

United States Senate

WASHINGTON, DC 20510

February 9, 2017

The Honorable John F. Kelly
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly,

We are writing about the executive order on “Border Security and Immigration Enforcement Efforts” – a.k.a., the border wall executive order – issued by President Trump on January 25, 2017. The executive order requires you to “[i]dentify and, to the extent permitted by law, allocate *all sources of Federal funds* for the planning, designing, and constructing of a physical wall along the southern border.”¹ (emphasis added). We are unwavering in our commitment to protecting national security and public safety. However, we are concerned that the sweeping language and broad requirements of this executive order will force you to divert critical resources from Department of Homeland Security (DHS) priorities, hampering your agency’s ability to carry out its mission and keep our country safe.

DHS has five critical responsibilities: terrorism prevention; border security; immigration enforcement; cybersecurity; and disaster preparedness.² In consultation with Administration officials, the Senate and House established funding for each of these homeland security priorities and needs in the 2016 Appropriations legislation. As Secretary of Homeland Security, you have the authority to transfer a small percentage of appropriations between accounts in a fiscal year. This authority allows you to meet unexpected funding needs, but still allows you to retain discretion to ensure that the agency is able to appropriately prioritize funds to protect national security.

President Trump’s executive order – either because it was hastily drafted or because this was the President’s intent – required that you “to the extent permitted by law, *allocate all sources of Federal funds* for the planning, designing, and constructing of” the border wall (emphasis added). In other words, the executive order appears to *require* you to divert all appropriated funds that you have the authority to move, even at the expense of important

¹ Executive Order: Border Security and Immigration Enforcement Improvements (released Jan. 25, 2017) (online at: <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>).

² Department of Homeland Security Website, Our Mission (viewed Jan. 31, 2016) (online at: <https://www.dhs.gov/our-mission>).

homeland security priorities. This could include cutting the number of Customs and Border Protection agents or Immigration and Customs Enforcement officials; cutting funds for communities facing disasters; cutting funds for protecting federal networks and fighting cyber crime; and cutting funds for enhancing security and guarding against terrorism.

We are extraordinarily concerned that President Trump's executive order appears to require that you divert DHS funds meant for critical security priorities to instead fund the border wall. We are writing to determine how much funding you intend to divert to the wall, and ask whether this diversion of funds could have a significant adverse effect on border security, prevention of terrorism, immigration enforcement, cybersecurity, and disaster preparedness. We also have additional questions about the development and implementation of this Executive Order.

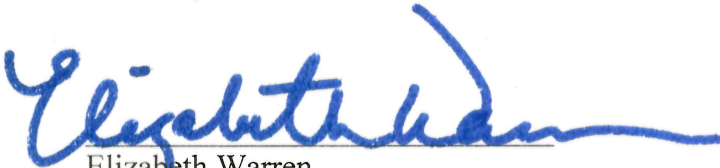
We ask that you respond to these questions no later than February 23, 2017.

- 1) Were you or your staff consulted during the preparation of this Executive Order? If so, did you provide input into its contents, and if so, was this input incorporated into the Executive Order?
- 2) Was the DHS Office of General Counsel consulted during the preparation of this Executive Order? If so, did they provide input into its contents, and if so, was this input incorporated into the Executive Order?
- 3) To your knowledge, was the Department of Justice Office of Legal Counsel consulted during the preparation of this Executive Order? If so, did they provide input into its contents, and if so, was this input incorporated into the Executive Order?
- 4) What specific categories of funding are included in the definition of "all sources of federal funds" that you intend to use to plan, design, and construct the border wall required by President Trump's Executive Order, and what is the total value of this funding in each category?
- 5) Do you believe that the Executive Order requires you to "allocate all sources of Federal funds" permitted by law to plan, design, and construct the border wall required by President Trump's Executive Order?
 - a. If not, how do you interpret this language?
 - b. How much of the available funding do you intend to use to plan, design, and construct the border wall required by President Trump's Executive Order?
- 6) Will any funding from DHS-authorized funds to prevent terrorism and enhance security be diverted from existing accounts to plan, design, and construct the border wall?
 - a. If so, how much will be diverted?
 - b. What specific cuts or changes to existing activities or staff levels will occur as a result of the diversion of this funding?
- 7) Will any funding from DHS-authorized funds to secure and manage our borders be diverted from existing accounts to plan, design, and construct the border wall?
 - a. If so, how much will be diverted?
 - b. What specific cuts or changes to existing activities or staff levels will occur as a result of the diversion of this funding?

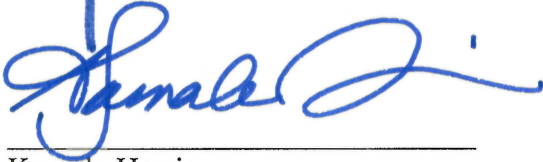
- 8) Will any funding from DHS-authorized funds to enforce and administer immigration laws be diverted from existing accounts to plan, design, and construct the border wall?
- a. If so, how much will be diverted?
 - b. What specific cuts or changes to existing activities or staff levels will occur as a result of the diversion of this funding?
- 9) Will any funding from DHS-authorized cybersecurity funds be diverted from existing accounts to plan, design, and construct the border wall?
- a. If so, how much will be diverted?
 - b. What specific cuts or changes to existing activities or staff levels will occur as a result of the diversion of this funding?
- 10) Will any funding from DHS-authorized disaster preparedness funds be diverted from existing accounts to plan, design, and construct the border wall?
- a. If so, how much will be diverted?
 - b. What specific cuts or changes to existing activities or staff levels will occur as a result of the diversion of this funding?

We look forward to your prompt response.

Sincerely,



Elizabeth Warren
United States Senator



Kamala Harris
United States Senator



Martin Heinrich
United States Senator



Brian Schatz
United States Senator



Tom Udall
United States Senator