



# Seattle City Attorney

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Peter S. Holmes

July 24, 2020

U.S. Attorney Brian Moran  
U.S. Attorney's Office, Western District of Washington  
700 Stewart Street, Suite 5220  
Seattle, WA 98101-1271

Acting Secretary of Homeland Security Chad F. Wolf  
U.S. Department of Homeland Security  
Washington, DC 20528

Attorney General William Barr  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0001

Chief Counsel Scott K. Falk  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue NW  
Washington, DC 20229

Re: Potential Federal Intervention in Local Matters

Dear Mr. Moran, Acting Secretary Wolf, Attorney General Barr, and Mr. Falk:

We are writing to address yesterday's unexpected arrival of a Customs and Border Protection Special Response Team in Seattle. The Federal Protective Service has stated that this team would be on "standby" for the protection of federal buildings. However, the timing of this move is perplexing, given that federal buildings in Seattle have not been the focus of any recent incidents or events. Moreover, there is some indication that this team is a BORTAC (Border Patrol tactical) team, which has been trained in areas which go well beyond what is likely needed for the protection of federal facilities (of which there are only four in Seattle). Given this context, we are seeking further information regarding the intended scope of federal activities, including written confirmation that the federal government is not targeting Seattle or King County for domestic law enforcement activities. To be clear, our jurisdictions reject this federal assistance with domestic law enforcement.

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Further information is particularly necessary in light of numerous recent statements by President Trump indicating that he intends a federal law enforcement role which goes far beyond protecting federal buildings and instead improperly intrudes on local government roles and authority. For example, on July 22, President Trump stated, "I'm announcing a surge of federal law enforcement into American communities plagued by violent crime," namely, as he repeatedly stated, cities with Democratic leaders. As you know, local crime has traditionally and appropriately been addressed by local authorities. In Seattle and King County, we are directing local law enforcement to meet the needs of our communities in accord with the discretion and judgment of our locally elected leaders.

If, despite our strong track record of local law enforcement efforts and the appropriate delineation between federal and local authority, your agency somehow believes that there are actual or potential grounds in the near future to invoke the Insurrection Act (currently codified at 10 U.S.C. §§251-255), we request that you provide us with specific information about the justification for doing so, as any bad faith invocation of the Insurrection Act, such as one premised on improper political motivations, is unlawful. If there are existing or foreseen areas where your agency believes the local response is likely to be inadequate to protect the civil rights of our community members, we ask that you identify those areas immediately, so that local authorities can continue to be the provider of law enforcement for local needs. This would allow for the continued division of authority that our country's bedrock principle of federalism supports and requires.

Through its conversations with Mayor Durkan, DHS indicated that there would be no surge of additional law enforcement. In subsequent conversations with King County officials, as well as its public statements, DHS has indicated that the new federal presence on standby in Seattle would be limited in scope to protection of federal buildings. We ask that if there are other new federal law enforcement activities envisioned moving forward, we be immediately apprised of those activities and any statutory basis for them. Similarly, while the City and County are often involved in joint task forces and other joint endeavors, we know of no precipitating reason to appropriately increase federal presence and operations in our jurisdiction at this time, even in light of any ongoing mutual aid agreements.

As you know, the federal protection of buildings is governed by 40 U.S.C. §1315, which allows for the DHS Secretary to "protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government." In light of the concerns described above, and recent widely reported events in Portland, we seek written clarification as to how you intend to approach the authority in that statute and confirmation that the exercise of such authority will remain within the proper scope of federal powers. We are concerned that the influx of federal personnel to Seattle could potentially incite the very same damage to federal property that this influx is purportedly designed to prevent. Moreover, as evidenced by your continuing and escalating presence in Portland, Oregon, once such events begin, they very well could lead to more widespread problems in the Seattle and King County, thereby endangering the health and safety of our communities. Any tactical team-triggered increase of federal law

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enforcement troops is an unreasonable and unnecessary interference with the everyday safety and security to which the people of Seattle, King County and Washington generally are clearly entitled.

We are particularly interested in your interpretation and intended application of 40 U.S.C. §1315(b)(2)(E) and (F). When crimes have been committed against federal government property (or persons on that property), subsection (E) provides the power to “conduct investigations, on and off the [federal] property in question.” Questions related to (E) include:

- With respect to investigation activities involving interviews or other interactions with members of the public, where would such investigations be conducted? Is your agency prepared to put limits on the geographic locations utilized?
- What manner of transportation to the investigation site would be utilized for investigation subjects or witnesses?
- Would federal officers and agents conducting any such investigation provide identification verifying their law enforcement status prior to any detainment or investigation?
- Would federal officers and agents be dressed either in military fatigues or wearing items that clearly identified their affiliation with a specific federal agency?
- Would federal agents clearly identify to investigation subjects or witnesses the federal crime at issue in the investigation?

As your agency considers these questions, we would remind you of 40 U.S.C. §1315(e), which indicates the clear legislative intent of Congress to have any federal authority exercised outside of federal property be done through agreements with appropriate state and local governments. Simply put, there is no reason to act outside of this legislative expectation, especially when reports of federal action far from federal property have clearly exacerbated the situation in Portland.

Additionally, 40 U.S.C. §1315(b)(2)(F) authorizes federal agents or officers to “carry out such other activities for the promotion of homeland security as the Secretary may prescribe.” Questions related to that subsection include:

- Will the Secretary define these “activities” in advance of any Seattle operation?
- Has the Secretary identified any specific homeland security needs in Seattle beyond the protection of federal property?
- If the Secretary has defined necessary activities or identified specific needs, will this information be shared with local authorities? If so, who will the contact person be and within what timeframe can we expect this information? Our governments can facilitate an appropriate contact.

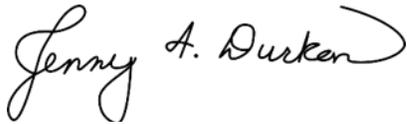
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Given that media reports have indicated that DHS believes this federal tactical team may be utilized as early as this weekend in Seattle, we would ask that you respond to our we request a substantive response by COB Monday, July 27, 2020.

We appreciate the opportunity to have a full and transparent discussion about the concerns we raised in this letter. We believe that federal intervention beyond the limited scope of on-site protection of federal facilities could result in our community suffering immediate and irreparable harm, as the situation on the ground would likely worsen and the important, constitutionally mandated balance between federal and local government could be thrown into disarray. If needed we will pursue legal action, including a Temporary Restraining Order. The protection of our local citizens from unwarranted federal intrusion, however, cannot be tolerated.

Sincerely,



Jenny A. Durkan  
Seattle Mayor



Dow Constantine  
King County Executive



Peter S. Holmes  
Seattle City Attorney



Daniel T. Satterberg  
King County Prosecuting Attorney