

RICHARD BLUMENTHAL
CONNECTICUT

COMMITTEES:

AGING

ARMED SERVICES

COMMERCE, SCIENCE, AND TRANSPORTATION

JUDICIARY

VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510

706 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510

(202) 224-2823
FAX: (202) 224-9673

90 STATE HOUSE SQUARE, TENTH FLOOR
HARTFORD, CT 06103

(860) 258-6940
FAX: (860) 258-6958

915 LAFAYETTE BOULEVARD, SUITE 304
BRIDGEPORT, CT 06604

(203) 330-0598
FAX: (203) 330-0608

<http://blumenthal.senate.gov>

May 8, 2019

The Honorable Patrick M. Shanahan
Acting Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Acting Secretary Shanahan:

We write to express our continued alarm regarding the expanding mission of the active duty servicemembers deployed to the southern border, most recently evident in your decision to issue waivers to a longstanding Department of Defense (DOD) policy that prevents military personnel from directly interacting with migrants in order to support a new Department of Homeland Security (DHS) request for assistance.

As you know, in response to this request, DOD has agreed to provide 160 personnel to transport migrants, 100 personnel to distribute meals and conduct welfare checks, and 20 military attorneys to represent DHS and Immigration and Customs Enforcement (ICE) in immigration court and before the Board of Immigration Appeal. We urge you to revoke these waivers to prevent the continued escalation of military involvement in immigration enforcement activities and the further politicization of the use of servicemembers to inappropriately respond to a divisive domestic policy issue.

This development is particularly concerning given the “military protective activities” that President Trump authorized on November 20, 2018, including “a show or use of force (including lethal force, where necessary), crowd control, temporary detention, and cursory search” if deemed necessary to protect Customs and Border Protection (CBP) personnel.¹ While your Department has failed to provide adequate legal justification for these “military protective activities,” you have simultaneously authorized the deployment of additional troops to perform support roles that will significantly increase their direct interaction with migrants, putting servicemembers at greater risk of violating Posse Comitatus under the pretense of humanitarian assistance.

We request legal justification not only for the military protective activities authorization, but also for the expansion of servicemembers’ role to include support functions that will necessitate direct interaction with migrants. Additionally, we request information about the

¹ Memorandum for the Secretary of Defense, Attorney General, and Secretary of Homeland Security. “Department of Defense Support to Border Security. November 20, 2018. <https://www.documentcloud.org/documents/5226804-Pres-Border-Decision-Memo.html#document/p3>.

training and legal guidance provided to servicemembers deployed to the border regarding rules for the use of force, as well as legal restrictions including Posse Comitatus and other DOD policies. Ensuring that servicemembers are prepared to operate in a law enforcement context – rather than a combat zone – is critically important, and we seek evidence to demonstrate that troops deployed to the border are appropriately trained for these circumstances.

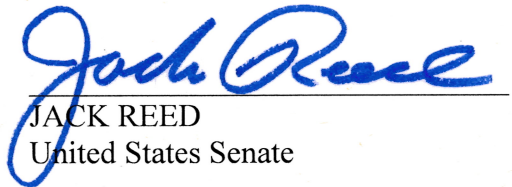
The only crisis at the border is a humanitarian one, and it is a crisis that has been severely exacerbated by President Trump’s own policies. The recent approval of additional DHS assistance is particularly distressing given the culmination of policy decisions that have resulted in an increasingly militarized border as your Department continues to allocate resources to support the DHS border mission. Members of Congress have consistently expressed concern regarding the troop deployment, including the politically-motivated timing of the initial active duty deployments, the potentially negative impact on military readiness, the cancellation of joint military exercises with allies due to budgetary constraints, and the absence of a timeline or detailed cost estimate.

Given these outstanding concerns, we urge you to reverse the decision to provide waivers and provide legal justification for the expanding mission of active duty troops deployed to the southern border. Thank you for your immediate attention to this issue.

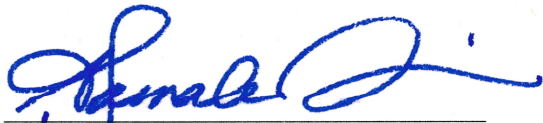
Sincerely,



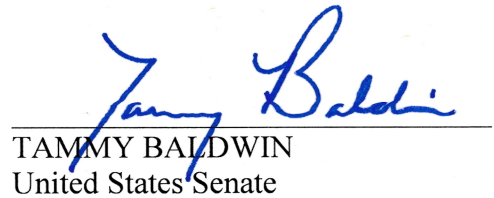
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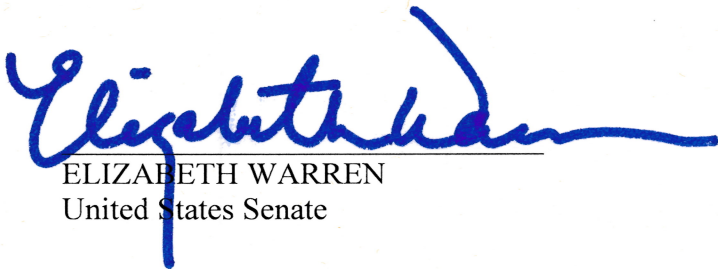
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United States Senate



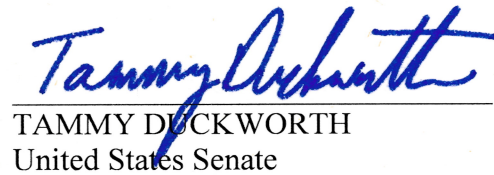
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United States Senate

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United States Senate

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United States Senate