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## REVIEW OF THE DOD'S ROLE, RESPONSIBILITIES, AND ACTIONS TO PREPARE FOR AND RESPOND TO THE PROTEST AND ITS AFTERMATH AT THE U.S. CAPITOL CAMPUS ON JANUARY 6, 2021

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# **REVIEW OF THE DEPARTMENT OF DEFENSE'S ROLE, RESPONSIBILITIES, AND ACTIONS TO PREPARE FOR AND RESPOND TO THE PROTEST AND ITS AFTERMATH AT THE U.S. CAPITOL CAMPUS ON JANUARY 6, 2021**

## **I. INTRODUCTION**

This report presents the results of the DoD Office of Inspector General (OIG) review of the DoD's role, responsibilities, and actions to prepare for and respond to the protest and its aftermath at the U.S. Capitol Campus on January 6, 2021.<sup>1</sup>

The DoD Acting Inspector General initiated this review on January 15, 2021. Our review evaluated requests for DoD support before January 6, 2021, how the DoD responded to such requests, the requests for support the DoD received as the events unfolded on January 6, 2021, and how the DoD responded to the protests and rioting at the U.S. Capitol Campus. We evaluated whether the DoD's actions were appropriate and supported by requirements. We also examined whether the DoD complied with applicable laws, regulations, and other guidance in its response to requests for assistance.

To conduct the review, we assembled a multidisciplinary team of DoD OIG administrative and criminal investigators, evaluators, auditors, and attorneys. We examined approximately 24.6 gigabytes of e-mails and documents, including letters, memorandums, agreements, plans, orders, reports, briefings, calendars, statements witnesses made in congressional hearings, and comments witnesses made to journalists as reported in media articles and network news broadcasts. We examined records from the offices of the Secretary of Defense (SecDef); the DoD General Counsel; the Chairman of the Joint Chiefs of Staff (JCS); the Secretary of the Army (SecArmy); the Chief, National Guard Bureau (NGB); and the District of Columbia National Guard (DCNG). We also reviewed records provided to us by the Office of the Mayor, Washington, D.C.; the Office of the District of Columbia Homeland Security and Emergency Management Agency (DCHSEMA); the Department of the Interior (DoI); the U.S. Capitol Police (USCP) OIG; and the Federal Bureau of Investigation (FBI). Finally, we reviewed official e-mails, telephone records, call logs, and records from other means of communication, such as text messages, that DoD officials used before and on January 6, 2021.

We interviewed 44 witnesses, including:

- Mr. Christopher C. Miller, former Acting SecDef;
- Mr. Ryan C. McCarthy, former SecArmy;
- Mr. Kenneth Rapuano, former Assistant Secretary of Defense for Homeland Defense and Global Security (ASD[HD&GS]);
- Mr. Robert Salesses, former Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities (DASD[HD & DSCA])

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<sup>1</sup> The U.S. Capitol Campus is a large area within Washington, D.C., that consists of the U.S. Capitol building and visitor center, principal congressional office buildings, Library of Congress buildings, Supreme Court buildings, U.S. Botanic Garden and over 270 acres of grounds.

- General (GEN) Mark Milley, Chairman, JCS;
- GEN James McConville, Chief of Staff, U.S. Army;
- GEN Daniel Hokanson, Chief, NGB;
- Lieutenant General (LTG) Walter Piatt, Director of the Army Staff;
- Then-LTG Charles Flynn, Deputy Chief of Staff for Operations, Plans, and Training/G-3/5/7, Headquarters, Department of the Army (HQDA);<sup>2</sup>
- Major General (MG) William Walker, Commanding General, DCNG;<sup>3</sup>
- Ms. Muriel Bowser, Mayor, Washington, D.C.;
- Dr. Christopher Rodriguez, Director, DCHSEMA;
- Acting Chief of Police Robert Contee, D.C. Metropolitan Police Department (MPD);<sup>4</sup>
- Mr. Steven Sund, former Chief of Police, USCP; and
- DoD personnel involved in planning and executing the DCNG's response to requests for assistance at the U.S. Capitol Building.<sup>5</sup>

We also reviewed classified material as part of our review; however, this report does not contain any classified information.

Although we conducted an independent review of the actions of the DoD's Components and personnel, we also held interagency meetings with the OIGs from the Department of Justice (DoJ), Department of Homeland Security (DHS), and DoI to identify and address potentially overlapping facts and timelines applicable to each OIG's independent reviews of the January 6, 2021 events.

We divided our report into six sections.

Section I is an introduction to this report.

Section II provides an overview of our findings, conclusions, and recommendations.

Section III, "Defense Support of Civil Authorities," provides an overview of the DoD's mission, the DCNG's mission, and the support that DCNG provides to civil authorities.

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<sup>2</sup> LTG Flynn received a promotion to General and subsequently assumed command of U.S. Army Pacific on June 4, 2021. We address him as LTG Flynn throughout this report.

<sup>3</sup> MG Walker served as the Commanding General, District of Columbia Army and Air National Guard, from January 2017 through March 2021. On March 5, 2021, MG Walker was selected as the new Sergeant at Arms of the U.S. House of Representatives. He subsequently retired from military service and was sworn in as the 38th Sergeant at Arms of the U.S. House of Representatives on April 26, 2021. We address him as MG Walker throughout this report.

<sup>4</sup> Mr. Contee became the MPD Chief on May 4, 2021.

<sup>5</sup> Hereafter we refer to the U.S. Capitol Building in this report as the Capitol.



Section IV, “Significant Events Leading Up to January 6, 2021,” provides an overview of the relevant events leading up to January 6, 2021, and includes information about protests, riots, and other events in D.C. from June through December 2020, and the DoD’s review and approval of the D.C. Government’s request for assistance (RFA) from the DCNG. We also provide our conclusions regarding DoD actions during this period.<sup>6</sup>

Section V, “DoD’s Actions on and After January 6, 2021,” provides details of the events on January 6, 2021. It includes information about the DCNG’s mission and activities, DoD coordination with D.C. and Federal officials, receipt and approval of the USCP’s RFA, DoD planning for the DCNG’s new mission, the DoD’s response to the events at the Capitol, and plans for the DCNG and National Guard (NG) forces from several states to help secure the Capitol in the immediate aftermath of January 6, 2021. We also provide our conclusions regarding DoD actions during this period.

Section VI, “DoD OIG Review Observations and Recommendations,” details our observations regarding the DoD’s response time to the Capitol on January 6, 2021. Additionally, we make recommendations that the SecDef and SecArmy should consider improving the DoD’s Defense Support of Civil Authorities (DSCA) operations, policies, and procedures.

We provided a copy of our preliminary report to the Deputy SecDef, the DoD General Counsel, and The Inspector General of the Army for review on October 29, 2021. We asked them to review our preliminary report and identify any information they believed should be exempt from public release under the Freedom of Information Act, section 552, title 5, United States Code. We also asked them to identify any information they believed was factually incorrect and provide documentation to support their assessment for our review. We also provided excerpts from our preliminary report to the OIGs from the DOJ, DHS, and DOI, and asked each to review for exemptions from public release and to identify any potential factual errors. We received responses from all entities that reviewed our preliminary report and, where we deemed appropriate, modified our final report.

## **II. OVERVIEW OF THE DOD OIG REVIEW**

### *A. EVENTS LEADING UP TO JANUARY 6, 2021*

The United States held a presidential election on November 3, 2020. As individual states tallied and reported their election results to Congress, the President of the United States asserted that the election results were fraudulent.

The President announced via Twitter on December 19, 2020, that there would be a large protest on January 6, 2021, in Washington, D.C. He also alleged election fraud. He followed with a tweet on December 27, 2020, about the planned large gathering on January 6, 2021, to protest Congress certifying the Electoral College vote results at the Capitol.<sup>7</sup>

Twelve days later, on Thursday, December 31, 2020, Mayor Bowser sent a letter to MG Walker, requesting DCNG support in the District of Columbia for January 5 through 6, 2021. Mayor Bowser wrote in her letter that DCNG personnel would support both the MPD and the Fire and Emergency Medical Services (DCFEMS). In addition, she wrote, “[N]o DCNG personnel shall be

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<sup>6</sup> We based our conclusions on a preponderance of the evidence, consistent with our normal process in administrative investigations.

<sup>7</sup> A description of the electoral process is at <https://www.usa.gov/election>. A description of the Electoral College is at <https://www.archives.gov/electoral-college>.

armed during this mission, and at no time, will DCNG personnel or assets be engaged in domestic surveillance, searches, or seizures of [U.S.] persons.” She also stated that the Director, DCHSEMA, would send an RFA to MG Walker providing detailed requirements for the request.

The DCHSEMA Director sent an RFA to MG Walker on December 31, 2020, requesting DCNG personnel to support D.C. authorities from 7:30 a.m., Tuesday, January 5, 2021, through midnight, Wednesday, January 6, 2021.<sup>8</sup> The DCHSEMA Director wrote that the DCNG’s primary mission would be “crowd management and assistance with blocking vehicles at traffic posts [traffic control points or TCPs].” The DCHSEMA Director specifically requested six DCNG crowd management teams at identified Metro transit stations to prevent overcrowded platforms and teams to help staff 30 designated TCPs.

MG Walker forwarded the D.C. RFA to Mr. McCarthy on Friday, January 1, 2021, and recommended that Mr. McCarthy approve supporting the request. Mr. Miller told us that he learned of the D.C. RFA on January 1, 2021. During the following weekend, Army Staff members coordinated the response to D.C. officials with staff members assigned to the Office of the Assistant Secretary of Defense for Homeland Defense and Global Security (OASD[HD&GS]) and the DoD Office of General Counsel (OGC). OASD(HD&GS) staff members also telephoned and texted their points of contact at the U.S. Secret Service (USSS), U.S. Marshals Service (USMS), U.S. Park Police (USPP), DHS, and USCP to determine if any of these Federal civilian law enforcement agencies intended to request DoD support for January 6, 2021. All of these agencies responded that they did not anticipate needing DoD assistance.

Mr. Miller and Mr. McCarthy attended a number of meetings from Saturday, January 2, 2021, through Monday, January 4, 2021, within the DoD and with the DoJ, the DHS, and the DoI. The DoD held these meetings to discuss approval of the D.C. RFA, the potential for civil disturbances on January 6, 2021, and conditions for deployment of DCNG personnel. During these interagency and interdepartmental meetings, Mr. Miller sought to ensure that civilian agencies had no additional support requirements for the DoD, and that the DoJ would be designated as the lead Federal agency if circumstances developed to necessitate a Federal response to potential civil disturbances. During a January 4, 2021 meeting, Acting Attorney General (AG) Jeffrey Rosen orally concurred with the DoD’s plan for fulfilling the D.C. RFA. Mr. McCarthy wrote in a January 4, 2021 letter to Mr. Miller that he intended to approve the D.C. RFA if a lead Federal agency was designated and if the anticipated size of the demonstrations exceeded the capability of civilian law enforcement agencies.<sup>9</sup>

Following a January 4, 2021 meeting with Mr. McCarthy, Mr. Miller signed a memorandum that authorized Mr. McCarthy to approve the D.C. RFA, subject to consultation with Mr. Rosen and additional guidance. Mr. Miller specifically withheld the authority from Mr. McCarthy to approve riot control equipment or tactics; use military Intelligence, Surveillance, and Reconnaissance (ISR) assets; share equipment with law enforcement agencies; and seek support from non-DCNG units. Finally, Mr. Miller authorized Mr. McCarthy to employ a standby Quick Reaction Force (QRF) only as a last resort in response to a request from an appropriate civil authority.<sup>10</sup> He directed Mr. McCarthy to notify him immediately if Mr. McCarthy employed the QRF.<sup>11</sup>

<sup>8</sup> Copies of the DCHSEMA Director’s RFA and Mayor Bowser’s letters are in Appendix C. In this report, we refer to the DCHSEMA Director’s RFA and the Mayor’s letter as the “D.C. RFA.”

<sup>9</sup> See Appendix C for a copy of Mr. McCarthy’s letter.

<sup>10</sup> A Quick Reaction Force (QRF) is any force that is poised to respond on very short notice.

<sup>11</sup> See Appendix C for a copy of Mr. Miller’s memorandum.

On the evening of January 4, 2021, Mr. McCarthy discussed the DoD's mission and Mr. Miller's employment guidance with MG Walker. Later that evening, an Army Staff member, on behalf of Mr. McCarthy, sent a letter to the DoJ to request Mr. Rosen's written concurrence with the DoD's plan to fulfill the D.C. RFA.

Mr. McCarthy sent a letter to MG Walker on January 5, 2021, that authorized MG Walker to support the D.C. RFA with 340 DCNG personnel for traffic and crowd control activities at 30 TCPs and 6 Metro stations; chemical, biological, radiological, and nuclear (CBRN) monitoring and hazardous material on-site support; and a 40-person QRF stationed at Joint Base Andrews (JBA), Maryland. The letter prohibited performing other tasks and duties or employing the QRF without Mr. McCarthy's approval.<sup>12</sup>

The DCNG executed its approved mission as directed on the morning of January 5, 2021. Additionally, on January 5, 2021, Mayor Bowser sent a letter to both the DoD and DoJ advising that no other Federal law enforcement support personnel were required and discouraged the deployment of any additional Federal law enforcement personnel without first consulting with MPD leadership.<sup>13</sup>

No major incidents of rioting or other violence occurred on January 5 or during the morning of January 6, 2021.

#### *B. EVENTS ON JANUARY 6, 2021*

At about 11:00 a.m. on Wednesday, January 6, the President and other speakers addressed a large group of protesters assembled on The Ellipse, near the White House. At this time, [REDACTED] DCNG soldiers were on duty at TCPs and Metro stations in downtown Washington, D.C., with another [REDACTED] off duty and expected to report to the DCNG Armory during the afternoon to relieve troops on duty and cover TCPs and Metro stations during the evening. The 40-person DCNG QRF was stationed at JBA. The QRF was outfitted with riot control equipment, and the soldiers at TCPs and Metro stations had riot control equipment stored in their vehicles. [REDACTED] DCNG soldiers were carrying out CBRN monitoring and hazardous material on-site support, and [REDACTED] DCNG personnel were at the Armory providing command and control and other support.

Shortly before 1:00 p.m. on January 6, 2021, as the President concluded his speech, a large crowd left The Ellipse and began marching towards the Capitol. As this group reached the area of the U.S. Capitol Campus, an undetermined number of individuals forced their way past barricades, some attacking law enforcement personnel, and into the Capitol as Members of Congress were meeting to certify the Electoral College vote count.<sup>14</sup> Beginning at 1:49 p.m. and throughout the afternoon of January 6, 2021, the DoD and the DCNG received numerous calls from various Federal and D.C. government officials requesting support and immediate assistance.

At 2:20 p.m., a conference call between Army Staff members, civilian officials from the D.C. government, and the USCP was initiated during which Mr. Sund requested NG support at the Capitol. Mr. McCarthy relayed the request to Mr. Miller, who approved mobilization of the DCNG at 3:04 p.m. The DCNG moved the QRF from JBA to the DCNG Armory, arriving at approximately 3:15 p.m. The [REDACTED] DCNG soldiers on duty at TCPs and Metro stations remained at their posts

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<sup>12</sup> See Appendix C for a copy of Mr. McCarthy's letter.

<sup>13</sup> See Appendix C for a copy of Mayor Bowser's letter.

<sup>14</sup> These actions are under criminal investigation by the DoJ-FBI and were not within the scope of our review.



without other direction. At 3:48 p.m., after contacting congressional leaders and media personnel to rebut false media reports that the DoD denied Mr. Sund's request for support, Mr. McCarthy left the Pentagon for MPD headquarters to coordinate the DCNG response to the Capitol events.

After Mr. McCarthy arrived at MPD headquarters, he worked with D.C. government officials to develop a plan to re-mission and deploy the DCNG to support the USCP at the Capitol. Mr. McCarthy then called Mr. Miller at about 4:32 p.m., and Mr. Miller immediately approved the re-mission plan and authorized Mr. McCarthy and MG Walker to deploy the DCNG to the Capitol.

The soldiers on duty at TCPs and Metro stations returned to the Armory at approximately 5:00 p.m. as directed by the DCNG Joint Task Force commander and did not participate in the response to the Capitol events. The QRF, now supplemented with Soldiers reporting to duty for the evening shift at TCPs and Metro stations and other personnel on duty at the Armory, left the Armory at 5:15 p.m. for USCP headquarters to be sworn in as "special policemen" by USCP personnel. The response force then moved to the Capitol, arriving at 5:55 p.m., and joined civilian law enforcement personnel in reinforcing the perimeter and clearing the Capitol grounds.

The events at the Capitol led to questions from Members of Congress about the adequacy and timeliness of the DoD's response to requests for assistance and DCNG's deployment to the Capitol.

### *C. FINDINGS AND CONCLUSIONS*

#### Conclusions on DoD Actions Before January 6, 2021

We concluded that the actions the DoD took before January 6, 2021, to prepare for the planned protests in Washington, D.C., on January 5 and 6, 2021, were appropriate, supported by requirements, consistent with the DoD's roles and responsibilities for DSCA, and compliant with laws, regulations, and other applicable guidance.

We also examined the actions the DoD took before January 6, 2021, that were independent of the D.C. RFA. We looked for a role or responsibility for the DoD to act preemptively to prevent or deter what later happened at the Capitol. We found none. On the contrary, we found restrictions that limited the DoD's roles and responsibilities in planning and providing support for domestic civil disturbance operations (CDO). These restrictions, set forth in statutes and implementing DoD directives, do not limit what civil authorities can request, but rather mandate what support DoD can provide to civilian authorities by setting strict limits.

#### Conclusions on DoD Actions On January 6, 2021

We concluded that the DoD's actions to respond to the USCP's RFA on January 6, 2021, were appropriate, supported by requirements, consistent with the DoD's roles and responsibilities for DSCA, and compliant with laws, regulations, and other applicable guidance. In particular, we determined that the decisions made by Mr. Miller, Mr. McCarthy, and other senior DoD officials, and actions taken by the DoD in response to the civil disturbance at the U.S. Capitol Campus on January 6, 2021, were reasonable in light of the circumstances that existed on that day and requests from D.C. officials and the USCP.

We also determined that DoD officials did not delay or obstruct the DoD's response to the USCP RFA on January 6, 2021.

*D. DOD OIG REVIEW OBSERVATIONS AND RECOMMENDATIONS*

Although we reached the previous conclusions, we made several observations and recommendations about how the DoD could improve its command structure, command and control architecture, communications systems, planning, and training during future DSCA missions within D.C. We detail our observations and recommendations in Section VI of this report.

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### III. DEFENSE SUPPORT OF CIVIL AUTHORITIES

To place the DoD's responsibilities and role in the events leading up to and on January 6, 2021, into context, we briefly describe the authorities that allow the DoD to support civil authorities. We then describe the processes the DoD uses to review and approve or disapprove requests for the DCNG to support local and Federal civil authorities in D.C.<sup>15</sup>

#### *Defense Support of Civil Authorities Overview*

The DoD exists to defend the United States and fight its wars. Although primarily oriented toward foreign threats to the homeland, the DoD possesses capabilities and resources that can support civil authorities and other domestic non-DoD entities. Defense Support of Civil Authorities (DSCA) is a DoD term that describes a broad range of activities that support civil authorities. These can include provision of medical treatment services, search and rescue operations, and CBRN response. The DoD provides DSCA in response to an RFA from civil authorities for help with domestic emergencies, law enforcement agency support, and other domestic activities. The DoD can provide DSCA on its own initiative as outlined below, but only when directed by the President under the Insurrection Act, or in very limited circumstances when exercising Immediate Response Authority or Emergency Authority.<sup>16</sup>

#### *DSCA Authorities*

Before providing DSCA in response to each RFA, the DoD must determine the specific legal authority that directs or allows the requested support. U.S. law, presidential executive orders and directives, Federal regulations, and DoD policies provide the framework and authorities for DSCA at the Federal, state, local, tribal, and territorial levels. We briefly discuss authorities related to civil disturbances, other emergencies, and support to civilian law enforcement below. Appendix A contains excerpts from the standards applicable to our review.

#### Civil Disturbances and Emergency Authority

Civil disturbances represent a category of domestic emergency that includes group acts of violence and disorder that are prejudicial to public law and order. State and local law enforcement agencies are the primary response agencies during a domestic civil disturbance. State and territorial governors may activate NG forces under their control in state active duty status during such disturbances. The D.C. mayor is not a state or territorial governor and does not have authority over the DCNG.

The U.S. Attorney General (AG) receives and coordinates requests for CDO, and is responsible for managing the U.S. Government's response to domestic civil disturbances. Federal military forces supporting the AG while conducting CDO remain under SecDef command and control, and play a limited role during a Federal response.

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<sup>15</sup> The Assistant Secretary of Defense for Homeland Defense and Global Security is the DoD proponent for DSCA policy and is responsible for the DoD issuances that were the primary sources for this section of our review. These include DoDD 3025.18, "Defense Support of Civil Authorities (DSCA)," December 29, 2010, (Incorporating Change 2, March 19, 2018); DoD Instruction 3025.21, "Defense Support of Civilian Law Enforcement Agencies," February 27, 2013, (Incorporating Change 1, Effective February 8, 2019); DoD Instruction 3025.22, "The Use of the National Guard for Defense Support of Civil Authorities," July 26, 2013, (Incorporating Change 1, May 15, 2017); and all volumes of DoD Manual 3025.01, "Defense Support of Civil Authorities," August 11, 2016.

<sup>16</sup> The events on January 6, 2021, did not meet those limited circumstances allowing DoD unilateral action.



In rare cases, Federal forces also may respond directly to civil disturbances. The U.S. Constitution and U.S. law authorize the President to employ military forces to suppress insurrections, rebellions, and domestic violence in a specific civil jurisdiction under specific circumstances. The Insurrection Act allows the President to use Title 10 forces to enforce Federal laws when rebellion against U.S. authority makes it impracticable to enforce U.S. law by ordinary means.<sup>17</sup> Additional information on the Insurrection Act is located in Appendix A.

DoD policy allows Federal military commanders to exercise “emergency authority” under extraordinary circumstances to prevent significant loss of life, prevent wanton destruction of property, restore governmental function, restore public order, protect Federal property, and protect Federal functions. Federal military commanders do not need a request for assistance from civil authorities to respond, and may perform tasks such as dispersing unauthorized assemblages, patrolling disturbed areas, maintaining essential transportation and communications systems, setting up roadblocks, and cordoning off areas. Emergency authority is only available when (1) local authorities are unable to control large-scale, unexpected civil disturbances, and (2) it is impossible to communicate through the military chain of command to obtain presidential authorization for the DoD to conduct CDO.

### Disasters, Other Emergencies, and Immediate Response Authority

Primary responsibility for responding to natural and man-made disasters and emergencies rests with state and local officials. A governor may activate state or territorial NG forces to fulfill these responsibilities and may directly request aid from other states pursuant to the Emergency Management Assistance Compact (EMAC).<sup>18</sup> A governor may also request Federal assistance when requirements exceed the state’s capabilities. DHS, specifically the Federal Emergency Management Agency, acts as the Lead Federal Agency for coordinating the Federal response to large-scale natural disasters. In general, the DoD provides disaster and emergency support in response to requests from this Agency.

DoD policy states that Federal military commanders, DoD Component heads, and responsible DoD civilian officials can exercise “immediate response authority” to save lives, prevent human suffering, and mitigate great property damage when the time to act does not permit obtaining higher headquarters (HQ) approval.<sup>19</sup> Civil non-law enforcement authorities must first make an oral or written RFA to the DoD. DoD support under immediate response authority may include search and rescue, evacuation, emergency medical treatment, firefighting, debris clearance, and food and water distribution.

Support of civilian law enforcement activities, as opposed to non-law enforcement activities, is not provided under immediate response authority because this authority does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory.

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<sup>17</sup> Title 10 of the United States Code outlines the legal basis for the roles, missions, and organization of the U.S. Armed Forces. Title 10 forces include active duty military, reservist, and National Guard personnel ordered to Federal-level active duty for Federal-level missions. National Guardsmen working in full-time positions, and on certain state missions, also serve in a Title 10, Federal status.

<sup>18</sup> The EMAC is a mutual aid agreement Congress signed into law in 1966 that allows states, territories, and the District of Columbia to share resources during emergencies.

<sup>19</sup> The Stafford Act (section 5121, title 42, United States Code) provides statutory authority for the use of the armed forces for domestic disaster relief.

### Support of Civilian Law Enforcement Activities

The DoD may support civilian law enforcement agencies for preplanned and other events such as civil disturbances, disasters, and other emergencies. When providing support, the DoD must recognize and conform to legal limitations on direct DoD involvement in civilian law enforcement activities. For example, the 1878 Posse Comitatus Act, section 1385, title 8, United States Code (18 U.S.C. § 1385), as amended, generally prohibits the use of active duty Federal military personnel to enforce U.S. laws within the borders of the United States. This prohibition applies to NG personnel when they serve in Title 10 status, but not when they serve in a Title 32 or state active duty status.<sup>20</sup> Any employment of Federal military forces in support of civilian law enforcement operations must maintain the primacy of civilian authority. The SecDef must ensure that DoD support does not include or permit direct DoD participation in search, seizure, arrest, or other similar law enforcement activity unless a law otherwise authorizes participation in such activity. Examples of possible DoD support include specialized personnel and units, equipment, facilities, training, and expert advice.

The SecDef is the approval authority for requests for direct assistance in support of civilian law enforcement agencies, including responding with assets that have the potential for lethality.<sup>21</sup> This includes situations in which a confrontation between civilian law enforcement and civilian individuals or groups is anticipated. The Assistant Secretary of Defense for Homeland Defense and Global Security (ASD[HD&GS]) is the DoD official responsible for DSCA policy and reviews all such requests. Within the Office of the ASD (HD&GS), the DSCA Director, who reports to the DASD for Homeland Defense Integration and DSCA, and his staff receive and coordinate requests for DSCA. The ASD(HD&GS) may approve some types of DoD support for civilian law enforcement agencies, including (1) non-lethal support that is not related to law enforcement functions like arrest, seizure, or crowd or traffic control; and (2) CBRN and explosive detection and response capabilities for preplanned events.

U.S. law allows the DoD to assist the USCP on a temporary and reimbursable basis when the Capitol Police Board asks for help and on a permanent and reimbursable basis when the Capitol Police board asks in advance and in writing. The DoD may provide assistance without reimbursement under circumstances specified in other sections of U.S. law. Except in an emergency, the Capitol Police Board must consult with appropriate members of the U.S. Senate and House of Representatives before requesting DoD assistance.<sup>22</sup> The law also authorizes the USCP Chief, in the event the Capitol Police Board determines there is an emergency, to appoint any member of the uniformed services, including members of the NG, as a “special officer of the Capitol Police.”

#### *DSCA and the DCNG*

The President appoints the DCNG Commanding General (CG), who reports to the President. In a 1969 executive order, the President delegated to the SecDef the authority to “supervise,

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<sup>20</sup> Title 10 personnel are active duty military members in the Army, Navy, Air Force, and Marine Corps. National Guard personnel serve in a Title 10 status when the President calls them to active duty, or “federalizes” them. Title 32 personnel are National Guard personnel funded with Federal funds, while remaining under the command and control of the governor of their state, territory, or commonwealth.

<sup>21</sup> Except when a Federal military commander exercises emergency authority as explained in the passage about civil disturbances.

<sup>22</sup> The Capitol Police Board consists of the Sergeant at Arms of the U.S. House of Representatives, the Sergeant at Arms and Doorkeeper of the U.S. Senate, and the Architect of the Capitol. The USCP Chief serves in an approved non-voting capacity.

administer and control” the DCNG.<sup>23</sup> In a subsequent memorandum, the SecDef further delegated authority over the D.C. Army National Guard (DCARNG) to the SecArmy and authority over the D.C. Air National Guard (DCANG) to the Secretary of the Air Force.<sup>24</sup> The D.C. mayor is not in the DCNG chain of command.

The 1969 executive order authorized the SecDef, subject to the President’s direction, to order the DCNG to aid D.C. civil authorities. The SecDef subsequently delegated authority to the SecArmy to command DSCA operations of the DCARNG and DCANG, through the DCNG CG. A fact sheet about the DCNG and an excerpt from the DCNG’s “2019 Annual Report” that depicts the chain of command and organizational structure are located in Appendix B.

### *Approving Requests for DCNG Assistance in the District of Columbia*

DoD policy requires DoD officials to consider a set of factors designed to ensure compliance with laws and other important criteria when reviewing RFAs. Staffing procedures, which we briefly describe below, depend on whether the requesting agency is the D.C. government or a Federal agency within D.C. A list of review criteria and schematic descriptions of the procedures used for the RFAs we examined for this review is located in Appendix B.

The D.C. government submits RFAs to the DCNG CG, who reviews them and makes a recommendation to the SecArmy. The Army Staff advises the SecArmy on the RFA as needed, and the SecArmy coordinates with the SecDef. The SecArmy also coordinates with and receives advice from the AG. The SecArmy or SecDef then approves or disapproves the RFA, and the SecArmy notifies the D.C. government, often through the DCNG CG. The Mayor may appoint DCNG personnel providing the approved support to D.C. as “Special [Police] privates.” During the appointment period, “Special [Police] privates” possess all the powers and privileges and perform all the duties of standing police force privates.

Federal agencies normally send RFAs through the DoD Executive Secretariat to the SecDef for approval.<sup>25</sup> The SecDef is not required to coordinate these Federal agency RFAs with the AG. When the USCP is the requesting Federal agency, the Capitol Police Board must make an advance written request. In an emergency, the U.S. House of Representatives’ or the U.S. Senate’s Sergeant at Arms may make an oral request and follow up with a written request from the Capitol Police Board. The Chief of the USCP does not have the authority to make an emergency RFA independent of the Capitol Police Board. The Chief of the USCP may appoint any responding NG personnel as “special officer[s] of the Capitol Police.”

## **IV. SIGNIFICANT EVENTS LEADING UP TO JANUARY 6, 2021**

In this section, we detail the information the DoD received before January 6, 2021, about possible civil disturbances, and the actions the DoD took in response to that advance information. We give particular attention to the December 31, 2020 D.C. RFA for traffic and crowd control during the protests planned for January 5 and 6, 2021, and how the DoD responded to that request. At the end of this section, we present our conclusions about the DoD’s response to the D.C. RFA, based on a preponderance of the evidence we reviewed.

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<sup>23</sup> Executive Order 11485, “Supervision and control of the National Guard of the District of Columbia,” October 1, 1969.

<sup>24</sup> Secretary of Defense Memorandum, “Supervision and Control of the National Guard of the District of Columbia,” October 10, 1969.

<sup>25</sup> Federal agencies sometimes submit RFAs directly to the DCNG CG or the SecArmy, who coordinates them with the SecDef.



### *Chronology of Significant Events Leading Up to January 6, 2021*

Table 1 lists significant events concerning civil disturbances and the presidential election that happened before January 6, 2021.<sup>26</sup>

*Table 1. Chronology of Significant Events Leading Up to January 6, 2021*

Date	Event
<b>May 25, 2020</b>	Mr. George Floyd dies while in police custody in Minneapolis, Minnesota.
<b>May 29 – Jun. 1, 2020</b>	Violent protests occur in D.C. over George Floyd's death; DCNG personnel and aviation assets help with Federal response.
<b>Jul. 4, 2020</b>	The DCNG helps civil authorities with crowd management during Independence Day festivities in D.C.
<b>Aug. 28, 2020</b>	The DCNG helps civil authorities with crowd management and traffic control during the 57th anniversary of the March on Washington for Jobs and Freedom.
<b>Nov. 3, 2020</b>	The U.S. presidential election takes place.
<b>Nov. 14, 2020</b>	Post-presidential election protests occur in D.C.; civil authorities do not request DCNG assistance.
<b>Dec. 12, 2020</b>	The second post-presidential election protest in D.C. occurs; civil authorities do not request DCNG assistance.
<b>Dec. 19, 2020</b>	The President tweets, "Big protest in D.C. on January 6, 2021. Be there, will be wild!"
<b>Dec. 27, 2020</b>	The President tweets, "See you in Washington, D.C., on January 6th. Don't miss it. Information to follow!"
<b>Dec. 30, 2020</b>	The MPD estimates that on January 6, 2021, there will be approximately 23 protest groups and 25,550 protestors; the MPD shares this information with the DCNG.
<b>Dec. 30, 2020</b>	The DHS estimates that on January 6, 2021, there will be 21 protest groups and 2,000 protestors committed to attend all protests in Washington, D.C.; DHS shares this information with the AOC. <sup>27</sup>
<b>Dec. 31, 2020</b>	The MPD shares with the DCNG an assessment that group actions during planned protests will be spontaneous and include the possibility of more aggression.
<b>Dec. 31, 2020</b>	The DCHSEMA Director submits the D.C. RFA to the DCNG for January 5-6, 2021, for traffic control at intersections; crowd control at Metro station platforms; and CBRN response capability. MG Walker informs Mr. McCarthy of the D.C. RFA.
<b>Jan. 1, 2021</b>	MG Walker sends his mission analysis for fulfilling the D.C. RFA for January 5-6, 2021, to Mr. McCarthy with a recommendation for approval.
<b>Jan. 2, 2021</b>	Mr. McCarthy and MG Walker discuss the D.C. RFA on a conference call; MG Walker updates his support plans while waiting for approval of the D.C. RFA.
<b>Jan. 2, 2021</b>	Mr. Miller, GEN Milley, Mr. McCarthy, and GEN McConville discuss the D.C. RFA; Mr. McCarthy says the final decision will come on January 4, 2021.
<b>Jan. 2, 2021</b>	Mr. Miller's staff coordinates with the FBI, DHS, and USMS on whether these agencies had any concerns regarding the January 5-6, 2021 election protest events; the FBI had no specific concerns; DHS was not increasing its posture and was not tracking any threats to Federal facilities; and USMS was not responding to protests on January 5-6, 2021.
<b>Jan. 2, 2021</b>	The DCHSEMA Director submits an updated D.C. RFA to DCNG that includes a requirement to swear in DCNG personnel as "Special Police."
<b>Jan. 3, 2021</b>	Mr. Miller's staff coordinates with the USCP and USPP on whether either agency is requesting support for the planned election protest events on January 5-6, 2021; neither agency requests DoD support for the events.

<sup>26</sup>We identified the date and time that events occurred by a preponderance of the evidence we reviewed.

<sup>27</sup> The Army Operations Center (AOC) is the Army's main location for command, control, and coordination of all Army operational activities. The use of the initials "AOC" throughout this report refer to the Army Operations Center, and not the initials commonly used to refer to or identify Congresswoman Alexandria Ocasio-Cortez.

Date	Event
Jan. 3, 2021	Mr. Miller participates in a Government interagency senior-level meeting; none of the attendees requests DoD assistance for January 5-6, 2021.
Jan. 3, 2021	Mr. McCarthy and the MPD Acting Chief of Police discuss the D.C. RFA; Mr. McCarthy wants the MPD to exhaust all Federal law enforcement resources first and defers the D.C. RFA approval decision to January 4, 2021.
Jan. 3, 2021	Mr. McCarthy discusses the D.C. RFA with Army senior leaders; he prepares for a decision meeting with Mr. Miller the next day to discuss the possible role of other Federal agencies in the expected election protests.
Jan. 3, 2021	Mr. Miller and GEN Milley attend a White House meeting. At the end of the meeting, the President asks about election protest preparations and Mr. Miller tells him, "We've got a plan, and we've got it covered."
Jan. 4., 2021	Mr. McCarthy recommends to Mr. Miller that the DCNG support the D.C. RFA, subject to three conditions all related to the role of other Federal agencies; Mr. Miller orally authorizes Mr. McCarthy to approve the D.C. RFA and discusses his additional guidance for fulfilling the request.
Jan. 4, 2021	Mr. McCarthy informs Mayor Bowser and the MPD Acting Chief of Police that the D.C. RFA is approved.
Jan. 4, 2021	MG Walker briefs Mr. McCarthy on final plans to fulfill the D.C. RFA; they discuss mission parameters and employment guidance.
Jan. 4, 2021	Mr. Miller issues written guidance applicable to the DCNG's fulfillment of the D.C. RFA.
Jan. 4, 2021	Mr. Miller discusses the D.C. RFA with Mr. Rosen.
Jan. 4, 2021	Mr. McCarthy asks Mr. Rosen by letter to confirm the plan to use DCNG personnel to fulfill the D.C. RFA.
Jan. 5, 2021	The DCNG begins an approved mission to support the MPD with traffic and crowd control at intersections and Metro stations.
Jan. 5, 2021	The AOC receives early information that DHS is monitoring 81 planned gatherings and has nothing significant to report regarding credible threats.
Jan. 5, 2021	Mr. McCarthy sends a letter to MG Walker that issues written authority to fulfill the RFA and conveys detailed employment guidance.
Jan. 5, 2021	Mayor Bowser states in writing that her government is prepared for the planned election protests and does not require help from Federal law enforcement agencies; she also wants to be consulted before deployment of any Federal resources beyond the approved DCNG deployment.
Jan. 5, 2021	During the evening, the President calls Mr. Miller to discuss the upcoming rallies. Mr. Miller told us that the President told him to "do what's required to protect the American people."
Jan. 5, 2021	The AOC receives an assessment from the USPP ICTB that the USPP can handle the President's Ellipse rally and large crowds; the ICTB has concerns over lack of intelligence on a notional "one off domestic radical."
Jan. 5, 2021	The FBI's Norfolk Division released an SIR [REDACTED]

**Legend**

ICTB Intelligence/Counter-Terrorism Branch

SIR Situational Information Report

*Events in Washington, D.C., Before the 2020 Presidential Election*

The events leading up to the 2020 presidential election are important to the January 6, 2021 fact pattern we reviewed because witnesses told us that previous events influenced the DoD response to RFAs pertaining to civil disturbances before and on January 6, 2021. After the May 25, 2020 death of Mr. Floyd while in police custody in Minneapolis, Minnesota, cities throughout the United States experienced several weeks of demonstrations, some of which were marked by

episodes of looting, vandalism, arson, and other violence. Beginning on May 29, 2020, Washington, D.C., entered a similar period of demonstrations and rioting that lasted into June 2020.

Protests occurred throughout downtown Washington, D.C., on May 30, 2020, including vandalism of monuments on the National Mall. These protests continued on May 31, 2020, and a number of businesses were looted. Based on the civil unrest, the former U.S. AG characterized the day as “the most violent day of civil unrest in the District in 30 years.”

Mayor Bowser ordered a 7:00 p.m. curfew for Washington, D.C., on June 1, 2020. During the early evening, Federal law enforcement officers cleared Lafayette Square of protesters before the President spoke at the nearby St. John’s Episcopal Church. Although mobilized DCNG troops were present, they did not participate in the removal of protesters from Lafayette Square. Protests continued throughout that night and the DCNG deployed its available assets in force. It was during these events that a DCNG UH-72 medical evacuation helicopter was filmed hovering over a group of protesters.<sup>28</sup> The recording was widely publicized in the news and on social media.<sup>29</sup> One media outlet, *Politico*, reported, “The optics of the past 72 hours are putting people inside the halls of the Pentagon on edge as images of U.S. troops on the streets of the nation’s capital dominate airwaves across the globe.”

Mr. McCarthy described the June 2020 events as violent. He said, “It [the riot] turned very violent. They looted buildings. They spray painted monuments. They burned a church. Six of our [DCNG] Soldiers were injured and over the course of those 3 or 4 days about 100 policemen were injured.” Mr. McCarthy noted the public criticism of the DoD’s response. He mentioned the use of helicopters and added, “We had [DCNG] Soldiers in Lafayette Square where people thought they were engaging civilians because we had [loaned] military police shields to law enforcement officials. So there were [civilian] policemen ... using military police shields and we spent days and weeks explaining to the media and the Congress those weren’t our guys.”<sup>30</sup>

An Army public affairs officer told us that the Army received calls complaining that active duty personnel were in the streets from May through June 2020 because they saw active duty unit patches on DCNG uniforms. The officer explained that this was a misunderstanding because “there are several National Guard and Reserve units that have deployed with active duty troops so they have those combat patches” on their right shoulder.<sup>31</sup> In addition, some citizens thought Federal law enforcement officers who wore military-style uniforms were actually Soldiers. Other witnesses we interviewed said that the use of riot control agents and ISR aircraft were a concern to many in the DoD. According to Mr. McCarthy, the events of the summer led to congressional hearings and legislation on identifying personnel and other aspects of how DoD should operate in American cities.<sup>32</sup>

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<sup>28</sup> This incident resulted in a DCNG Army Regulation 15-6 investigation, a Department of the Army Inspector General investigation, and a DoD OIG oversight review of those investigations. The oversight review is available at the DoD OIG’s public website at <https://media.defense.gov/2021/May/28/2002731290/-1/-1/1/DODIG%20REPORT%20NO.%202021-089..PDF>.

<sup>29</sup> For example, <https://www.nytimes.com/2020/06/06/us/politics/protests-trump-helicopters-national-guard.html>.

<sup>30</sup> Additional details regarding the Army’s investigation into the events of June 2020 were publicly released on May 26, 2021, and can be found at <https://media.defense.gov/2021/May/28/2002731290/-1/-1/1/DODIG%20REPORT%20NO.%202021-089..PDF>.

<sup>31</sup> For example, if a DCNG Soldier was assigned or attached to an active duty unit while serving in a combat zone, that Soldier might wear the patch of the active duty unit on the right shoulder of his or her uniform.

<sup>32</sup> The U.S. House Armed Services Committee held a hearing on the DoD’s role in civilian law enforcement on July 9, 2020. Then-Secretary of Defense Dr. Mark Esper stated that governors across the nation called up more than 43,000 NG personnel to “uphold the rule of law, safeguard life and property, and protect the rights of Americans, all Americans, to protest safely and peacefully.”

An Army witness told us that a key lesson DoD learned from the events of June 2020 was that senior leaders need a thorough understanding of exactly what support civil authorities have requested. The witness explained that after the June 2020 events, Dr. Mark Esper and Mr. McCarthy began taking a personal interest in reviewing new RFAs, and they decided that requests for DCNG support to local and Federal law enforcement during planned protests were not routine requests.

Another Army witness told us that because of the June 2020 events, any time there was a scheduled protest, every agency asked for large number of forces without providing adequate justification. The witness told us that this caused the Army to put some conditions on requests for DCNG support during protests.

On July 4, 2020, and again on August 28, 2020, the DCNG provided support to Federal and D.C. law enforcement officials for two major events: (1) D.C.'s July 4, 2020 Independence Day festivities and (2) the 57th anniversary of the March on Washington for Jobs and Freedom. For the Independence Day festivities, the USPP requested that DCNG personnel serve in a security role to provide a uniformed presence and for crowd management. For the March on Washington anniversary, the DCHSEMA requested DCNG assistance with crowd management, TCPs, and CBRN response.<sup>33</sup> The DCNG provided 450 personnel for each mission with no notable incidents reported.<sup>34</sup>

#### *Events in Washington, D.C., After the 2020 Election*

A witness told us that Dr. Esper declined an RFA from the USPP for 150 DCNG to serve as a QRF from November 1 through 8, 2020. The witness said that Dr. Esper declined the RFA because he thought civil authorities had become over-reliant on the DoD as a first responder rather than as a last resort for civil disturbances.

The U.S. presidential election took place on November 3, 2020. During the evening of and for days after the election, the President and his supporters used the slogan "Stop the Steal" to express and rally support for the President's assertion that the election results were fraudulent. Protesters and counter-protesters gathered at various locations within Washington, D.C., on November 14, 2020, and engaged each other in violent confrontations. The violence resulted in at least one person stabbed, numerous others injured, and multiple arrests. The DoD and DCNG were not asked to support the law enforcement response to these incidents.

Protesters and counter-protesters gathered again at various locations within D.C. on December 12, 2020, and engaged in confrontations that were more violent. According to the DCNG [REDACTED], the DCNG received no RFAs for support from either D.C. officials or Federal law enforcement for the violent confrontations on that date. The DCNG [REDACTED] told us that for the November and December 2020 protests, the DCNG maintained a high level of situational awareness and was prepared to recall DCNG personnel for support if necessary.

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<sup>33</sup> The DCNG has a Weapons of Mass Destruction Civil Support Team with CBRN detection and response capabilities.

<sup>34</sup> There is no mention of a QRF for the July 4, 2020 festivities. Although DCHSEMA did not request a QRF for the March on Washington anniversary, the DCNG mission analysis process identified a QRF, which the SecArmy approved.

On December 19, 2020, the President tweeted that there would be a rally in D.C. on January 6, 2021. He tweeted:

Peter Navarro releases a 36-page report alleging election fraud "more than sufficient" to swing victory to Trump washex.am/3NWABCe. A great report by Peter. Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!

From December 26, 2020, through January 5, 2021, the President sent additional tweets about the planned January 6, 2021 election protest.<sup>35</sup>

### DoD Planning for January 5 Through 7, 2021

Mr. McCarthy testified before the U.S. House Appropriations Committee on January 26, 2021, that the Army does not collect domestic intelligence and relies on other Federal and local agencies for intelligence and threat assessments. He and other witnesses stated that it would have been inappropriate for the Army to plan to secure the Capitol without a support request from a Federal agency.

We asked Mr. McCarthy what information he or his staff received about planned protests and the potential for violence in the days before January 6, 2021. He and other witnesses told us that the MPD forecasted activity similar to election protests and counter-protests that occurred on November 14 and December 12, 2020. Mr. McCarthy told us that intelligence personnel did not anticipate that the protests would be as violent as they were on January 6, 2021. He also said that the DHS manages information collection and dissemination for interagency partners and provides law enforcement information as needed to Army senior leaders. Mr. McCarthy said that he did not remember receiving any briefings or information that indicated a specific threat, and he only recalled preparing plans for January 5 through 7, 2021, regarding the D.C. RFA submitted to the DoD on December 31, 2020.

Army Staff witnesses told us that the DoD did not plan for the anticipated January 5 and 6, 2021, election protests until the DCNG received the D.C. government's RFA. They said that there were no contingency plans for conducting CDOs in D.C. because the DoD acts only in response to specific requests from civil authorities unless the President invokes the Insurrection Act. MG Walker told us that he had a contingency plan for everything and that not having a contingency plan was "leadership malpractice."

### *Events of December 30, 2020*

The DCNG [REDACTED] e-mailed MG Walker; Brigadier General (BG) Aaron R. Dean II, U.S. Army, The Adjutant General, DCNG; Brigadier General (Brig Gen) Mark A Maldonado, U.S. Air Force, DCANG Commander and Director, Joint Staff, Joint Task Force District of Columbia (JTF-DC), DCNG; and BG Robert K. Ryan, U.S. Army, Land Component Commander, JTF-DC, DCNG, at 10:58 a.m. to forward information received from civilian law enforcement agencies. The e-mail discussed the planned election protests for January 6, 2021, and included information that the DCNG received from the MPD and Federal law enforcement. According to the e-mail, law enforcement agencies did not anticipate requesting civil disturbance support from the DCNG, but that the USSS might request Weapons of Mass Destruction Civil Support Team (CST) assistance. At

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<sup>35</sup> See Appendix E for the full text of these tweets.

the time of the e-mail, 23 protest groups had registered to participate or had made known their intent to attend protest events on January 5 and 6, 2021, with an expected attendance of 25,550. The MPD estimated that the protests would be similar to November and December 2020 but larger because of the President's tweet earlier that month.

BG Christopher LaNeve, Director of Operations, Readiness and Mobilization, Army G-3/5/7, Headquarters, Department of the Army (HQDA), e-mailed Mr. McCarthy and GEN McConville an update at 1:45 p.m. on the expected January 5 through 7, 2021 protests.<sup>36</sup> He reported that local law enforcement had not recalled or placed their officers on standby, and would maintain their operations centers in a "warm" status.<sup>37</sup> BG LaNeve included the DHS National Operations Center's (NOC) listing of the date, time, purpose, and number of interested and committed participants for 21 named protest events. According to the DHS NOC, the approximate number of people committed to attend all protests in Washington, D.C., from January 5 through 7, 2021, was 2,000, with more expressing an interest in attending.

### *Events of December 31, 2020*

The DCNG [REDACTED] e-mailed MG Walker, BG Dean, Brig Gen Maldonado, and BG Ryan at 5:04 p.m. to update them on significant changes the DCNG received from the MPD and Federal law enforcement regarding the anticipated protests. The significant changes were:

- organizers extended the events to include January 5, 2021;
- MPD was expected to request blocking vehicles for January 5 and 6, 2021; and
- DCFEMS was expected to request CST support.

The DCNG [REDACTED] e-mailed the following details from the MPD and the USPP.

- The MPD estimated the crowd's size would be 19,925.
- The USPP estimated 10,000 to 20,000 attendees were expected to attend the demonstrations but there was no central plan among the groups. The largest group of attendees was expected to assemble and remain at The Ellipse. Other groups would assemble at Freedom Plaza and the Capitol. The USPP reported that there was not a single organizer to control all the groups, so most action would be spontaneous. This was seen by some as a "last chance" so there was the possibility of more aggression than in previous protests.<sup>38</sup>

MG Walker called Mr. McCarthy during the late afternoon of December 31, 2020, and told him that the D.C. government would request DCNG support for January 5 and 6, 2021. An Army witness explained that the purpose of the D.C. RFA was to have the DCNG help the MPD with traffic and crowd control so that more MPD officers could be ready to respond to any civil unrest.

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<sup>36</sup> BG LaNeve received a promotion to Major General on February 25, 2021, and assumed duties and responsibilities as the Army's Deputy Chief of Staff, G-3/5/7, on June 21, 2021. We address him as BG LaNeve throughout this report.

<sup>37</sup> Although we were not able to define a "warm" status as it relates to the MPD, we believe it likely means maintaining the minimum staff needed to keep their operations center functioning.

<sup>38</sup> The e-mail did not specify exactly what was meant by "last chance"; however, the protest was planned to draw attention to the scheduled Electoral College vote at the Capitol.

Mr. McCarthy told MG Walker to conduct a mission analysis, and that he (Mr. McCarthy) would notify Mr. Miller of the pending D.C. RFA.

MG Walker also e-mailed Mr. McCarthy at 5:13 p.m. to advise that the DCHSEMA Director called to request that the DCNG help the MPD at 30 TCPs and 6 Metro stations, and provide CST support to D.C. Fire and Emergency Medical Services (DCFEMS). MG Walker added that DCHSEMA had not sent a formal request for assistance and that with a possible exception of the USSS, no Federal requests for assistance were anticipated. MG Walker included a slide presentation, "District of Columbia National Guard 5-6 January 2021 Support Plan," December 31, 2020, depicting the DCNG's initial assessment in anticipation of the receipt of the formal D.C. RFA. The presentation noted that the MPD and USPP estimated a crowd of 15,000 to 20,000, with an expectation that supporters of the Proud Boys and anti-fascist (antifa) organizations would seek confrontations with each other that could result in assaults and opportunities to commit larceny, looting, and arson. The final slide stated the following.

- Upon receipt of the formal D.C. RFA, mission analysis would be conducted.
- The mission required 350 DCNG personnel.
- The DCNG would have liaison teams at the MPD Emergency Operations Center.
- If required, [REDACTED] more DCNG personnel could respond within 3 hours, [REDACTED] more within 6 hours, and [REDACTED] more within 12 hours under the Commanding General's selective encampment order.<sup>39</sup>

LTG Piatt e-mailed Mr. McCarthy, GEN Hokanson, the Military District of Washington Commanding General, and MG Walker at 5:29 p.m. and told them that the Army Staff was ready to process the formal D.C. RFA when received.

Mayor Bowser sent a letter dated December 31, 2020, to MG Walker formally requesting DCNG support for the MPD and DCFEMS during demonstrations for which the National Park Service issued permits on January 5 and 6, 2021. Mayor Bowser specified, "[N]o DCNG personnel shall be armed during this mission, and at no time, will DCNG personnel or assets be engaged in domestic surveillance, searches, or seizures of [U.S.] persons." Mayor Bowser concluded by stating that the DCHSEMA Director would send MG Walker an RFA providing detailed requirements for the request.<sup>40</sup>

The DCHSEMA Director sent an RFA dated December 31, 2020, to MG Walker formally requesting that the DCNG help the MPD with crowd management and traffic management at 30 designated TCPs and 6 D.C. Metro stations from 7:30 a.m. to midnight on January 5 and 6, 2021. He asked that DCNG personnel wear reflective vests and carry lighted wands used to direct traffic. He also asked MG Walker to have the DCNG's CST provide CBRN and hazardous material support to the DCFEMS from 7:00 a.m. on January 5, 2021, to 7:00 a.m. on January 7, 2021. The DCHSEMA Director repeated Mayor Bowser's statements regarding no weapons or domestic surveillance,

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<sup>39</sup> See Appendix D for a copy of the slide presentation MG Walker e-mailed to Mr. McCarthy. Selective encampment is a recall of National Guardsmen based on other operational mission support requirements and meeting military medical readiness, and is not subject to open internal investigations of misconduct.

<sup>40</sup> See Appendix C for a copy of Mayor Bowser's letter.



searches, or seizures of U.S. persons. He confirmed that the MPD and DCFEMS exhausted their organic capabilities and could not carry out their security plans without the requested DCNG support.<sup>41</sup>

MG Walker told us that it was not alarming to receive two letters requesting the same or similar DCNG support. He told us that he normally received only one letter from the DCHSEMA Director; however, because the MPD, Mayor Bowser, the Deputy Mayor, and DCHSEMA were very concerned about the January 6 events, the Mayor sent her separate letter.<sup>42</sup> Mayor Bowser told us that she sent a letter to MG Walker to alert him that the DCHSEMA Director was going to send him an RFA. She told us that the District decided that because the number of participants expected at The Ellipse and at Freedom Plaza was growing, she would need the National Guard's support.

Mr. Miller told us that he learned of the D.C. RFA on December 31, 2020, although he could not recall how. He told us that he decided at that time that he would approve the D.C. RFA once the staffing process was completed.

### *Events of January 1, 2021*

The DCNG [REDACTED] completed the mission analysis for the D.C. RFA within 24 hours of receiving it. Regarding the D.C. RFA, in a memorandum for MG Walker the DCNG [REDACTED] recommended:

- an initial maximum of [REDACTED] Army and Air Guardsmen;
- if required, an additional [REDACTED] Guardsmen able to respond within 3 hours and [REDACTED] Guardsmen able to respond within 6 hours;
- any DCNG engagement in law enforcement activity [such as traffic control or crowd management] required that the MPD first swear in Guardsmen as "special police";
- all Guardsmen would serve on 32 U.S.C. § 502(f) status;<sup>43</sup>
- all Guardsmen would be unarmed; and
- at no time would the Guardsmen or assets engage in domestic surveillance, searches or seizures of U.S. persons.

The DCNG [REDACTED] told us that during the time between the D.C. RFA and the execution of the mission, the DCNG was preparing for the mission by conducting rehearsals, building operations orders, and assembling gear.

MG Walker signed a letter to Mr. McCarthy requesting that he approve the D.C. RFA. He enclosed the D.C. RFA, the mission analysis, and a copy of the MPD Rules for the Use of Force (RUF) for unarmed "Special Police."<sup>44</sup> The DCNG [REDACTED] e-mailed MG Walker's letter and the attachments to an Associate General Counsel in the Army OGC at 12:18 p.m. Mr. McCarthy

<sup>41</sup> See Appendix C for a copy of DCHSEMA Director Rodriguez's letter.

<sup>42</sup> Mayor Bowser's and the DCHSEMA Director's letters combined to create the D.C. RFA.

<sup>43</sup> In 32 U.S.C. § 502, "Required drills and field exercises," paragraph (f), members of the National Guard may be activated for training or to support operations or missions undertaken at the request of the President or SecDef.

<sup>44</sup> See Appendix C for a copy of MG Walker's letter and enclosures.

then requested a January 2, 2021 meeting with Mr. Miller and GEN Milley to discuss the DoD's options for a response to the D.C. RFA.

The DCNG prepared Operations Order (OPORD) 001-2021, "Operation Guardian," January 1, 2021. The OPORD provided instructions for planning and executing a mission to support the D.C. government with crowd management, traffic control points, and a Civil Support Team from January 5 through 7, 2021. The SITUATION paragraph stated, in part, that there were no credible threats of violence or civil unrest. The EXECUTION paragraph included a four-phase concept of the Operation. The first phase was planning and preparation, which included mission analysis, training, exercises, and coordination as necessary with D.C. government and Federal agencies. The second phase was initial assembly. The third phase was execution, and the fourth was redeployment and closure. The OPORD tasked the Joint Forces HQ DCNG J3 with tasking subordinate units to execute or support the mission in accordance with key leader instructions, which the order did not specify. It also tasked the Joint Forces HQ DCNG J4 with ensuring that civil disturbance equipment was available.<sup>45</sup>

Mr. McCarthy told us that he wanted to ensure that local law enforcement was in the lead and that they exhausted all of their assets before turning to the DoD. If the DoD were to help, Mr. McCarthy wanted to see that there would be a command and control architecture that had the appropriate authorities and jurisdictions, and could make the appropriate decisions.

BG LaNeve told us that Mr. McCarthy needed to evaluate and understand who would be in charge and exactly what the DCNG would be expected to do to support law enforcement operations for the January 6, 2021 events. Another witness told us that the events of June 2020 made Mr. McCarthy sensitive to having Soldiers performing a law enforcement function near the Capitol while Congress certified the election results. GEN McConville and a third witness gave the example that in June 2020, the DCNG used tactical vehicles but Mr. McCarthy wanted them to use non-tactical vehicles in January 2021. The third witness also told us that Mr. McCarthy was concerned about the appearance of having the military close to the Capitol or having it look like an overly militarized response. According to this witness, Mr. McCarthy also wanted to make sure that law enforcement, not the military, was in the lead, and that a Federal agency other than the DoD was in charge of coordinating Federal actions as needed to prepare for or respond to any civil unrest.

Another witness told us that June 2020 showed that the DCNG needed a clear mission to support the D.C. RFA. The mission needed to state exactly what the DCNG would be required to do—when, for whom, and who would be in charge. The witness said that there was some discussion on the Army Staff that for this D.C. RFA it would be better if the DCNG did not have to be involved at all, and that other agencies should exhaust all resources before asking for DoD help. This witness also said that Mr. McCarthy understood that having the image of military personnel in full military combat gear guarding the Capitol was not a favorable optic and not something that people were excited about.

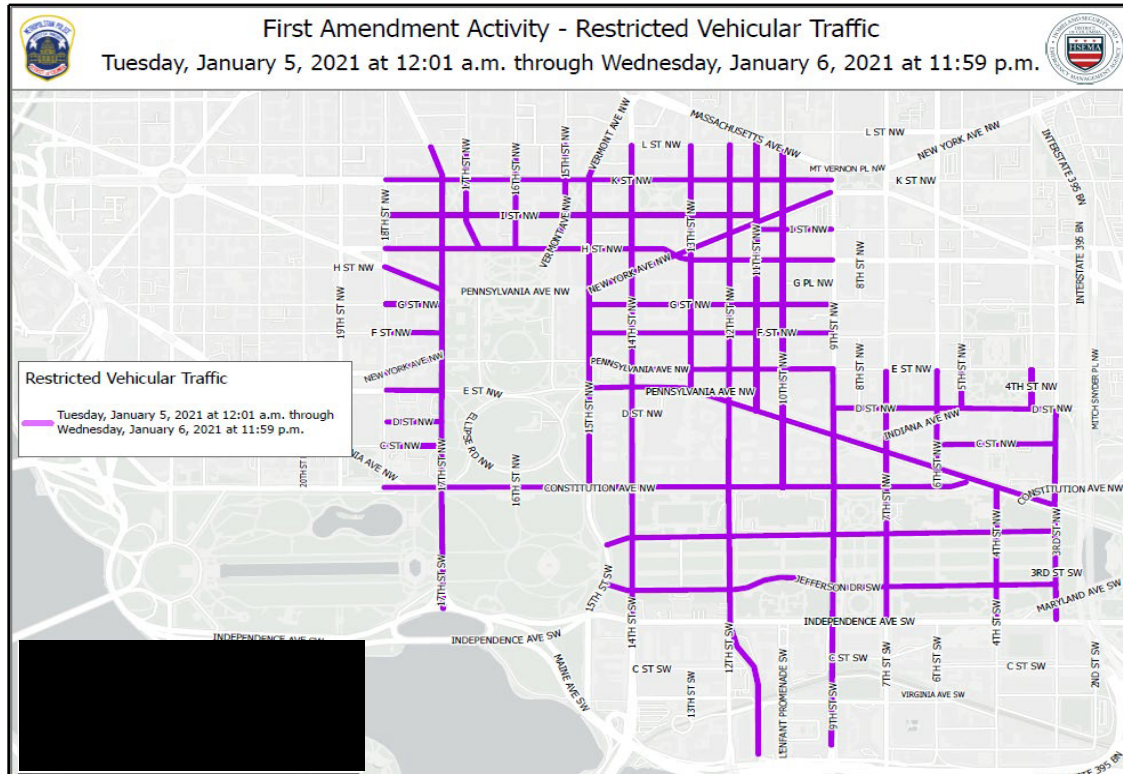
MG Walker e-mailed Mr. McCarthy a map at 8:50 p.m. that showed the streets and intersections where the MPD planned to restrict vehicular traffic for January 5 and 6, 2021. The map gave Mr. McCarthy a tentative list of the 30 intersections and 6 Metro stations where DCNG personnel would augment the MPD at TCPs.

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<sup>45</sup> See Appendix D for a copy of OPORD 001-2021.

Figure 1 shows the map that MG Walker sent to Mr. McCarthy. A witness told us that Mr. McCarthy was comfortable supporting the request once he saw exactly how and where the MPD wanted to place DCNG personnel.

*Figure 1. MPD – First Amendment Activity – Restricted Vehicular Traffic*



### *Events of January 2, 2021*

At 11:23 a.m., MG Walker confirmed to Maj Gen Nordhaus that there were no changes to the D.C. RFA for January 6, 2021. BG LaNeve e-mailed LTG Flynn that there would be an 11:30 a.m. conference call with Mr. McCarthy about the D.C. RFA. BG LaNeve wrote that the D.C. RFA was supportable, that he had seen no information that suggested crowds larger than previous estimates, and that the MPD and the USPP still had not assigned extra people to be on duty. At the 11:30 a.m. conference call, MG Walker discussed the D.C. RFA with Mr. McCarthy and other Army senior leaders.

At 1:14 p.m., a DCNG [REDACTED] e-mailed attorneys from the NGB, HQDA, and JCS about DCNG personnel being deputized for the limited roles D.C. requested in its RFA, stating:

[REDACTED] I do believe it was an oversight in that [DC]HSEMA's request did not include the statutory provision, and [I] am verifying this now.

Mr. Miller held a 1:30 p.m. virtual meeting with Mr. McCarthy, GEN Milley, GEN McConville, GEN Hokanson, and other senior DoD leaders. According to Mr. Miller, DoD leadership at that time was focused on another matter that was his primary concern, but they also discussed the D.C. RFA

for January 6, 2021. Mr. Miller told us that Army leadership expressed concerns about the negative press the DoD received after the DCNG's previous deployment for civil disturbances in June 2020, but Army leadership agreed to support the D.C. RFA for January 6, 2021. GEN Hokanson told us that he believed the SecArmy approved the RFA on January 2, 2021, and sent it back to MG Walker to execute the mission. Mr. Rapuano, the ASD(HD&GS), told us that it was reasonable to believe that the negative criticism of the DoD's role in the June 2020 civil disturbances contributed to some hesitation regarding the DoD's role in future civil disturbance missions. Mr. Salesses, the DASD(HD&DSCA), told us that there was concern within the DoD about using personnel like the DCNG was used in June 2020, and DoD leaders wanted law enforcement agencies to take the leading role in the civil disturbance mission for January 6, 2021.

GEN Milley described the 1:30 p.m. virtual meeting with Mr. Miller and other DoD leaders. GEN Milley told us that they discussed the concept of operations (CONOPS), crowd estimates, rules of engagement, and external perimeters and internal perimeters.<sup>46</sup> He also said that they talked about the Lead Federal Agency and setting up a command post.

An e-mail from a staff member of the Office of the Under Secretary of Defense for Policy to Mr. Salesses summarized Mr. Miller's 1:30 p.m. meeting.

- No decisions were made.
- Mr. McCarthy was not inclined to provide support unless D.C. had exhausted all resources.
- GEN Milley stressed the need for a lead Federal agency and that DoD should be the last resort.
- Principals agreed to reconvene on Monday, January 4, 2021.

This e-mail string also mentioned updating Mr. Rapuano, who was on leave, to tell him that Federal partners (USSS, DoI/Park Police, DoJ/FBI) were considering DoD support for the upcoming week.

After receiving this e-mail, Mr. Salesses contacted Mr. Rapuano, who directed OASD(HD&GS) staff members to contact Federal law enforcement agencies to determine if they planned to request DoD support for January 6, 2021. The DSCA [REDACTED] e-mailed points of contact at the FBI, USMS, and DHS asking for their specific concerns that the DoD should be tracking. The [REDACTED] responded that they had no specific concerns. The DHS representative stated that they were not increasing their posture and were not tracking any threats to Federal facilities. The USMS representative stated that they were not responding to protests on January 5 and 6, 2021, and did not require DoD support.

Mr. McCarthy e-mailed Army senior leaders at 5:48 p.m. to inform them that there would not be a final decision on the D.C. RFA until he met with Mr. Miller on January 4, 2021.

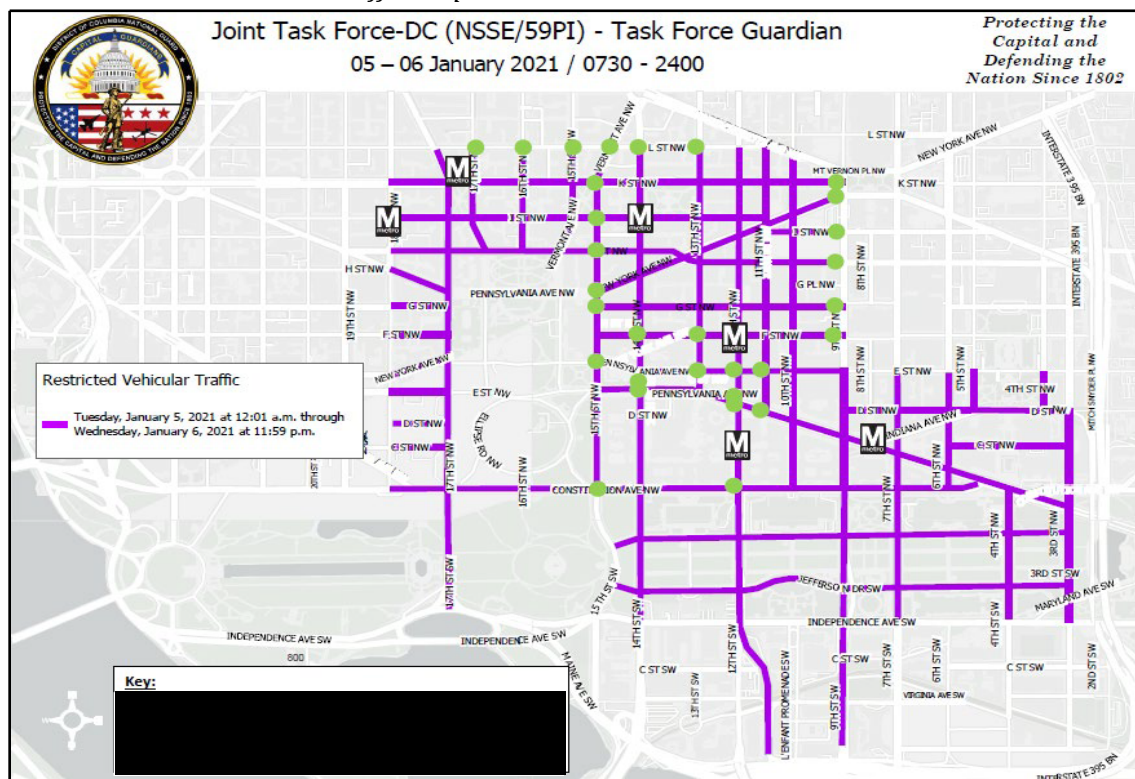
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<sup>46</sup> The Army defines "Concept of Operations" in Army Doctrine Publication (ADP) 5-0, "The Operations Process," July 31, 2019, as "a statement that directs the manner in which subordinate units cooperate to accomplish the mission and establishes the sequence of actions the force will use to achieve the end state."

MG Walker e-mailed Mr. McCarthy an updated slide presentation at 9:38 p.m. and referenced their discussion earlier in the day. The presentation, "District of Columbia National Guard 5-6 January 2021 Support Plan," was an update based on additional mission analysis. MG Walker updated the number of Guardsmen at each MPD TCP and provided additional information about CST capabilities and support to D.C. and Federal agencies. He stated that the number of DCNG personnel supporting the MPD changed to 340, which was closer to his original estimate of 350. MG Walker also stated in his e-mail that the 340 DCNG personnel included a 40-person DCANG QRF. The slide presentation showed a reduction in the projected recall response time of [REDACTED] additional DCNG personnel from 3 hours to 1 hour, and for [REDACTED] more from 6 hours to 3 hours.

This presentation also included a slide showing the TCPs and Metro stations where DCNG personnel would support the MPD. MG Walker told us that while the DCNG was preparing the slide presentation, Mr. McCarthy and senior Army leaders talked about optics, and how the DCNG personnel were not to be close to the Capitol. Figure 2 is the slide from MG Walker's presentation that shows in purple the streets where the MPD would restrict vehicle traffic and in green the intersections where DCNG personnel would support MPD officers. The slide also indicates DCNG-supported Metro stations.<sup>47</sup> No DCNG personnel were positioned near the Capitol.

Figure 2. Restricted Vehicular Traffic Map with the TCPs and Metro Stations



The DCNG [REDACTED] e-mailed an updated version of the December 31, 2020 D.C. RFA to an Army OGC attorney advisor at 7:38 p.m. The revised D.C. RFA added a statement that Mayor Bowser would designate DCNG personnel supporting MPD as "Special Police" under D.C. Code, Title

<sup>47</sup> See Appendix D for a copy of the entire presentation.

5, Section 5-129.03, "Appointment of special police without pay." This designation gave DCNG personnel law enforcement authority equal to that of D.C. civilian police officers.<sup>48</sup>

MG Walker told us that the DCNG personnel were deputized in case they needed to help the MPD. The DCNG [REDACTED] told us that even providing TCPs is a law enforcement function, so DCNG personnel needed to be sworn in as special deputies so they could conduct crowd management, crowd safety, and traffic control activities.

GEN McConville wrote in an e-mail to LTG Piatt that it was important to have a well-defined plan for Mr. McCarthy if the decision was made to commit the DCNG. He stated that local, state, and Federal law enforcement should be committed first and that the DCNG should be the last resort, in a support role.

### *Events of January 3, 2021*

At 9:24 a.m., Mr. Sund spoke to the U.S. House of Representatives and U.S. Senate Sergeants at Arms, seeking approval to submit a request for DCNG support at the Capitol on January 6, 2021. The Sergeants at Arms did not approve submitting a request asking DCNG for support. Mr. Sund added that the House Sergeant at Arms expressed concerns about the optics of National Guard members around the Capitol.

GEN McConville told us:

the general feeling of all those involved [with approving the D.C. RFA] was that the military would have no role, and many people talked about the optics of having military at the Capitol. What that would look like, how that would influence even some of the demonstrators or protesters. And so there was a general feeling among everybody that the military would be in a very small and supporting role even to this point with the traffic control points."

At 9:51 a.m., the Army Operations Center (AOC) e-mailed information that the AOC received from the DHS NOC to BG LaNeve. The DHS NOC reported that the USPP approved numerous protest permits and that several hotels were sold out during the nights of January 5 and 6, 2021. The DHS NOC called those indicators of large crowds although the estimated numbers of protestors remained unknown. The DHS NOC indicated that Lafayette Square, the National Mall, and the Capitol Building were the areas of concern. Several witnesses told us that the crowd estimates were based on information gathered from the media and from rental car and hotel reservations. MG Walker told us:

So, the Metropolitan Police Department they canceled all leave, all hands on deck. They said ... that they were ready for any eventuality. The FBI was talking about what they were seeing, the hotels. The Secret Service was talking about they're in a heightened state. Everybody was in a heightened state of awareness and readiness.

The military advisor to the DHS e-mailed Maj Gen Nordhaus at 7:48 a.m., advising that the DHS was planning to mobilize DHS law enforcement officers to protect Federal properties in the National Capitol Region in response to potential protest activity for January 5 and 6, 2021.

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<sup>48</sup> See Appendix C for a copy of the DCHSEMA Director's updated letter.

Maj Gen Nordhaus responded that MG Walker received the D.C. RFA anticipating potential protest activities for those dates.

The DSCA Special Events [REDACTED] queried and received responses from several Federal and D.C. government agencies, including the USCP, regarding whether they planned to request DCNG support before January 6, 2021. None of the agencies anticipated requesting or requiring DoD assistance beyond the D.C. RFA. Mr. Sund told us a subordinate advised him of DoD's query and that he directed the subordinate to give a negative response because he did not have approval to request DCNG support.

Mr. Sund spoke to the Senate Sergeant at Arms at 11:53 a.m. to request approval for DCNG support on January 6, 2021. According to Mr. Sund, the Senate Sergeant at Arms recommended he contact the DCNG to find out if the USCP needed immediate help from the DCNG, how many personnel MG Walker could provide, and how quickly they could deploy to the Capitol.

Mr. Saleses e-mailed Mr. Rapuano at 12:25 p.m. with the results of OASD(HD&GS) staff's contacts with other Federal agencies. He noted that Federal civilian law enforcement agencies were tracking the planned protest activities, but the FBI, USMS, USPP, USCP, and DHS did not anticipate requesting DoD or DCNG support. Mr. Saleses also summarized the D.C. RFA and the planned DCNG response force for TCPs and Metro stations. Additionally, Mr. Saleses drafted a read-ahead memorandum for Mr. Rapuano's meeting with Mr. Miller the following day. The memorandum summarized the D.C. RFA, recommended that Mr. Miller approve the D.C. RFA, and advised Mr. Miller that no Federal agencies were requesting DoD or DCNG support for the January 6, 2021 protests.

Mr. Miller attended a 1:00 p.m. virtual interagency meeting with Cabinet members and representatives from the DoJ, DoI, and DHS; the then-Assistant to the President for National Security Affairs (National Security Advisor); and senior DoD officials including Mr. McCarthy and GEN Milley. Mr. Miller told us that during the meeting he attempted to ensure the interagency group had a common operating picture and to determine if other Federal agencies intended to request support from the DoD. The attendees from the other Federal agencies told Mr. Miller that they were not going to request DoD support and that civilian law enforcement officials believed they could handle whatever protests were expected for January 6, 2021.

GEN Milley told us that during this meeting, the group discussed: (1) the D.C. RFA; (2) crowd size—estimates remained the same, 15,000 to 20,000; and (3) crowd locations—the Washington Monument, the National Mall, Freedom Plaza, Lafayette Square Plaza/Black Lives Matter Plaza, the Capitol, the White House, and The Ellipse. GEN Milley emphasized that the lead Federal agency and law enforcement needed to be the first responders, and that ultimately this was police work. He told us that everyone agreed to that. He told us that the attendees stated the following during the meeting.

- Secretary of the Interior: The DoI did not anticipate making any requests for DCNG assistance. The DoI brought people in from the other parts of the country to assist them.
- Acting AG: The DoJ was prepared and needed no support from the DoD. A fusion center was set up at the FBI. There was a lot of chatter but no specific threat.



- DHS Director of Ops: The DHS would have its virtual situation room operational and saw no specific threat to any Federal buildings. The DHS also brought in additional assets to augment current forces.
- Secretary of Homeland Security: Concerned about what would happen at sunset and the potential it would be similar to what happened on November 14 and December 12, 2020, with small opposing groups roaming the city and fighting one another.
- Secretary of the Army: Briefed the draft CONOPS for the National Guard mission to support the D.C. RFA.
- National Security Advisor: Wanted to make sure everyone communicated with the USSS.

Mr. McCarthy told us that during the meeting they discussed: (1) the requirements to support the D.C. RFA; (2) the oral designation from the White House to make the Justice Department the lead Federal agency, and (3) the DoD's question, "Does anyone else need support? Because we could mobilize the entire Guard?" Mr. McCarthy told us that the only request the DoD had received at that time was the D.C. RFA. He said that the USCP, USPP, and other Federal agencies did not ask for support. Mr. McCarthy did not know which White House official designated the lead Federal agency; however, GEN Milley told us:

Ambassador [Robert C.] O'Brien [National Security Advisor] or White House Chief of Staff [Mark] Meadows, one of them says, "Hey, Department of Justice is the lead Federal agency." Which is the right answer by the way. The Department of Justice should be the lead Federal agency. It's a law enforcement issue, it's domestic in nature and at the Federal level the Department of Justice should be and they are normally on things like this.

GEN Milley told us that the DoD initiated these interagency meetings even though the DoJ was the lead Federal agency. He said the reason the interagency meetings were happening was that he, Mr. McCarthy, and Mr. Miller, and others insisted on the coordination meetings.

Mr. McCarthy called Chief Contee at 3:30 p.m. to discuss the D.C. RFA. Chief Contee told us that during the call, Mr. McCarthy indicated that the DoD was going to deny the D.C. RFA and expressed concern with the optics of boots on the ground anywhere near the Capitol. We asked Mr. McCarthy the reason he gave to Chief Contee for why the DoD might deny the RFA. Mr. McCarthy responded, "I wanted to make sure that he [Chief Contee] exhausted all of his resources [before asking for DCNG help], that he was looking to Federal law enforcement for support, and that he had exhausted all of those assets." Mr. McCarthy also said, "We were very conscious of our [public] perception and operations. We wanted to make sure that we communicated very clearly what we were doing, if we were going to support those [civil disturbance] operations." Mr. McCarthy added that Chief Contee did not want to use Federal law enforcement to support MPD operations.

Chief Contee explained to us that he did not want other Federal law enforcement involved on January 6, 2021, because of the risk associated with having unidentified Federal officers carrying

weapons within D.C. Chief Contee said that Mr. McCarthy asked him to give Mr. McCarthy until January 4, 2021, for a decision on the D.C. RFA.<sup>49</sup>

Mr. Miller told us, “There was absolutely no way ... I was putting U.S. military forces at the Capitol, period.” He cited media stories alleging that the President’s advisors were pushing him to declare martial law to invalidate the election and that Mr. Miller was an ally installed as the Acting SecDef to facilitate a coup. He also cited a January 3, 2021 open letter from 10 former Secretaries of Defense warning the DoD not to use the military in a manner antithetical to the U.S. Constitution. Mr. Miller stated that he “made a very deliberate decision that I would not put U.S. military people ... East of the 9th Street, northwest. ... And the reason for that was I knew if the morning of the 6th or prior if we put U.S. military personnel on the Capitol, I would have created the greatest Constitutional crisis probably since the Civil War.”

Other witnesses concurred with Mr. Miller. Mr. McCarthy stated:

We were very conscious of the perception of military personnel near the Capitol and we’re trying to communicate to the Congress ... and we wanted them to know that [DCNG] were in support of Metro PD, that we were not putting the[m] near the Capitol. We’re getting a lot of chatter on the news as well as the Congress of what is the military going to do that day [January 6, 2021]?

Mr. McCarthy told us that he did not want to create the perception that the military was involved in the electoral process. He said that Mr. Miller made it clear that the military would not be involved in certifying the election results and that “10 different news agencies” asked him about military use and martial law. Mr. McCarthy said that he wanted to make sure that civilian law enforcement, not the military, was in the lead, and that a Federal agency other than the DoD had the lead for coordinating Federal actions, as needed, to prepare for or respond to the demonstrations. He said that the DoD learned in the summer of 2020 that the multi-jurisdictional nature of D.C. made putting the security architecture in place a complex problem.<sup>50</sup>

Mr. McCarthy hosted a video teleconference (VTC) with Army senior leaders and staff to prepare for a January 4, 2021 meeting with Mr. Miller. Before this meeting, BG LaNeve e-mailed Mr. McCarthy a slide presentation, which showed two unresolved conditions for supporting the D.C. RFA. First, no lead Federal agency was designated. Second, the DoD did not know the level to which other Federal agencies committed their support to the MPD. Mr. McCarthy told the group about his conversation with Chief Contee and emphasized his (Mr. McCarthy’s) concerns about command and control.

LTG Piatt told us that he believed Mr. McCarthy wanted to recommend approval of the D.C. RFA after the following conditions were met. According to LTG Piatt, there had to be a lead Federal agency and other agencies had to exhaust their forces. LTG Piatt said that there had to be a coherent plan and all agencies needed a shared understanding of the size of the demonstrations. Additionally, LTG Piatt said that the DoD needed to know the details of the shared threat

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<sup>49</sup> Chief Contee said that this telephone call took place on December 31, 2020. We presented it here because the preponderance of evidence indicated it was January 3, 2021. Mr. McCarthy told us that MG Walker notified him about the request on the evening of December 31, 2020. Mr. McCarthy discussed the RFA with MG Walker, Mr. Miller, and others on January 1 and 2, 2021. Mayor Bowser swore in Chief Contee on January 2, 2021. Mr. McCarthy said that he called Chief Contee the day after he was sworn into office.

<sup>50</sup> We reviewed the transcript of a July 9, 2020 hearing of the U.S. House Armed Services Committee on the DoD’s role in civilian law enforcement. Committee Chair Adam Smith told GEN Milley and then-Secretary of Defense Esper, “I am very concerned about the Department of Defense becoming unduly politicized.”

assessment from the FBI and DHS. According to LTG Piatt, Mr. McCarthy also stressed the importance of understanding the threat assessment, the RUF, and the mission parameters; proper equipment; and training.

Mr. Miller and GEN Milley met with the President at the White House at 5:30 p.m. The primary topic they discussed was unrelated to the scheduled rally. GEN Milley told us that at the end of the meeting, the President told Mr. Miller that there would be a large number of protestors on January 6, 2021, and Mr. Miller should ensure sufficient National Guard or Soldiers would be there to make sure it was a safe event. Gen Milley told us that Mr. Miller responded, "We've got a plan and we've got it covered."

Mr. Sund told us that at 6:14 p.m., he and MG Walker discussed DCNG support available to the USCP for January 6, 2021. According to Mr. Sund, MG Walker told him that in addition to support provided to the city for traffic closures, an additional [REDACTED] DCNG personnel were supporting the COVID-19 response. Mr. Sund told us that MG Walker advised him that if the USCP needed immediate assistance, MG Walker could change the mission of DCNG personnel supporting COVID-19 operations fairly quickly and deploy those Soldiers to the Capitol.

The Task Force Guardian (TF Guardian) Commander told us that the DCNG had [REDACTED] Guardsmen helping with traffic control and security at COVID-19 testing locations in support of the D.C. government.<sup>51</sup> He said that because the Guardsmen were already on orders, the DCNG would be ready to go if anything happened during the timeframe specified in the D.C. RFA. The DCNG would recall the Guardsmen to the Armory and send the Guardsmen as a QRF wherever needed.

### *Events of January 4, 2021*

Mr. McCarthy submitted his recommendation to approve the D.C. RFA in a letter to Mr. Miller dated January 4, 2021. Mr. McCarthy recommended that the DCNG support the RFA if:

- a lead Federal agency other than the DoD was established to coordinate the actions of all entities involved;
- the estimated numbers for the demonstrations exceeded local and Federal agencies' abilities to address the risks; and
- all other Federal agencies exhausted their assets to support the demonstrations.

Mr. McCarthy informed Mr. Miller that the DCNG would support the MPD with 340 personnel consisting of:

- two shifts of [REDACTED] personnel each operating non-tactical vehicles at TCPs;
- two shifts of [REDACTED] personnel each providing support at Metro stations;
- the [REDACTED]-person CST;

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<sup>51</sup> The TF Guardian Commander was not identified and activated until January 4, 2021; however, the testimony provided by the TF Guardian Commander was relevant at this point in our report.

- a 40-person QRF staged at JBA; and
- [REDACTED] personnel providing command and control and other mission support.<sup>52</sup>

He stated that the DCNG was not authorized to perform tasks other than those authorized in his letter, and that he would not commit the DCNG until Mr. Miller approved the RFA.<sup>53</sup> The Acting Army General Counsel concurred with Mr. McCarthy's recommendation and conditions.

LTG Piatt told us that Mr. McCarthy based the language in the letter partly on the appearance to Army officials that the MPD, USCP, DoJ, USPP, and USSS each had its own plan.

Mr. Miller met with Mr. McCarthy, GEN Milley, and other senior DoD leaders at 9:00 a.m. for what Mr. Miller described as a decision meeting. Mr. Miller orally approved the D.C. RFA during this meeting. Mr. Rapuano directed the OASD(HD&GS) [REDACTED] after the meeting to draft an approval memorandum.

Mr. McCarthy told us that at 10:45 a.m., he called Chief Contee, who was with Mayor Bowser, and told them the DCNG would fulfill the D.C. RFA. Chief Contee told us that during this call, Mr. McCarthy stipulated that: (1) the DCNG would have a specific number of personnel; (2) the DCNG could not be posted east of 9th Street; and (3) the MPD could not change the mission without his approval.<sup>54</sup> Chief Contee said that the stipulations Mr. McCarthy placed on the use of DCNG personnel were not consistent with his experience with previous RFAs that D.C. submitted to the DoD. Chief Contee told us that he thought it might have resulted from the DoD's concerns over the optics of having boots on the ground.

An official in the Army's Office of the Chief Legislative Liaison told us that Mr. McCarthy notified the Senate Armed Services Committee, House Armed Services Committee, Senate Appropriations Committee for Defense, and House Appropriations Committee for Defense about the decision. He notified each committee by telephone about the DoD's decision to fulfill the D.C. RFA and the fact that the DoD had not received any other RFAs. The official told us that this was standard procedure for Mr. McCarthy, and that Mr. McCarthy answered Members' questions about whether Soldiers' uniforms would be clearly marked and whether Soldiers would carry weapons. Army congressional liaison officers e-mailed details of Mr. McCarthy's decision pending Mr. Miller's formal approval and the upcoming DCNG deployment to congressional staffers at approximately 11:00 a.m.

Mr. Salesses sent Mr. Miller's draft approval memorandum to the Office of the Secretary of Defense and the Army Staff for coordination at 12:42 p.m., and an updated version was distributed for review at 2:11 p.m. At 2:28 p.m., BG LaNeve forwarded Mr. Miller's draft memorandum to LTG Piatt for Mr. McCarthy's review. LTG Flynn then e-mailed a copy to MG Walker at 2:41 p.m., and recommended that MG Walker review the memorandum with the SecArmy during their evening meeting. MG Walker was scheduled to brief Mr. McCarthy at 5:30 p.m. on his final plans to fulfill the D.C. RFA.

The DCNG organized the TF Guardian on January 4, 2021, to support the D.C. RFA. This task force consisted of 340 Army and Air National Guardsmen assigned to the DCNG. Their mission was

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<sup>52</sup> The QRF that staged at JBA consisted of D.C. Air National Guard personnel.

<sup>53</sup> See Appendix C for a copy of Mr. McCarthy's letter.

<sup>54</sup> 9th Street Northwest is approximately 2,500 feet west of 1st Street Northwest, the street that is immediately adjacent to the west side of the Capitol. The west steps of the Capitol are another 500 feet, approximately, east of 1st Street Northwest.

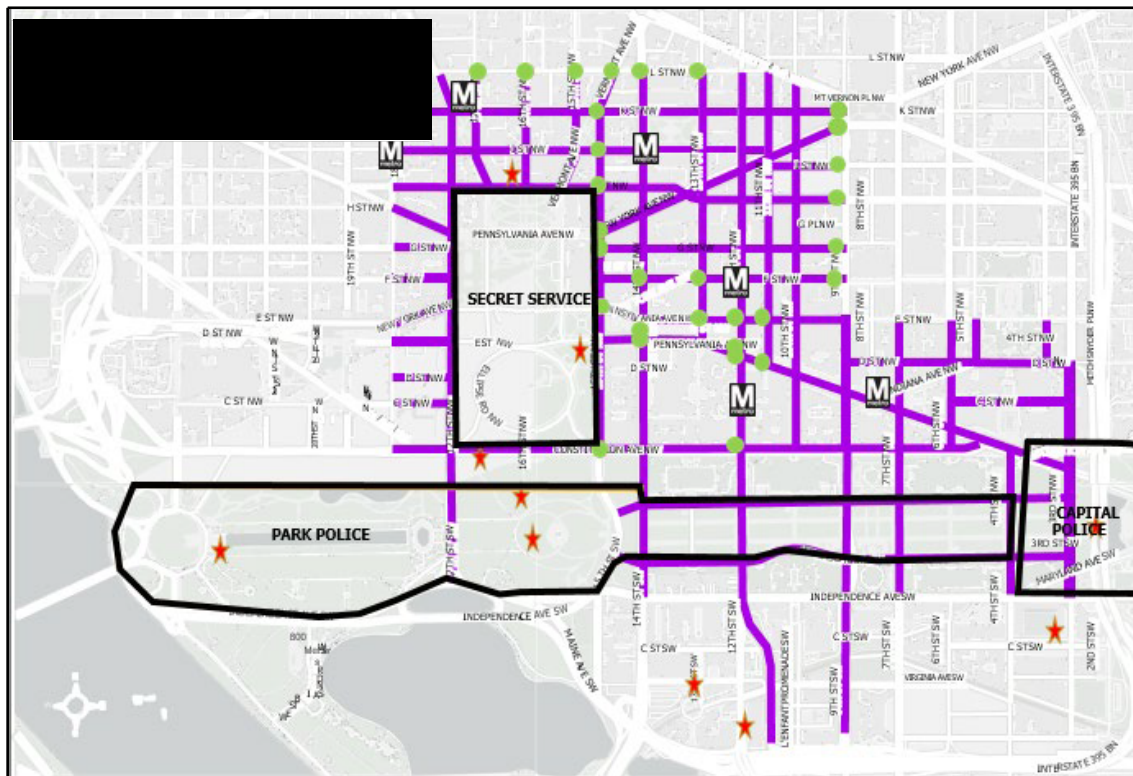
to support the MPD at the TCPs and Metro station platforms, and included a QRF staged at JBA. The task force was a subordinate command under the Joint Task Force District of Columbia, commanded by BG Ryan.

The TF Guardian Commander told us that no DCNG tabletop exercises were conducted in preparation for the D.C. RFA to support the election protest events scheduled for January 5 through 7, 2021, although several tabletop exercises were conducted both internally at the DoD and the DCNG and externally with the USSS related to the upcoming 2021 presidential inauguration.<sup>55</sup>

MG Walker e-mailed an updated slide presentation to BG LaNeve and other Army leaders at 4:41 p.m. The presentation referenced the approved D.C. RFA and showed supported TCPs and Metro stations. It also indicated areas of USCP, USPP, and USSS jurisdiction; and identified locations of proposed demonstrations. No DCNG personnel were positioned near the Capitol. The presentation also covered the RUF; transportation; and command, control, and communications. ■

■<sup>56</sup> Figure 3 shows the updated TCPs, Metro stations, jurisdictions, and demonstrations.

*Figure 3. Restricted Vehicular Traffic Map with TCPs, Metro Stations, Jurisdictions, and Demonstrations*



Mr. Miller, GEN Milley, Mr. McCarthy, Mr. Rosen, MG Walker, and others attended a virtual Federal interagency meeting at 5:00 p.m. Mr. Miller again asked attendees from other Federal agencies whether they would need DoD support on January 6, 2021. None of the agencies'

<sup>55</sup> A tabletop exercise is an activity in which key personnel assigned high-level roles and responsibilities gather to deliberate various simulated emergency or rapid response situations.

<sup>56</sup> See Appendix D for a copy of the presentation.

representatives indicated they needed DoD support. GEN Milley described this meeting as an update and said that attendees reviewed the DCNG concept of the operation. GEN Milley told us that during the meeting, MG Walker said he was not inclined to need any additional support because he had what he needed. After the meeting, an Army Staff member called a staff member of Mr. Rosen's and advised her that during the virtual interagency meeting, Mr. Rosen gave "his oral concurrence today to the request from Secretary McCarthy for approval of the plan to provide the District of Columbia Government with specified support from the D.C. National Guard this week."

MG Walker briefed Mr. McCarthy at 5:30 p.m. MG Walker told us that he did not get a copy of Mr. Miller's memorandum approving the D.C. RFA and containing Mr. Miller's specific employment guidance. MG Walker stated that Mr. McCarthy would not normally share correspondence from Mr. Miller with MG Walker. Mr. McCarthy said that he did not recall MG Walker questioning, either during the briefing or at any other time, the guidance MG Walker received about carrying out the mission, including guidance for employing the QRF. He said that MG Walker wanted to make sure Soldiers had access to helmets and body armor if they needed it to protect themselves, and that he (Mr. McCarthy) authorized DCNG personnel to have that equipment in their vehicles.

Other witnesses told us that Mr. McCarthy and MG Walker both reviewed Mr. Miller's DCNG employment guidance and the fact that Mr. McCarthy would hold at his level the authority to employ the QRF. Mr. McCarthy first would require a plan from the DCNG before he would authorize QRF deployment.<sup>57</sup> During a joint hearing of the Senate Homeland Security and Governmental Affairs Committee and the Senate Rules and Administration Committee, on March 3, 2021, MG Walker stated that Mr. McCarthy's decision to hold the authority to use the QRF at his level and to only authorize if Mr. McCarthy had a CONOPS was unusual to him. MG Walker testified that he did not have the restrictions in the employment guidance in the past. The other witnesses said that MG Walker acknowledged the guidance when Mr. McCarthy provided it and did not express concerns.

During his interview, we presented MG Walker with a copy of Mr. Miller's memorandum and asked him to review it. MG Walker told us that this was the first time he saw the memorandum or was informed of its contents. After reviewing the memorandum, MG Walker emphasized to us that although Mr. Miller, in his approval memorandum, authorized Mr. McCarthy to employ the QRF as a last resort, Mr. McCarthy withheld this authority at his level, which gave MG Walker a "bit of indigestion." MG Walker told us that "for whatever reason," Mr. McCarthy would only authorize the QRF to deploy "as a last resort" and would "require a concept of operation prior to authorizing."

A witness from the Army Staff told us:

The discussion of QRF implementation beforehand was very clear and General Walker understood it and he knew exactly what needed to happen if the QRF needed to be employed and he had no questions or concerns at that time. He was using June [2020] as a baseline too, and honestly in my opinion is the fact that the Secretary had to approve the QRF [would] absolve General Walker of any liabilities issues if he did employ the QRF.

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<sup>57</sup> The scope of the RFA meant that that QRF could assist DCNG personnel with traffic and crowd control at TCPs and Metro stations. Only Mr. McCarthy or Mr. Miller could approve using the QRF for another purpose.

The DCHSEMA Director told us that MG Walker notified him by telephone that the DCNG would support the D.C. RFA. The TF Guardian Commander told us that there was planning to prepare for the D.C. RFA but that he did not know until January 4, 2021, that it was approved.

Mr. Miller said that he spoke with Mr. Rosen between 5:45 p.m. and 6:00 p.m. Mr. Miller described this call as his attempt to determine whether Mr. Rosen needed anything from the DoD and to remind Mr. Rosen of his role to be the lead Federal agency. Mr. Miller said the meeting was a continuation of the process to ensure all of the involved agencies understood who was in charge.

The TCP Officer in Charge (OIC) told us that she learned at 5:53 p.m. that she would be the OIC of the DCNG personnel assigned to the TCP mission beginning the following day, January 5, 2021. The TCP OIC said that she received only general details about the mission and that the TCP personnel reported to the D.C. Armory on the morning of January 4, 2021.

MG Walker stated that the QRF consisted of personnel from the DCANG's 113th Security Forces Squadron, many of whom were law enforcement officers in their civilian employment.<sup>58</sup> The QRF OIC confirmed that the QRF came from the 113th Wing and said that the QRF had 16 Security Forces Squadron personnel, and had 8 administrative, 2 medical, 5 aircrew consisting of 2 pilots and 3 flight attendants, and 10 maintenance personnel. The 16 Security Forces personnel had previous experience with civil unrest; however, the other 24 QRF members, including the QRF OIC, came from a mix of military specialties in the 113th Wing and had no experience in civil unrest operations. The QRF OIC said that he learned of the mission on the evening of January 4, 2021, and that he would be the OIC for the QRF the next day, January 5, 2021. He reported to the TF Guardian Commander, with directions to be prepared to respond anywhere in D.C. when ordered.

At 6:54 p.m., Mr. Miller's staff e-mailed his signed memorandum to a member of Mr. McCarthy's staff. Mr. Miller's memorandum, "Employment Guidance for the District of Columbia National Guard," authorized Mr. McCarthy to approve the D.C. RFA after Mr. McCarthy consulted with the AG, as Executive Order 11485 requires.<sup>59</sup> The memorandum also stated that the DCNG would remain under MG Walker's command and control. The memorandum authorized Mr. McCarthy to deploy the DCNG's QRF only as a last resort and in response to a request from an appropriate civil authority, and directed Mr. McCarthy to notify Mr. Miller immediately if he authorized the QRF's deployment.<sup>60</sup> Mr. Miller's employment guidance included eight restrictions, which only he (Mr. Miller) could rescind. The DCNG could not:

- be issued weapons, ammunition, bayonets, batons, or ballistic protection equipment such as helmets and body armor;
- interact physically with protestors, except when necessary in self-defense or defense of others, consistent with the DCNG RUF;
- employ any riot control agents;
- share equipment with law enforcement agencies;

<sup>58</sup> The 113th Security Forces Squadron is a subordinate unit of the 113th Wing, DCANG, at JBA.

<sup>59</sup> Executive Order 11485, "Supervision and control of the National Guard of the District of Columbia," October 1, 1969.

<sup>60</sup> The memorandum authorized Mr. McCarthy to approve the D.C. government's December 31, 2020 D.C. RFA. This meant that Mr. McCarthy could only employ the QRF within the scope of that particular RFA, to help DCNG elements engaged in traffic and crowd control at TCPs and Metro stations.



- use ISR assets or conduct ISR incident, awareness, and assessment activities;
- employ helicopters or any other air assets;
- conduct searches, seizures, arrests, or other similar direct law enforcement activity; or
- seek support from any non-DCNG National Guard units.<sup>61</sup>

Mr. McCarthy told us that Mr. Miller based his employment guidance on lessons the DoD learned from the June 2020 civil disturbance events in Washington, D.C., as described earlier in this report, when response actions escalated quickly based on what Mr. McCarthy termed “fragmentary orders.”

An e-mail from a DoJ attorney to an Army official showed the Army official called between 6:34 p.m. and 6:49 p.m. and informed the DoJ attorney that earlier on January 4, 2021, Mr. Rosen gave his oral concurrence with the DCNG’s plan to fulfill the D.C. RFA. The DoJ attorney wrote that the DoJ requested a written request from Mr. McCarthy for memorialization of the Acting AG’s oral approval.

A second Army official e-mailed the DoJ attorney a letter from Mr. McCarthy addressed to Mr. Rosen at 7:45 p.m. The letter conveyed the D.C. RFA and mission details and stated that Mr. McCarthy approved the DCNG to support the MPD with 340 personnel. It went on to say that after Mr. Rosen’s concurrence, Mr. McCarthy would provide his decision and Mr. Rosen’s concurrence to Mr. Miller. The DoJ attorney acknowledged receipt of the letter at 7:46 p.m.<sup>62</sup>

### *Events of January 5, 2021*

A Joint Force Headquarters – National Capitol Region, U.S. Army Military District of Washington Force Protection Advisory assessed the threats of crime and domestic terrorism as “Moderate.” [REDACTED]

BG Ryan and the DCNG [REDACTED] told us that they did not receive the approval for the mission to fulfill the D.C. RFA until January 5, 2021. The DCNG [REDACTED] added that sometimes they do not receive mission approvals until the day of a mission. He said that the DCNG would routinely anticipate that requests for support would be approved and plan accordingly before the formal approval would be sent to them.

Mr. McCarthy and other witnesses told us that Mr. McCarthy signed a letter to codify what he and MG Walker discussed during MG Walker’s 5:30 p.m. briefing on January 4, 2020. Mr. McCarthy’s staff and attorneys from the Army Offices of The Judge Advocate General and General Counsel worked on Mr. McCarthy’s letter on the night of January 4, 2021, and Mr. McCarthy

<sup>61</sup> See Appendix C for a copy of Mr. Miller’s memorandum.

<sup>62</sup> See Appendix C for a copy of Mr. McCarthy’s letter.

signed it on January 5, 2021. The letter, addressed to MG Walker, restated Mr. Miller's employment guidance but removed previous language that prohibited DCNG personnel from donning helmets and body armor without first getting permission. Instead, Mr. McCarthy ordered DCNG personnel to store helmets and body armor in vehicles or buildings in close proximity to the TCP and Metro positions that were staffed. He directed DCNG leadership to notify him if a threat required immediate donning of the equipment for self-defense. Mr. McCarthy also wrote:

I withhold authority to approve employment of the DCNG Quick Reaction Force (QRF) and will do so only as a last resort, in response to a request from an appropriate civil authority. I will require a concept of operation prior to authorizing employment of the QRF. If the QRF is employed, DCNG personnel will be clearly marked and/or distinguished from civilian law enforcement personnel. You will notify me immediately of any requests for QRF employment.

[Paragraph omitted]

Pursuant to my request, the Deputy Attorney General reviewed and concurred with your plan for support to the civil authorities of the District of Columbia.

All DCNG personnel associated with this support mission will serve under the provisions of Title 32, U.S.C., Section 502(f). They will serve solely in a support role to the named civil authorities and remain under the command and control of DCNG leadership at all times. DCNG will not be armed for this event however, MPD requests that DCNG members be equipped with safety vests and lighted traffic wands to assist with this mission. Further, MPD requests DCNG personnel supporting the mission be appointed as "Special Police" pursuant to D.C. Code § 5-129.03. They will not engage in domestic surveillance of U.S. persons.<sup>63</sup>

We asked Mr. McCarthy to explain the CONOPS he required before he would authorize employing the QRF. He said that it included a description of DCNG and MPD personnel in the employment area, the mission or task the QRF would perform, how the QRF would perform the mission, who the QRF would support, and how the QRF would communicate during the mission.

Mr. McCarthy summarized his thoughts about reviewing and approving the D.C. RFA in light of civil disturbance events in spring and summer 2020. He said:

We knew we were going to support it [D.C. RFA]. It was one of those things where not purely saying "no" but our initial—we're initially inclined to say, "Did you [D.C. government] exhaust all of your other resources? Have you looked at this? Have you looked at that? Is there a better way—because just the history of putting Soldiers into these operations as you go back to the '60s, Martin Luther King riots, and say, I mean that's why our posture in the DoD when [in June 2020] we had the 82nd Airborne Division 30 minutes of Washington D.C., that was history about to repeat itself from [the] King riots. It was the same unit. So, the mindset of the Department of Defense was whether it was any of these operations we wanted to be sure—could law enforcement do it without us? So, if you fast-forward to the 6th, this thing

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<sup>63</sup> See Appendix C for a copy of Mr. McCarthy's letter.

transpired in minutes, and hours, or it took days to build up the structure that we had and that still wasn't perfect last summer.

Mr. McCarthy said that he wanted to make sure the MPD and D.C. government officials rigorously analyzed the mission and asked the hard questions.

Mr. McCarthy and other witnesses emphasized that there was a direct relationship between the lessons learned from the involvement of DoD personnel during the June 2020 civil disturbances and the specific language in the written employment guidance designed to achieve the clarity of purpose he gave to MG Walker. Mr. McCarthy also emphasized to us that he was conscious of having Soldiers on D.C. streets, and particularly near the Capitol as Congress certified the presidential election results, because this could create a false impression that the military was playing a role in the election process. One witness told us that June 2020 taught Mr. McCarthy the importance of a deliberate decision-making process—that he could not simply approve RFAs and let the DCNG figure out the details.

The DCNG [REDACTED] told us that in his 15 years of experience with the DCNG, he had never seen a document that showed the guidance that was as descriptive, with so many constraints and restrictions, as the employment guidance for the January 5 and 6, 2021 mission.

The TCP OIC told us that she reported to the Armory at 4:00 a.m. The TCP Deputy OIC said that at 11:00 p.m. on January 4, 2021, he was ordered to report to the Armory at 5:00 a.m. on January 5, 2021. The TCP Deputy OIC told us that there was a single shift on January 5, 2021, that worked from 8:00 a.m. to 8:00 p.m. The TCP Deputy OIC explained that he and the TCP OIC were:

splitting the detail down by [traffic control] point, not necessarily by shift, and we were actively rotating people through at all times, and then it's structured—it shifted over—oh, gosh. It shifted to shiftwork starting on the 6th when we realized it was going to be more of a permanent emplacement in those locations.

The TCP Deputy OIC continued that [REDACTED] DCNG personnel were at 30 TCPs for a total of [REDACTED] for the mission. The TCP OIC said that [REDACTED] DCNG personnel were at 30 TCPs, for a total of [REDACTED] personnel on each shift and [REDACTED] for the two-shift mission.

The TCP OIC and Deputy TCP OIC said that they received no information that there were credible threats to the DCNG mission or its personnel. The TCP OIC explained that they expected protests, but nothing involving violence. The TCP OIC said that the DCNG was there only as a presence; they were not to use tactical vehicles and needed to keep their riot control gear out of public view.

The TCP OIC told us that personnel assigned to the TCPs did not belong to a particular unit, but were transitioned from personnel on COVID orders and had no specific military specialty. She said that they received basic riot control training, medical screening, and public affairs and judge advocate general briefings; and the MPD deputized them. She added that there was no preexisting plan to designate one of the shifts for civil disturbance purposes.

According to the TCP OIC, the DCNG personnel were equipped with General Services Administration vehicles or rental vehicles and wore their regular uniforms with black vests that identified them as DCNG. She told us that for January 5, 2021, they stored their response force

equipment set in a "box truck," which they parked at a designated rally point at the corner of 14th Street Northwest and Pennsylvania Avenue. This equipment set consisted of a helmet with face shield, a body shield, a baton, and shin guards. The TCP OIC added that they were told on the evening of January 5, 2021, to move that riot gear from the box truck to their vehicles, and to keep the riot gear concealed so that the public would not see it.

The TCP OIC said that she was directed to help the MPD with traffic control. She added that the TF Guardian Commander briefed them that they could not change their mission, that they were not to leave the assigned TCP position, even if the MPD left, and to relay any movement information up the chain of command. She said that if there was no MPD at the intersection, they were to stay in the vehicle. The TCP OIC also said:

And we were given very clear guidance that we are there only to assist MPD, and we are not to—we are not stopping anything unless an MPD asks, unless we felt that we needed to help the MPD because it was a life-threatening instance [at the TCPs], but otherwise it was the MPD Officer that's [sic] going to be doing any kind of thing that was involving any kind of threat. We were there for a presence.

The TCP OIC indicated that there was a similar mission at the Metro stations to ensure pedestrian traffic on the Metro platforms flowed freely or to help shut down the Metro stations in an emergency. The TCP Deputy OIC added that the TCP OIC and personnel at the Metro stations were DCANG personnel.

The DCNG 33rd CST Commander told us that he was staged at D.C. Fire Engine #2 Station with the D.C. Fire Chief and D.C. Fire Operations. He said that he had a small Joint Hazard Assessment Team on standby at the Armory with D.C. Fire Department personnel. He had another Joint Hazard Assessment Team located at the White House with three personnel stationed in two civilian vehicles and one person inside the White House's Emergency Operations Center as a liaison.

Before the TCP and Metro platform mission began, an AOC staff member e-mailed BG LaNeve at 7:28 a.m. to relay that the AOC was monitoring DHS and DCNG information and that the DHS had nothing significant to report in the NCR. The AOC also reported that local law enforcement was monitoring Facebook and open media sources for information on what to expect at the 81 planned gathering locations.

The QRF OIC told us that the QRF at JBA did not ready itself until the TCP and Metro platform mission was well under way. He stated that, at 10:00 a.m., the QRF received its equipment set consisting of helmets, face shields, shields, shin guards, kneepads, batons, and protective vests without armor plates. They then conducted civil disturbance training, the first such training that a majority of the personnel ever received, and were ready to deploy by 12:30 p.m.

BG Ryan and other witnesses told us that an MPD officer asked the TCP OIC and the TCP Deputy OIC to reposition a TCP from one location to another. BG Ryan told us that it was a long process because the request went through the chain of command all the way to Mr. McCarthy for approval. BG Ryan told us that there was great concern about restrictions placed on DCNG personnel assigned to TCPs. The TF Guardian Commander also told us that the DCNG could not move a TCP at the MPD's request over a distance of one block without Mr. McCarthy's approval.

Mr. Sund told us that he hosted a noon video call with civilian law enforcement leaders, the Military District of Washington CG, and MG Walker. MG Walker said that during the video call he told Mr. Sund that if the USCP needed the DCNG, Mr. Sund would need to submit a formal letter requesting assistance. MG Walker told us that he would have every available Guardsman in the Armory head to the Capitol, and would order the ones supporting the MPD at TCPs to head to the Capitol, if requested.

At 12:30 p.m., a policy adviser from U.S. Senator Chris Murphy's office e-mailed an Army Staff member a letter addressed to Mr. Rosen, Mr. Miller, and Mr. McCarthy regarding the deployment of the DCNG and compliance with section 1064 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. The letter addressed the requirement for members of the Armed Forces and Federal law enforcement personnel to visibly display both their names and organizations on their uniforms.

A member of Mayor Bowser's staff e-mailed a letter to a member of the Army Staff at 2:27 p.m. The letter informed Mr. Rosen, Mr. Miller, and Mr. McCarthy that the D.C. government did not request personnel support from other Federal law enforcement agencies in preparation for the election demonstrations expected to take place on January 5 and January 6, 2021. Mayor Bowser noted that the DCNG would provide logistical support to the MPD, and discouraged any additional deployment without first consulting with the MPD. Mayor Bowser wrote that the MPD was prepared to lead the law enforcement, coordination, and response to allow for the peaceful demonstration of First Amendment rights in Washington, D.C.<sup>64</sup>

Mayor Bowser and the DCHSEMA Director both told us that the intent of Mayor Bowser's letter was to ensure coordination and notification between Federal agencies and the D.C. government if additional Federal forces were deployed to Washington, D.C., during the January 6, 2021 demonstrations. Mr. McCarthy told us that he read the letter and thought back to June 2020 when there was confusion as DCNG, MPD, and Federal law enforcement personnel were all on the streets with different missions, authorities, and jurisdictions.

At 7:30 p.m., a DHS official forwarded USPP intelligence notes to an official in the AOC. The 1:30 p.m. entry in the DHS NOC current operations chat log stated:

We [USPP] are probably looking at bigger crowds for tomorrow than for anything [we] saw in Nov or Dec. Interestingly, we are not seeing [Black Lives Matter] BLM/Antifa mobilize as they have done in the past. ... [There will] be some fights and some minor property damage. My main concern is the one off domestic radical who sees this date (6 Jan) [as] the "last stand" or last opportunity to stop Congress and right a wrong done by the election. That's who we have no intel on and that's what worries me the most. We can handle the POTUS [President's] event and large crowds. It's the rhetoric that I'm afraid might have already influenced some already unstable individuals into action.

Two other log entries from the DHS NOC current operations chat log stated:

Open sources are reporting thousands are expected to attend the rally on the Ellipse ... as pro-Trump supporters descend on the nation's capital for a series of marches to protest the results of the 2020 election.

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<sup>64</sup> See Appendix C for a copy of Mayor Bowser's letter.

Approximately 300 ARNG [Army National Guard] will muster today (05 JAN) to assist local law enforcement with traffic control points, crowd management at metro stations and CST operations. Crowds estimated at 15-20K with approximately 81 separate events planned.

Mr. Miller told us that the President called him during the evening of January 5, 2021, and asked if Mr. Miller was watching the protests in Freedom Plaza.<sup>65</sup> Mr. Miller told us that at that point, he was not concerned that there was going to be a mobilization of violence. Mr. Miller told us that he and the President discussed the upcoming rallies, and the President's guidance was to do what was required to protect the American people.

The FBI's Norfolk Division released a "Situational Information Report [SIR]," dated January 5, 2021, [REDACTED].

We asked 16 witnesses about this report, including Mr. Miller, Mr. McCarthy, GEN Milley, and Mr. Sund. All 16 witnesses told us that they knew nothing of this FBI report on January 5-6, 2021, and did not learn of it until after January 6, 2021, when the media reported on it.

Coordination with the FBI identified two DoD representatives assigned to the Norfolk Joint Terrorism Task Force who were on the distribution list for the FBI SIR. The first DoD representative retired in December 2020 and did not have access to the FBI's e-mail system on January 5, 2021. The second DoD representative told us that he was out of his office and traveling on Government business when he received the e-mailed FBI SIR. He could not confirm whether he forwarded the FBI SIR because, at the time of his interview, he did not have access to his archived e-mails. He told us:

I don't know if I forwarded that particular SIR. Like I said I was TDY down in Florida working on another case and I'm sure that I looked at my e-mail, looked at the SIR, saw that it said Washington D.C. and I don't know if I forwarded it out. [REDACTED]

He also told us that Washington, D.C., was not within his area of responsibility and that he had no specific recollection on whether or not he forwarded the SIR or notified anyone of the FBI SIR because it did not pertain to his area of responsibility.

The TCP OIC told us that during the evening hours, the TCP personnel moved their equipment set to their General Services Administration and rental vehicles to keep the riot gear concealed so that the public would not see. The TF Guardian Commander told us that this was done so personnel did not have to fall back to a different location to get the protective gear, if needed. The QRF OIC told us that the QRF was released at 11:30 p.m., and he planned for the QRF to report to JBA at 10:30 or 11:00 a.m. the next day, January 6, 2021.

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<sup>65</sup> Freedom Plaza is an open plaza situated near 14th Street and Pennsylvania Avenue near the White House in Washington, D.C. Freedom Plaza is a place known for political protest and civic events.

*DoD OIG Conclusions on DoD Actions Before January 6, 2021*

We concluded that the actions the DoD took before January 6, 2021, to prepare for the planned protests in Washington, D.C., on January 5 through 6, 2021, were appropriate, supported by requirements, consistent with the DoD's roles and responsibilities for DSCA, and complied with laws, regulations, and other applicable guidance.

We reached our conclusion based on the following.

- D.C. officials submitted a written RFA on December 31, 2020, to the DoD.
- DoD officials evaluated the D.C. RFA for legality, lethality, risk, cost, appropriateness, and readiness, as DoD policy required.
- Executive Order 11485 authorized the SecDef to order the DCNG to aid the civil authorities of D.C.
- The D.C. RFA included direct support to law enforcement, which DoD policy allows with SecDef approval.
- In the chain of command, MG Walker reported to Mr. McCarthy and Mr. McCarthy reported to Mr. Miller.
- Mr. McCarthy acted within his authority when he made conditional recommendations to Mr. Miller to authorize support to the D.C. RFA.
- Mr. Miller acted within his authority when he authorized Mr. McCarthy to approve the D.C. RFA with written guidance on what the DCNG was not authorized to do without Mr. Miller's specific personal authorization.
- Mr. McCarthy acted within his authority when he required MG Walker to develop a CONOPS before authorizing MG Walker to employ the QRF at the Capitol.
- Mr. Rosen concurred with the DoD's plan to fulfill the D.C. RFA.
- Mr. Miller and Mr. McCarthy's instructions for fulfilling the D.C. RFA were reasonable, based on:
  - DoD's experience responding to civil unrest in D.C. in June 2020;
  - a desire to avoid fulfilling the D.C. RFA in a way that would create the impression that the military would influence or play a role in Congress's January 6, 2021 Electoral College vote certification; and
  - a desire to fulfill the D.C. RFA for limited TCP and Metro station support exactly as requested and avoid performing restricted law enforcement activities such as searches, seizures, arrests, and surveillance of individuals.



- DoD officials determined that the agencies responsible for maintaining law and order in D.C. did not need DoD support.
- DoD officials received information from civilian law enforcement channels that did not warrant advising the President to consider invoking the authorities in the Insurrection Act or National Emergencies Act.

We also examined the actions the DoD took before January 6, 2021, that were independent of the D.C. RFA. We looked for a standard that required or would have allowed the DoD to act preemptively without presidential direction to prevent or deter what later happened at the Capitol. We found none. On the contrary, we found restrictions on the DoD's roles and responsibilities in planning and providing support for domestic civil disturbance operations, including the following.

- U.S. law and DoD policy severely restrict the DoD's conduct of domestic law enforcement activities.
- DoD policy states that civilian law enforcement, not the DoD, has the primary responsibility to maintain law and order in D.C.; agencies of the Federal government other than the DoD have supplementary responsibility; and more specifically, the USCP has the responsibility to maintain law and order on the U.S. Capitol Campus.
- In general, the DoD does not initiate DSCA except in response to an RFA from a civil authority, and U.S. laws, regulations, and policies do not authorize the DoD to act in the absence of a valid request for DSCA.

We found no standard that would have allowed the DoD to act preemptively or unilaterally before January 6, 2021, in response to projected civil disturbances in D.C. We determined that the DoD's roles, planning, and actions taken were authorized and appropriate in response to the single and limited RFA the DoD received on December 31, 2020, to support civil authorities on January 5 and 6, 2021.

## **V. DOD'S ACTIONS ON AND AFTER JANUARY 6, 2021**

In this section, we present information about the events that occurred on January 6, 2021, at the Capitol, and how DoD personnel responded to these events. We focus on the USCP RFA and how the DoD received, approved, and fulfilled it. We interviewed witnesses about their recollections of the exact times that specific events occurred on January 6, 2021, and many of the witnesses' recollections varied. We also examined the DCNG's continued role in securing the Capitol after January 6, 2021, and testimony DoD and other officials gave in congressional hearings after January 6, 2021, about how the DoD responded to the events at the Capitol on January 6, 2021, and the timeliness of that response. At the end of this section, we present our conclusions about the DoD's actions on January 6, 2021, based on a preponderance of the evidence we reviewed.

Table 2 lists significant events concerning the Capitol on January 6, 2021.

*Table 2. Chronology of Significant Events on January 6, 2021*

Time	Event
<b>Morning Events</b>	
<b>5:00 a.m.</b>	The AOC reports on the previous night's events, including six arrests and pro-President protestor clashes with the MPD.
<b>7:00 a.m.</b>	DCNG personnel begin their mission at TCPs and Metro stations.
<b>10:00 a.m.</b>	The AOC reports that 323 DCNG personnel were "prepared to support Civil Disturbance Operations."
<b>11:29 a.m.</b>	Mr. McCarthy and Army senior leaders receive a DCNG personnel status brief as of 10:00 a.m.
<b>Noon - 12:59 p.m.</b>	
<b>Noon</b>	The AOC reports "■ DCNG personnel at 30 TCPs, ■ at six Metro stations, and 42 on QRF standby."
<b>Noon</b>	The President begins speaking at The Ellipse.
<b>12:46 p.m.</b>	Mr. McCarthy receives the noon DCNG personnel status update.
<b>12:53 p.m.</b>	The Capitol grounds' outer perimeters are breached, according to Mr. Sund.
<b>12:58 p.m.</b>	Mr. Sund requests assistance from Chief Contee and receives officers from the MPD, surrounding counties, and the Virginia State Police.
<b>1:00 - 1:59 p.m.</b>	
<b>1:11 p.m.</b>	The President concludes his speech at The Ellipse.
<b>1:34 p.m.</b>	Mayor Bowser calls Mr. McCarthy about USCP assistance.
<b>1:40 p.m.</b>	The AOC reports to Army senior leaders that an estimated crowd of 15,000 – 20,000 people are "moving in the direction of the National Capitol."
<b>1:49 p.m.</b>	Mr. Sund calls MG Walker and requests DCNG assistance.
<b>2:00 - 2:59 p.m.</b>	
<b>2:10 p.m.</b>	Mr. Sund calls MG Walker and informs him of the Capitol Police Board's authorization to request DCNG assistance.
<b>2:13 p.m.</b>	The AOC reports to Army senior leaders that crowds continue to gather at the Capitol, which is "reportedly locked down due to multiple attempts to cross police barriers and police injuries."
<b>2:15 p.m.</b>	Mr. Sund reports the first unlawful breach of the Capitol.
<b>2:17 p.m.</b>	The TF Guardian Commander tells the QRF OIC to get the QRF "geared up and on the bus for when Mr. McCarthy approves a change in mission."
<b>2:19 p.m.</b>	The DCHSEMA Director initiates a conference call with MG Walker to help Mr. Sund to request DCNG assistance at the Capitol.
<b>2:22 p.m.</b>	Mr. McCarthy begins a conference call in his office with key D.C. government leaders and members of his staff "to determine the situation and their requirements." Mr. Sund orally requests DCNG support for the USCP and Mr. McCarthy subsequently departs his office during the call to brief Mr. Miller.
<b>2:45 p.m.</b>	The conference call in Mr. McCarthy's office with his staff and D.C. leaders ends on receipt of a report of gunfire inside the Capitol.
<b>2:55 p.m.</b>	The QRF departs JBA with a police escort to the D.C. Armory, according to the QRF OIC.
<b>2:55 p.m.</b>	The TF Guardian Commander arrives at the USCP Command Post in the Capitol.
<b>3:00 - 3:59 p.m.</b>	
<b>3:04 p.m.</b>	Mr. Miller authorizes Mr. McCarthy to mobilize all 1,100 personnel in the DCNG.
<b>3:15 p.m.</b>	The QRF arrives at the DCNG Armory, according to the QRF OIC.
<b>3:26 p.m.</b>	Mr. Sund calls MG Walker to coordinate a formal written USCP request for DCNG assistance.
<b>3:48 p.m.</b>	Mr. McCarthy departs the Pentagon for MPD HQ.

Time	Event
<b>3:55 p.m.</b>	GEN Hokanson initiates communications with the state governors.
<b>4:00 - 4:59 p.m.</b>	
<b>4:05 p.m.</b>	Mr. McCarthy arrives at MPD HQ and meets with Mayor Bowser and Chief Contee. Mr. McCarthy receives a situational brief and develops a plan for the DCNG to help the USCP at the Capitol.
<b>4:07 p.m.</b>	Mr. Sund e-mails a written request to MG Walker for immediate DCNG support.
<b>4:08 p.m.</b>	The AOC reports a 41-person QRF is on the way from JBA to the Armory, "with 184 more on standby as of" 3:23 p.m.
<b>4:13 p.m.</b>	According to the DoD Executive Secretary, Mr. Miller approves a USCP request for Pentagon Force Protection Agency support.
<b>4:25 p.m.</b>	According to witnesses, BG LaNeve notifies MG Walker to have the DCNG ready to respond.
<b>4:30 p.m.</b>	Mr. Miller concurs with Mr. McCarthy's plan for DCNG personnel to meet with the MPD and conduct Capitol perimeter security and clearance operations as part of a joint USCP, FBI, MPD, and DCNG operation.
<b>4:35 p.m.</b>	Mr. McCarthy calls MG Walker and informs him that Mr. Miller approved the DCNG re-mission request to support the USCP.
<b>4:40 p.m.</b>	Mr. McCarthy accepts the Maryland Governor's offer of Maryland NG assets.
<b>5:00 - 5:59 p.m.</b>	
<b>5:00 p.m.</b>	Mr. McCarthy reissues the deployment order that he gave MG Walker at 4:35 p.m.
<b>5:08 p.m.</b>	MG Walker orders the DCNG QRF, now enhanced with additional personnel, to move to the Capitol.
<b>5:15 p.m.</b>	DCNG personnel depart the Armory en route to USCP HQ.
<b>5:15 p.m.</b>	Mr. McCarthy briefs Mr. Miller, and they discuss planning considerations including troop levels, and mission duration.
<b>5:20 p.m.</b>	DCNG personnel arrive at the Capitol, according to MG Walker.
<b>5:29 p.m.</b>	DCNG personnel arrive at USCP HQ, according to the TF Guardian Commander and QRF OIC.
<b>5:30 p.m.</b>	MG Walker arrives at the Capitol.
<b>5:40 p.m.</b>	The USCP swears in DCNG personnel as "Special Police" at USCP HQ.
<b>5:55 p.m.</b>	DCNG personnel arrive on the grounds of the Capitol, according to the QRF OIC.
<b>6:00 - 6:59 p.m.</b>	
<b>6:00 p.m.</b>	DCNG personnel join the line of law enforcement personnel facing the crowd on the west side of the Capitol.
<b>6:00 p.m.</b>	Mr. McCarthy briefs Mr. Miller, GEN Milley, the White House Counsel, the National Security Advisor, and officials from the DHS, DoI, DoJ, and FBI by telephone that 150 DCNG personnel are at the Capitol and another 150 are on the way.
<b>6:09 p.m.</b>	BG Matt Smith, Deputy Operations Director, G-3/5/7, HQDA, receives a report from the AOC that 1,000 police officers are on Capitol grounds and that the building is clear of rioters as of 6:04 p.m.
<b>6:14 p.m.</b>	The USCP and MPD, with the help of the DCNG, establish a perimeter on the west side of the Capitol.
<b>6:29 p.m.</b>	Mr. McCarthy speaks by telephone with the FBI Deputy Director to maintain situational awareness and discuss resources needed to secure the Capitol.
<b>6:50 p.m.</b>	Mr. McCarthy telephonically thanks Virginia's governor for his offer to send Virginia Army NG forces.
<b>7:00 - 7:59 p.m.</b>	
<b>7:03 p.m.</b>	A DCNG official e-mails Mr. McCarthy, MG Walker, LTG Piatt, and BG LaNeve to report that the Capitol's interior and east front were "clear of demonstrators" as of 6:45 p.m.

Time	Event
<b>7:15 p.m.</b>	Mr. Miller, Mr. McCarthy, GEN Milley, Mr. Rosen, Mayor Bowser, and Chief Contee conduct a conference call with the Vice President, the Speaker of the House of Representatives, the Senate Majority Leader, and the Senate Minority Leader to discuss the current situation at the Capitol.
<b>7:52 p.m.</b>	MG Walker meets with Mr. McCarthy at MPD HQ to begin planning to integrate out-of-state NG personnel arriving in D.C.
<b>8:00 - 8:59 p.m.</b>	
<b>8:51 p.m.</b>	Mr. Miller directs GEN Hokanson to identify state NG units "in the vicinity of the District of Columbia" that can "conduct civil disturbance/support law enforcement operations." For such units, Mr. Miller authorizes "additional training" under 32 U.S.C. § 502(f), which authorizes commanders to order NG members to perform training or other duties to carry out operations or missions the President or SecDef requests.
<b>9:00 - 11:59 p.m.</b>	
<b>9:00 p.m.</b>	Mr. Miller, Mr. McCarthy, GEN Milley, and GEN Hokanson conduct a conference call to plan for the arrival of up to 6,200 out-of-state NG personnel.
<b>9:45 p.m.</b>	Mr. McCarthy departs MPD HQ for the Armory.
<b>9:56 p.m.</b>	BG Smith e-mails senior DoD and Army leaders that as of 6:00 p.m., approximately one company of DCNG personnel arrived at the Capitol and integrated with Federal law enforcement.
<b>9:58 p.m.</b>	Mr. McCarthy meets with MG Walker and senior DCNG leaders at the Armory to discuss putting DCNG personnel on 30-day mobilization orders and to develop plans to integrate large numbers of NG personnel reporting to D.C. from different states.
<b>10:15 p.m.</b>	Mr. McCarthy departs the Armory and arrives at the Capitol grounds.
<b>10:20 p.m.</b>	MG Walker receives three calls between 10:20 p.m. and 10:32 p.m. from Mr. Sund, who is following up on his written RFA.
<b>11:00 p.m.</b>	Mr. McCarthy departs the Capitol and returns to MPD HQ.
<b>11:27 p.m.</b>	Maj Gen Nordhaus notifies the NG Joint Force Headquarters in Virginia, Maryland, Pennsylvania, New York, New Jersey, and Delaware that they are "now approved to begin movement into the DC area."

### *Events Before Noon*

Mr. Miller spent the morning of January 6, 2021, focused on another significant national security matter. He had a television on in the background in his office to be aware of the events in downtown D.C. According to the OASD(HD&GS) DSCA [REDACTED], the primary focus of the OASD(HD&GS) staff was a major transition exercise scheduled for January 7, 2021, involving the incoming Deputy Secretary of Defense.

BG LaNeve received an e-mail from the AOC at 5:00 a.m. reporting, in part, that:

- 243 DCNG personnel were "released from blocking and Metro positions" at 11:30 p.m. the previous night;
- the DCNG was "deploying to [traffic] blocking and Metro position" not later than 8:00 a.m.;

- there were “six arrests overnight,” including two gun charges and various civil disturbance charges; and
- pro-President protesters clashed with the MPD at approximately 1:37 a.m.

The DCNG TCP detail held its first formation of the day at 5:00 a.m. with the first shift of [REDACTED] personnel present for duty. This shift, led by the TCP OIC, was scheduled to be relieved between 2:30 p.m. and 4:00 p.m. by a second [REDACTED]-person shift led by the TCP Deputy OIC. The TCP OIC and the TCP senior enlisted advisor spent the morning moving between TCPs. Similar to the TCP OIC, the TF Guardian Commander remained in his command vehicle with his senior enlisted advisor and two Soldiers east of the White House. They moved between the various DCNG positions throughout the day.

The TCP Deputy OIC told us that he reported to the Armory at approximately 5:00 a.m. He said that on this day, the detail planned to change from a single shift to two shifts with the night shift reporting to the Armory at 3:30 p.m. for a shift change scheduled for 5:00 p.m.

DCNG witnesses told us that DCNG operations were normal the morning of January 6, 2021. At 7:00 a.m., DCNG personnel began their mission at the TCPs and Metro stations. MG Walker stated that the Guardsmen had riot gear in their vehicles at the TCPs. The TF Guardian Commander said that the DCNG “had time in the morning to put the [riot] gear in every vehicle. So every vehicle had helmets, shin guards, protective shields, [and] vests, everything in the vehicle.” A DCNG official e-mailed MG Walker a status update as of 10:00 a.m., stating that [REDACTED] DCNG personnel were on station at 30 TCPs, [REDACTED] were at 6 Metro stations, and the 40-Guardsmen QRF was on standby at JBA.

Mr. McCarthy told us that, as the DCNG’s DSCA mission began that morning, MG Walker was in command and BG LaNeve monitored the situation from the Pentagon. BG LaNeve told us that the DCNG deployed to support the MPD at TCPs and Metro stations as planned. LTG Piatt said that the Army G-3/5/7 operations staff performed a “conditions check” to make sure everything with the DCNG was in place as planned.

The AOC e-mailed BG LaNeve the “DHS NOC Update as of 1000.” The update reported, in part, that:

- 323 DCNG personnel were “prepared to support Civil Disturbance Operations” with mission dates of January 5 through 24, 2021;
- no incidents of criminal or illegal activity directed at Federal facilities or personnel occurred in the preceding 24 hours;
- a USPP official stated, “We can handle the President’s event and large crowds”;
- the USSS estimated the crowd in and around The Ellipse at 10:00 a.m. at more than 20,000, with no reported incidents; and
- the Arlington County Police Department agreed to help the MPD January 5-6, 2021.

The QRF OIC reported to JBA at approximately 10:30 a.m. He told us that eight Airmen who were assigned to the QRF the day before had been reassigned. Eight new Airmen reported for QRF duty just before noon.

At 11:29 a.m., Mr. McCarthy's Executive Officer forwarded the "DHS NOC Update [#1] as of 1100" to Mr. McCarthy and Army senior leaders. Update #1 repeated the information reported in the 10:00 a.m. report and added that the MPD estimated the crowd size "in and around the city" at 15,000.

*Events From Noon Through 12:59 p.m.*

A DCNG official e-mailed MG Walker a status update of "NSTR" (nothing significant to report) as of noon. [REDACTED] DCNG personnel were on station at 30 TCPs, [REDACTED] were at 6 Metro stations, and the QRF, now listed at 42 personnel, was on standby. The TF Guardian Commander clarified that the QRF was still at JBA.

The President started his speech at The Ellipse at noon.

The QRF OIC stated that the QRF, which now included several untrained personnel, conducted training between 12:30 p.m. and 1:00 p.m. He told us, "[W]e issued them equipment immediately and started their civil disturbance training immediately. I got everybody out there and we just kind of rehashed to get everyone a little bit more time with the training and more comfortable with their gear." The QRF OIC explained:

The training—our Security Forces personnel basically took us outside in the parking lot. We geared up with our civil disturbance gear. We lined up a—I would say the training was excellent for what they provided to us and we felt comfortable going out into the field with what we learned you know, lined up simulated response to aggravated crowd throwing objects, pushing against, holding the line, and just preventing people getting through.

He also said that during this time, he heard from the 113th Wing leaders and others that the situation at The Ellipse and the Capitol was escalating. The 113th Wing leadership directed that he notify them when QRF training was finished.

MG Walker e-mailed Mr. McCarthy an update at 12:46 p.m. with information that was current as of noon. His report stated:

- the President is making remarks at The Ellipse and the overall situation is intensifying;
- there is no change in the DCNG force posture;
- current demonstrations are peaceful;
- there are 20,000 peaceful demonstrators at The Ellipse, 80,000 peaceful demonstrators at Lincoln Memorial/Mall, and 200 periodic demonstrators and counter-demonstration confrontations at Capitol Hill;
- there are no additional requests for DCNG personnel;

- DCNG personnel are not targets; and
- there are no recommendations for Army Senior Leader actions.

Mr. Sund told us that demonstrators approached a fence line established around the Capitol grounds at 12:53 p.m. According to Mr. Sund, the demonstrators immediately started fighting with USCP officers, “tearing apart the barricades and hundreds started breaching our perimeter.” Mr. Sund told us that he then contacted the Capitol Police Board at 12:58 p.m. to declare an emergency so he could make a request for DCNG assistance.

*Events From 1:00 p.m. Through 1:59 p.m.*

The second shift, also known as the relief shift, of DCNG troops assigned to TCPs and Metro stations began reporting to the Armory at 1:00 p.m. Between 1:00 p.m. and 1:30 p.m., LTG Piatt received reports of many people moving towards the Capitol with some walking past or moving USCP barriers. The TF Guardian Commander saw the crowds leaving The Ellipse and walking toward the Capitol.

The President concluded his speech at The Ellipse at 1:11 p.m.

Mr. McCarthy told us that Mayor Bowser called him at 1:34 p.m. and asked whether the USCP had asked for the DoD’s assistance. Mr. McCarthy told us that it was clear to him the DoD needed to help either the MPD or the USCP. Mr. McCarthy said that he needed to know the CONOPS and the task and purpose for any request other than for MPD TCPs and Metro stations. In response to Mayor Bowser informing Mr. McCarthy that the USCP needed DCNG assistance, he told a staff member to immediately contact Mr. Miller, who was in his office. One of Mr. Miller’s staff members told Mr. McCarthy that Mr. Miller was in meetings until 4:00 p.m., which indicated to Mr. McCarthy that Mr. Miller was not yet aware of the situation at the Capitol. Mr. McCarthy then told his staff that they needed to assemble senior leaders to determine how to provide support to the Capitol.

The DHS NOC Update #2 reported that as of 1:30 p.m.:

- “no major incidents of illegal activity” occurred in the previous two hours;
- an estimated crowd of 15,000 – 20,000 people were “moving in the direction of the National Capitol” from The Ellipse and other points in the city; and
- the Capitol police confirm a few people attempted to cross police barriers and were arrested; the situation continues to develop.

Mr. Sund called MG Walker at 1:49 p.m. to ask about DCNG assistance at the Capitol. During the call, Mr. Sund told MG Walker the Capitol Police Board was preparing the emergency authorization to request DCNG assistance. MG Walker said that Mr. Sund asked him to send National Guardsmen to the Capitol during the call. MG Walker stated that he then called LTG Piatt and told him, “Hey, look. The Capitol is being breached. You can see it on TV. We need to get out there and help them.” MG Walker said that he wanted Mr. McCarthy’s immediate approval by voice confirmation but, according to MG Walker, LTG Piatt told him, “We’ve got to go find the Secretary of the Army.”

During a joint hearing of the Senate Homeland Security and Governmental Affairs Committee and the Senate Rules and Administration Committee, a U.S. Senator asked MG Walker, “If the restrictions on your authorities hadn’t been put in place by DoD, what would you have done when Chief Sund called you at 1:49 [p.m.] on January 6th with an urgent request for National Guard assistance?” MG Walker answered:

I would have immediately pulled all the Guardsmen that were supporting the Metropolitan Police Department. They had the gear in their vehicles. I would have had them assemble in the Armory and then get on the buses and go straight to the [Capitol] and report to the ... most ranking Capitol Police officer they saw and take direction.

[Paragraph omitted]

So that was the plan. I would have sent them there immediately. As soon as I hung up, my next call would have been to my subordinate commanders [to] get every single Guardsman in this building, and everybody that’s helping the Metropolitan Police—re-mission them to the Capitol without delay.

Another U.S. Senator asked, “General Walker, to review the timeline[,] at 1:49 [p.m.] Chief Sund contacted you, at 2:15 [p.m.] the Capitol was breached. I think in your testimony you said you had the available 340 D.C. National Guard troops, is that correct?” MG Walker responded, “Well, sir, it was actually half of that so—so half were on the streets helping the Metropolitan Police Department, the other half would have come [sic] in to relieve them, but we would have called them in to come in.” The U.S. Senator then asked, “Okay, so you had 40 in the quick—quick reaction force, correct?” MG Walker responded, “Yes, sir.” The U.S. Senator then asked MG Walker, “[H]ad this [USCP RFA] all been preapproved by the Secretary of Defense ... how quickly could you have gotten how many people to the Capitol?” MG Walker responded that he could have had 150 Guardsmen at the Capitol in 20 minutes.

Mr. Salesses and other witnesses stated that regardless of Mr. Miller’s and Mr. McCarthy’s employment guidance, MG Walker did not have the authority to direct the DCNG to respond to a civil disturbance at the Capitol in support of the USCP. Mr. Salesses explained that only the SecDef had that authority.

Mr. Miller told us that he noticed on the television in his office that some protestors had become violent at the Capitol. He did not recall the exact time he noticed this, but stated that it was at that moment that he knew an RFA to help at the Capitol would soon come. He said that before January 6, 2021, he did not intend to place military personnel at the Capitol because he knew that the military was only to be used as a last resort. However, after seeing attempts to use a bike rack as a weapon against law enforcement, he was prepared to approve a request for assistance if he received one.

As events escalated at the Capitol, the DoD Executive Secretary moved into Mr. Miller’s office. Throughout the day, Mr. Miller exchanged telephone calls with the Vice President, Members of Congress, Cabinet members, and members of the White House staff. Mr. Miller and GEN Milley both told us that there were no calls between the President and Mr. Miller.

The TF Guardian Commander told the QRF OIC between 1:50 p.m. and 2:00 p.m. to stand by and be prepared to load the buses. The DCNG Director of Operations told the QRF OIC that upon the breach of the Capitol, the QRF was on an enhanced alert status.



The TCP OIC received instructions from the TF Guardian Commander after the Capitol was breached on how to staff the TCP locations. The TCP OIC added that according to the TF Guardian Commander, if no MPD officers were present at the TCP locations, DCNG personnel who felt unsafe could get into their cars. If DCNG personnel “really felt unsafe, and if there is not an MPD [officer] present, [DCNG personnel] can drive to the next TCP.” The TF Guardian Commander told us that once MPD officers started to move to the Capitol, DCNG personnel could consolidate the TCPs “so that the Soldiers and Airmen weren’t just sitting out there by themselves. At least there was a larger group of them together as MPD pulled off [to go to the Capitol].” The TCP OIC clarified that none of the TCPs consolidated because of MPD personnel leaving the TCPs, because “we had no threats at our TCPs.”

*Events From 2:00 p.m. Through 2:59 p.m.*

The TF Guardian Commander told us that shortly after 2:00 p.m., he learned via news reports that protesters had breached the Capitol, so he started to move closer to the Capitol. Mr. Sund told us that the Capitol Police Board authorized his request for DCNG assistance at 2:08 p.m. He called MG Walker at 2:10 p.m., told him about the emergency authorization, and stated that the USCP were being “overrun by thousands of protesters fighting violently with the officers.” According to MG Walker, 20 minutes later, Mr. Sund called MG Walker again and said, “Hey, it’s getting worse,” and “I need 200 Guardsmen immediately.”

The AOC forwarded “DHS NOC Update #3 as of 1400” to Army senior leaders at 2:13 p.m. Update #3 reported, in part, that (1) crowds continued to gather at the Capitol, which was “reportedly locked down due to multiple attempts to cross police barriers and police injuries”; (2) the USCP arrested people who attempted to cross barriers; and (3) the situation continued to develop.

MG Walker explained the action the TF Guardian Commander took in responding to the events at the Capitol. MG Walker said:

And [the TF Guardian Commander] who was—he was in charge of all the traffic control points, and he was in charge of the Metro stations. On his own, we call it initiative, he goes to the Capitol because the police were leaving the traffic control points, MPD was. They abandoned the traffic control points. Well, guess what? We can’t be there without the police. So, [the TF Guardian Commander] heads to the Capitol and the police tell him, “Hey, look. Where’s the Guard? Where’s everybody?” And [the TF Guardian Commander is calling BG Ryan], “Hey, we’ve got to get here right away.” And that was at—[TF Guardian Commander] at 1412 [2:12 p.m.] he goes to the Capitol and says, “Hey, it’s going to be breached.” This is [the TF Guardian Commander] calling back [to BG Ryan].

According to MG Walker, at the same time the TF Guardian Commander moved to the Capitol and contacted DCNG HQ, BG Dean told BG Ryan to hold the night shift traffic control points on standby and get everybody ready to deploy to the Capitol as quickly as possible. MG Walker stated he was on the phone trying to get permission to deploy to the Capitol. MG Walker added, “I’m just going to say it, everybody in the National Guard knew what was expected of them. Everybody knew where we were supposed to be and what we were supposed to do.”

The TF Guardian Commander told us that after pre-positioning himself with the USCP, he called BG Ryan to ask about the status of DCNG personnel responding to the events at the Capitol.

He informed BG Ryan that the USCP was requesting immediate help, and BG Ryan told him he was working the request. BG Ryan confirmed to us that about the same time as the TF Guardian Commander arrived at the Capitol, BG Ryan arrived at the DCNG HQ Joint Operations Center for a Commanders Update Briefing. After speaking with the TF Guardian Commander and observing the developing events on a nearby television, he notified BG Dean of the situation. BG Ryan said his staff was told that MG Walker and BG Dean were awaiting approval to deploy DCNG personnel.

According to Mr. Sund, the first unlawful entry into the Capitol happened at 2:15 p.m. At about this same time, the TF Guardian Commander received a report from his Soldiers that MPD officers were leaving the TCPs and moving to the Capitol. He said that upon losing MPD support at the TCPs, and in anticipation of a new RFA from the USCP, he consolidated the TCPs, established a rally point close to the Capitol, and then proceeded to the Capitol himself. He called the QRF OIC at 2:17 p.m. and told him to get the QRF "geared up and get them on the bus and just have them waiting" for re-mission approval from Mr. McCarthy.

The DCHSEMA Director called MG Walker at 2:19 p.m., and requested that all DCNG personnel report immediately to the Capitol in support of the MPD. MG Walker relayed the DCHSEMA Director's request to Army senior leaders via secure VTC at 2:22 p.m.

The AOC e-mailed GEN McConville, LTG Piatt, LTG Flynn, and other Army senior leaders at 2:20 p.m. to relay open-source reports regarding the Vice President. According to the reports, the Vice President "has been ushered from the U.S. Capitol as protesters breach the Capitol Building. Additional open source reports indicate the U.S. Senate is in recess due to a warning of an external threat."

Mr. McCarthy said that the DCNG [REDACTED] called him at 2:20 p.m., reporting explosions and firearms going off in D.C. Mr. McCarthy then requested a conference call, which began at 2:22 p.m., so he could understand the situation<sup>66</sup> LTG Piatt arrived in Mr. McCarthy's office as the conference call was starting. GEN McConville, LTG Flynn, BG LaNeve, the Acting Army General Counsel and other staff personnel joined Mr. McCarthy in his office during the conference call. Mayor Bowser, the DCHSEMA Director, Chief Contee, Mr. Sund, and other members of their staffs also joined the conference call.

During the conference call, Mr. Sund made an urgent request for immediate DCNG assistance at the Capitol. Mr. McCarthy was on the conference call when it started, but did not remain present for the duration of the call. Witnesses told us that Mr. McCarthy stayed on the call for approximately 5 minutes, long enough to hear and acknowledge the urgent request from Mr. Sund and Mayor Bowser. Mr. McCarthy asked MG Walker how quickly the QRF could respond, and MG Walker said that the QRF could move in 20 minutes. Mr. McCarthy told us, "I do remember telling General Walker to posture all of his troops and to get to the right configuration to get ready to go and I was going to go get the authority." LTG Piatt told us that Mr. McCarthy directed MG Walker to move the QRF to the Armory. MG Walker told us that he moved the QRF to the Armory on his own initiative, "without permission."

According to two witnesses, MG Walker did not have the authority to deploy the QRF and Mr. McCarthy did not have the authority to re-mission any DCNG element, including the QRF, from the approved mission of supporting the MPD with TCPs and Metro stations to a new mission of supporting the USCP at the Capitol. The authority to approve support to a Federal agency rested

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<sup>66</sup> According to testimony from Mayor Bowser and the DCHSEMA Director, it was the DCHSEMA Director who convened the conference call.

with Mr. Miller. Witnesses told us that Mr. McCarthy told LTG Piatt to develop a plan with MG Walker and the civilian participants on the telephone call for the DCNG to deploy and then Mr. McCarthy “ran down the hallway” to see Mr. Miller.

We asked LTG Piatt to describe the conference call. LTG Piatt told us that it was not the “clearest” conference call because some participants were nearly panicked. He said that people talked over each other, there was “yelling and screaming and shouting,” other people were moving in and out of Mr. McCarthy’s office, simultaneous conversations were occurring, the news was on the television, and background noise was heard on some of the participants’ telephones. He said that Mr. McCarthy understood that law enforcement needed help immediately, but call participants did not have a clear understanding of the situation. LTG Piatt said that before leaving the conference call, Mr. McCarthy told LTG Piatt that he was going to get Mr. Miller’s approval and that he (LTG Piatt) should develop a plan to re-mission the DCNG from their current limited mission to helping Federal law enforcement deal with the situation at the Capitol.

MG Walker told us that during the call, LTG Piatt and LTG Flynn asked him for his operational plan, and he answered, “The operational plan, I’m going to give it to you right now. Get on the buses, get to the Capitol, and take direction from Metropolitan, I mean from either the Metropolitan Police or the United States Capitol Police. That’s the plan.”

During his interview with us, LTG Piatt commented on MG Walker’s plan. LTG Piatt told us that he commanded a division in Iraq and could not imagine sending a subordinate element into a violent situation without that element clearly understanding the mission. LTG Piatt added, “It would be like me saying, ‘Go to Baghdad and just find somebody and see what they need.’”

Mr. Sund told us that during the conference call, LTG Piatt commented on the “optics of [the] National Guard standing in line with the Capitol in the background,” and that he [LTG Piatt] “would rather relieve your [USCP] officers off traffic posts” so the officers could respond to the Capitol.

The DCHSEMA Director told us that either LTG Piatt or LTG Flynn said it would not look good to have Soldiers confront “peaceful protesters.” Chief Contee told us that an Army official commented on the “optics” of having “boots on the ground” at the Capitol.

MG Walker stated that LTG Piatt and LTG Flynn said they would not advise Mr. McCarthy to send Guardsmen to the Capitol; it would not be a good optic and could incite the crowd. MG Walker said that he was “stunned” and “frustrated” at these comments.

LTG Piatt told us that optics were a concern as the Army prepared to deploy Soldiers into downtown D.C. in response to the D.C RFA, but he did not recall making that statement during the telephone call specifically about the USCP’s RFA. Two Army witnesses who were on the conference call told us that during the call, LTG Piatt questioned the impression that the image or “optic” of uniformed Soldiers rushing into the Capitol would make with the public. One Army witness said that LTG Piatt thought that the “optic” was not appropriate in the absence of a good plan for deploying Soldiers to the Capitol. The other Army witness told us that LTG Piatt was trying to emphasize that law enforcement, not the DCNG, was best suited for the mission of clearing the Capitol.

The two Army witnesses also told us that LTG Piatt asked questions during the conference call and tried to understand exactly what was happening at the Capitol, what tasks DCNG personnel would perform, whether they should be armed, who the QRF would align with, and where the QRF

would assemble once they arrived at the Capitol. One of these witnesses said that no one on the conference call could answer LTG Piatt's questions and the only thing LTG Piatt and the witness heard were "hysterical cries for help." The other witness said that the civilian officials did not want to hear any questions, and wanted every available Soldier to immediately rush to the Capitol. This witness told us that LTG Piatt explained that DCNG personnel were not armed or equipped for riot control and if the DCNG reported immediately, as requested, the USCP would only get "a bunch of bodies that [would] be able to reinforce the perimeter" but would not be equipped or prepared to conduct building clearance operations.

Mr. Sund told us that LTG Piatt said his recommendation to Mr. McCarthy was to not support the request. He said that Chief Contee then said, "Hold on. Let me get this right. You're denying [Mr. Sund's] request for National Guard?" According to Mr. Sund, LTG Piatt said that he was not denying the request and that he would discuss the request with Mr. McCarthy.

Chief Contee described his exchange with LTG Piatt to us. He said that he asked Mr. Sund if Mr. Sund was asking for the support of the DCNG on the grounds of the Capitol and Mr. Sund responded, "Yes." Chief Contee told us that he then told LTG Piatt that [Mr. Sund] was requesting the support of the DCNG and asked LTG Piatt if he was denying the request. According to Chief Contee, LTG Piatt replied that they were not denying the request. One witness described LTG Piatt as the "calm voice" on the conference call and recounted how LTG Piatt told the group that he was not disapproving the plan but was saying that we needed a plan so that he could recommend approving it. Another witness said that Mayor Bowser and Chief Contee were frustrated that LTG Piatt told them that Mr. McCarthy was getting the approval from Mr. Miller, rather than saying, "Yes, we're coming."

According to LTG Piatt, he told the conference call participants that the DCNG was better suited to establish a cordon around the building and not do room clearing operations, a task suited to law enforcement. He told us that he stated three times that he was not denying the request and was, instead, telling the group it needed to develop a plan while Mr. McCarthy secured Mr. Miller's approval. He said that he was unable to calm the group down, and finally someone on the call stated they would tell the media that the Army denied the USCP request. According to an Army witness on the call, Mayor Bowser made the statement about telling the media the Army denied the USCP request.

We asked LTG Flynn about his involvement in the conference call. LTG Flynn told us that when he entered Mr. McCarthy's office, LTG Piatt was on the telephone asking questions. He listened to the conference call for a couple of minutes, did not contribute to the conversation, and left to establish a video conference call. Other Army witnesses confirmed that LTG Flynn's participation was minimal.

As the conference call in Mr. McCarthy's office continued, Mr. McCarthy, GEN McConville, BG LaNeve, and three staff members ran to Mr. Miller's office where they met with Mr. Miller, Deputy Secretary of Defense David Norquist, GEN Milley, GEN Hokanson, and the DoD General Counsel. Mr. McCarthy described the situation as "very confusing." They discussed which DoD forces were already in the city, which resources could respond, the full mobilization of the DCNG, and how quickly the forces could mobilize.<sup>67</sup> Mr. McCarthy told Mr. Miller that the DCNG needed to mobilize everything and move to the Capitol as quickly as possible, and Mr. Miller immediately

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<sup>67</sup> Mobilization of the DCNG means to gather the forces in one place, organize the forces, and get the forces ready to operate under approved conditions.

agreed. Mr. McCarthy also said that there was tremendous confusion at that time because they lacked specifics about the situation, did not yet know the task DCNG would perform, and, thus, could not develop a plan to execute that task quickly.

LTG Piatt told us that at about 2:45 p.m., the conference call in Mr. McCarthy's office ended when someone on the conference call reported that gunshots were fired inside the Capitol. LTG Piatt said that he then joined the secure video conference call planning bridge that LTG Flynn opened, which included MG Walker and DCNG staff members. He told us that there was shock and confusion, and "what we could see coming together was the Capitol was overrun, penetrated, the perimeter was shattered." LTG Piatt then told the group on the video conference call:

We're going to get approval. We need to come up with a plan. I think my assumption will be that we will be asked to cordon the outer perimeter of the Capitol to facilitate the clearance of the Capitol and then allow for [law enforcement to make] targeted arrests of those that were the most violent.

The TF Guardian Commander told us that he called the QRF OIC sometime at 2:17 p.m. and told him to equip the QRF and prepare it for a move to the Capitol. The QRF OIC stated that he received multiple notifications between 1:50 p.m. and 2:30 p.m. to prepare to load the QRF on their buses and move to the Capitol. He stated that he received an order to move to the Armory at 2:45 p.m. and that the QRF departed JBA with a police escort at 2:55 p.m., arrived at the Armory at 3:15 p.m., and stood by for further orders.

The TF Guardian Commander arrived at the USCP Command Post at 2:55 p.m.<sup>68</sup> First an MPD Assistant Chief asked, and then Mr. Sund asked, "How many Guardsmen do you have on the way now?" The TF Guardian Commander did not know how many Guardsmen were on the way but told them that he was working on it. The TF Guardian Commander told them that he needed Mr. McCarthy's approval to deploy the DCNG to the Capitol.

Mr. Miller told us that sometime before 3:00 p.m., he heard of gunshots being fired inside the Capitol. He stated that was the point when he knew the DoD would have to become involved in the response at the Capitol. He said, "Whatever time that was that was like, Okay. The National Guard is getting mobilized. We're going big. It's now—it now has triggered that worst-case scenario." Mr. Miller also told us that he needed to focus on what was happening nationally and internationally and avoid being "target-locked" in the event a major incident happened elsewhere at the same time.

#### *Events From 3:00 p.m. Through 3:59 p.m.*

Mr. Miller ordered Mr. McCarthy to mobilize all of the DCNG's 1,100 personnel at approximately 3:04 p.m. Mr. Miller told us that his order gave Mr. McCarthy the approval and guidance he needed to mobilize the DCNG to help the USCP and MPD, and that MG Walker would immediately employ the QRF. The DCNG [REDACTED] told us that at 3:04 p.m., MG Walker ordered a selective encampment and recall of DCNG units.

We asked Mr. McCarthy if Mr. Miller's decision to mobilize the entire DCNG included approval also to deploy DCNG personnel immediately to the Capitol to support the MPD or the USCP. He replied, "It did," but he added that Mr. Miller wanted:

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<sup>68</sup> USCP Headquarters is located at 119 D Street NE, Washington, D.C. 20510. It is not located within the Capitol itself.

a clear understanding of what you're going to do. Get a plan. Put it all together, and then go. ... I was going to come back to him on how we're going to do it. ... I was going to go down to Metro PD Headquarters and get a better read on the situation. ... [I]t was clear that we wanted to come back to him and show him how it was ... .

Mr. McCarthy also said that GEN Milley suggested mobilizing forces from neighboring states because it was unclear how long troops would be needed. GEN Hokanson took the lead for coordinating this effort, while he [Mr. McCarthy] took the lead for coordinating the immediate response with the D.C. government and Federal agencies.

GEN McConville told us that he understood Mr. Miller's order to mean Mr. McCarthy could mobilize everyone in the DCNG and get them to the Armory while simultaneously planning how to help law enforcement at the Capitol. He said that the DCNG personnel needed to know the mission, task, and purpose; what equipment to have or not to have, including weapons; what route to take; and other details.

GEN Hokanson told us that while discussing National Guard personnel during the meeting, Mr. Miller said, "Get them everything they want." The original number of personnel they discussed was 6,000. GEN Hokanson told us that he left the meeting to start calling leaders at the State level for support.

The TF Guardian Commander told us that he called BG Ryan multiple times from USCP HQ between 2:49 p.m. and 4:15 p.m., "trying to get an answer on the force" and telling BG Ryan, "We need to have our forces come here now. I need the QRF now." The TF Guardian Commander also told us that BG Ryan responded, "Hey, I've already let [MG Walker] know. I've talked to BG Dean, we're working it. We're getting a release now." The TF Guardian Commander stated that he thought the QRF's release was imminent, and then he could recall the [REDACTED] DCNG personnel at the TCPs to a specific location at the Capitol. He said, "[S]ince I had already linked up with both MPD and Capitol Police I could easily just bring them into the line and then hook them up and tell them where to get set up."

We asked the TF Guardian Commander if the DCNG had a plan if they were needed at the Capitol. He responded that he was not sure if Mr. McCarthy was aware that he (the TF Guardian Commander) was with the USCP helping to bring in forces. He told us that they had a plan for the troops to assemble at a rally point, organize, and don riot gear, and that he had already made contact with the USCP and MPD.

The TCP OIC told us that between 3:00 p.m. and 3:17 p.m., the Metro station mission consolidated with the TCP personnel to the vicinity of 14th Street and Pennsylvania Avenue for security reasons "because they were standing at the Metro ... they weren't in a vehicle."

Mr. McCarthy left Mr. Miller's office and called MG Walker at approximately 3:05 p.m. Mr. McCarthy did not want to send the DCNG to the Capitol without a plan he could present to Mr. Miller. A witness told us that Mr. McCarthy and MG Walker discussed how many personnel were already at the Armory and where the DCNG could replace or reinforce MPD officers, freeing the MPD to respond to events at the Capitol in greater numbers. Mr. McCarthy directed MG Walker to recall DCNG personnel to the Armory, including the QRF at JBA and those already supporting the

MPD at Metro stations. He ordered that all personnel be equipped with riot shields and batons, and for MG Walker to prepare a “hasty” plan to support law enforcement at the Capitol.

MG Walker stated that he ordered the QRF to move from JBA to the Armory at 3:00 p.m. He said that they arrived 20 minutes later, got off the buses, put on their riot gear, reboarded the buses, before 5:00 p.m., and waited at the Armory.

According to an Army witness, while Mr. McCarthy was in Mr. Miller’s office, the Mayor’s office notified the news media that LTG Piatt denied the USCP’s RFA. Mr. McCarthy then spent the next 25 minutes calling and speaking with leading Members of Congress, the news media, and Mayor Bowser, correcting inaccurate reports and telling them of Mr. Miller’s approval of the USCP RFA and his own effort to get the entire DCNG mobilized. Mr. McCarthy said that he asked Mayor Bowser where she was and if he could co-locate with her. Mayor Bowser told Mr. McCarthy that she was at MPD HQ, and Mr. McCarthy told her that he would get to MPD HQ as soon as he could.

While Mr. McCarthy dealt with news media inquiries, the VTC with Army Staff and DCNG officials continued. LTG Piatt told us that the DCNG’s position was, “We don’t plan. We just provide numbers. [You, the Army] tell us what you need.” LTG Piatt said that he disagreed and told the DCNG group there must be a clear task and purpose for a new mission. They initially thought the mission would be to reinforce a perimeter, but there was no longer a perimeter to reinforce. LTG Piatt told us that it looked like it would be a mission to “take back the Capitol” from the protesters, so they had to equip, configure, and move to meet a new, emerging mission. LTG Piatt explained that the military decision-making process identifies specified and implied tasks, which:

results in an operations order or a concept of the operation, and that can be formal, written pages [or] it could be informal. It could be a drawing on a piece of paper, or could be a verbal [oral] explanation of what operations I need to do so that we know we have scoped the environment, we’ve analyzed the threat, we’ve equipped the forces correctly and they’re prepared to accomplish the mission and higher headquarters understands what the mission is.

LTG Piatt said that while this was occurring, the DCNG was recalling its personnel, building up forces as they reported to the Armory, issuing civil disturbance gear, and getting buses and vehicles lined up for transport. Also during this hour, the QRF arrived at the Armory from JBA.

Mr. Sund called MG Walker to coordinate a formal written USCP request for DCNG assistance at 3:26 p.m.

The TCP Deputy OIC told us that the TCP night shift was scheduled to report to the Armory at 3:30 p.m. As the Deputy OIC began to ready personnel to perform their duty, a DCNG operations officer told him that the mission would change from TCP to QRF duty and to prepare to receive civil disturbance equipment. He then notified the TCP OIC that he would not be relieving the day shift as planned. The TCP Deputy OIC continued that there were no details or “real authorization,” and he was concerned because he learned in the civil disturbances in June 2020 “how this could go” if they (the DCNG) “rolled in unprepared like we did the first night [in June 2020].” According to the TCP Deputy OIC, they performed equipment checks and inspections, and light training, such as “standard shield formation.”

Mr. McCarthy left the Pentagon for MPD HQ at approximately 3:48 p.m. to meet with Mayor Bowser and Chief Contee. His aide, executive officer, public affairs officer, and congressional liaison officer accompanied him while BG LaNeve followed in a second vehicle. Mr. McCarthy told us that LTG Piatt did not make any recommendations to him before he left for MPD headquarters. We asked Mr. McCarthy what happened on the conference call while he was in Mr. Miller's office that gave D.C. officials the impression that the USCP RFA would be declined. Mr. McCarthy told us his staff was trying to get situational awareness but it was clear there was a lot of confusion. He said individuals on the conference call were talking past each other so he made the decision to go to MPD headquarters, coordinate directly with D.C. officials, and get some assets to the Capitol as quickly as possible. An Army witness told us that MG Walker could not clearly articulate to his staff what the USCP specifically needed. The witness said this is what prompted Mr. McCarthy and his staff to go to MPD HQ to figure out what was actually happening at the Capitol and what the USCP needed. Another witness told us that MG Walker and his staff "were unable to tell Secretary McCarthy any details about where they [DCNG] were going, what they were doing," which was why Mr. McCarthy went to MPD HQ to do the planning. The witness said that the DCNG, including MG Walker and two DCNG liaison officers at MPD HQ, provided no meaningful input to Mr. McCarthy or did not produce a plan that set the conditions to deploy to the Capitol other than to say they were ready to go.

GEN Hokanson told us that the first state he called for help was Virginia. He spoke with the Adjutant General for Virginia, MG Tim Williams, at 3:46 p.m. At the time of his call, the Virginia Governor already had authorized mobilization of their 500-member response force. MG Williams told GEN Hokanson that the Virginia response force would arrive the following morning (January 7). GEN Hokanson then called the Adjutant General for Maryland, MG Tim Gowan, at 3:55 p.m. The Maryland Governor also ordered mobilization of Maryland's response force. MG Gowan informed GEN Hokanson that 100 members of the Maryland response force could be to D.C. in about 8 to 10 hours with a follow-on force of 150 to 200 more. GEN Hokanson also told us that he "reached out" to Delaware, Pennsylvania, New Jersey, and New York. He asked them if and how quickly they could provide support. GEN Hokanson told us that they "started the process [mobilizing their Guardsmen] really immediately on that."

#### *Events From 4:00 p.m. Through 4:59 p.m.*

The AOC received DHS NOC Update #4, current as of 4:00 p.m., at 4:08 p.m. Update #4 reported, in part, that:

- the Capitol was being evacuated to a safe alternate location as of 3:52 p.m.;
- 1,100 DCNG personnel were activated as of 3:38 p.m.; and
- a 41-person QRF was on the way from JBA to the Armory with 184 more on standby as of 3:23 p.m.

Update #4 also included:

- a 3:00 p.m. report that a civilian at the Capitol sustained a gunshot wound;
- a 2:35 p.m. report that Mayor Bowser ordered a citywide curfew to begin at 6:00 p.m.;



- a 2:45 p.m. report that the DHS Acting Deputy Secretary authorized Federal law enforcement agencies to immediately help the USCP; and
- a 2:23 p.m. open-source report that the Vice President evacuated the Capitol and the U.S. Senate was in recess.

BG Smith forwarded DHS NOC Update #4 to DoD and Army senior leaders at 4:50 p.m.

Mr. McCarthy arrived at MPD HQ at approximately 4:05 p.m. and met with Mayor Bowser and Chief Contee. BG LaNeve arrived several minutes later. Mr. McCarthy's aide carried a map of the city, a lesson learned from his experience with responding to civil disturbances in June 2020. Witnesses told us that not having heard from MG Walker regarding any specific plan, Mr. McCarthy laid the map on a table. Mr. McCarthy, Mayor Bowser, Chief Contee, and others present drafted a plan that identified where the DCNG personnel would go, the route they would take, with whom they would connect when they arrived, what they would do when they got there, whom they would support, who was in charge, and who the key leaders were. Mr. McCarthy then telephonically briefed Mr. Miller and GEN Milley on the draft plan. Mr. Miller concurred with the plan and authorized the deployment of the DCNG to the Capitol. According to BG LaNeve, it took about 20 minutes to work out these details before giving an order to initiate the movement plan.

Mr. Sund said that he e-mailed the written request for DCNG support to MG Walker at 4:07 p.m.

The TCP OIC told us that she received a text message from the Sergeant Major for the TF Guardian Commander at 4:11 p.m. directing all TCP and Metro station personnel to remain in place. Around this same time, the TCP OIC learned that that roughly 90 DCNG personnel from the afternoon relief shift were re-missioned to the QRF and put under the command of the TCP Deputy OIC. The TCP OIC's day shift personnel were not re-missioned.

At approximately 4:13 p.m., the USCP requested the support of Pentagon Force Protection Agency officers through a standing mutual aid agreement. Mr. Miller approved the request for law enforcement support.

Witnesses told us that BG LaNeve called MG Walker at approximately 4:25 p.m. and told him to be ready to move to the Capitol. Mr. McCarthy discussed by telephone the plan he and the D.C. officials developed with the FBI's Deputy Director, who provided a location for DCNG personnel to meet with law enforcement. Mr. McCarthy and other witnesses said that Mr. McCarthy called Mr. Miller again at approximately 4:30 p.m. Mr. McCarthy briefed Mr. Miller, who concurred with the plan to have the DCNG meet with and follow the MPD to conduct perimeter security and clearance operations as part of a joint USCP, FBI, MPD, and DCNG operation to clear the Capitol. Witnesses explained that "perimeter and clearance operations" meant reinforcing the perimeter and clearing the area outside the Capitol of protesters, but not entering the Capitol.

Mr. McCarthy called MG Walker at approximately 4:35 p.m. and told him that Mr. Miller approved the re-mission request. Mr. McCarthy told MG Walker to immediately move all available DCNG personnel from the Armory to Lot 16 at the corner of 1st Street and D Street and meet with

the MPD Assistant Chief to perform perimeter and clearance operations.<sup>69</sup> After Mr. McCarthy gave MG Walker the deployment order, he handed the telephone to BG LaNeve, who told MG Walker of the plan's details.

BG LaNeve recalled that when Mr. Miller approved the re-mission plan, there was still no meeting point established. He told us that Mr. McCarthy directed him to get the DCNG moving to the Capitol. BG LaNeve said that he then called MG Walker, telling him to make sure his troops were ready to move to the Capitol and that he [BG LaNeve] would identify the linkup meeting point. BG LaNeve said that approximately 20 or 30 minutes later, at around 5:00 p.m., that he again called MG Walker, and at this time provided the location for DCNG personnel to meet with law enforcement. We reviewed contemporary handwritten notes from Mr. McCarthy's aide, which indicated that at 4:36 p.m., BG LaNeve and a witness coordinated with MG Walker, advised him to mobilize 150 DCNG personnel, and move, under police escort, to 1st Street and D Street. DCNG personnel would meet FBI personnel there and move into position to establish an inner cordon.<sup>70</sup>

Mr. McCarthy spoke on the telephone with the Maryland Governor at 4:40 p.m. The Governor offered to send Maryland NG forces to D.C. to help, and Mr. McCarthy accepted.

Mr. Miller told us that at various points during the afternoon, he spoke to several Members of Congress. He informed them of the National Guard mobilization and that he authorized the National Guard to respond to the events at the Capitol. He also spoke to and provided the Vice President a situation report. He did not speak to the President on January 6, 2021.

#### *Events From 5:00 p.m. Through 5:59 p.m.*

The DCNG's Routine Report for the SecArmy for 1700 (5:00 p.m.) reported that:

- MG Walker is Senior Leader on site (at the Armory);
- demonstrators breached the Capitol at 1:50 p.m. and the MPD Emergency Operations Center reported shots fired in the Capitol; the USCP evacuated and cleared the Capitol; two officers were reported shot and one civilian was reported killed on Capitol grounds; no Service member casualties occurred; SecDef and SecArmy approved encampment of the DCNG;
- thousands of demonstrators remained on Capitol grounds and law enforcement was in the process of clearing the Capitol; two suspicious pipe bomb-like devices were cleared at 4:30 p.m. by the MPD and USPP; Mayor Bowser imposed a 6:00 p.m. curfew;
- The Ellipse had 80,000 peaceful demonstrators at Lincoln Memorial/Mall and 10,000 demonstrators with significant civil disturbance activity at Capitol Hill;
- USCP requested an additional 200 DCNG personnel to support the USCP;

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<sup>69</sup>There are two 1st and D Street intersections near the U.S. Capitol. A DCNG official confirmed the linkup (meeting) point was 1st and D Streets Northeast, next to USCP headquarters.

<sup>70</sup> 1st and D Streets Northeast.

- DCNG members were not targets, but collateral threats existed; the risk of small arms was significant; and
- there were no recommendations for Army Senior Leader actions.

Notes that Mr. McCarthy's aide took as events happened stated that at 5:00 p.m., Mr. McCarthy "launches – riot gear – NG QRF from MPD thru [BG] LaNeve." We asked the aide to clarify this note, and he told us that Mr. McCarthy, believing MG Walker received the approval to act and information he needed 30 minutes earlier, called [DCNG HQ] to ask if the DCNG was "on station" at the Capitol, and learned they had not yet moved (from the Armory to the Capitol). The aide stated that Mr. McCarthy "re-issued the same 'go' order" that he gave MG Walker approximately 30 minutes earlier.

TCP personnel returned to the Armory at approximately 5:00 p.m. At the Armory, they turned in their riot gear for those personnel who might need it, rested, and waited to find out what their mission would be on January 7, 2021. These individuals did not deploy to the Capitol. BG Ryan told us he did not repurpose the day shift troops for the QRF or as a civil disturbance unit because they had already been deployed during the day.

At approximately 5:00 p.m., BG LaNeve again called MG Walker and gave him the location to meet with law enforcement. Another witness who was with Mr. McCarthy at MPD Headquarters told us that MG Walker did not get "approval to do the specific actions" until close to or just after 5:00 p.m. This witness confirmed to us that no one conveyed to MG Walker the specific meeting point and other details until after 5:00 p.m.

At approximately 5:00 p.m., GEN McConville re-joined the VTC bridge the Army Staff established earlier in the afternoon to plan a response to events at the Capitol. GEN McConville said that at approximately 5:05 p.m., he asked MG Walker, who was also in the VTC, if he "had authority to go [to the Capitol]," and MG Walker replied, "Yep. What do you want me to do?" GEN McConville said that he advised MG Walker that the best thing to do would be to "Go command. Go do the right thing, the right way, get out there and do what you need to do."

MG Walker stated that he received the authorization to go to the Capitol at 5:08 p.m. or 5:09 p.m. According to MG Walker, he had approximately 155 Guardsmen ready to deploy, but he could have sent that number (155) "earlier in the afternoon" and had them at the Capitol "in 20 minutes." MG Walker stated that the DCNG personnel arrived at the Capitol at 5:20 p.m. and that he arrived between 5:20 p.m. and 5:30 p.m. According to MG Walker, the USCP swore in the DCNG personnel as "Special Police," and the DCNG forces helped establish a security perimeter on the east side of the Capitol. The DCNG [REDACTED] told us that at 5:20 p.m., the DCNG had 156 Guardsmen at the Capitol to support civil disturbance operations.

According to a witness, Mr. McCarthy had to reissue the deployment order to MG Walker 30 minutes after he originally conveyed it to MG Walker, which the witness believed contradicts MG Walker's March 3, 2021 testimony to the Senate Homeland Security and Governmental Affairs and Senate Rules and Administration Committees. The witness told us that MG Walker's assertion to those committees that the DCNG could have responded to the Capitol in 20 minutes was not true. The witness said, "It took 27 minutes for [MG Walker] to get the order from [Mr. McCarthy] around [4:35 p.m.] to actually get his wheels moving on the bus." In addition, the witness said "mischaracterization" was the word the witness would use to describe MG Walker's response to questions from congressional committees.

Other witnesses, including on-scene DCNG personnel, provided varying accounts of times, actions, and personnel numbers. BG Ryan told us that 154 DCNG personnel moved to the Capitol at 5:08 p.m. He said that the 154 personnel, whom he described as the expanded QRF, included 40 Air National Guardsmen previously staged at JBA as the original QRF, 90 Guardsmen originally detailed as the night shift at the TCPs, and 24 Guardsmen who would have been part of the night shift at the Metro stations. BG Ryan also told us that four buses left the Armory and “staged at a rally point.” Once staged, the Guardsmen “got off the buses, assembled, and then moved under the direction of civil authority to establish the perimeter and expand the perimeter security purposes at the Capitol.” He added that the Guardsmen assigned to the morning TCPs and Metro stations returned to the Armory, but did not move out “with that element [QRF] of four buses ... to the Capitol.”

The TF Guardian Commander told us that BG Ryan called him sometime between 4:50 p.m. and 5:39 p.m. and advised that the QRF was on the way. Like BG Ryan, the TF Guardian Commander said that 154 DCNG personnel moved to the Capitol.

The TCP Deputy OIC recalled that the authorization to depart the Armory occurred closer to 5:00 p.m. and put the total number for the now-expanded QRF at approximately 136. The buses did not leave the Armory until 5:23 p.m. The buses arrived at Lot 16 at 160 D Street Northeast at 5:45 p.m., the USCP swore the QRF in as “Special Police,” and then they waited for approximately 45 minutes before moving towards the Capitol.

MG Walker stated that when he received permission to deploy to the Capitol, “I already had the Guardsmen on the buses,” but the QRF OIC told us that at 5:10 p.m., “someone came running down” and said, “Everybody on the buses now.” He said that he and “59 or 60” personnel boarded the buses and departed for the Capitol at 5:15 p.m.

At 5:15 p.m., Mr. McCarthy updated Mr. Miller and GEN Milley via phone on how things were going. They discussed planning considerations, including troop levels, mission duration, and how to tighten the coordination loops with other Federal agencies.

At 5:28 p.m., the DCNG pulled into a parking lot at the corner of 2nd and C Streets Northeast, outside the USCP HQ building. The TF Guardian Commander told us that he coordinated with the USCP on where the QRF would assemble and relayed the location (Lot 16) to the QRF OIC. At 5:29 p.m. the QRF OIC responded, “Apparently we pulled into the wrong [parking] lot. Trying to reroute to Lot 16 now.” The QRF OIC confirmed that the response force arrived at the wrong parking lot at approximately 5:29 p.m. and had to move to a different lot. Mr. Sund told us that the DCNG personnel arrived at the Capitol and were sworn in as “Special Police” by 5:40 p.m.; however, the QRF OIC told us that the DCNG troops were sworn in at USCP HQ in the parking lot.

The QRF OIC told us that they waited for about 20 minutes before the buses left again with a police escort and arrived at the east side of the Capitol, and the QRF got off the buses at approximately 5:55 p.m.; this DCANG group and the TCP Deputy OIC’s DCARNG group totaled about 100 personnel. Before arriving at the Capitol, they received no information about what the task would be or whom they would support. The QRF OIC, as the senior officer, took charge, and the DCARNG and DCANG operated as one unit. The TCP Deputy OIC told us that the groups were “side-by-side” but that he remained in charge of his contingent.

The Washington Headquarters Services Acting Director sent an e-mail at 5:50 p.m. to the Office of the Secretary of Defense staff members advising them that 20 Pentagon Force Protection

Agency line officers were deployed to the Capitol under the mutual law enforcement aid agreement and were in-processing with the USCP.

*Events From 6:00 p.m. Through 6:59 p.m.*

The QRF OIC told us that the DCNG response force moved into the line of law enforcement personnel holding the perimeter on the west side of the Capitol at approximately 6:00 p.m. The OIC and his personnel followed a senior USCP officer around the north side of the Capitol to the west side where they relieved law enforcement officers on the front line. The DCNG [REDACTED] told us that the QRF immediately provided civil disturbance support on the front of the Capitol, clearing the crowds off the grounds and onto the National Mall. According to the QRF OIC, up to a “couple thousand” protesters were still on the front line in a compact area, and there was shouting and some pushing, and protestors threw projectiles at the DCNG personnel. He said that from approximately 6:00 p.m. until approximately 7:25 p.m. they remained on the line while pushing the crowd back an estimated 300-400 yards.

Mr. McCarthy briefed Mr. Miller, GEN Milley, the White House Counsel, the National Security Advisor, and officials from DHS, DoI, DoJ, and the FBI by telephone at approximately 6:00 p.m. He reported that there were 150 DCNG and 350 FBI personnel at the Capitol, with another 150 DCNG personnel on the way. The group set a goal to clear the Capitol and reconvene Congress by 9:00 p.m.

The AOC forwarded DHS NOC Update #5, as of 6:00 p.m., to HQDA at 6:09 p.m. Update #5 reported, in part, that 1,000 police officers were on Capitol grounds and that the building was “clear” as of 6:04 p.m. Update #5 also included open-source reports that:

- the MPD joined ATF, USPP, and USCP officers at the Capitol to “continue to clear rioters” (3:47 p.m.);
- [REDACTED]
- the NGB and DoD were planning with the DoJ to clear the Capitol (4:17 p.m.);
- four police officers were injured amid protests at the Rayburn House Office Building (4:17);
- protesters breached the north door of the Capitol a second time (4:22 p.m.);
- the USCP cleared rioters from the U.S. Senate floor (4:46 p.m.);
- Mayor Bowser declared a riot (4:55 p.m.); and
- tear gas was deployed at the Capitol (5:57 p.m.).<sup>71</sup>

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<sup>71</sup> Open source information may be defined as information which is publicly available and that anyone can lawfully obtain by request, purchase or observation. Open source information may not be regarded as credible unless the source is known and trusted, or if the information is verified by other means.

The DCNG Operations Director notified GEN Hokanson at 6:07 p.m. that MG Walker was with Mr. McCarthy at the Capitol.

According to a DoD-established official timeline, by 6:14 p.m., the USCP and MPD, with help from the DCNG, established a perimeter on the west side of the Capitol.

Mr. McCarthy spoke on the telephone with the FBI Deputy Director at 6:29 p.m. to maintain shared situational awareness and discuss resources needed to secure the Capitol. At 6:50 p.m., Mr. McCarthy spoke on the telephone with the Virginia Governor to thank him for sending a large personnel contingent to provide support at the Capitol.

Maj Gen Nordhaus told us that approximately 3-4 hours after Mr. Miller gave oral authorization to mobilize the National Guard, the Maryland National Guard committed 500 troops, Virginia committed 2,000, Pennsylvania committed 1,000, New York committed 1,000, New Jersey committed 500, and Delaware committed 200. GEN Hokanson added that “we had commitments of 6,200” Guardsmen, and all would operate under Title 32 orders.

*Events From 7:00 p.m. Through 7:59 p.m.*

A DCNG official e-mailed Mr. McCarthy, MG Walker, LTG Piatt, and BG LaNeve at 7:03 p.m. and reported that the USCP declared the Capitol’s interior and east front were clear of demonstrators as of 6:45 p.m., and that the DCNG and law enforcement were clearing the west front.

The QRF OIC told us that sometime after 7:00 p.m., law enforcement officers began ordering the protesters to leave the area. He said that the DCNG personnel formed a “protective corridor” that would facilitate arrests by law enforcement officers of those who refused to disperse, and added that DCNG personnel did not take part in any arrests.

At approximately 7:15 p.m., Mr. Miller, Mr. McCarthy, GEN Milley, Mayor Bowser, Chief Contee, and Mr. Rosen had a telephone call with the Vice President, Speaker of the House of Representatives, and the Senate Majority and Minority Leaders to discuss the situation at the Capitol. Mr. McCarthy told us that they informed the Vice President and Members of Congress that Congress could reconvene at 8:00 p.m.

The TF Guardian Commander told us that after leaving USCP HQ, he proceeded to the west side of the Capitol at 7:10 p.m. to check on the QRF personnel. Between 7:18 p.m. and 7:23 p.m., he saw the QRF personnel posted in a line formation and recalled rioters throwing unknown items at the QRF that “sounded like either like [*sic*] screws, or nails, or something was hitting their [DCNG] shields.” At that point, the MPD:

formed a line using D.C. Guard on each side basically like a lane and they started grabbing rioters and pulling them through and walking them onto a bus they had to—as they made their arrest and from that point on that night everybody that remained just they were [*sic*] getting arrested.

The DCNG 33rd CST Commander told us that his CST unit was not at the Capitol.

MG Walker met with Mr. McCarthy at approximately 7:52 p.m. at MPD HQ. The witness described how MG Walker told Mr. McCarthy the day shift would go home, to which Mr. McCarthy

responded, "No. No they're not." Mr. McCarthy directed that all available DCNG personnel remain on duty; there would be no shift change for those who began the day at Metro stations and TCPs, or for the NG personnel who were at the Capitol. A witness to this call told us that Mr. McCarthy wanted to deploy every available asset to the Capitol. Mr. McCarthy also told MG Walker to begin planning to integrate out-of-state NG personnel arriving in D.C.

*Events From 8:00 p.m. Through 8:59 p.m.*

The TCP Deputy OIC stated that there had not been time to issue radios to DCNG personnel before leaving the Armory, and the QRF used cellular telephones and hand signals to communicate until a DCNG officer issued radios between 8:30 p.m. and 9:00 p.m. The DCANG personnel who came from JBA had no experience in operating the radios or in using proper radio communications protocols, and the QRF OIC continued to use his personal cellular telephone to communicate with DCNG leadership, the MPD, and the USCP.

The QRF OIC estimated that 20-30 additional DCARNG personnel arrived between 8:00 p.m. and 9:00 p.m. He noted that by then only a few protesters and some news reporters remained on the Capitol grounds. He said that the USCP asked DCNG personnel to continue to maintain a security perimeter, which they did until relieved at approximately 2:30 a.m., January 7, 2021. DCANG personnel relieved the QRF at 1:12 a.m.

GEN Hokanson received an email from Mr. Miller's office at 8:51 p.m. that contained a memorandum from Mr. Miller directing GEN Hokanson identify state NG units near the District of Columbia that could respond and conduct civil disturbance or support law enforcement operations. For the units identified, Mr. Miller authorized additional training under 32 U.S.C. § 502(f), which authorizes commanders to order NG members to perform training or other duties to carry out operations or missions at the request of the President or SecDef.

*Events From 9:00 p.m. Through 11:59 p.m.*

Mr. Miller, Mr. McCarthy, GEN Milley, and GEN Hokanson spoke on the telephone at approximately 9:00 p.m. They discussed the number of DCNG personnel currently at the Capitol (250-270) and planned for the expected arrival over the next several days of up to 6,200 out-of-state NG personnel.

According to the TCP OIC, "there was some back and forth about whether we repurpose the TCP mission to go to the Capitol or whether we put them back on the TCP." At approximately 9:00 p.m., she was told of the decision to continue with the TCP mission for January 7, 2021, as this remained the primary duty for DCNG personnel in accordance with the D.C. RFA.

BG Smith e-mailed senior DoD and Army leaders at 9:56 p.m. and reported that since the DHS NOC Update #5 at 6:09 p.m.:

- approximately one company of DCNG personnel had arrived at the Capitol and integrated with Federal law enforcement;
- planning was ongoing to add additional Guardsmen in support of the USCP;

- planning was ongoing to augment the DCNG with out-of-state NG personnel upon receipt of “validated requests for assistance”; and
- the Army Staff was facilitating procurement and assembly of fencing at the Capitol.<sup>72</sup>

Mr. McCarthy left MPD HQ at approximately 9:45 p.m., and at 9:58 p.m., he met with MG Walker and senior DCNG leaders at the Armory. They discussed putting DCNG personnel on 30-day mobilization orders and plans to integrate large numbers of NG personnel who would report from various states.

After leaving the Armory, Mr. McCarthy arrived at the Capitol at 10:15 p.m., viewed the scene, and visited with DCNG personnel performing the perimeter security mission. He held a meeting with Mr. Sund, MG Walker, and the TF Guardian Commander between 10:20 p.m. and 10:30 p.m. At this meeting, Mr. Sund thanked MG Walker for the DCNG’s help, and Mr. McCarthy promised Mr. Sund that additional Guardsmen from other states would arrive to help.

Mr. McCarthy left the Capitol and arrived at MPD HQ at 11:00 p.m., where he coordinated with Chief Contee and again spoke on the telephone with Mr. Miller.

Maj Gen Nordhaus notified the NG Joint Force Headquarters in Virginia, Maryland, Pennsylvania, New York, New Jersey, and Delaware at 11:27 p.m. that they were “now approved to begin movement into the D.C. area.” A “DCNG CDO Force Flow” briefing chart showed that 255 DCNG personnel were supporting Federal law enforcement by the end of January 6, 2021. The chart also showed the expected inflow of forces for January 7 through 10, 2021. It noted that Mr. McCarthy set a goal of having 850 Guardsmen on site by noon on January 7, 2021.

GEN Hokanson reached out to BG Dean and the DCNG staff on the status of Joint Reception Staging Onward Movement and Integration operations. He wanted to know the location of the operations staging area and how soon they would be ready to receive out-of-state personnel.<sup>73</sup> According to GEN Hokanson, “The last thing we ever want to do is have [the out-of-state troops] go directly into an environment that they know nothing about.”

### *Witnesses’ Reflections on the DoD’s January 6, 2021 Actions*

Mr. McCarthy summarized the day’s events by stating that the DCNG’s “posture in the day was for traffic control points and Metro crowd facilitation,” and the “intelligence didn’t warrant” preparing to support anything other than what D.C. officials requested in the D.C. RFA. He said that he understood that civilian leaders were under duress and “wanted things to be faster,” but there was a “lack of clarity, and a lack of focus, rehearsal, and preparation. It was a cold start.” He also told us that the DoD did not deny any request for civil disturbance support and no one recommended to him that he should deny any request.

Regarding the DoD’s preparations for January 6, 2021, LTG Flynn and LTG Piatt told us that protecting the Capitol is a law enforcement mission, not a DoD mission. Four Army Staff witnesses

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<sup>72</sup> This report does not address any procurement matters or fencing installed at the Capitol.

<sup>73</sup> The Joint Reception Staging Onward Movement and Integration process identifies incoming personnel, their mission capabilities, and the assets they bring, and then pairs them with the support request from the host state NG and civil authorities during a crisis or natural disaster. The complete life cycle of the process begins with receiving personnel and equipment, transporting assets to their requested locations, and providing the logistical support required to safely conduct operations. Then they must return personnel and equipment to their home station when NG or Federal support is no longer required, all while maintaining 100 percent accountability.



told us that the DoD, including the Army and the DCNG, responded quickly under the circumstances. LTG Piatt in particular praised the DCNG's response. He said:

The time that it [the response] took was [the] time [to] withdraw from one mission, re-equip, re-mission, recall forces, and reconfigure support packages for a completely new mission. ... get back to your headquarters, in this case the Armory. Get a new set of mission orders, get your equipment issued, reconfigure, and head to a different mission that was never even in our wildest estimates was [*sic*] going to be a part of their mission set for this time [January 5-7, 2021]. ... I think they did [it] extremely fast and I don't think anyone delayed them. I think there's confusion, there's fog, there's friction, there's frustration, but we knew that we could not just commit a force to an unknown mission with an unclear ... task and purpose ... .

[Paragraph omitted]

If we would have piecemealed forces in there without a mission we would have run the risk of doing incredible harm and probably losing the force that was going to be needed to secure the Capitol. In my professional observation this was done with extreme professionalism and extreme speed.

GEN McConville stated that if any law enforcement organization "wanted a robust military deterrent at the Capitol [for January 6, 2021] one should have been requested," as was the case for the January 20, 2021 presidential inauguration.<sup>74</sup> He continued by saying that the DoD must be very careful about domestic employment of military resources for a law enforcement mission. GEN McConville told us that the scope of our review of January 6, 2021 events could have been different if the DoD had rushed Soldiers, without a plan, into a chaotic situation and the Soldiers were not properly trained and equipped for riot control and became casualties, or they were equipped and armed and shot civilians to defend themselves.

Mr. McCarthy told us that the DoJ, as the lead Federal agency for the events of early June 2020, established a command and control structure, coordinated between the supporting organizations, and assigned tasks and resources. Mr. McCarthy's assessment was that the DoJ did not perform its necessary lead Federal agency functions on January 6, 2021. To stress the complexity that required the whole-of-government leadership of a lead Federal agency, he pointed out that the MPD, USPP, and USSS all were at The Ellipse in the morning. The crowd crossed multiple different Federal and local jurisdictions as it converged on the Capitol from The Ellipse and other locations in the city, yet no single law enforcement agency was in charge.

Witnesses distinguished between the way civilian law enforcement agencies and the military respond to calls for help, explaining that individual law enforcement officers respond immediately to distress calls while the military sends units after determining mission details and issuing orders. One of these witnesses told us that the Army would not send individual Guardsmen, who did not have riot gear, directly from their homes or TCPs to the Capitol. GEN McConville stated that the Army's most ready and trained units require 2 to 3 hours to respond. LTG Flynn added that the DCNG had to re-position, re-organize, re-orient, and then re-mission forces, and did a very good job responding quickly under the circumstances on January 6, 2021.

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<sup>74</sup> DHS designated the January 20, 2021 presidential Inauguration as a National Special Security Event. For information about this, visit <https://www.secretservice.gov/protection/events/credentialing#:~:text=What%20is%20a%20National%20Special,grants%20the%20Secretary%20this%20authority.>

### *Significant Events After January 6, 2021*

Mr. McCarthy traveled to USCP HQ, where he met with Mr. Sund and an Assistant USCP Chief at approximately 12:23 a.m. on January 7, 2021. They discussed the previous day's events and what was still to come, and Mr. McCarthy assured Mr. Sund of the DoD's continued support. A witness who accompanied Mr. McCarthy told us that the MPD's Assistant Chief said that the USCP had no credible evidence in advance that anything like the attack on the Capitol was going to happen.

At 2:15 a.m., January 7, 2021, the DCNG reported that 740 Guardsmen were in support of operations at the Capitol. According to the DCNG [REDACTED], the Guardsmen conducted support at the Capitol and the necessary command and control, medical support, sustainment operations, and functions. Guardsmen also initiated the activities required for the Reception, Statement, Onward Movement and Integration process. At approximately 2:30 a.m., additional NG personnel relieved the QRF personnel who arrived just before 6:00 p.m. on the previous night, January 6, 2021.

The TCP mission continued on January 7, 2021, from 7:30 a.m. to between 6:00 p.m. and 8:00 p.m. Although the 30 TCPs were renumbered, the intersections remained the same. The remaining TCP personnel were then broken down into platoons. Some personnel did not report for duty due to possible COVID-19 exposure. The DCNG staffed all 30 TCPs, some with only two DCNG personnel and at least one MPD officer. According to the TCP OIC, the Pennsylvania NG eventually relieved the DCNG personnel at the TCPs after a couple of days, but the TCP mission continued through the January 20, 2021 presidential inauguration. The TCP OIC added that during the TCP mission, her personnel sustained no injuries, but encountered one incident involving some Proud Boys yelling racially derogatory language.

On January 7, 2021, at 9:07 a.m., the NGB Operations Directorate e-mailed Maj Gen Nordhaus the number of NG forces expected to report to the Armory over the next several days. Following reception and staging at the Armory, the forces would integrate with DCNG forces supporting Federal law enforcement. A spreadsheet attached to the e-mail showed the total numbers, by state, as of 9:04 a.m. It indicated that the DoD expected 2,100 Guardsmen to be on duty at the Capitol by the end of Thursday, January 7, 2021; 5,200 by the end of Friday, January 8, 2021; and 6,200 by the end of Saturday, January 9, 2021. Table 3 is an excerpt from the spreadsheet and indicates the number of National Guardsmen by state.

*Table 3. Number of National Guardsman by State January 7 through 9, 2021*

	Jan. 7 Thurs AM	Jan. 7 Thurs PM	Jan. 8 Fri AM	Jan. 8 Fri PM	Jan. 9 Sat AM	Jan. 9 Sat PM
<b>DC</b>	1,000	1,000	1,000	1,000	1,000	1,000
<b>VA</b>	500	500	500	2,000	2,000	2,000
<b>MD</b>	500	500	500	500	500	500
<b>PA</b>	0	50	200	500	800	1,000
<b>NY</b>	0	50	200	500	800	1,000
<b>NJ</b>	0	0	0	500	500	500
<b>DE</b>	0	0	0	200	200	200

The e-mail to Maj Gen Nordhaus also stated that Guardsmen would be on orders for up to 30 days, and that four different states lacked between 77 and 700 sets of riot control gear.

Army National Guard (ARNG) Execution Order 100-21 detailed the mission, intent, end-state, equipment, and other information for ARNG forces arriving in D.C. to support the DCNG.<sup>75</sup> The Execution Order stated, in part, that the SecDef directed the ARNG to assemble troops prepared to support law enforcement to prevent further civil unrest and restore law and order. The ARNG would mobilize and deploy DCNG personnel in D.C. on January 7, 2021, to augment the DCNG in its support of civil authorities to protect life and infrastructure. Soldiers would deploy with individual weapons, riot gear, small arms protective plates, and personal protective equipment.

Mr. Sund signed a letter to MG Walker, dated January 7, 2021. He wrote:

I confirm the emergency request, made in accordance with sections 1970 and 1974 of Title 2, U.S. Code, conveyed on the evening of January 6, 2021, for Department of Defense support in protecting Members of Congress and other Congressional personnel, and in securing the grounds and property of the United States Capitol.

Specifically, the Board requests that the Department of Defense make available a minimum of 1,500, and a maximum of 6,200 National Guard personnel to assist in protecting the perimeter of the U.S. Capitol, with a minimum of 850 per shift.

[Paragraph omitted]

This support is required through January 24, 2021.

Mr. Rosen signed a letter to Mr. McCarthy, dated January 12, 2021, that acknowledged his January 4, 2021 informal advice that Executive Order 11485 and the D.C. Code authorized the planned DCNG support of the D.C. civil authorities for January 5 through 7, 2021, as requested in the D.C. RFA. [REDACTED]

Mr. Rapuano signed a memorandum for Mr. Miller on January 15, 2021, to document approval for NG support to the USCP in response to incidents at the Capitol on January 6, 2021. He attached Mr. Sund's January 7, 2021 written request to MG Walker and wrote:

You approved the requested support verbally [orally], and ordered full mobilization of the DCNG in response to this request, including the Quick Reaction Force (QRF), and the temporary re-missioning of any DCNG personnel who had otherwise been supporting the DC Metropolitan Police Department as authorized by you on January 4, 2021.

You also directed the Chief of the National Guard Bureau to request on your behalf that State officials order NG personnel to duty under Section 502(f) of Title 32, U.S. Code to assist in fulfilling the request.

DoD may provide assistance to the USCP in accordance with Section 1970 of Title 2, U.S. Code, in the performance of its duties related to protection. When

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<sup>75</sup> ARNG Execution Order 100-21, "Civil Disturbance Operations (CDO) in the District of Columbia (D.C.)," January 8, 2021.

such assistance is temporary, DoD may provide it on a non-reimbursable basis. Because you have authority to provide support under Section 1970, you may authorize NG personnel, including DCNG personnel, to fulfill the request in a Section 502(f) of Title 32, U.S. Code, duty status.

Based on your authorization of duty under Section 502(f), and at your request, State Governors ordered their NG forces to duty to support this mission, and those forces remain under the command and control of their respective State Governors.

Section 277 of Title 10, U.S. Code, requires reimbursement for NG personnel providing support to law enforcement agencies using NG personnel performing duty under Section 502(f) of Title 32, U.S. Code, notwithstanding any other provision of law. Pursuant to Section 277(c), the Secretary of Defense may waive this requirement for reimbursement if such support results in a benefit to the NG personnel providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

Mr. Rapuano recommended that Mr. Miller authorize the support on a non-reimbursable basis, in accordance with 10 U.S.C. § 277, "Reimbursement," paragraph (c). Mr. Rapuano also recommended that the NGB Chief request, on Mr. Miller's behalf, that State officials order NG personnel to duty under 32 U.S.C. § 502(f). He added that this included the QRF, and the temporary re-missioning of any DCNG personnel who had otherwise been supporting the MPD as authorized on January 4, 2021. Mr. Miller initialed the memorandum on January 19, 2021, indicating that he approved Mr. Rapuano's recommendations. Mr. Rapuano coordinated the memorandum with Mr. McCarthy, GEN Hokanson, the DoD OGC, and the Joint Staff before he sent it to Mr. Miller for approval.

#### *DoD OIG Conclusions on DoD Actions On and After January 6, 2021*

We concluded that the DoD's actions to respond to the USCP's RFA on January 6, 2021, were appropriate, supported by requirements, consistent with the DoD's roles and responsibilities for DSCA, and complied with laws, regulations, and other applicable guidance. In particular, we determined that the decisions made by Mr. Miller, Mr. McCarthy, and other senior DoD officials, and the actions taken by the DoD in response to the civil disturbance at the Capitol on January 6, 2021, were reasonable in light of the circumstances that existed on that day and requests from D.C. officials and the USCP.

We reached our conclusion based on the following.

- The Capitol Police Board authorized and Mr. Sund made an oral emergency RFA to the DoD at 2:08 p.m. on January 6, 2021. Mr. Sund followed up on January 7, 2021, with a written version of the request.
- Mr. Miller was the appropriate approval authority for the USCP's RFA, and there was no requirement for him to obtain presidential approval to respond because:
  - DoD policy states that the SecDef is the approval authority for requests for direct assistance in support of civilian law enforcement agencies,

- Executive Order 11485 authorized the SecDef, through the DCNG CG, to command the DCNG when the DCNG is in a militia status, and
  - Section 1970, title 2, United States Code, "Assistance by executive departments and agencies," authorizes the DoD to help the USCP when the Capitol Police Board requests assistance.
- Subordinate commanders, including Mr. McCarthy and MG Walker, had to get Mr. Miller's approval to fulfill the USCP RFA. They did not have immediate response authority because that authority does not apply to supporting civilian law enforcement activities. They could not exercise emergency authority because exercising that authority requires that it be impossible to communicate through the chain of command to obtain a presidential authorization to conduct civil disturbance operations, and those circumstances did not exist on January 6, 2021.
- Mr. Miller approved the USCP RFA.
- Mr. Miller ordered the DCNG to mobilize.
- Mr. Miller properly requested that state officials order NG personnel to duty under 32 U.S.C. § 502(f) to help with DoD's response to the USCP RFA.
- Mr. Miller directed GEN Hokanson to request that officials from several neighboring states order NG personnel to duty to help with the DoD response.
- Mr. Miller approved the CONOPS that Mr. McCarthy developed for the DCNG's response to the events at the Capitol.

We also determined that DoD officials did not improperly delay or obstruct the DoD's response to the USCP RFA on January 6, 2021. We made this determination based on the following.

- We determined that the overall response time from receipt of the USCP RFA to the arrival of DCNG personnel at the Capitol was approximately 3¼ to 3½ hours.
- We did not identify a standard that required the DoD to fulfill a DSCA RFA within a specified amount of time after receiving one.
- Following the issuance of Executive Order 11485, the SecDef delegated to the SecArmy, through the DCNG CG, command of all DCNG operations in a militia status when aiding D.C. civil authorities.
- The only DCNG force available to respond to the events at the Capitol between the time rioters began to breach the Capitol perimeter and approximately 4:30 p.m. was the 40-person QRF. The DCNG did not move the 114 troops on duty at TCPs and Metro stations and these troops remained on station until they returned to the Armory, and they were not deployed to the Capitol. The DCNG did not supplement the QRF with additional troops until after troops assigned to the evening shift at TCPs and Metro stations began to report to the Armory for duty and were equipped with riot gear and added to the response force.

- The officer designated to lead the QRF on January 4, 2021, had no law enforcement or civil disturbance experience.
- Only 16 members of the QRF were law enforcement specialists. Eight members of the QRF were transferred to other duties and replaced before January 6, 2021.
- QRF members received limited time on January 6 to train as a unit and were not trained on how to operate their tactical radios.
- Mr. McCarthy acted within his authority and discretion when he required a CONOPS before he would authorize MG Walker to deploy the DCNG to the Capitol in response to the USCP RFA.
- A CONOPS could be oral and needed only to identify a mission, task, and purpose, and basic command, control, communications, and logistics details.
- Concerns about optics and a potentially negative public impression created by sending NG forces to the Capitol while the Congress was certifying the Electoral College count did not impact DoD's response on January 6, 2021, because Mr. McCarthy was already requesting Mr. Miller's approval of the USCP RFA within minutes of the start of the teleconference in his office.

## **VI. DOD OIG REVIEW OBSERVATIONS AND RECOMMENDATIONS**

In Sections IV and V of this report, we detail and make conclusions about the DoD's actions before and on January 6, 2021. In this section, we detail our observations and make recommendations that the DoD, the Army, and the DCNG should consider to improve DSCA operations, policies, and procedures.

Many questions have surfaced in the media and in questions and comments from congressional committees about the DoD's response time to the Capitol on January 6, 2021. There is a longstanding principle in U.S. law, codified in statutes and DoD directives that requires civilian control of military operations in a domestic environment. The DCNG operations require SecDef authorization followed by SecArmy direction and guidance for any DCNG DSCA response to civilian authorities. Before and on the morning of January 6, 2021, DoD leadership had no indication that later that day the USCP would make an emergency DSCA RFA to the DoD for an immediate response to the Capitol. We also note that on January 5 and in the morning on January 6, no incidents occurred that foreshadowed the events of the afternoon of January 6 at the Capitol, and no Federal agency, including the USCP, requested DoD assistance for anticipated civil disturbances. Initial reports the DoD received about ongoing events during the early afternoon of January 6, 2021, were contradictory. For example, after the first breach of the Capitol perimeter, the Army Operations Center received information from the DHS suggesting that no major incidents were occurring.

While events unfolded on January 6, 2021, a chaotic and confusing situation developed that affected the conference call at approximately 2:20 p.m. between senior leaders from the DoD, Army Staff, DCNG, D.C. government, and USCP. This was critical because the USCP made its request for immediate emergency assistance during the conference call. Following Mr. Miller's subsequent

approval of the USCP RFA, Mr. McCarthy spent 25 minutes on multiple telephone calls to reassure civilian leaders and to correct inaccurate media reports that the Army denied the USCP RFA.

Differences also existed between the approaches Mr. McCarthy and DCNG leadership took to emergency response planning. This, coupled with the incorrect media reports, resulted in Mr. McCarthy traveling to MPD HQ to reassure Mayor Bowser personally that the DCNG would respond and to work with key civilian leaders to develop a CONOPS to deploy the DCNG to the Capitol.

Civilian law enforcement and the U.S. Armed Forces follow different doctrines for emergency responses to civilian incidents. Civilian law enforcement is configured and has a duty to respond immediately, as individual patrols, to emergency calls for help from the public and other law enforcement agencies. Civilian law enforcement normally has communications equipment that allows multiple jurisdictions to interact with and coordinate between the individual responders. Military personnel are trained to respond to civilian emergency events, not by sending individuals into an uncertain situation as they become available, but by assembling and deploying a force capable of decisive operations. Military doctrine requires that commanders first determine essential details, conduct a mission analysis, and then develop a thorough CONOPS. This is the process the DoD followed to support the December 31, 2020 D.C. RFA for only limited DCNG personnel for TCP and Metro Station support. In exigent circumstances, all of the planning steps can be completed orally, including the CONOPS.

The vast majority of DCNG personnel are not active duty personnel and the DCNG is not an emergency response organization equivalent to a police or fire department. The DoD has no units configured for immediate response to civil disturbances in the NCR, and the DCNG has no civil disturbance capability available for immediate response unless a force is requested and mobilized before a civil disturbance event. We note in Sections IV and V of this report that civilian authorities did not request DCNG civil disturbance response capability before the breach of the Capitol on January 6, 2021. The December 31, 2020 D.C. RFA, which requested limited DCNG support for TCPs and Metro stations on January 5-7, 2021, was not an emergency request.

The unprecedented events of January 6, 2021, highlighted areas where the DoD, Army, and DCNG could improve DSCA operations, policies, and procedures. Based on our review and for the reasons stated below, we recommend that the Secretary of Defense and the Secretary of the Army review and take appropriate action regarding the following.

#### *Operational Commander/Command and Control*

Executive Order 11485 places the SecDef in the DCNG chain of command. The SecDef subsequently delegated to the SecArmy the responsibility to command and control DCNG operations when conducted to support D.C. civil authorities. The SecArmy is not an operational military commander. The U.S. Northern Command (USNORTHCOM) was created on October 1, 2002. Part of USNORTHCOM's mission includes planning, organizing, and executing homeland defense and civil support missions throughout the United States. One of NORTHCOM's subordinate commands is Joint Force Headquarters National Capitol Region, Fort McNair, Washington, D.C. Although the NCR and D.C. fall within USNORTHCOM's area of responsibility, USNORTHCOM's roles and responsibilities are not clearly defined in the DSCA process for the D.C. RFA, the USCP RFA, or an immediate emergency response to assist civilian authorities within Washington, D.C. We recommend that the DoD take the following actions.

1. Review and update DoD DSCA policy and guidance concerning:
  - a. USNORTHCOM's role in providing support to civilian authorities within D.C. and the NCR; and
  - b. The command and control of the DCNG, including an operational commander for DSCA matters.
2. Integrate DoD's command and control with civilian authorities within the NCR in accordance with the National Emergency Communications Plan.

### *Communication*

Between January 5 and 6, 2021, the DCNG and Army Staff leaders defaulted to using mobile telephones, in many cases their personal devices, as the primary means of communication, including communications with supported local and Federal law enforcement agencies. In addition, Air Force elements of the DCNG response force, including members of the QRF, had no training on the use of multiband radios and radio communication protocols employed on January 6, 2021. Furthermore, some DCNG personnel did not receive multiband radios until after the USCP placed them into protective positions at the Capitol. We recommend that the DoD take the following actions.

1. Ensure DCNG and Army Staff leaders have reliable and functioning DoD-issued communications equipment.
2. Ensure DCNG personnel receive proper communications equipment before commencing civil disturbance operations.
3. Ensure DCNG personnel are fully trained on the use of multiband radios and communication protocols.

### *Planning*

The DSCA RFA process to request DCNG support is not codified in any directive. We also found no contingency plan that that DoD could have used on January 6, 2021, for a response to a civil disturbance within the NCR. We recommend that the DoD take the following actions.

1. Review and codify in policy the specific processes for Federal and non-Federal agencies to request military support for DSCA matters.
2. Consider formulating contingency plans for how the DoD and the DCNG should respond to major civil disturbance events within the NCR.
3. Conduct training with Federal and non-Federal agencies on how to submit a DSCA RFA to the DoD. The training should include information required by the DoD along with an explanation of the DoD approval process.
4. Establish information-sharing meetings with Federal and local agencies within the NCR when large-scale events are planned. These meetings should occur at a level below the SecArmy and be in accordance with established laws and DoD policies.



*Training*

DCNG members assigned to the QRF were not sufficiently trained to conduct high-intensity civil disturbance operations such as the situation presented on January 6, 2021. Many of the DCNG's QRF personnel either had minimal or no CDO training or experience. Fewer than half of the personnel assigned to QRF duty had law enforcement or civil disturbance operations experience. Eight DCNG personnel were assigned to the QRF on the morning of January 6, 2021, and received minimal training before being deployed to the Capitol. We recommend that the DoD take the following actions.

1. Establish selection criteria and appropriate training for personnel performing as members of the DCNG QRF. This training should include scenarios and, where possible, training with Federal and non-Federal agencies.
2. Establish a QRF certification process for all personnel assigned to the DCNG QRF.
3. The DCNG QRF OIC should be someone with a background or experience in law enforcement or civil disturbance operations.

## APPENDIX A: STANDARDS<sup>76</sup>

### *Title 2, United States Code, “The Congress”*

#### 2 U.S.C. § 1970, “Assistance by Executive departments and agencies”

##### (a) Assistance

- 1) **In General:** Executive departments and Executive agencies may assist the United States Capitol Police in the performance of its duties by providing services (including personnel), equipment, and facilities on a temporary and reimbursable basis when requested by the Capitol Police Board and on a permanent and reimbursable basis upon advance written request of the Capitol Police Board; except that the Department of Defense and the Coast Guard may provide such assistance on a temporary basis without reimbursement when assisting the United States Capitol Police in its duties directly related to protection under sections 1922, 1961, 1966, 1967, and 1969 of this title and sections 5101 to 5107 and 5109 of title 40. Before making a request under this paragraph, the Capitol Police Board shall consult with appropriate Members of the Senate and House of Representatives in leadership positions, except in an emergency.
- 4) **Provision of Assistance:** Assistance under this section shall be provided-
  - (A) Consistent with the authority of the Capitol Police under sections 1961 and 1966 of this title;
  - (B) Upon the advance written request of
    - I. the Capitol Police Board; or
    - II. in an emergency –
      - i. The Sergeant at Arms and Doorkeeper of the Senate in any matter relating to the Senate; or
      - ii. The Sergeant at Arms of the House of Representatives in any matter relating to the House of Representatives; and
  - (C)
    - I. on a temporary and reimbursable basis;
    - II. on a permanent reimbursable basis upon advance written request of the Capitol Police Board; or
    - III. on a temporary basis without reimbursement by the Department of Defense and the Coast Guard as described under paragraph (1).

<sup>76</sup> In this appendix, we present only relevant excerpts of laws, executive orders, and DoD policy that governed our review of DoD actions taken or, in some cases, not taken. In general, these standards governed by authorizing, limiting, or prohibiting action; prescribing procedures; and assigning responsibilities. All of these standards are open source and available for viewing in full text on the Internet.

2 U.S.C. § 1974, “Capitol Police special officers”

(a) **In general.** In the event of an emergency as determined by the Capitol Police Board or in a concurrent resolution of Congress, the Chief of the Capitol Police may appoint—

- 1) any law enforcement officer from any Federal agency or State or local government agency made available by that agency to serve as a special officer of the Capitol Police within the authorities of the Capitol Police in policing the Capitol buildings and grounds; and
- 2) any member of the uniformed services, including members of the National Guard, made available by the appropriate authority to serve as a special officer of the Capitol Police within the authorities of the Capitol Police in policing the Capitol buildings and grounds.

(b) **Conditions of appointment.** An individual appointed as a special officer under this section shall –

- 1) serve without pay for service performed as a special officer (other than pay received from the applicable employing agency or service);
- 2) serve as a special officer no longer than a period specified at the time of appointment;
- 3) not be a Federal employee by reason of service as a special officer, except as provided under paragraph (4); and
- 4) shall be an employee of the Government for purposes of chapter 171 of title 28 if that individual is acting within the scope of his office or employment in service as a special officer.

(e) **Approval.** Any appointment under this section shall be subject to initial approval by the Capitol Police Board and to final approval by the Speaker of the House of Representatives (in consultation with the Minority Leader of the House of Representatives) and the President pro tempore of the Senate (in consultation with the Minority Leader of the Senate), acting jointly.

*Title 10, United States Code, “Armed Forces”*

10 U.S.C. § 101, “Definitions”

d. **Duty Status.**—The following definitions relating to duty status apply in this title:

- 5) The term “full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

10 U.S.C. § 252, “Use of militia and armed forces to enforce Federal authority.”

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.

10 U.S.C. § Section 277, “Reimbursement”

- (a) Subject to subsection (c), to the extent otherwise required by section 1535 of title 31 (popularly known as the “Economy Act”) or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.
- (b) –
  - 1) Subject to subsection (c), the Secretary of Defense shall require a Federal agency to which law enforcement support or support to a national special security event is provided by National Guard personnel performing duty under section 502(f) of title 32 to reimburse the Department of Defense for the costs of that support, notwithstanding any other provision of law. No other provision of this chapter shall apply to such support.
  - 2) Any funds received by the Department of Defense under this subsection as reimbursement for support provided by personnel of the National Guard shall be credited, at the election of the Secretary of Defense, to the following:
    - (A) The appropriation, fund, or account used to fund the support.
    - (B) The appropriation, fund, or account currently available for reimbursement purposes.
- (c) An agency to which support is provided under this chapter or section 502(f) of title 32 is not required to reimburse the Department of Defense for such support if the Secretary of Defense waives reimbursement. The Secretary may waive the reimbursement requirement under this subsection if such support—
  - 1) is provided in the normal course of military training or operations; or
  - 2) results in a benefit to the element of the Department of Defense or personnel of the National Guard providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

10 U.S.C. § Section 12406, “National Guard in Federal Service”

Whenever—

- 1) the United States, or any of the Commonwealths or possessions, is invaded or is in danger of invasion by a foreign nation;

- 2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or
- 3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

*Title 32, United States Code, "National Guard"*

32 U.S.C. § 502, "Required drills and field exercises," states, in part,

(f) –

- 1) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—
  - (A) without his consent, but with the pay and allowances provided by law; or
  - (B) with his consent, either with or without pay and allowances, be ordered to perform training or other duty in addition to that prescribed under subsection (a).
- 2) The training or duty ordered to be performed under paragraph (1) may include the following:
  - (A) Support of operations or missions undertaken by the member's unit at the request of the President or Secretary of Defense.
  - (B) Support of training operations and training missions assigned in whole or in part to the National Guard by the Secretary concerned, but only to the extent that such training missions and training operations—
    - i. are performed in the United States or the Commonwealth of Puerto Rico or possessions of the United States; and
    - ii. are only to instruct active duty military, foreign military (under the same authorities and restrictions applicable to active duty troops), Department of Defense contractor personnel, or Department of Defense civilian employees.
- 3) Duty without pay shall be considered for all purposes as if it were duty with pay.

*Title 18, United States Code, "Crimes and Criminal Procedure"*

## 18 U.S.C. § 1385, "Use of Army and Air Force as posse comitatus"

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.<sup>77, 78</sup>

*Title 50, United States Code, "War and National Defense"*

## 50 U.S.C. § 1631, "Declaration of national emergency by Executive order; authority; publication in Federal Register; transmittal to Congress"

When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

*Public Law 104-321, 104th Congress, October 19, 1996, "Emergency Management Assistance Compact"*

The Emergency Management Assistance Compact, states, in part, the following.

## ARTICLE I.

## PURPOSE AND AUTHORITIES.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

<sup>77</sup> From the Center for Law and Military Operations, The Judge Advocate General's Legal Center & School, U.S. Army, "Domestic Operational Law: 2018 Handbook for Judge Advocates," September 2018. As amended, this generally prohibits the use of active duty personnel to enforce U.S. laws within the borders of the United States. The purpose of the Act was to limit direct military involvement with civilian law enforcement, without congressional or constitutional authorization.

<sup>78</sup> From the Cornell Law School, Legal Information Institute, U.S. Constitution Annotated, Article II. Executive Department, Section III, "The President as Law Enforcer, Military Power in Law Enforcement: The Posse Comitatus." The prohibition applies to NG personnel when they serve in Title 10 status. It does not apply to them when they are serving on state active duty or activated pursuant to Title 32.

## ARTICLE II.

## GENERAL IMPLEMENTATION.

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

## ARTICLE III.

## PARTY STATE RESPONSIBILITIES

B. Requests shall provide the following information:

2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

## ARTICLE XIII.

## ADDITIONAL PROVISIONS.

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under section 1385, title 18, United States Code.<sup>79</sup>

*Executive Order 11485, "Supervision and control of the National Guard of the District of Columbia," October 1, 1969*

By virtue of the authority vested in me as President of the United States and Commander-in-Chief of the Armed Forces of the United States and the National Guard of the District of Columbia under the Constitution and laws of the United States, including section 6 of the Act of March 1, 1889, 25 Stat. 773 (District of Columbia Code, sec. 39-112), and section 110 of title 32 and section 301 of title 3 of the United States Code, it is hereby ordered as follows.

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<sup>79</sup> The EMACweb website states that since ratification and signing into law in 1996 (Public Law 104-321), 50 states, the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands and the Northern Mariana Islands have enacted legislation to become EMAC members. The National Guard deploy through EMAC in both State Active Duty and Title 32 to assist Member States.

**Section 1.** The Secretary of Defense, except as provided In section 3, is authorized and directed to supervise, administer and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter "National Guard") while in militia status. The Commanding General of the National Guard shall report to the Secretary of Defense or to an official of the Department of Defense designated by the Secretary on all matters pertaining to the National Guard. Through the Commanding General, the Secretary of Defense shall command the military operations, including training, parades and other duty, of the National Guard while in militia status. Subject to the direction of the President as Commander-in-Chief, the Secretary may order out the National Guard under title 39 of the District of Columbia Code to aid the civil authorities of the District of Columbia.

**Section 2.** The Attorney General is responsible for: (1) advising the President with respect to the alternatives available pursuant to law for the use of the National Guard to aid the civil authorities of the District of Columbia; and (2) for establishing after consultation with the Secretary of Defense law enforcement policies to be observed by the military forces in the event the National Guard is used in its militia status to aid civil authorities of the District of Columbia.

**Section 3.** The Commanding General and the Adjutant General of the National Guard will be appointed by the President. The Secretary of Defense, after consultation with the Attorney General, shall at such times as may be appropriate submit to the President recommendations with respect to such appointments.

**Section 4.** The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

**Section 5.** Executive Order No. 10030 of January 26, 1949, is hereby superseded.

*Secretary of Defense Memorandum, "Supervision and Control of the National Guard of the District of Columbia," October 10, 1969*

The President, by Executive Order Number 11485, October 1, 1969, authorized and directed me to supervise, administer, and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter "National Guard") while in a militia status except as provided in Section 3 of the Executive Order. The President also directed that I command (through the Commanding General of the National Guard) the military operations, including training, parades and other duty of the National Guard while in militia status and authorized me to delegate to subordinate officials any of the authority conferred upon me by the Executive Order.

I hereby direct the Secretary of the Army to act for me in the above matters pertaining to the Army National Guard and the Secretary of the Air Force to act for me in matters pertaining to the Air National Guard. The Commanding General of the National Guard shall report to the Secretary concerned for their respective elements of the National Guard and the Secretaries will exercise this authority through the Commanding General of the National Guard while the National Guard is in militia status.

As to the use of the National Guard in militia status to aid civil authorities, I hereby direct the Secretary of the Army to command, through the Commanding General of the National Guard, all operations of the Army and Air National Guard elements as an exception to the above. The Secretary of the Army, after consultation with me and subject to the direction of the President as



Commander-in-Chief, and in accordance with the Interdepartmental Action plan for Civil Disturbance, may order out the National Guard under Title 39 of the District of Columbia code to aid the civil authorities of the District of Columbia.

The Secretary of the Army and the Secretary of the Air Force are authorized to delegate the foregoing authority to the Under Secretary or Assistant Secretary for Manpower and Reserve Affairs of their respective military departments.

*Title 5, Code of the District of Columbia, "Police, Firefighters, Medical Examiner, and Forensic Sciences"*

Section 129.03, title 5, "Appointment of Special Police without Pay," states that the Mayor of the District of Columbia may, upon any emergency of riot, pestilence, invasion, insurrection, or during any day of public election, ceremony, or celebration, appoint as many special privates without pay, from among the citizens, as he may deem advisable, and for a specified time. During the term of service of such special privates, they shall possess all the powers and privileges and perform all the duties of the privates of the standing police force of the District and such special privates shall wear an emblem to be presented by the Mayor.

*DoD Directive (DoDD) 3025.18, "Defense Support of Civil Authorities (DSCA)," December 2, 2010, (Incorporating Change 2, March 19, 2018)*

DoDD 3025.18, states, in part, the following.

1. PURPOSE. This Directive:

- a. Establishes policy and assigns responsibilities for DSCA.
- d. Provides guidance for the execution and oversight of DSCA when requested by civil authorities or by qualifying entities and approved by the appropriate DoD official, or as directed by the President, within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any political subdivision thereof.
- e. Authorizes immediate response authority for providing DSCA, when requested.
- f. Authorizes emergency authority for the use of military force, under dire circumstances, as described in paragraph 4.k. above the signature of this Directive.
- g. Incorporates the Deputy Secretary of Defense Memorandum (Reference (e)), which is hereby cancelled.

4. POLICY. It is DoD policy

- d. All requests for DSCA shall be written, and shall include a commitment to reimburse the Department of Defense in accordance with sections 5121, et. seq., of Reference (g) (also known as "The Stafford Act"), section 1535 of title 31, U.S.C. (also known as "The Economy Act" (Reference (y))), or other authorities except requests for support for

- immediate response, and mutual or automatic aid, in accordance with paragraphs 4.i. and 4.o. of this section. Unless approval authority is otherwise delegated by the Secretary of Defense, all DSCA requests shall be submitted to the office of the Executive Secretary of the Department of Defense. For assistance provided according to paragraph 4.i of this section, civil authorities shall be informed that oral requests for assistance in an emergency must be followed by a written request that includes an offer to reimburse the Department of Defense at the earliest available opportunity. States also must reimburse the United States Treasury in accordance with section 9701 of Reference (y). Support may be provided on a non-reimbursable basis only if required by law or if both authorized by law and approved by the appropriate DoD official.
- e. All requests from civil authorities and qualifying entities for assistance shall be evaluated for:
1. Legality (compliance with laws).
  2. Lethality (potential use of lethal force by or against DoD Forces).
  3. Risk (safety of DoD Forces).
  4. Cost (including the source of funding and the effect on the DoD budget).
  5. Appropriateness (whether providing the requested support is in the interest of the Department).
  6. Readiness (impact on the Department of Defense's ability to perform its other primary missions).
- j. The authority of State officials is recognized to direct a State immediate response using National Guard personnel under State command and control (including personnel in a title 32, U.S.C. (Reference (f)) (hereafter referred to as "Title 32") status) in accordance with State law, but National Guard personnel will not be placed in or extended in Title 32 status to conduct State immediate response activities.
- l. Except for immediate response and emergency authority as described in paragraphs 4.i. and 4.k. of this section, only the Secretary of Defense may approve requests from civil authorities or qualifying entities for Federal military support for:
1. Defense assistance in responding to civil disturbances (requires Presidential authorization) in accordance with Reference (c).
  2. Defense response to chemical, biological, radiological, nuclear, and high-yield explosives (CBRNE) incidents, except as authorized in paragraph 4.s. of this section.
  3. Defense assistance to civilian law enforcement organizations, except as authorized in paragraph 4.s. of this section and Reference (c).
  4. Assistance in responding with assets with potential for lethality. This support includes loans of arms; vessels or aircraft; or ammunition. It also includes assistance under section 282 of Reference (d) and section 831 of title 18, U.S.C. (Reference (ac)); all support to counterterrorism operations; and all support to civilian law enforcement authorities in situations where a confrontation between civilian law enforcement and civilian individuals or groups is reasonably anticipated.

- s. The ASD(HD&GS) may approve requests for the following types of DoD support of civilian law enforcement agencies in accordance with the Deputy Secretary of Defense Memorandum (Reference (af)):
  1. Non-lethal support that is unrelated to law enforcement functions such as arrest, search, seizure, or crowd or traffic control.
  2. Support provided by non-military personnel under section 2564 of Reference (d), including support contracted by DoD to support civilian law enforcement agencies during certain sporting events.
  3. CBRNE detection and response capabilities for pre-planned events, with the concurrence of the force providers, the Chairman of the Joint Chiefs of Staff, and other DoD officials as appropriate.

## **Glossary, Part II. Definitions.**

**DSCA.** Support provided by U.S. Federal military forces, DoD civilians, DoD contract personnel, DoD Component assets, and National Guard forces (when the Secretary of Defense, in coordination with the Governors of the affected States, elects and requests to use those forces in title 32, U.S.C., status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events.

**Emergency authority.** A Federal military commander's authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because 1) such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order or (2) duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions.

**Immediate response authority.** A Federal military commander's, DoD Component Head's, and/or responsible DoD civilian official's authority temporarily to employ resources under their control, subject to any supplemental direction provided by higher headquarters, and provide those resources to save lives, prevent human suffering, or mitigate great property damage in response to a request for assistance from a civil authority, under imminently serious conditions when time does not permit approval from a higher authority within the United States. Immediate response authority does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory. (State immediate response is addressed in paragraph 4.j. above the signature of this Directive.)

*DoD Instruction 3025.21, "Defense Support of Civilian Law Enforcement Agencies," February 27, 2013, (Incorporating Change 1, Effective February 8, 2019)*

4. Policy. It is DoD policy that,
  - a. DoD shall be prepared to support civilian law enforcement agencies consistent with the needs of military preparedness of the United States, while recognizing

and conforming to the legal limitations on direct DoD involvement in civilian law enforcement activities.

Enclosure 2, Responsibilities:

9. CJCS. The CJCS, in addition to the responsibilities in section 7 of this enclosure, shall:
  - c. Advise the Secretary of Defense, ASD(HD&GS), or Heads of the DoD Components, upon request, on the effect on military preparedness of the United States of any request for defense assistance with respect to CDO.

Enclosure 3, Participation Of DoD Personnel In Civilian Law Enforcement Activities:

1. GUIDING STATUTORY REQUIREMENTS AND SUPPORTING POLICIES

- a. Statutory Restrictions.
  - 1) The primary restrictions on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute U.S. laws, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, shall be fined under [Title 18, United States Code], or imprisoned not more than 2 years, or both.
- b. "Permissible Direct Assistance." Categories of active participation in direct law enforcement-type activities (e.g., search, seizure, and arrest) that are not restricted by law or DoD policy are:
  - 3) When permitted under emergency authority in accordance with [DoD Directive 3025.18], Federal military commanders have the authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:
    - (a) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or,
    - (b) When duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions. Federal action, including the use of Federal military forces, is authorized when necessary to protect Federal property or functions.

- 5) Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct DoD participation in civilian law enforcement include:

- (f) Protection of the President, Vice President, and other designated dignitaries in accordance with section 1751 of [Title 18, United States Code] and Public Law 94-524 (Reference (x)).

c. Restrictions on Direct Assistance.

- (1) Except as authorized in this Instruction (e.g., in Enclosures 3 and 4), DoD personnel are prohibited from providing the following forms of direct civilian law enforcement assistance:

- (b) A search or seizure.

- (c) An arrest; apprehension; stop and frisk; engaging in interviews, interrogations, canvassing, or questioning of potential witnesses or suspects; or similar activity.

- (d) Using force or physical violence, brandishing a weapon, discharging or using a weapon, or threatening to discharge or use a weapon except in self-defense, in defense of other DoD persons in the vicinity, or in defense of non-DoD persons, including civilian law enforcement personnel, in the vicinity when directly related to an assigned activity or mission.

- (f) Surveillance or pursuit of individuals, vehicles, items, transactions, or physical locations, or acting as undercover agents, informants, investigators, or interrogators.

5. APPROVAL AUTHORITY. Requests by civilian law enforcement officials for use of DoD personnel to provide assistance to civilian law enforcement agencies shall be forwarded to the appropriate approval authority.

- a. The Secretary of Defense is the approval authority for requests for direct assistance in support of civilian law enforcement agencies, including those responding with assets with the potential for lethality, except for the use of emergency authority as provided in subparagraph 1.b. (3) of this enclosure and in Reference (c) [DoDD 3025.18], and except as otherwise provided [in this instruction].

- c. The Secretaries of the Military Departments and the Directors of the Defense Agencies may, in coordination with the ASD(HD&GS), approve the use of DoD personnel:

- 1) To provide training or expert advice in accordance with paragraphs 1.e. and 1.f. of this enclosure.

- 2) For equipment maintenance in accordance with paragraph 1.d. of this enclosure.

- 3) To monitor and communicate the movement of air and sea traffic in accordance with subparagraphs 1.d. (5)(b) 1 and 4 of this enclosure.
- d. All other requests, including those in which subordinate authorities recommend disapproval, shall be submitted promptly to the ASD(HD&GS) for consideration by the Secretary of Defense, as appropriate.
- f. All requests that are to be considered by the Secretary of Defense or the ASD(HD&GS) that may involve the use of Reserve Component personnel or equipment shall be coordinated with the ASD(M&RA). All requests that are to be considered by the Secretary of Defense or the ASD(HD&GS) that may involve the use of NG personnel also shall be coordinated with the Chief, NGB. All requests that are to be considered by the Secretary of Defense or the ASD(HD&GS) that may involve the use of NG equipment also shall be coordinated with the Secretary of the Military Department concerned and the Chief, NGB.

#### Enclosure 4, "DoD Support of CDO"

### 1. GUIDING STATUTORY REQUIREMENTS AND SUPPORTING POLICIES

- a. The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government, including DoD, for civil disturbances is important due to the potential severity of the consequences of such events for the Nation and the population.
- b. The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in State and local governments. Supplementary responsibility is vested by statute in specific agencies of the Federal Government other than DoD. The President has additional powers and responsibilities under the Constitution of the United States to ensure that law and order are maintained.
- c. Any employment of Federal military forces in support of law enforcement operations shall maintain the primacy of civilian authority and unless otherwise directed by the President, responsibility for the management of the Federal response to civil disturbances rests with the Attorney General. The Attorney General is responsible for receiving State requests for Federal military assistance, coordinating such requests with the Secretary of Defense and other appropriate Federal officials, and presenting such requests to the President who will determine what Federal action will be taken.
- d. The employment of Federal military forces to control civil disturbances shall only occur in a specified civil jurisdiction under specific circumstances as authorized by the President, normally through issuance of an Executive order or other Presidential directive authorizing and directing the Secretary of Defense to provide for the restoration of law and order in a specific State or locality in accordance with sections 251-254 of Reference (d) [Title 10 U.S.C.].

#### 4. ROLE OF THE NG

- b. NG forces may be ordered or called into Federal service to ensure unified command and control of all Federal military forces for CDO when the President determines that action to be necessary in extreme circumstances.

#### 6. APPROVAL AUTHORITY

- a. The President is the approval authority for requests for assistance for CDO, except for emergency authority as provided in subparagraph 1.b.(3) of Enclosure 3 and in Reference (c) [DoD Directive 3025.18].

*DoD Instruction 3025.22, "The Use of the National Guard for Defense Support of Civil Authorities," July 26, 2013, (Incorporating Change 1, May 15, 2017)*

This Instruction states, in part, the following.

1. PURPOSE. This instruction establishes policy, assigns responsibilities, and provides procedures for the use of the National Guard for Defense Support of Civil Authorities (DSCA) in accordance with the authority in section 502(f) of Title 32, United States Code (U.S.C.) (Reference (a)), DoD Directive (DoDD) 5111.1 (Reference (b)), and Deputy Secretary of Defense Memorandum (Reference (c)); the responsibilities and functions in accordance with DoDD 5111.13 (Reference (d)); and the guidance in DoDD 3025.18 (Reference (e)).
3. POLICY. It is DoD policy that:
  - b. In accordance with Reference (e), DSCA is initiated by a request for DoD assistance from civil authorities or qualifying entities, or is authorized by the President or Secretary of Defense. Any request for assistance that is the responsibility of another federal department or agency will be redirected to the appropriate department or agency.
  - d. The use of the National Guard to support a Federal support a federal department or agency or qualifying entity request for assistance will only be conducted in a duty status pursuant to Reference (f) or section 502(f) of Reference (a), unless otherwise authorized by the Secretary of Defense.
    1. The National Guard will be considered for DSCA in accordance with the Global Force Management (GFM) process.
    2. The recommendation to approve funding for the National Guard in a duty status pursuant to section 502(f) of Reference (a) will be made to the Secretary of Defense after:
      - a) The National Guard has been selected as the recommended sourcing solution to perform a DSCA mission.
      - b) It has been determined that the National Guard in a duty status in accordance with section 502(f) of Reference (a) is more appropriate than in a duty status in accordance with Reference (f).

- g. Support may be provided on a non-reimbursable basis only if required by law or if both authorized by law and approved by the Secretary of Defense.

*DoD Manual 3025.01, "Defense Support of Civil Authorities," August 11, 2016, (Incorporating Change 1, Effective April 13, 2017)*

**"Purpose:** This manual is composed of several volumes, each containing its own purpose. In accordance with the authority in DoD Directives (DoDDs) 5111.13 and 3025.18:

The manual:

- Assigns responsibilities and establishes procedures for Defense Support of Civil Authorities (DSCA).
- Identifies authorities for DoD Components to provide support of civil authorities and non-DoD entities. For DoD support described in this manual that is not under the oversight of the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)), this manual identifies the offices of responsibility and oversight.

This volume provides a general overview of DSCA."

### Volume 1: Overview

Section 3: "Overview of DSCA" states, in part:

3.1. DoD has capabilities and resources to defend the United States and fight its wars. These capabilities and resources are also well suited to support civil authorities and other non-DoD entities. DSCA, in general, is in response to a request for assistance from civil authorities for domestic emergencies, law enforcement agency support, and other domestic activities. The most visible support is provided during major natural and man-made disasters and other incidents (see Section 4 of Volume 2 of this manual). However, DoD also frequently provides support to a wide range of non-DoD entities.

3.2. A key factor in determining whether DoD should provide support of non-DoD entities is identifying the authority that directs or allows the support. U.S. law, Presidential Executive Orders and directives, federal regulations, and DoD policies provide the framework and authorities for DoD to provide support of non-DoD entities. A number of the DoD Components (e.g., the Defense Agencies) have specific authorities and appropriations to provide support of non-DoD entities.

Section 9: "Capabilities" states:

9.1. DoD has many capabilities that are well suited to support civil authorities in times of need. Some military capabilities that are frequently requested may be provided to civil authorities under separate authorities and policies.

9.2. DoD SAR is a capability that is often requested during major disasters but is also used during small-scale accidents and incidents. See Appendix 9A for additional information on DoD's SAR capabilities.



9.3. DoD has CBRN defense capabilities designed for combat environments that may be applied for domestic civil support. In addition, DoD has CBRN forces uniquely trained and equipped for domestic operations as part of the CBRN Response Enterprise. This enterprise comprises both CBRN defense and general purpose units from the active and reserve components. See Appendix 9B for additional information on DoD's CBRN defense capabilities.

9.4. The DoD medical system is designed to treat military members, dependents, and other authorized persons. During major disasters, the civilian medical community can be quickly overwhelmed with patients. DoD will likely be involved in life-saving activities in support of civil authorities. See Appendix 9C for additional information on DoD's medical capabilities.

9.5. The USSS routinely request EOD and EDD during National Special Security Events for the protection of the President and high-level officials and dignitaries. See Appendixes 9D and 9E for additional information on DoD's EOD and EDD capabilities.

## Volume 2: DoD Incident Response

Section 3: "Incident Response" states, in part:

3.1. DoD has a long history of supporting civil authorities in response to disasters and emergencies. Defense support is primarily drawn from the existing warfighting capabilities of DoD.

3.2. The majority of natural and man-made disasters are handled at the local and State levels; DoD support as portrayed in the media is mostly in response to large-scale natural disasters, such as hurricanes and severe weather. Following a Presidential declaration in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Section 5121, et. seq., of Title 42, United States Code (U.S.C.), referred to in this volume as the "Stafford Act"), the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) acts as the lead federal agency for coordinating the federal response.

3.3. In accordance with DoDD 3025.18, DoD officials have immediate response authority to respond temporarily to a request from civil authorities facing imminently serious conditions in order to save lives, prevent human suffering, or mitigate great property damage. Immediate response authority may be used in incidents where limited time does not permit approval from higher authority through the normal request for DoD assistance processes.

Section 5: "Immediate Response Authority" states, in part:

5.1. GENERAL. There are two specific authorizations provided to DoD officials in DoDD 3025.18: immediate response authority and emergency authority. The procedures for the provisions of emergency authority and their comparison with immediate response authority are found in Appendix 14A of this volume.

- a. DoDD 3025.18 prescribes policy regarding responding to the request of a civil authority pursuant to immediate response authority, which may be used to save lives, prevent human suffering, or mitigate great property damage. Immediate response authority does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory.

- d. Immediate response authority may be used whether the incident is a small, local emergency or a complex catastrophe.

5.3. EXAMPLES OF POSSIBLE DOD SUPPORT USING IMMEDIATE RESPONSE AUTHORITY.  
Some examples of possible DoD support using immediate response authority include:

- a. Rescue, evacuation, and emergency medical treatment of casualties, maintenance, or restoration of emergency medical capabilities, and safeguarding the public health.
- b. Emergency restoration of essential public services (including firefighting, water, communications, transportation, power, and fuel).
- c. Emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services.
- d. Monitoring and decontaminating radiological and chemical effects, and controlling contaminated areas.
- e. Management of biological effects and reporting through national warning and hazard control systems.
- f. Roadway movement planning.
- g. Collecting, and distributing water, food, essential supplies, and materiel on the basis of critical priorities.
- i. Damage assessment.
- j. Interim emergency communications.
- k. MCM distribution support.
- l. Explosive ordnance disposal.
  - 1) DoD explosive ordnance disposal personnel may provide immediate response for explosive ordnance disposal support of civil authorities, when requested, in accordance with DoDD 3025.18 and DoDI 3025.21, and may provide disposition of military munitions in accordance with Parts 260-270 of Title 40, CFR.
  - 2) Domestic explosive ordnance disposal support of civilian law enforcement agencies is provided in accordance with DoDI 3025.21.

Section 14: CIVIL DISTURBANCE OPERATIONS states, in part, the following.

14.1. GENERAL.

- a. The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in State and local governments. Governors

employ National Guard forces in State active duty to support State and local government agencies for disaster responses and in domestic emergencies, including response to civil disturbances; the Governor directs, commands, and controls such activities in accordance with State or territorial law and federal law.

- b. The U.S. Constitution and laws of the United States authorize the President to employ military forces to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. The employment of federal military forces to control civil disturbances may occur only in a specified civil jurisdiction under specific circumstances, as authorized by the President.

#### 14.3. EXAMPLES OF POSSIBLE DOD SUPPORT.

- a. Dispersing unauthorized assemblages.
- b. Patrolling disturbed areas.
- c. Maintaining essential transportation and communications systems.
- d. Setting up roadblocks.
- e. Cordoning off areas.

#### Appendix 14A: EMERGENCY AUTHORITY

##### 14A1. GENERAL

- b. Emergency authority differs from immediate response authority. Table 14 compares and contrasts emergency authority and immediate response authority.

Table 14. Comparison of Emergency Authority with Immediate Response Authority

	<b>Emergency Authority</b>	<b>Immediate Response Authority</b>
<b>Authority</b>	Paragraph 4.i of DoDD 3025.18	Paragraph 4.g. of DoDD 3025.18
<b>Situation requiring usage</b>	Civil disturbances	Disaster or emergency
<b>Purpose</b>	<ul style="list-style-type: none"> <li>- Prevent significant loss of life</li> <li>- Prevent wanton destruction of property</li> <li>- Restore governmental function</li> <li>- Restore public order</li> <li>- Protect federal property</li> <li>- Protect federal functions</li> </ul>	<ul style="list-style-type: none"> <li>- Save lives</li> <li>- Prevent human suffering</li> <li>- Mitigate great property damage</li> </ul>
<b>Probability of using authority</b>	Extremely rare	Very limited
<b>Lethal force</b>	If necessary	Not allowed
<b>Law enforcement actions</b>	If necessary	Not allowed
<b>Request from civil authority</b>	Not required	<b>Required</b>
<b>Reimbursable</b>	No	Yes (must seek)
<b>Authorization extends to:</b>	Federal military commanders	<ul style="list-style-type: none"> <li>- DoD officials</li> <li>- Federal military commanders</li> <li>- DoD Component heads</li> <li>- Responsible DoD civilian officials</li> </ul>

- c. It is very likely that the situations or incidents that allow federal military commanders to exercise emergency authority also will involve conditions for commanders to exercise immediate response authority, but not the reverse. Emergency authority is only available in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control large-scale, unexpected civil disturbances. The classic example of when emergency authority and immediate response authority were both used was during the earthquake and fires of San Francisco in 1906.

14A3. EXAMPLES OF CIRCUMSTANCES THAT MAY LEAD TO THE USE OF EMERGENCY AUTHORITY. Examples of the types of circumstances that may result in a federal military commander being **unable** to obtain authorization from the President include:

- Electromagnetic pulse that disables electronic devices in a large area.
- Massive solar flare that disables the power grid and destroys communications equipment.
- Crippling computer attacks that disable critical infrastructure, especially the communications sector.
- Catastrophic earthquake.
- IND detonation.

Volume 3: Pre-planned DoD Support of Law Enforcement Agencies, Special Events,  
Community Engagement, and Other Non-DoD Entities

SECTION 3: PRE-PLANNED DOD SUPPORT

3.1. DoD may provide support to civil authorities that is not in response to emergencies or disasters, but is generally planned in advance of the assistance provided. Support may be provided based on statute, DoD policies, and/or agreements with other agencies. Approving authorities may be at various levels within DoD.

3.2. DoD support of civilian law enforcement agencies is closely monitored from within and outside DoD. Military commanders and DoD officials must be aware of the limitations and restrictions placed on military members based on statute, Executive orders, and DoD policies on conducting domestic civilian law enforcement activities. DoD policy for DoD support of civilian law enforcement agencies is described in Section 4 of this volume. The U.S. Secret Service (USSS) is a civilian law enforcement agency to which DoD routinely provides military support (see Section 5 of this volume).

SECTION 4: DOD SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES

4.3 EXAMPLES OF POSSIBLE DOD SUPPORT.

- a. Specialized personnel and units.
- b. Equipment.
- c. Facilities.
- d. Training.
- e. Expert advice.

## APPENDIX B: DSCA AND THE DCNG

### DCNG Fact Sheet

# DISTRICT OF COLUMBIA NATIONAL GUARD FACT SHEET

Created in 1802 by President Thomas Jefferson, the District of Columbia National Guard is the first military responder to defend and support the nation's capital, the nation's leaders, residents, workers and visitors by assisting district and federal agencies in the District of Columbia. Known as the Capital Guardians, the DCNG maintains trained and equipped forces as reserve components of the Air Force and Army, uniquely poised to perform sustained ground missions and federal air missions as directed to defend and protect the homeland. Commanded by Maj. Gen. William J. Walker, the District of Columbia National Guard is the only National Guard that reports only to the U.S. president.



## HISTORY

The roots of the DCNG are older than the District of Columbia, older than the active duty military and older than the United States. Before there was a District of Columbia, Citizen Soldiers were forming militia units in Georgetown and Bladensburg. These militiamen were among those who would fight—and win—the American War of Independence. The DCNG is the only National Guard with a national mission—to protect our Federal Government as the President's Guard.

Supervision and control of DCNG was delegated by the President of the United States to the Secretary of Defense pursuant to Executive Order 10030 in

Jan. 26, 1949, with authority given to the Secretary to designate officials of the National Military Establishment to administer affairs of the DCNG.

The DCNG is the only U.S. military force empowered to function in a state or, in this case, a district status. Those functions range from limited actions during non-emergency situations to full-scale law enforcement of martial law when local law enforcement officials can no longer maintain civil control. The National Guard may be called into federal service in response to a call by the President or Congress.

## DCNG VISION

To cultivate a continuously adapting, growing and ever evolving cohesive Army and Air National Guard team that while striving for perfection steadily becomes the premier National Guard in the Nation with an unmatched relevant, resilient and responsive professional joint force ready at a moment's notice for virtually any Department of Defense, federal or district government mission.

## DCNG MISSION

To proactively anticipate requirements and be prepared to rapidly deploy where directed, and confidently execute the orders of the President of the United States, the Secretary of Defense, the Secretary of the Army and the Secretary of the Air Force in times of peace and war with a highly disciplined, motivated and focused professional force that is well led and optimally manned, trained and equipped to meet the expectations of the Department of Defense, our federal and District of Columbia government partners, and the needs of our fellow citizens.

## STATE PARTNERSHIP PROGRAM



**Burkina Faso**



**Jamaica**

The State Partnership Program (SPP) is a joint program of the United States Department of Defense, the U.S. State Department, and the individual states, territories, and the District of Columbia. Guided by U.S. foreign policy goals, the SPP is administered by the National Guard Bureau and supports theater commanders' security cooperation objectives. The program has been successfully building mutually beneficial relationships around the globe for 25 years. In February 2019, the DCNG partnered with Burkina Faso. The pairing of Burkina Faso is the 76th state partner under the SPP. Burkina Faso is the DCNG's second state partnership. The DCNG formalized a partnership with the Jamaican Defense Forces in 1999. Since the partnership began, the DCNG has completed more than 40 exchanges with Jamaican partners ranging from humanitarian assistance and disaster relief preparedness to military policing, medical readiness, maintenance of vehicles and civil engineering capacity building.

## STRATEGIC GOALS

**Goal 1:** Obtain and sustain comprehensive "right now" mission readiness

**Goal 2:** Train to and consistently meet the One Army and Air Force standard

**Goal 3:** Build innovative leaders at all levels with active talent management

**Goal 4:** Become widely known for discipline, professionalism and success



# DISTRICT OF COLUMBIA NATIONAL GUARD FACT SHEET

## JOINT TASK FORCE – DISTRICT OF COLUMBIA

Joint Task Force-District of Columbia (JTF-DC), is an element of the District of Columbia National Guard. It leverages unique National Guard capabilities to support a wide range of challenging federal and community incidents. It usually is constituted as part of a larger local or federal effort to prepare for or react to an emerging situation, including National Special Security Events.

## MULTI-AGENCY AUGMENTATION COMMAND

The Multi-Agency Augmentation Command (MAC) is a command aligned under the District of Columbia Army National Guard. It provides trained personnel for staff augmentation and operational support to Headquarters, Department of the Army, Operations Center, the Alternate Army Operations Center, the Domestic Operations Support Division, the National Guard Coordination Center, Army National Guard Domestic Operation Center, National Guard Bureau – Legislative Liaison and other operations centers in support of routine, national crisis or wartime requirements. The MAC also supports National Special Security Events and the State of the Union Address. As required, the command provides staff capability packages to augment the JTF-DC for Domestic Support to Civil Authorities operations.

## 113TH WING, AIR NATIONAL GUARD



The 113th Wing, District of Columbia Air National Guard is located at Joint Base Andrews, Md. The 113th Wing is the air component of the District of Columbia National Guard. As the only federal National Guard unit, its chain of command extends from the President of

the United States, through the Secretary of the Army, to the Commanding General, D.C. National Guard.

The 113th Wing fiercely defends the National Capitol Region with an unrivaled F-16 fighter aircraft 24/7 Aerospace Control Alert force and provides domestic operation capabilities in support of the District of Columbia.

The 113th Wing engages globally through exceptional C-40 airlift for national leaders and provides lethal fighter aircraft and agile combat support forces for Combatant Commanders.



## QUICK FACTS

- Headquarters: 2001 East Capital Street SE, Washington, D.C. 20003
- Number of Soldiers: 1,350
- Number of Airmen: 1,100
- Aircraft: F-16 Fighting Falcon, C-40 (civilian equivalent: Boeing 737), Fairchild C-26E Metroliner
- Helicopters: Sikorsky UH-60 Black Hawk and the Eurocopter UH-72 Lakota

## COUNTERDRUG PROGRAM

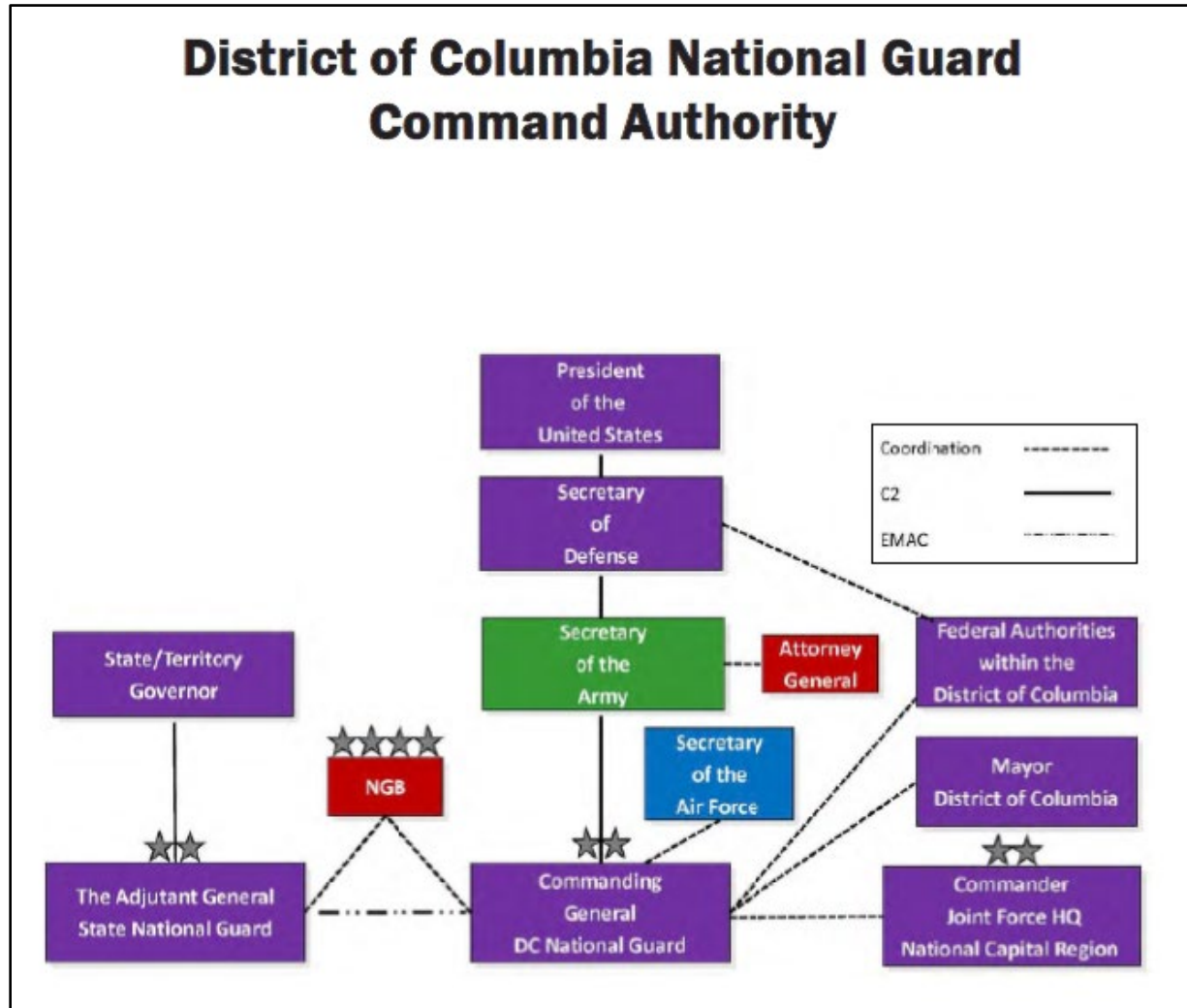
The DCNG Counterdrug Program conducts a full-spectrum campaign that bridges the gap between Department of Defense and non-DoD institutions in the fight against illicit drugs. The program centers around three pillars:

1. Assist community-based organizations to better educate the community.
2. Assist in criminal intelligence gathering and information sharing.
3. Disrupt the drug market by supporting arrest operations.



**PROTECTING THE CAPITAL AND DEFENDING THE NATION SINCE 1802**

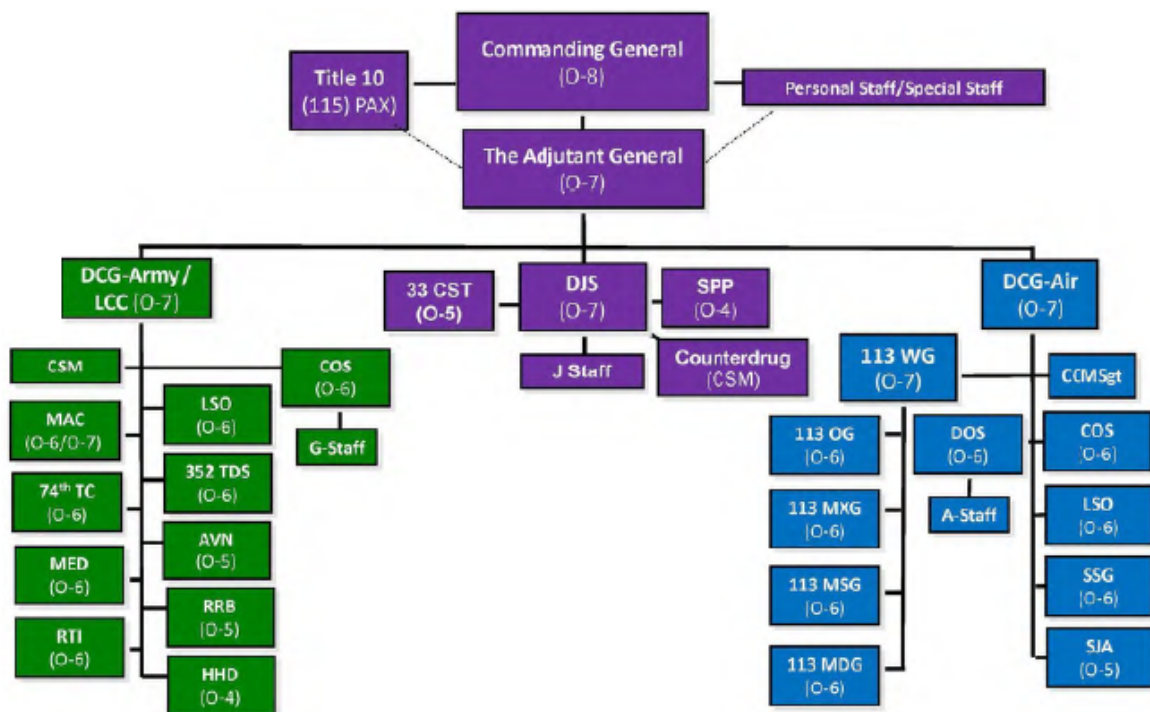
*The DCNG Senior Leadership and Organizational Structure<sup>80</sup>*



<sup>80</sup> From the DCNG's 2019 Annual Report.



## District of Columbia National Guard Organizational Structure

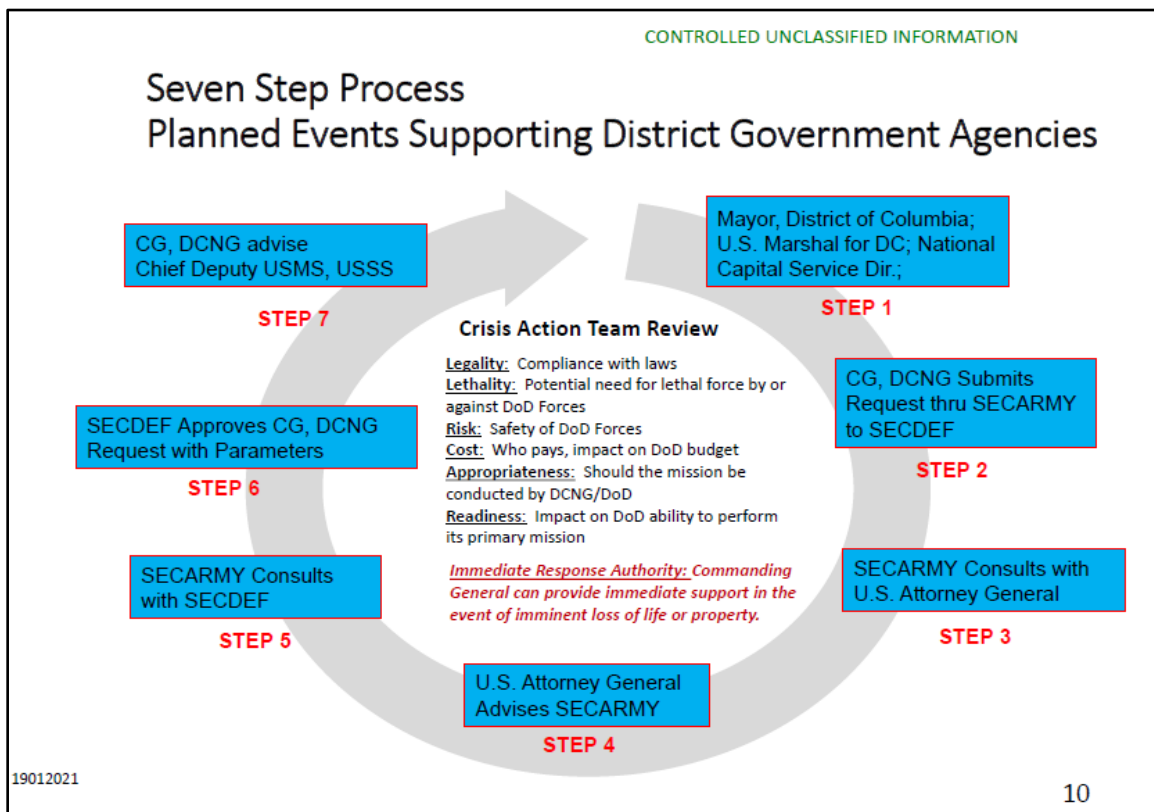


### *Approving Requests for DCNG Support in the District of Columbia*

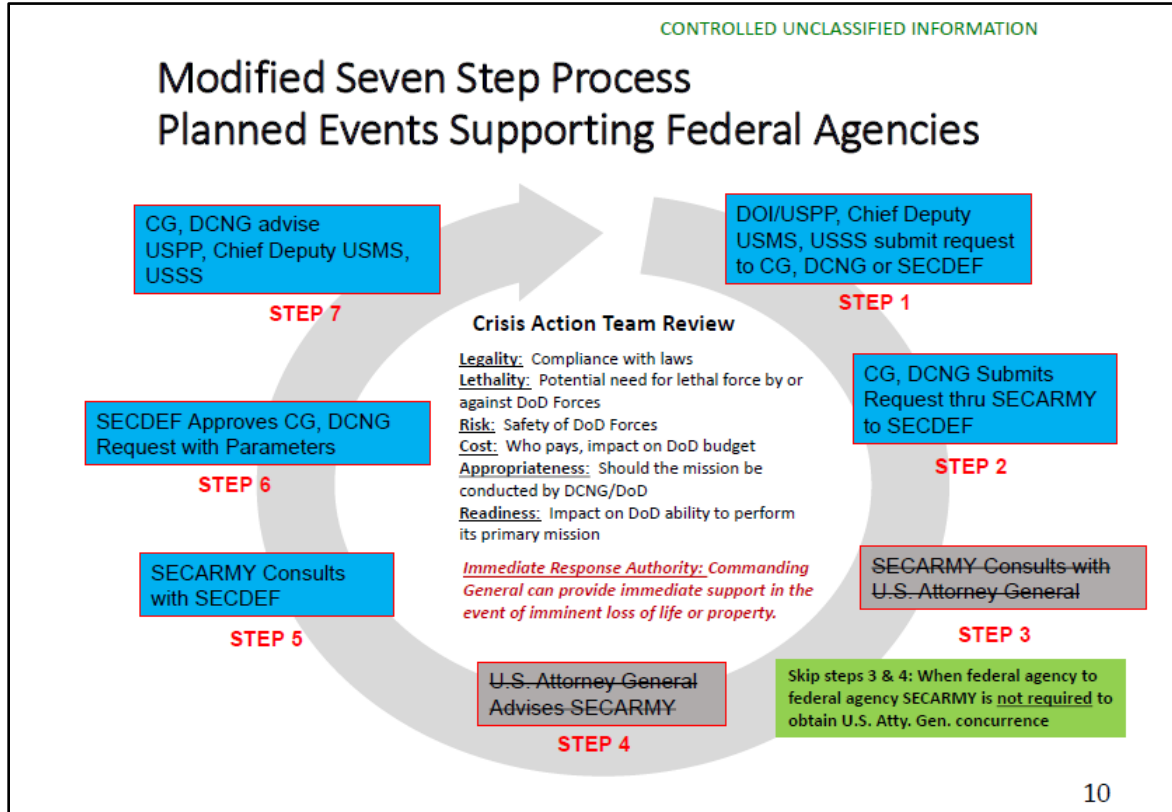
DoDD 3025.18 identifies six factors that DoD officials must consider for all RFAs.

- Legality (compliance with laws)
- Lethality (potential use of deadly force by or against DoD personnel)
- Risk (safety of DoD personnel)
- Cost (including the source of funding and the effect on the DoD budget)
- Appropriateness (whether providing the requested support is in the interest of the DoD)
- Readiness (impact on the DoD's ability to perform its other primary missions)

### RFAs From the D.C. Government



## RFAs From a Federal Agency in the District of Columbia



## APPENDIX C: CORRESPONDENCE RELATED TO THE D.C. GOVERNMENT'S DECEMBER 31, 2020 REQUEST FOR ASSISTANCE (RFA)

*Mayor Bowser's December 31, 2020 RFA*



MURIEL BOWSER  
MAYOR

December 31, 2020

Major General William J. Walker  
Commanding General  
District of Columbia National Guard  
2001 East Capitol Street, SE  
Washington, DC 20003

Dear Major General Walker:

As you know, First Amendment demonstrations permitted by the National Park Service are scheduled to occur in the District of Columbia on Tuesday, January 5, 2021 and Wednesday, January 6, 2021. As a result, District Government requests DC National Guard (DCNG) support, as these demonstrations will follow similar events on November 14, 2020 and December 12, 2020, which resulted in a large influx of participants, violence and criminal activity.

The District of Columbia is requesting personnel from the DCNG. Further, DCNG will support operations for both the Metropolitan Police Department and the DC Fire and Emergency Medical Services. Finally, no DCNG personnel shall be armed during this mission, and at no time, will DCNG personnel or assets be engaged in domestic surveillance, searches, or seizures of US persons.

Director Christopher Rodriguez of the District's Homeland Security and Emergency Management Agency will provide the requirements of and more details related to the mission. I request that you immediately connect with Director Rodriguez to discuss this critical request. Thank you for your immediate assistance.

Sincerely,

Muriel Bowser  
Mayor

*The DCHSEMA Director's December 31, 2020 RFA*

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

Muriel Bowser

Mayor

Dr. Christopher Rodriguez

Director

December 31, 2020

District of Columbia National Guard  
ATTN: General William Walker  
2001 East Capitol Street, SE  
Washington, DC 20003

**Sent via email**

Dear General Walker,

As you know, First Amendment demonstrations permitted by the National Park Service are scheduled to occur in the District of Columbia on Tuesday, January 5, 2021 and Wednesday, January 6, 2021. As a result, District Government requests DC National Guard (DCNG) support, as these demonstrations will follow similar events on November 14, 2020 and December 12, 2020, which resulted in a large influx of participants, violence, and criminal activity. I can confirm that the requesting DC agencies below have exhausted their organic capabilities in accordance with the Seven Step Call-Up process for DCNG support. This request is made on behalf of, and with concurrence from, The Honorable Muriel Bowser, Mayor of Washington, DC.

First, to support the Metropolitan Police Department's (MPD) security mission, it is requested that members of DCNG be activated to assist MPD. Due to the size of these events, all available MPD resources will be deployed and the assistance of DCNG will be essential in supporting the security plan. The mission of DCNG during this activation will primarily be crowd management and assistance with blocking vehicles at traffic posts. Specifically, DCNG is requested to provide:

- Six (6) crowd management teams to manage crowds at specified Metro stations and prevent overcrowding on Metro platforms;
- A team to assist at thirty (30) designated traffic posts.

DCNG should be prepared to staff these locations from 0730 hours until 2400 hours on both Tuesday, January 5, 2021 and Wednesday, January 6, 2021. In addition, it is requested that DCNG members be equipped with visibility vests and lighted traffic wands to assist with this mission. The availability of resources to assist MPD would greatly enhance our ability to successfully accomplish our mission of securing the safety of the residents and visitors of the District of Columbia.

---

HSEMA.DC.GOV

 GOVERNMENT OF THE  
DISTRICT OF COLUMBIA  
MURIEL BOWSER, MAYOR

Second, the DC Fire and Emergency Medical Services Department (FEMS) requests that members of the Civil Support Team (CST) conduct the following five (5) tasks on request: (1) Chemical, Biological, Radiation, Nuclear monitoring, and hazardous material on-site support; (2) provide liaisons at all required locations; (3) provide technical decontamination support; (4) provide Analytical Laboratory System support; and (5) provide CST Operations and Communications capability support. FEMS would like CST support to begin at 0700 hours on Tuesday, January 5, 2021 and conclude at 0700 hours on Thursday, January 7, 2021—or when released by FEMS. The CST will be partnered with FEMS throughout this mission, and DCNG will coordinate with FEMS to ensure support requirements are complete. DCNG's chain-of-command will remain intact for purposes of administrative and operational control.

No DCNG personnel will be armed during this mission. At no time will DCNG personnel or assets be engaged in domestic surveillance, searches, or seizures of US persons. If there are any questions about this request, please contact me. Thank you for your assistance in this matter.

Respectfully,



Dr. Christopher Rodriguez  
Director, HSEMA



*MG Walker's January 1, 2021 Letter to Mr. McCarthy About the D.C. Government's RFA*

**JOINT FORCE HEADQUARTERS  
DISTRICT OF COLUMBIA NATIONAL GUARD  
OFFICE OF THE COMMANDING GENERAL  
2001 EAST CAPITOL STREET, SE  
WASHINGTON, DC 20003-1719**

January 1, 2021

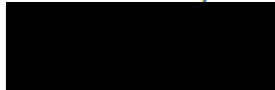
The Honorable Ryan D. McCarthy  
Secretary of the Army  
101 Army Pentagon, Room 3E560  
Washington, D.C. 20310-0101

Dear Secretary McCarthy:

Enclosed are letters from Mayor Muriel Bowser, and Dr. Christopher Rodriguez, Director, District of Columbia Homeland Security and Emergency Management Agency (HSEMA), on behalf of the District of Columbia Metropolitan Police Department (MPD) and District of Columbia Fire and Emergency Service (DCFEMS), (see enclosures 1 and 2). The Mayor requests the District of Columbia National Guard (DCNG) provide support from 0700 until 2400, 5-6 January 2021 to respond to planned First Amendment demonstrations. The details of the HSEMA request includes crowd management at Metropolitan Transit Stations, to stage vehicles at designated traffic control points for MPD; and for DCFEMS that the 33rd Civil Support Team (CST) conduct their core tasks for detection, technical decontamination, analytical laboratory suite support, and CST operations and communications capability from 0700 until release 5-7 January 2021 (see enclosure 2).

The DCNG analyzed the request for support (see enclosure 3) and determined the support constitutes valid training and operational practices; is within our current capabilities and funding; is an appropriate use of DCNG forces, and will not detract from our readiness. The DCNG will not conduct domestic surveillance or law enforcement activities. The DCNG will not be armed for this event however, MPD requests that DCNG members be equipped with safety vests and lighted traffic wands to assist with this mission (see enclosures 1 thru 3). Further, MPD requests DCNG personnel supporting the mission be appointed as "Special Police" pursuant to D.C. Code § 5-129.03. MPD officers will accompany and be in the vicinity of DCNG personnel. DCNG members will provide support in a Title 32 U.S.C § 502(f) status.

I have concluded that providing this support benefits our training, readiness and retention. Dr. Rodriguez indicates that the aforementioned agencies have exhausted their organic capabilities and require DCNG assistance. Therefore, I would like to honor Mayor Bower's request for support. Accordingly, I respectfully seek your approval for the DCNG to support this mission in accordance with all applicable laws, Department of Defense policies and regulations.

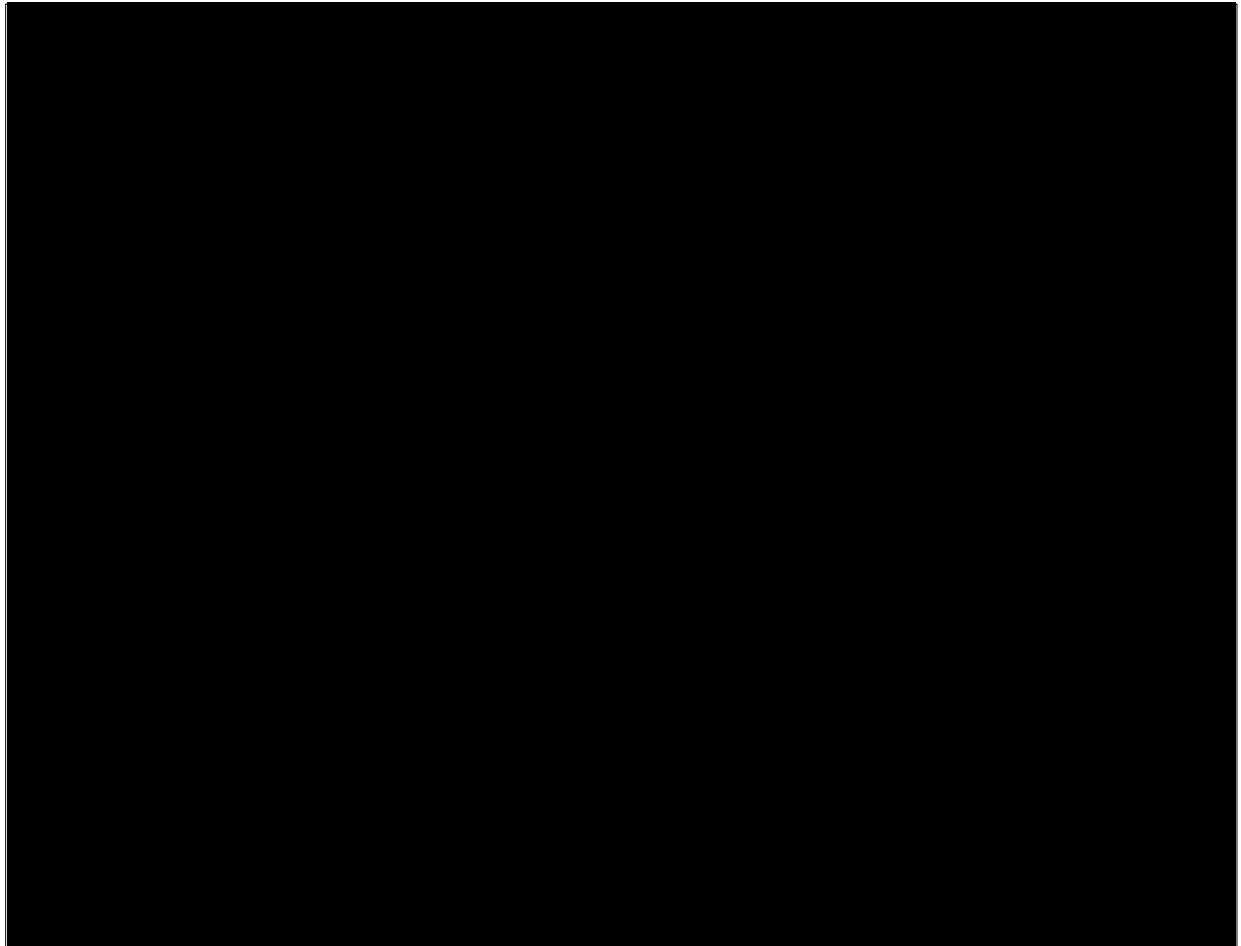


**WILLIAM J. WALKER**  
Major General, USA  
Commanding General

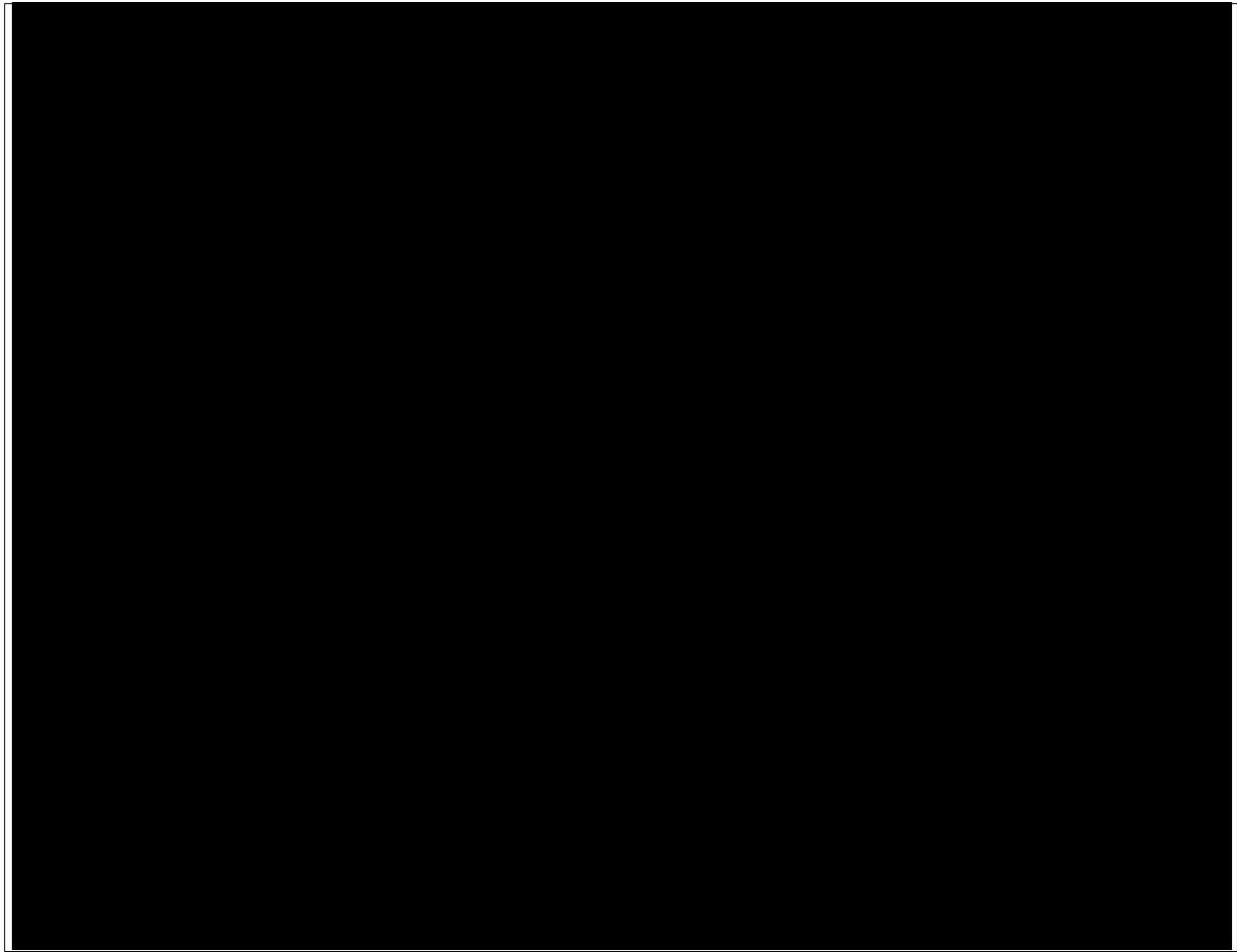
Encls (4)

1. Mayor Muriel Bower Request
2. Dr. Christopher Rodriguez Request
3. DCNG Mission Analysis
4. RUF/ROC (Special Police, visible vests and lighted traffic wands)

*Enclosure to MG Walker's Letter to Mr. McCarthy – Rules for the Use of Force by Unarmed Special Police*







*The DCNG's January 1, 2021 Mission Analysis for the D.C. Government's RFA*

**JOINT FORCE HEADQUARTERS  
DISTRICT OF COLUMBIA NATIONAL GUARD  
2001 EAST CAPITOL STREET, SE  
WASHINGTON, DC 20003-1719**

NGDC-J3

1 January 2021

MEMORANDUM FOR MG William J. Walker, Commanding General, District of Columbia National Guard (DCNG), 2001 East Capitol Street, SE, Washington, DC 20003-1719

SUBJECT: Mission analysis for District of Columbia National Guard support on 5-7 January 2021

1. The Director, District of Columbia Homeland Security and Emergency Management Agency (HSEMA), with the concurrence of the Mayor, requests District of Columbia National Guard (DCNG) support to provide crowd management, Traffic Control Points (TCPs) and the 33<sup>rd</sup> Civil Support Team (CST) from 5-7 January 2021. HSEMA requests that the DCNG provide direct support to the Metropolitan Police Department (MPD) and the Fire and Emergency Medical Services Department (FEMS) as follows:

a. MPD – Daily support from 0730-2400 on 5-6 January 2021

- (1) Provide six crowd management teams at specified Metro stations and prevent overcrowding on Metro platforms;
- (2) A team to assist at 30 designated traffic posts.

b. FEMS – Support from 0700 on 5 January to 0730 on 7 January 2021 or when released by FEMS

- (1) Chemical, Biological, Radiological, Nuclear monitoring and hazardous material on-site support;
- (2) Liaisons at all required locations;
- (3) Technical decontamination support;
- (4) Analytical Laboratory System support;
- (5) CST operations and communications capability support.

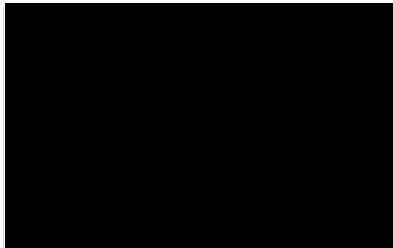
3. The Joint Staff has analyzed these requests and determined that the DCNG requires approximately [REDACTED] Guardsmen to execute this mission. This number includes our command, staff, liaisons, maintenance teams, food services,

administrative support, communication support and medical support requirements.

4. In order to conduct the specified tasks above, to include all implied tasks, recommend an initial **troop cap** of [REDACTED] Army and Air Guardsmen. Additional support, if required, is postured with [REDACTED] Guardsmen on 3-hour response and [REDACTED] Guardsmen on 6-hour response.

5. Guardsmen will partner with MPD or FEMS throughout the course of this mission and the support activities listed will benefit individual and unit training readiness. The DCNG will maintain command and control of Guardsmen and serve solely in a support role. Any DCNG engagement in law enforcement activities will require Guardsmen to be sworn in as special police by the Metropolitan Police Department or Federal Law Enforcement agency prior to conducting such activities. All Guardsmen will serve in a reserve status pursuant to Title 32 U.S.C. § 502(f). The Federal Tort Claims Act, 28 U.S.C. 2671-2680, is applicable to National Guard serving under Title 32 orders. Therefore, all Guardsmen acting within the course and scope of their duties for purposes of this mission possess civil liability protection. Guardsmen will be unarmed during the mission and at no time will the Guardsmen or assets engage in domestic surveillance, searches or seizures of U.S. persons.

6. The POC for this memorandum is the undersigned at [REDACTED]  
[REDACTED]



*The DCHSEMA Director's Updated Letter to MG Walker – Designation of DCNG Personnel as Special Police*



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

Muriel Bowser  
Mayor  
Dr. Christopher Rodriguez  
Director

December 31, 2020

District of Columbia National Guard  
ATTN: General William Walker  
2001 East Capitol Street, SE  
Washington, DC 20003

**Sent via email**

Dear General Walker,

As you know, First Amendment demonstrations permitted by the National Park Service are scheduled to occur in the District of Columbia on Tuesday, January 5, 2021 and Wednesday, January 6, 2021. As a result, District Government requests DC National Guard (DCNG) support, as these demonstrations will follow similar events on November 14, 2020 and December 12, 2020, which resulted in a large influx of participants, violence, and criminal activity. I can confirm that the requesting DC agencies below have exhausted their organic capabilities in accordance with the Seven Step Call-Up process for DCNG support. This request is made on behalf of, and with concurrence from, The Honorable Muriel Bowser, Mayor of Washington, DC.

First, to support the Metropolitan Police Department's (MPD) security mission, it is requested that members of DCNG be activated to assist MPD. Due to the size of these events, all available MPD resources will be deployed and the assistance of DCNG will be essential in supporting the security plan. The mission of DCNG during this activation will primarily be crowd management and assistance with blocking vehicles at traffic posts. Specifically, DCNG is requested to provide:

- Six (6) crowd management teams to manage crowds at specified Metro stations and prevent overcrowding on Metro platforms;
- A team to assist at thirty (30) designated traffic posts.

DCNG should be prepared to staff these locations from 0730 hours until 2400 hours on both Tuesday, January 5, 2021 and Wednesday, January 6, 2021. In addition, it is requested that DCNG members be equipped with visibility vests and lighted traffic wands to assist with this mission. The availability of resources to assist MPD would greatly enhance our ability to successfully accomplish our mission of securing the safety of the residents and visitors of the District of Columbia.

HSEMA.DC.GOV

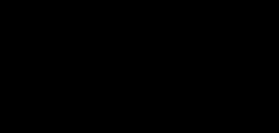
WE ARE  
DISTRICT  
GOVERNMENT OF THE  
DISTRICT OF COLUMBIA  
DC MURIEL BOWSER, MAYOR

Second, the DC Fire and Emergency Medical Services Department (FEMS) requests that members of the Civil Support Team (CST) conduct the following five (5) tasks on request: (1) Chemical, Biological, Radiation, Nuclear monitoring, and hazardous material on-site support; (2) provide liaisons at all required locations; (3) provide technical decontamination support; (4) provide Analytical Laboratory System support; and (5) provide CST Operations and Communications capability support. FEMS would like CST support to begin at 0700 hours on Tuesday, January 5, 2021 and conclude at 0700 hours on Thursday, January 7, 2021—or when released by FEMS. The CST will be partnered with FEMS throughout this mission, and DCNG will coordinate with FEMS to ensure support requirements are complete.

Prior to the commencement of any duties on January 5, 2021, the Mayor of the District will designate all DCNG personnel providing traffic control support to MPD as "Special Police" of MPD, empowering them with law enforcement authority commensurate with that of DC civilian police officers IAW D.C. Official Code (2001 ed.), Title 5, § 5-129.03. At all times, the DCNG military chain-of-command will remain intact for purposes of administrative and operational control.

No DCNG personnel will be armed during this mission. At no time will DCNG personnel or assets be engaged in domestic surveillance, searches, or seizures of US persons. If there are any questions about this request, please contact me. Thank you for your assistance in this matter.

Respectfully,



Dr. Christopher Rodriguez  
Director, HSEMA

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HSEMA.DC.GOV

 GOVERNMENT OF THE  
DISTRICT OF COLUMBIA  
MURIEL BOWSER, MAYOR

*Mr. McCarthy's January 4, 2021 Letter to Mr. Miller – Conditional Recommendation to Approve the D.C. Government's December 31, 2020 RFA*



SECRETARY OF THE ARMY  
WASHINGTON

JAN 04 2021

Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Mr. Secretary,

On 31 December 2020, Mayor Muriel Bowser and Dr. Christopher Rodriguez, Director, District of Columbia Homeland Security and Emergency Management Agency (HSEMA), on behalf of the District of Columbia Metropolitan Police Department (MPD) and District of Columbia Fire and Emergency Service (DCFEMS) requested support from the District of Columbia National Guard (DCNG). Mayor Bowser requests DCNG support from 0700 to 2400 on 5 and 6 January 2021, to support the MPD and DCFEMS response to planned First Amendment demonstrations. The HSEMA request for DCNG support includes crowd management at Metropolitan Transit Stations and establishment of traffic control points manned by DCNG Soldiers and vehicles in support of MPD. The DCFEMS requests support from the 33rd Civil Support Team (CST) to conduct their core tasks of detection, technical decontamination, analytical laboratory suite support, and CST operations and communications support from 0700 on 5 January until mission complete on 7 January 2021.

The DCNG will support MPD with 340 total personnel. DCNG Disposition:

- a. Traffic Control Points: [REDACTED] personnel ([REDACTED] total/2 shifts) operating in non-tactical vehicles
- b. Metro station support: [REDACTED] personnel ([REDACTED] total/2 shifts)
- c. CST Support: [REDACTED] personnel
- d. Quick Reaction Support: 40 personnel staged at Joint Base Andrews
- e. Internal C2 and Support [REDACTED] personnel

On 1 January 2021, MG Walker submitted his request and concept of operation for my approval. I recommend DCNG support this mission if the following conditions are met:

- a. The establishment of a lead federal agency, other than DoD, to enable enhanced coordination of all entities.
- b. The estimated numbers for the demonstrations exceed the local and federal agencies' ability to address the risk.
- c. All other federal agencies have exhausted their assets to support these events.

I directed MG Walker to prepare to recall DCNG personnel to support this event. The DCNG will be postured to support; however, will not commit until the request for support is approved. DCNG are not authorized to perform any additional tasks or duties not authorized in this memorandum.

[REDACTED]  
Ryan D. McCarthy



*Mr. Miller's January 4, 2021 Memorandum for Mr. McCarthy – DCNG Employment Guidance*



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

JAN - 4 2021

MEMORANDUM FOR SECRETARY OF THE ARMY

SUBJECT: Employment Guidance for the District of Columbia National Guard

This memorandum responds to your January 4, 2021 memorandum regarding the District of Columbia request for District of Columbia National Guard (DCNG) support in response to planned demonstrations from January 5-6, 2021. You are authorized to approve the requested support, subject to my guidance below and subject to consultation with the Attorney General, as required by Executive Order 11485.

Without my subsequent, personal authorization, the DCNG is not authorized the following:

- To be issued weapons, ammunition, bayonets, batons, or ballistic protection equipment such as helmets and body armor.
- To interact physically with protestors, except when necessary in self-defense or defense of others, consistent with the DCNG Rules for the Use of Force.
- To employ any riot control agents.
- To share equipment with law enforcement agencies.
- To use Intelligence, Surveillance, and Reconnaissance (ISR) assets or to conduct ISR or Incident, Awareness, and Assessment activities.
- To employ helicopters or any other air assets.
- To conduct searches, seizures, arrests, or other similar direct law enforcement activity.
- To seek support from any non-DCNG National Guard units.

At all times, the DCNG will remain under the operational and administrative command and control of the Commanding General of the DCNG, who reports to the Secretary of Defense through the Secretary of the Army.

You may employ the DCNG Quick Reaction Force (QRF) only as a last resort and in response to a request from an appropriate civil authority. If the QRF is so employed, DCNG personnel will be clearly marked and/or distinguished from civilian law enforcement personnel, and you will notify me immediately upon your authorization.

Christopher C. Miller  
Acting

*Mr. McCarthy's January 5, 2021 Letter to MG Walker – RFA Approval and Limitations***SECRETARY OF THE ARMY  
WASHINGTON**

05 JAN 2021

Major General William J. Walker  
Commanding General  
District of Columbia National Guard  
2001 East Capitol Street SE  
Washington, DC 20003-1719

Dear General Walker:

This responds to your letter dated January 1, 2021 recommending approval of the request of Mr. Christopher Rodriguez, Director of District of Columbia Homeland Security and Emergency Management Agency (DCHSEMA), on behalf of the District of Columbia Fire and Emergency Service (DCFEMS) and DC Metropolitan Police Department (MPD) dated December 31, 2020, requesting the District of Columbia National Guard (DCNG) 33rd Civil Support Team (CST) and traffic management and crowd control for planned demonstrations in DC from 5-7 January 2021.

**Support to the Civil Authorities of the District of Columbia**

DCHSEMA requested that the DCNG CST conduct the following tasks, upon request, for each event: (1) Chemical, Biological, Radiological, and Nuclear (CBRN) monitoring and hazardous material (HAZMAT) on-site support; (2) liaisons at all required locations; (3) technical decontamination support (on call);<sup>1</sup> (4) Analytical Laboratory Suite (ALS) support (on call); and (5) CST operations and communications capability support. The CST personnel will be partnered with personnel from DCFEMS throughout the course of these missions and will serve solely in a support role to emergency fire and medical first responders.

DCHSEMA also requested six crowd management teams at specified Metro stations and to prevent overcrowding on Metro platforms; and teams to assist at 30 designated traffic posts.

Your mission analysis determined that the DCNG could provide all of the requested support. I approve the DCNG to support the MPD with 340 total personnel. DCNG Disposition will include:

- a. Traffic Control Points: [REDACTED] personnel [REDACTED] total/2 shifts) operating in non-tactical vehicles
- b. Metro station support: [REDACTED] personnel [REDACTED] total/2 shifts)

<sup>1</sup> The requested technical decontamination support will be limited to first responders working with the CST. It will not include the mass decontamination of civilians.



-2-

c. CST Support: [REDACTED] personnel

d. Quick Reaction Support: 40 personnel staged at Joint Base Andrews

e. Internal C2 and Support: [REDACTED] personnel

DCNG are not authorized to perform any additional tasks or duties not authorized in this memorandum. In addition, without my personal authorization, the DCNG is not authorized the following:

- a. To be issued weapons, ammunition, bayonets, and batons.
- b. To interact physically with protestors, except when necessary in self-defense or defense of others, consistent with the DCNG Rules for the Use of Force other than those who pose an immediate threat of physical harm to Federal personnel or destruction of Federal facilities.
- c. To employ any riot control agents.
- d. To share equipment with law enforcement agencies.
- e. To use Intelligence, Surveillance, and Reconnaissance (ISR) assets or to conduct ISR or Incident, Awareness, and Assessment (IAA) activities.
- f. To employ helicopters or any other air assets.
- g. To conduct searches, seizures, arrests, or other similar direct law enforcement activity.
- h. To seek support from any non-DCNG National Guard units.

DCNG Soldiers have the inherent right to self-defense. DCNG Soldiers will store their helmets and body armor within vehicles or buildings in close proximity to their positions. In the event of an elevation of the threat requiring immediate donning of this equipment for self-defense, DCNG leadership will immediately notify the Secretary of Army.

At all times, the DCNG will remain under the operational and administrative command and control of the Commanding General of the DCNG, who reports to the Secretary of Defense through the Secretary of the Army.

-3-

I withhold authority to approve employment of the DCNG Quick Reaction Force (QRF) and will do so only as a last resort, in response to a request from an appropriate civil authority. I will require a concept of operation prior to authorizing employment of the QRF. If the QRF is employed, DCNG personnel will be clearly marked and/or distinguished from civilian law enforcement personnel. You will notify me immediately of any requests for QFR employment.

The support mission for the CST will begin at approximately 0700 hours on January 5, 2021, and will end on January 7, 2021 when DCHSEMA, in coordination with DCFEMS, determines that the mission is complete. Finally, your mission analysis determined that the requested support constitutes valid military training; is within the current capabilities of the DCNG, and will not detract from the readiness of the DCNG.

**Approval**

Pursuant to my request, the Deputy Attorney General reviewed and concurred with your plan for support to the civil authorities of the District of Columbia.

All DCNG personnel associated with this support mission will serve under the provisions of Title 32, U.S.C., Section 502(f). They will serve solely in a support role to the named civil authorities and remain under the command and control of DCNG leadership at all times. DCNG will not be armed for this event however, MPD requests that DCNG members be equipped with safety vests and lighted traffic wands to assist with this mission. Further, MPD requests DCNG personnel supporting the mission be appointed as "Special Police" pursuant to D.C. Code § 5-129.03. They will not engage in the domestic surveillance of U.S. persons.

  
Ryan D. McCarthy

CF:  
Office of the Assistant Secretary of Defense (Homeland Defense and Global Security)  
Office of the Department of Defense General Counsel  
Department of Defense Executive Secretary  
Chief, National Guard Bureau  
Deputy Chief of Staff, G-3/5/7  
Office of the Army General Counsel

*Mr. McCarthy's January 4, 2021 Letter to Mr. Rosen – Confirming DoJ Approval of the D.C. Government's December 31, 2020 RFA*



SECRETARY OF THE ARMY  
WASHINGTON

JAN 04 2021

Jeffrey A. Rosen  
Deputy Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Rosen:

By letter dated January 1, 2021, Major General (MG) William J. Walker, Commanding General, District of Columbia National Guard (DCNG), transmitted a request from the District of Columbia Homeland Security and Emergency Management Agency (DCHSEMA) for DCNG support for planned First Amendment demonstrations from 5-7 January. The Mayor of the District of Columbia concurred with the submission of this request for support. By this letter, I am confirming your approval, consistent with Executive Order 11485, of the request for assistance to the civil authorities of the District of Columbia described below.

DCHSEMA requested that the DCNG Civil Support Team (CST) conduct the following tasks, upon request, for each event: (1) Chemical, Biological, Radiological, and Nuclear (CBRN) monitoring and hazardous material (HAZMAT) on-site support; (2) liaisons at all required locations; (3) technical decontamination support (on call);<sup>1</sup> (4) Analytical Laboratory Suite (ALS) support (on call); and (5) CST operations and communications capability support. The CST personnel will be partnered with personnel from DCFEMS throughout the course of these missions and will serve solely in a support role to emergency fire and medical first responders. The support mission will begin at approximately 0700 hours on January 5, 2021, and it will end when DCHSEMA, in coordination with DCFEMS, determines that the mission is complete on January 7, 2021.

DCHSEMA also requested support to the MPD. They requested DCNG provide crowd management teams at specified Metro stations and to help prevent overcrowding on Metro platforms; additionally, they requested teams to assist at designated traffic posts.

MG Walker's mission analysis determined that approximately 340 DCNG personnel are needed to accomplish the mission; determined that the requested support constituted valid military training; was within the current capabilities of the DCNG; and would not detract from the readiness of the DCNG.

<sup>1</sup> The requested technical decontamination support will be limited to first responders working with the CST. It will not include the mass decontamination of civilians.

-2-

I approved the DCNG to support MPD with 340 total personnel. Following your concurrence, I will provide my decision and your concurrence to the Acting Secretary of Defense. The DCNG disposition follows:

- a. Traffic Control Points: [REDACTED] personnel ([REDACTED] total/2 shifts) operating in non-tactical vehicles
- b. Metro station support: [REDACTED] personnel ([REDACTED] total/2 shifts)
- c. CST Support: 20 personnel
- d. Quick Reaction Support: 40 personnel staged at Joint Base Andrews
- e. Internal C2 and Support: [REDACTED] personnel

DCNG are not authorized to perform any additional tasks or duties not authorized in this memorandum. In addition, without my personal authorization, the DCNG is not authorized the following:

- a. To be issued weapons, ammunition, bayonets, batons, or ballistic protection equipment such as helmets and body armor.
- b. To interact physically with protestors, except when necessary in self-defense or defense of others, consistent with the DCNG Rules for the Use of Force other than those who pose an immediate threat of physical harm to Federal personnel or destruction of Federal facilities.
- c. To employ any riot control agents.
- d. To share equipment with law enforcement agencies.
- e. To use Intelligence, Surveillance, and Reconnaissance (ISR) assets or to conduct ISR or Incident, Awareness, and Assessment (IAA) activities.
- f. To employ helicopters or any other air assets.
- g. To conduct searches, seizures, arrests, or other similar direct law enforcement activity.
- h. To seek support from any non-DCNG National Guard units.

MG Walker will employ the DCNG Quick Reaction Force (QRF) only as a last resort, in response to a request from an appropriate civil authority and with my prior approval. I will require a concept of operation prior to authorizing employment of the QRF. If the QRF is employed, DCNG personnel will be clearly marked and/or distinguished from civilian law enforcement personnel, and MG Walker will notify me immediately upon his authorization. At all times, the DCNG will remain under the operational and administrative command and control of the Commanding General of the DCNG, who reports to the Secretary of Defense through the Secretary of the Army.

All DCNG personnel associated with this support mission will serve under the provisions of Title 32, U.S.C., Section 502(f). They will serve solely in a support role to the named civil authorities and remain under the command and control of DCNG leadership at all times. DCNG will not be armed for this event, however; MPD requests that DCNG members be equipped with safety vests and lighted traffic wands to assist

-3-

with this mission. Further, MPD requests DCNG personnel supporting the mission be appointed as "Special Police" pursuant to D.C. Code § 5-129.03. They will not engage in domestic surveillance of U.S. persons nor conduct search or seizure activities.

My point of contact for this matter is [REDACTED]  
[REDACTED]

Sincerely,

[REDACTED]  
Ryan D. McCarthy [REDACTED]

Attachments  
as

CF:  
Office of the Department of Defense General Counsel  
Office of the Assistant Secretary of Defense (Homeland Defense and Global Security)  
Department of Defense Executive Secretary

*Mayor Bowser's January 5, 2021 Letter to Mr. Miller, Mr. McCarthy, and Mr. Rosen – The D.C. Government Did Not Request Other Federal Law Enforcement Assistance*



MURIEL BOWSER  
MAYOR

January 5, 2021

The Honorable Jeffery Rosen  
Acting United States Attorney General  
950 Pennsylvania Ave, NW  
Washington, DC 20530

The Honorable Ryan D. McCarthy  
Secretary of the Army  
101 Army Pentagon  
Washington, DC 20310

The Honorable Chris Miller  
Acting Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301


Dear Acting Attorney General Rosen, Secretary McCarthy, and Acting Secretary Miller:

As the law enforcement agency charged with protecting residents and visitors throughout the District of Columbia, the Metropolitan Police Department (MPD) is prepared for this week's First Amendment activities. MPD has coordinated with its federal partners, namely the US Park Police, US Capitol Police and the US Secret Service—all of whom regularly have uniformed personnel protecting federal assets in the District of Columbia. This week, MPD has additional logistical support of unarmed members of the DC National Guard, who will work under the direction of, and in coordination with, MPD.

The District of Columbia Government has not requested personnel from any other federal law enforcement agencies. To avoid confusion, we ask that any request for additional assistance be coordinated using the same process and procedures.

We are mindful that in 2020, MPD was expected to perform the demanding tasks of policing large crowds while working around unidentifiable personnel deployed in the District of Columbia without proper coordination. Unidentifiable personnel—in many cases, armed—caused confusion among residents and visitors and could become a national security threat with no way for MPD and federal law enforcement to decipher armed groups.

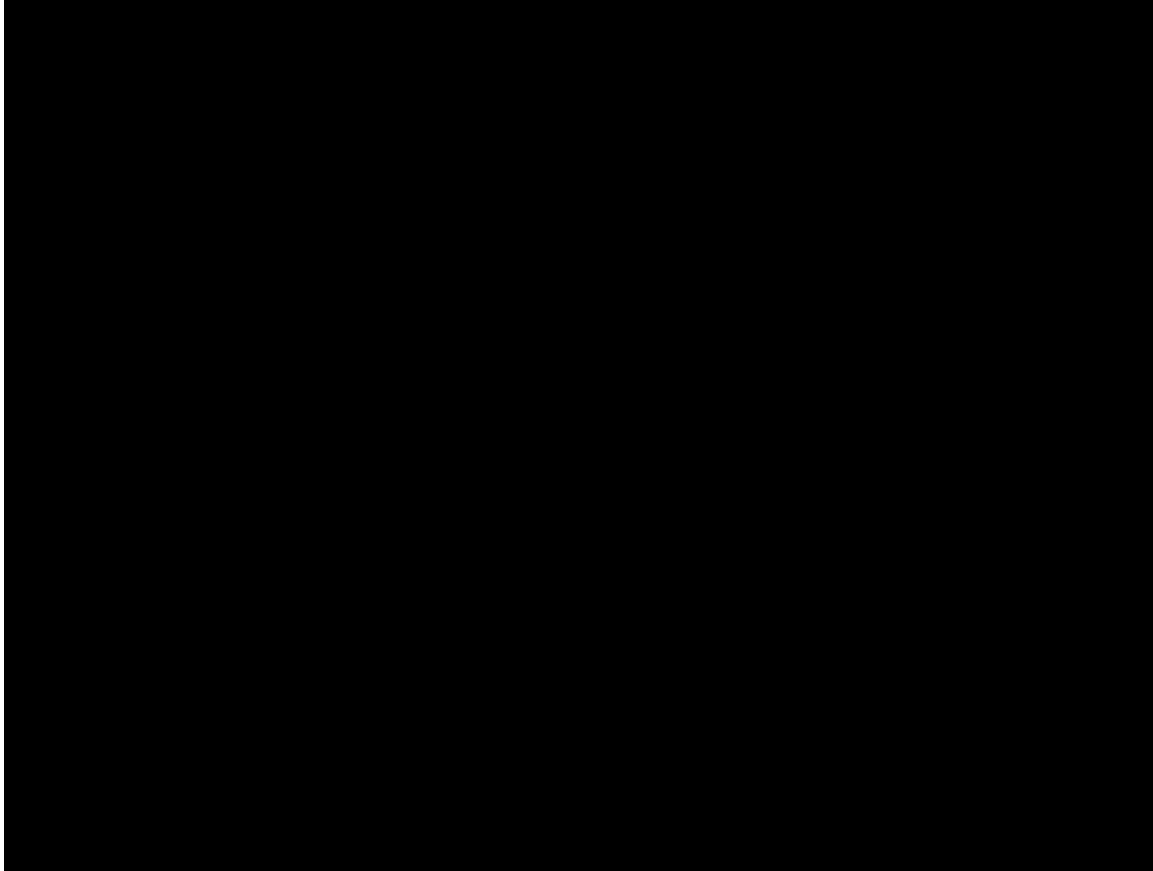
To be clear, the District of Columbia is not requesting other federal law enforcement personnel and discourages any additional deployment without immediate notification to, and consultation with, MPD if such plans are underway. The protection of persons and property is our utmost concern and responsibility. MPD is well trained and prepared to lead the law enforcement, coordination and response to allow for the peaceful demonstration of First Amendment rights in the District of Columbia.

  
Muriel Bowser  
Mayor

Cc: Congresswoman Eleanor Holmes Norton

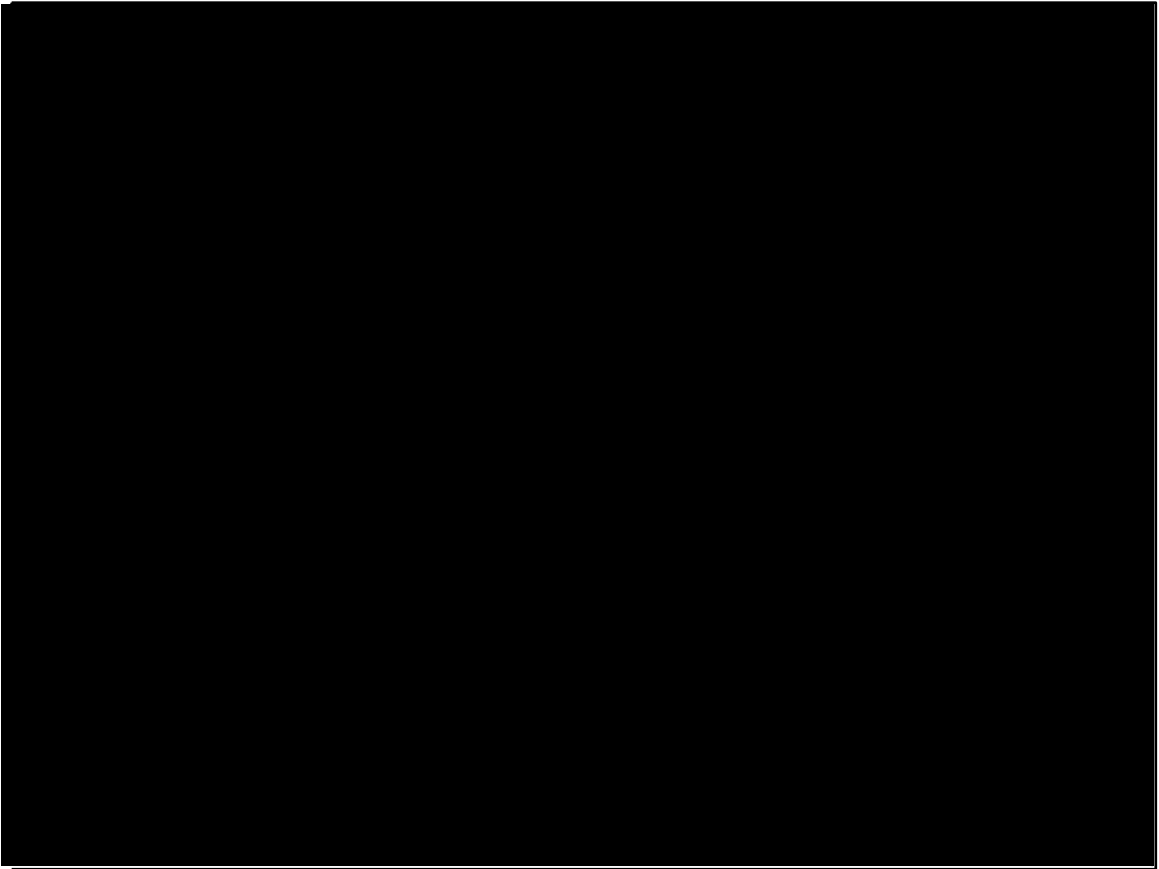
**APPENDIX D: DCNG BRIEFINGS AND ASSOCIATED MAPS OF THE  
DISTRICT OF COLUMBIA**

*DCNG December 31, 2020 Presentation for Mr. McCarthy*



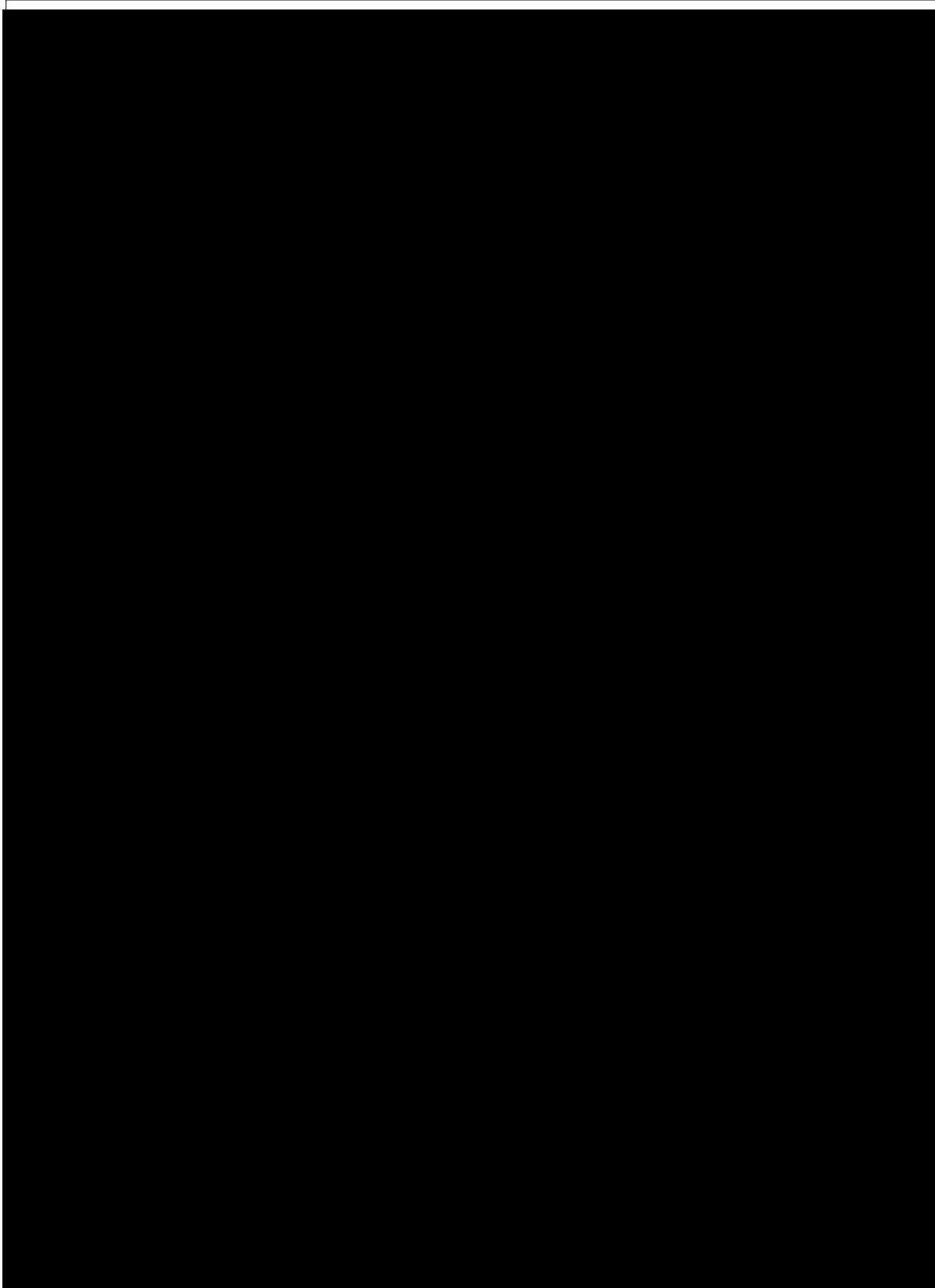


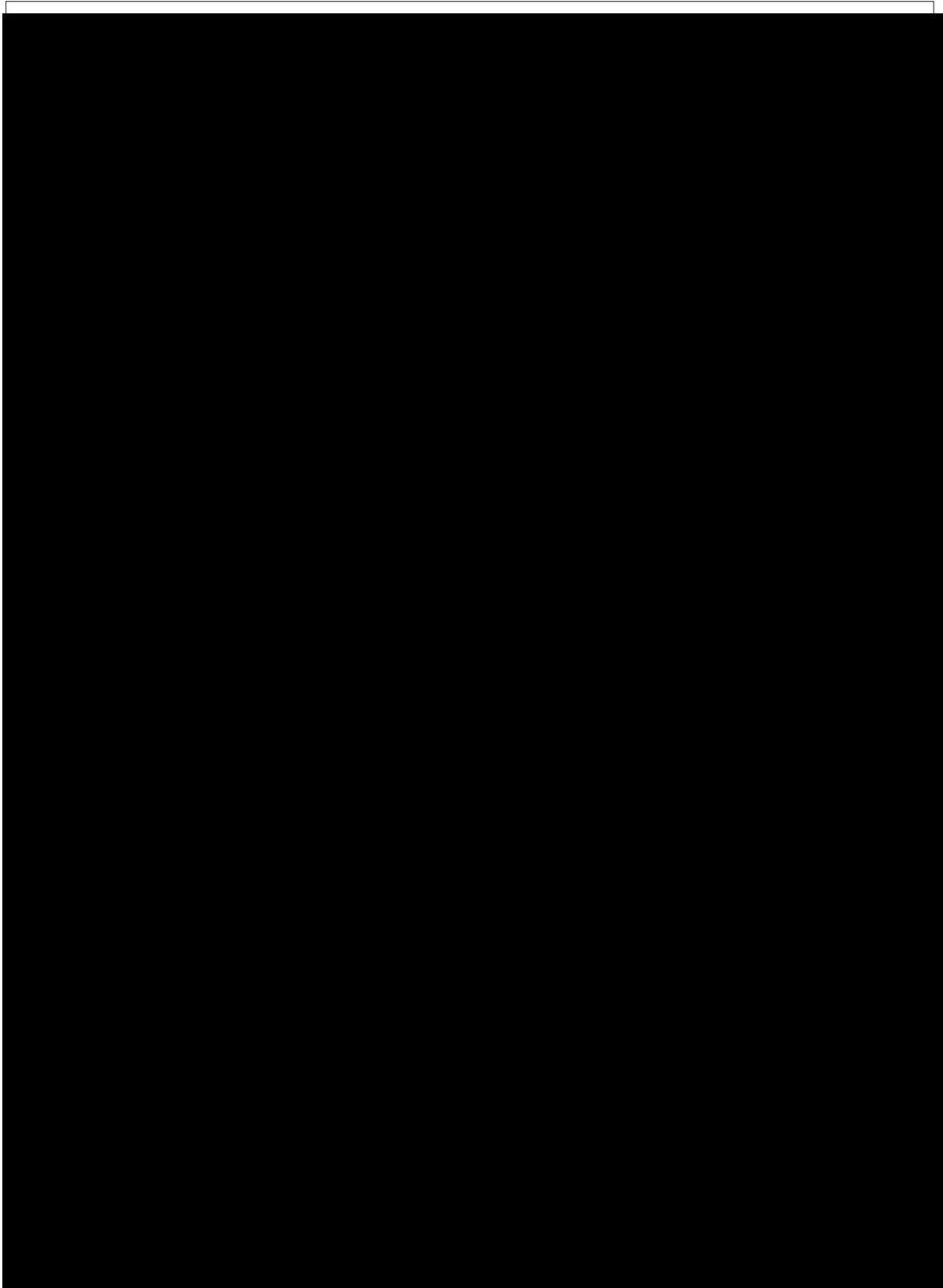


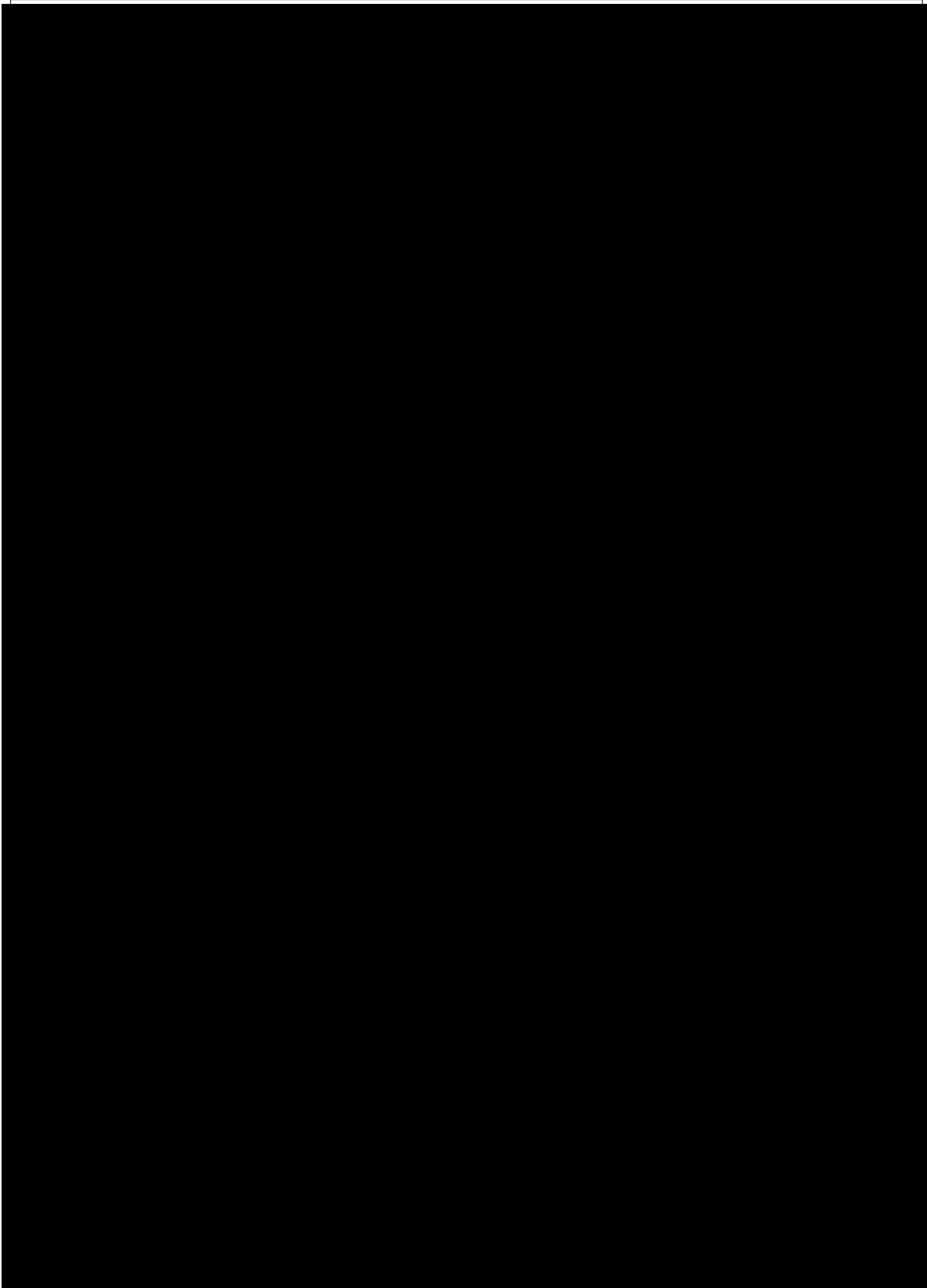


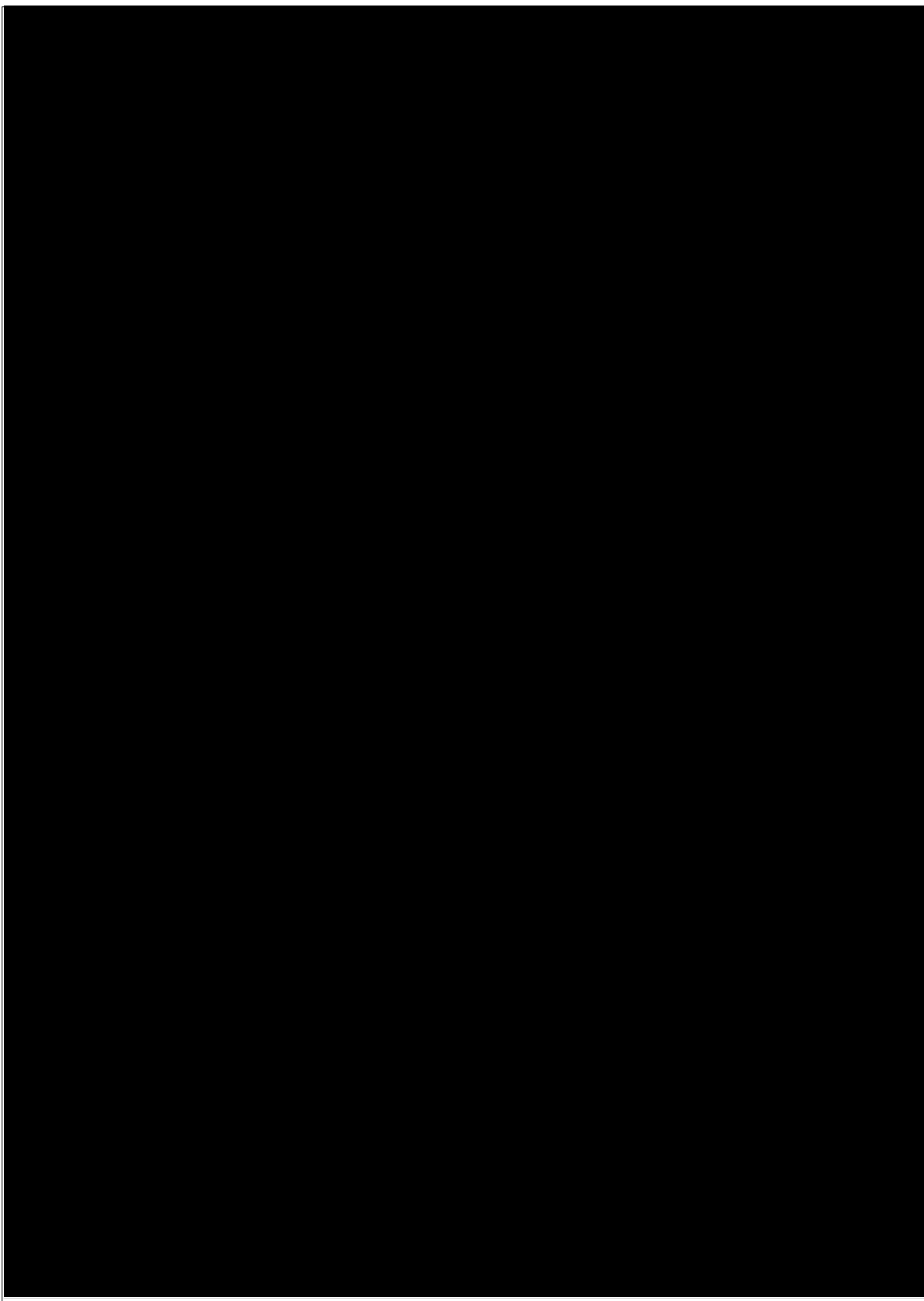


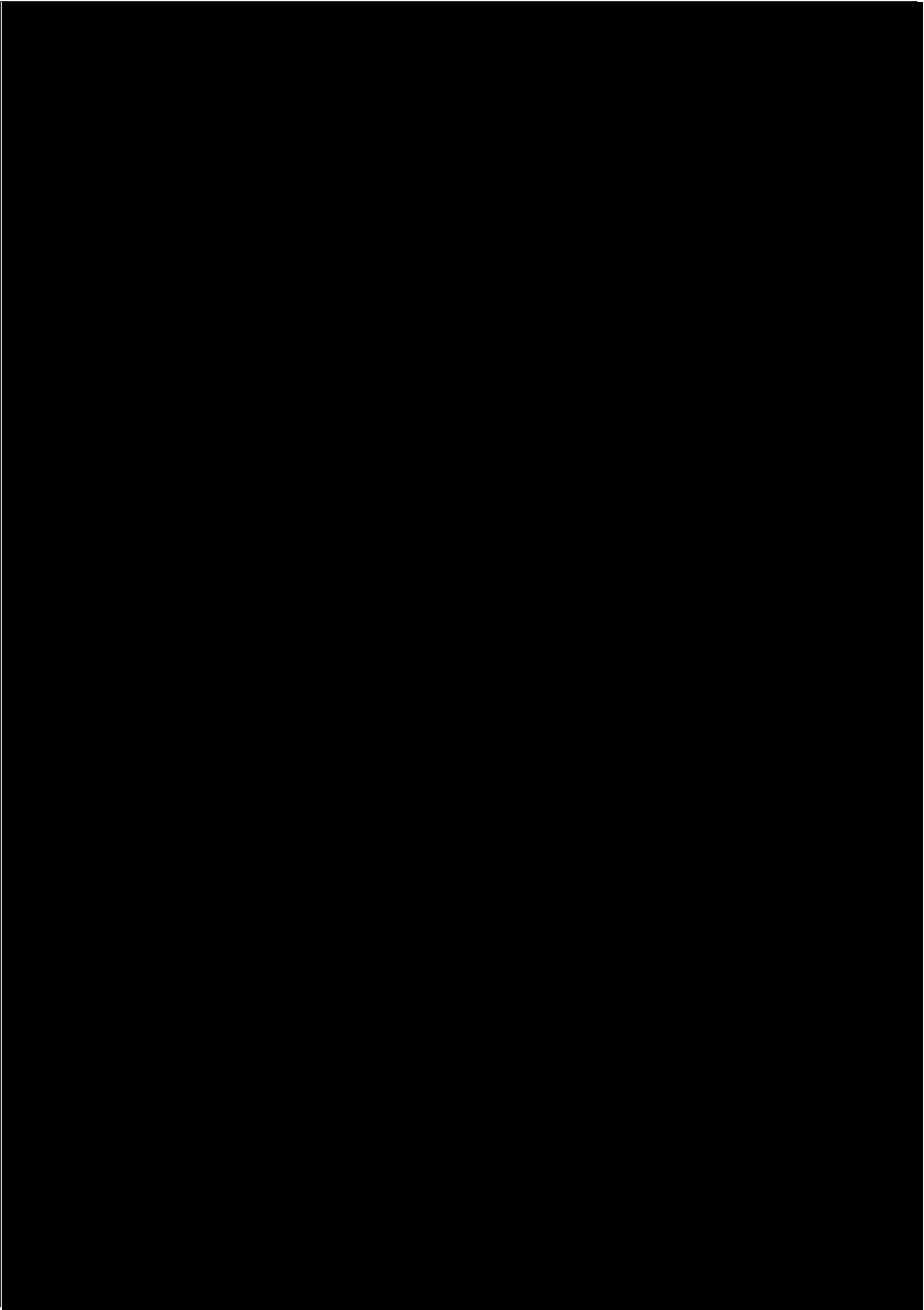
*DCNG January 1, 2021 Operations Order 001-2021 – Operation Guardian*

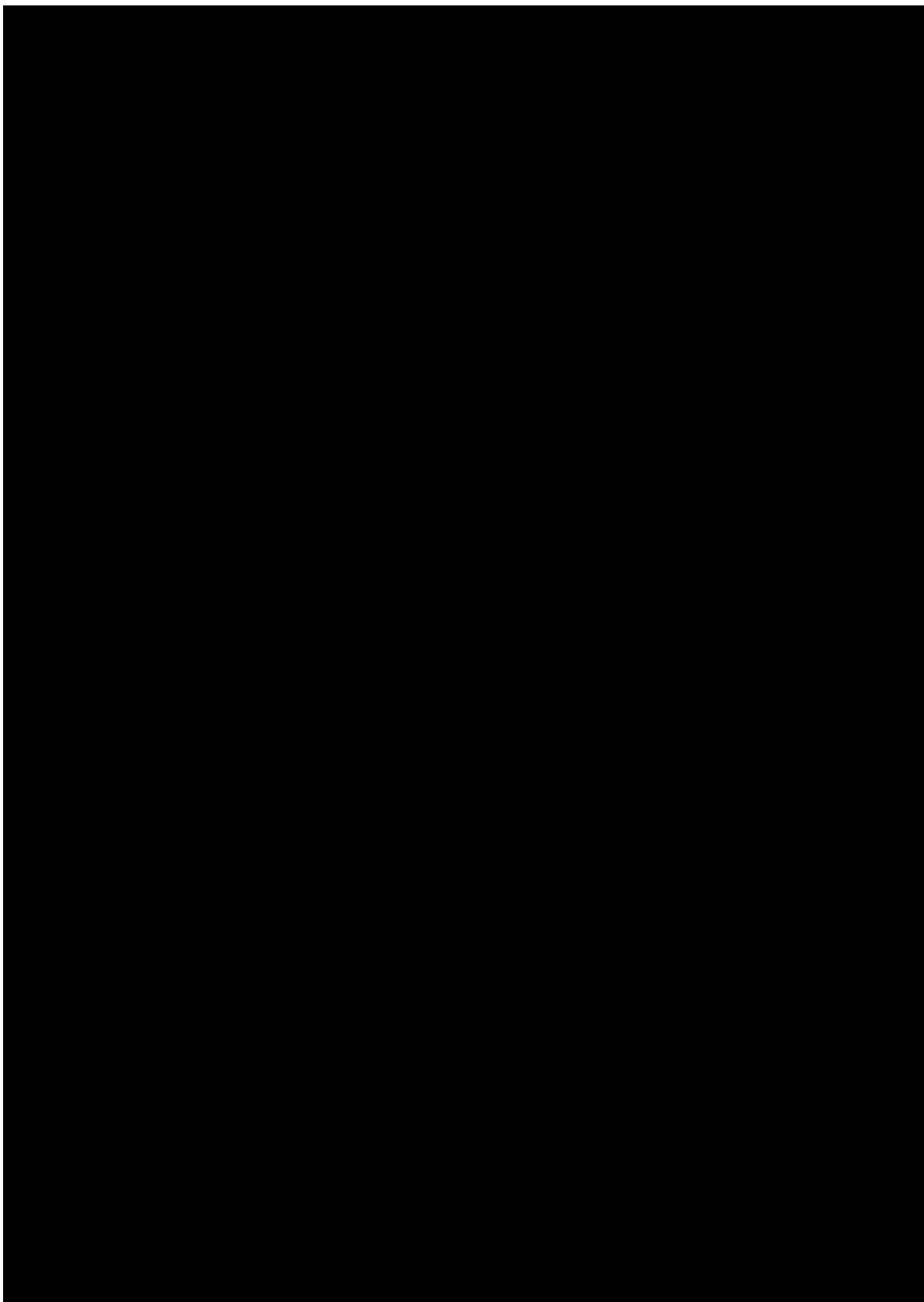




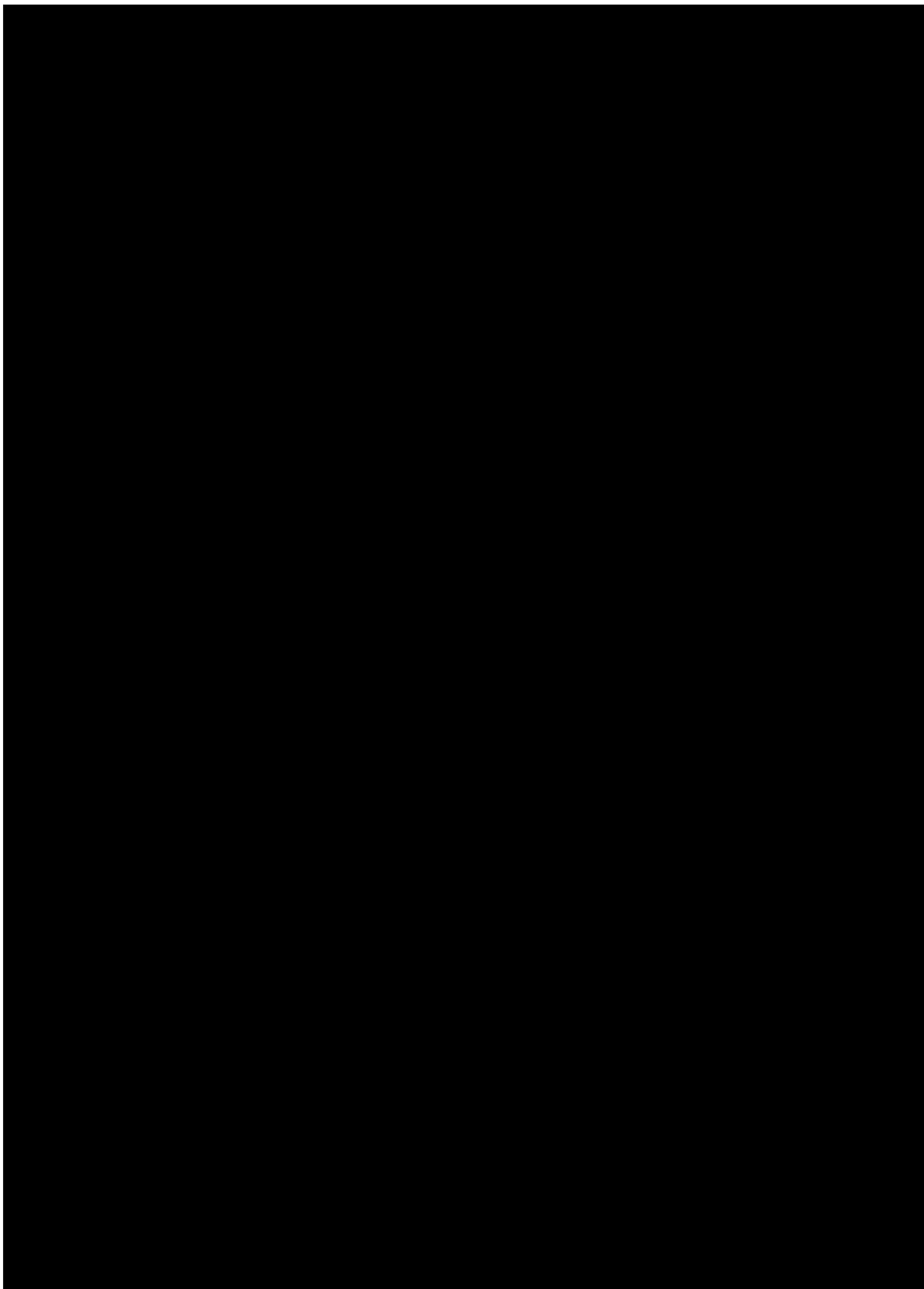


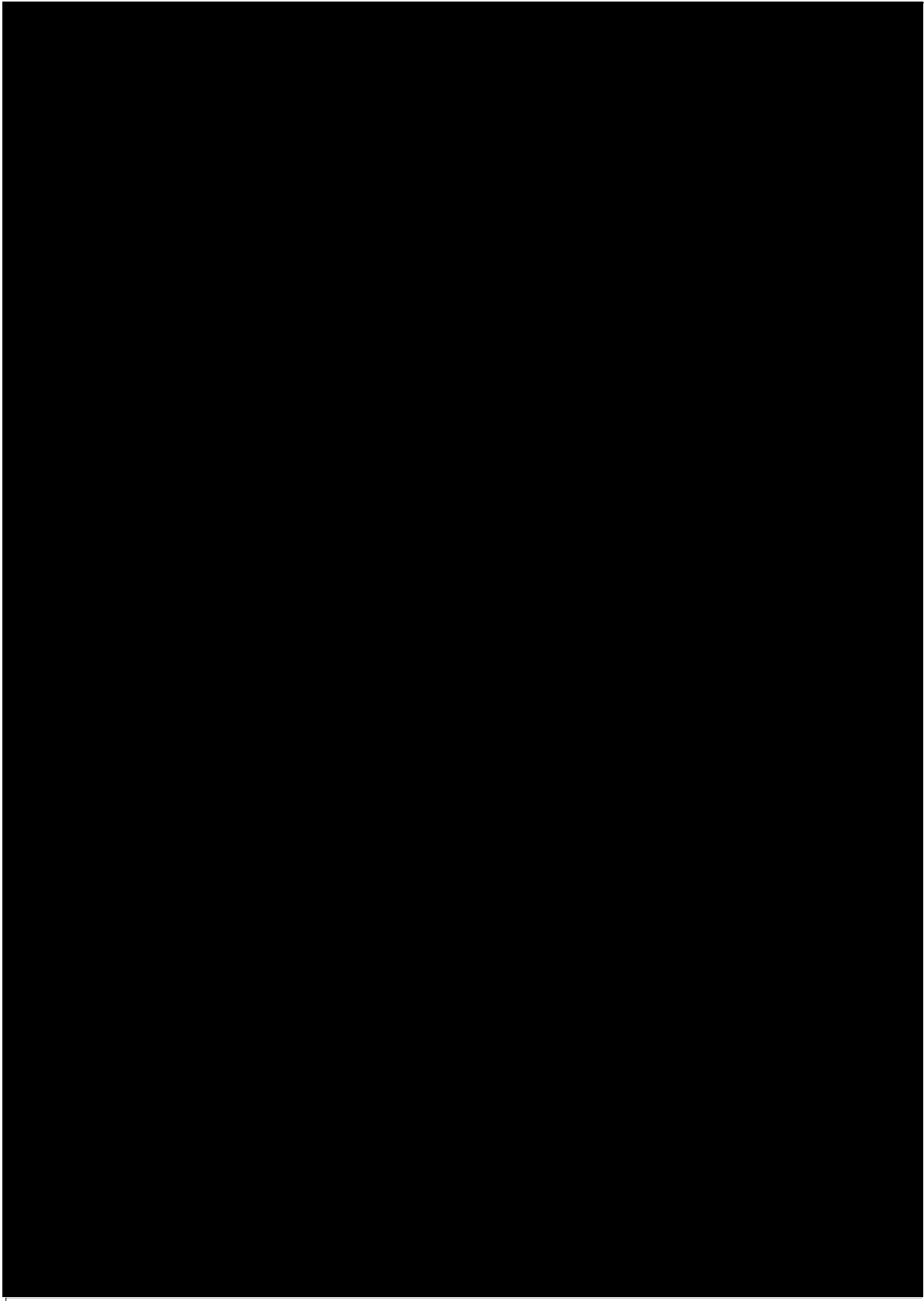






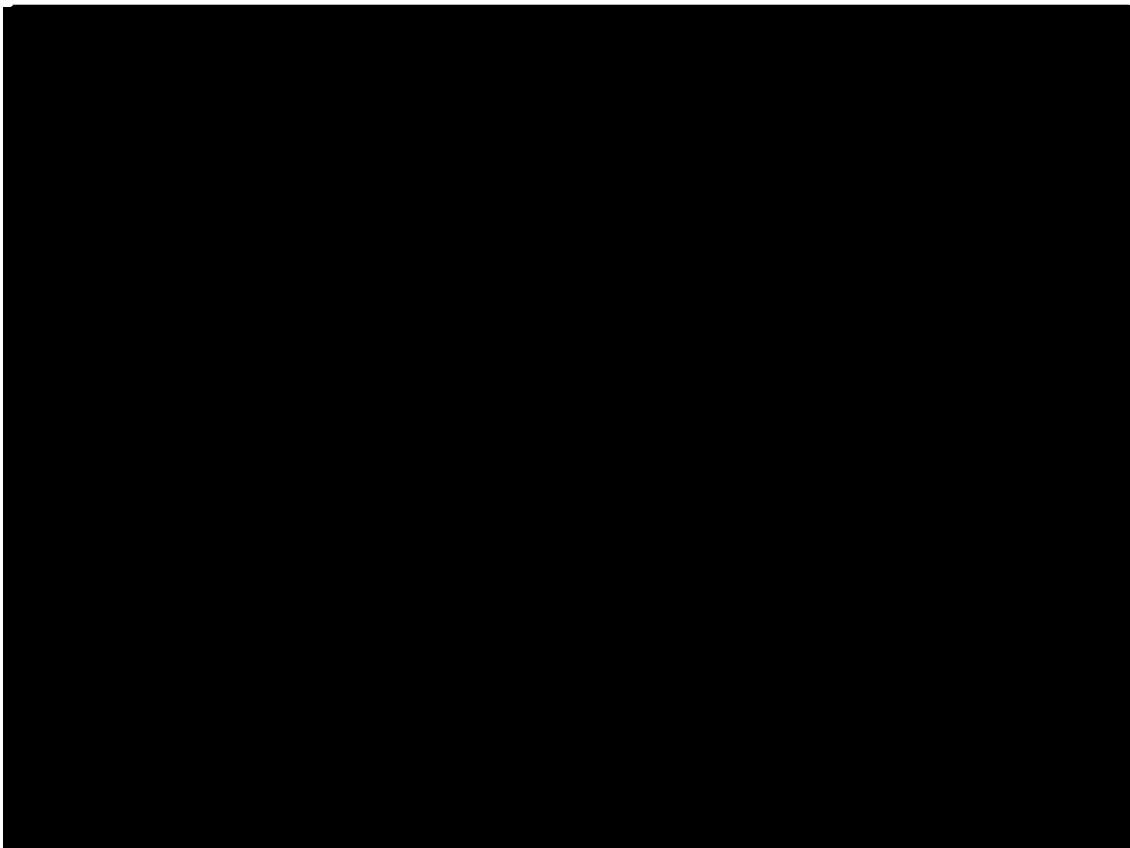
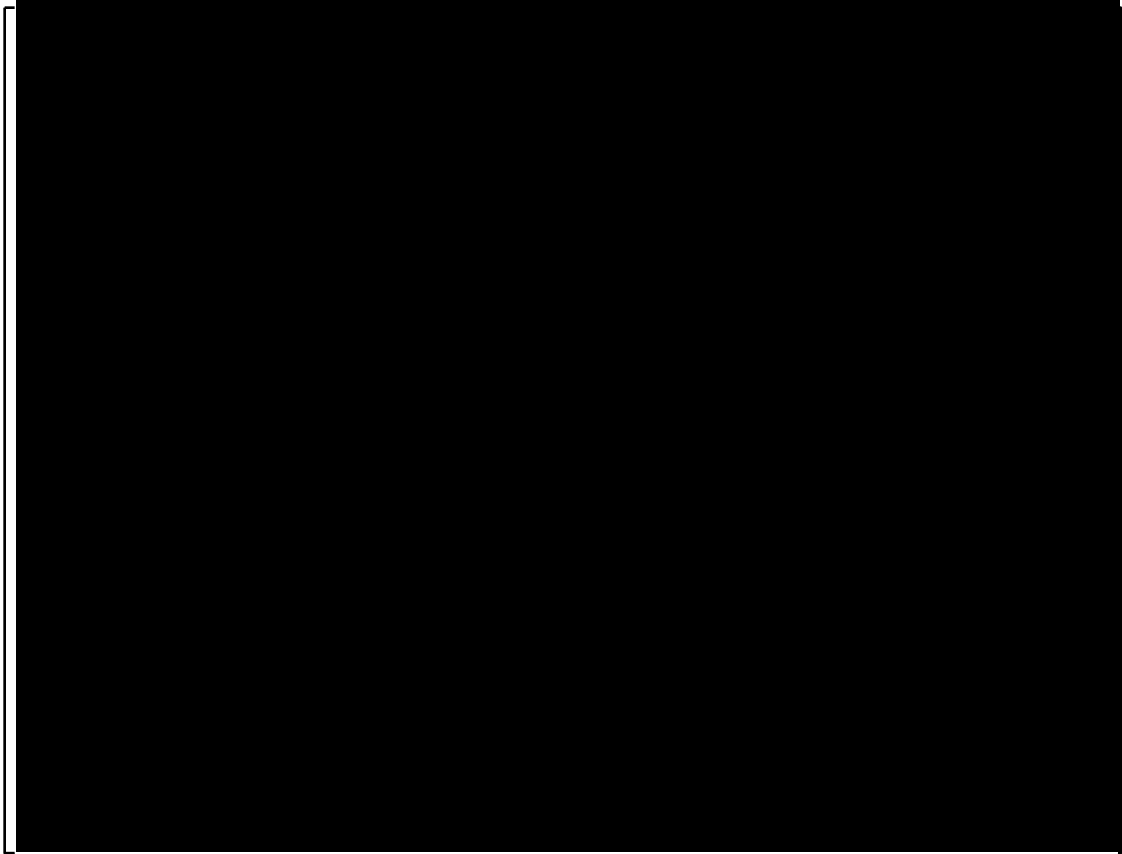


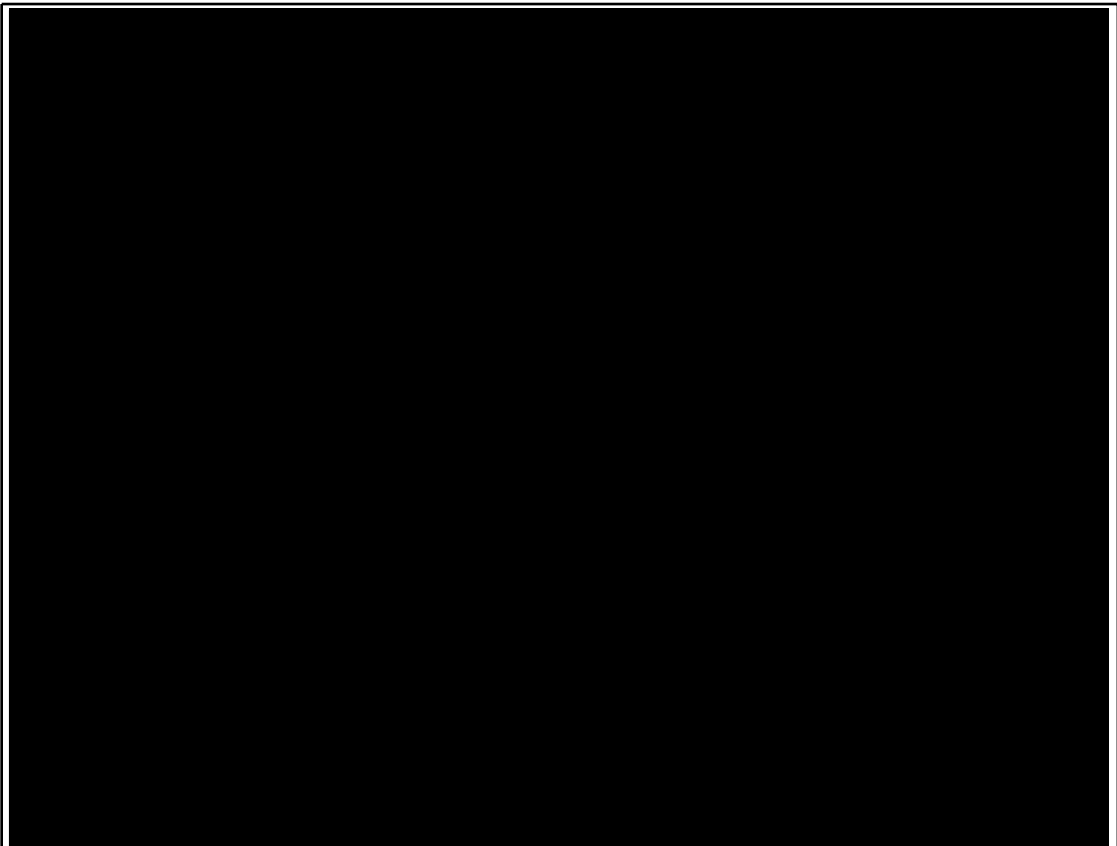


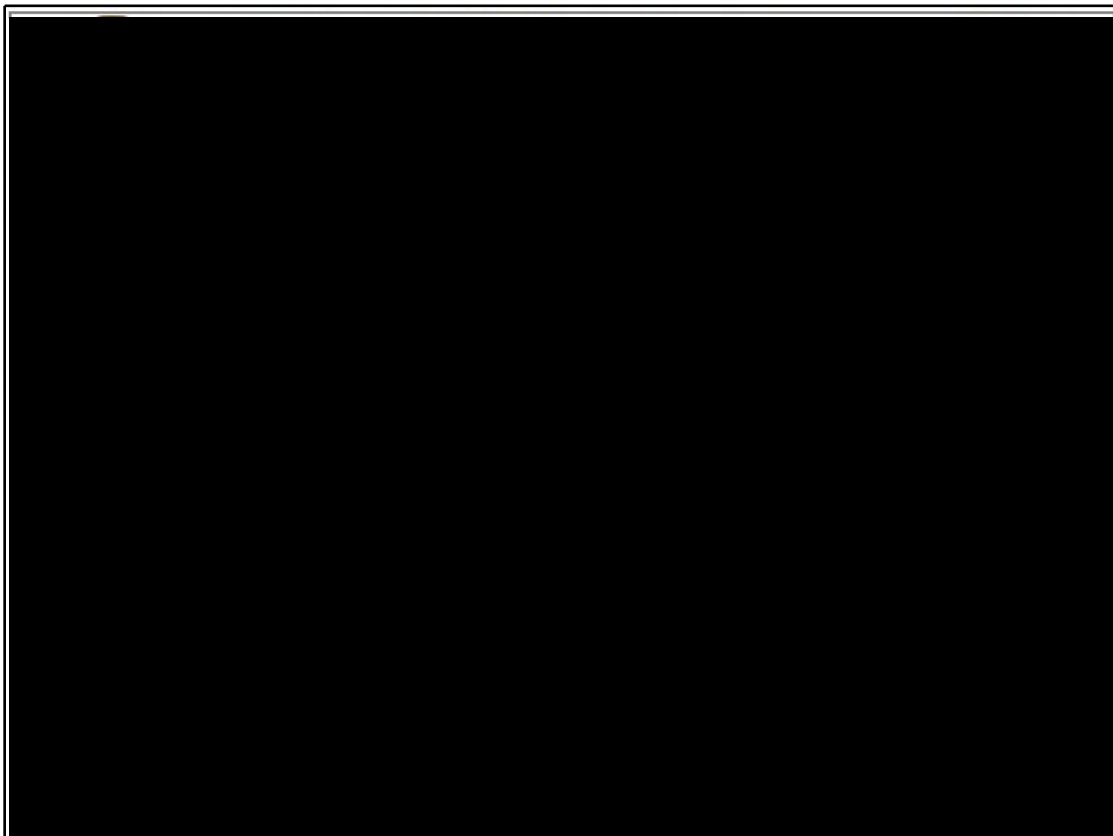
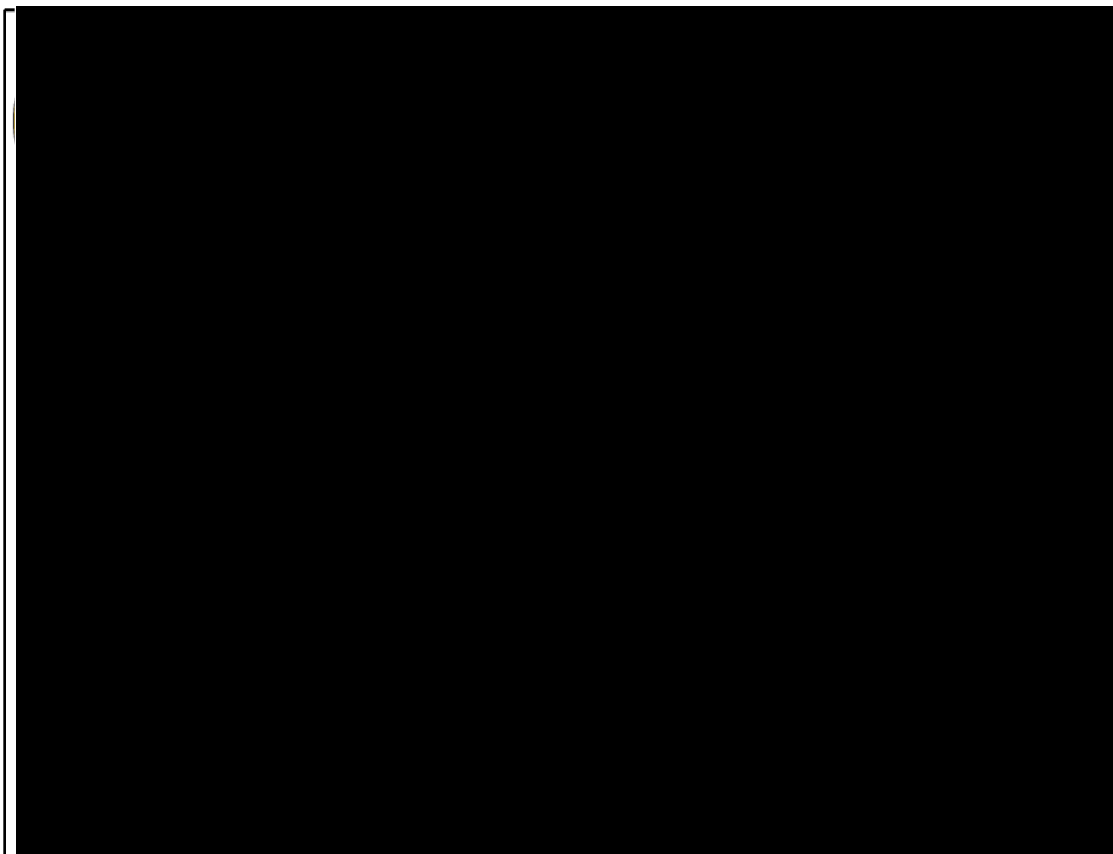


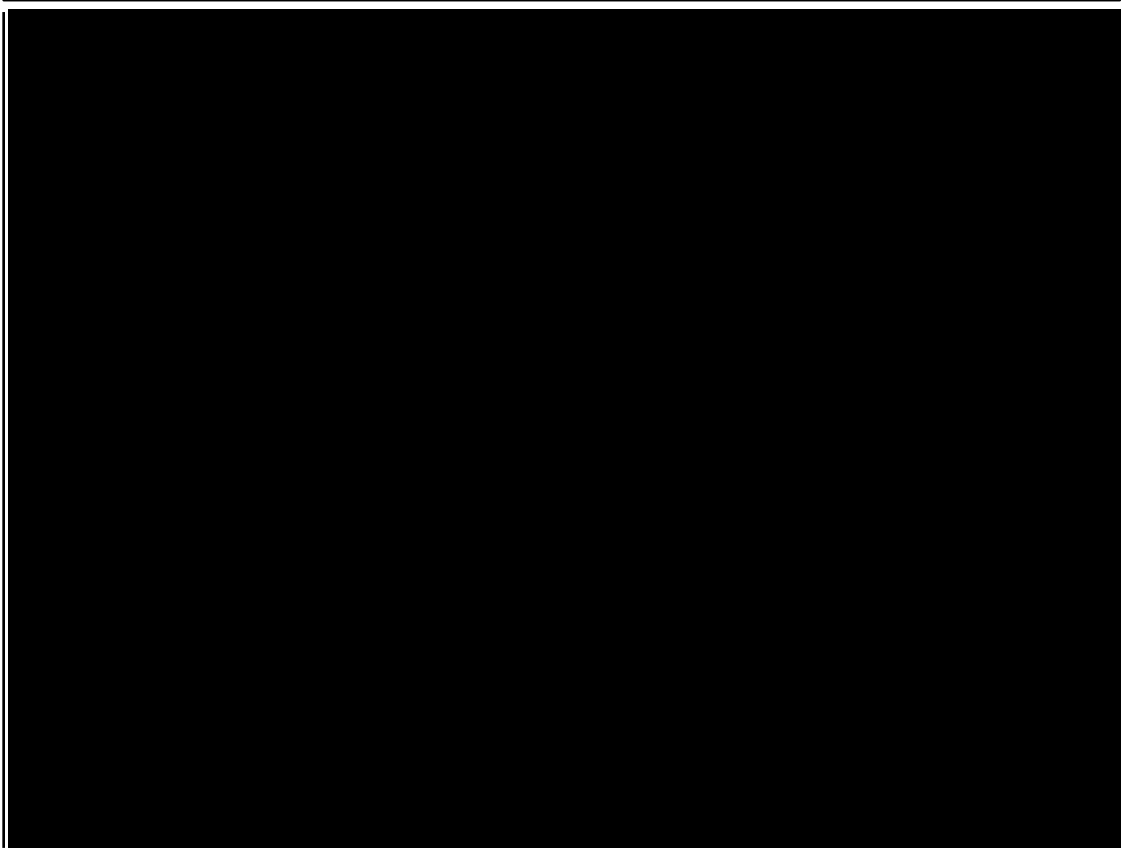
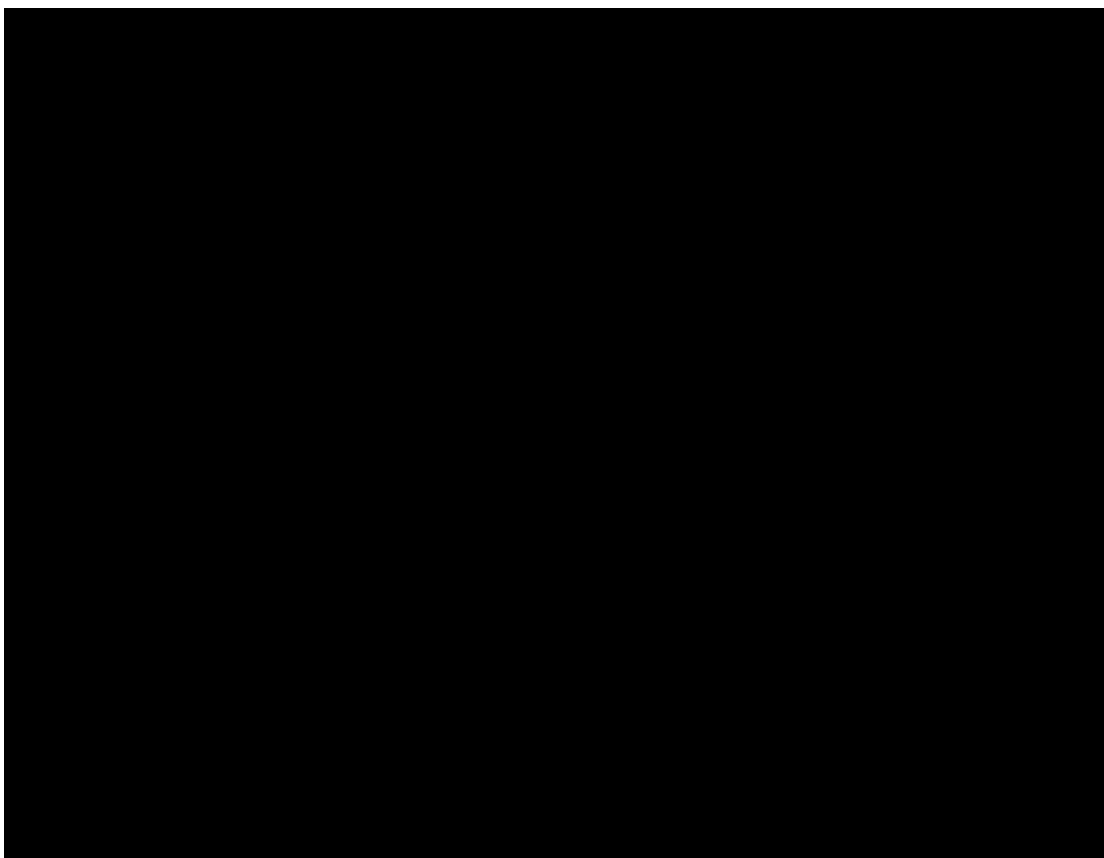
*DCNG January 2, 2021 Presentation for Mr. McCarthy*



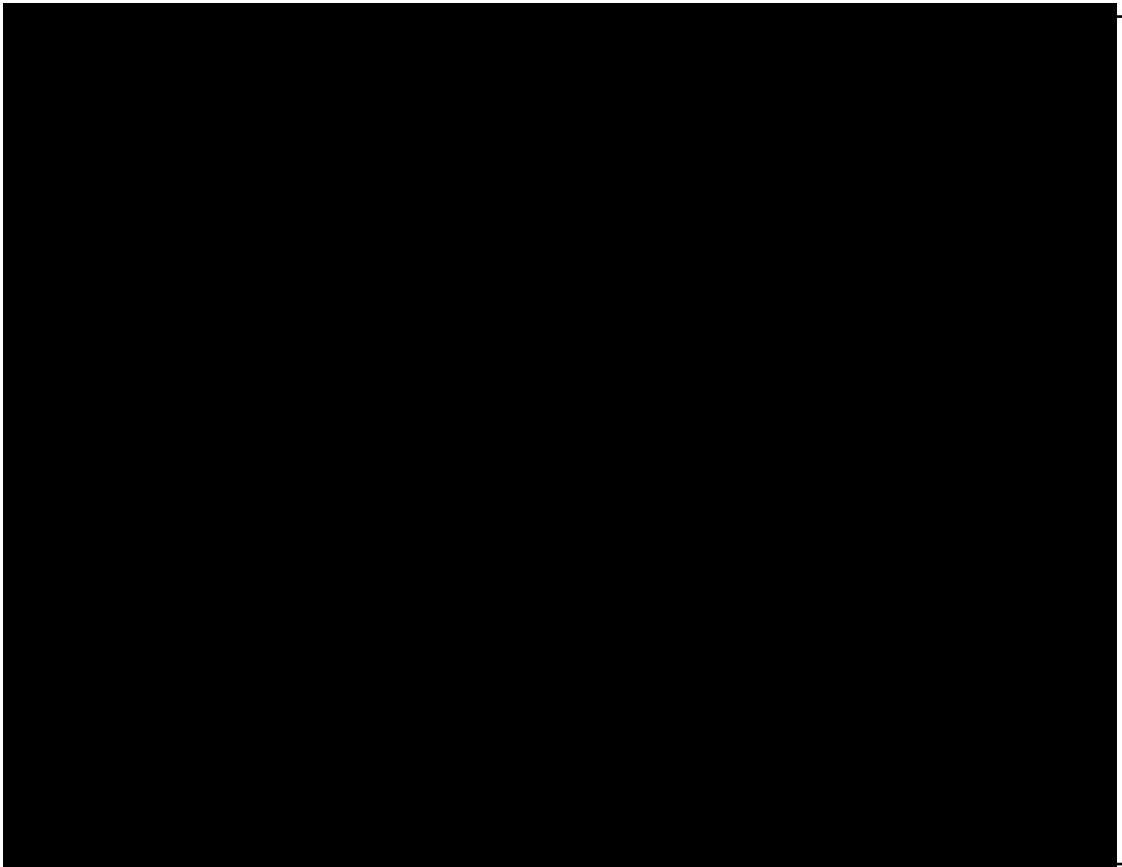




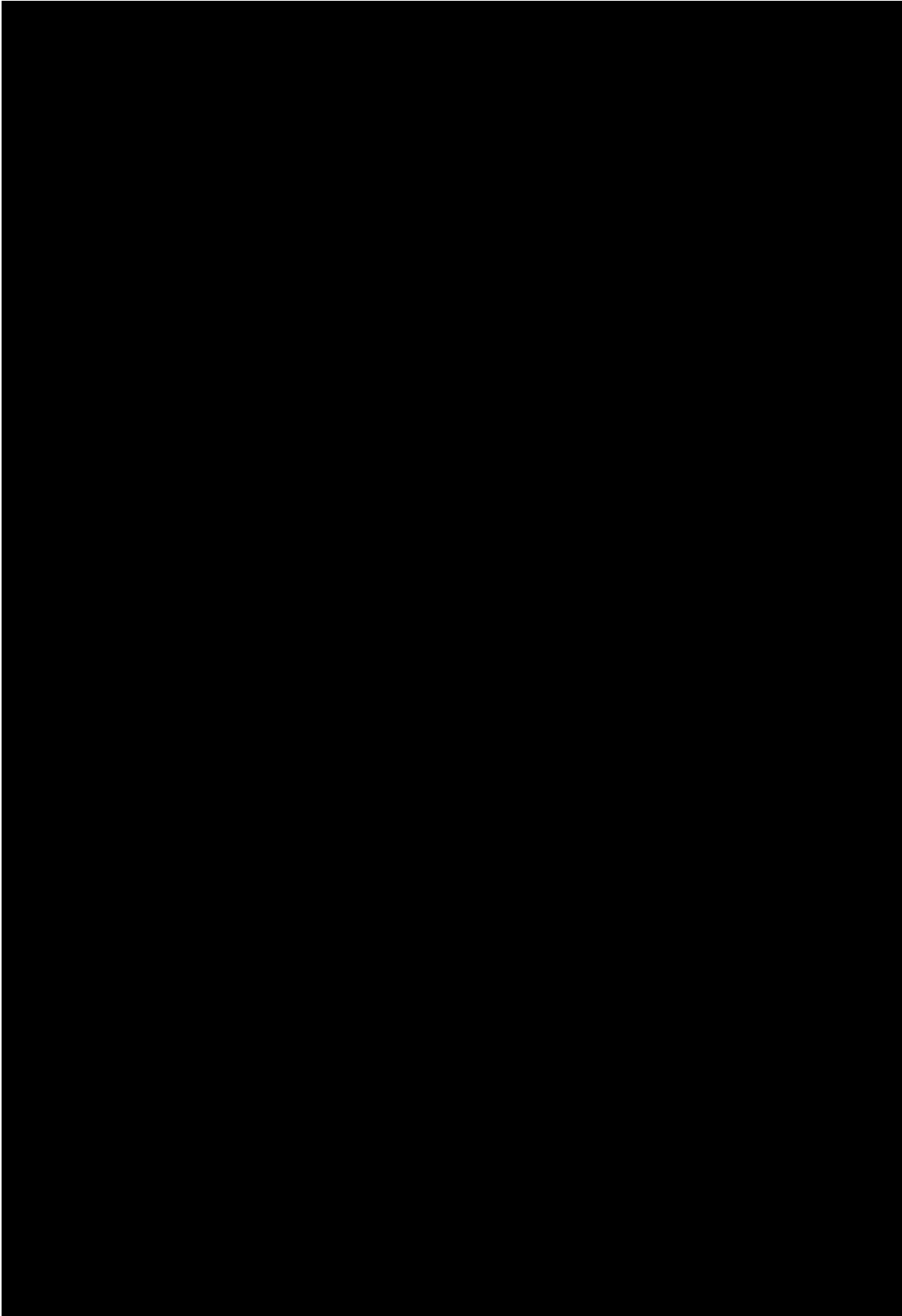


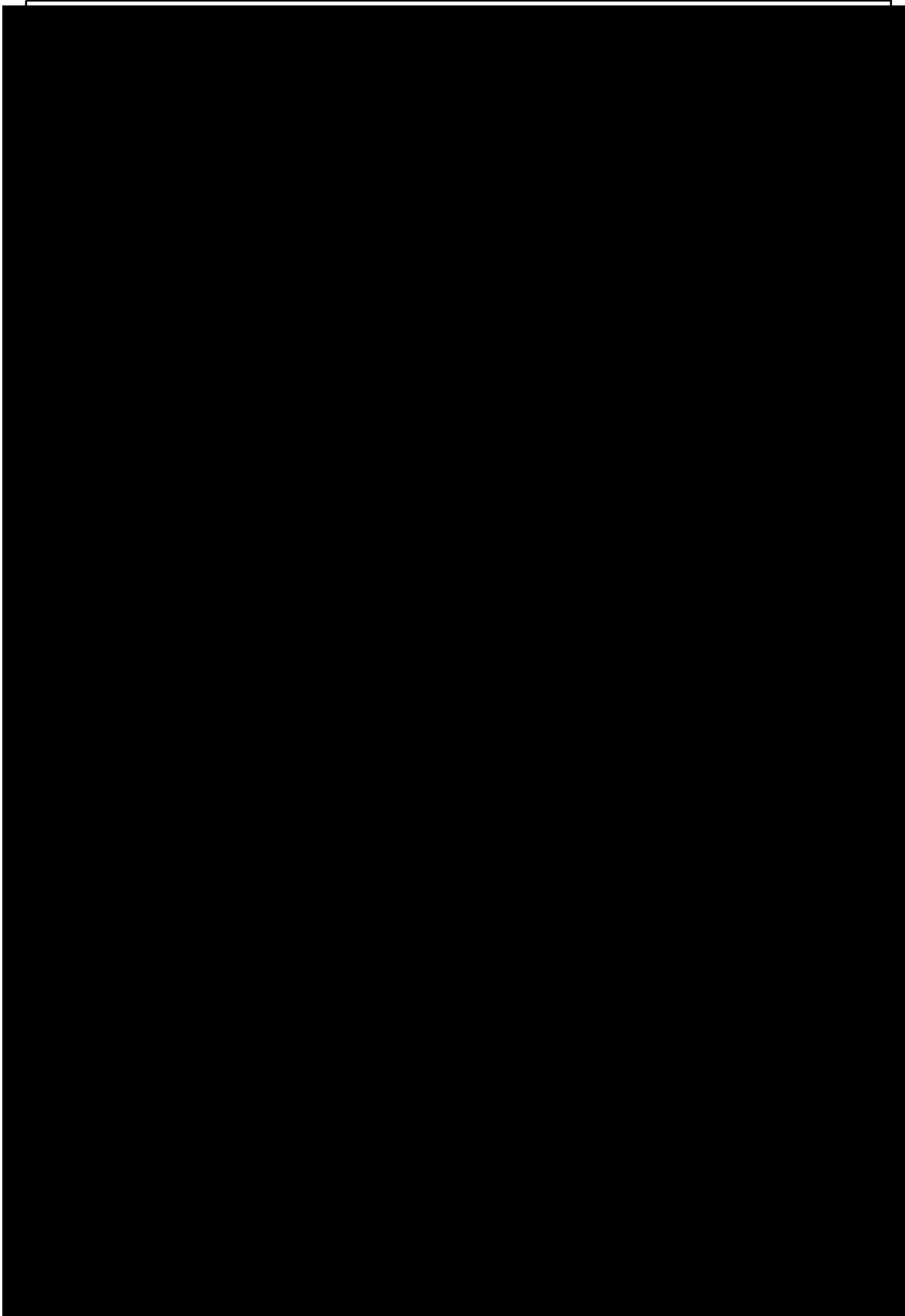


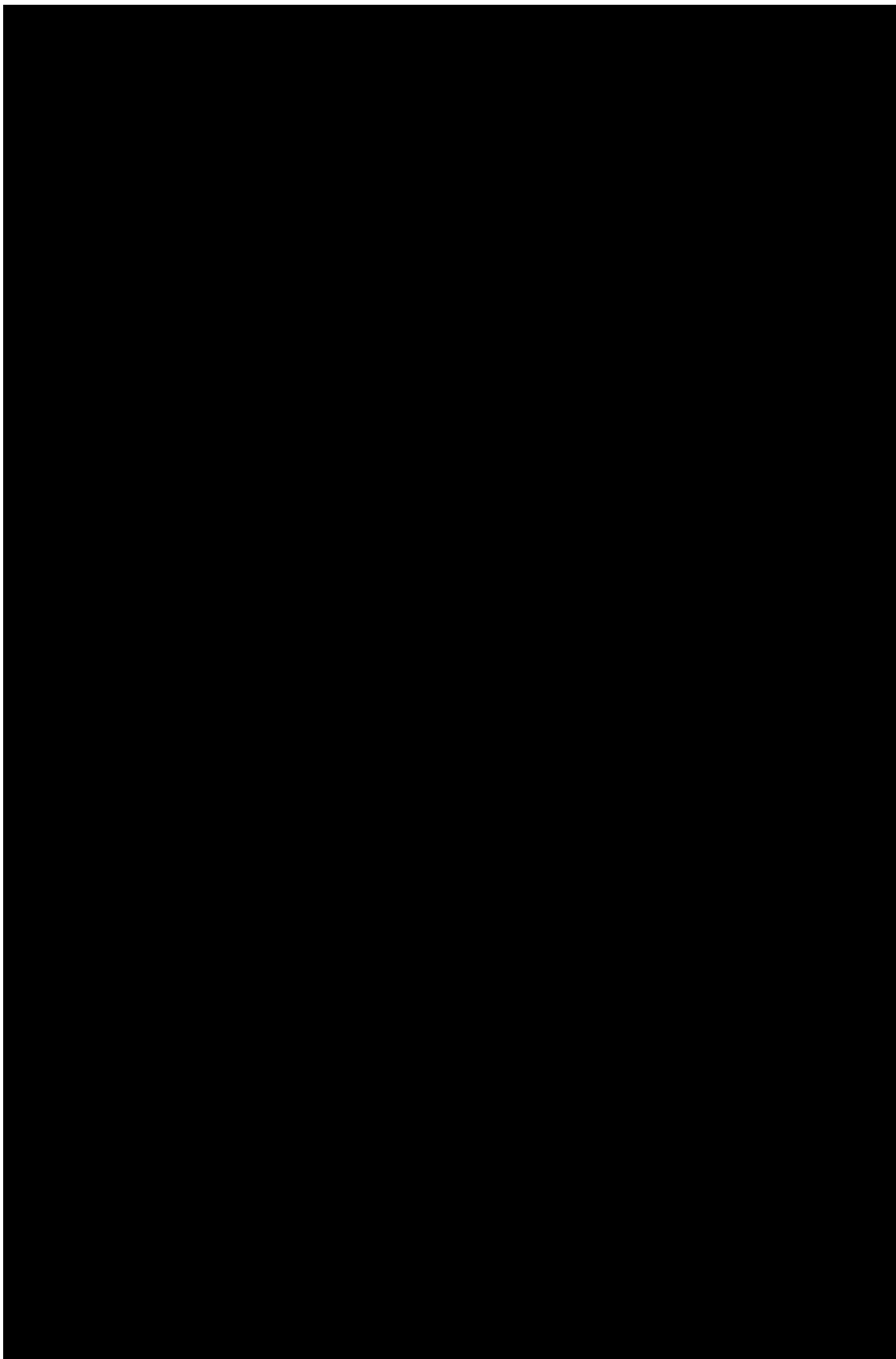
*DCNG January 4, 2021 Presentation (Pre-Mission Briefing) for Mr. McCarthy*

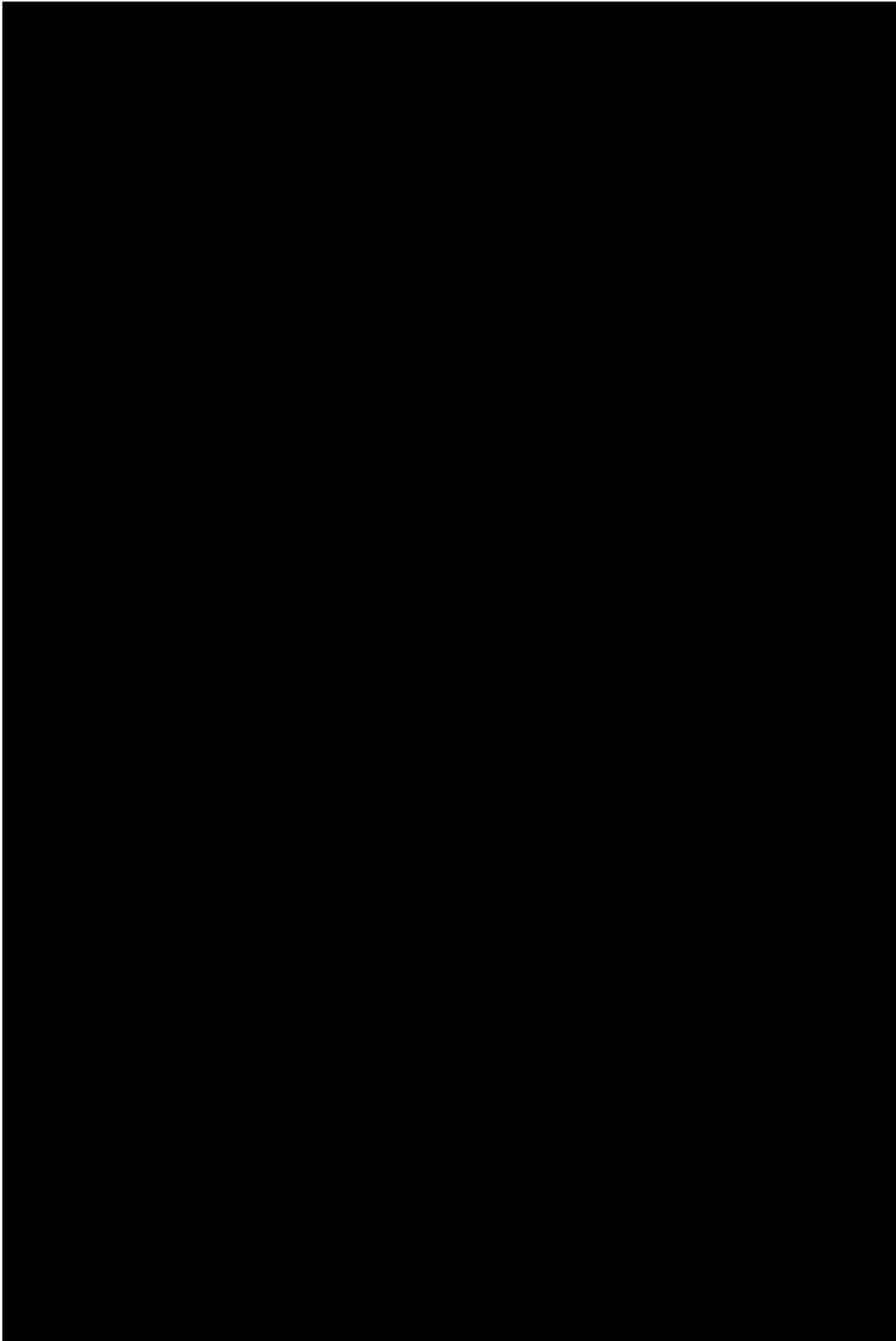


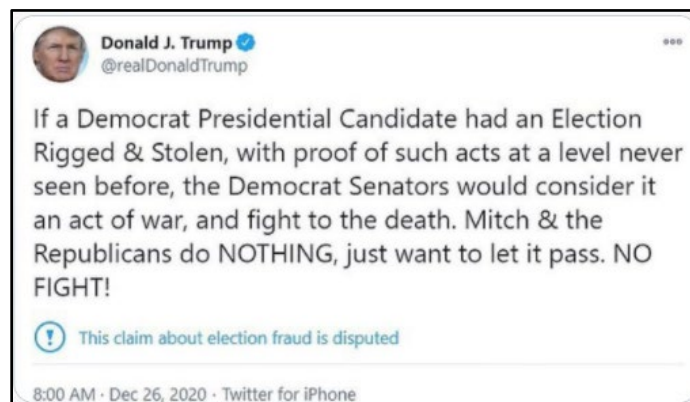








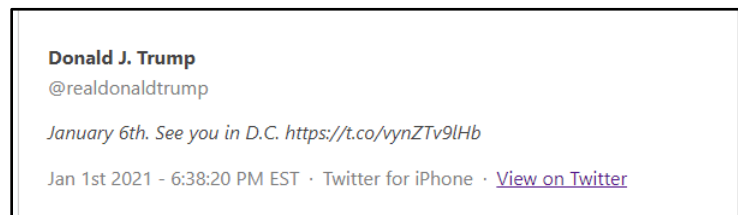


**APPENDIX E: PRESIDENT'S TWEETS***DECEMBER 19, 2020**DECEMBER 26, 2020**DECEMBER 27, 2020*

DECEMBER 30, 2020



JANUARY 1, 2021



JANUARY 3, 2021




JANUARY 5, 2021

**Donald J. Trump**  
@realdonaldtrump

*See you in D.C. <https://t.co/ti4bChnPKz>*


Jan 5th 2021 - 10:27:41 AM EST · Twitter for iPhone · [View on Twitter](#)

 **Donald J. Trump** ✓  
@realDonaldTrump

I hope the Democrats, and even more importantly, the weak and ineffective RINO section of the Republican Party, are looking at the thousands of people pouring into D.C. They won't stand for a landslide election victory to be stolen.  
[@senatemajldr](#) [@JohnCornyn](#) [@SenJohnThune](#)

4:12 PM · Jan 5, 2021

56.9K 25.6K people are Tweeting about this

 **Donald J. Trump** ✓  
@realDonaldTrump

Washington is being inundated with people who don't want to see an election victory stolen by emboldened Radical Left Democrats. Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!

5:05 PM · Jan 5, 2021 · Twitter for iPhone

**Donald J. Trump**  
@realdonaldtrump

*I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early — doors open at 7AM Eastern. BIG CROWDS!  
<https://t.co/k4bLXESc0c>*

Jan 5th 2021 - 5:43:07 PM EST · Twitter for iPhone · [View on Twitter](#)

## ACRONYMS AND ABBREVIATIONS

<b>AG</b>	Attorney General
<b>antifa</b>	Anti-fascist
<b>AOC</b>	Army Operations Center
<b>Armory</b>	D.C. Armory
<b>ARNG</b>	Army National Guard
<b>BG</b>	Brigadier General, U.S. Army
<b>Brig Gen</b>	Brigadier General, U.S. Air Force
<b>CBRN</b>	Chemical, biological, radiological, and nuclear
<b>CDO</b>	Civil Disturbance Operations
<b>CG</b>	Commanding General
<b>CONOPS</b>	Concept of Operations
<b>CST</b>	Civil Support Team
<b>DCANG</b>	D.C. Air National Guard
<b>DCARNG</b>	D.C. Army National Guard
<b>DCFEMS</b>	D.C. Fire and Emergency Medical Services
<b>DCHSEMA</b>	District of Columbia Homeland Security and Emergency Management Agency
<b>DCNG</b>	District of Columbia National Guard
<b>DHS</b>	Department of Homeland Security
<b>DoDD</b>	DoD Directive
<b>DoI</b>	Department of the Interior
<b>DoJ</b>	Department of Justice
<b>DSCA</b>	Defense Support of Civil Authorities
<b>EMAC</b>	Emergency Management Assistance Compact
<b>FBI</b>	Federal Bureau of Investigation



<b>GEN</b>	General
<b>HQDA</b>	Headquarters, Department of the Army
<b>ISR</b>	Intelligence, Surveillance, and Reconnaissance
<b>ITCB</b>	Intelligence/Counter-Terrorism Branch
<b>JBA</b>	Joint Base Andrews
<b>JCS</b>	Joint Chiefs of Staff
<b>LTG</b>	Lieutenant General
<b>MG</b>	Major General
<b>MPD</b>	Metropolitan Police Department
<b>NCR</b>	National Capitol Region
<b>NG</b>	National Guard
<b>NGB</b>	National Guard Bureau
<b>NOC</b>	Network Operations Center
<b>NORTHCOM</b>	Northern Command
<b>OASD(HD&amp;GS)</b>	Office of the Assistant Secretary of Defense for Homeland Defense and Global Security
<b>OGC</b>	Office of General Counsel
<b>OIC</b>	Officer in Charge
<b>OIG</b>	Office of Inspector General
<b>OPORD</b>	Operations Order
<b>QRF</b>	Quick Reaction Force
<b>RFA</b>	Request for assistance
<b>RUF</b>	Rules for the Use of Force
<b>SecArmy</b>	Secretary of the Army
<b>SecDef</b>	Secretary of Defense
<b>SIR</b>	Situational Information Report

<b>TCP</b>	Traffic Control Point
<b>TF Guardian</b>	Task Force Guardian
<b>U.S.C.</b>	United States Code
<b>USCP</b>	U.S. Capitol Police
<b>USMS</b>	U.S. Marshals Service
<b>USPP</b>	U.S. Park Police
<b>USSS</b>	U.S. Secret Service
<b>VTC</b>	Video Teleconference

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CAMPUS ON JANUARY 6, 2021



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