

Congress of the United States
Washington, DC 20510

January 28, 2019

The Honorable Patrick Shanahan
Acting Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Acting Secretary Shanahan:

We are writing regarding our ongoing concerns about the deployment of active-duty military personnel at the southern border. We initially wrote to Secretary Mattis on November 19, 2018 with a number of questions about the inappropriate and politicized mobilization of military personnel at the border just weeks before the 2018 elections.¹ We appreciate the Department's December 20, 2018 response to our inquiry.²

However, since that response, a January 14, 2019 announcement by the Pentagon indicated that the deployment would be extended another nine months, through September 30, 2019. This subsequent announcement further stated that "DOD is transitioning its support at the southwestern border from hardening ports of entry to mobile surveillance and detection, as well as concertina wire emplacement between ports of entry."³ The extension of this deployment and expansion of DOD's stated mission on the border raise new questions and concerns that require additional transparency.

The initial deployment represented a virtually unprecedented use of active-duty military forces at the border, with little or no justification or rationale. We are concerned about reports in the wake of the announced extension that President Trump's "penchant for politicizing the military" – at the border and elsewhere – have "fuel[ed] unprecedented uncertainty and anxiety inside the Pentagon."⁴ We also remain concerned about reports that President Trump is considering declaring a national emergency and "identifying billions of dollars in military construction funds that could be shifted toward building the wall ... potentially harm[ing] future military readiness."⁵

¹ Letter from Sen. Elizabeth Warren, Rep. Jackie Speier, and Rep. Beto O'Rourke to the Honorable James N. Mattis, November 19, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.11.19%20Letter%20to%20DOD%20re%20active%20duty%20deployment%20to%20southwest%20border.pdf>.

² Letter from John Rood, Under Secretary of Defense for Policy, to Sen. Elizabeth Warren, Rep. Jackie Speier, and Rep. Beto O'Rourke, Dec. 20, 2018.

³ Department of Defense, DOD Statement on Support to DHS, January 14, 2019, <https://dod.defense.gov/News/News-Releases/News-Release-View/Article/1731752/dod-statement-on-support-to-dhs/>

⁴ CNN, Barbara Starr, Trump is fraying nerves inside the Pentagon, Jan. 17, 2019, <https://www.cnn.com/2019/01/17/politics/trump-frays-nerves-at-pentagon/index.html>

⁵ Ibid.

The House Armed Services Committee will be holding a hearing tomorrow on the deployment of active duty military troops at the Southern border. We ask that the Department's witness come to this hearing prepared to address the following questions, and that the Department further respond to our inquiry in writing.

We have the following questions about the recently announced extension of the deployment:

1. What was the process by which you decided to approve the DHS request for the extended deployment? When did DHS make the request? Did Pentagon officials make any independent assessment of whether the request was reasonable and necessary? If so, which officials were involved? Please provide that assessment.
2. What specific activities will active duty military forces be conducting under the extended deployment? Why is it necessary for active duty forces rather than DHS staff or the National Guard to perform these activities? Please provide a copy of any relevant operation orders (OPORDs).
3. Why has DOD not fully exercised the authorization to deploy the National Guard pursuant to the April 2018 order issued by then-Secretary Mattis?
4. How many troops are you presently planning to deploy as a result of the extended orders?
5. Does September 30, 2019 represent a clear and certain end-date for the deployment? If not, what factors will be taken into consideration with regard to potential additional extensions?
6. What is the cost of the current operation and the extended deployment?
 - a. How much has the operation cost to date?
 - b. What is the current average daily cost of operations?
 - c. What is the estimated total cost for the deployment through September 30, 2019?
 - d. What is the breakdown of this total cost? i.e. personnel costs, logistics and transportation, equipment, etc.
 - e. What budgetary account is DOD drawing from to pay for the operation? Will operational costs be reimbursed by DHS as the requesting agency under DSCA?
7. Has DOD been asked by DHS or by any other Administration official to identify funds that could be used to build a border wall in the event that President Trump declares an emergency to build a border wall or barrier?
 - a. If so, has DOD prepared these plans?
 - b. If so, how much does DOD estimate the border wall will cost in FY2019, and in future years?
 - c. Has DOD identified a source for these funds, and if so, from where will be funds be diverted?

8. Do you share the concerns of Pentagon officials and others about the President's partisan, politicized use of active duty military forces?

In addition, while we appreciate the Department's response to our November 19, 2018 letter, we do not believe this response was sufficient, and have additional follow-up questions:

9. The Department indicates in response to question 1 that the deployment of military personnel is "being executed based on DHS requests for DOD assistance to CBP."

Did DOD officials conduct any independent analysis of the need for active duty personnel, or the validity of the DHS request? If so, please explain the findings of this analysis, and provide copies of any decision memoranda or other materials relevant to the decision.

10. In response to question 3a and 3b, the Department provided a short list of the types of support provided by military personnel to DHS and CPB: "contingency planning; hardening or reinforcing ports of entry (POEs) and placing wire obstacles between POEs; aviation support; medical assistance; and force protection coverage."

Please provide more detailed information on each of these activities. For example, what contingency plans have military personnel prepared? How many POEs have been hardened or reinforced by military personnel, and how? How many miles of wire obstacles have been placed by military personnel? What kind, type, and quantity of aviation support, medical assistance, and force protection coverage have active duty personnel provided, and where have they done so?

11. Has the Department produced any assessments to validate whether or not its activities have had a demonstrable positive impact on border security? If so, please provide those assessments.

12. The President's public comments implied that the use of rocks and stones could be used as a justification to shoot individuals at the border. Have any unit commanders or any military personnel been provided with any specific guidance regarding the Standing Rules for the Use of Force for military personnel at the border and the President's comments? Have any military personnel at the border used non-deadly or deadly force based on the need for self-defense or defense of others? If so, please describe such actions.

We ask that you provide written answers to these questions no later than February 11, 2019.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator



Jackie Speier
Member of Congress