

Congress of the United States
Washington, DC 20515

June 5, 2020

Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, D.C. 20229

Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, D.C. 20526

Dear Acting Commissioner Morgan and Acting Director Albence:

We are writing to you today regarding recent reports that U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) are deploying resources in connection with demonstrations nationwide. As both CBP and ICE have acknowledged, the right to peaceful protest is a bedrock principle of our democracy. We write to you today to request information regarding ICE and CBP operations in connection with demonstrations, particularly in light of public reports that law enforcement have used force—including tear gas, spray chemical irritants, non-lethal bullets, and other forms of force.

It is critical to understand how ICE and CBP are using their resources, particularly during the ongoing public health crisis that has sickened over 1.8 million people in the United States and claimed over 100,000 American lives. On May 31, CBP informed Congress that CBP “is currently deploying officers, agents and aviation assets across the country at the request of our federal, state and local partners.”¹ The notification referenced routine CBP operations “to augment law enforcement and humanitarian relief efforts.” On June 1, ICE issued a statement indicating that “ICE personnel and Special Response Teams have been deployed . . .” for similar purposes.² Your agencies’ public statements and responses to congressional staff to date have provided extremely limited details regarding the nature and purpose of these deployments.

It is also vital to ensure that ICE and CBP are acting responsibly, reasonably, and within their respective authorities. CBP has stated that “CBP’s deployment of manpower and aerial assets is about supporting the efforts of our federal, state and local partners, not about carrying out CBP’s immigration enforcement mission.”³ An ICE spokesperson similarly stated that “[t]here’s not going to be any immigration enforcement element whatsoever.”⁴ We need answers regarding what, precisely, your agencies will be doing and what policies and procedures are in place to protect the rights of individuals with whom you come into contact.

We therefore ask that you respond to the following questions by June 12, 2020:

1. How do your agencies track requests for assistance or resources, including both requests for personnel and equipment?
 - a. What is the approval process for such requests?

¹ E-mail from Michael J. Robinson, *et al.*, “Subject: Deployment of CBP Personnel and Assets” (May 31, 2020).

² Priscilla Alvarez, CNN, “ICE deploying personnel and teams nationwide in response to protest unrest” (June 1, 2020), available at https://www.cnn.com/us/live-news/george-floyd-protests-06-01-20/h_0871e84fa1e97f5df617c4fe7880de7e [ICE Statement].

³ CBP, Twitter (May 31, 2020), available at <https://twitter.com/cbp/status/1267240839429963778>.

⁴ ICE Statement

- b. Who at your agencies is responsible for approving such requests?
 - c. Have your agencies deployed personnel or equipment to any jurisdictions that did *not* request assistance?
 - d. Have any state or local entities requested that you *not* deploy personnel or equipment in response to the demonstrations?
2. Has anyone at your agencies discussed these deployments with anyone at the White House? If so, please specify the individual with whom anyone at your agency spoke and the name of the agency official(s) that participated in the conversation.
3. As of the date of your response, how many total personnel has each of your agencies deployed? For each deployment, please describe:
 - a. What individuals or entity requested the deployment, including whether it was state or local law enforcement
 - b. The location, duration, and nature of the deployment
 - c. The number of personnel deployed
4. As of the date of your response, have any of your agencies' "aviation assets" been deployed in connection with demonstrations? For each deployment, please describe:
 - a. What individuals or entity requested the deployment, including whether it was state or local law enforcement
 - b. The location, duration, and nature of the deployment
 - c. What, if any, surveillance capabilities were utilized
 - d. Whether any footage obtained by the aviation assets are being shared with local, state, or federal agencies for law enforcement purposes
5. What uniforms, identification, and equipment will personnel participating in these deployments wear and carry? Please provide any relevant policies and procedures with your response.
6. ICE has stated that it "fully respects the rights of all people to peacefully express their opinions"⁵ and CBP has stated that it "support[s] those who participate in lawful protests."⁶ How have you defined these standards, and what training have your personnel received regarding the standards that they are required to apply?
 - a. Have your personnel received training regarding applicable privacy laws?
 - b. Have your personnel received training on the appropriate use of force, including methods of de-escalation?
 - c. Have your personnel received training regarding the exercise of First Amendment rights, including the freedom of speech and the freedom of assembly?
7. What forms of force are your personnel authorized to utilize as part of these deployments?
8. Please provide any guidance that you distributed to your personnel reflecting your public statements that your agencies are not conducting immigration-related activities, including a

⁵ ICE Statement.

⁶ CBP, "Statement of Acting Commissioner Mark Morgan on Ensuring Peaceful Protests" (June 2, 2020), available at <https://www.cbp.gov/newsroom/speeches-and-statements/statement-acting-commissioner-mark-morgan-ensuring-peaceful-0>.

detailed description of any training received by personnel, relating to questions (a) and (b) below.

- a. Please confirm that both of your agencies will not conduct immigration enforcement activities, including referrals for immigration enforcement, at protests and demonstrations.
 - b. To the extent that protests and demonstration may occur at or near sensitive locations, such as churches, schools, medical facilities, and community centers, please confirm that your agencies will not conduct immigration enforcement activity of any kind at these locations.
 - c. What training have you conducted to ensure that personnel comply with these statements?
 - d. What repercussions will result from any non-compliance?
9. Under what other authorities will CBP and ICE personnel conduct its activities, including law enforcement activities unrelated to civil immigration enforcement? Please provide specific statutory references.
- a. Do your agencies intend to invoke authority to conduct interrogations and arrests pursuant to 8 U.S.C. § 1357(a) without warrants, including arrests for “any offense against the United States, if the offense is committed in the officer’s or employee’s presence” in connection with these deployments?
10. Are your agencies collecting any personally identifiable information regarding the individuals attending demonstrations, either in person or via other methods of surveillance?
- a. If so, what specific personally identifiable information are your agencies collecting?
 - b. What is the purpose of collecting each type of information?
 - c. What agency policies and procedures apply to the privacy interests of subject individuals?
 - d. What, if any, specific additional policies and procedures have your agencies put into place to address privacy interests specifically in the context of these deployments?
 - e. Will your agencies notify any individual about whom personally identifiable information is collected?
11. What if any methods of surveillance do your agencies intend to use in connection with these deployments, including but not limited to cell site simulators or facial recognition technology?
12. Are your agencies’ intelligence units collecting, sharing, or disseminating intelligence information related to the protests?

Thank you for your prompt attention to this matter.

Sincerely,



Kamala D. Harris
United States Senator



Mary Gay Scanlon
Member of Congress



Juan Vargas
Member of Congress

Signatories

U.S. Senators

Richard J. Durbin
Chris Van Hollen
Tom Udall
Martin Heinrich
Bernard Sanders
Edward J. Markey
Tammy Duckworth
Richard Blumenthal
Elizabeth Warren
Christopher S. Murphy
Sherrod Brown
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Patty Murray

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