

United States Senate

WASHINGTON, DC 20510

March 14, 2017

The Honorable James Mattis
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Mattis:

We are writing regarding our concerns about the January 25, 2017, “Border Security and Immigration Enforcement Improvements”¹ Executive Order and the subsequent Department of Homeland Security (DHS) guidance implementing the Executive Order,² and its impact on our military families and military readiness. We are concerned that the Executive Order will cause unfair hardship for certain military families by eliminating important protections that keep those families together. The rollback of these protections does a disservice to the brave men and women serving in uniform and will ultimately harm current and future military readiness.

Under current law, the Secretary of Homeland Security is authorized to temporarily admit foreign nationals into the United States based on “urgent humanitarian reasons” or if admitting those nationals will have a “significant public benefit.”³ Since 1998, U.S. immigration authorities have been authorized to admit these foreign nationals located outside of the country, or to treat as legally admitted those already unlawfully present in the country, under a program known as “parole in place.”⁴ Subsequently, in a November 2014 memorandum, the Obama Administration issued guidance that allowed family members of individuals serving in the U.S. Armed Forces to lawfully remain in the United States and apply for lawful permanent resident status.⁵ This policy was issued to ease the fears of service members with immigrant family members. As the November 2014 memorandum explained, “[m]ilitary preparedness can potentially be adversely affected if active members of the U.S. Armed Forces and individuals serving in the Selected Reserve of the Ready Reserve, who can be quickly called into active duty, worry about the immigration status of their spouses, parents and children.”⁶

President Trump’s Executive Order and the associated DHS guidance appear to reverse this policy by directing the Secretary of Homeland Security to “ensure that parole authority [...] is exercised... only when an individual demonstrates urgent humanitarian reasons or a significant

¹ <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

² https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

³ Immigration and Nationality Act (INA) § 212(d)(5)(A), <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-15905/0-0-0-16404.html>.

⁴ Memorandum from Paul W. Virtue, INS General Counsel, to INS officials, “Authority to Parole Applicants for Admission Who Are Not Also Arriving Aliens,” Legal Op. 98-10 (Aug. 21, 1998). In 2003, the Immigration and Naturalization Service (INS) was abolished and its functions were placed under United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) – within the newly created Department of Homeland Security (DHS).

⁵ https://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place_0.pdf.

⁶ https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf.

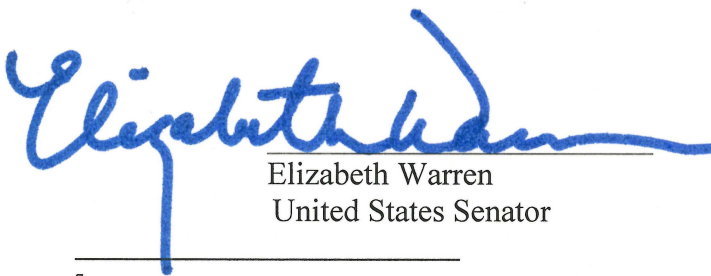
public benefit derived from such parole.”⁷ The DHS guidance explicitly rejects “[t]he practice of granting parole to certain aliens in *pre-designated categories*,” alleging that this practice “has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal immigration.”⁸ This language appears to exclude family members of military personnel – who comprise such a pre-designated category – from being granted parole to avoid deportation.


Making U.S. service members deployed on active duty endure the stress and anxiety of worrying about whether their spouse, child, or parent will be deported from or denied entry into the United States will undermine these service members’ ability to do their jobs. Allowing family members of our military personnel to secure lawful immigration status – and preventing families from being separated while a service member is deployed – is an investment in our service members and in the readiness of the military. It helps to keep service members focused on their missions and demonstrates good faith to current, future and former service members who choose to serve our nation. We are concerned about the reversal of policies that benefit military families, and the process by which these policies were reversed. We therefore request that you clarify the practical effects of the Executive Order on family members of U.S. military personnel by answering the following questions:

1. Was the Department of Defense consulted by the White House or the Department of Homeland Security (DHS) about the impact of the Executive Order and DHS guidance to reverse the “parole in place” policy for military families? If so, did the Department provide input on this policy, and what was it? Please provide copies of any interagency communications regarding this policy.
2. Has DOD consulted with service members and their families or conducted any assessment of the impact of this policy change on military readiness and morale? If so, what were the results of these assessments?
3. Has DOD conducted any analyses to determine how many military families are subject to this new policy? Please provide a numerical breakdown by active duty and reserve components.
4. Since the Executive Order was signed, how many spouses, children, and parents of service members have been deported or denied lawful immigration status?
5. Has DOD published guidance or advice for military families on the impact of the Executive Order and DHS guidance? If so, please provide copies of these materials.

We look forward to your answers to these questions by March 28, 2017.

Sincerely,


Elizabeth Warren
United States Senator


Kirsten Gillibrand
United States Senator

⁷ <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

⁸ https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf (emphasis added).