

United States Senate  
WASHINGTON, DC 20510

May 3, 2023

**VIA ELECTRONIC TRANSMISSION**

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Attorney General Garland,

We write to you today regarding the Department of Justice’s (DOJ) failure to enforce federal law at the personal residences of members of the United States Supreme Court in the aftermath of the leak of the draft opinion in *Dobbs v. Jackson Women’s Health Organization* on May 2, 2022.

During the roughly two-month period between the leak of the draft opinion and the issuance of the Court’s final opinion in *Dobbs*, multiple Supreme Court Justices were subject to illegal and continuous protest activity at their personal residences. In some cases, illegal activity by left-wing activists at the personal residences of the Justices progressed even further, such as the case of a California man who was arrested after turning himself in near Justice Kavanaugh’s home for attempting to murder him – specifically citing the leaked *Dobbs* opinion as one of the reasons for his actions.<sup>1</sup> Later reports indicated that the individual potentially intended to kill up to three members of the Supreme Court.<sup>2</sup>

Concern about the illegal protest activity at the personal residences of the Justices crossed partisan lines. The chairman of the Senate Judiciary Committee, Senator Durbin, referred to the protests as “reprehensible” and called on protestors to “[s]tay away from the homes and families of elected officials and members of the court.”<sup>3</sup>

As you are well aware, 18 U.S.C. §1507 (hereinafter, Section 1507) makes it a crime to picket or parade in or near a residence occupied by a judge “with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty.”

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<sup>1</sup> Maria Cramer and Jesus Jiménez, “Armed Man Traveled to Justice Kavanaugh’s Home to Kill Him, Official Say,” NEW YORK TIMES, June 8, 2022, <https://www.nytimes.com/2022/06/08/us/brett-kavanaugh-threat-arrest.html>.

<sup>2</sup> Holmes Lybrand and Tierney Sneed, “FBI says man accused of attempting to kill Brett Kavanaugh said he was ‘shooting for 3’ justices,” CNN, July 27, 2022, <https://www.cnn.com/2022/07/27/politics/kavanaugh-roske-arrest-warrant/index.html>.

<sup>3</sup> Aaron Blake, “Yes, experts say protests at SCOTUS justices’ homes appear to be illegal,” WASHINGTON POST, May 11, 2022, <https://www.washingtonpost.com/politics/2022/05/11/protest-justice-home-illegal/>.

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During your March 1<sup>st</sup> appearance before the Senate Judiciary Committee, each of us who are members of that committee raised questions regarding DOJ's failure to pursue any charges or prosecutions under Section 1507 related to the illegal protests outside the homes of multiple Supreme Court Justices. In response to our questions, you repeatedly asserted that DOJ's failure to bring any charges under Section 1507 was due to the fact that the deputies of the U.S. Marshals Service (USMS) assigned to protect the homes of the Justices had failed to make any arrests under that statute.

In response to questions from Senator Lee, you stated under oath, that "the Marshals have been advised and they know – the Marshals on the ground – they have full authority to arrest people under any federal statute, including that federal statute [18 U.S.C. §1507]."<sup>4</sup> In response to Senator Cruz you confirmed that, to your knowledge, no prosecutions under Section 1507 had been brought, and you went on to say: "The Attorney General does not decide whether to arrest...the Marshals on scene...they do make the decision of whether to make an arrest."<sup>5</sup>

In response to Senator Cotton's questions regarding the deterrent effect that might have resulted from arresting some of the protestors for violations of Section 1507, you stated that you were "leaving it to the Marshals Service to make determinations on the ground" and the Marshals protecting the homes of the Justices "have to make determinations about what they see on the ground."<sup>6</sup>

In the aftermath of your appearance before the Senate Judiciary Committee, it became clear that your testimony was misleading and incorrect. During your March 28<sup>th</sup> appearance before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies (CJS Subcommittee), Senator Britt questioned you about training materials that had been provided to USMS deputies who were assigned to the protective details at the homes of the Justices.<sup>7</sup>

Those training materials revealed that the Marshals did not make any arrests under Section 1507 for a straightforward reason – *they were actively discouraged from doing so*. Despite the clear language of Section 1507, the training materials advised the USMS deputies on the ground that "Protest is not synonymous with unlawful activity."<sup>8</sup> They were also advised to avoid criminal enforcement actions involving protestors "unless absolutely necessary" and that "[m]aking arrests and initiating prosecutions is *not* the goal" of their presence at the homes of the Justices.<sup>9</sup>

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<sup>4</sup> Oversight of the Department of Justice, Hearing before the U.S. Senate Committee on the Judiciary, March 1, 2023, <https://www.judiciary.senate.gov/committee-activity/hearings/02/22/2023/oversight-of-the-department-of-justice>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> A Review of the President's Fiscal Year 2024 Funding Request for the U.S. Department of Justice, Hearing before U.S. Senate Committee on Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, March 28, 2023, <https://www.appropriations.senate.gov/hearings/a-review-of-the-presidents-fiscal-year-2024-funding-request-for-the-us-department-of-justice>.

<sup>8</sup> Training Slides: U.S. Marshals – SCOTUS Residence Protective Details, available at <https://www.britt.senate.gov/wp-content/uploads/2023/03/U.S.-Marshals-SCOTUS-Training-Slides.pdf>.

<sup>9</sup> *Id.*

The training materials instruct the USMS deputies not to engage in protest-related enforcement actions “beyond that which are strictly and immediately necessary and tailored to ensure the physical safety of the Justices and their families” and further instruct the USMS deputies that Section 1507’s language regarding the “intent of influencing any judge” only “goes to criminal threats and intimidation, not 1<sup>st</sup> A[mendment] protected protest activities.”<sup>10</sup>

Finally, in direct contradiction of your testimony that the Marshals on the ground were vested with full and independent authority to pursue arrests under Section 1507, the training materials instruct the USMS deputies to coordinate any enforcement action in advance with the relevant U.S. Attorney’s Office and state that it would be “counter-productive” to make arrests in cases that DOJ will not charge and prosecute.<sup>11</sup>

You testified to Senator Britt that the March 28<sup>th</sup> hearing was the first time you had seen the training materials.<sup>12</sup> You also argued that, despite the content of those training materials clearly contradicting your testimony before the Judiciary Committee, there was “nothing for me to amend” in your Judiciary Committee testimony because “I’ve never seen those slides before.”<sup>13</sup> You committed to Senator Britt that you would look into the issue further after the hearing.<sup>14</sup>

Despite the content of the training materials, in response to questions from Senator Lee during an April 19<sup>th</sup> hearing before the Senate Judiciary Committee, Deputy Attorney General Lisa Monaco continued to argue that your incorrect testimony before the Judiciary Committee on March 1<sup>st</sup> “was very clear and not in need of correction.”<sup>15</sup> She maintained that she was not aware of the training materials prior to your March 28<sup>th</sup> testimony to Senator Britt, but said she had reviewed them since that time.<sup>16</sup>

In response to questions from all three members of the Judiciary Committee who are signatories to this letter, Deputy Attorney General Monaco also repeatedly cited a statement provided by Mr. Ronald L. Davis, the Director of USMS, to Fox News Digital which appeared in a March 29<sup>th</sup> article on the Fox News website. Despite the content of the training materials, Director Davis continued to assert that you gave USMS “full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the justices.”<sup>17</sup> He also

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> A Review of the President’s Fiscal Year 2024 Funding Request for the U.S. Department of Justice, *supra* note 7.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Holding Russian Kleptocrats and Human Rights Violators Accountable for their Crimes Against Ukraine, Hearing before the U.S. Senate Committee on the Judiciary, April 19, 2023, <https://www.judiciary.senate.gov/committee-activity/hearings/holding-russian-kleptocrats-and-human-rights-violators-accountable-for-their-crimes-against-ukraine>.

<sup>16</sup> *Id.*

<sup>17</sup> Jon Brown, “US Marshals were told not to arrest protesters at Supreme Court justices’ homes ‘unless absolutely necessary,’” FOX NEWS, March 29, 2023, <https://www.foxnews.com/politics/us-marshals-were-told-not-arrest-protesters-supreme-court-justices-homes-unless-absolutely-necessary>.

asserted that the training materials provided to the deputies at the homes of the Justices would be reviewed “on an ongoing basis” to ensure they remained consistent with that directive.<sup>18</sup>

In addition to the training materials discussed by Senator Britt during your March 28<sup>th</sup> appearance before the Senate Appropriations CJS Subcommittee, we have now also reviewed several different versions of post orders that were provided to USMS deputies assigned to the protective details at the homes of the Justices.

Post orders dated May 19, 2022, state that “[a]lthough there may be state and federal laws concerning protest activity around residences the USMS is not in a position to enforce those laws.” Post orders dated June 4, 2022, state that USMS deputies should not engage protestors “unless they attempt to enter private property.”

The June 4<sup>th</sup> post orders also include a section that mimics much of the language of the training materials unveiled by Senator Britt at the March 28<sup>th</sup> Senate Appropriations CJS Subcommittee hearing. The post orders inform USMS personnel that they “should not engage in protest-related enforcement actions beyond that which are strictly and immediately necessary and tailored to ensure the physical safety of the Justices and their families” and that enforcement actions should not focus on “protest activities on public space.” The June 4<sup>th</sup> post orders also instruct USMS personnel that “[a]ny contemplated USMS enforcement action should be coordinated in advance” with the appropriate U.S. Attorney’s Office.

In light of all the clear evidence that DOJ actively sought to dissuade USMS personnel from enforcing Section 1507, the Deputy Attorney General’s April 19<sup>th</sup> testimony before the Senate Judiciary Committee, the March 29<sup>th</sup> statement made by USMS Director Davis, and your continued failure to amend your March 1<sup>st</sup> testimony before the Senate Judiciary Committee all raise a number of troubling questions regarding DOJ’s dishonesty and impropriety with respect to its handling of this matter.

As such, we ask that you provide the following documents no later than May 24, 2023:

- (1) Any and all draft copies of training materials, guidance, post orders, or other documents related to the U.S. Marshals Service’s (USMS) enforcement of 18 U.S.C. §1507 at the personal residences of members of the U.S. Supreme Court that were circulated within or in any way discussed, revised, edited, cleared, or otherwise reviewed by any individual within the Office of the Attorney General or Office of the Deputy Attorney General at any point within the period of time between the leak of the *Dobbs* opinion on May 2, 2022, and the present – including any comments on, revisions to, or edits to those drafts.
- (2) Documents, including emails, memorializing any discussions within or involving individuals within the Office of the Attorney General or the Office of the Deputy Attorney General regarding USMS enforcement of 18 U.S.C. §1507 at the personal

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<sup>18</sup> *Id.*

residences of members of the U.S. Supreme Court at any point in time between May 2, 2022, and the present.

- (3) Copies of any emails or other record of communications between any individual within the Office of the Attorney General or the Office of the Deputy Attorney General and any individual within USMS regarding enforcement of 18 U.S.C. §1507 at the personal residences of members of the U.S. Supreme Court at any point in time between May 2, 2022, and the present.
- (4) Copies of any emails or other record of communications between any individual within the Office of the Attorney General or the Office of the Deputy Attorney General and any individual within the U.S. Attorney's Office for the District of Maryland and the U.S. Attorney's Office for the Eastern District of Virginia regarding the enforcement of 18 U.S.C. §1507 at the personal residences of members of the U.S. Supreme Court at any point in time between May 2, 2022, and the present.

In addition, please provide answers to the following questions by May 24, 2023:

- (5) At any point in the period of time between the leak of the *Dobbs* opinion on May 2, 2022, and your March 1, 2023, testimony before the Senate Judiciary Committee, were you, the Deputy Attorney General, or any individual from the Office the Attorney General or the Office of the Deputy Attorney General aware of any training materials, post orders, guidance, or other documents related to the enforcement of 18 U.S.C. §1507 that were provided to USMS personnel assigned to protect the personal residences of members of the U.S. Supreme Court?
- (6) At any point in the period of time between the leak of the *Dobbs* opinion on May 2, 2022, and your March 1, 2023 testimony before the Senate Judiciary Committee did you, the Deputy Attorney General, or any individual from the Office of the Attorney General or the Office of the Deputy Attorney General ever discuss, authorize, provide clearance for, offer comment on, revise, edit, or review any training materials, post orders, guidance, or any other materials or documents related to the enforcement of 18 U.S.C. §1507 by USMS personnel at the personal residences of members of the U.S. Supreme Court?
- (7) At any point in the period of time between the leak of the *Dobbs* opinion on May 2, 2022, and your March 1, 2023 testimony before the Senate Judiciary Committee did you, the Deputy Attorney General, or any individual from the Office of the Attorney General or the Office of the Deputy Attorney General ever discuss or communicate in any way with any individual employed by the USMS regarding USMS's enforcement of 18 U.S.C. §1507 at the personal residences of the members of the U.S. Supreme Court?
- (8) During your March 28<sup>th</sup> appearance before the Senate Appropriations CJS Subcommittee, you committed to look into the directives that USMS personnel had been given, as

reflected in the training materials discussed during that hearing. Since that time, have you reviewed those training materials or any other post orders, guidance, or other documents related to the enforcement of 18 U.S.C. §1507 that were provided to USMS personnel assigned to protect the personal residences of members of the U.S. Supreme Court?

- a. Have you had any discussions with the Deputy Attorney General, the Director of USMS, or any other USMS personnel regarding those training materials or any other post orders, guidance or other documents related to the enforcement of 18 U.S.C. §1507 that have been provided to USMS personnel assigned to protect the personal residences of members of the U.S. Supreme Court?
  - b. Have you, the Deputy Attorney General, or any individual within the Office of the Attorney General or the Office of the Deputy Attorney General sought any revisions to those training materials or any other post orders, guidance or other documents related to the enforcement of 18 U.S.C. §1507 that have been provided to USMS personnel assigned to protect the personal residences of members of the U.S. Supreme Court?
- (9) Since your March 28<sup>th</sup> appearance before the Senate Appropriations CJS Subcommittee, has any effort been undertaken to identify which specific individuals within DOJ and/or USMS produced and signed off on or otherwise cleared the training materials discussed during that hearing?
- a. If so, please provide the names and titles of the individuals who were involved in the production and clearance of the training materials in question.
- (10) Do you agree that the instruction given to USMS personnel in the training slides to “[a]void, unless absolutely necessary, criminal enforcement actions involving the protest or protestors, particularly on public space” contradicts your March 1<sup>st</sup> testimony before the Senate Judiciary Committee that USMS personnel on the ground at the personal residences of the Justices had “full authority to arrest people under any federal statute,” including 18 U.S.C. §1507?
- (11) Do you agree that the instruction given to USMS personnel in the training slides that “[m]aking arrests and initiating prosecutions is *not* the goal of the USMS presence at SCOTUS residences” contradicts your March 1<sup>st</sup> testimony before the Senate Judiciary Committee that USMS personnel on the ground at the personal residences of the Justices had “full authority to arrest people under any federal statute,” including 18 U.S.C. §1507?
- (12) Do you agree that the instruction given to USMS personnel in the training slides that they should not engage in protest-related enforcement actions “beyond that which are strictly and immediately necessary and tailored to ensure the physical safety of the Justices and their families” undermines and contradicts your March 1<sup>st</sup> testimony before

the Senate Judiciary Committee that USMS personnel on the ground at the personal residences of the Justices had “full authority to arrest people under any federal statute,” including 18 U.S.C. §1507?

- (13) Do you agree that the instruction given to USMS personnel in the training slides that they should not focus on “protest activities on public space” undermines and contradicts your March 1<sup>st</sup> testimony before the Senate Judiciary Committee that USMS personnel on the ground at the personal residences of the Justices had “full authority to arrest people under any federal statute,” including 18 U.S.C. §1507?
- (14) Do you agree that the instruction given to USMS personnel in the training slides that “[a]ny contemplated USMS enforcement action should be coordinated in advance with the appropriate USAO [U.S. Attorney’s Office]” undermines and contradicts your March 1<sup>st</sup> testimony before the Senate Judiciary Committee that USMS personnel on the ground at the personal residences of the Justices had “full authority to arrest people under any federal statute,” including 18 U.S.C. §1507?
- (15) Do you agree that the direction given to USMS personnel in the training slides that “[i]t is counter-productive to make PC [probable cause] arrests on cases that the USAO [U.S. Attorney’s Office] will not charge and prosecute” undermines and contradicts your March 1<sup>st</sup> testimony before the Senate Judiciary Committee that USMS personnel on the ground at the personal residences of the Justices had “full authority to arrest people under any federal statute,” including 18 U.S.C. §1507?
- (16) In light of the content of the training slides discussed during your March 28<sup>th</sup> appearance before the Senate Appropriations CJS Subcommittee and the content of the post orders distributed to USMS personnel during May and June of 2022 that clearly undermine and contradict your March 1<sup>st</sup> testimony regarding USMS enforcement of 18 U.S.C. §1507, do you intend to correct the record and your March 1<sup>st</sup> testimony to the Senate Judiciary Committee?
- (17) The training materials unveiled during your March 28<sup>th</sup> appearance before the Senate Appropriations CJS Subcommittee assert that 18 U.S.C. §1507’s language regarding the “intent of influencing any judge” applies to criminal threats and intimidation, not First Amendment protected protest activities. As Senator Lee pointed out during Deputy Attorney General Monaco’s April 19<sup>th</sup> appearance before the Senate Judiciary Committee, this represents the addition of a non-statutory element to the offense Congress laid out in 18 U.S.C. §1507. Does DOJ stand by that construction of 18 U.S.C. §1507’s “intent of influencing any judge” language?
- (18) What is DOJ’s current, official authoritative construction of 18 U.S.C. §1507?

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(19) Does the official authoritative construction provided above differ in any way from DOJ's official authoritative construction of 18 U.S.C. §1507 at any point in time between the leak of the *Dobbs* opinion on May 2, 2022, and the present?

Thank you for your prompt attention to this matter.

Sincerely,



Katie Boyd Britt  
United States Senator



Tom Cotton  
United States Senator



Ted Cruz  
United States Senator



Mike Lee  
United States Senator