



OFFICE OF THE GOVERNOR

April 11, 2018

Dear Secretary Nielsen and Secretary Mattis:

Pursuant to your request, the California National Guard will accept federal funding to add approximately 400 Guard members statewide to supplement the staffing of its ongoing program to combat transnational crime. This program is currently staffed by 250 personnel statewide, including 55 at the California border.

Your funding for new staffing will allow the Guard to do what it does best: support operations targeting transnational criminal gangs, human traffickers and illegal firearm and drug smugglers along the border, the coast and throughout the state. Combating these criminal threats are priorities for all Americans – Republicans and Democrats. That’s why the state and the Guard have long supported this important work and agreed to similar targeted assistance in 2006 under President Bush and in 2010 under President Obama.

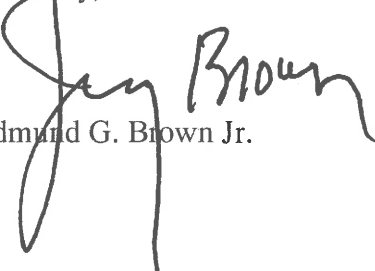
But let’s be crystal clear on the scope of this mission. This will not be a mission to build a new wall. It will not be a mission to round up women and children or detain people escaping violence and seeking a better life. And the California National Guard will not be enforcing federal immigration laws.

Here are the facts: there is no massive wave of migrants pouring into California. Overall immigrant apprehensions on the border last year were as low as they’ve been in nearly 50 years (and 85 percent of the apprehensions occurred outside of California).

I agree with the Catholic Bishops who have said that local, state and federal officials should “work collaboratively and prudently in the implementation of this deployment, ensuring that the presence of the National Guard is measured and not disruptive to community life.”

I look forward to working with you on this important effort.

Sincerely,

  
Edmund G. Brown Jr.

**MEMORANDUM OF AGREEMENT BETWEEN  
THE STATE OF CALIFORNIA  
AND  
THE DEPARTMENT OF DEFENSE  
AND  
THE DEPARTMENT OF HOMELAND SECURITY**

Preamble

In response to a request for support from the United States Department of Defense and Department of Homeland Security, the Governor of the State of California agrees to accept federal funding to increase the number of personnel supporting ongoing operations of the California National Guard to combat drugs and transnational crime, currently staffed by 250 personnel statewide, including 55 near California's southern border. This new staffing will continue to focus on transnational criminal gangs, human traffickers, and illegal firearm and drug smugglers along the border, the coast, and throughout the state. California National Guard service members deployed under this Agreement will not be used to perform or support any immigration enforcement work.

Terms

The Parties agree that:

1. **Authority:** The Governor shall order military personnel to duty in accordance with 32 U.S.C. § 502(f) and all applicable law.
2. **Federal Funding:** The Department of Defense has authorized the use of 32 U.S.C. § 502(f) duty status to order Soldiers/Airmen to duty on a reimbursable basis in order to perform missions statewide in support of border security. The California National Guard shall activate service members in support of this Agreement when it certifies with the Department of Defense that appropriate funds are available to address the mission requirements outlined below.
3. **Command and Control:** In accordance with article V, section 7 of the California Constitution, the Governor is the Commander in Chief of the Militia, which includes the California National Guard in state status. California National Guard personnel performing missions in accordance with this Agreement will not be in a federal status. Personnel will remain under the command and control of the Governor and the Adjutant General of California at all times.
4. **Duration/End State:** This Agreement shall remain in effect until September 30, 2018, unless renewed or extended in a writing signed by all parties.

5. **Mission Scope:** California agrees to provide approximately 400 National Guard service members to perform support missions along the border, the coast, and throughout the state that include:

- a. Operations targeting transnational criminal gangs, human traffickers, and illegal firearm and drug smugglers;
- b. Counterdrug operations and counter-narcoterrorism operations crossing in both directions of the border;
- c. Interdiction of illegal firearm shipments crossing in both directions of the border;
- d. Operations interdicting human trafficking; and
- e. Coastal and offshore interdiction of illegal drugs and firearms.

6. **Mission Limitations:**

- a. California National Guard service members shall not enforce immigration laws, arrest people for violation of immigration laws, guard individuals taken into custody for immigration-related violations, nor support the enforcement of immigration laws;
- b. No service members shall be employed in a direct law enforcement role;
- c. No service members shall participate in the construction of any border barrier; and
- d. Personnel and funds for this operation shall only be used in support of missions described in paragraph 5 of this Agreement.

7. **Governor's Authority:** As the Commander in Chief of the National Guard under state command and control, the Governor retains the authority to decline missions for any reason, including but not limited to missions that would compromise the state's ability to respond to state emergencies, missions that would exceed the mission scope and limitations outlined in paragraphs 5 and 6, or missions that do not meet a valid state and/or national security interest.

8. **Rules for the Use of Force:** All California National Guard forces participating in this operation will comply with the California National Guard's Rules for the Use of Force (RUF).

9. **Liability:** All California National Guard personnel participating in this operation are federal employees within the meaning of the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2679, and are included within the coverage of its provisions.

10. **Effective Date:** This Agreement shall become effective on the date of the last signature below.

11. **Amendment/Termination:** This Agreement may only be amended in a writing signed by all parties. Any party may terminate participation in this Agreement at any time for any reason in a signed writing delivered to the other parties.

12. **Signatures:**

\_\_\_\_\_  
Kirstjen M. Nielsen  
Secretary  
Department of Homeland Security

\_\_\_\_\_  
Date

\_\_\_\_\_  
James N. Mattis  
Secretary  
Department of Defense

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Edmund G. Brown Jr.  
Governor  
State of California

  
\_\_\_\_\_  
Date