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WASHINGTON, D.C. 20301-2600

HOMELAND DEFENSE &
GLOBAL SECURITY

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

MAR 14 2019

Dear Senator Warren:

I am writing to you on behalf of Acting Secretary of Defense Shanahan in response to your January 28, 2019, letter, requesting answers to questions regarding the extension of Department of Defense (DoD) support to U.S. Customs and Border Protection (CBP) at the southern border of the United States.

DoD support to CBP is being executed pursuant to the April 4, 2018, Presidential memorandum, "Securing the Southern Border of the United States." The military's presence and support increases the effectiveness of CBP's border security operations, frees up Border Patrol agents to conduct law enforcement duties, and enhances situational awareness to stem the tide of illegal activity along the southern border of the United States. DoD has a long history of using active duty, National Guard, and Reserve personnel to support the Department of Homeland Security (DHS) and CBP in their mission to secure U.S. borders.

Enclosed are answers to your questions. Thank you for your continued support of the U.S. Armed Forces. A similar letter will be sent to Representative Speier.

Sincerely,

A handwritten signature in black ink, reading "Kenneth P. Rapuano".

Kenneth P. Rapuano

Enclosure:
As stated

Response to Questions

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.

Answer: On August 21, 2018, DHS requested an extension of the existing National Guard support to CBP Operation Guardian Support through September 30, 2019.

Using the standard request for assistance process, and informed by the direction in the President's April 4, 2018, memorandum, DoD approved this DHS request for extension on August 30, 2018.

On December 27, 2018, DHS requested that DoD provide the following additional support to CBP Operation Secure Line at the southern border of the United States: (i) provide personnel to operate CBP mobile surveillance capabilities at 146 sites between U.S. ports of entry through September 30, 2019; and (ii) emplace 167.4 miles of concertina wire to strengthen existing border barriers between U.S. ports of entry in California and Arizona.

Using the standard request for assistance process, and informed by the direction in the President's April 4, 2018, memorandum, DoD considered and approved this December 27, 2018, DHS request on January 11, 2019.

As part of its standard request for assistance process, DoD evaluates all requests for assistance based on the following considerations: legality; the potential for use of lethal force by or against DoD personnel; the risk to DoD personnel; cost to DoD; appropriateness; and potential effect on DoD's ability to perform its other primary defense missions.

Recommendations to the Secretary of Defense concerning requests for assistance are coordinated within the Department with the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, the General Counsel of the Department of Defense, the Chairman of the Joint Staff, and other officials, as appropriate based on the specific request.

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 of the National Guard to perform these activities? Please provide a copy of any relevant operation orders (OPORDs).

Answer: DoD provides the following support to CBP Operation Secure Line at the southern border of the United States: (i) provide personnel to operate CBP mobile surveillance capabilities at 146 sites between U.S. ports of entry through September 30, 2019; and (ii) emplace up to

167.4 miles of concertina wire to strengthen existing border barriers between U.S. ports of entry in California and Arizona.

DoD selected the military personnel best suited and most readily available from its Total Force to provide the requested assistance. DoD support is driven by DHS mission requirements. DoD continually assesses the DoD capabilities and resources necessary to meet these mission requirements, while mitigating impacts on military readiness and considering ongoing and future operational commitments.

DoD defers to DHS as to whether DHS has sufficient employees who are capable and available to perform the activities described in DHS's December 27, 2018, requests for assistance.

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?

Answer: The number of National Guard personnel supporting CBP Operation Secure Line is driven by DHS's evolving mission requirements and the availability of National Guard volunteers. As such, this number has varied over the last nine months.

4. How many troops are you presently planning to deploy as a result of the extended orders?

Answer: From February 1, 2019 through September 30, 2019, DoD will provide approximately 1,200 personnel to operate CBP mobile surveillance cameras at 146 sites between U.S. ports of entry, as well as, approximately 600 support staff at Army North Headquarters.

Additionally, approximately 2,600 personnel will emplace 167.4 miles of concertina wire to strengthen existing border barriers between U.S. ports of entry in California, Arizona, and Texas from February 1, 2019 through March 31, 2019.

As of February 9, 2019, 1,909 military personnel were supporting CBP operation Secure Line. The number of military personnel supporting the operation is driven by DHS mission requirements. DoD will continue to evaluate the force composition required to meet the mission requirements.

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?

Answer: DoD support to CBP operations Guardian Support and Secure Line is currently scheduled to end by September 30, 2019. DHS may request extensions of this support, or request different types of support, as needed, based on the evolving situation at the southern border of the United States. If DHS does request extension of current support, or new types of support, DoD will consider those requests in accordance with the standard request for assistance process and informed by the direction in the President's April 4, 2018, memorandum.

6. What is the cost of the current operation and the extended deployment?

Answer: As of February 7, 2019, DoD Components have reported approximately \$203 million in obligations in fiscal years 2018 and 2019 for DoD support to CBP Operation Guardian Support. The current estimated cost of this support totals \$411 million, including \$103 million in Fiscal Year (FY) 2018 and \$308 million in FY 2019.

As of February 6, 2019, DoD Components have reported approximately \$41 million in obligations in FY 2019 for DoD support to CBP Operation Secure Line. The estimated cost of DoD support to CBP Operation Secure Line through January 31, 2019 is \$132 million.

The estimated cost of DoD support to CBP Operation Secure line from February 1 through September 30, 2019, is currently in development. The DoD border support mission continues to evolve as the Department of Homeland Security and U.S. Northern Command refine the operation. As a result, the Department is in the process of capturing requirements and estimating the potential costs. The cost will depend on the total size, duration, and scope of the DoD support.

a. How much has the operation cost to date?

Answer: As of February 7, 2019, DoD Components have reported approximately \$203 million in obligations in fiscal years 2018 and 2019 for DoD support to CBP Operation Guardian Support.

As of February 6, 2019, DoD Components have reported approximately \$41 million in obligations in FY 2019 for DoD support to CBP Operation Secure Line.

b. What is the current average daily cost of operations?

Answer: DoD support to CBP Operation Guardian Support operations commenced on April 7, 2018, and as of February 7, 2019, has incurred approximately \$203 million in reported obligations. The straight-line average daily cost of operations equals approximately \$665,000/day for the 306 days of the operation to date.

DoD support to CBP Operation Secure Line commenced on October 26, 2018, and as of February 6, 2019, has incurred approximately \$41 million in reported obligations. The straight-line average daily cost of operations equals approximately \$395,000/day for the 103 days of the operation to date.

The average daily cost is not necessarily the best metric to understanding the dynamic nature of DoD support to CBP due to changes in personnel totals and deployment/redeployment of personnel, which varies daily.

c. What is the estimated total cost for the deployment through September 30, 2019?

Answer: The current estimated total cost of DoD support to Operation Guardian Support through FY 2019 is \$411 million, including \$103 million in FY 2018 actual obligations and a projected estimate of \$308 million in FY 2019.

The estimated total cost of DoD support to CBP Operation Secure Line through January 31, 2019, is \$132 million. The estimated cost of DoD support to CBP Operation Secure line from February 1 through September 30, 2019, is currently in development. The DoD border support mission continues to evolve as the Department of Homeland Security and U.S. Northern Command refine the operation. As a result, the Department is in the process of capturing requirements and estimating the potential costs. The cost will depend on the total size, duration, and scope of the DoD support.

d. What is the breakdown of this total cost? i.e. personnel costs, logistics and transportation, equipment, etc.

Answer: For DoD support to CBP Operation Guardian Support, the estimate includes costs associated with National Guard pay and allowances to include applicable per diem (\$250 million), Operation and Maintenance support costs (\$26 million), and Operation and Maintenance flying hour costs (\$32 million).

For DoD support to CBP Operation Secure Line, the estimate includes costs associated with personnel subsistence/per diem/lodging/ family separation allowance (\$37 million), transportation (\$33 million), operating (\$57 million), and border fortification material (\$5 million). The Department is working to develop a cost estimate for the most recent DHS request for assistance, which requires DoD support from February 1 through September 30, 2019.

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?

Answer: Consistent with the President's direction, including his April 4, 2018, memorandum, DoD support is non-reimbursable to the extent permitted by law. To date, the Components have reported costs mainly in Operation and Maintenance, and Military Personnel accounts. The DoD Comptroller is reviewing DoD accounts to fund this support with minimal disruption to readiness and other DoD missions.

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?

Answer: The President has declared that there is a national emergency requiring the use of the armed forces to support DHS's efforts to address the humanitarian, border security, and law enforcement crises at the southern border of the United States. The President's proclamation invoked section 2808 of title 10, U.S. Code, which authorizes the Acting Secretary of Defense to use unobligated military construction funds to undertake military construction projects, not otherwise authorized by law, that are necessary to support such use of the armed forces, including the construction of barriers.

In addition, DoD has considered section 284(b)(7) of title 10, U.S. Code, which authorizes the Acting Secretary of Defense to, in support of another Federal department such as DHS construct roads and fences and install lighting to block drug smuggling corridors across international

boundaries of the United States. In Fiscal Year 2018, DoD used this authority in support of the following U.S. Border Patrol Sectors: Tucson and Yuma, AZ, and Del Rio and El Paso, TX.

a. If so, has DOD prepared these plans?

Answer: Although DoD has undertaken prudent preparatory measures in light of the President's earlier statements regarding the possibility of a national emergency declaration, specific plans were not developed. DoD is currently undertaking a deliberative process to assess whether and how border barrier projects could make DoD personnel more effective in their mission at the border in support of DHS.

b. If so, how much does DOD estimate the border wall will cost in FY2019, and in future years?

Answer: DoD defers to DHS, the Federal department responsible for border security, on cost estimates for construction of border infrastructure, including barriers. DoD is currently undertaking a deliberative process to assess whether and how border barrier projects could make DoD personnel more effective in their mission at the border in support of DHS.

c. Has DOD identified a source for these funds, and if so, from where will be funds be diverted?

Answer: The DoD Counterdrug Program is the source of funds for use of section 284(b)(7) of title 10, U.S. Code, to construct roads and fences and install lighting to block drug smuggling corridors across international boundaries of the United States.

In support of his declaration of national emergency, the President invoked section 2808 of title 10, U.S. Code, which allows unobligated military construction funds to be used as a source of funds for military construction projects, not otherwise authorized by law, that are necessary to support such use of the armed forces, including the construction of barriers..

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

Answer: DoD support to CBP is being executed pursuant to the lawful direction of the President in his April 4, 2018 memorandum, "Securing the Southern Border of the United States," which is publicly available.

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.

Answer: The DHS request for DoD support of CBP Operation Secure Line did not specify that this assistance be provided by active-duty military personnel. Requests for assistance specify DoD capabilities required to conduct particular activities for defined durations in designated locations. DoD independently determines which personnel and other resources are to be made available to provide the requested capabilities.

In this case, DoD selected the military personnel best suited and most readily available from its total force to provide the requested assistance.

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 CBP: “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?

Answer:

Military Planners. Military personnel supporting CBP contingency planning provide assistance regarding activities necessary to secure the southern border of the United States. Such military personnel are not developing military contingency plans.

Hardening of Ports of Entry. DoD hardened or reinforced 22 U.S. ports of entry in California, Arizona, and Texas with temporary barriers and 70 miles of concertina wire.

Aviation Support. DoD made strategic and medium airlift available to CBP (e.g., for the purpose of transporting CBP quick reaction forces).

Medical Assistance. DoD made medical assistance to CBP personnel and CBP referred migrants available at U.S. ports of entry in California and Arizona. As part of this assistance, active duty military personnel medically evaluated and treated approximately 191 migrants referred by CBP medical personnel at or near U.S. ports of entry in California and Arizona through January 31, 2019. DoD health care providers treated migrants for dermatological, gastrointestinal, ophthalmologic, respiratory, dental, and other medical conditions, as well as treated persons for a variety of physical injuries and fevers, for example, and provided medical follow-up.

DoD medical assistance will continue through September 30, 2019, for emergency life-saving care at the point of injury for CBP personnel, who are injured as a result of violent encounters.

Force Protection. Within property controlled by CBP at or adjacent to a U.S. port of entry in California, active duty military personnel (i.e., Military Police) served as the last line of southward-facing protection for CBP personnel performing Federal functions against potential hostile actions by migrants or other individuals attempting to enter the United States. At no time while performing this mission did DoD military personnel have to take action or otherwise come into contact with migrants. This support shifted to an “available when needed” status on February 1, 2019.

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.

Answer: DoD relies on the assessments of DHS, the Federal department responsible for border security. DoD defers to DHS as to the effect of DoD support on the security of the southern border of the United States. DoD and DHS work continually to adjust the level of DoD support needed.

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.

Answer: The Standing Rules for the Use of Force (SRUF), Enclosure L of the Chairman of the Joint Chiefs of Staff Instruction 3121.01B, remain in effect for land- and air-based operations in the United States. No specific additional guidance was determined to be necessary.

Unit commanders at all levels are required to teach and train their personnel on the SRUF. Military personnel are highly trained and, for the most part, require no additional training on such matters. Nevertheless, U.S. Northern Command conducted mandatory two-day training for all military personnel deployed to the southern border before those personnel began supporting CBP.

No DoD personnel supporting CBP have had to use non-deadly or deadly force based on the need for self-defense or the defense of others.