

July 11, 2019

The Honorable Mark T. Esper
Acting Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Acting Secretary Esper:

I write regarding your nomination to be the Secretary of Defense and my concerns about potential conflicts of interest you face due to your previous role as Vice President of Government Relations for Raytheon from 2010 to 2017 – the top lobbyist for the nation’s third largest defense contractor.¹ If nominated and confirmed, your potential conflicts would raise significant questions about whether the Department of Defense’s (DoD) contracting decisions would favor Raytheon, particularly given your recusal period from decisions affecting Raytheon will soon expire and your recent memo on “Ethics Obligations and Screening Arrangement” details exceptions to recusing yourself from DoD decisions affecting Raytheon.²

When we met to discuss your nomination on July 10, 2019, I asked that, like former Acting Secretary Patrick Shanahan,³ you extend your recusal commitment through the duration of your tenure at DoD, and take additional steps to eliminate any real or perceived conflicts of interest. You indicated you would not do so. I am troubled by your unwillingness to fully address your real and perceived conflicts of interest, and write to ask that you reconsider your refusal to extend your Raytheon recusal through the duration of your tenure at DoD.

I am concerned by the cozy relationship between giant defense contractors, the DoD, and the White House, which is precisely why I introduced the *Anti-Corruption and Public Integrity Act*,⁴ which would ban you from working at DoD for six years after lobbying for Raytheon, and the *DoD Ethics and Anti-Corruption Act*.⁵ When I questioned you during your November 2017 Senate Armed Services Committee nomination hearing to serve as Secretary of the Army, I had

¹ CBS News, “Trump says he’s draining the swamp as he fills Cabinet with ex-lobbyists,” Kathryn Watson, June 20, 2019, <https://www.cbsnews.com/news/trump-says-hes-draining-the-swamp-as-he-fills-cabinet-with-ex-lobbyists/>.

²U.S. Department of Defense, “Memorandum for Designated Agency Ethics official: Ethics Obligations and Screening Arrangement,” June 24, 2019, https://www.esd.whs.mil/Portals/54/Documents/FOID/Proactive_disclosures/Screening_Arrangement_Acting_SD_Mark_Esper.pdf?ver=2019-07-09-103203-477.

³ The Hill, “Acting Defense chief recuses himself from matters involving Boeing,” Ellen Mitchell, January 02, 2019, <https://thehill.com/policy/defense/423535-acting-defense-chief-recuses-himself-from-matters-involving-boeing>.

⁴ Anti-Corruption and Public Integrity Act, S.3357, <https://www.congress.gov/bill/115th-congress/senate-bill/3357?q=%7B%22search%22%3A%5B%22%5C%22Anti-Corruption+and+Public+Integrity+Act%5C%22%22%5D%7D&s=2&r=2>.

⁵ Department of Defense Ethics and Anti-Corruption Act of 2019, S.1503, <https://www.congress.gov/bill/116th-congress/senate-bill/1503>.

ample reason for concern over your Raytheon conflicts. While you “oversaw all [lobbyists’] activities across all services”⁶ at Raytheon, the company paid you handsomely,⁷ including deferred compensation valued over \$1 million that will pay out after 2022,⁸ to advance their interests at the DoD, in Congress, and at the White House.

You were also a member of then-candidate Donald Trump’s “Leadership Council”⁹ prior to the 2016 election and helped shape this Administration’s anti-regulation and pro-industry agenda. Since President Trump’s election, he has made numerous decisions that benefit defense contractors: such as invoking emergency authority under arms export control laws to evade Congressional review of arms sales,¹⁰ including Raytheon help to Saudi Arabia to develop high-tech bomb parts,¹¹ and significantly increasing defense spending.¹²

In your 2017 ethics agreement,¹³ you committed to recuse from any decisions regarding Raytheon for two years, as required by President Trump’s Executive Order regarding Ethics Commitments by Executive Branch Appointees.¹⁴ While I appreciated this commitment, your agreement’s covered period is set to expire in November 2019 — only four months away. When we met on July 10, 2019, you refused to commit to extend your recusal commitment beyond November and for the duration of your service at the DoD. You claimed that this was based on the advice of DoD ethics officials on the premise that it would create a new precedent — despite the fact that Secretary Shanahan made the same commitment.

In our recent meeting, you refused to commit not to seek a waiver for decisions affecting Raytheon for the remaining duration of your 2017 ethics agreement. Your June 24, 2019 ethics screening arrangement memo — which was apparently not reviewed by the U.S. Office of Government Ethics — also clarifies that even after November 2019, you will still be “disqualified from participating personally and substantially in any particular matter that has a direct and

⁶ Senate Committee on Armed Services, “Nominations -- Esper - Wilkie - Kernan -- Roberts,” November 2, 2017, <https://www.armed-services.senate.gov/hearings/17-11-02-nominations--esper--wilkie--kernan--roberts>.

⁷ The Hill, “Trump’s Army secretary pick made over \$1.5M at Raytheon,” Meagan R. Wilson, August 07, 2017, <https://thehill.com/policy/defense/345619-trumps-army-secretary-pick-made-over-15m-at-raytheon>.

⁸ Bloomberg, “Pentagon’s Esper Outlines Waivers From Raytheon Recusals,” Anthony Capaccio and Bill Allison, July 9, 2019, <https://www.bloomberg.com/news/articles/2019-07-09/acting-defense-chief-esper-modifies-recusal-pledge-on-raytheon>.

⁹ Rolling Stone, “The Shadow Cabinet: How a Group of Powerful Business Leaders Drove Trump’s Agenda,” Andy Kroll, June 19, 2019, <https://www.rollingstone.com/politics/politics-features/trump-leadership-council-members-full-list-848274/>.

¹⁰ NBC News, “Trump bypasses Congress to push through arms sales to Saudis, UAE,” Dan De Luce, May 24, 2019, <https://www.nbcnews.com/politics/national-security/trump-bypasses-congress-push-through-arms-sales-saudis-nae-n1010116>.

¹¹ New York Times, “Trump Allows High-Tech U.S. Bomb Parts to Be Built in Saudi Arabia,” Michael LaForgia and Walt Bogdanich, June 7, 2019, <https://www.nytimes.com/2019/06/07/us/saudi-arabia-arms-sales-raytheon.html>.

¹² Washington Post, “U.S. military spending set to increase for fifth consecutive year, nearing levels during height of Iraq war,” Jeff Stein and Aaron Gregg, April 18, 2019, <https://www.washingtonpost.com/us-policy/2019/04/18/us-military-spending-set-increase-fifth-consecutive-year-nearing-levels-during-height-iraq-war/>.

¹³ Letter from Mark T. Esper to Ruth M.S. Vitter, July 27, 2017, <http://altgov2.org/wp-content/uploads/Esper-Mark-T.-finalEA.pdf>.

¹⁴ Office of Government Ethics, “Executive Order 13770,” January 28, 2017, [https://www2.oge.gov/web/oge.nsf/0/A43C4DBAB9EC4DC7852580BC006FBA83/\\$FILE/Exec%20Order%2013770.pdf](https://www2.oge.gov/web/oge.nsf/0/A43C4DBAB9EC4DC7852580BC006FBA83/$FILE/Exec%20Order%2013770.pdf).

predictable effect on the ability or willingness of Raytheon to provide [your] deferred compensation benefits, unless [you] first obtain a waiver.” In the same memo, however, you seem to nullify this commitment by carving out an exception for you to participate in matters that directly affect Raytheon’s financial interests if DoD officials believe that your participation is “so important that it cannot be referred to another official.”¹⁵

It would raise serious ethical questions, for example, if you engaged in negotiations with Turkey over its potential purchase of Russian-made S-400 air defense system instead of Raytheon’s Patriot system, given that you “personally engaged the Hill on”¹⁶ the Patriot system. Similarly, it would be unethical for you to attempt to influence the U.S. Department of Justice and the Federal Trade Commission’s decision whether to approve the Raytheon and United Technologies merger that could threaten competition in the U.S. market.¹⁷ Your screening arrangement memo, if unchanged, would appear to allow you to participate in decisions that affect Raytheon’s financial standing and should disqualify you from serving as Secretary of Defense, even in an acting capacity.

I appreciated your willingness to meet with me and have a cordial discussion of these matters. But I was extremely disappointed by your unwillingness to commit to take the steps needed to clear any ethics cloud related to your former lobbying work for Raytheon. It appears that, consistent with your 2017 ethics agreement, you have not participated in these matters or other matters involving Raytheon since your confirmation as Secretary of the Army. If confirmed, you must continue not to be involved with any matters that would affect Raytheon’s or your own financial interests.

I ask that you:

- (1) Extend your Raytheon recusal through the duration of your tenure at DoD.
- (2) Expand your recusal by explicitly recusing yourself from participating in all decisions — including but not limited to policy, budget, contracting, and strategy discussions — involving Raytheon or any of Raytheon’s direct competitors (i.e., any companies that are competing directly against Raytheon for any DoD contract), for the duration of your service at DoD.
- (3) Commit to not seek a waiver from your recusal from matters involving Raytheon through your new screening arrangement memo or otherwise.
- (4) Clarify and amend your new screening arrangement memo to ensure that it does not weaken or create loopholes for your recusal commitments.
- (5) Determine if there are additional steps that you can take to address your potential conflicts of interest, and provide the Senate Armed Services Committee with a list of any

¹⁵U.S. Department of Defense, “Memorandum for Designated Agency Ethics official: Ethics Obligations and Screening Arrangement,” June 24, 2019, [https://www.esd.whs.mil/Portals/54/Documents/FOID/Proactive disclosures/Screening Arrangement Acting SD Mark Esper.pdf?ver=2019-07-09-103203-477](https://www.esd.whs.mil/Portals/54/Documents/FOID/Proactive%20disclosures/Screening%20Arrangement%20Acting%20SD%20Mark%20Esper.pdf?ver=2019-07-09-103203-477).


¹⁶ Senate Committee on Armed Services, “Nominations -- Esper - Wilkie - Kernan - Roberts,” November 2, 2017, <https://www.armed-services.senate.gov/hearings/17-11-02-nominations--esper--wilkie--kernan--roberts>.

¹⁷ New York Times, “4 Questions Hovering Over the Raytheon-United Technologies Deal to Create a Defense Giant,” Peter Eavis, June 11, 2019, <https://www.nytimes.com/2019/06/11/business/economy/raytheon-united-technologies-merger.html>.

and all additional steps you will commit to take to address your real or perceived conflicts of interest and how they may affect DoD decisions.

I look forward to your written response to this request no later than July 19, 2019.

Sincerely,



Elizabeth Warren
United States Senator