

Congress of the United States
Washington, DC 20515

November 2, 2020

Mr. Chad F. Wolf
U.S. Department of Homeland Security
301 7th Street SW
Washington, D.C. 20528

Dear Mr. Wolf:

As you are aware, in 2020, we have seen record levels of voter turnout with 93 million Americans casting their votes before Election Day. Electoral changes in many states, catalyzed by the novel coronavirus pandemic, have led to an unprecedented amount of litigation now working its way through our courts. This litigation and the fact that in multiple states, absentee ballots cannot be counted until after the polls close, could lead to a slower determination of the Presidency and other offices than voters are accustomed to. We are concerned about the potential deployment of Department of Homeland Security (DHS) personnel to respond to protests or other gatherings related to the election outcome. As Members of the House Committee on Homeland Security and Committee on the Judiciary, we write to request information on operational plans from now through the inauguration period.

Over the last several months, we have been alarmed by decisions that increasingly appear to politicize law enforcement within DHS and undermine the Department's institutional integrity. The Department has the authority to deputize law enforcement officers to assist the Federal Protective Service in order to protect federal persons and property. The Department's decision last July to deploy agents to Portland, Oregon, pursuant to 40 U.S.C. § 1315, resulted in a situation in which DHS officers and agents were discovered to be arresting or otherwise detaining peaceful protestors far from federal property with no probable cause. This resulted in requests by state and local officials for DHS officers to leave Portland, undermining trust in DHS by state and local officials across a number of states. DHS faces at least five civil rights suits for infringements of constitutional rights and a variety of other potentially justiciable legal violations stemming from this deployment. The Inspectors General of both your agency and the Justice Department have opened investigations into this matter.

In the event that electoral outcomes are either delayed while ballots are counted or contested and protests occur, it is critical that any law enforcement response ensure that the constitutional rights of those gathering are upheld. Should additional support be required, precedent and norms suggest that law enforcement action first exhaust all state and local resources, including the specific state's National Guard, and then draw on state-requested resources from other states, before states request federal assistance. Should DHS be requested to provide assistance, it would need to ensure that its officers and agents – who are not trained to police situations of civil unrest involving U.S. citizens – are acting pursuant to clear legal authority, in situations appropriate to their mission and training, and in a manner that does not violate constitutional rights such as free speech and freedom of association. DHS should not deploy additional personnel pursuant to 40 U.S.C. § 1315 without the consent of state officials.

To ensure the protection of the First Amendment rights of all Americans, DHS must be particularly sensitive to its actions in this moment. To that end, we request that DHS and its operational components provide any and all updated information regarding any operations involving deployed agents (other than continuity of government operations) that could have any potential impact on citizens seeking to vote, election activities, or civil disturbances under contemplation between now and January 20, 2021.

In the event of consideration of DHS assets being deployed within the election season, which extends through inauguration, we request the following information, noting the concurrence of the DHS Office of General Counsel and DHS Office of Civil Rights and Civil Liberties, be provided by Tuesday, November 3:

1. Has the Department of Justice requested that DHS be prepared to deploy officers or agents to prevent or respond to election-related issues, civil disturbances, or other issues in the time period from now through the inauguration? Under what circumstances, and pursuant to what authority?
2. Has DHS concluded that it has the inherent authority to deploy officers or agents absent a request from DOJ? Under what circumstances, and pursuant to what authority?
3. Has the President, Vice President, or White House staff directed, requested, or suggested deployment or training of officers or agents during the period from now through the inauguration? If so, under what circumstances, and pursuant to what authority?
4. Has DHS concluded that it has the independent authority to deploy or conduct a training of officers or agents that could have any potential impact on citizens seeking to vote, election activities, or civil disturbances absent a request from the affected state's governor? Under what circumstances, and pursuant to what authority?
5. Please provide the doctrine that DHS would apply for a deployment (other than continuity of government operations) that could have any potential impact on citizens seeking to vote, election activities, or civil disturbances; the operational plans for such a deployment; the rules of engagement that will apply to such a deployment; and to the extent that specific units are contemplated for deployment the names and parent organizations of such units.
6. If assistance is requested by a governor, how does DHS intend to coordinate such deployments or trainings with the governors of the affected states? In which states have coordination protocols already been established? Please provide a copy or description of those protocols.
7. Under what authorities does DHS intend to deploy its officers and agents, to the extent not listed above? To what extent has DHS concluded that such authorities permit deployment without the consent of the governor of the affected state? Please provide a copy or description of any legal opinion to that effect, and a copy

or description of any analysis completed that shows that DHS officers and agents should be used for this purpose in these circumstances.

8. What rules have been established with respect to identification of officers and agents? Specifically, will officers and agents deploy in camouflage or other tactical uniforms, how will agencies and units be identified (e.g. via patches or symbols), where will officers and agents display their names and ranks, and will officers and agents deploy with body cameras? Please provide a copy or description of any such rules.

We also request that the House Committees on Homeland Security, on the Judiciary, and on Appropriations be notified 48 hours before any planned deployment or training during the time period from now through Inauguration Day, including a copy or description of any modifications to the doctrine, operational plans, rules of engagement, coordination protocols, interpretations of legal authorities, rules of identification of officers and agents, and any other information provided pursuant to the above request.

Sincerely,



Ted W. Lieu
Member of Congress



Kathleen M. Rice
Member of Congress

cc:

Mark Morgan, Senior Official Performing the Duties of the Commissioner, U.S. Customs and Border Protection

Tony Pham, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement

Kenneth Cuccinelli, Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services

David Pekoske, Administrator, Transportation Security Administration

ADM Karl Schultz, Commandant, U.S. Coast Guard

Peter Gaynor, Administrator, Federal Emergency Management Agency

Christopher Krebs, Director, Cybersecurity and Infrastructure Security Agency

James Murray, Director, U.S. Secret Service

Randolph Alles, Acting Undersecretary for Management