

United States Senate

WASHINGTON, DC 20510

July 22, 2020

The Honorable William P. Barr
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
2801 Nebraska Avenue NW
Washington, D.C. 20528

Dear Attorney General Barr and Acting Secretary Wolf:

We write with urgent concern about disturbing reports of actions by Department of Justice and Department of Homeland Security officers against American protesters, as well as threats by the President to deploy federal law enforcement agents into the streets of more American cities. Federal officials should not be dispatched into the streets of our cities without proper authority, training, and accountability. Nor should they be violating the civil rights of Americans who are exercising their First Amendment rights and seeking reforms of their own government's policies.

Last Friday, our nation lost Congressman John Lewis, a titan of civil rights whose life embodied the American tradition of civil disobedience. As a young leader of the Civil Rights Movement, he repeatedly put his life on the line for racial justice and equality. When he led the march across the Edmund Pettus Bridge in Selma, Alabama, in 1965, an unidentified state trooper fractured his skull with a billy club—and then hit him again when he tried to stand up. Speaking at the 55th anniversary of that march earlier this year, after his cancer diagnosis, Congressman Lewis urged Americans, “Get in good trouble, necessary trouble, and help redeem the soul of America.”¹

Since the murder of George Floyd at the hands of police officers nearly two months ago, Americans have taken to the streets in cities and towns across the United States to protest police brutality and systemic racism. On Capitol Hill, this movement has also spurred critical and meaningful police reform legislation in the form of the George Floyd Justice in Policing Act, a broad-based reform bill that has passed the House of Representatives with bi-partisan support and currently has 37 cosponsors in the Senate.

The latest instance of alarming federal law enforcement activities directed by the Trump Administration has come from Portland, Oregon. Portland has seen more than 50 consecutive days of protests in the wake of Mr. Floyd's murder. Reports have emerged of a disturbing militarized response by federal agents dispatched to the city. According to these reports, federal officers wearing camouflage and tactical gear and lacking any obvious identifying insignia have jumped out of unmarked vehicles and detained protesters. One terrified protester did not know

¹ *John Lewis' Legacy Shaped in 1965 on 'Bloody Sunday,'* ASSOCIATED PRESS (July 18, 2020), <https://www.nytimes.com/aponline/2020/07/18/us/ap-us-john-lewis-bloody-sunday.html>.

whether the men detaining him were law enforcement officials or far-right militia groups operating in the area who often wear military-style outfits. These officers have reportedly arrested, searched, and detained protesters before properly reading them their *Miranda* rights. Federal officers have also apparently fired “less-lethal” weapons through the slits in the federal courthouse’s façade, and another was seen walking the streets with a burning ball emitting a chemical agent.² Further, these tactics have not deescalated the situation, but rather have aggravated it.

In addition, federal officers have been wearing military-style woodland camouflage with no apparent tactical purpose on the streets of an American city. These officers also appear to be equipped with military-style tactical gear unsuited for riot control or law enforcement responses to civil unrest. In fact, this use of military-style outfits has drawn criticism even from military leaders within the Trump Administration. Secretary of Defense Mark Esper has evidently raised concerns about federal law enforcement agents patrolling American streets in uniforms similar to those worn by servicemembers deployed overseas in war zones.³

Deepening these concerns, it appears that federal forces were sent into the streets against their fellow Americans without proper training. An internal Department of Homeland Security memorandum reportedly warned that the federal officers dispatched to Portland were not specifically trained in riot control or mass demonstrations. The memorandum cautioned: “Moving forward, if this type of response is going to be the norm, specialized training and standardized equipment should be deployed to responding agencies.”⁴

Now, the President has darkly suggested that federal law enforcement activities in Portland were a harbinger of things to come in other American cities. “I’m going to do something—that, I can tell you,” he told reporters in the Oval Office on Monday. “Because we’re not going to let New York and Chicago and Philadelphia and Detroit and Baltimore and all of these—Oakland is a mess. We’re not going to let this happen in our country. All run by liberal Democrats.”⁵ In his own words, Donald Trump made crystal clear the starkly partisan nature of his intentions, even expressly invoking his presumptive political opponent in November. “Look at what’s going on—all run by Democrats, all run by very liberal Democrats. All run, really, by radical left,” he

² See, e.g., Sergio Olmos, Mike Baker & Zolan Kanno-Youngs, *Federal Agents Unleash Militarized Crackdown on Portland*, N.Y. TIMES (July 17, 2020), <https://www.nytimes.com/2020/07/17/us/portland-protests.html>; Katie Shepherd & Mark Berman, ‘It Was Like Being Preyed Upon’: Portland Protesters Say Federal Officers in Unmarked Vans Are Detaining Them, WASH. POST (July 17, 2020), <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>; N’dea Yancey-Bragg, Kristine Phillips & Lindsay Schnell, ‘Secret Police Force’: Feds Reportedly Pull Portland Protesters Into Unmarked Vehicles, Stirring Outrage, USA TODAY (July 17, 2020), <https://www.usatoday.com/story/news/nation/2020/07/17/reports-federal-officers-detain-portland-protesters-unmarked-vans/5457471002>.

³ Laura Seligman, *Esper Concerned Over Federal Agents Dressed Like Military Troops in U.S. Cities*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/esper-federal-agents-military-protests-376381>.

⁴ Sergio Olmos, Mike Baker & Zolan Kanno-Youngs, *Federal Officers Deployed in Portland Didn’t Have Proper Training, D.H.S. Memo Said*, N.Y. TIMES (July 17, 2020), <https://www.nytimes.com/2020/07/18/us/portland-protests.html>.

⁵ Peter Baker, Zolan Kanno-Youngs & Monica Davey, *Trump Threatens To Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES (July 20, 2020), <https://www.nytimes.com/2020/07/20/us/politics/trump-chicago-portland-federal-agents.html>.

said, adding, “If [former Vice President Joe] Biden got in, that would be true for the country. The whole country would go to hell. And we’re not going to let it go to hell.”⁶

This was more than just a partisan broadside by the President. A spate of federal agents are expected to be deployed in the streets of Chicago soon, including at least 150 agents from the Department of Homeland Security.⁷ Further reporting indicates that federal officers may also be sent to Albuquerque, New Mexico; Kansas City, Missouri; and Milwaukee, Wisconsin.⁸ Nor was this the first time he had used this kind of inflammatory rhetoric. He tweeted on Sunday: “The Radical Left Democrats, who totally control Biden, will destroy our Country as we know it. Unimaginably bad things would happen to America. Look at Portland, where the pols are just fine with 50 days of anarchy. We sent in help. Look at New York, Chicago, Philadelphia. NO!”⁹ Previously, the President had urged a group of governors to “dominate” protesters or otherwise “look like a bunch of jerks,” while also calling protesters “terrorists” and encouraging the governors to “do retribution.”¹⁰

Other statements by senior Trump Administration officials have likewise been troubling, and appear to be designed to provide cover for federal use of force against civilians. Acting Secretary Wolf issued an official statement last week that “Portland has been under siege . . . by a violent mob while local political leaders refuse to restore order to protect their city. Each night, lawless anarchists destroy and desecrate property, including the federal courthouse, and attack the brave law enforcement officers protecting it.”¹¹ This press release references “violent anarchists” 72 times, including in documenting 20 instances of graffiti.¹² Acting Secretary Wolf, you also tweeted a photograph of yourself speaking to officers in camouflage uniforms, stating, “We will never surrender to violent extremists on my watch.”¹³ Such characterizations of all protesters as “violent anarchists,” echoing the President’s politicized rhetoric, seem intended not to seek resolution but rather to stoke the flames of hate and discord.

Critically, it remains unclear what legal authorities the federal government has invoked for its militarized interventions in American cities. All of this is part of an alarming pattern by the

⁶ *Id.*

⁷ Gregory Pratt & Jeremy Gerner, *Trump Expected To Send New Federal Force to Chicago This Week To Battle Violence, But Plan’s Full Scope Is a Question Mark*, CHI. TRIB. (July 20, 2020), <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-dhs-deployment-20200720-dftu5ychwbxctg4ltarh5qnmwma-story.html>.

⁸ Rich Kremer, *White House Hints at Federal Response to Protests in Milwaukee*, WIS. PUB. RADIO (July 20, 2020), <https://www.wpr.org/white-house-hints-federal-response-protests-milwaukee>; Caroline Linton, *Trump Says Federal Officers in Portland Have Done a “Great Job,” and He Is Considering Deploying Them in Other Cities*, CBS NEWS (July 20, 2020), <https://www.cbsnews.com/news/trump-federal-officers-portland-great-job-send-officers-other-cities>.

⁹ Donald J. Trump (@realDonaldTrump), TWITTER (July 19, 2020, 12:56 P.M.), <https://twitter.com/realDonaldTrump/status/1284894845614600194>.

¹⁰ Katie Rogers, Jonathan Martin & Maggie Haberman, *As Trump Calls Protesters ‘Terrorists,’ Tear Gas Clears a Path for His Walk to a Church*, N.Y. TIMES (July 17, 2020), <https://www.nytimes.com/2020/06/01/us/politics/trump-governors.html>.

¹¹ Press Release, Dep’t of Homeland Sec., Acting Secretary Wolf Condemns The Rampant Long-Lasting Violence in Portland (July 16, 2020), <https://www.dhs.gov/news/2020/07/16/acting-secretary-wolf-condemns-rampant-long-lasting-violence-portland>.

¹² *Id.*

¹³ Acting Secretary Chad Wolf (@DHS_Wolf), TWITTER (July 17, 2020, 8:00 A.M.), https://twitter.com/DHS_Wolf/status/1284095516276592641.

Trump Administration in taking an aggressive and excessive response to protests catalyzed by the killing of George Floyd, Breonna Taylor, Ahmaud Arbery, and many others. This includes the forcible clearing of peaceful protesters in Lafayette Square, in front of the White House, shortly before a photo opportunity for President Trump near St. John's Episcopal Church—reportedly at your direction, Attorney General Barr.¹⁴

The right of Americans to join together, assemble peaceably, and protest is vital to our democracy. It is at the core of the First Amendment. We decry violence in all its forms. But Americans should be able to exercise their rights under the First Amendment without inappropriate interference or legally questionable activities by federal officers. They should be able to expect accountability, transparency, and professionalism whenever federal forces are on the streets of America's cities.

In light of these concerns, we respectfully request that you respond to the following questions:

1. Who—the Attorney General, the Acting Secretary of Homeland Security, or some other official—has directed the federal response to the protests in Portland and Washington? And who is directing such operations in other American cities?
2. The Trump Administration has not clearly articulated its legal basis, if any, for deploying federal officers to American cities to engage in this conduct against protesters. And it is far from clear that all of these activities by the Department of Justice and the Department of Homeland Security are fully and properly authorized under federal law. When will the Department of Justice and/or the Department of Homeland Security provide a full public explanation of its purported legal rationale?
3. As explained above, there have been extensive reports of federal officers wearing camouflage and tactical gear who have jumped out of unmarked vehicles and detained protesters in Portland, but these officers have evidently lacked any obvious identifying markers.
 - a. What agency or office is conducting these operations?
 - b. What legal authority do you believe permits this activity?
 - c. Which official made the final decision to authorize this activity?
 - d. Do the Department of Justice and/or the Department of Homeland Security intend to use this tactic, or similar ones, in other American cities?
4. Why have federal agents deployed in American cities and authorized to execute arrests not consistently worn uniforms identifying them as law enforcement officers and indicating their employing agency?

¹⁴ Peter Baker, Maggie Haberman, Katie Rogers, Zolan Kanno-Youngs & Katie Benner, *How Trump's Idea for a Photo Op Led to Havoc in a Park*, N.Y. TIMES (June 2, 2020), <https://www.nytimes.com/2020/06/02/us/politics/trump-walk-lafayette-square.html>.

5. Some reports have indicated that federal agents in Portland have detained individuals who were not near federal property.¹⁵ To the extent your agencies are relying on legal authorities regarding the protection of federal property, what do you believe are the legal limits on the actions of federal agents operating at a significant distance from federal property?
6. For the Department of Justice and/or Department of Homeland Security officers who have been deployed to Portland, Washington, and any other American cities to respond to recent protests, what training have they received in terms of crowd control, use of force, and civil rights?
7. Department of Homeland Security agents are reportedly set to be deployed to Chicago soon, and the President has also referenced cities such as New York, Philadelphia, Detroit, Baltimore, and Oakland. Other reporting has indicated Albuquerque, Kansas City, and Milwaukee may be included as well. In what cities is the Department of Justice and/or the Department of Homeland Security currently planning deployments against protesters?
8. When the Department of Justice and/or the Department of Homeland Security deploys officers to respond to protesters in an American city, what notice will be provided about the nature and scope of their activities—including whether federal agents will be operating in the streets without identifying markings?

We appreciate your prompt attention to this urgent matter and respectfully request a response no later than August 4, 2020.

Sincerely,



Cory A. Booker
United States Senator



Ron Wyden
United States Senator



Jeffrey A. Merkley
United States Senator



Kamala D. Harris
United States Senator

¹⁵ Jonathan Levinson & Conrad Wilson, *Federal Law Enforcement Use Unmarked Vehicles To Grab Protesters Off Portland Streets*, ORE. PUB. BROAD. (July 16, 2020), <https://www.opb.org/news/article/federal-law-enforcement-unmarked-vehicles-portland-protesters>.

/s/ Richard Blumenthal
Richard Blumenthal
United States Senator

/s/ Tom Udall
Tom Udall
United States Senator

/s/ Chris Van Hollen
Chris Van Hollen
United States Senator

/s/ Sheldon Whitehouse
Sheldon Whitehouse
United States Senator

/s/ Edward J. Markey
Edward J. Markey
United States Senator

/s/ Richard J. Durbin
Richard J. Durbin
United States Senator

/s/ Bernard Sanders
Bernard Sanders
United States Senator

/s/ Martin Heinrich
Martin Heinrich
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

/s/ Tim Kaine
Tim Kaine
United States Senator

/s/ Tammy Baldwin
Tammy Baldwin
United States Senator

/s/ Robert P. Casey, Jr.
Robert P. Casey, Jr.
United States Senator

/s/ Tammy Duckworth
Tammy Duckworth
United States Senator

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator

/s/ Thomas R. Carper
Thomas R. Carper
United States Senator

/s/ Sherrod Brown
Sherrod Brown
United States Senator

/s/ Michael F. Bennet
Michael F. Bennet
United States Senator

/s/ Mazie Hirono
Mazie K. Hirono
United States Senator

/s/ Tina Smith
Tina Smith
United States Senator

/s/ Kirsten E. Gillibrand
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United States Senator

/s/ Patrick J. Leahy
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United States Senator

/s/ Christopher A. Coons
Christopher A. Coons
United States Senator

/s/ Jack Reed
Jack Reed
United States Senator