

## **SECDEF ESPER ANSWERS TO JULY 9 HASC HEARING QFRS**

**QFR Title:** Use of the Military for Political Gain

**Requestors:** Rep Elissa Slotkin, Rep Mikie Sherrill

**Witness:** Esper, Mark

**QFR ID:** HASC-22-008 QFR

**Question Number:** 8

**Question:** Over the past three years, we have seen time and again the politicization of the U.S. military. The list is long: sending active duty troops to the southern border, taking nearly \$10B from the Department of Defense budget for the border wall, withdrawing troops from northern Syria in advance of a Turkish incursion and then redeploying them to guard Syrian oil fields, downplaying the threats of COVID-19 for service members, threatening to deploy active duty troops to American cities against Governors' wishes, deploying the National Guard to Lafayette Square and moving unarmed protestors for the President's photo op at the St. John's Church on June 1. These events, particularly those in the past few months, seem to reinforce the idea that the President sees the military not as a constitutionally established instrument of government, but as an armed force that exists to serve him personally, for his own personal and political gains. This pains us, one of us a proud Army wife, stepmom to a new army officer, and former Acting Assistant Secretary of Defense, and the other a graduate of the U.S. Naval Academy, former Navy helicopter pilot, and former federal prosecutor. We believe -- and hope that you agree -- that the American people need and want our military to adhere strictly to its tradition of remaining apolitical. This is especially important given the significant authority and fire power of the Department of Defense. Given the above events, we feel compelled to look ahead to decisions that you, as the most senior defense officials, may be called upon to make in the next six months. These decisions will fall squarely into the constitutional roles that you both swore to uphold and we know you both respect. Mr. Secretary, Chairman Milley, we are relying on you to preserve the system that our founding fathers designed. First, on conducting military operations outside the United States ahead of an election: - Do you agree that the U.S. military powers should be used only to advance the national security of the United States, and not for any one president's political gain? - If the President proposes military action in the next few months that was meant to distract the American public instead of protect American security, would you refuse such an order?

**Answer:** Throughout our nation's history, the U.S. military has been a force for good. The Department of Defense's enduring mission is to provide combat-credible military forces needed to deter war, defend our nation, and protect the security of our nation. The Department of Defense remains committed to carrying out this mission, consistent with the Constitution and the law.

**QFR Title:** Use of Military in National Elections

**Requestors:** Rep Elissa Slotkin, Rep Mikie Sherrill

**Witness:** Esper, Mark

**QFR ID:** HASC-22-009 QFR

**Question Number:** 9

**Question:** Second, on the use of military forces in our national elections: As you are likely aware, there is almost no precedent for deploying uniformed military members to the polls on election day. Are there any circumstances in the 2020 elections when you would deem it necessary to send the U.S. military to be present at polling places? - Do you believe that the military should be involved in administering or tallying results of an election? - If you were ordered to send active duty military to be present at the polls during election day, would you refuse such an order?

**Answer:** The U.S. military has acted, and will continue to act, in accordance with the Constitution and the law.

**QFR Title:** The Military's Role in a Peaceful Transition of Power

**Requestors:** Rep Elissa Slotkin, Rep Mikie Sherrill

**Witness:** Esper, Mark

**QFR ID:** HASC-22-010 QFR

**Question Number:** 10

**Question:** Third, on the military's role in supporting a peaceful transition of presidential power: - Are you aware that the U.S. Congress certifies the results of the electoral college? - Do you commit to facilitating a peaceful transition of power that reflects the certification of Congress? - Are you both committed to the principle that there can only be one President at a time? - Do you both recognize that your oaths to the Constitution and the chain of command itself require you to act on the orders of the legitimate President, and only the legitimate President, once he or she is sworn in on January 20, 2021?

**Answer:** The U.S. military has acted, and will continue to act, in accordance with the Constitution and the law.

**QFR Title:** Use of Military in Peaceful Transition

**Requestors:** Rep Elissa Slotkin, Rep Mikie Sherrill

**Witness:** Esper, Mark

**QFR ID:** HASC-22-011 QFR

**Question Number:** 11

**Question:** Finally, you both affirmed to the Armed Services Committee on July 9, 2020 that you are aware that, under the Constitution, the duly elected President is the sole commander-in-chief of the United States. You both further affirmed that you are aware that the chain of command runs from the duly elected President as commander-in-chief to the Secretary of Defense, and from the Secretary of Defense to the commanders of the combatant commands. Secretary Esper, you confirmed that you are aware that Secretaries of Defense serve at the pleasure of the President, subject to the advice and consent of the Senate, and can be removed by the President at his or her legal discretion. General Milley, you confirmed that you are aware that the Uniformed Code of Military Justice criminalizes mutiny and sedition and attempted mutiny and sedition and applies to every uniformed member of the Armed Services, including

yourself. You both affirmed your oaths to the Constitution, and affirmed that your oath requires you to support and defend the Constitution of the United States against all enemies foreign and domestic and bear true faith and allegiance to the same. Finally, you both confirmed your understanding of the Insurrection Act, which provides, “Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.” A legitimate President, therefore, might well have a factual basis to deem an illegitimate president claiming power to be acting in “rebellion against the authority of the United States,” and in turn to consider utilizing Insurrection Act authorities should it otherwise be “impracticable to enforce the laws of the United States.” Anyone in the chain of command would, in turn, be legally compelled to obey the legitimate President’s orders—and not any orders of the illegitimate president. - Is that correct? - If somebody other than the legitimate President as certified by Congress ordered you to use the military to prevent the peaceful transition of power from one President to another, would you refuse such an order?

**Answer:** The U.S. military has acted, and will continue to act, in accordance with the Constitution and the law.