

## **Training Slides: U.S. Marshals – SCOTUS Residence Protective Details**

- **Slide #1**
  - Emphasizes that the Marshals should not view their detail as an enforcement operation
  - Despite the clear language of 18 U.S.C. §1507, it advises the Marshals that “Protest is not synonymous with unlawful activity.”

This is a residential and personal protection mission that involves 1<sup>st</sup> A protected activity, not an enforcement operation.

- The First Amendment of the U.S. Constitution protects public protests; the rights of free speech, to assemble, and to petition government.
- The right is strongest when exercised in public space.
- Protest is not synonymous with unlawful activity.
- The law allows protesters to express their opinions in public, and in so doing to be rude, provocative, insulting, disrespectful, loud, critical, dismissive, and offensive, among other things.
- The lawful movement of a protesting crowd from place to place should not be reflexively equated with violence or a threat from the crowd.

- **Slide #2**
  - Marshals instructed to avoid any criminal enforcement actions involving protestors “unless absolutely necessary.”
  - Marshals instructed that “making arrests and initiating prosecutions is not the goal” of their presence at the homes of the Justices.

Goals of the residential and personal protection mission:

- Keep SCOTUS Justices and their families free from any physical harm.
- Do not interfere with lawful, First Amendment protected protest activity.
- Avoid, unless absolutely necessary, criminal enforcement actions involving the protest or protestors, particularly on public space.
- Making arrests and initiating prosecutions is not the goal of the USMS presence at SCOTUS residences.

- **Slide #3**

- Despite the clear language of 18 U.S.C. §1507, it instructs the Marshals 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/their families.
- Marshals also told to defer to state and local authorities, if possible, for enforcement actions that involve both federal and state/local crimes.

These goals are in the standing order:

- Do 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.
- Enforcement actions should focus on immediate and direct criminal threats to the safety of the Justices and their families, and to criminal incursions on to their private property, not on protest activities on public space.
- Enforcement actions that involve both federal and state/local crimes, particularly those that involve public space, should be conducted by state and local authorities, if possible.

- **Slide #4**

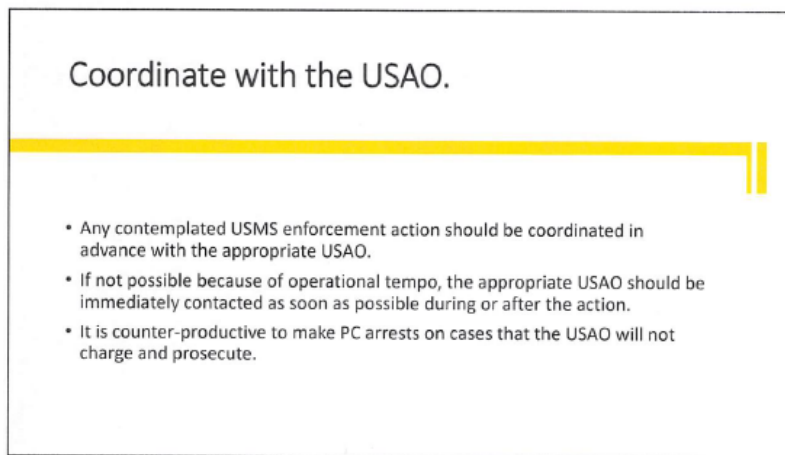
- Discourages the Marshals from making arrests under 18 U.S.C. §1507 by asserting that there may be a First Amendment right to harass the Justices and their families
- Despite the clear language of 18 U.S.C. §1507, asserts that the ‘intent of influencing any judge’ language only applies to “criminal threats and intimidation,” not protest activities.
- States that any arrests of protestors should be a “last resort” to prevent physical harm to the Justices and their families

Enforcement of 18 U.S. Code § 1507...

- The face of 1507 directly implicates activities that also involve the 1<sup>st</sup> A right to free speech, to assemble, and to petition government.
- The “intent of influencing any judge” language thus logically goes to criminal threats and intimidation, not 1<sup>st</sup> A protected protest activities.
- Also: Any threat or intimidation that may violate 1507 likely also involves other federal/state/local criminal statutes as or more directly applicable and less likely to 1<sup>st</sup> A challenges.
- Regardless, any arrests of protestors are a last resort to prevent physical harm to the Justices and/or their families.

**Slide #5**

- Despite AG Garland’s assertion to the Senate Judiciary Committee that Marshals on the ground had “full authority” to make arrest decisions, this slide directed the Marshals to coordinate any enforcement action in advance with the relevant DOJ U.S. Attorney’s Office.
- It states that it would be “counter-productive” for the Marshals to make arrests on cases that DOJ “will not charge and prosecute.”



Coordinate with the USAO.

- Any contemplated USMS enforcement action should be coordinated in advance with the appropriate USAO.
- If not possible because of operational tempo, the appropriate USAO should be immediately contacted as soon as possible during or after the action.
- It is counter-productive to make PC arrests on cases that the USAO will not charge and prosecute.