

# EXHIBIT S



## POLITICS

# White House approves military to use lethal force at southern border

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WASHINGTON — The White House has authorized active-duty military troops stationed along the southwest border to use lethal force, if necessary, a significant escalation of the support role they had been tasked with that may run afoul of a 140-year-old law that generally bars the military from operating within U.S. boundaries.

White House Chief of Staff John Kelly signed a memo late Tuesday expanding the mission of the 5,800 troops to include protecting Customs and Border Protection agents. That represents a sharp change in the orders given to troops currently deployed in California, Arizona and Texas, who had been lining the border with concertina wire and providing only logistical support to CBP personnel.

Defense Secretary James Mattis confirmed the new guidelines to reporters on Wednesday but downplayed the level of interaction his troops will have with migrants. He said most troops aren't carrying weapons and that the military would stay away from civilian law enforcement roles such as arrests, which are forbidden under in the Posse Comitatus Act.

The law prohibits the federal government from using the armed forces in a domestic police role, except in situations specifically authorized by the Constitution or Congress.

Mattis emphasized that he would use his expanded authorities only in response to a specific, detailed request from Secretary of Homeland Security Secretary Kirstjen Nielsen, and that none has yet been made.

"I now have the authority to do more," Mattis told reporters. "Now we'll see what she asks me."

The memo was first reported by the Military Times.

Mattis' assurances did little to quell criticism from advocacy groups worried about Trump's increasingly dangerous actions and rhetoric as thousands of migrants — mostly from Central America — line up in Tijuana, Mexico, and elsewhere to try to enter the country to request asylum. The president had previously suggested that troops would be allowed to fire upon migrants if any of them threw rocks at the U.S. troops, but neither the Pentagon nor the Department of Homeland Security backed up that assertion.

With the new orders, Michael Breen, president of Human Rights First, said the White House is officially "upping the ante" against migrants, and creating a hostile environment that could lead to deadly confrontations.

"This legally dubious 'cabinet order' creates confusion, undermines morale, and may very well lead to violence," Breen said. "Americans should be thankful that those currently serving are likely to exhibit more judgment than their commander in chief."

Public Citizen, a liberal advocacy group based in Washington, D.C., filed a Freedom of Information Act request demanding the public release of Kelly's order to determine whether it violates the Posse Comitatus Act.

"The authorization of the military to use force within domestic borders is a matter of grave consequence for a nation under civilian rule," said Robert Weissman, president of Public Citizen. "Kelly's order should be published immediately for the public to understand exactly what he has authorized, whether the Trump administration is violating the law and what risk of violence may await asylum-seekers."

Trump, who is spending the Thanksgiving holiday at his resort in Palm Beach, Florida, ordered the troops to the border following reports of a caravan of Central Americans inching its way toward the U.S. border. In the run-up to the midterm elections, he repeatedly described the caravan as an "invasion" and returned to the issue in a tweet Wednesday evening.

"There are a lot of CRIMINALS in the Caravan. We will stop them. Catch and Detain!" Trump posted on Twitter. "Judicial Activism, by people who know nothing about security and the safety of our citizens, is putting our country in great danger. Not good!"

Trump was likely referring to a ruling from a California judge on Monday that halted the administration's attempts to bar migrants who enter the country illegally from applying for asylum.

The U.S. military has been deployed domestically to conduct law enforcement duties before, but only under laws passed by Congress.

In 1991, Congress passed a law that allows the Pentagon to assist federal and state law enforcement officials during domestic anti-drug operations. That led to a 1997 incident in Texas where a Marine on a drug-surveillance mission shot and killed an 18-year-old who was herding goats on his family's ranch.

A Congressional Research Service report in April concluded that the military could be deployed, but only if it was limited to "certain types of support" to law enforcement, such as conducting aerial surveillance, operating equipment, sharing intelligence and providing advice.

But the report said the administration would run into legal trouble if it tasked the military with conducting law enforcement activities.

"There must be a constitutional or statutory authority to use federal troops in a law enforcement capacity to stop aliens from entering the country unlawfully, or to apprehend gang members or seize contraband," the report found.