

# United States Senate

WASHINGTON, DC 20510

December 7, 2018

The Honorable James Mattis  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Mattis:

We are writing to express deep concern over the extended deployment of active duty military to the U.S. southern border, and strongly urge you to reconsider your approval to extend the orders. On November 30, the Department of Homeland Security sent a request to extend the deployment of 4,000 of the currently 5,900 deployed active duty troops for an additional 45 days through January 31, 2019. On December 4, the Defense Department confirmed it would support the request. As a country, we call on our troops frequently to sacrifice in defense of our freedoms, which they do willingly and selflessly. As you know better than most, the decision to deploy the military comes with the responsibility to be judicious and ethical when we make those requests. In this case the White House's decision does not live up to that obligation and seems designed to stoke fear about those seeking asylum in our country.

Many of us have previously detailed our concern with this deployment and use of active duty forces. The administration's rationale for deploying troops was to evoke fear and xenophobia and does not serve a genuine national security purpose. Continuing to rely on active duty troops militarizes the border and normalizes the deployment of active duty forces domestically – a dangerous precedent for any democracy.

We would like to raise three specific aspects of the deployment that should worry all those who are invested in the readiness of our military, its professional use, and the need to keep a bright-line distinction between military and law enforcement.

**First, we have seen no justification for the extension of the orders.** The Trump administration has presented no evidence to suggest asylum seekers pose a national security threat to the nation. In fact, the Department's own assessment does not show a high risk of violence. There are other steps that can be taken to support U.S. Customs and Border Patrol agent processing of asylum seekers in an orderly and lawful way that does not involve active duty servicemembers.

The Department has yet to detail a desired end-state and specify what conditions will allow these troops to return home. The majority of the points asked to be hardened have been completed; there has not been a request to leave concertina wire in place, suggesting that these obstacles were never operationally necessary; and the troops still lack authorities to perform the duties most needed by CBP, which is expedited processing at the border. We are also concerned that a plan for rotating forces, while an improvement for the families and individuals who will not have to remain at the border more than 45 days, would allow for the deployments to continue

indefinitely by neutralizing concerns over individual deployment lengths. We request a clear end-state that can be met and will ensure servicemembers return home.

**Second, we remain concerned with the expansion of rules of use of force.** On November 21, 2018, White House Chief of Staff John Kelly signed a cabinet order allowing the Department of Defense to expand its rules for use of force beyond what, reportedly, you or Department of Homeland Secretary Kirstjen Nielsen thought was necessary or appropriate. The fact that the rules were expanded at the insistence of political figures in the White House, rather than based on the professional military judgment of Department leaders, is inappropriate and unacceptable.

Without a basis in the tactical situation and coming dangerously close to violating the Posse Comitatus Act, authorizing use of lethal force to protect CBP agents, crowd control, temporary detention and cursory search, this expansion will inevitably force soldiers and Marines into compromised situations. As with the extension, there has been no justification supported by evidence or intelligence for why these authorities have been expanded. Media reports suggest these authorities were part of the initial DHS request for assistance in October and were rejected by your office then. We are deeply concerned that a legitimate or substantiated rationale has not been provided for the expansion, especially in conjunction with the extension of the deployment. We request a detailed justification for the expansion of rules of use of force.

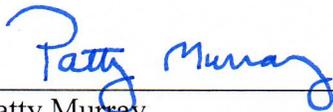
**Finally, we still have not received an adequate answer to justify the use of active duty forces.** There are currently approximately 2,100 National Guard troops serving on the border in California, Arizona, and Texas with 4,000 authorized. There has been no justification provided by either the Departments of Defense or Homeland Security as to why active duty troops were deployed. Further, if hardening points along the border is an immediate concern worthy of active duty support, it is unclear why the National Guard units already there have not been asked to support these tasks when they possess the capacity to do so. The lack of justification for the use of Title 10 instead of Title 32 remains concerning and suggests, again, this deployment is less about the mission than it is about the optics of crisis the presence of active duty forces creates.

Our concern remains that this politically motivated mission is inappropriate and must be ended. It has the potential to normalize and create ambiguity surrounding the deployment of active duty forces domestically, something we believe should be refused in all but the most necessary situations of existential threat; it will blur the line between military and law enforcement duties; and it risks breaking the trust of those soldiers and Marines whose professionalism is being manipulated for domestic political purposes inevitably putting them in situations where any decision is legally or morally fraught.

Absent justification and substantial transparency, the extension of orders must be rescinded.

We appreciate your prompt attention to our letter and look forward to your response not later than December 20, 2018.

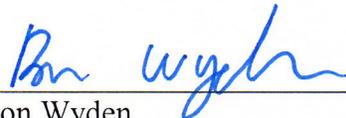
Sincerely,



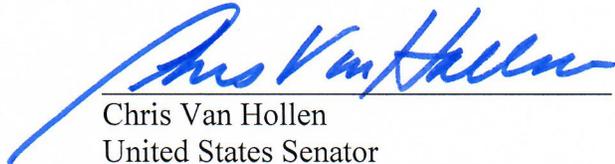
Patty Murray  
United States Senator



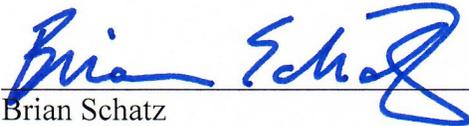
Richard Blumenthal  
United States Senator



Ron Wyden  
United States Senator



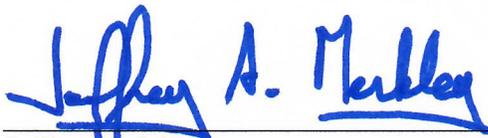
Chris Van Hollen  
United States Senator



Brian Schatz  
United States Senator



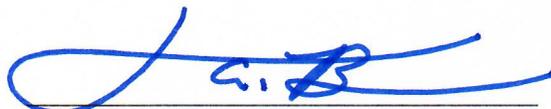
Bernard Sanders  
United States Senator



Jeffrey A. Merkley  
United States Senator



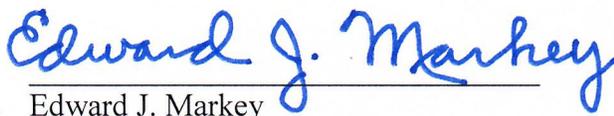
Kamala D. Harris  
United States Senator



Cory A. Booker  
United States Senator



Sherrod Brown  
United States Senator



Edward J. Markey  
United States Senator



Robert Menendez  
United States Senator