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United States Senate

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April 24, 2018

VIA ELECTRONIC DELIVERY

The Honorable Jim Mattis
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
301 7th Street SW, Mail Stop 0150
Washington, DC 20528

Dear Secretary Mattis and Secretary Nielsen:

I am writing in regard to the order authorizing and approving the deployment of up to 4,000 National Guard personnel to conduct operations in support of U.S. Department of Homeland Security (DHS) southwest border security missions. These deployments are well underway and National Guardsmen are currently positioned at the southwest border or will be deploying in the coming weeks and months.

Setting aside my serious reservations about the merits of this mission and the lack of evidence indicating a real operational need for this surge in personnel, my principle concern now is making sure that the Guardsmen are appropriately taken care of while activated and during post-mobilization; that they have full access to the benefits their service entitles them to; that they are appropriately equipped; given clear guidance for the mission they are expected to carry out and the rules for use of force they are expected to follow; and that States are fully funded to support the full costs of the deployment.

Troublingly, the President's recent threat to withhold Federal funding from California's National Guard influences the ability of the National Guard to conduct its mission and impacts the lives and goals of the Guardsmen called to conduct important counter-gang and drug operations. Working at cross purposes in such a manner is counterproductive to accomplishing the mission of your order and undermines unity of effort and sews confusion into an already complex and difficult environment. By threatening not to fully fund the Guard, the government is effectively threatening not to look after the troops, their pay and benefits and their equipping needs – such a proposal to withhold Federal dollars is unconscionable. Lastly, I vehemently object the President's assertion that the troops "do nothing." We are talking about men and women who have stood-up, sworn an oath and elected to serve their country, their State and their local communities. We as leaders must set the example and support our deployed troops in word and by our actions.

While activating the Guard under title 32 authorities will provide Governors with operational control and the ability to leverage Federal funds, the expenditure of Federal resources could

result in less Federal assistance for States during emergency operations unless additional funds are appropriated. Additionally, the deployment of State resources also calls into question the ability of the States to surge capabilities to another State who is requesting National Guard assistance in support of Emergency Management Compacts (EMAC).

The deployment of our military to the border also raises significant legal questions about their authorities, what actions they will be ordered to take and the rules for the use of force in confronting both the U.S. citizens and non-U.S. citizens they will inevitably encounter. The complexities of a militarized border create potential flashpoints for misunderstandings between the military, Federal law enforcement, U.S. citizens and other civilians which could, at best, lead to confusion and chaos and, at worst, to tragedy.¹

Consequently, I am requesting responses to the following questions from your departments:

Questions for U.S. Department of Defense:

1. Please clarify the planned length of duty for the 4,000 National Guard personnel who will be deployed, under what authorities they will be deployed and what benefits they will be eligible for. Additionally, please clarify whether individuals will be mobilized on a voluntary or involuntary basis.

As you know, the length of activation and the manner they are called to duty will impact the benefits individuals are eligible for, (be they medical, educational, home loans or any other benefit military service entitles them to), and affect the stability of a servicemember's home and work life. Please confirm you are taking into account these considerations and maximizing benefits to individual troops as you make decisions on length of deployment.

2. Please provide personnel cost estimates for the activation and deployment of the 4,000 Guardsmen. Additionally, please provide cost estimates and funding requirements for the equipment preparation and sustainment during the mission and upon mission conclusion. Please address potential costs of equipment maintenance funding at the unit, intermediate and depot level and what the final fiscal impact will be to the providing State on all unit equipment post deployment.
3. Please provide a readiness analysis on the potential impact of this border deployment on a State's ability to respond to an in-state emergency, and impacts on inter-state EMACs relating to National Guard responses to emergencies and disasters.
4. What percentage of 2018 Title 32 funds are being allotted for this duty and will DOD require additional appropriated Title 32 money in order to cover the costs for future state emergencies? Will this deployment cause a reduction of funding to other programs or functions within DOD and specifically the National Guard, for example, schools, professional development courses and qualification courses?

¹ How Verhovek, Sam. (1997, June 29). After Marine on Patrol Kills a Teen-Ager, a Texas Border Village Wonders Why. *The New York Times*, Retrieved from <https://mobile.nytimes.com/1997/06/29/us/after-marine-on-patrol-kills-a-teen-ager-a-texas-border-village-wonders-why.html>

Question for U.S. Department of Defense and U.S. Department of Homeland Security:

1. Please provide your department's legal review for the National Guard's use of force and the rules governing their interaction with U.S. and non-U.S. citizens. Border operations will inevitably lead to troops having to confront complex situations involving not just individuals crossing the border illegally, but potentially American civilians who live in the border region. Deployed members of the National Guard must have clear guidance on how to handle these situations with clear and consistent rules for the use of force that both protect civilians and give troops confidence that they are protected from legal liability.

Question for U.S. Department of Homeland Security:

1. Please provide a detailed description of the specific activities Guardsmen will perform on the border and provide respective operational, manning and equipping requirements DHS will require.

Thank you in advance for your prompt attention to these issues.

Sincerely,

A handwritten signature in blue ink that reads "Tammy Duckworth". The signature is written in a cursive, flowing style.

Tammy Duckworth
United States Senator

CC:

General Joseph L. Lyngel, Chief, National Guard Bureau