

United States Senate

WASHINGTON, DC 20510

February 15, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20528

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

The Honorable Matthew Albence
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, D.C. 20536

Dear Acting Secretary Wolf, Acting Commissioner Morgan, and Acting Director Albence:

U.S. Customs and Border Protection (CBP) yesterday announced a plan to deploy 100 agents—including members of its heavily armed, Border Patrol Tactical Unit (BORTAC)—to American cities that are legally choosing not to cooperate with President Trump’s immigration policies.¹ BORTAC personnel are reportedly already operating in Boston.² Because this initiative is unnecessary, unwelcome, dangerous, menacing, retaliatory, and unlikely to achieve its stated goal, we write to demand that you reverse course and to pose questions to better understand your rationale for employing paramilitary-style immigration personnel equipped with “stun grenades and enhanced Special Forces-type training, including sniper certification,”³ in Boston and elsewhere in the United States.

¹ New York Times, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

² WBUR News, “SWAT-Like Immigration Officers Are In Boston, Ready To Cooperate With ICE Arrests,” Shannon Dooling, February 14, 2020, <https://www.wbur.org/news/2020/02/14/swat-like-immigration-officers-are-in-boston-ready-to-cooperate-with-ice-arrests>.

³ New York Times, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

CBP is reportedly deploying personnel to Boston, and to Atlanta, Chicago, Detroit, Houston, Los Angeles, Newark, New Orleans, New York, and San Francisco.⁴ The stated goal is to “supplement enforcement activity” by U.S. Immigration and Customs Enforcement (ICE) in those cities.⁵ Immigration officials have stated that BORTAC will be deployed “to enhance the integrity of the immigration system, protect public safety, and strengthen our national security,”⁶ and that they “will assist in routine operations.”⁷ But CBP’s BORTAC forces are not trained to focus on “run-of-the-mill immigration arrests.”⁸ They are supposed to “handl[e] uncommon and dangerous situations outside the normal scope of Border Patrol agent duties.”⁹ BORTAC’s members are “elite,”¹⁰ having undergone selection and training “designed to mirror aspects of the U.S. Special Operations Forces’,”¹¹ and serve “essentially as the SWAT team of the Border Patrol.”¹² BORTAC’s “work often takes place in the most rugged and swelteringly hot areas of the border. It can involve breaking into stash houses maintained by smuggling operations that are known to be filled with drugs and weapons.”¹³ BORTAC staff have also responded to prison riots and have been deployed to Iraq and Afghanistan.¹⁴

In short, BORTAC personnel are not meant to focus on routine operations in some of the United States’ largest cities, and there is no need for them to be part of these operations. Last July, an “emergency” supplemental appropriation was passed and signed into law (over our

⁴ *Id.*

⁵ Reuters, “U.S. Border Patrol to send Tactical Unit officers to ‘sanctuary cities,’” Ted Hesson, February 14, 2020, <https://www.reuters.com/article/us-usa-immigration/u-s-border-patrol-to-send-tactical-unit-officers-to-sanctuary-cities-idUSKBN2082N6>.

⁶ New York Times, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

⁷ Washington Post, “Trump administration taps elite Border Patrol units to arrest immigrants inside the United States,” Nick Miroff and Maria Sacchetti, February 14, 2020, https://www.washingtonpost.com/immigration/trump-administration-taps-elite-border-units-to-arrest-immigrants-inside-the-united-states/2020/02/14/6d30e484-4f77-11ea-b721-9f4cdc90bc1c_story.html.

⁸ New York Times, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

⁹ U.S. Customs and Border Protection, “Border Patrol Special Operations Group,” fact sheet, August 6, 2018, <https://www.cbp.gov/sites/default/files/documents/Border%20Patrol%20Special%20Operations%20Group.pdf>.

¹⁰ U.S. Customs and Border Protection, “Robert Garcia Selected as Chief Patrol Agent for U.S. Border Patrol’s Swanton Sector,” press release, October 25, 2018, <https://www.cbp.gov/newsroom/local-media-release/robert-garcia-selected-chief-patrol-agent-us-border-patrol-s-swanton>.

¹¹ U.S. Customs and Border Protection, “Border Patrol Tactical Unit (BORTAC),” fact sheet, May 2, 2014, <https://www.cbp.gov/sites/default/files/documents/Border%20Patrol%20Tactical%20Unit.pdf>.

¹² New York Times, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

¹³ *Id.*

¹⁴ Tactical Life, “BORTAC: The US Border Sentinels,” Nick Jacobellis, November 3, 2014, <https://www.tactical-life.com/lifestyle/military-and-police/bortac-us-border-sentinels/>; U.S. Customs and Border Protection, “Border Patrol Tactical Unit (BORTAC),” fact sheet, May 2, 2014, <https://www.cbp.gov/sites/default/files/documents/Border%20Patrol%20Tactical%20Unit.pdf>.

opposition¹⁵) providing ICE with hundreds of millions of dollars of additional funding.¹⁶ It is unclear why ICE now needs to draw upon elite CBP resources in order to carry out its operations.

The decision to redeploy these specially-trained immigration officers away from the southern border and into American cities is even more difficult to understand given President Trump's freshly repeated claim that there is an emergency at the Southern border.¹⁷ The proclamation of an immigration emergency at the border cannot be reconciled with the decision to move elite personnel from the border to assist with the conduct of "routine operations" thousands of miles away.

Elected local leaders and law enforcement officials have already objected to BORTAC's deployment. Boston Mayor Marty Walsh noted that "Boston is one of the safest cities in America.... Policies aimed at sowing division and fear are ultimately counterproductive and harmful not merely to the families and individuals who are targeted but to the broader community of which we are all a part."¹⁸ Suffolk County District Attorney Rachael Rollins said, "Deploying militarized units into neighborhoods creates even greater fear and disorder and significantly harms relationships that local law enforcement agencies and public officials have worked so hard to build and foster.... None of this makes us safer."¹⁹ Los Angeles County Sheriff Alex Villanueva has "strongly oppose[d] this irresponsible deployment of federal SWAT agents in Los Angeles County for civil immigration enforcement."²⁰

We agree with District Attorney Rollins and other experts that this step makes us less safe. Former CBP Commissioner Gil Kerlikowske called this deployment a "significant mistake," explaining, "If you were a police chief and you were going to make an apprehension for a relatively minor offense, you don't send the SWAT team. And BORTAC is the SWAT team.... They're trained for much more hazardous missions than this."²¹ Stepped-up raids by immigration forces also make documented and undocumented immigrants—and their families—more fearful of reporting crimes and aiding investigations, which makes cities more dangerous.

¹⁵ Tweets by Senator Elizabeth Warren, June 26, 2019, <https://twitter.com/SenWarren/status/1143937632847761408>; Senator Edward J. Markey, "Senator Markey Statement on Border Funding Package," June 26, 2019, <https://www.markey.senate.gov/news/press-releases/senator-markey-statement-on-border-funding-package>.

¹⁶ Public Law 116-26.

¹⁷ White House, Presidential Proclamation 9844, "Presidential Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States," February 15, 2019, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-declaring-national-emergency-concerning-southern-border-united-states/>; Executive Office of the President, Federal Register Notice, "Continuation of the National Emergency With Respect to the Southern Border of the United States," February 13, 2020, <https://www.federalregister.gov/documents/2020/02/14/2020-03212/continuation-of-the-national-emergency-with-respect-to-the-southern-border-of-the-united-states>.

¹⁸ Tweet by Mayor Marty Walsh, February 14, 2020, https://twitter.com/marty_walsh/status/1228468937001783301.

¹⁹ Tweet by DA Rachael Rollins, February 14, 2020, <https://twitter.com/DARollins/status/122850520615856130>.

²⁰ Los Angeles County Sheriff's Department, "Sheriff's Response on Border Patrol Tactical Unit Deployment," press release, February 14, 2020, <https://lasd.org/sheriffs-response-on-border-patrol-tactical-unit-deployment/>.

²¹ New York Times, "Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities," Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

Lawyers for Civil Rights—a legal action, education, and advocacy organization based in Boston—correctly explained, “Immigrants are pushed deeper into the shadows, and victims and witnesses of crime are reluctant to come forward. This makes us all unsafe.”²²

The BORTAC deployment to Boston and other cities is unnecessary, unwelcome, and dangerous. But the specter of heavily armed, military-like personnel in our cities will accomplish one thing: provoke fear. Administration officials have reportedly said the BORTAC members are expected to “stand[] by as a show of force.”²³ While in the cities, they will be enforcing civil immigration laws—not criminal laws—and an immigration official said they “will not be busting down doors or engaging in shootouts.”²⁴ Using highly trained SWAT teams as mere decoration in order to showcase the might of immigration authorities is nothing but a wasteful attempt to menace our communities.

District Attorney Rollins was right when she said, “This is being done to strike fear and terror throughout our immigrant communities. This is being done to be cruel and to silence and terrorize people,”²⁵ as was Sheriff Villanueva when he said, “This poorly thought out plan can only be seen as a tactic to intimidate an already vulnerable population and drive them deeper into the shadows.”²⁶ The Administration should not be menacing our communities—in Boston or any other American city—with heavily armed militarized units.

The real explanation for this deployment appears to be that President Trump and his Administration are attempting to punish American cities that reject his misguided immigration policies. In his first week in office, President Trump issued an Executive Order directing Administration officials to identify and cut off all federal grants to jurisdictions that make local law enforcement decisions with which the President disagrees²⁷—a step that multiple courts found to be unlawful.²⁸ Last week, the Administration sued two jurisdictions that do not cooperate with ICE.²⁹ In this month’s State of the Union Address, he criticized other jurisdictions

²² Boston Globe, “Border patrol agents to have presence in Boston for immigration enforcement in coming weeks,” Danny McDonald and Travis Andersen, February 14, 2020, <https://www.bostonglobe.com/2020/02/14/metro/border-patrol-sending-tactical-team-boston-immigration-enforcement-nyt-reports/>.

²³ New York Times, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

²⁴ *Id.*

²⁵ Tweet by DA Rachael Rollins, February 14, 2020, <https://twitter.com/DARollins/status/1228505020615856130>.

²⁶ Los Angeles County Sheriff’s Department, “Sheriffs Response on Border Patrol Tactical Unit Deployment,” press release, February 14, 2020, <https://lasd.org/sheriffs-response-on-border-patrol-tactical-unit-deployment/>.

²⁷ White House, Executive Order 13768, “Executive Order: Enhancing Public Safety in the Interior of the United States,” January 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.

²⁸ Congressional Research Service, “Immigration Enforcement & the Anti-Commandeering Doctrine: Recent Litigation on State Information-Sharing Restrictions,” Kelsey Y. Santamaria, December 18, 2019, Tables 1 and 2, pp. 4–6, <https://fas.org/sgp/crs/homesecc/LSB10386.pdf>.

²⁹ Wall Street Journal, “Justice Department Sues New Jersey, Washington County Over Sanctuary Policies,” Michelle Hackman, February 10, 2020, <https://www.wsj.com/articles/justice-department-files-suits-against-states-over-sanctuary-policies-11581376905>.

for similar reasons.³⁰ And last week, the Department of Homeland Security (DHS) cited New York’s immigration-related policies as a rationale for barring all of the state’s residents from enrolling in DHS’s Trusted Traveler Programs.³¹ The Administration’s track record of animosity toward these cities makes this latest step appear retaliatory or punitive, and is consistent with Attorney General William Barr’s unnecessary threat last week of “a significant escalation” by the federal government against these jurisdictions.³²

The deployment will reportedly run from February through May.³³ This period overlaps substantially with when the Census Bureau will be conducting its decennial count.³⁴ It therefore raises the possibility that some part of the motivation for your show of force—and the effect of this deployment—will be to suppress census participation by immigrant communities and people of color. The Trump Administration has actively sought to intimidate and undercount immigrants, Latino communities, and others through a push to include a citizenship question on the census.³⁵ That effort included collaboration with a Republican gerrymandering expert who found that a citizenship question would be “advantageous to Republicans and non-Hispanic Whites.”³⁶ Thus, the suspicious timing of this menacing deployment warrants immediate explanation.

Given the importance of this matter—especially to Boston and to other targeted cities—we ask that you answer the following questions by February 24, 2020:

1. How many of the 100 CBP personnel deployed to assist ICE are BORTAC members?
2. In which communities will these BORTAC members be deployed?
3. What are the specific orders given to the BORTAC teams, and what are their specific rules of engagement while deployed in American cities? What is the chain of command for deployed BORTAC teams?

³⁰ The Hill, “Trump takes aim at ‘sanctuary cities,’” Rafael Bernal, February 4, 2020, <https://thehill.com/latino/481539-trump-takes-aim-at-sanctuary-cities>.

³¹ New York Times, “Trump Administration Freezes Global Entry Enrollment in New York Over Immigration Law,” Zolan Kanno-Youngs and Jesse McKinley, February 6, 2020, <https://www.nytimes.com/2020/02/06/us/politics/dhs-new-york-global-entry.html>.

³² U.S. Department of Justice, “Attorney General William P. Barr Delivers Remarks at the National Sheriffs’ Association Winter Legislative and Technology Conference,” February 10, 2020, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-national-sheriffs-association-winter>.

³³ New York Times, “Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities,” Caitlin Dickerson and Zolan Kanno-Youngs, February 14, 2020, <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

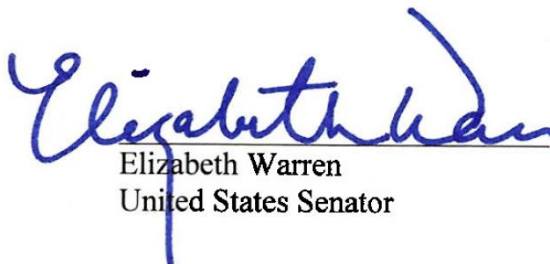
³⁴ United States Census 2020, “Important Dates,” <https://2020census.gov/en/important-dates.html>.

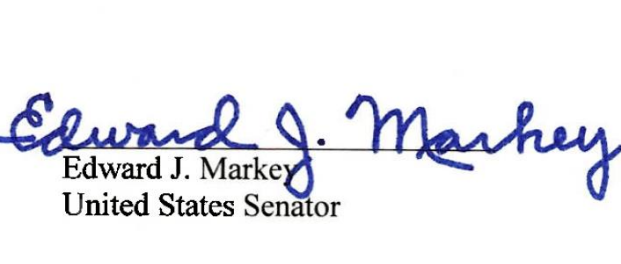
³⁵ Washington Post, “Where a citizenship question could cause the census to miss millions of Hispanics,” Ted Mellnik and Kate Rabinowitz, July 4, 2019, <https://www.washingtonpost.com/politics/2019/06/06/where-citizenship-question-could-cause-census-miss-millions-hispanics-why-thats-big-deal/>.

³⁶ New York Times, “Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question,” Michael Wines, May 30, 2019, <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

4. How many BORTAC agents have been sent to Boston? How many will be sent to Boston by the end of the deployment?
5. Why are BORTAC capabilities needed in Boston and other American cities? What specific evidence of threats supports your decision to deploy these forces?
 - a. What specific incidents in Boston and the other target cities have led you to believe you need heavily armed, SWAT-like personnel in some of our country's largest cities?
 - b. Why were any BORTAC personnel deployed, rather than other Border Patrol agents?
 - c. Is this deployment intended to cause fear in immigrant communities or other populations in these cities?
 - d. Is this deployment motivated in any way by the desire to retaliate against or punish jurisdictions that disagree with President Trump's immigration policies?
6. Have any of the local elected officials responsible for these communities requested that you send BORTAC personnel there to aid with any law enforcement? Have any specifically objected?
 - a. How have you responded to these requests or objections?
7. Has the deployment of BORTAC personnel to cities in the nation's interior resulted in a reduction of the number of personnel available to operate at the southern border? If so, how big is this reduction, and how will DHS and CBP address the effects of the reduction in forces at the southern border?
8. How was the length of this deployment determined? How and when will CBP and DHS determine if the BORTAC personnel can be redeployed to the southern border or their original spheres of operation?
9. Did CBP, ICE, or DHS consult with any other federal government agency regarding the need for, and impact of, the deployment of BORTAC personnel?
 - a. Specifically, did CBP, ICE, or DHS consult with any officials from the Census Bureau, the Department of Commerce, or any other individual regarding the impact of the deployment on the upcoming census? If so, what was the nature of these discussions?

Sincerely,


Elizabeth Warren
United States Senator


Edward J. Markey
United States Senator