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COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED FIFTEENTH CONGRESS

November 23, 2018

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JENNIFER M. STEWART, STAFF DIRECTOR

The Honorable Donald J. Trump
President of the United States
The White House
Washington, DC 20500

Dear Mr. President,

I am writing because of your administration's recent decision to grant legal authority for active duty personnel along the southern border to act as an extension of law enforcement. This decision raises serious legal questions, puts our armed forces in an untenable position, and further reduces their readiness.

The activities described in the memorandum signed, at your direction, by your Chief of Staff include "a show or use of force (including lethal force, where necessary), crowd control, temporary detention, and cursory search." This is yet another unnecessary step towards the militarization of the southern border and is not a proportionate response to individuals that wish to legally seek asylum as they flee violence and persecution in their countries. Furthermore, the activities described in the memorandum may be a violation of existing federal laws, such as the Posse Comitatus Act (18 USC 1385) or limitations on troops' participation certain law enforcement activities (10 USC 275).

I am also concerned by the continued lack of transparency and limited information being provided to Congress on Department of Defense operations along the southern border. Congress has frequently heard about decisions made or actions taken through the press rather than hearing directly from your Administration. This includes this most recent memorandum issued the week of Thanksgiving. With that in mind, I request the following information be provided in response to this letter:

- (1) a detailed justification, to include any classified or unclassified threat assessment, for issuing the directive that military personnel be used to conduct activities that could be considered law enforcement activities;
- (2) an assessment of the capability and capacity of U.S. Customs and Border Protection agents, and any gaps or limitations that were identified in the context of the current caravans, that warrant the use of active duty military personnel in potential law enforcement activities described in the memorandum;
- (3) a legal opinion and specific statutory authorities cited to justify how the potential actions authorized by the memorandum are in compliance with current law and not in contradiction to previously referenced statutory limitations;

(4) a list of the equipment and weapons that military personnel will be authorized to carry and use in performance of the expanded mission;

(5) details of the specific training, to include foreign language training and training on the legal rights of individuals to seek asylum, that military personnel will be provided prior to the performance of the expanded mission;

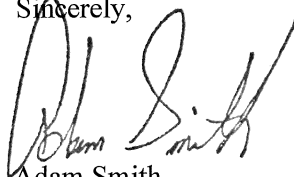
(6) the cost to-date of utilizing 5,800 active duty and 2,100 National Guard personnel along the southern border, the expected length the deployment is expected to take place beyond December 15, 2018, and the expected total cost of the Department of Defense's activities along the southern border, and specific funding sources, in fiscal year 2019;

(7) the specific mission assigned to each unit supporting the southern border deployment and plans to transition these responsibilities back to the Department of Homeland Security;

(8) what facilities military personnel would use to temporarily detain individuals under the new authority, what certifications are in place to ensure facilities are adequate for children and families, what time limits are in place for length of detention, what training and capabilities the troops have in providing care to asylum seekers in their detention, and what process is in place to ensure individuals detained by our military are transferred into the existing lawful asylum seeking process.

I hope that you will reconsider this recent decision and de-escalate the situation by removing active duty troops from the southern border.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Smith", written over a horizontal line.

Adam Smith

Ranking Member