

# Exhibit 3

Joint Statement by  
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Under Secretary of Defense for Policy  
Office of the Secretary of Defense  
And  
Vice Admiral Michael Gilday, USN  
Director of Operations  
The Joint Staff

Before the 116th Congress  
Committee on Armed Services  
U.S. House of Representatives  
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## **Introduction**

Chairman Smith, Ranking Member Thornberry, distinguished Members of the Committee: Thank you for the opportunity to testify before you today on Department of Defense (DoD) support to the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) mission to secure the southern border of the United States.

## **The Department of Defense Has a Long History of Supporting Border Security**

DoD has a long history of supporting efforts to secure U.S. borders. Since the early 1990s, DoD has supported civilian law enforcement agency border security activities, counterdrug activities, and activities to counter transnational organized crime and other transnational threats. Active, Reserve, and National Guard personnel have provided operational military support, such as aerial reconnaissance, ground surveillance, search and rescue support, and medical support. DoD has loaned facilities and special equipment, such as aerostats, ground surveillance radars, and ground sensors to CBP. DoD has also provided temporary housing support to the Department of Health and Human Services (HHS) as part of the national response to the surge of unaccompanied alien children (UAC) at the U.S. southern border. From 2012 to 2017, DoD provided shelter for nearly 16,000 UAC, who received care, security, transportation, and medical services from HHS. Consistent with section 2815 of the National Defense Authorization Act for FY 2017 (Public Law 114-328), the Secretary of Defense certified that providing this sheltering support to HHS would not negatively affect military training, operations, readiness, or other military requirements, including National Guard and Reserve readiness.

At the direction of President Bush, in support of CBP's Operation Jump Start, DoD provided National Guard personnel (6,000 from June 2006 - July 2007; 3,000 from July 2007 - July 2008) to augment and enhance CBP's ability to execute its border security mission. National Guard personnel provided aviation, engineering, medical, entry identification, communications, vehicle maintenance, administrative, and other non-law enforcement support. In addition, the National Guard improved the southern border security infrastructure by building more than 38 miles of fence, 96 miles of vehicle barrier, more than 19 miles of new all-weather road, and road repairs exceeding 700 miles. At the direction of President Obama, DoD provided

up to 1,200 National Guard personnel annually from 2010 to 2016 in support of CBP's Operation Phalanx. National Guard personnel provided aerial reconnaissance, analytical support, and support to counterdrug enforcement activities that enabled CBP to recruit and train additional officers and agents to serve on the border.

### **DoD Works Closely with the Department of Homeland Security on Requests for Assistance**

Across the full-range of support that DoD has provided DHS – border security support, disaster support, special event security support, and support for protection of the President – DoD has worked closely with DHS, as DHS develops its requests for DoD assistance as deliberately, expeditiously, and effectively as possible to meet mission needs.

DoD carefully considers all requests for assistance, including in order to determine whether DoD has the requested capabilities and resources and whether providing the requested assistance is consistent with the law. When a request is approved, DoD works with the requester to select the right forces and resources to meet the requester's mission needs, and to avoid or mitigate the potential impacts on military readiness. DoD has used the same process for every DHS request for assistance related to DHS's border security mission.

### **Current Department of Defense Border Security Support**

In his April 4, 2018, memorandum, "Securing the Southern Border of the United States," the President directed the Secretary of Defense to support DHS in "securing the southern border and taking other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country." The President also directed the Secretary of Defense to request the use of National Guard personnel to assist in fulfilling this mission, pursuant to section 502 of title 32, U.S. Code, and to use such other authorities as appropriate and consistent with applicable law. The President also directed the Secretary of Defense and the Secretary of Homeland Security, in coordination with the Attorney General, to determine what other resources and actions are necessary to protect our southern border, including Federal law enforcement and U.S. military resources.

From April 2018 to the present, National Guard personnel have supported CBP Operation Guardian Support, augmenting CBP efforts to secure the southern border. National Guard personnel have performed a range of administrative, logistical, and operational support tasks, freeing U.S. Border Patrol agents from these duties and enabling more U.S. Border Patrol agents to patrol the border. National Guard support to CBP Operation Guardian Support is scheduled to continue through September 30, 2019.

From October 2018 to the present, active-duty military personnel have supported CBP Operation Secure Line by providing: aviation support (e.g. transporting CBP quick reaction forces); engineering support (e.g., hardening U.S. ports of entry (POEs), providing temporary barriers, and emplacing concertina wire); planning support; last line of outward defense protection for CBP personnel performing their Federal functions at POEs; and loaned personnel protective equipment (e.g., helmets with face shields, hand-held shields, and shin guards). Active-duty military personnel were selected because the Secretary of Defense determined them to be the best-suited and most readily available forces from the Total Force to provide the assistance requested by the DHS. Then, as now, the Department continually assesses the necessary force composition and layout. We adjust as necessary to meet mission requirements, while minimizing impacts on readiness, as well as consider future and global response military operational requirements. For example, the protection of CBP personnel performing their Federal functions at POEs will shift to a contingency basis (i.e., available when needed), starting February 1, 2019. Likewise, with each approved request, we ensure that the assigned military forces are trained and prepared to execute the mission in support of CBP.

On January 11, 2019, the Acting Secretary of Defense approved a DHS request for additional active-duty military support of CBP Operation Secure Line. These military personnel will operate mobile surveillance cameras in Arizona, California, New Mexico, and Texas in all nine Border Patrol Sectors, and emplace concertina wire on existing barriers at areas designated by CBP along the southern border between POEs in Arizona and California. The mobile surveillance camera support is currently scheduled to continue through September 30, 2019. CBP has requested that an additional 150 miles of concertina wire be emplaced no later than March 31, 2019.

All of this military support has been – and will continue to be – provided consistent with the law, including the Posse Comitatus Act, section 1385 of Title 18, U.S. Code. Military personnel have supported civilian law enforcement efforts, but do not participate directly in law enforcement activities, such as search, seizure, and arrest. Military personnel protecting CBP personnel performing their Federal functions at POEs are, consistent with the April 1971 opinion of the Department of Justice Office of Legal Counsel, also complying with the Posse Comitatus Act.

### **Conclusion**

The military's presence and support increase the effectiveness of CBP's border security operations, free U.S. Border Patrol agents to conduct law enforcement duties at the southern border, and enhance situational awareness to stem the tide of illegal immigration, human smuggling, and drug trafficking along the southern border. The ongoing temporary DoD support is a continuation of DoD's long history of supporting DHS and CBP in their mission to secure the U.S. border. These decisions are far from static, as we continue to work with the Services, the National Guard Bureau, and U.S. Northern Command to evaluate mission requirements and associated risks.

Chairman Smith, Ranking Member Thornberry, distinguished members of the Committee, thank you for the opportunity to testify before the committee.