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July 28, 2020

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

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

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C St. NW
Washington, DC 202040

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Nebraska Avenue Center, NW
Washington, DC 20528

Dear Attorney General Barr, Secretary Esper, Secretary Bernhardt, and Acting Secretary Wolf:

I write regarding President Trump's use of paramilitary domestic federal law enforcement agents against protesters and civilian bystanders in Portland, Oregon, and his imminent threats to deploy tens of thousands of these personnel in Seattle, Chicago, and other U.S. cities.¹ President Trump has used these forces – who are improperly trained, unsuited for their operation, and have engaged in legally questionable tactics and arrests – in American cities despite clear opposition from governors, mayors, and citizens who are exercising their First Amendment rights in the communities in which these federal personnel have been deployed.

¹ Washington Post, "Trump threatens to deploy federal agents to Chicago and other U.S. cities led by Democrats," Nick Miroff and Mark Berman, July 20, 2020, https://www.washingtonpost.com/national/defending-portland-crackdown-trump-pledges-to-deploys-feds-to-chicago-and-other-us-cities-led-by-democrats/2020/07/20/fda42b8a-caaa-11ea-89ce-ac7d5e4a5a38_story.html.

You are each responsible for the command of military or civilian troops and domestic law enforcement personnel in your agencies. I urge you not to allow these personnel under your command or supervision to be used in any future domestic actions against people exercising their right to protest.

Reportedly code-named “Operation Diligent Valor,”² these secretive deployments comprise law enforcement and personnel from agencies including U.S. Customs and Border Protection (CBP) and the U.S. Marshals Service with disparate missions and who, especially in the case of CBP personnel, “were not specifically trained in riot control or mass demonstrations.”³ The involvement of CBP agents is particularly concerning given that agency’s documented history of enforcement abuses in border communities.⁴ These forces have reportedly failed to clearly display law enforcement identification and in some cases wore camouflage uniforms suggestive of a military deployment. Reports indicate that federal law enforcement “ventur[ed] blocks from the buildings they were sent to protect” and “range[d] deep into the streets of a city whose leadership has made it clear they are not welcome.”⁵ Untrained forces reportedly “flooded street corridors with tear gas and shot projectiles” in an “extraordinary campaign to subdue protesters,”⁶ and unidentified federal agents were spotted “driving around the area in unmarked minivans grabbing individuals off the street” without explanation or probable cause.⁷ The operation has reportedly targeted not only civilians expressing their free speech rights but also journalists covering the ongoing protests, including a freelance photojournalist shot using less-lethal rounds, despite the fact that he was clearly identified as a member of the media.⁸

These attacks – in which the President appears to be using Department of Homeland Security (DHS) forces as his “goon squad,”⁹ in the words of a former acting director of U.S. Immigration

² Reuters, “Court documents reveal secretive federal unit deployed for ‘Operation Diligent Valor’ in Oregon,” Gabrielle Borter, July 22, 2020, [https://www.reuters.com/article/us-global-race-portland-valor/court-documents-reveal-secretive-federal-unit-deployed-for-operation-diligent-valor-in-oregon-idUSKCN24N2SH#:~:text=\(Reuters\)%20%2D%20The%20U.S.%20Department,this%20month%2C%20court%20documents%20show](https://www.reuters.com/article/us-global-race-portland-valor/court-documents-reveal-secretive-federal-unit-deployed-for-operation-diligent-valor-in-oregon-idUSKCN24N2SH#:~:text=(Reuters)%20%2D%20The%20U.S.%20Department,this%20month%2C%20court%20documents%20show).

³ New York Times, “Federal Officers Deployed in Portland Didn’t Have Proper Training, DHS Memo Said,” Sergio Olmos, Mike Baker, and Zolan Kanno-Youngs, July 18, 2020, <https://www.nytimes.com/2020/07/18/us/portland-protests.html>.

⁴ Amnesty International, “Saving Lives Is Not a Crime: Politically Motivated Legal Harassment Against Migrant Human Rights Defenders by the USA,” July 2, 2019, <https://www.amnesty.org/download/Documents/AMR5105832019ENGLISH.PDF>.

⁵ New York Times, “Federal Agents Push Into Portland Streets, Stretching Limits of Their Authority,” Mike Baker, Thomas Fuller, Sergio Olmos, July 25, 2020, <https://www.nytimes.com/2020/07/25/us/portland-federal-legal-jurisdiction-courts.html>.

⁶ New York Times, “Federal Officers Deployed in Portland Didn’t Have Proper Training, DHS Memo Said,” Sergio Olmos, Mike Baker, and Zolan Kanno-Youngs, July 18, 2020, <https://www.nytimes.com/2020/07/18/us/portland-protests.html>.

⁷ NPR, “Federal Officers Use Unmarked Vehicles To Grab People in Portland, DHS Confirms,” July 17, 2020, <https://www.npr.org/2020/07/17/892277592/federal-officers-use-unmarked-vehicles-to-grab-protesters-in-portland>.

⁸ NPR, “Order Temporarily Blocks Feds from Targeting Press And Legal Observers in Portland,” Rachel Treisman, July 23, 2020, <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/23/894953202/order-temporarily-blocks-feds-from-targeting-press-and-legal-observers-in-portla>.

⁹ The Guardian, Trump is using federal agents as his ‘goon squad’, says Ice’s ex-acting head, July 24, 2020, <https://www.theguardian.com/us-news/2020/jul/24/trump-goon-squad-john-sandweg-homeland-security-ice>.

and Customs Enforcement – come approximately 100 days before the election.¹⁰ They also come as President Trump’s “re-election campaign is spending millions of dollars on several ominous television ads that promote fear.”¹¹ The deployment of federal paramilitary forces against civilians is a historic embarrassment for our nation, and harms the United States’ standing in the world. It has also contributed to the valid concern that President Trump – with the complicity of agency heads that agree to send these personnel – is turning your departments’ personnel into tools of authoritarianism.¹²

The partisan use of paramilitary domestic federal law enforcement forces to give the President the misguided opportunity to “appear as a field general”¹³ from almost 3,000 miles away – a chance he reportedly seized because he was “sinking in the polls”¹⁴ – raises alarms about the President’s respect for law and precedent, and whether he will take additional, more dangerous and outrageous actions to pit federal forces against their own people in the months and days leading up to and after the 2020 presidential election.

The potential for President Trump to activate domestic forces as his “personal militia” (as former Secretary of Homeland Security Tom Ridge put it¹⁵) is even more disturbing given his ongoing refusal “to reassure the country that he would abide by the voters’ will” and peacefully leave office if he is voted out – resulting in “an unprecedented test of American democracy.”¹⁶ I therefore write to seek your assurances that you will not allow the military or civilian forces under your control to be used by the President to suppress dissent and democracy.

¹⁰ New York Times, “Trump Threatens to Send Federal Law Enforcement Forces to More Cities,” Peter Baker, Zolan Kanno-Youngs, Monica Davey, July 20, 2020, <https://www.nytimes.com/2020/07/20/us/politics/trump-chicago-portland-federal-agents.html>.

¹¹ New York Times. “As Trump Pushes Into Portland, His Campaign Ads Turn Darker,” Maggie Haberman, Nick Corasaniti, and Annie Karni, July 21, 2020, <https://www.nytimes.com/2020/07/21/us/politics/trump-portland-federal-agents.html>.

¹² See, e.g., BuzzFeed News, “‘Disturbing and Demoralizing’: DHS Employees Are Worried The Portland Protest Response is Destorying Their Agency’s Reputation,” July 21, 2020, <https://www.buzzfeednews.com/article/hamedaleaziz/dhs-employee-anger-over-portland-protest-response>; The Atlantic, Trump Is Putting On A Show in Portland, Anne Applebaum, July 22, 2020, <https://www.theatlantic.com/ideas/archive/2020/07/trump-putting-show-portland/614521/>; Haaretz.com, “Portland is Trump’s Testing Ground for Authoritarian Rule,” Alexander Reid Ross and Shane Burley, July 22, 2020, <https://www.haaretz.com/us-news/.premium-portland-trump-s-testing-ground-for-authoritarian-rule-1.9009427>; MSNBC, Federal Officers in Portland Seen AS Nod to Authoritarianism, July 25, 2020, <https://www.youtube.com/watch?v=Guu9rdqyySg>.

¹³ Washington Post, “Operation Diligent Valor: Trump showcased federal power in Portland, making a culture war campaign pitch,” July 24, 2020, https://www.washingtonpost.com/national/portland-protests-operation-diligent-valor/2020/07/24/95f21ede-cce9-11ea-89ce-ac7d5e4a5a38_story.html.

¹⁴ Washington Post, “Operation Diligent Valor: Trump showcased federal power in Portland, making a culture war campaign pitch,” Marissa J. Lang, Josh Dawsey, Devlin Barrett, Nick Miroff, July 24, 2020, https://www.washingtonpost.com/national/portland-protests-operation-diligent-valor/2020/07/24/95f21ede-cce9-11ea-89ce-ac7d5e4a5a38_story.html.

¹⁵ New York Times, “As Trump Pushes Into Portland, His Campaign Ads Turn Darker,” Maggie Haberman, Nick Corasaniti, and Annie Karni, July 21, 2020, <https://www.nytimes.com/2020/07/21/us/politics/trump-portland-federal-agents.html>.

¹⁶ Washington Post, “Trump’s assault on election integrity forces question: What would happen if he refused to accept a loss?,” Elise Viebeck and Robert Costa, July 22, 2020, https://www.washingtonpost.com/politics/trumps-assault-on-election-integrity-forces-question-what-would-happen-if-he-refused-to-accept-a-loss/2020/07/22/d2477150-caae-11ea-b0e3-d55bda07d66a_story.html.

I also ask that you provide answers to the following questions:

1. Has the President sought to activate military or federal law enforcement forces under your control in Portland or other American cities in response to protests or other activity by protestors, or asked out-of-state governors to send their National Guard military personnel into those places?
 - a. If so, please describe each request, and your response to the request.
 - b. If your personnel are currently deployed in American cities:
 - i. Please provide information on which personnel, how many officers or agents, in what cities, and length of deployment.
 - ii. With what weapons and support are these personnel equipped?
 - iii. Who is in command of these personnel? Please provide details, including names and titles, of officials within your agency who are charged with making decisions regarding the size, length, and nature of the deployment.
 - iv. Under what rules of engagement are these personnel operating?
 - v. What training, if any, have the engaged personnel received to prepare them for domestic operations of this nature? Please document all trainings and produce copies of any written guidance that has been provided to personnel being deployed.
 - vi. Have these personnel arrested or detained protestors, and if so, how many and under what protocol? Where and for what duration have these protestors been detained?
 - vii. What information, if any, are the personnel under your supervision collecting about individuals engaged in protests?
 - viii. What is the approximate cost of deploying these personnel, and from which accounts have the funds been allocated? Have funds been reallocated for this purpose?
 - ix. How many complaints have been lodged with your respective agencies regarding their deployments to cities, and how have you resolved or responded to these?
 - c. For each agency or unit under your supervision, please identify the specific statutory and regulatory legal authorities that authorize that agency or unit to:
 - i. Engage in crowd control or respond to civil disturbances;
 - ii. Make arrests or detentions;
 - iii. Use force;
 - iv. Enforce federal laws, and please identify which federal laws such agency is authorized to enforce;
 - v. Conduct searches or seizures;
 - vi. Use tear gas, pepper balls, pepper spray, or other chemical irritants, and please describe under what circumstances they may be used;
 - vii. Use electronic surveillance or cell simulator technologies,¹⁷ and please describe under what circumstances they may be used; and

¹⁷ Willamette Week, "A Mysterious Plane Circled Over Portland for Hours. The U.S. Marshals Service Won't Say If It's Theirs," Tess Riski, June 15, 2020, <https://www.wweek.com/news/2020/06/15/a-mysterious-plane-circled-over-portland-protests-for-hours-the-u-s-marshals-service-wont-say-if-its-theirs/>.

- viii. Patrol areas that are not federally-owned property.
- d. If there are opinions from the Department of Justice Office of Legal Counsel on any of the above topics, please provide them.
2. Will you commit to refuse to deploy the military or federal law enforcement forces under your control domestically against peaceful protesters or otherwise against Americans in advance of the November elections, and refuse to deploy in a manner intended to intimidate voters on November 3?
 3. In the event President Trump loses the election and will not peacefully leave office, will you refuse to deploy the military or federal law enforcement forces under your control in support of his defiance of the voters' will?

This is an urgent matter for American democracy and for the safety of Americans peacefully protesting in their communities, and I therefore ask that you provide me with written commitments no later than August 3.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator