the president's seizure of funds that were otherwise allocated by Congress. The second is repurposing these funds to a dangerous and inhumane border wall, instead of something that would actually make the U.S. safer and stronger — such as providing universal health care to all its inhabitants.

And it matters where the funds would come from. Knowing what funds the president is targeting empowers progressives to speak up when the money comes from worthy projects. Among the few vulnerable programs that progressives can actually support are things like high schools for military kids and desperately needed safety upgrades to military housing. While the U.S. military is far larger than it needs to be, cutting funds for schools and safe housing for military families is an abhorrent approach to cutting military spending.

And when the president targets funds that directly propagate violence and injustice, it still benefits progressives to know where those funds might come from. Among the vulnerable programs that deserve to see cuts (by legitimate democratic means) are those like Immigration

and Customs Enforcement (ICE) and construction at overseas bases to expand and maintain the United States' imperial reach. Knowing that these are our current budget priorities can strengthen the case against the wall by situating the wall within the context of the U.S. propensity to steer our resources toward violence as a solution to every problem.

The big picture is an authoritarian president raiding funds that simultaneously enable and stem from U.S. militarism and attempting to divert toward yet another violent end: a xenophobic wall on the U.S.-Mexico border.

Here are the possible sources of funds the president wants to raid for his wall.

\$1.375 Billion From Congressional Budget

This is the only part of the \$8 billion that is not up for debate. Congress allocated this money as part of their deal to avoid another government shutdown.

The \$1.375 that Congress approved last week can be used for bollard fencing, a form of steel slat barrier, and for existing technologies, which can be interpreted to mean upgrades to existing fencing. It cannot be used for a concrete wall under the deal legislators struck.

\$3.6 Billion in Military Construction Funds

According to the administration, only the \$3.6 billion in military constructions funds required the declaration of a national emergency to repurpose the funds for building a border wall.

The legality of seizing the \$3.6 billion in military construction funds under the emergency declaration hinges on whether the Department of Defense finds that the funds are necessary to support the use of the armed forces, presumably referring to the thousands of troops now stationed near the border. Acting Secretary of Defense Patrick Shanahan told reporters that he has the authority to decide whether or not the military requires construction of a border wall to support their presence at the border, and emphasized that he had not yet made a decision on the matter.

Controversy has arisen over whether the repurposed construction funds could potentially come from funds for upgrading military housing after recent reports that military families were subjected to mold, rodents, lead paint and other hazards in military housing. Defense Department officials identified a backlog of repairs worth \$116 billion related to the poor housing conditions.

Other military facilities currently under construction could be left half-built, and military construction projects from Wisconsin to Kuwait could be cut. Acting Secretary Shanahan has indicated that wall funds won't come out of military housing funds, but has not been able to say what projects would be put on hold.

While the Pentagon has more money than it needs by any reasonable measure, military construction is a target for funding the wall only because it's the closest thing to a legal path the administration could identify. It's one of only a few parts of the Pentagon budget that has remained fairly steady over the last 30 years, apart from a surge at the height of the Iraq and Afghanistan wars, according to my analysis of government spending data. The entire military construction budget is about \$10 billion a year, which is about a fifth of what a single military contractor, Lockheed Martin, pulled in through government contracts last year. If the security and well-being of people in the U.S. were the true motivation, it would make more sense to cut

Lockheed's contracts or war funds and move the money toward a real need, like Medicare for All or renewable energy.

In fact, reducing Pentagon spending could save as much as \$200 billion per year, or more. Reallocating money from the Pentagon's budget, which is bloated with waste, pork and U.S. overreach, makes all the sense in the world. Those dollars could go a significant way toward funding Medicare for All, a proposal that according to an estimate by researchers at the University of Massachusetts would require approximately \$1 trillion in new annual funds to be fully paid for (though it would save the country on health care costs overall).

\$2.5 Billion From Department of Defense Counterdrug Funds

The massive Department of Defense can seem to have its tentacles in just about everything, and the drug war is no exception. The administration says it will take \$2.5 billion in drug interdiction funds from a Pentagon program and will tap these funds before using the \$3.6 billion from military construction.

The Pentagon runs counterdrug programs that extend outside the United States, aiming to interrupt drug trades before they reach the United States. The budget for this program is roughly \$1 billion each year, including some money dedicated to the much-criticized Pentagon slush fund, which allows Pentagon spending to exceed legislated budget caps.

According to experts, repurposing these funds would likely mean the interruption of long-term counter-drug efforts, including school anti-drug programs run by the National Guard. This may not have much effect, since evidence suggests that the sort of drug interdiction programs the Pentagon runs aren't very effective at curtailing the drug trade. It's one among many examples of misguided Pentagon spending, but shifting those funds to a wall only creates a new set of problems.

The counterdrug budget is only about \$1 billion, far short of the administration's suggested \$2.5 billion to take from this fund. This may seem like a mathematical impossibility, but the administration has plans to more than double the available funding by funneling other, as-yet-unidentified military funds into the counterdrug program. If this sounds like money laundering, it's because it essentially is, but such maneuvers can be legal under certain circumstances. One of those circumstances is that Congress cannot have previously denied funds for the item in question. In this case, Congress dramatically denied funds through a 35-day government shutdown, but prior legal cases may not exist on this question, so it's hard to know how a court would rule.

The administration plans to repurpose Pentagon counterdrug funds through the use of a simple executive order – no emergency declaration needed.

\$600 Million From Seized Assets

The \$600 million from the Treasury represents less than 10 percent of the total \$8 billion the administration is eyeing to fund a border wall, but it comes from a particularly pernicious source.

The Treasury funds that the White House is targeting are from the Treasury Forfeiture Fund (TFF). TFF revenues result from the seizure of private property by federal agencies, including Customs and Border Patrol, the Secret Service and ICE, as well as the IRS

and Coast Guard. According to the program's annual report, property seizures occurred in connection with visa fraud, and cash and drug smuggling, among other crimes.

The Treasury's legal seizure of property is a questionable practice that has been decried by civil rights advocates as fundamentally undemocratic. An Institute for Justice report criticized the program for creating a profit motive for government to seize assets, and because civil seizures can be made without a conviction, and even without charges being filed. The property being seized doesn't even have to belong to the perpetrator of a crime – and the owner of property used in an alleged crime must prove their own innocence in order to retain their property. The use of civil seizure without due process has been criticized by experts from across the political spectrum.

From 2001 to 2014, the Treasury seized \$6.9 billion in property. Auctions of seized property — including homes, cars and even show horses — generate revenue for the TFF. That revenue can then be redirected back to any of the agencies with seizure authority, or to a select few other federal law enforcement offices.

President Trump can use these funds for his wall with a simple executive order, as long as he can legitimately claim that building the wall is a law enforcement activity. At least one expert questioned whether this claim would hold up. Ilya Shapiro, a constitutional expert at the libertarian Cato Institute, told U.S. News and World Report that a reasonable interpretation of that requirement could go further to specify domestic law enforcement, and that a wall may not meet that standard.

What's Next for the Wall

The next phase for these funds will consist of legal challenges and probably congressional challenges as well. The first lawsuits have already been filed, and more may follow. The lawsuits mainly hinge on whether there is any emergency at the southern border and whether the president is usurping an authority explicitly designated for Congress by the Constitution.

The president is supposed to be just a bit player in the formation of the federal budget, presenting his budget request, and then signing (or vetoing) spending bills at the end of the process. In addition to the lawsuits, Congress has the legal power to end a president's emergency declaration using a streamlined process with simple majorities in both the House and Senate. It's possible that both the House and Senate could vote to end the emergency, but probably not with enough votes to overcome the inevitable presidential veto. Still, a congressional rejection of the emergency would be a powerful symbol and could ultimately still lead to the wall's undoing.

Ultimately, the fate of the funds being raided for the wall probably lies with the courts. It could be a long road.