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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION  
AGAINST DEFENDANTS U.S.  
DEPARTMENT OF HOMELAND  
SECURITY AND U.S. MARSHALS  
SERVICE**

**EXPEDITED HEARING REQUESTED**

**MOTION FOR TEMPORARY RESTRAINING ORDER**  
**AND PRELIMINARY INJUNCTION**

Plaintiffs Index Newspapers LLC (“Portland Mercury”), Doug Brown, Brian Conley, Sam Gehrke, Mathieu Lewis-Rolland, Kat Mahoney, Sergio Olmos, John Rudoff, Alex Milan Tracy, Tuck Woodstock, and Justin Yau hereby move for a temporary restraining order and preliminary injunction. This motion is based on Federal Rule of Civil Procedure 65 and the First and Fourth Amendments to the United States Constitution. Plaintiffs support this motion with the accompanying memorandum of law and the declarations of Mathieu Lewis-Rolland and Garrison Davis and others in the process of being collected and signed at the time of filing of this motion.

Plaintiffs specifically seek an order enjoining Defendant Department of Homeland Security (“DHS”), Defendant U.S. Marshals Service (“USMS”), and their agents and employees (collectively, the “federal agents”) as follows:

1. The federal agents are enjoined from arresting, threatening to arrest, or using physical force directed against any person whom they know or reasonably should know is a Journalist or Legal Observer (as explained below), unless the federal agents have probable cause to believe that such individual has committed a crime. For purposes of this injunction, such persons shall not be required to disperse following the issuance of an order to disperse, and such persons shall not be subject to arrest for not dispersing following the issuance of an order to disperse. Such persons shall, however, remain bound by all other laws.

2. The federal agents are further enjoined from seizing any photographic equipment, audio- or video-recording equipment, or press passes from any person whom they know or reasonably should know is a Journalist or Legal Observer (as explained below), or ordering such person to stop photographing, recording, or observing a protest, unless the federal agents are also lawfully seizing that person consistent with this injunction. The federal agents must return any seized equipment or press passes immediately upon release of a person from custody.

3. To facilitate the federal agents’ identification of Journalists protected under this injunction, the following shall be considered indicia of being a Journalist: visual identification as

a member of the press, such as by carrying a professional or authorized press pass or wearing a professional or authorized press badge or distinctive clothing that identifies the wearer as a member of the press. These indicia are not exclusive, and a person need not exhibit every indicium to be considered a Journalist under this injunction. The federal agents shall not be liable for unintentional violations of this injunction in the case of an individual who does not carry a press pass or wear a press badge or distinctive clothing that identifies the wearer as a member of the press.

4. To facilitate the federal agents' identification of Legal Observers protected under this injunction, the following shall be considered indicia of being a Legal Observer: wearing a National Lawyers' Guild issued or authorized Legal Observer hat (typically a green NLG hat) or wearing a blue ACLU issued or authorized Legal Observer vest.

5. The federal agents may issue otherwise lawful crowd-dispersal orders for a variety of lawful reasons. The federal agents shall not be liable for violating this injunction if a Journalist or Legal Observer is incidentally exposed to crowd-control devices after remaining in the area where such devices were deployed after the issuance of an otherwise lawful dispersal order.

The materials submitted in support of this motion demonstrate that "immediate and irreparable injury, loss, or damage will result to the movant[s] before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). They demonstrate a threat of irreparable harm to Plaintiffs and those similarly situated, that Plaintiffs are likely to succeed on the merits, that the balance of this harm against any harm the TRO may inflict on other parties weighs in favor of granting the TRO, and that the public interest favors issuing a TRO. If the Court grants the requested relief, Plaintiffs seek an expedited hearing under Federal Rule of Civil Procedure 65(b)(3). For the reasons argued in the memorandum of law, the Court should enter an order granting this relief.

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## **MEMORANDUM OF LAW**

Plaintiffs Index Newspapers LLC (“Portland Mercury”), Doug Brown, Brian Conley, Sam Gehrke, Mathieu Lewis-Rolland, Kat Mahoney, Sergio Olmos, John Rudoff, Alex Milan Tracy, Tuck Woodstock, and Justin Yau respectfully submit this memorandum in support of their motion for a temporary restraining order and preliminary injunction.

## **INTRODUCTION**

Plaintiffs respectfully seek to enjoin Defendant Department of Homeland Security (“DHS”), Defendant U.S. Marshals Service (“USMS”), and their agents and employees (collectively, “federal agents”) from assaulting news reporters, photographers, legal observers, and other neutrals who are documenting Defendants’ violent response to protests over the murder of George Floyd. The Court has issued an identical TRO enjoining the Portland police from engaging in identical conduct.<sup>1</sup> The federal agents are aware of the Court’s TRO, but have taken the position that they need not comply, which has once again placed press and legal observers in peril.

After the Court issued its TRO, journalists and legal observers enjoyed a respite from the violence and intimidation that gave rise to this lawsuit. Unfortunately, in the days that followed, President Trump sent federal agents into Portland to suppress protests and subject Portland to the same indiscriminate violence that he used to clear Lafayette Square of peaceful protesters, stating that “[t]he locals couldn’t handle it” because “[l]ocal law enforcement has been told not to do too much.”<sup>2</sup> President Trump added that his shock troops were “handling it very nicely”—by which he meant, apparently, that they were successfully subjugating protesters and carrying out his longstanding vendetta against the press.

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<sup>1</sup> The Court’s TRO covered “Defendants and their agents and employees, including but not limited to the Portland Police Bureau and all persons acting under the direction of the Portland Police Bureau.” (Dkt. 33 at 8 ¶ 1.)

<sup>2</sup> Conrad Wilson & Jonathan Levinson, *President Trump Says Portland Police Are Incapable of Managing Protests*, OPB (July 10, 2020), <https://www.opb.org/news/article/president-trump-portland-police-are-incapable-of-managing-protests/>.

In the early hours of July 12, 2020, federal agents shot at least two journalists, including Plaintiff Mathieu Lewis-Rolland. (Declaration of Mathieu Lewis-Rolland (“Lewis-Rolland Decl.”), Dkt. 44 ¶¶ 13-16; Declaration of Garrison Davis (“Davis Decl.”), Dkt. 43 ¶¶ 13-14.) Mr. Lewis-Rolland wore a shirt stating “PRESS” on large letters on the front and back and was photographing the protests with professional camera equipment. Nevertheless, federal agents shot him 10 times in the back and side—all above the waist. (Lewis-Rolland Decl. ¶¶ 2-3, 13.) They also shot journalist Garrison Davis, even though he too was clearly marked as press and was prominently displaying his press pass. (Davis Decl. ¶¶ 4, 13-14.) They also chased away legal observers affiliated with the National Lawyers’ Guild by threatening to beat them with batons. (Davis Decl. ¶ 16.) The next day, the President announced: “We very much quelled it. If it starts again, we’ll quell it again, very easily. It’s not hard to do.”<sup>3</sup> In the days that followed, federal agents have continued attacking journalists and legal observers and using indiscriminate military violence to chill Plaintiffs’ protected activities.

As the Court has already ruled, such conduct raises “a serious threat to [Plaintiffs’] First Amendment rights,” and therefore poses “a likelihood of irreparable injury.” (Dkt. 33 at 7.) As members of the media and legal observers, Plaintiffs have a right to witness important public events and recount them to the world. Their newsgathering, observing, and recording activities are at the core of what the First Amendment protects. *Leigh v. Salazar*, 677 F.3d 892, 900 (9th Cir. 2012) (“The free press is the guardian of the public interest”). Federal agents’ efforts to intimidate and suppress reporting on their own misconduct violate clearly established First Amendment law and are causing irreparable harm to Plaintiffs and the public. Federal agents are not above the law. They cannot attack media and legal observers for trying to document and observe law-enforcement activities—that is the hallmark of a totalitarian regime. For the reasons the Court issued the TRO against the police, the Court should issue identical relief against

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<sup>3</sup> @keaton\_thomas, Twitter (July 13, 2020, 11:47 A.M.), [https://twitter.com/keaton\\_thomas/status/1282748500782899200](https://twitter.com/keaton_thomas/status/1282748500782899200).

federal agents, prohibiting them from assaulting people they know or reasonably should know are journalists or legal observers.

### **FACTUAL BACKGROUND**

The factual background for this motion is largely the same as the background for the TRO the Court issued 15 days ago. What is new is that even as Portland police comply with the TRO, the federal government has begun attacking journalists and legal observers in their stead. These facts are detailed below.

#### **A. Portland's Demonstrations Over the Murder of George Floyd**

The Minneapolis police murdered George Floyd on May 25, 2020. His killing prompted protests worldwide, including in Portland. Since his murder, thousands of people have gathered every night in Portland to protest and mourn Mr. Floyd's murder and insist that our institutions start ensuring that Black lives matter. These protests continue to the present day. (Declaration of Doug Brown ("Brown Decl."), Dkt. 9 ¶ 8.)

#### **B. The Court Issues a TRO Against the Police**

As detailed in Plaintiffs' previous motion for a TRO, over a month of protests, the police had repeatedly retaliated against journalists and legal observers and forcibly prevented them from covering the protests. (Dkt. 7 at 3-6.) On June 30, Plaintiffs moved for a TRO. (Dkt. 7.) On July 2, the Court granted a TRO enjoining the police from "arresting, threatening to arrest, or using physical force directed against any person whom they know or reasonably should know is a Journalist or Legal Observer," along with certain indicia to facilitate the police's identification of journalists and legal observers. (Dkt. 33 at 8-10.)

#### **C. Federal Agents Attack Journalists and Legal Observers**

After court issued TRO, journalists and legal observers enjoyed a brief respite and were able to report on protests without threat of reprisal. But then President Trump decided to move in federal agents to "quell" the protests.

### 1. Federal Agents Shoot Plaintiff Lewis-Rolland

In the early hours of July 12, Mr. Lewis-Rolland was at the protests near the federal courthouse, documenting the protesters and their interaction with federal officials. (Lewis-Rolland Decl. ¶¶ 4, 6.) He was carrying bulky camera equipment, wearing a t-shirt that said “PRESS” in big block letters, and staying in well-lit areas to make sure officials could see that he was there in a journalistic capacity. (*Id.* ¶¶ 3-4.)

Around 1:54 a.m., federal agents began rushing out of the federal courthouse to eject protesters and neutrals alike from the area with tear gas, impact projectiles, and physical force. (*Id.* ¶¶ 5-7.) The agents were from “more than a half-dozen federal law enforcement agencies and departments” under the purview of DHS, including the Federal Protective Service.<sup>4</sup> Mr. Lewis-Rolland took the following video that documents much of what ensued:

<https://www.facebook.com/MathieuLewisRolland/videos/10218671503762415/>. (Lewis-Rolland Decl. ¶ 5.)

Soon after the federal agents emerged from the courthouse, one shoved Mr. Lewis-Rolland, shouting “GET BACK! GET BACK!” (*Id.* ¶ 7.) About a minute later, an agent from the Federal Protective Service, Agent Doe, took aim at Mr. Lewis-Rolland but ultimately did not shoot at that time. (*Id.* ¶ 9.) Mr. Lewis-Rolland began moving west, complying with the agents’ orders. (*Id.* ¶ 10.) About three minutes after the agents began their offensive, Mr. Lewis-Rolland had moved almost all the way to SW 4th Avenue, well past the boundary of federal property. (*Id.* ¶ 11.) Nevertheless, federal agents, including Agent Doe, continued to chase him and the crowd. (*Id.*) A few seconds later, Agent Doe or other federal agents next to him shot Mr. Lewis-Rolland in the side and back ten times. (*Id.* ¶ 13.) They riddled him with hard plastic bullets launched with enough force to put bullet holes in his “PRESS” t-shirt (*id.* ¶ 18):

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<sup>4</sup> Ben Fox & Gillian Flaccus, *Homeland Security Deploys Officers In Portland Under Trump Monument Order*, OPB (July 10, 2020), <https://www.opb.org/news/article/portland-oregon-homeland-security-officers-protests-trump-monument-order/>.





*Figure 1: Federal agents' bullets ripped Mr. Lewis-Rolland's t-shirt at the bottom left and bottom right corners.*

Mr. Lewis-Rolland posed no threat to any federal agent or anyone else. (*Id.*) He was only documenting what officers and protesters were doing. (*Id.*) He was performing an essential function of the Fourth Estate. For his trouble, he suffered several wounds, lacerations, and contusions (*e.g., id.* ¶ 15):





Figure 2: Two of the ten times federal agents shot Mr. Lewis-Rolland. More pictures in Lewis-Rolland Decl. ¶¶ 14-16.

## 2. Federal Agents Shoot Journalist Garrison Davis and Assault Legal Observers

Journalist Garrison Davis was also covering the protests on the night of July 11 and the early morning of July 12. (Davis Decl. ¶¶ 1, 3.) Like Mr. Lewis-Rolland, Mr. Davis was clearly there as press: He wore a helmet that said “PRESS” on it in big block letters, held his press pass in one hand and his iPhone in the other, and did not participate in protests. (*Id.* ¶¶ 4-5.)

Shortly after midnight, the federal agents issued what they called a “last warning.” (*Id.* ¶ 12.) They then launched a tear-gas offensive, engulfing the entirety of the steps of the courthouse, SW 3rd Avenue, and Lownsdale Square in tear gas. (*Id.*) They also started shooting munitions into the crowd. (*Id.*) As Mr. Davis moved backward, one Government agent shot him in the back with a tear gas canister. (*Id.* ¶ 13.) The canister fell into Mr. Davis’s bag and

inundated him with tear gas until people nearby helped him remove it. (*Id.*) Government agents also shot directly at him with pepper bullets and other munitions, even though he was no threat to them or anyone else. (*Id.* ¶ 14.) Mr. Davis also saw Government agents chase, truncheons swinging, after legal observers who were clearly affiliated with the National Lawyers’ Guild. (*Id.* ¶ 17.)

### **3. Federal Agents’ Violent Attacks Continue Even as Legal Action Is Threatened**

After this Court issued a preliminary injunction preventing the police from retaliating against and dispersing journalists and legal observers, and even after Plaintiffs moved to add the federal officers as parties to this litigation, the federal agents continued their attacks on journalists and legal observers. (Declaration of Doug Brown (“Brown Decl.”) ¶¶ 11-15.) These attacks included indiscriminately shooting and tear-gassing them for no cause whatsoever. (*Id.*; Declaration of Justin Yau (“Yau Decl.”) ¶¶ 5-6.)

### **ARGUMENT**

Under the traditional four-factor test, plaintiffs may obtain a preliminary injunction if they show that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tip in their favor; and (4) an injunction is in the public interest. *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 738 (9th Cir. 2014). Alternatively, in the Ninth Circuit, plaintiffs who show that the balance of hardships tips “sharply” in their favor need only raise “serious questions” going to the merits. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Warsoldier v. Woodford*, 418 F.3d 989, 993-94 (9th Cir. 2005) (“[T]he greater the relative hardship to [plaintiff], the less probability of success must be shown.” (quotation marks omitted)). Here, Plaintiffs easily meet either bar.

## **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR FIRST AMENDMENT CLAIMS**

The First Amendment prohibits any law “abridging the freedom of speech, or of the press.” U.S. Const. amend. I. To obtain a preliminary injunction, Plaintiffs need only “mak[e] a colorable claim that [their] First Amendment rights have been infringed, or are threatened with infringement.” *Doe v. Harris*, 772 F.3d 563, 570 (9th Cir. 2014). After that, the Government bears the burden of justifying the restriction on Plaintiffs’ speech. *Id.*

Federal agents retaliated against Plaintiff Lewis-Rolland and have illegally denied access to journalists and legal observers trying to document and record what Defendants are doing to protesters. The substantive First Amendment issues here are therefore essentially the same as those the Court decided in granting the TRO against the City. And there is no jurisdictional or procedural bar to granting Plaintiffs the same relief against the federal agents. Thus, Plaintiffs satisfy the likelihood-of-success prong and the Court should enjoin the federal agents from arresting, threatening to arrest, or using physical force directed against any person whom they know or reasonably should know is a journalist or legal observer.

### **A. Federal Agents Unlawfully Retaliated Against Plaintiff Lewis-Rolland**

The First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech. *Hartman v. Moore*, 547 U.S. 250, 256 (2006). To state a First Amendment retaliation claim, a plaintiff must allege (1) that he or she was engaged in a constitutionally protected activity; (2) that the officers’ actions would chill a person of ordinary firmness from continuing to engage in that activity; and (3) that the protected activity was a substantial or motivating factor in the officers’ conduct. *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300-01 (9th Cir. 1999). These elements are easily satisfied here.

#### **1. Mr. Lewis-Rolland Was Engaged in Constitutionally Protected Activities**

Mr. Lewis-Rolland easily satisfies the first prong of a retaliation claim because he was engaged in the core First Amendment activities of newsgathering and recording federal agents at a protest.

Because freedom of the press lies at the heart of the First Amendment, “newsgathering is an activity protected by the First Amendment.” *United States v. Sherman*, 581 F.2d 1358, 1361 (9th Cir. 1978) (citing *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)). That principle applies with greater force when the media reports on “the proceedings of government,” because the media then acts as “surrogates for the public.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975); *Leigh*, 677 F.3d at 900 (quotation marks omitted). Here, at the time federal agents shot him, Mr. Lewis-Rolland was doing just that: reporting on protests against the government and government agents’ dispersal of the protesters. (Lewis-Rolland Decl. ¶¶ 2-4.)<sup>5</sup>

Mr. Lewis-Rolland’s activity was constitutionally protected for a separate and independent reason: For 25 years, the Ninth Circuit has recognized that people have the right to film “public officials performing their official duties in public.” *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995). *Fordyce* itself involved facts remarkably similar to those here—a plaintiff who was “assaulted and battered by a Seattle police officer” in retaliation for videotaping and audio-recording a protest in the streets of Seattle. 55 F.3d at 439. In the decades since *Fordyce*, courts have continued to recognize this clearly established right. *See, e.g., McComas v. City of Rohnert Park*, 2017 WL 1209934, at \*7 (N.D. Cal. Apr. 3, 2017) (holding that there is a clearly established right against retaliation for “peacefully filming [an] officer”); *Barich v. City of Cotati*, 2015 WL 6157488, at \*1 (N.D. Cal. Oct. 20, 2015) (same); *see also Adkins v. Limtiaco*, 537 F. App’x 721, 722 (9th Cir. 2013) (allowing retaliation claim for photographing police officers to proceed even when plaintiff directed “a significant amount of verbal criticism and challenge” at officers (quoting *City of Houston v. Hill*, 482 U.S. 451, 461 (1987))).

Here, Mr. Lewis-Rolland was gathering news, recording public demonstrations on the streets of Portland, and documenting protest activities and police conduct, just as Jerry Fordyce

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<sup>5</sup> As explained in Plaintiffs’ motion for a temporary restraining order, all of the Plaintiffs attend protests to record and observe events, not to protest. (Dkt. 7 at 8.)

did 25 years ago on the streets of Seattle. (Lewis-Rolland Decl. ¶¶ 2-4.) For this reason, Mr. Lewis-Rolland was engaged in a constitutionally protected activity. *Fordyce*, 55 F.3d at 439.

**2. Federal Agents' Use of Violent Force Has Chilled Mr. Lewis-Rolland from Exercising His First Amendment Rights**

Federal agents shot Mr. Lewis-Rolland ten times because he was filming them. (Lewis-Rolland Decl. ¶¶ 13-16.) They shot him with hard plastic bullets that ripped his shirt and left him covered in bruises and lacerations. (*Id.* ¶¶ 13-18.) On the same night, they shot Mr. Davis with a tear gas canister, pepper bullets, and other munitions, and they threatened to beat legal observers. (Davis Decl. ¶¶ 13-14, 16.)

This is easily enough to chill a reasonable person's speech. *Mendocino*, 192 F.3d at 1300-01. Courts have repeatedly held that similar uses of force would deter a person of ordinary firmness from exercising their constitutional rights. *See, e.g., Black Lives Matter Seattle—King Cty. v. City of Seattle*, 2020 WL 3128299, at \*3 (W.D. Wash. June 12, 2020) (holding that using tear gas, pepper spray, and rubber bullets would “surely chill[] speech”); *Abudiab v. Georgopoulos*, 586 F. App'x 685, 686 (9th Cir. 2013) (denying qualified immunity for retaliation where officer pepper-sprayed and punched plaintiff); *Barich v. City of Cotati*, 2015 WL 6157488, at \*1 (N.D. Cal. Oct. 20, 2015) (“No reasonable trier of fact could doubt that a person of ordinary firmness would be deterred by the threat of arrest.”).

Indeed, similar uses of force by PPB have actually deterred Plaintiffs from continuing to cover protests. (Dkt. 7 at 11-12.) Mr. Lewis-Rolland himself stated, before this Court's first TRO, that he had “ceased covering the protests in part because the actions of the police ha[d] made [him] apprehensive about [his] safety.” (Declaration of Mathieu Lewis-Rolland in Support of Plaintiffs' Motion for Temporary Restraining Order, Dkt. 12 ¶ 13.) Relying on the protection conferred by the Court's TRO, Mr. Lewis-Rolland returned to his reporting. (Lewis-Rolland Decl. ¶ 1.) If federal agents can do what the Court has forbidden the police to do, he will be chilled once again.

### 3. **Mr. Lewis-Rolland's Newsgathering and Reporting Was a Substantial Motivating Factor in Federal Agents' Conduct**

The last element of a retaliation claim is that a plaintiff's protected activity must be "a substantial motivating factor" in federal agents' conduct—that is, there must be some "nexus between [federal agents'] actions and an intent to chill speech." *Ariz. Students' Ass'n v. Ariz. Bd. Of Regents*, 824 F.3d 858, 867 (9th Cir. 2016). "As with proof of motive in other contexts, this element of a First Amendment retaliation suit may be met with either direct or circumstantial evidence." *Ulrich v. City & Cty. of S.F.*, 308 F.3d 968, 979 (9th Cir. 2002). Plaintiffs easily meet this standard here.

First, federal agents plainly knew Mr. Lewis-Rolland was newsgathering and reporting when they fired upon him. He was carrying a large, professional camera, with a long telephoto lens, and his phone was attached to the top via hotshoe. (Lewis-Rolland Decl. ¶ 3.) He was wearing a t-shirt that said "PRESS" in big block letters on both sides. (*Id.*) He was staying in well-lit areas so that it would be clear he was there only to document the protesters and their interaction with federal officials. (*Id.* ¶ 4.) He was not protesting. (*Id.*) Federal agents knew full well that he was reporting when they shot him.

Second, the agent who most likely shot Mr. Lewis-Rolland, Agent Doe, actually took aim at Mr. Lewis-Rolland a few minutes earlier, but he lowered his weapon when he realized Mr. Lewis-Rolland was capturing him on camera. (*Id.* ¶ 9.) Agent Doe then followed Mr. Lewis-Rolland as he moved to stay ahead of the skirmish line, waited until Mr. Lewis-Rolland's camera was turned away from him, and only then lit Mr. Lewis-Rolland up with a rapid succession of hard plastic bullets. (*Id.* ¶¶ 12-13.) This too shows that Agent Doe specifically targeted Mr. Lewis-Rolland for participating in protected First Amendment activity.

Third, the federal agents shot Mr. Lewis-Rolland in the back and side. (*Id.* ¶¶ 13-16.) He was not even facing them and therefore could not have been posing any risk to them. (*Id.* ¶ 13.) They also shot him multiple times, which was plainly excessive and not commensurate with any risk. Moreover, they shot him all ten times above the waist, risking damage to major organs,



rather than take aim at the large muscle groups of the buttocks and thighs.<sup>6</sup> All of these facts strongly suggest an intent to chill speech.

Finally, the federal agents' attack on Mr. Lewis-Rolland took place against the backdrop of their attacking press and legal observers generally. On the same night, federal agents shot another journalist with a tear-gas canister, pepper bullets, and other munitions. (Davis Decl. ¶¶ 13-14.) They also prevented legal observers in green National Lawyers' Guild hats from observing their activities by chasing them away with batons and threats of beatings. (Davis Decl. ¶ 16.) Taken together, all this is insurmountable proof that federal agents intended to deprive Mr. Lewis-Rolland of his constitutional rights.

**B. For Reasons the Court has Already Explained, Federal Agents Have Unlawfully Denied Access to Journalists and Legal Observers**

As the Court previously recognized, Plaintiffs seek a right of access. They assert the right to observe, record, and report on how Defendants enforce their dispersal orders. To vindicate that right, Plaintiffs must show (1) that the place and process to which they seek access have historically been open to the press and general public and (2) that public access plays a significant positive role in the functioning of the particular process in question. *Press-Enterprise Co. v. Superior Court* (“*Press-Enterprise II*”), 478 U.S. 1, 8-9 (1986).

Both elements are met here: “[P]ublic streets historically have been open to the press and general public, and public observation of police activities in the streets plays a significant positive role in ensuring conduct remains consistent with the Constitution.” (Dkt. 33 at 7.) Permitting Plaintiffs to observe and report on how federal agents disperse crowds will have a salutary effect by facilitating federal agents' accountability to the public. *Cox Broad. Corp.*, 420 U.S. at 490-91 (“[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the

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<sup>6</sup> The same night, federal agents shot a protester in the head causing severe injuries. Jonathan Levinson, *Federal Officers Shoot Portland Protester In Head With ‘Less Lethal’ Munitions*, OPB (July 12, 2020), <https://www.opb.org/news/article/federal-officers-portland-protester-shot-less-lethal-munitions/>.

press to bring to him in convenient form the facts of those operations.”). And Plaintiffs have no “alternative observation opportunities” other than remaining at the scene where federal agents are using violent force against the people. *Reed v. Lieurance*, 863 F.3d 1196, 1211-12 (9th Cir. 2017). Thus, Plaintiffs have a qualified right of access.

Defendants can defeat that right only if they show “an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise II*, 478 U.S. at 9. But Defendants have no legitimate interest, much less an “overriding interest,” in shooting people clearly marked as press or legal observers, who are committing no crime but simply documenting how federal agents interact with protesters. Federal agents might have a valid interest in protecting public safety, preventing vandalism or looting, or protecting themselves—but media and neutral observers present no such threat. To the contrary, as the Ninth Circuit explained in *Leigh*:

By reporting about the government, the media are “surrogates for the public.” When wrongdoing is underway, officials have great incentive to blindfold the watchful eyes of the Fourth Estate. If a government agency restricts public access, the media’s only recourse is the court system. The free press is the guardian of the public interest, and the independent judiciary is the guardian of the free press. Thus, courts have a duty to conduct a thorough and searching review of any attempt to restrict public access.

677 F.3d at 900 (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980)); *see also* Timothy B. Dyk, *Newsgathering, Press Access, and the First Amendment*, 44 Stan. L. Rev. 927, 949 (1992) (“[W]hen the government announces it is excluding the press for reasons such as administrative convenience, preservation of evidence, or protection of reporters’ safety, its real motive may be to prevent the gathering of information about government abuses or incompetence.”).

As for narrow tailoring, the Court has already held that “there are at least serious questions” about whether it is narrowly tailored for law enforcement to exclude journalists and legal observers. (Dkt. 33 at 7.) Effecting that exclusion with the kind of extreme violence federal agents used against Mr. Lewis-Rolland can never be narrowly tailored. (Lewis-Rolland Decl.



¶¶ 13-18.) Mr. Lewis-Rolland posed no threat to federal officers, so shooting him ten times at close range was not tailored at all.

### **C. The Court Can Grant Equitable Relief Against the Federal Government**

The Court has jurisdiction over Plaintiffs’ claim for injunctive relief against the federal agents because the federal government has waived its immunity against such claims:

An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.

5 U.S.C. § 702. In enacting that sentence, Congress “eliminate[d] the sovereign immunity defense in all equitable actions for specific relief against a Federal agency or officer acting in an official capacity.” *E.V. v. Robinson*, 906 F.3d 1082, 1092 (9th Cir. 2018) (quoting H.R. Rep. No. 94-1656, at 9 (1976)). Plaintiffs seek only equitable relief against the federal agents. Thus, sovereign immunity is no bar and the Court has jurisdiction over Plaintiffs’ claim.

Plaintiffs plainly also have a cause of action to bring such a claim. When plaintiffs seek equitable relief under the First Amendment, courts often reach the merits without even “discussing whether a cause of action existed to challenge the alleged constitutional violation.” *Sierra Club v. Trump*, 929 F.3d 670, 694-95 (9th Cir. 2019) (citing *Trump v. Hawaii*, S. Ct. 2392, 2416-17 (2018)) (collecting cases); *Sierra Club v. Trump*, 2020 WL 3478900, at \*11-12 (9th Cir. June 26, 2020) (explaining plaintiffs “ha[ve] a cause of action to enjoin the [federal government’s] unconstitutional actions” under courts’ “historic [power] of equitable review”).

Because Plaintiffs seek to enjoin federal agents from violating their First Amendment rights, they have an equitable cause of action to seek relief. Thus, there is no jurisdictional or procedural bar to granting Plaintiffs the same relief as the Court granted against the federal agents. (*See* Dkt. 33 at 8-10.)

## **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM WITHOUT THE COURT’S INTERVENTION**

“[A]nytime there is a serious threat to First Amendment rights, there is a likelihood of irreparable injury.” (Dkt. 33 at 7 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005)).) Because Plaintiffs have, at minimum, raised a colorable claim that the exercise of their constitutionally protected right to record Government activity in public has been infringed, they have satisfied the irreparable-injury requirement. (*See id.*) As long as the Government is free to shoot and arrest journalists and legal observers, Plaintiffs’ exercise of their First Amendment rights will “surely [be] chilled.” *Black Lives Matter*, 2020 WL 3128299, at \*3; *Barich v. City of Cotati*, 2015 WL 6157488, at \*1 (N.D. Cal. Oct. 20, 2015) (“No reasonable trier of fact could doubt that a person of ordinary firmness would be deterred by the threat of arrest.”).

What is more, in the newsgathering context, the Ninth Circuit has recognized that time is of the essence and that any delay or postponement “undermines the benefit of public scrutiny and may have the same result as complete suppression.” *Courthouse News Serv. v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020) (quoting *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994)). Thus, every minute that Plaintiffs are inhibited and intimidated from exercising their First Amendment rights, they suffer irreparable injury. (Dkt. 33 at 7.)

## **III. THE PUBLIC’S INTEREST AND BALANCE OF EQUITIES WEIGH STRONGLY IN FAVOR OF PLAINTIFFS**

### **A. The Public Has an Unassailable Interest in a Free Press**

“Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles.” *Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012) (quotation marks omitted). Furthermore, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quotation marks omitted) (granting an injunction under Fourth Amendment).

Plaintiffs are journalists and observers reporting on public demonstrations of worldwide interest. As members of the news media, they were given express permission by the Mayor’s

curfew order to be at the protest sites so they could provide live, up-to-date coverage of the activities of protesters and demonstrators, and also monitor the conduct of law enforcement.<sup>7</sup> This express permission is an acknowledgement of the uniquely significant public interest in press coverage in this case. In the context of the violent, destructive events of recent weeks, the public's interest in having information of this nature in a timely manner is obvious and constitutionally unassailable.

It would be difficult to identify a situation in which the public has a greater interest in unbiased media coverage of police and Government conduct than this one. The protests are rooted in an incident of shocking police brutality, and how the police and Government agents respond to the protesters is of critical importance to how and whether the community will be able to move forward. Although the protests began in Minneapolis, they have now spread across the country and the globe. The public interest in press coverage of these events cannot reasonably be questioned.

“The Free Speech Clause exists principally to protect discourse on public matters.” *Brown v. Entm't Merch. Ass'n*, 564 U.S. 786, 790 (2011). It reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. at 270. It is “[p]remised on mistrust of governmental power.” *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010). “[I]t furthers the search for truth,” *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018) (citation omitted), and “ensure[s] that . . . individual citizen[s] can effectively participate in and contribute to our republican system of self-government.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982). Unless the constitutional rights of journalists are protected, the public's ability to participate meaningfully as citizens in a constitutional democracy will be severely diminished.

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<sup>7</sup> Emergency Executive Order Declaring an Emergency and Implementing a Temporary Nighttime Curfew in the City of Portland Oregon (May 30, 2020), <https://www.portland.gov/sites/default/files/2020-05/5.30.20-mayors-state-of-emergency-.pdf>.

### **B. The Balance of Equities Weighs Strongly in Favor of Plaintiffs**

Because Plaintiffs have “raised serious First Amendment questions,” the balance of hardships “tips sharply in [Plaintiffs’] favor.” *Cnty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1059 (9th Cir. 2007) (quotation marks omitted). Plaintiffs’ evidence—both video and testimony—shows that officers have exercised their discretion in an arbitrary and retaliatory fashion to punish journalists for recording Government conduct and that their unlawful policy is aimed toward the same end. In contrast to the substantial and irreparable injuries to Plaintiffs, any harm to the Government would be negligible. The Government no interest in preventing journalists from reporting on what it is doing to protesters. While the Government might have an interest in protecting federal buildings and property, that interest is not served by using force against individuals who are identified as journalists, or who are merely recording events and present no threat of harm to police or the public.

The balance of equities weighs heavily in favor of Plaintiffs.

\* \* \*

The Government’s attempts to shield its violence against protesters from public scrutiny by targeting press and legal observers shows, once again, that “[w]hen wrongdoing is underway, officials have great incentive to blindfold the watchful eyes of the Fourth Estate.” *Leigh*, 677 F.3d at 900. But just as the “free press is the guardian of the public interest,” so “the independent judiciary is the guardian of the free press.” *Id.* To protect the press—and ultimately, the public’s power to govern its public servants—this Court should enjoin the police from dispersing and retaliating against press and legal observers.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this Motion for a temporary injunction and preliminary injunction be granted.

Dated: July 17, 2020

Respectfully Submitted,

By: /s/ Matthew Borden  
Matthew Borden, *pro hac vice*  
J. Noah Hagey, *pro hac vice*  
Athul K. Acharya, OSB No. 152436  
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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **GARRISON DAVIS**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF DOUG BROWN IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Doug Brown, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a legal observer for the ACLU. If called as a witness, I could, and would, testify competently to the facts below.

2. As a legal observer, my job is to watch what happens at the protests, take photos or videos if I can, and report what I see to the ACLU. I always wear the blue ACLU vest identifying me as a legal observer when I cover the ongoing Portland protests. It says ACLU on it in big block letters so that the everyone understands what I am doing there.

3. I covered the protests on July 16, 2020. I was there in my capacity as a legal observer. I did not demonstrate against the police. I was wearing my blue ACLU vest.

4. I arrived downtown at 10:00 p.m. Shortly after I arrived, I began following a group of Portland police officers to watch what they were doing. There was also a group of protesters following the police. We eventually followed the police over to the area by the Justice Center.

5. All of a sudden, I lost sight of the police (I presume they went into Justice Center). At the same time, I saw pepper balls exploding at the feet of the protesters. Nobody in the crowd had done anything threatening or unlawful.

6. At that point, I could see federal agents emerging from the Edith Green federal building next to the Justice Center and amassing in the street. This was at around 11:00 p.m.

7. The federal agents formed a wall to block the road. More federal agents positioned themselves on the sidewalk.

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8. A small group of protesters, NLG legal observers, a journalist and I were about 500 feet away from the federal agents were standing. Some of the protesters began slowly walking toward the federal agents and yelling at them and asking why they were shooting at them. Nobody had done anything threatening or unlawful.

9. The federal agents kept their guns trained on approaching protesters but did not fire any shots after initial volley of pepper balls. Federal agents in blue uniforms moved back under the overhang of the Edith Green building. Federal agents in camouflage uniforms began hiding in grass and behind trees.

10. More people started gathering in the street on the edge of the sidewalk in front of the building. The federal agents did not say anything, but did a test on a long range acoustical device (“LRAD”). Without warning, the federal agents began firing at the feet of the people on the sidewalk, then began firing indiscriminately into the crowd. Prior to this occurring, I had not seen any threats or unlawful activity from the protesters.

11. At 11:26, I saw the federal agents shoot a journalist. Video here: <https://tinyurl.com/FedsVsReporters>, at 14:55–17:12. The journalists were not doing anything threatening or illegal.



12. After they started shooting, federal agents lit a fiery stick that gave off some kind of smoke, set off flash bang grenades and tear gas. I was tear gassed and had to run away from the area and could no longer report on or observe what the federal agents did to the protesters.

13. Once I was able to breath and see well enough, I walked west on SW Jefferson. Then I turned north on SW 4th. When I arrived there, federal agents were clearing the street. I was across from Chapman Square (which is City property). Federal agents told me that I could not go near the fence and threatened to shoot me. I saw a person with press insignia and a camera walking on the west side of SW 4th. Federal agents threatened to shoot him. He was holding his camera and looked like he was recording. Video here: <https://tinyurl.com/FedsVsReporters>, at 22:42–23:25.

14. I saw some commotion occurring around SW Salmon and SW 4th Ave., so I went over there. Federal agents were marching in a line, pushing up from Third Street to Fourth Street. They were setting off flashbang grenades as they went. Teargas was wafting over everyone including homeless people and food stands. Federal agents were shooting at people and releasing teargas.



15. Almost the whole time I was at the protests, I felt like I could be targeted at any time because the federal agents had attacked and threatened reporters and legal observers right in front of me and were indiscriminately firing munitions, flashbangs, and tear gas at crowds for no apparent reason.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 17, 2020

A handwritten signature in black ink, appearing to read 'Doug Brown', written over a horizontal line.

Doug Brown

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF JUSTIN YAU IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Justin Yau, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a student at the University of Portland studying communications under the G.I. Bill, with a focus on journalism; before that, I served in the U.S. Army, where I was deployed to the Middle East in support of Operation Inherent Resolve. I have covered protests in Hong Kong and Portland. My work has been published in the *Daily Mail*, *Reuters*, *Yahoo! News*, *The Sun*, *Spectee* (a Japanese news outlet), and msn.com. I have attended the protests in Portland as a freelance and independent journalist for the purpose of documenting and reporting on them.

2. In the early morning of July 15, I was covering the protests in downtown Portland outside the Justice Center and Hatfield Courthouse. I was taking photographs with my Nikon D3100 DSLR camera with an 18-55mm lens. I was also filming with a gimbal camera and my cellphone. I was wearing a high-visibility vest that said “PRESS” in large block letters and a helmet that said “PRESS” in large block letters. I also had a press pass around my neck.



3. The following is a true and correct photograph of the helmet and vest I was wearing:



4. A few minutes before 4:00 a.m., I was filming and photographing a small crowd of protesters at the intersection of SW 3rd Avenue and SW Main Street being pushed north by

federal agents. The crowd was largely in the street, with a few members on the sidewalk. Federal agents were firing on them with flash-bang grenades, pepper balls, and tear gas.


5. I was standing as far from the crowd as was possible while still reporting effectively. The police and federal agents in Portland have made me very fearful for my safety, so I usually try to stand far away, both to remain out of the line of fire and to make clear that I am not one of the protesters. From the perspective of the officers, I was on their far left, in the park, about 40 feet away from the main crowd and 150 feet away from the federal agents.

6. Nevertheless, a federal agent fired a tear-gas canister from a grenade launcher directly at me. Two burning fragments of the canister struck me, one on my leg and one on my arm. At that point, I shook them off and ran away until I was sure I was alright.

7. I have covered protests in Hong Kong, where a totalitarian regime is suppressing protesters with brutal violence. Even Hong Kong police, however, were generally conscientious about differentiating between press and protesters—as opposed to police and federal agents in Portland.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 17, 2020

DocuSigned by:  
  
E5C1188F5F92400...  
Justin Yau

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

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**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF NATHAN HOWARD  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION AGAINST DEFENDANTS  
U.S. DEPARTMENT OF HOMELAND  
SECURITY AND U.S. MARSHALS  
SERVICE**

I, Nathan Howard, declare:

1. I am Washington resident who lives in the City of Vancouver. I have been a photojournalist since 2014, when I began reporting for the Moscow-Pullman Daily news. I currently work on a freelance basis; my photographs have been published in the *Willamette Week*, *Mother Jones*, Bloomberg Images, Reuters, and the Associated Press. I have attended the protests in Portland some 20-25 times over the last two months for the purpose of documenting and reporting on them. If called as a witness, I could, and would, testify competently to the facts below.

2. When I report on the protests, I carry two large cameras. One is a Nikon D600 with a large 70-200mm f/2.8 telephoto lens, and the other is a Sony A92 with a 35mm lens. I also sometimes wear a helmet with the word “PRESS” on it in big block letters, but not always, because it interferes with my gas mask. I also wear a press pass issued by the National Press Photographers’ Association, the largest and oldest body of professional photojournalists in the United States.

3. During the 2020 Portland protests, I have been hit by pepper balls three times. The first two times, they were not obviously targeted at me, so I gave the police the benefit of the doubt. This time was radically different.

4. Late on July 19 or early on July 20, I was covering interactions between federal agents and protesters near the Justice Center and the Hatfield Courthouse. One group of agents emerged from the courthouse and pushed protesters all the way to SW 4th Avenue. I remained in Chapman Square next to SW 3rd Avenue because another group of agents was coming from the other federal building two blocks south of the courthouse and I wanted to document them. The only other people near me were other journalists. The nearest protester was more than a full block away from me.

5. As the line of federal agents advanced north through the park, I saw them notice me and screamed “I’M PRESS, I’M PRESS,” while holding up my press pass in one hand and my camera in the other. Agents in this group told me to stay where I was and passed me.



6. The two groups of federal agents merged and then began walking between the parks, with some agents walking closer to my position. Again, I screamed “I’M PRESS, I’M PRESS,” while holding up my press pass in one hand and my camera in the other. Again, one of them said “okay, okay, stay where you are, don’t come closer,” or words to that effect.

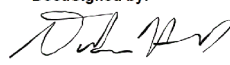
7. Three seconds after I was told to stay where I was, the agent to the left of the one who spoke took aim at me and fired at least two pepper balls directly at me. He obviously knew I was press and shot me at close range anyway.

8. After that, I turned and ran some 30-40 feet away and hid behind a tree until the agents lost interest in me. Some federal agents carry firearms with live, lethal ammunition. I did not want them to shoot me next.

9. I would like to continue attending and documenting the protests. That is my job, and I would like to be able to do my job and inform the public without being willfully and maliciously shot. I am fearful, however, that federal agents will continue to target me and possibly injure me to a much greater extent than they did on this occasion.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 20, 2020

DocuSigned by:  
  
B059192D33474F4...  
Nathan Howard

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF JOHN RUDOFF IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, John Rudoff, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a photojournalist. My work has been published nationally and internationally, including my extensive reporting from many areas of urban civil conflict. Since this lawsuit began, I have been published in *Rolling Stone*, *The Nation*, and on the front page of the July 18, 2020 national edition of the *New York Times*. I have attended the protests in Portland over the last two months for the purpose of documenting and reporting on them. If called as a witness, I could, and would, testify competently to the facts below.

2. I am a plaintiff in this case and helped secure a temporary restraining order from the Court protecting journalists and legal observers from being targeted by the Portland Police Bureau and other police agencies working with PPB. Before the restraining order, I had stopped attending protests out of fear that the police might injure me. I began attending protests again after the Court issued its restraining order because I believed that the Court's order would protect me.

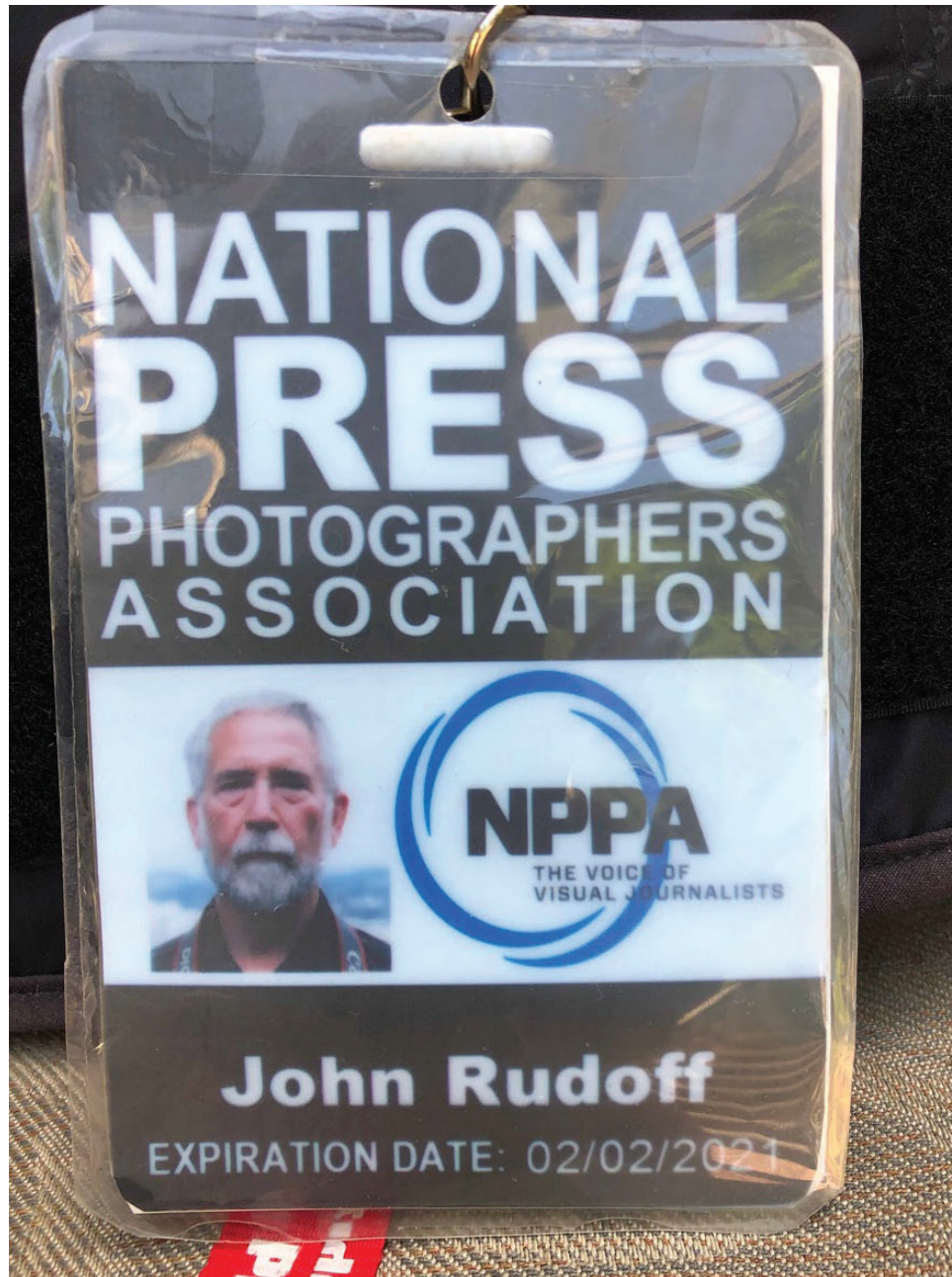
3. On the night of July 19, I was reporting on the protests in downtown Portland in front of the Hatfield Courthouse. I was using two large professional cameras: one Canon 5D Mark IV with a 24-70mm lens, and another Canon 5D Mark IV with a bright white 70-200mm lens. I was wearing a 4x6" laminated press credential issued by the National Press Photographers' Association, the largest and oldest body of professional photojournalists in the United States. I was also wearing a vest that said "PRESS" in big block letters and a helmet that also said "PRESS" in big block letters.

4. The following is a true and correct copy of a photograph of the helmet and vest I was wearing on the night of July 19:





5. The following is a true and correct copy of a photograph of my press credential, which I was also wearing on the night of July 19:



6. Around 11:50 p.m., I was documenting federal agents as they were exiting the courthouse shooting tear gas and other munitions. I was standing in an open, well-lit area, and to my memory there were very few people in my immediate vicinity. I was not near an arrest or a skirmish line.

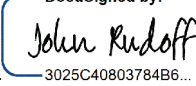
7. Suddenly, and for no reason, a federal agent shot me in my right shoulder, inches from my head. Based on the contusion, I believe it was a 40mm rubber bullet. The pain was so bad that I had to retreat into the park and stop documenting for around 15 minutes while I recovered. As of this writing, the bruise is black and blue and tender to the touch.

8. I am also aware that federal agents have targeted and severely injured many other journalists and legal observers since they began operations in Portland, including my co-plaintiff Mathieu Lewis-Rolland.

9. I would like to continue attending and documenting the protests, especially now that they have taken on national significance, because I believe it is vitally important that the actions of federal agents, police, and protesters be documented. I am fearful, however, that federal agents will injure me even more severely than they did on the night of July 19.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 20, 2020

DocuSigned by:  
  
3025C40803784B6...  
John Rudoff

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF ALEX MILAN TRACY IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**



I, Alex Milan Tracy, declare:

1. I am an Oregon resident who lives in the City of Portland. Since this lawsuit began, my photographs have been published by CNN, ABC, CBS, *People Magazine*, *Mother Jones*, and *Slate*, among others. I have covered a great deal of the recent protests over George Floyd and police brutality in Portland. If called as a witness, I could, and would, testify competently to the facts below.

2. I am a plaintiff in this case and helped secure a temporary restraining order from the Court protecting journalists and legal observers from being targeted by the Portland Police Bureau and other police agencies working with PPB.

3. On July 19, 2020, I was reporting on the protests in downtown Portland in front of the Hatfield Courthouse. I was using two large, professional Fujifilm X-T3 cameras: one with a wide lens, and another with a telephoto lens. I was also holding a GoPro HERO8 camera. I was wearing a press card that clearly states I am press. I was also wearing a helmet that said “PRESS” in big white letters across both the front and back. I was there in my capacity as a member of the media. I did not protest or demonstrate.

4. I was documenting federal agents just before midnight as they were launching a barrage of tear gas at a group of people in conjunction with other munitions. I was standing in an open, well-lit area, not behind any protestors.

5. As I was taking video and photographing the chaos, a federal agent shot me in my left ankle joint with an impact munition round. At the same time, I was consumed with tear gas and hit with pepper-balls on my right elbow. The pain was so bad that I had to be assisted by a fellow photojournalist, Nathan Howard, who helped me get away into Chapman Square and called medics to come over to assist me. I had to stop documenting what was happening at the protest while I recovered.

6. Here is a true and correct copy of the original video documenting this portion of this incident: <https://twitter.com/AlexMilanTracy/status/1285112506030022656>.

7. A video by Nathan Howard of medics attending to me (in which my press helmet is clearly visible) is here: <https://twitter.com/SmileItsNathan/status/1285106514374594560>.

8. The pain was extremely bad. I felt like there was definitely ligament damage. Fortunately, I could still move, so I continued to cover that night until the early hours of July 20.

9. I've been resting my ankle on ice ever since. It is red, purple and extremely sore.

10. Going for the joints to debilitate appears to be a common tactic by these federal agents and can be extremely successful in putting journalists, like me, out of action.

11. I am also aware that federal agents have targeted and severely injured many other journalists and legal observers since they began operations in Portland, including my co-plaintiff Mathieu Lewis-Rolland.

12. I would like to continue attending and documenting the protests as I believe it is vitally important to document what is happening. I am fearful, however, that federal agents will injure me even more severely than they did on the night of July 19.

13. I have watched as every night the conduct by the federal agents has gotten worse and worse since they first appeared. Last night, it seemed to me that the federal agents were specifically targeting reporters.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 20, 2020



Alex Milan Tracy

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF NATE HABERMAN-DUCEY IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Nate Haberman-Ducey, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a rising 2L at Lewis & Clark Law School. I trained as a legal observer with the National Lawyers Guild one week into the protests and have attended the protests numerous times as an NLG legal observer. If called as a witness, I could, and would, testify competently to the facts below.

2. On July 19, 2020, I was walking with my bicycle through Lawnsdale Park towards SW Salmon and SW 3rd at around 1:45 a.m. I was wearing my green, NLG-issued hat. For several hours, I had been focused on finding evidence of crowd control munitions and was not participating in the protest. I was also looking for water because I had been tear gassed all night. There was more tear gas being dispersed in front of the Hatfield Courthouse.

3. At this time, there were no more than 4-5 people around me in the park. The atmosphere was still very heavy with tear gas. I was walking my bicycle through the park. I had one hand on the seat of the bicycle, and one on the handlebars. I was not posing a threat to the Hatfield Courthouse or anyone else.

4. Suddenly, without warning or reason, a federal agent shot my bike with a pink paint marking round from a FN 303 riot gun. When I stopped to look at what happened, they shot me in the right hand – my dominant hand – with the same force. The pain was excruciating. My hand swelled up immediately. The following is a true and correct copy of a photograph of my swollen and bruised right hand, taken shortly thereafter:



5. Here is a true and correct copy of a video documenting this incident, although I am off camera to the right: <https://tinyurl.com/NateShot1>. You can see a federal agent gesture towards where I am (off camera to the right) and near the end of the video, you can hear someone say: "They are firing at Nate right now."

6. I was wearing my unmistakable, green NLG hat. I was walking peacefully with my bike and there were no protesters or other people around me that the agent might have been aiming at.

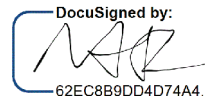
7. I tried to ignore the pain and continue observing, but it was incredibly painful. I went to the emergency room, where I remained until 9 a.m. this morning.

8. At the emergency room, the doctors put my broken hand into a splint, which I cannot clean, where it must remain for 4-6 weeks

9. I would like to continue attending and observing the protests but am extremely concerned that the federal agents' endless use of tear gas will contaminate my splint. The gas leaves a serious residue on *everything* and I do not see how I will be able to clean my splint or safely observe the protests for the foreseeable future.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 21, 2020

DocuSigned by:  
  
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Nate Haberman-Ducey

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF JUNGHO KIM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Jungho Kim, declare:

1. I am a California resident who lives in the City of San Francisco. I am a freelance photojournalist. My work has been published in the *San Francisco Chronicle*, *CalMatters*, and other outlets. I attended the Portland protests for the first time on the night of July 19, 2020. If called as a witness, I could, and would, testify competently to the facts below.

2. I was clearly marked as press. I wore a reflective neon yellow vest with a large reflective white stripe that said "PRESS" in big block letters, as well as a white helmet with reflective patches on the sides that said "PRESS" on the front and rear. I also wore a press pass issued by the National Press Photographers' Association, the largest and oldest body of professional photojournalists in the United States. I was using a professional Sony A9 camera with a 35mm lens.

3. I have covered protests in Hong Kong and the Bay Area, and I know how to conduct myself as a journalist during protests. I never, ever take part in the protests and have never uttered a chant. When the police are dispersing a crowd, I know to get out of the way and do my work from the side. Because I follow these principles, I have never been shot by the authorities in Hong Kong or the Bay Area. The federal agents who shot me last night are a different story.

4. After the fence outside the federal courthouse had been taken down, federal agents came outside to disperse the crowd. They were firing tear-gas canisters, pepper bullets, and other munitions. Because of my experience, I knew to move to the side.

5. Federal agents pushed protesters all the way to the west side of the park. I stayed parallel with them for a while, but wanted a photo from the rear, so I let them get ahead of me. This group of agents got as far as 10 meters in front of me. Another group of agents was setting up a defensive position 20-30 meters away.



6. This is a true and correct copy of a photograph I took around this time. It accurately depicts the distance from me to the nearest group of officers:



7. Suddenly, without warning or reason, an agent shot me in the chest with a pink marker round. It did not hurt me, because I was wearing a ballistic vest, but it hit me directly below the heart. That is an unacceptable use of force for almost any round intended to be less than lethal. I do not believe it was an accident, either, because I was stationary and there were no protesters around me that agents might have been aiming at.

8. This is a true and correct copy of a photograph I took of my torso area immediately after the federal agents shot me:





9. This is a true and correct copy of a photograph I took of some type of munition fired into and exploding in the middle of a group consisting mostly of press and NLG legal observers:



10. I would like to continue attending and documenting the protests. That is my job, and I have been able to do it in other places, including Hong Kong, without being willfully and maliciously shot. I am fearful, however, that U.S. federal agents will continue to target me and possibly injure me to a much greater extent than they did on this occasion.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 21, 2020

DocuSigned by:  
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Jungho Kim

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF JAMES COMSTOCK  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION AGAINST DEFENDANTS  
U.S. DEPARTMENT OF HOMELAND  
SECURITY AND U.S. MARSHALS  
SERVICE**

I, James Comstock, declare:

1. I am an Oregon resident who lives in Tigard, Oregon. I have worked in the judicial system since 1995 and have been a licensed private investigator for 9 ½ years. I currently work primarily as a defense investigator, often for appointed counsel in Federal criminal matters in the District of Oregon through the CJA panel. I trained as a legal observer with the National Lawyers Guild after the temporary restraining order took effect in this case and have attended the protests numerous times as an NLG legal observer. If called as a witness, I could, and would, testify competently to the facts below.

2. I attended the protests on July 19, 2020, in my capacity as a legal observer. I was wearing a green, NLG-issued hat. I did not touch the fence or throw anything. I did not protest or demonstrate.

3. A few minutes before midnight, I was in the park area observing the area in front of the Hatfield Courthouse. As soon as I saw protesters had pushed the fence surrounding the courthouse over, I expected that federal agents were going to come out and tear gas everyone. Because I did not want to get tear gassed, I put on my gas mask and moved up Main St. to the west, to the opposite side of 4<sup>th</sup> Ave, to get away from the area. I later reviewed the distance, and noted that the place where I was standing is approximately 375 feet away from the front door of the Hatfield Courthouse.

4. On the sidewalk at the south west corner of the intersection of SW 4<sup>th</sup> Ave and SW Main St., I saw a member of the media and went to speak with him. He was documenting the protests when the federal agents apparently hit his camera lens with some type of munition. He was very upset. Once I was done talking, I stood against the wall of the Portland Building alone and was making notes on my phone.

5. Suddenly, without warning or reason, a federal agent shot me in the very hand with which I was writing on my phone. It hurt extremely bad. The following is a true and correct copy of a photograph of my swollen right hand, taken when I arrived at my home:



6. I was wearing my unmistakable, green NLG hat. I was standing alone against the wall and there were no protesters around me that the agent might have been aiming at. I was at least 6 feet away from the reporter I had just talked to, and nowhere near any other crowds.

7. Around twenty minutes later, a protestor pointed out that I was bleeding from my leg. I was not cut before being shot and did not fall or injure my leg that I am aware of after being shot. I think I may have been cut by shrapnel from the munitions fired at me when I was shot.

8. I would like to continue attending and observing the protests as I believe it is a very noble and necessary thing. I am fearful, however, that federal agents will continue to target me and possibly injure me even more severely than they did on the night of July 19.

9. As a criminal defense investigator, local jails will cut off my access and ability to see and speak with my clients if I am arrested. Because of this I am very concerned of being wrongly arrested, especially in light of reports about plainclothes officers snatching civilians off the streets of Portland in unmarked cars.



10. One the night of July 19<sup>th</sup> and the early morning of July 20<sup>th</sup>, it seemed to me that the federal agents were specifically targeting legal observers.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 21, 2020

  
\_\_\_\_\_  
James Comstock

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF JAKE JOHNSON IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Jake Johnson, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a freelance reporter. I graduated from Portland State University in June 2020. I was a journalist for more than three of my four years there, first for the *PSU Vanguard* and then for the *Pacific Sentinel*, where I was the executive editor. I have been covering Portland protests since 2017. If called as a witness, I could, and would, testify competently to the facts below.

2. When the 2020 Portland protests began, I resisted covering them because of the novel coronavirus. My partner works with vulnerable populations and I did not want to run the risk of contracting and transmitting covid-19. By July 4, however, it became clear that the Portland police and federal agents were specifically targeting journalists for punishment, and I felt it was my duty to show up and help document the atrocities that were taking place. In order to do so safely, I must wear a KN95 mask and take extreme sanitization precautions. Nevertheless, I have attended the protests since July 4 for the purpose of documenting and reporting on them.

3. When I attend the protests, I take photographs with a Nikon D750 DSLR camera and I take video with my cellphone. I wear a big white construction helmet that says “PRESS” in big black bold type on the front, the left, the right, and the back sides—and on top, in case I am bending over or in case an officer or federal agent takes aim at me from a balcony. I do not take part in protests or intervene on behalf of protesters. I am there only to observe, record, and report.

4. Around 12:30 a.m. on July 20, I was reporting on the protests in downtown Portland in front of the Hatfield Courthouse. I was dressed as described above and had my big 80-200mm telephoto lens on my Nikon.

5. I was walking from the northwest to the northeast corner of Chapman Square, towards the intersection of SW 3rd Avenue and SW Main Street, where federal agents were arrayed in a line and shooting at protesters. I wanted to document this interaction. I was taking care to walk slowly so as to avoid startling the agents, and I was taking care to stay on the path

so as to remain in the light. There were very few people in my immediate vicinity; the closest person was another member of the press, who was some 10-20 feet behind me.

6. Suddenly, without warning, provocation, or reason, one federal agent took aim and fired a shot directly at my torso. Based on the size and shape of the wound and the feeling when the shot hit, I believe the agent used a 40mm rubber bullet. The agent's rubber bullet hit me 3 inches to the right of my navel, and I believe only an inch or two from where my Nikon camera was hanging. Based on where the agent hit me, I believe they were targeting members of the press and legal observers, and I believe they were possibly trying to destroy my equipment.

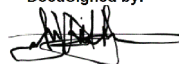
7. The shot hurt me immensely and I had to take a break from taking photographs to get myself together. Today, the entire area is tender and purple, and the flesh at the center of the shot is raw. It is painful to wear my camera because it swings and often touches the area where the agent shot me.

8. This video is a true and correct recording I took of the events described above, starting at around the 7:00 mark: <https://twitter.com/FancyJenkins/status/1285109644021526529>. In addition, from 6:00 to 7:00, I am panning around me and it is plain that there are very few other people in my immediate vicinity.

9. I would like to continue attending and documenting the protests. I believe it is vitally important that I do so to document the actions of law enforcement and protesters—especially when law enforcement officers target journalists for retribution. I am fearful, however, that police and federal agents will injure me even more severely than they did on the night of July 19.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 21, 2020

DocuSigned by:  
  
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Jake Johnson

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF KARINA BROWN IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Karina Brown, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a staff reporter for *Courthouse News*, and my work has also appeared in the *Willamette Week* and *Slate*. I have attended the Portland protests for the purpose of documenting and reporting on them. If called as a witness, I could, and would, testify competently to the facts below.

2. I have been a journalist for 15 years, and have reported on Portland protests since 2017. When I report on protests, I wear a large press pass issued by *Courthouse News* that says “PRESS” on it in big block letters. I also carry a professional Sony RX100 IV camera.

3. I reported on the protests downtown on the night of July 17, 2020, and into the morning of July 18. All night, I was waving my press badge, shooting photos, and yelling at federal agents and local police that I was press.

4. Around 3:00 a.m., officers were riding riot vans, hanging off the sides on runner boards, chasing groups of protesters around downtown. I could not tell if they were local police or federal agents as they were dressed in very similar black uniforms.

5. I was following a group of protesters that were running from officers. The officers kept performing massed charges and other maneuvers that were successfully breaking the group up into smaller pieces. All of a sudden, the officers separated me from the crowd and I found myself running on my own. The officers were following along in their riot van.

6. I heard the van accelerate towards me. Two officers cried out in unison, in a menacing sing-song voice, “WE’RE GONNA GET YOU!”

7. I became deeply afraid for my safety. I did not know what the officers meant by “getting” me, nor what the officers would do to me once they “got” me. I ducked behind a large column, hoping I would be safe there. But an officer cried out again: “WE CAN STILL SEE YOU!”

8. Fortunately, at this point the driver of the van sped off and I did not find out what the officer intended to do once he “got” me.



9. I was again reporting on the protests near the federal courthouse on the night of July 20. A number of protesters, probably 100 or more, were massed in the outdoor foyer area of the courthouse, in between the pillars and the boarded-up doors. I was taking photos and videos and sending tweets documenting what was going on.

10. Very suddenly, federal agents appeared in an embrasure in the courthouse wall and began shooting pepper balls at the crowd.

11. Everyone started to run, and I tried to get behind one of the pillars to avoid being shot. As I was moving toward cover, however, a federal agent shot me directly in the buttocks, twice.

12. I was less than 15 feet from the agent when he shot me. At that distance I am certain it was no accident that he hit me in that area. The agent targeted me as a member of the press when I was running away, and targeted my buttocks to add sexual harassment to injury.

13. Fired at such close range, the shots were extremely painful and concentrated. The toxic pepper powder spread to my face, where it caused so much pain that I was unable to continue reporting. It continued to burn for hours. I have covered a lot of protests, and been around a lot of tear gas and pepper spray fired by Portland police, but they have rarely burned for more than 30 minutes. Whatever chemicals federal agents were using felt much, much stronger.

14. I would like to continue attending and documenting the protests. That is my job, and I plan to begin covering the protests every night. I am fearful, however, that federal agents or local police will continue to target me, both as a member of the press and as a woman, and possibly injure me to a much greater extent than they did on this occasion.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 21, 2020

DocuSigned by:  
*Karina Brown*  
EEBA502CFF824EC...

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Karina Brown

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF NOAH BERGER IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Noah Berger, declare:

1. I am a California resident who lives in the Bay Area. I have been an independent photojournalist since 1995. My work has been published nationally and internationally for 25 years, including my extensive coverage of protests in San Francisco and Oakland. I arrived in Portland on Sunday night on assignment for the Associated Press. I documented the protests and the federal response on Sunday and Monday nights. If called as a witness, I could, and would, testify competently to the facts below.

2. I have significant experience documenting riots and violent situations involving the police, including coverage of these ongoing protests in the Bay Area for the Associated Press. What I have seen and documented these two nights in Portland is markedly different than even the most explosive protests I have covered in Oakland. The federal agents here charge a *lot* harder than what I am used to seeing.

3. On the night of July 19, I was capturing the protests in downtown Portland in front of the Hatfield Courthouse. I did not protest or demonstrate. I was using two large professional cameras: one Nikon Z 6 with 17-35mm lens, and another Nikon Z 6 with a 50mm lens. I also carry a 70-200mm lens. I was wearing two press credentials, one from the State of California and another from the City of Oakland Police Department. I was also wearing a motorcycle helmet and a gas mask.

4. I was documenting the scene in front of the Courthouse just before midnight on July 19. I was not on the federal property. Suddenly, without warning or reason, a federal agent shot me twice, in my stomach and my elbow, with some type of rubber bullet or impact munition. It hurt a lot but did not take me out of commission.

5. This is a true and correct copy of a photograph I took of my elbow after the federal agents shot me:



6. About an hour later, around 1 a.m., I was documenting protestors in front of the front door of the Courthouse.

7. Suddenly, without warning, a pack of federal agents rushed into the area. I saw that these troops were not messing around. I immediately lifted up my press pass, repeatedly yelled that I was press and that I was leaving, and started moving away, while holding my press pass aloft.

8. While I was identifying myself as press and clearly moving away, one of the federal agents rushed and began whipping me with his baton. Two other federal agents joined him. They surrounded me, and struck me with their batons at least 3 or 4 times.

9. One of the federal agents pulled out his pepper-spray and sprayed me from about one foot away. The pain was immense and I was unable to open my left eye for at least an hour. I

tried to keep documenting with one eye, but only lasted about fifteen minutes more. I could not even open my left eye while I was filing my photographs.

10. The federal agents administered the same beating and pepper-spraying to me as they did to the Navy veteran in the widely shared video from July 18.

11. The federal agents gave no warning before charging and beating me. I was not posing any danger to law enforcement or to the Courthouse. There was no reason to beat and pepper-spray me when I was clearly present as a journalist and was leaving the area.

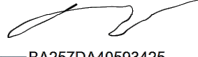
12. The following is a true and correct copy of a photograph of my press credential, which I was also wearing on the night of July 19:



13. I intend to continue covering the protests tonight but am fearful that federal agents will injure me even more severely than they did on the night of July 19.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 21, 2020

DocuSigned by:  
  
BA257DA40593425...  
\_\_\_\_\_  
Noah Berger



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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF MIKE BIVINS IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Mike Bivins, declare:

1. I am an Oregon resident who lives in the City of Portland. I have been a journalist since 2014 and was formerly a news reporting intern with *Eugene Weekly*, and freelanced for them for a number of years. I currently work on a freelance basis; my footage has been sold to ABC and NBC, among others, and I have appeared on CNN and in a BBC documentary about prior protests in Portland. I have attended the current protests in Portland several times for the purpose of documenting and reporting on them. If called as a witness, I could, and would, testify competently to the facts below.

2. I reported on the protests in downtown Portland on July 20, 2020. I carried my red iPhone 11 (and not a more expensive camera that is more likely to be damaged or stolen). I wore a nice shirt, slacks, and loafers, and a double-sided press pass issued by the Village Portland. I was there in my capacity as a member of the media. I did not protest or demonstrate.

3. I was documenting federal agents interacted with protestors in front of the Hatfield Courthouse after midnight. I was standing in an open, well-lit area, near other journalists.

4. Suddenly, and without provocation, a federal agent lunged at me, and pepper sprayed me at point-blank range. Here is a true and correct copy of the original video documenting this portion of this incident:

<https://twitter.com/itsmikebivins/status/1285480935098667008>.

5. The pain was really bad. The federal agent pepper-sprayed not just my eyes, but my ears, face, and body. Everything was burning so badly, I felt like my skin was going to melt off.

6. The federal agent gave no warning before the assault. He did not say that we would be arrested, that this was an illegal assembly, or even to move back.

7. I believe the federal agent pepper sprayed me to force me to stop documenting what federal agents were doing. And it worked. I stumbled backwards and a group of people herded around me. I dropped to the ground and people began to pour water and saline into my

eyes and face. I required this assistance at least five times before I felt capable of seeing and breathing semi-normally.

8. My ears, face, and body all had bright red marks on them and were burning so badly. I was scared to even look at the chemical burns all over on my skin.

9. Being on the receiving end of pepper-spray at point-blank range, and fearing another serious injury, makes me question if covering the federal response to the protests is worth the significant risk to my personal health and livelihood.

10. I am also aware that the federal agents recently shot and broke someone's hand when they were observing the protests. My day job is in a patient-facing position in a local hospital. Given my responsibilities, I cannot risk breaking a finger, let alone my hand, or suffering another serious injury that would stop me from my doing this job during the pandemic.

11. The following is a true and correct copy of a photograph of my press credential, which I was also wearing on the night of July 20:



12. I would like to continue attending and documenting the protests as I believe it is vitally important to document what is happening. I am fearful, however, that federal agents will injure me even more severely than they did on the night of July 20.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 21, 2020

DocuSigned by:  
  
182782F59A654FB...  
Mike Bivins

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**SUPPLEMENTAL DECLARATION OF  
ALEX MILAN TRACY IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION  
AGAINST DEFENDANTS U.S.  
DEPARTMENT OF HOMELAND  
SECURITY AND U.S. MARSHALS  
SERVICE**

I, Alex Milan Tracy, declare:

1. I am an Oregon resident who lives in the City of Portland. Since this lawsuit began, my photographs have been published by CNN, ABC, CBS, *People Magazine*, *Mother Jones*, and *Slate*, among others. I have covered a great deal of the recent protests over George Floyd and police brutality in Portland. If called as a witness, I could, and would, testify competently to the facts below.

2. On July 20, I submitted a declaration to the Court in support of Plaintiffs' motion for a temporary restraining order because federal officers targeted and shot me with an impact round on my ankle on Sunday night. I did not cover the protests on the night of July 20 because of my injury. I returned to document the protests in my capacity as a journalist and newsgatherer last night (July 21 into July 22).

3. I was documenting the protests in downtown Portland in front of the Hatfield Courthouse early in the morning on July 22, 2020. I was using my two large, professional cameras, one with a wide lens, and another with a telephoto lens. I was holding my GoPro HERO8 camera. I was also wearing my press card that clearly states I am press. I was also wearing my helmet that says "PRESS" in big white letters across both the front and back. I was there in my capacity as a member of the media. I did not protest or demonstrate.

4. At approximately 12:30 a.m., I was standing in the street and filming tear gas and a group of federal officers who were on the sidewalk in front of the Courthouse. Two federal officers gestured at me with their batons to move back. I moved back and one of the officers briefly charged at me. I moved back into the middle of the street.

5. Here is a true and correct copy of a still frame from the original video documenting this portion of this incident:





6. A few minutes later, at approximately 12:35 a.m., I was standing in about the same spot in the street and filming the same group of federal officers on the sidewalk in front of the Courthouse. I was standing next to a fellow photojournalist, Noah Berger, who I understand also submitted a declaration in support of Plaintiffs' motion.

7. The federal officers raised their weapons in our direction. Then, the closest federal officer launched a flash bang towards myself and Noah. We were both hit but continued to document the scene.

8. Here is a true and correct copy of the original video documenting this portion of this incident: <https://twitter.com/AlexMilanTracy/status/1285858616965165059>.

9. I also spoke with a fellow photojournalist, Justin Katigbak, who told me was shot in the chest with a less-lethal round. He was wearing a black helmet that clearly said PRESS in big white letters. He looked visibly distressed and told me he was heading home.

10. Last night, the federal officers acted as violently towards journalists as they have at any point that I've documented them at the protests. It seemed to me that the federal officers were specifically targeting reporters for seeking to enforce our First Amendment protections. Throughout last night, I witnessed federal officers repeatedly huddling up and pointing at me and

other press members who were standing around or near me. I finally left last night because I was genuinely terrified of standing in front of the federal officers. They kept looking and pointing directly at me, and I feared they would raise their weapons at me again.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

  
\_\_\_\_\_  
Alex Milan Tracy

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

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**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF KAT MAHONEY IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Kat Mahoney, declare:

1. I am an Oregon reside who lives in the City of Portland. I am an independent attorney and unpaid legal observer, a role that I have served since 2017. I have attended the Portland protests nearly every night for the purpose of documenting police interaction with protesters.

2. I wear a blue ACLU vest that clearly identifies me as a legal observer.

3. I have not broken any laws or done anything violent towards anyone.

4. I have not interceded as police have attacked, arrested, brutalized, and intimidated members of the public peacefully exercising their First Amendment rights.

5. I have only observed, wearing a paint respirator, ear plugs, and goggles.

6. On July 21, 2020, I observed the protest that extended along SW 3rd Avenue from SW Salmon Street to SW Madison Street. Shortly after midnight on July 22, federal agents came out of the federal courthouse to begin a second push to clear protestors from the sidewalk in front of the building, SW 3rd Avenue, Lownsdale Square, and Chapman Park.

7. I was in Chapman Park and quickly made my way towards Lownsdale to document the push. I knelt behind a metal bench in Chapman Park towards the northwest corner and recorded. Federal agents threw multiple tear-gas canisters and smoke chasers, and shot munitions towards the crowd.

8. I was not in the crowd and was unable to identify what munitions were being used. However, federal agents soon turned their attention to the people near me in Chapman Park.

9. Federal agents fired a smoke chaser towards where the food tents, known as Riot Ribs, resided. Smoke chasers were also fired at people near me, to my right. The people near me were journalists and a handful of protestors that had not been pushed west on SW 3rd Avenue.

10. Tear gas clouds wafted by me and I had to close my eyes a few times to minimize the stinging sensation due to the fact that my goggles had shifted and allowed for a leak.

11. I continued to hold my phone up over the edge of the bench. To my right I heard a

pop noise and looked over to see a tent hit with a smoke chaser. The munition started a small fire, but a few protesters stomped it out.

12. I then looked towards the federal agents and saw that they had fired a smoke chaser at me. It hit the ground right under the bench and ricocheted, striking my left knee. Within a second, a second smoke chaser was fired at me, which hit my right foot.

13. Immediately, I stood up, knowing if I stayed I would continue to be a target. A third smoke chaser was fired towards me and this time I jumped to avoid it hitting my legs.

14. I walked up SW Main Street towards SW 4th Avenue where I knew many people were being treated by medics. After only taking a few steps, two protestors saw me and assisted me to SW 4th Avenue.

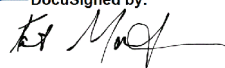
15. I was treated by medics for my eyes, checked to ensure I could walk well, and asked questions to make sure I lucid.

16. In the last few days, federal agents' use of force has increased and they have been indiscriminately firing into the crowds. Federal agents have also pointed their weaponry at members of the press, legal observers, and other witnesses, such as the Clergy Witness.

17. I intend to continue covering the protests, but I am fearful for my safety. Last night I felt that federal agents treated me as an enemy combatant, which I was not, rather than as a neutral legal observer.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

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C65E3388AA13457...

Kat Mahoney

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF TUCK WOODSTOCK IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**



I, Tuck Woodstock, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a freelance journalist and have covered a great deal of the recent protests over George Floyd and police brutality in Portland. If called as a witness, I could, and would, testify competently to the facts below.

2. On Saturday, July 19, I was reporting on a protest in North Portland. After a small group of protesters started a fire at the Portland Police Association building, Portland police arrived and ordered the entire crowd to disperse to the east. Portland police began walking the crowd east, then suddenly executed a massed charge against the group I was covering.

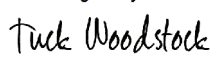
3. I was wearing a large red press badge on a lanyard and a helmet that said "PRESS" on three sides. I also yelled "PRESS" over and over and over again. As I did this, the police officers sprinted past me, going around me to chase and tackle protesters. They did not shove me or shout at me specifically.

4. Because of this action, I was left standing behind most of the police officers. I was allowed to film from behind the group. When I was done filming from that angle, I said "I'm behind you" and came around to walk and film alongside the officers. At no point did the officers yell at me to move or attempt to prevent me from filming.

5. This was a marked change from previous nights in this same location, before the Court entered its temporary restraining order, when I have been yelled at repeatedly to move and shoved backwards by the line of riot police.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

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Tuck Woodstock

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

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Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF MATHIEU LEWIS-ROLLAND IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Mathieu Lewis-Rolland, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a freelance photographer and photojournalist who has covered the ongoing Portland protests. I am a plaintiff in this case and helped secure a temporary restraining order from the Court protecting journalists and legal observers from being targeted by the Portland Police Bureau and other police agencies working with PPB. I have also submitted a declaration explaining how federal agents shot me 10 times in support of Plaintiffs' motion for a temporary restraining order against the federal agents at the protests. If called as a witness, I could, and would, testify competently to the facts below.

2. I covered the protests in downtown Portland on the night of July 20 into the early morning of July 21, 2020.

3. I was present in a journalistic capacity. I carried a large Nikon D850 DSLR camera attached to a 85mm lens. My cellphone was attached to the hotshoe on top of my camera. Because I knew that the Court had ordered the police to stop using violence against journalists and legal observers, I wore a t-shirt that said "PRESS" in big block letters on both sides. In addition, since federal agents shot me ten times on July 12, I have attached a reflective neon-yellow stripe to the outside of my lens, I wear reflective neon-yellow wristbands on both arms, and I wear a helmet with reflective stripes attached that says "PRESS" on several sides.

4. At the time the following events took place, I was taking care to remain in a well-lit area so that the police could read my shirt, and so that it would be clear I was there only to document the protesters and their interaction with police and federal officials. I did not participate in the protests.

5. What I witnessed on this night shocked me to my very core. Several times, I saw federal agents point live-ammunition lethal weapons into the crowd. Several times, federal agents trained their sights on me as I photographed them. Towards the end of the night, federal agents shot at me several times, and one threw a tear gas canister directly at my feet. Overall, federal agents' wanton violence last night was the worst I have seen since the protests began.

6. I arrived downtown around 10:30 p.m. At that time, the atmosphere was relaxed and positive. Thousands of protesters were present; the mood was celebratory. A groups of moms had linked arms in front of the courthouse. Balloons were in the air.

7. Shortly after midnight federal agents stormed out of the courthouse, shooting rubber bullets and tear-gas canisters. They tried to arrest someone outside the courthouse doors for no reason that I could discern. The crowd prevented the arrest. In response, an agent unholstered his live-ammunition handgun and pointed it at members of the crowd. This is a true and correct copy of a photograph I took of him threatening to shoot people with live, lethal ammunition:





8. Later in the night, I captured another image of a federal agent pointing a live-ammunition firearm—I believe it is an M4 with a suppressor attachment—at the crowd. This is a true and correct copy:



9. I also saw federal agents train their sights on me several times, even though it was extremely obvious that I am press. One agent held aim on me for as much as 10 seconds while I

yelled that I was press, until he finally decided not to shoot. Several other agents aimed at me as well, including one I captured on my camera. This is a true and correct copy of that photograph:



10. In addition, a federal agent fired 8-12 impact rounds directly at me for no reason. A few seconds later, he or another federal agent threw a canister of tear gas directly at my feet and forced me to retreat and stop reporting on their actions. A true and correct copy of a video I took of these events can be accessed at the following URL, about 12 minutes into the video: [https://facebook.com/story.php?story\\_fbid=10218746255271156&id=1342929165](https://facebook.com/story.php?story_fbid=10218746255271156&id=1342929165).

11. After the Court issued an injunction against the City, Portland police officers' conduct towards me improved markedly. For example, on the night of July 4, a police officer ran at me, yelling at me to disperse. I yelled, "I'm press! I'm press! There's a restraining order! I have a right to be here!" and stood my ground. The officer asked me to move 10 feet away, but let me do my job: observing, recording, and reporting on the protesters and police. I have to vigorously invoke my rights as a member of the press, but when I do, the police have left me

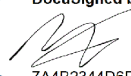


alone multiple times. Also, I have on occasion been allowed to get behind Portland police's skirmish line, because what I was doing was not a threat to them.

12. After the Court issued its injunction against the City, I felt like I could document the protests with less fear of being injured by law enforcement. That is no longer true. I would like to continue attending and documenting the protests. But I am worried that federal agents will continue to target me and possibly injure me again, as they have already done once and attempted to do again many times. Based on federal agents' actions, I just recently spent over a thousand dollars on a military-grade gas mask, a type III-A Kevlar vest, and a type III-A helmet, which are rated against AR-15 bullets. I have done this because on multiple occasions, I have feared for the safety of my life at the hands of federal agents—even when I comply with their orders.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

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Mathieu Lewis-Rolland

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

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**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF ELIZABETH DYLAN (“EDDY”) BINFORD-ROSS IN SUPPORT OF PLAINTIFFS’ MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Elizabeth Dylan (“Eddy”) Binford-Ross, declare:

1. I am a 17-year-old Oregon resident who lives in the City of Salem. If called as a witness, I could, and would, testify competently to the facts below.

2. I just completed my junior year at South Salem High School where I am the Editor-in-Chief of the school’s newspaper, *The Clypian*. I have covered the ongoing George Floyd protests for *The Clypian* since May. I take photos and videos of the protests, live tweet from the protests, and write stories about them for *The Clypian*. My live tweet coverage has been used by ABC, NBC, Reuters, the Independent, Anonymous, Yahoo!News, KOMO News, MSN, Fox, World News Tonight, and other major media outlets.

3. I carry a large Canon Rebel T3 camera with a zoom lens around my neck and a bulky camera case on my hip. Below is a picture of me reporting at a June 6, 2020 protest that was published in the *Salem Reporter*. <https://www.salemreporter.com/posts/2510/south-salem-student-journalist-becomes-daily-chronicler-of-protests>



4. Since Friday, July 17, 2020, I have been reporting nightly on the protests in downtown Portland for *The Clypian*. On Friday, July 17, I attended the event wearing my camera, camera bag, lanyard, and press badge. At all such events, when law enforcement direct their attention towards me, I routinely hold up my press badge and camera to ensure that they identify me as press. I have been following this routine during my coverage of these events. After two stun grenades were deployed near me on Friday night despite my normal press identifiers, I added a helmet that said “Press” on all four sides and wrote “Press” in yellow reflective tape down the right side of my jeans. Attached as **Exhibit 1** are true and correct copies of photographs of my press badge, press helmet and lanyard, as well as a picture my mom took of me Sunday night in downtown Portland after more munitions were directed towards me.

5. Part of our family’s safety plan for my coverage of these events is that a parent must shadow me to ensure that I am safe. On Friday, my father was on parent duty. At around 10:05 p.m., a group of protesters was listening to music. For reasons that are not clear to me, federal agents came out of one of the buildings without warning and told the crowd to “get back.” Shortly afterwards, they began shooting indiscriminately into the crowd and firing off tear gas and pepper spray. I did not see anyone doing anything illegal. Most of the crowd was in front of the Justice Center, and was not near the federal buildings. When the shooting started, my father and I were standing to the side, away from the protesters, along with the other media. Federal agents came by and pointed their weapons at us and the other media. I held up my press pass to the agents. They did not direct us to leave or otherwise speak to us. Shortly afterward, federal agents tear gassed and pepper sprayed the entire crowd and people moved away. We left, too, to escape the tear gas.

6. After things had died down, my father and I went over near the Edith Green federal building. We were by the side closest to the Edith Green building about fifteen feet from the wall. I was with my father and two other people we recognized from Salem who were livestreaming the event. None of us was protesting. I was watching a group of protesters located about half a block away to see what they were doing. All of a sudden, someone from inside the

wall of the federal building threw a flashbang grenade over the wall at us without any visual or auditory warning. It blew up about 10 feet away from me. I was stunned and temporarily deafened. After that occurred, my dad and I immediately left the area.

7. Later, around 1:30 a.m., protesters began building some kind of fence or barricade and a second confrontation occurred. Portland police told the crowd that it had five minutes to leave. I was reporting on these events from Fourth Street and Main Street in between the Edith Green Building and the Justice Center well away from the protesters.

8. Shortly afterward, the police and federal agents came running out and formed a line together in front of the Justice Center. I am not sure what buildings they came from, but they came out at exactly the same time. Then they began marching in formation and moving the crowd up through Chapman Square.

9. At the time this was occurring, I had positioned myself off to the side (with my father) on the other side of Madison Street to report on these events. We were moving backward away from the line. We were not near anyone who was protesting. The only other person near us appeared to be filming the event. That is when federal agents threw another flashbang grenade towards me. It landed about seven feet away. The noise was deafening, and I recoiled from the impact. It left my ears ringing for a long time afterward. I was recording on my phone when they did this. A true and correct copy of the video is here:

<https://twitter.com/childrightsprof/status/1284558309744242690?s=20>.

10. Before returning the next night to continue covering the protests, I grabbed my ski helmet and labeled it on all four sides with "PRESS." I also added "PRESS" in yellow reflective tape to my pant leg. My mom tried to find me a gas mask because of all the chemical weapons the federal agents were deploying, and enlisted a veteran friend and my uncle who is former military police to help. Despite their efforts, which spanned reaching out to contacts across the country, we were told that no quality ones were available and that I should wear goggles and use water, urine, saline, or milk to counteract the effects of the chemicals being deployed. That night, we added chemical lab and ski goggles and water bottles (for rinsing) to my safety bag.

11. On Saturday, July 18, 2020, federal agents released so many chemical weapons that I was crying, coughing, and gagging. I felt like I was going to vomit. My skin was burning. Some of the volunteer medics who were supporting the protesters saw that I was in distress. They ran over to me and poured saline solution on my eyes and gave me water to drink. Although we had brought the goggles, we did not get them out quickly enough and once we started wearing them, we found that they were not effective at protecting us from the toxins being deployed by the federal agents. The next morning, I woke up coughing and started researching the weapons and chemicals the federal agents had deployed.

12. When I returned to cover the protests again on Sunday, July 19, 2020, my mother was on parent duty. This time we brought swim goggles in hope that they would have a tighter seal and she brought washcloths soaked in milk to put over our mouths to protect us from the toxic chemicals and saline solution to rinse our eyes. That night I was wearing my helmet labeled “PRESS” on all four sides, my jeans with “PRESS” in yellow reflective tape down my right leg, my lanyard, and my press pass, and I was carrying my large camera and camera bag.

13. Despite the multiple markings from head to leg, federal agents threw another flashbang grenade and shot a teargas canister towards me.

14. At the time this occurred, I was reporting from the southwest corner of Main Street and Third Street at the edge of Chapman Square. We were on the periphery of the protest. There was a young woman in the middle of the intersection walking away from the federal agents with her hands above her head. The only other person I saw near us was someone recording with his phone. Federal agents began to shoot flashbang grenades and tear gas at the crowd indiscriminately, up Main Street and into both parks.

15. The federal agents threw an explosive stun grenade toward us. It hurt my ears and frightened me. There was no reason for them to aim at me, my mom, or anyone else in the immediate area. My mom turned around to grab the grenade after it went off. I was shouting “Get away” as we ran diagonally southwest through the park away from the federal agents. Then the federal agents shot a tear gas canister down the pathway we were running on. My mom



stomped on it to stop the tear gas from spewing the poisonous gas and hurting us. She grabbed that, too, yelling at me to meet her at the water fountain because the canister was blistering her finger and she was stopping to grab dirt and leaves to cool the devices. A true and correct copy of a recording of these events is here:

<https://twitter.com/childrightsprof/status/1285302066718535682?s=20>. When we got to the water fountain, we put our faces in the water to wash off the chemicals and took large mouthfuls of water to stop the burning in our throats.

16. A true and correct photograph of the grenade federal agents threw towards me is attached as **Exhibit 2**. As seen in the photo, it is a multiport device. After doing some research, I learned that this is the most powerful stun grenade manufactured by Defense Technology. The warnings on the grenade state: “This device should be used by trained persons only. When loaded it contains an explosive composition that could cause serious injury or death. Always wear ear and eye protection.” It also states that the area of deployment should be “visibly clear.” It is marked BORTAC, which according to my research is an elite Customs and Border Patrol unit normally deployed to go after international drug traffickers and the like.

17. A true and correct photograph of the tear gas canister the federal agents shot towards us is attached as **Exhibit 3**.

18. After I saw the devices the federal agents were directing towards me, I made a point of investigating what other chemicals and devices they were using. True and correct photographs that I took of various canisters collected from the scene Sunday night are attached as **Exhibit 4**.

19. The next three incidents all occurred on the night of Tuesday, July 21. The first occurred at approximately midnight. The press corps was standing on the southeast corner of Third Street and Main Street recording a standoff between federal agents and protesters. There were at least half a dozen members of the press clustered together wearing clothes, vests, and helmets labeled “PRESS.” The press corps was taking pictures and using a variety of cameras and recording devices, including one large television camera on a tripod. The federal agents were

clearly aware of our presence and identity. At one point, the federal agents asked us to move back and we immediately complied. Despite this, a short while later and without any visual or auditory warning a federal agent in a black uniform walked toward us and pointed his gun directly at me. Another agent tried to redirect his attention towards the protesters, saying what sounded like “That’s media, don’t shoot,” and initially he directed his gun southwest, towards the protesters. Despite being told to redirect his gun, he turned his gun towards us again and pointed it directly at me. The incident can be seen at 5:34 of the recording posted here:

<https://www.facebook.com/wendiwarren.binford/videos/10221706522752856>.

20. Moments after that incident, tear gas was deployed right next to the curb on Third Street where the press corps was reporting from. I was wearing swim goggles under my eyeglasses and had a mask on my mouth, but it was not enough to protect me from the poisonous chemicals so I ran south on Third Street to get away. My mom grabbed the water-soaked washcloths from my safety bag and gave it to me to cover my mouth, but it was already in my mouth and throat and I was coughing and my mouth and throat were burning. I drank from the water bottles we had brought to try to stop the burning and coughing. My mom was temporarily blinded by the tear gas the federal agents deployed next to the press corps when the chemicals got inside the chemistry lab goggles she was wearing so I led her by the arm down Madison and onto Second Street where we rinsed out her eyes and drank more water before I resumed reporting.

21. A couple of hours later, I was reporting on an incident unfolding in the north end of the courthouse portico. I was standing just outside marble blocks about 25+ feet from the incident. All of a sudden, federal agents started running around from the north side of the building and shoving people to the ground and against the wall. I quickly moved in against the wall of the courthouse, put my hands up, and backed away from the portico to clear a path for the federal agents. Despite this, one of the federal agents shoved me against the stone wall and another one pushed my mom into the cement sidewalk. My elbow was hurt and throbbing from the assault. My mom’s right knee and hand were bleeding and her pants were torn. Reporters

from another media outlet saw my mom's injuries and used their first aid kit to stop the bleeding. A video of the incident can be seen here:


<https://twitter.com/Clypian/status/1285841361120288771>. A photo of me next to the wall where the federal agent assaulted me showing that I was clearly identifiable as press is attached as

**Exhibit 5.**

22. I would like to continue reporting on the protests in Portland but my parents and I are extremely concerned that there have been seven dangerous incidents involving federal agents. They have deployed flash bang grenades and tear gas canisters toward me, pointed a gun directly at me even after being told by another agent that we were media, and shoving me into a stone wall even though I was already up against it to clear a path for them. When each of these incidents occurred, I was clearly identifiable as press, and have been following all directives from the federal agents. During all of these incidents, I was located on the periphery of the event I was reporting on.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

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Eddy Binford-Ross

# EXHIBIT 1











# EXHIBIT 2







# EXHIBIT 3







# EXHIBIT 4



















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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

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**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**SUPPLEMENTAL DECLARATION OF JOHN RUDOFF IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, John Rudoff, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a photojournalist. My work has been published nationally and internationally, including my extensive reporting from many areas of urban civil conflict. Since this lawsuit began, I have been published in *Rolling Stone*, *The Nation*, and on the front page of the July 18, 2020 national edition of the *New York Times*. I have attended the protests in Portland over the last two months for the purpose of documenting and reporting on them. If called as a witness, I could, and would, testify competently to the facts below.

2. On July 20, I submitted a declaration to the Court in support of Plaintiff's motion for a temporary restraining order because federal officers targeted and shot me in my right shoulder, inches from my head, with what I believe was a 40mm rubber bullet. Despite my injury, I returned to document the protests in my capacity as a journalist and newsgatherer last night (July 21 into July 22).

3. Early in the morning on July 22, 2020, I was documenting the protests in downtown Portland. I was wearing my helmet and vest that say "PRESS" in large block letters. I was wearing my 4x6" laminated press credential issued by the National Press Photographers' Association, which clearly states that I am press. Additionally, I was wearing light-colored clothing and heavy boots.

4. At approximately 12:40 a.m., I was standing on the east sidewalk of SW 4<sup>th</sup> Avenue, just north of the intersection of SW 4<sup>th</sup> and SW Salmon, where I was photographing a police skirmish line, who were arranged facing north in that intersection. They were all federal officers. I was photographing their line, facing north, and the protestors who were arrayed facing south.

5. The following is a true and correct copy of a photo I took documenting this incident:



6. Minutes later, I suddenly felt a tremendous strike and extreme pain in the lower medial aspect of my left tibia, directly above the line of my boot. I stopped photographing at once and hobbled north on SW 4<sup>th</sup> for about 50 yards, crossed the street from east to west, and hid in a concrete alcove of a big building.

7. Friends saw me sitting and came to render first aid – betadine, a gauze pad, and light wrap. I could not continue working after this (even though I was on assignment for a large European news agency) because I was hobbled and in too much pain. Another friend drove me to my car, about six blocks away, and I drove home to try to tend to my injury.

8. The following is a true and correct copy of a photograph that I took at 1:30 a.m. today, June 22, showing a deep anterior abrasion, medial extension of the abrasion, and significant circumferential swelling:





9. During the night, I and my family attended to my injury, including topical cleaning, topical antibiotics, gauze pads, and light wrap. I was in significant pain all night and I still am in significant pain. I have been soaking my leg in hot water throughout the day.

10. The following is a true and correct copy of a photograph that I took of my leg at approximately 10:50 a.m. this morning, the morning after the injury:





11. Despite my desire to continue reporting on and photographing the protests, I do not think that I can work today and probably will not be able to work tomorrow due to this injury and the pain that I am in. I am also fearful of being injured even more severely by the ever-escalating behavior of the federal agents.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

DocuSigned by:  
*John Rudoff*  
3025C40803784B6...

---

John Rudoff

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF STEVE HICKEY IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Steve Hickey, declare:

1. I am a Washington resident who lives in Seattle. I am a freelance photographer whose work has been published nationally by NBC, including my coverage of protests in Seattle. I arrived in Portland on Saturday night with the intent to film footage that would be licensed to NBC documenting the protests and the federal response on Saturday and Sunday nights. If called as a witness, I could, and would, testify competently to the facts below.

2. I have significant experience documenting riots and violent situations involving the police, including coverage of these ongoing protests in Seattle. What I have seen and documented these nights in Portland is markedly different than even the most explosive protests I have covered in Seattle. The federal agents here repeatedly charge far off federal property and beat up anyone who cannot run away in time. But I have not seen federal agents arrest those people. Instead, they seem to be allowing them to return to the increasingly restless crowds to spread brutal stories of how they were attacked by federal agents. I wonder if this is intentional.

3. On the night of July 19, I was capturing the protests in downtown Portland in front of the Hatfield Courthouse. I did not protest, demonstrate, or get very close to the police line. I was using a large Sony a7R IV. I was also wearing shorts, a tucked-in shirt, and gas mask.

4. At approximately 1 or 1:30 in the morning on July 20, I was standing near the former site of the Elk Fountain by SW 3rd Ave. and SW Main St., trying to capture photos of the federal agents and protestors converging in the street in front of the Courthouse. I was around 100 feet away from any federal agents.

5. Suddenly, I noticed a federal agent looking at me, so I looked up at him. We locked eye contact even through our masks. I thought: Why is he looking at me?

6. The federal agent raised his gun, aiming it directly at me.

7. As soon as I realized what was happening, I turned away and raised my hand to cover my face. An unidentified impact munition struck me in the back of my arm that was covering my face. I am 6'3", so it must have been intentional to aim at my head.

8. This is a true and correct copy of a photograph I took of my elbow after being shot by the federal agents:



9. Being shot stung incredibly bad but I felt fortunate to have shielded my face from the blow.

10. When I was shot, I was not in the crowd of protestors. I may have been near some fellow photographers. I did not defy any orders to move away. I had already moved far away.

11. A bit later, I was documenting the scene near the corner of SW 3rd Ave. and SW Salmon. Again, I was at least 100 feet away from any federal agents, who appeared to be retreating. I was not doing anything threatening. I was crouching behind a car because federal agents had just shot at my face.

12. Right as I happened to look up, suddenly, without any warning or provocation, I felt a huge impact on my face and heard a chunk of something ricochet nearby.

13. A federal agent had again shot at my face, this time connecting with my gas mask. It shattered the mask's plastic filter cover.

14. This is a true and correct copy of a photograph I took of the rubber bullet and my damaged mask:




15. There was *nobody* else around me when the federal agents shot at my face the second time. The federal agents appeared to be retreating at the time.

16. I do not intend to continue covering the protests in Portland after tonight, in part because I am fearful that federal agents will injure me even more severely than they did on the night of July 19 and morning of July 20 when they intentionally shot at my face, twice, when I was not even near any protestors.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

DocuSigned by:  
  
8A54CDE3D17648C...

Steve Hickey



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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF GABRIEL TRUMBLY IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST DEFENDANTS U.S. DEPARTMENT OF HOMELAND SECURITY AND U.S. MARSHALS SERVICE**

I, Gabriel Trumbly, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a paralegal and owner of a small photography business, EverythingUndertheSun, LLC. I served honorably for six years in the Oregon Army National Guard. If called as a witness, I could, and would testify competently to the facts below.

2. I have been curious about the reality of protests for the past few years. I have recorded almost every major protest that the news indicated was out of control or had police misconduct for the past four years. I do not partake in any form or protest. I will talk to people on all sides of them, Proud Boys, ANTIFA, Police Officers, and any others taking sides. While I did not clearly identify myself with clothing as press during all other protests, I now wear a black vest with bright white reflective tape, and front and back Velcro patches that say "PRESS" in bright white, easily identifiable at 50 meters, and readable at 25, as well as 2 small lights tied to my shoulder which can be white or red, I have a GoPro mounted to my chest, so I am identifiable even through thick smoke, and I carry an identifiable professional camera, in a large metal carrying cage, with a mounted microphone. Below is a photo of me as I was dressed on July 20



3. During the early morning of July 20 at about 1:50 a.m., federal agents of various types, but virtually indistinguishable by their uniform, filed out of the Mark O. Hatfield Courthouse. They were throwing tear gas, firing pepper balls, 40mm marker rounds, and “Impact Batons” which are virtually indistinguishable from what most would consider a rubber bullet.

4. I have been filming almost every day since May 29 around the Multnomah County Justice Center, so I have a feel for where to stand to be able to film, without interfering with officers performing what they say are lawful actions. I stood on the park side of road, on the sidewalk because the crowd had been cleared by the tear gas, and munitions. I have a gas mask, and as a non-participant in the protest I was on a public sidewalk filming police officers performing their duty in a public space, with the intent to produce content for my LLC. The officers were firing tear gas and munitions off corners of 3rd, intersecting with Main and Salmon, firing up those streets towards 4th. I stayed mostly to the middle between Main and Salmon. There were a couple of other people marked as PRESS near me, and a medic.

5. I noticed a DHS officer in a black uniform using the silver metal pillars across the street as a stable shooting platform for his 40mm, about 25 feet from me. He had not made a significant move in a few minutes, and virtually no munitions were being fired towards me, as there were no protesters near me. One of the federal agents threw a tear gas canister about 10 feet from me where the sidewalk meets the road. There was no puff of gas, after a few seconds I moved closer to see if it was a dud, or the agent had forgotten to pull the pin. I moved my camera towards it and noticed that the pin was pulled, and the top was missing, so I believe the canister was a dud. As I started to move back to my previous location heard a thud and felt a sharp pain in my hand. The officer in black who was about 25 feet away, with a stable shooting platform fired a 40mm pink marker round and struck me in the right index finger. Based on the immediate swelling, and what I thought may have been a sliver of bone sticking out, I thought it was broken. It turned out to be a wood splinter sticking out. The new 40mm marker rounds have foam, this had a wood back, which is more damaging. The 40mm marker round is a paint round, intended

to be used to mark someone in a crowd committing criminal activity with paint, so you can arrest them later. The effective range is 10-100 meters. Below is a photo I took of my finger.



6. After getting over being shocked that I was hit, as nothing else was going on around me, and I wasn't doing anything remotely illegal, I requested medical attention from the federal officers. As about one in five federal officers carry a silenced M4 assault rifle, and I have seen them point them at people, I was unwilling to cross the street to request the medical attention they should provide me. Instead I yelled as loud as I could while holding up my bloody finger, requesting medical attention. While I am confident they could hear me, none of them acknowledged my request.

7. Since they did not arrest me despite being out in the open, with no credible threat around, well within chasing distance, and because in my experience the federal agents use marking rounds very scarcely, I believe I was not being marked with pink paint as a criminal. Rather I was struck in the hand holding my camera, and I believe this is a clear attempt to damage my filming equipment with paint rounds.

8. Despite my desire to continue documenting the protests, I am also fearful of being injured even more severely by federal agents.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 22, 2020

DocuSigned by:  
*Gabriel Trumbly*  
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Gabriel Trumbly



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Defendants.

Case No. 3:20-cv-1035-SI

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION AGAINST  
DEFENDANTS U.S. DEPARTMENT OF  
HOMELAND SECURITY AND U.S.  
MARSHALS SERVICE**

REPLY ISO MOTION FOR TEMPORARY RESTRAINING ORDER &  
PRELIMINARY INJUNCTION AGAINST FEDERAL DEFENDANTS

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Plaintiffs respectfully submit this Reply in support of their motion for a temporary restraining order.

### **INTRODUCTION**

The federal agents' Opposition is an exercise in Trumpian argument—unburdened by citation to fact and contrary to the actual evidence. The federal agents argue that Plaintiffs lack standing, even though they admit that they do not intend to stop chilling Plaintiffs' First Amendment rights in a hail of rubber bullets and billowing clouds of tear gas rained down from Washington, D.C. Their Opposition simply ignores the mountain of declarations showing that they have been intentionally shooting, beating, and tear-gassing clearly marked journalists and legal observers, who are standing far from protesters and who pose no threat or interruption to law enforcement's unmitigated stream of violence—beyond exposing it to the world.

The federal agents claim that they are trying to bring “law and order” to Portland by attacking (and disappearing, Pinochet-style) protesters. Yet the City, the Mayor, and the State have all condemned what they are doing. As this brief was in its final stages, the City informed the Court that “[t]he actions of federal defendants are escalating violence, inflaming tensions in our City, and harming Portlanders who seek to engage in non-violent protests in support of racial justice.” (City Memorandum in Support of Motion for TRO Against Federal Defendants, Dkt. 70 at 2.) Governor Kate Brown has similarly observed that “[t]his political theater from President Trump has nothing to do with public safety,” and that “[t]he president is failing to lead this nation. Now he is deploying federal officers to patrol the streets of Portland in a blatant abuse of power by the federal government.”<sup>1</sup> Most tellingly, the federal agents are unable to cite a single instance of any journalist or legal observer attacking a federal monument, harming federal property, or interfering with any law-enforcement activities.

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<sup>1</sup> Aaron Mesh, *Oregon Gov. Kate Brown Says President Trump Is Invading Portland as an Election Stunt*, Willamette Week (July 16, 2020), <https://www.wweek.com/news/2020/07/16/oregon-gov-kate-brown-says-president-trump-is-invading-portland-as-an-election-stunt/>.



Most of the arguments mounted by the federal agents are ones this Court has already rejected. They claim that preventing reporters from documenting law enforcement’s dispersal of protesters does not implicate Plaintiffs’ First Amendment rights—even though the Court held that “public streets historically have been open to the press and the general public” and that “there are at least serious questions” whether violently expelling journalists and legal observers from them while enforcing a dispersal order is narrowly tailored. (*Compare* Opp. at 18-19 with Dkt. 33 (“TRO”) at 7.) They argue that Plaintiffs cannot demonstrate irreparable harm, even though the Court held that “anytime there is a serious threat to First Amendment rights, there is a likelihood of irreparable injury.” (*Compare* Opp. at 24-25 with TRO at 7.) They argue that “the balance of the equities and the public interest weigh against granting an injunction,” even though this Court has squarely held otherwise. (*Compare* Opp. at 25-28 with TRO at 8.) Indeed, with the escalating violence federal agents have imported into Portland, the public’s need for people to document and report these events has only intensified.

The federal agents also assert, without any evidentiary support, that Plaintiffs’ requested injunctive relief is “unworkable” (Opp. at 21-24) when it has already been working against the City for 21 days. As noted in the moving papers and as unrefuted by the federal agents, the only shortcoming in the Court’s extant Preliminary Injunction is that the federal agents rode into town and blatantly ignored its terms.

In a final counterfactual push, the federal agents claim that they have not retaliated against journalists and legal observers, even though multiple unrefuted declarations show that they have repeatedly targeted reporters and legal observers for gratuitous violence for no reason other than reporting and observing. In reality, after Plaintiffs moved for a TRO, federal agents ramped up their brutality against journalists and legal observers—which has resulted in the flood of declarations submitted over the last few days.

In sum, Plaintiffs have standing, seek a workable injunction, and are likely to succeed on the merits, and the public interest and balance of equities support their claim to relief. The Court should perfect its protection of Plaintiffs’ rights and extend its injunction to the federal agents.

## **ARGUMENT**

### **I. PLAINTIFFS PLAINLY HAVE STANDING TO OBTAIN AN INJUNCTION**

To obtain prospective injunctive relief, Plaintiffs must show that they are threatened with “real and immediate” future injury. *Thomas v. Cty. of Los Angeles*, 978 F.2d 504, 507 (9th Cir. 1992), *as amended* (Feb. 12, 1993) (quotation marks omitted). In the First Amendment context, because they challenge the federal agents’ policy of violently dispersing journalists and legal observers, they need show only that “the challenged [policy] appl[ies] to [their] conduct.” *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1022 (9th Cir. 2009). Plaintiffs have supplied a mountain of evidence that easily makes the required showing.

#### **A. Plaintiffs Have Standing Because They Have Documented “Actual Repeated Incidents” of Federal Agents Targeting Journalists and Legal Observers**

Nearly every night since Plaintiffs moved to amend their complaint, federal agents have visited fresh horrors upon individual Plaintiffs and members of the plaintiff class:

- On July 15, federal agents shot a tear-gas canister at Plaintiff Yau. (Declaration of Justin Yau (“Yau Decl.”), Dkt. 56 ¶ 6.)
- On July 16, federal agents shot and threatened to shoot journalists. (Declaration of Doug Brown (“Doug Brown Decl. II”), Dkt. 55 ¶¶ 11-13.)
- On July 17, federal agents threw flashbang grenades at a journalist on two separate occasions. (Declaration of Elizabeth Binford-Ross (“Binford-Ross Decl.”), Dkt. 78 ¶¶ 6, 9.)
- On July 18, officers who may have been federal agents intimidated a female journalist, chasing her in a van and yelling “WE’RE GONNA GET YOU!” (Declaration of Karina Brown (“Karina Brown Decl.”), Dkt. 71 ¶¶ 6-8.)
- On July 19, federal agents shot Plaintiff Rudoff in the shoulder with a 40mm rubber bullet. (Declaration of John Rudoff (“Rudoff Decl.”), Dkt. 59 ¶ 7.)

- Also on July 19, federal agents shot Plaintiff Tracy in the ankle with an impact munition, causing ligament damage, and in the elbow with pepper balls. (Declaration of Alex Milan Tracy (“Tracy Decl.”), Dkt. 60 ¶¶ 5, 8.)
- Also on July 19, federal agents shot a legal observer in the hand with an FN 303 riot gun. (Declaration of Nate Haberman-Ducey (“Haberman-Ducey Decl.”), Dkt. 61 ¶ 4.)
- Also on July 19, federal agents shot a journalist in the chest with a marker round. (Declaration of Jungho Kim (“Kim Decl.”), Dkt. 62 ¶ 7.)
- Also on July 19, federal agents shot a journalist in his camera lens and another legal observer in his hand. (Declaration of James Comstock (“Comstock Decl.”), Dkt. 63 ¶¶ 4-5.)
- Also on July 19, federal agents shot a journalist with a flashbang grenade and rolled a tear gas cannister at her. (Binford-Ross Decl. ¶ 15.)
- On July 19-20, federal agents told a journalist to stay where he was and then shot him. (Declaration of Nathan Howard (“Howard Decl.”), Dkt. 58 ¶¶ 6-7.)
- Also on July 19-20, federal agents shot a journalist in the stomach and the elbow, beat him with their batons, and pepper-sprayed him at point-blank range. (Declaration of Noah Berger (“Berger Decl.”), Dkt. 72 ¶¶ 4-11.)
- On July 20, federal agents shot a journalist in the stomach with a rubber bullet, only a few inches to the right of where his camera was hanging. (Declaration of Jake Johnson (“Johnson Decl.”), Dkt. 64 ¶¶ 6-7.)
- Also on July 20, federal agents shot a female journalist in the buttocks at near point-blank range. (Karina Brown Decl. ¶¶ 11-13.)
- Also on July 20, federal agents pepper-sprayed a journalist at point-blank range. (Declaration of Mike Bivins (“Bivins Decl.”), Dkt. 73 ¶¶ 4-6.)
- On July 21, federal agents shot pepper balls and threw a tear-gas grenade at Plaintiff Lewis-Rolland. (Declaration of Mathieu Lewis-Rolland (“Lewis-Rolland Decl.”), Dkt. 77 ¶ 10.)

- On July 22, federal agents shot a flash-bang grenade at Plaintiff Tracy and another journalist, and shot a third journalist with an impact round. (Supp. Declaration of Alex Milan Tracy (“Supp. Tracy Decl.”), Dkt. 79 ¶¶ 7-9.)
- Also on July 22, federal agents fired three smoke grenades at Plaintiff Mahoney, striking her left knee and right foot. She managed to dodge the third. (Declaration of Kat Mahoney (“Mahoney Decl.”), Dkt 75 ¶¶ 12-13.)

Each night that protests continue, every Plaintiff and every member of the plaintiff class faces a real and immediate threat of similar violence from federal agents. *Chavez v. United States*, 226 F. App’x 732, 737 (9th Cir. 2007) (explaining that a threat of injury is sufficiently “immediate” when a plaintiff alleges that federal agents “have caused injury on numerous occasions and will continue to do so”). The possibility of recurring injury “ceases to be speculative” where “actual repeated incidents are documented.” *Thomas*, 978 F.2d at 507 (quoting *Nicacio v. I.N.S.*, 797 F.2d 700, 702 (9th Cir. 1985)). Plaintiffs have documented repeated injuries, often to the same Plaintiff, night after night.

Despite this large and growing mountain of evidence, the federal agents argue that Plaintiffs “lack[] standing to obtain prospective injunctive relief for alleged future injuries based on allegations of prior harm.” (Opp. at 11 (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983); *Nelsen v. King Cty.*, 895 F.2d 1248, 1251 (9th Cir. 1990)).) If that were true as a general matter, a plaintiff could support her request for injunctive relief only with sheer clairvoyance. But that is not the rule: While isolated past wrongs cannot support prospective injunctive relief on their own, a *series* of such wrongs is surely evidence that “there is a real and immediate threat of repeated injury.” *O’Shea v. Littleton*, 414 U.S. 488, 496 (1974); *Lyons*, 461 U.S. at 102 (same). Article III demands neither precognition nor the “consummation of threatened injury” before a plaintiff may obtain preventive relief. *Blum v. Yaretsky*, 457 U.S. 991, 1000 (1982) (quotation marks omitted).

In fact, federal agents have admitted in their Opposition that they intend to continue violently dispersing journalists and legal observers until the Court tells them otherwise. (Opp. at

20-21.) This is a policy that plainly applies to Plaintiffs' conduct. So Plaintiffs have standing to challenge it. *Long Beach Area Peace Network*, 574 F.3d at 1022. Not only have Plaintiffs shown evidence of consummated injury, but federal agents have confirmed that the beatings will continue until press coverage improves. Article III demands no more of Plaintiffs than that.

**B. Plaintiffs Have Standing Because Their Allegation of Future Harm Does Not Depend on an "Extended Chain of Highly Speculative Contingencies"**

The federal agents cite a litany of cases in which plaintiffs alleged "extended chain[s] of highly speculative contingencies," nearly all of which required plaintiffs to commit a future "violation of an unchallenged law" before they would suffer the injury alleged. *Nelsen v. King Cty.*, 895 F.2d 1248, 1252 (9th Cir. 1990); *see, e.g., Lyons*, 461 U.S. at 105-06 (plaintiff would have to violate law, encounter police, be arrested, and either resist arrest or officers would have to disobey orders and put him in a chokehold); *O'Shea*, 414 U.S. at 496-97 (five steps including law violation); *Whitmore v. Arkansas*, 495 U.S. 149, 156-57 (1990) (five steps including obtaining federal habeas corpus relief); *Nelsen*, 895 F.2d at 1252 (ten steps including law violation); *Eggar v. City of Livingston*, 40 F.3d 312, 316-17 (9th Cir. 1994) (six steps including law violation); *Murphy v. Kenops*, 99 F. Supp. 2d 1255, 1259-60 (D. Or. 1999) (four steps including law violation). For sound policy reasons, federal courts refuse to assume that plaintiffs will violate a law they do not challenge. *Nelsen*, 895 F.2d at 1253 ("a claim of standing which is not only speculative, but is predicated upon the violation of an unchallenged law is insufficient"); *Eggar*, 40 F.3d at 316-17 (same).

Those cases are irrelevant here. This case involves neither an extended chain of contingencies nor Plaintiffs' future violation of an unchallenged law. The chain of events for Plaintiffs to suffer the same injury again is merely two links long. First, Plaintiffs must return to cover the protests. Nearly all of them have declared their intention to do so. (Lewis-Rolland Decl. ¶ 12.; Declaration of Doug Brown ("Doug Brown Decl. I"), Dkt. 9 ¶ 27; Rudoff Decl. ¶ 9; Tracy Decl. ¶ 12; Declaration of Sam Gehrke ("Gehrke Decl."), Dkt. 10 ¶ 10; Declaration of Steven Humphrey ("Humphrey Decl."), Dkt. 11 ¶ 5; Mahoney Decl. ¶ 17; Declaration of Sergio



Olmos (“Olmos Decl.”), Dkt. 15 ¶ 8; Declaration of Tuck Woodstock (“Woodstock Decl. I”), Dkt. 23 ¶ 11.) These are not “‘some day’ intentions”; they are “particularized future and imminent plans to [cover] protest[s].” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563-64 (1992); *Murphy*, 99 F. Supp. 2d at 1259.

Second, federal agents must continue to target Plaintiffs for violent reprisal. In addition to the staggering evidence that they have targeted journalists and legal observers so far, *see* Part I.A, *supra*, they have stated on the record their intention to continue to do so. (Opp. at 20-21 (explaining that federal agents intend to continue using force against all persons, including journalists and legal observers)); *see also* Conrad Wilson & Jonathan Levinson, *President Trump Says Portland Police Are Incapable of Managing Protests*, OPB (July 10, 2020) (explaining that federal agents were sent to Portland to do—in President Trump’s own words—what “[l]ocal law enforcement has been told not to do”).<sup>2</sup>

This two-link chain of ironclad certainty is enough by itself to remove Plaintiffs’ claim from the ambit of *Lyons* and its progeny. In addition, to the extent Plaintiffs’ claim relies on their future violation of dispersal orders, those orders are not “unchallenged.” *Cf. Nelsen*, 895 F.2d at 1252-53. Plaintiffs *do* challenge dispersal orders’ application to them. (Mot. at 2 (seeking an order that Plaintiffs “shall not be required to disperse following the issuance of an order to disperse, and such persons shall not be subject to arrest for not dispersing following the issuance of an order to disperse”).) Thus, there is ample indication here that Plaintiffs have “firm intentions to ‘take action that would trigger the challenged governmental action,’” and that when they do, they will be “subjected to the challenged governmental action,”” i.e., the unconstitutional use of targeted force to suppress their exercise of their First Amendment rights. *Murphy*, F. Supp. 2d at 1260 (quoting *Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1407 (9th Cir. 1991)). They therefore have standing to seek preventive injunctive relief.

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<sup>2</sup> <https://www.opb.org/news/article/president-trump-portland-police-are-incapable-of-managing-protests/>.

## II. THE INJUNCTION IS WORKABLE

The federal agents claim that the injunction Plaintiffs seek is unworkable, would require micromanagement, and would endanger officers. (Opp. at 20-22.) They cite no evidence for this proposition, and ignore the evidence against it—including that the Court has already issued a TRO and preliminary injunction embodying these exact terms, and that the City has been living under the same terms for 21 days of protests now. (TRO; Dkt. 49 (“Stipulated PI”).<sup>3</sup>) The City has even asked the Court to impose similar relief against the federal agents to protect journalists, legal observers, and the First Amendment. (City Memo at 2.)

For the 21 days, the City of Portland and the Portland police have been bound by the same injunction that Plaintiffs ask the Court to issue against the federal agents, the Portland police have largely been able to identify people they knew or should have known were press and legal observers from protesters and to avoid using force on them. For example, as recounted by Plaintiff Woodstock:

Portland police began walking the crowd east, then suddenly executed a massed charge against the group I was covering.

I was wearing a large red press badge on a lanyard and a helmet that said “PRESS” on three sides. I also yelled “PRESS” over and over and over again. As I did this, the police officers sprinted past me, going around me to chase and tackle protesters. They did not shove me or shout at me specifically.

Because of this action, I was left standing behind most of the police officers. I was allowed to film from behind the group. When I was done filming from that angle, I said “I’m behind you” and came around to walk and film alongside the officers. At no point did the officers yell at me to move or attempt to prevent me from filming.

(Declaration of Tuck Woodstock (“Woodstock Decl. II”), Dkt. 76 ¶¶ 2-4.) Plaintiff Lewis-

Rolland has also had a similar experience:

After the Court issued an injunction against the City, Portland police officers’ conduct towards me improved markedly. For

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<sup>3</sup> The preliminary injunction to which Plaintiffs and the City stipulated includes an additional paragraph concerning property seized pursuant to lawful arrest. (Stipulated PI ¶ 3.) Plaintiffs do not object to the inclusion of a substantively identical provision in the injunction against the federal agents. This should alleviate their complaints in this regard. (*Cf.* Opp. at 23.)

example, on the night of July 4, a police officer ran at me, yelling at me to disperse. I yelled, “I’m press! I’m press! There’s a restraining order! I have a right to be here!” and stood my ground. The officer asked me to move 10 feet away, but let me do my job: observing, recording, and reporting on the protesters and police. I have been able to do this multiple times. Also, I have on occasion been allowed to get behind Portland police’s skirmish line, because what I was doing was not a threat to them.

(Lewis-Rolland Decl. ¶ 11.)

The federal agents argue that they cannot turn their backs on journalists and legal observers because it would present security risks “and would severely distract from the critical mission of restoring order and protecting life and property.” (Opp. at 21.) But they cite no evidence in support of this proposition. In fact, their own internal memo admits that they are not even trained in crowd control.<sup>4</sup> Moreover, as seen above, the Portland police have allowed Plaintiffs and other journalists and legal observers to remain behind the police skirmish line during dispersal orders without incident. (Lewis-Rolland Decl. ¶ 11; Woodstock Decl. II ¶¶ 2-5.) Both were successfully able to assert their identity as press to avoid being harmed by the police, and their presence behind police lines did not impair police operations. (*Id.*)

The federal agents cite *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940), for the proposition that “[w]hen clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious.” (Opp. at 23.) But nothing in the proposed injunction prevents federal agents from acting against any “threat to public safety, peace, or order.” (*See* Stipulated PI ¶ 1 (permitting police to arrest journalists of legal observers if they “have probable cause to believe that such individual has committed a crime”).) The federal agents have failed to show what they are legitimately seeking to “prevent or punish” by pushing, beating, and shooting

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<sup>4</sup> Sergio Olmos, Mike Baker, & Zolan Kanno-Youngs, *Federal Officers Deployed in Portland Didn’t Have Proper Training, D.H.S. Memo Said*, N.Y. Times (July 18, 2020), <https://www.nytimes.com/2020/07/18/us/portland-protests.html>; *see also* <https://int.nyt.com/data/documenttools/dh-stacticalagent-memo2/bcc35f3303958cac/full.pdf> (admitting that DHS officers assigned to Portland “do not specifically have training in riot control or mass demonstrations”).

journalists and legal observers who have committed no crime other than documenting protests and law enforcement.

Contrary to the federal agents' contention, Plaintiffs can point to recent cases in this District and others, "in which federal or state officers responding to large-scale, ongoing incidents by violent opportunists have been enjoined in the manner Plaintiffs propose here." (Opp. at 22.) In at least three cases, courts have enjoined law-enforcement officers responding to this same series of nationwide protests following the murder of George Floyd:

- the TRO already issued in this case (Dkt. 33);
- Judge Hernandez's order in the *Don't Shoot Portland* case (*Don't Shoot Portland v. City of Portland*, No. 3:20-cv-00917-HZ (D. Or. June 9, 2020), Dkt. 29 at 9-10 (ordering that "PPB be restricted from using tear gas or its equivalent except as provided by its own rules generally," "tear gas use shall be limited to situations in which the lives or safety of the public or the police are at risk," and "[t]ear gas shall not be used to disperse crowds where there is no or little risk of injury")); and
- the U.S. District Court for the District of Colorado's order granting a wide-ranging temporary restraining order against the police as well (*Abay v. City of Denver*, No. 1:20-cv-01616-RBJ (D. Colo. June 5, 2020), Dkt. 16 at 10-11 (enjoining "Denver Police Department and officers from other jurisdictions working with Denver Police Department officers from using chemical weapons or projectiles unless an on-scene supervisor at the rank of Captain or above specifically authorizes [it]"; ordering that "all other non- or less-lethal projectiles may never be discharged to target the head, pelvis, or back" and "shall not be shot indiscriminately into a crowd"; that "all orders to disperse must be followed with adequate time for the intended audience to comply, and officers must leave room for safe egress," and more)).

Not only is the injunction Plaintiffs seek workable, it *has* worked. And it has worked in other jurisdictions as well. The federal agents' assertion that it would unduly restrict their activity has no basis in reality.

### III. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR FIRST AMENDMENT CLAIMS

The federal agents ignore the Ninth Circuit’s legal framework set forth in the moving papers: To obtain a preliminary injunction, Plaintiffs need only “mak[e] a colorable claim that [their] First Amendment rights have been infringed, or are threatened with infringement.” *Doe v. Harris*, 772 F.3d 563, 570 (9th Cir. 2014). After that, the Government bears the burden of justifying its restriction on Plaintiffs’ speech. *Id.* It has not done so.

#### A. Plaintiffs Are Likely to Prevail on Their Retaliation Claim

The federal agents argue that Plaintiffs have not shown a likelihood of establishing intent for their retaliation claim. (Opp. at 16-17.) But as the federal agents’ own authority points out (Opp. at 16), Plaintiffs can establish intent through circumstantial evidence, including evidence that the federal agents engaged in conduct that would chill a reasonable person’s speech without a sufficient non-retaliatory reason for doing so. *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300-01 (9th Cir. 1999) (quotation marks omitted). That standard is easily met here.

The federal agents assert that Plaintiffs have not shown “anything other than the unintended consequence of an otherwise constitutional use of force under the circumstances.” (Opp. at 16 (quoting *Barney v. City of Eugene*, 20 F. App’x 683, 685 (9th Cir. 2001).) Leaving aside that the federal agents are asking the Court to rely on uncitable authority,<sup>5</sup> this argument simply ignores the evidence. Plaintiffs have submitted multiple declarations from journalists and observers, all of whom were attacked by federal agents even though they were separate from protesters, clearly marked press, and in some instances, had not even been asked to leave. (*E.g.*, Bivins Decl. ¶¶ 2, 4, 6; Berger Decl. ¶¶ 3-4; Johnson Decl. ¶¶ 3, 6; Rudoff Decl. ¶¶ 3-7; Binford-Ross Decl. ¶ 15.) In two cases, federal agents deliberately shot the reporters even after they had alerted the federal agents that they were press and complied with federal agents’ directives. (Howard Decl. ¶¶ 2, 5-7; Berger Decl. ¶¶ 7-9.) Several were shot above the waist, which is not how such munitions should be used. (Rudoff Decl. ¶ 7; Johnson Decl. ¶ 6.) Plaintiff Lewis-

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<sup>5</sup> Ninth Circuit Rule 36-3. The federal agents also ask the Court to rely on *Mims v. City of Eugene*, 145 F. App’x 194, 196 (9th Cir. 2005), which is also not citable under C.R. 36-3.



Rolland was shot 10 times! (Declaration of Mathieu Lewis-Rolland re: July 12, Dkt. 44 ¶¶ 13-15.) Courthouse News reporter Karina Brown was shot twice in the buttocks at close range. (Karina Brown Decl. ¶ 11.) Jungho Kim was shot in the chest. (Kim Decl. ¶ 7.) These are repeated, targeted, and gratuitous attacks. There is no explanation other than intimidation and retaliation, and the federal agents offer none.

The federal agents also cite *Capp v. City of San Diego*, 940 F.3d 1046, 1059 (9th Cir. 2019) (Opp. at 17), but it does not aid them. There, plaintiff alleged that the county had retaliated against his criticism by threatening to terminate his child custody, and the Ninth Circuit reversed dismissal of his claim because he *had* alleged animus. *Id.* (“Because Plaintiffs have alleged that retaliatory animus was the but-for cause of Firth’s conduct, Firth is not entitled to qualified immunity.”).) Plaintiffs have made at least the same showing here. Finally, the federal agents’ reliance on *Menotti v. Seattle*, 409 F.3d 1113 (9th Cir. 2005), is also unavailing. (Opp. at 17.) It may be impractical to distinguish between “law-abiding protesters” and “a violent subset of protesters who disrupt civic order,” *id.* at 1155, but the Court has here specifically provided indicia to “facilitate the Police’s identification” of journalists and legal observers. (TRO at 9.) Those indicia have worked for the Portland police. (City of Portland’s Opposition to Plaintiff’s Emergency Motion for Leave to File SAC (“City Opp.”), Dkt. 46 at 4 (asserting that Portland police have “complied in good faith with this court’s Temporary Restraining Order”).) The same indicia will work for federal agents.

#### **B. Plaintiffs Are Likely to Prevail on Their Access Claim**

Plaintiffs are also likely to prevail on their access claims. In their moving papers, Plaintiffs established a prima facie case for their right of access. (Mot. at 12-13.) As the Court has already held, “public streets historically have been open to the press and the general public” and “there are at least serious questions” whether violently expelling journalists and legal observers while enforcing a dispersal order is narrowly tailored. (TRO at 7.) In response to Plaintiffs’ showing and the Court’s TRO, the federal agents cite no evidence that would support denying access to members of the press and legal observers. The decisions they cite are also

inapposite, and do not address the situation where the government unnecessarily punishes protected activities.

**1. Press and Legal Observers Are Engaged in Activities that Pose No Threat to the Public or Law Enforcement**

The federal agents essentially argue that journalists and legal observers have no greater rights of access than the public, that the government may deny protesters access to the City streets or federal property, and that they may therefore shoot, tear gas, and beat members of the press with impunity once they unilaterally decide to disperse protesters. This is a false syllogism. Press and protesters are engaged in different activities. Even assuming that the federal agents had a valid reason to use violence against people exercising their right to protest, it does not follow that the same purported justifications for using violence apply to journalists and legal observers.

The federal agents argue that “the press has [no] special right to remain in or access a location that has been lawfully closed . . . to protesters.” (Opp at 18.) But this misses the point: Journalists and legal observers are engaged in different conduct than protesters, and so their claims are evaluated under different standards. Protesters seek a right to speak and assemble. Plaintiffs, however, seek a right of *access*—a right to “observe government activities.” *Leigh v. Salazar*, 677 F.3d 892, 898 (2012). Their claims are thus evaluated under the two-part test of *Press-Enterprise Co. v. Superior Court* (“*Press-Enterprise II*”), 478 U.S. 1 (1986). *Leigh*, 677 F.3d at 898. But this test for a right of *access* has no bearing on others’ right to *speak*—even if at the same time and in the same place. Thus, *Press-Enterprise II* established a right to access criminal proceedings in some circumstances, but it did not establish any right to heckle the judge. *See* 478 U.S. at 8-9.

Under *Press-Enterprise II*, Plaintiffs must show (1) that the place and process to which they seek access have historically been open to the press and general public and (2) that public access plays a significant positive role in the functioning of the particular process in question. *Id.* This Court has already decided both questions in Plaintiffs’ favor for purposes of a TRO, and that

Plaintiffs raised serious questions whether any infringement of their qualified right of access was narrowly tailored. (TRO at 7-8.)

In response, the federal agents' first argument is that Plaintiffs are "trespass[ing] on federal property." (Opp. at 17.) This is a non sequitur. Public streets are by definition public property—i.e., government property—and that has never prevented courts from recognizing that they are traditional public fora, even when a government purports to "close" it. *See, e.g., McCullen v. Coakley*, 573 U.S. 464, 490 (2014) (closure of sidewalks adjacent to abortion clinics was overbroad). This applies with equal force to "[p]ublic open spaces" such as parks, because they are "uniquely suitable for public gatherings and the expression of political or social opinion." *Long Beach Area Peace Network*, 574 F.3d at 1022 (quotation marks omitted).

As against these bedrock First Amendment principles, the federal agents cite the government's power to stop protesters from occupying federal property for 17 days and its power to prevent overnight camping in Lafayette Park. *United States v. Christopher*, 700 F.2d 1253, 1259-61 (9th Cir. 1983); *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 298-99 (1984); (Opp. at 17-18). But those cases did not involve denying the press access to critical events of world importance. They all involved legitimate reasons for restricting access, such as lack of adequate toilet facilities to support overnight camping, and they left open viable alternative channels for the activity at issue, such as allowing the public to protest at the park during daytime hours. *Clark*, 468 U.S. at 297-99; *Christopher*, 700 F.2d at 1259-60.<sup>6</sup>

Here, in contrast, there is no legitimate justification for excluding members of the media and legal observers. The federal agents have submitted no evidence that any journalist or legal observer was involved in any of the unlawful acts discussed in the government's papers, or that

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<sup>6</sup> *See also Occupy Sacramento v. City of Sacramento*, 878 F. Supp. 2d 1110, 1119 (E.D. Cal. 2012) (upholding regulation "intended to ensure the ability of the general public to enjoy the park facilities, to ensure the viability and maintenance of those facilities, to protect the public's health, safety and welfare, and to protect the City's parks and public property from overuse and unsanitary conditions, including but not limited to, camping and overnight sleeping activities in City parks not specifically designed for those purposes"); (Opp. at 18).

they pose a danger that would provide a compelling basis for excluding them, and “a court cannot rubber-stamp an access restriction simply because the government says it is necessary.” *Leigh*, 677 F.3d at 900. A policy that directs violence at anyone who does not leave when ordered to do, sweeping in journalists and legal observers who pose no threat to safety or law enforcement, is overbroad and thus not narrowly tailored. *See, e.g., Bd. of Airport Com’rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 574-75 (1987) (striking down ordinance that prohibited expressive activity in airport terminal because it unnecessarily swept in in protected activities such as “wearing of campaign buttons or symbolic clothing” in addition to activities that might cause congestion, such as canvassing). “Laws . . . that restrict more protected speech than is necessary violate the First Amendment.” *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 814 (9th Cir. 2013) (striking down as wildly overbroad a purported traffic-safety law that restricted hiring day laborers on the for the supposed reason that “day labor solicitation that blocks traffic”).

Not only is such a policy overbroad, it fails to significantly advance the federal agents’ stated goal of protecting officer safety and federal property. Excluding press and legal observers does not protect officer safety and federal property because journalists and legal observers pose no threat to officer safety and federal property. (Opp. at 20-21 (failing to identify a single instance in which a journalist or legal observer actually posed a threat).) That “a substantial portion of the [policy’s] burden on speech does not serve to advance its goals” is a second and “particularly compelling” reason why it fails the narrow tailoring requirement. *Berger v. City of Seattle*, 569 F.3d 1029, 1045-46 (9th Cir. 2009) (en banc) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)).

Finally, a policy of blanket exclusion is also not the least restrictive means of protecting public safety. When federal agents exclude press and legal observers, they have no viable way to cover federal agents’ use of force against protesters, and the only reporting becomes that of the government itself, which is the very evil that the First Amendment prevents. *Leigh v. Salazar*,

677 F.3d 892, 900 (9th Cir. 2012).<sup>7</sup> Meanwhile, Portland police have been able to protect public safety at least as well as federal agents without excluding press and legal observers. (City Opp. at 4.) Thus, there exist less restrictive means of protecting public safety, which is a third reason why the government’s view that it can simply attack journalists and legal observers is not narrowly tailored and does not satisfy the First Amendment. *See Valle Del Sol*, 709 F.3d at 826 (“because restricting speech should be the government’s tool of last resort, the availability of obvious less-restrictive alternatives renders a speech restriction overinclusive”).

The cases cited by the federal agents do not hold otherwise. They cite *Perry v. Los Angeles Police Department*, 121 F.3d 1365 (9th Cir. 1997). (Opp. at 19.) But that case underscores that the government has not met its burden here. In *Perry*, the Ninth Circuit struck down as not narrowly tailored an ordinance that prevented selling goods and soliciting money on the Venice Beach Boardwalk, except for non-profits. The Court reasoned: “There is no evidence that those without nonprofit status are any more cumbersome upon fair competition or free traffic flow than those with nonprofit status.” Similarly here, the government has not presented any evidence that would support excluding the press.

Defendants also cite *California First Amendment Coalition v. Calderon*, 150 F.3d 976 (9th Cir. 1998), in which San Quentin only allowed witnesses at executions to begin viewing the execution after the inmate was strapped to the gurney and the IV was inserted. (Opp. at 19.) The regulation was justified because it was necessary to protect the anonymity of the executioners, and it still allowed access to observing and documenting the execution. The Court reasoned that the press had no greater right than the public to document and observe the execution—because they were engaged in the exact same activity. Here, in contrast, the press is documenting and observing the protests, while protesters are engaged in a different activity. *Branzburg v. Hayes*, 408 U.S. 665 (1972), cited in *Calderon*, simply held that reporters do not have a constitutional

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<sup>7</sup> The federal agents’ assertion that press and legal observers could do the same job from several “blocks away from federal property” defies not only federal constitutional law but the laws of physics. (Opp. at 19.)



right to refuse to testify before a grand jury. It does not support allowing a regulation that sweeps in protected activity when it need not do so.

## **2. Plaintiffs Have No Alternative Forum**

Plaintiffs are likely to prevail for the separate and independent reason that if they are excluded from observing and reporting on the government’s dispersal of protesters, they have no alternative means of doing so. “The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.” *Courthouse News Serv. v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020) (quoting *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994)).

The federal agents argue that “[n]o Plaintiff asserts that any press or legal observer was unable to observe any activities merely because of the dispersal order. And there are no allegations that federal agents advanced, in an attempt to disperse rioters, more than a few blocks away from federal property. Thus, it is not at all clear why reporters and observers could not see sufficiently even if moved by an order to disperse, except for the use of crowd control munitions that could still be used under the proposed injunction.” (Opp. at 19.) These arguments make no sense. As stated in the declarations submitted with this motion, journalists and legal observers have had to stop reporting due to the severity and nature of the injuries (such as tear gas in the eyes) that federal agents have intentionally inflicted on them. (*E.g.*, Karina Brown Decl. ¶ 13; Mahoney Decl. ¶¶ 14-15.) If they are to document events, they cannot be dispersed—especially at the very time federal agents are choosing to inflict violence on protesters.

Finally, Defendants claim that the injunction against the City is unworkable and would endanger officers. (Opp. at 20.) Defendants cite no evidence for this proposition—including evidence from the City, which has been living under the injunction for 21 days of protest now. Indeed, the City has explained that Defendants’ conduct is “unconstitutional.” (City Opp. at 4.) Similarly, nobody from Washington has even provided a speculative, self-serving declaration to support Defendants’ theory. That is telling and fails to meet Defendants’ burden of proof.

## II. THE PUBLIC’S INTEREST AND BALANCE OF EQUITIES WEIGH STRONGLY IN FAVOR OF PLAINTIFFS

In granting the TRO against the City, the Court already held that the balance of equities and public interest favored Plaintiffs. Nothing in the federal agents’ briefing changes this analysis.

The federal agents argue that “[t]he government has a comprehensive interest in maintaining public order on public property.” (Opp. at 25 (citing *Feiner v. New York*, 340 U.S. 315, 320 (1951).) But that is no basis for excluding the press, who have not posed any such threat. It is against the public’s interest to prevent journalists and legal observers from documenting how law enforcement is treating protesters. As the Ninth Circuit has observed, the “free press is the guardian of the public interest,” and “the independent judiciary is the guardian of the free press.” *Leigh*, 677 F.3d at 900.

Moreover, the federal agents have only escalated violence against protesters, rather than aided law and order. For this reason, Portland Mayor Ted Wheeler called “for immediate removal of the President’s ‘Rapid Deployment Unit’ squads and for a congressional investigation of their unconstitutional terror tactics,”<sup>8</sup> and many other state and local leaders have condemned the federal agents’ conduct and noted that their presence in Portland is a cynical political ploy.<sup>9</sup> Even DHS agents have decried the federal agents’ conduct in Portland as unconstitutional.<sup>10</sup>

As the City told the Court, “the City’s position with respect to the Federal Entities’ conduct on and about July 12, 2020, as publicly expressed by its Mayor and commissioners, has been one of strong condemnation.”<sup>11</sup> (City Opp. at 5; *see also id.* at 7 (“City officials have

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<sup>8</sup> Twitter, July 20, 2020 at 3:27.

<sup>9</sup> *See, e.g.,* Mesh, *supra* note 1.

<sup>10</sup> Rhea Mahbubani, *DHS employees say Trump deploying federal agents to Portland is a ‘blatantly unconstitutional’ ‘embarrassment’*, Business Insider (July 22, 2020), <https://www.businessinsider.com/dhs-employees-portland-response-tarnishes-reputation-unconstitutional-2020-7>.

<sup>11</sup> For example, Mayor Wheeler publicly condemned “the violence federal officers brought to our streets in recent days, and the life-threatening tactics [federal] agents use,” and added, “We do not need or want their help.” Earlier, Mayor Wheeler had publicly called for the federal government to follow the same crowd-control rules and follow the same restrictions on crowd-

publicly condemned the actions of the Federal Entities in pointedly strong terms.”); *id.* (“The City’s position in this case is that its actions complied with the Constitution. The same cannot be said, however, about the Federal Entities’ use of force.”).) Governor Brown has likewise noted that “[t]his political theater from President Trump has nothing to do with public safety.”<sup>12</sup>

On July 17, 2020, the Oregon Attorney General filed a lawsuit against the United States Marshals Service, the United States Department of Homeland Security, the United States Customs and Border Protection, and the Federal Protective Service, alleging that they have “violate[d] the state’s sovereign interests in enforcing its laws and in protecting people within its borders from kidnap and false arrest, without serving any legitimate federal law enforcement purpose” (*Rosenblum v. John Does 1-10 et al.*, No. 3:20-cv-01161-HZ (D. Or. July 17, 2020), *Complaint*, Dkt. 1, at 3 ¶ 20.)<sup>13</sup> The complaint alleges that “one or more federal defendants have engaged in actions endangering Oregon’s citizens and the people walking Portland’s streets.” (*Id.* at 7 ¶ 32). It further alleges: “Citizens peacefully gathering on the streets of Portland to protest racial inequality have the right to gather and express themselves under the First Amendment to the United States Constitution. Defendants’ actions are undertaken with the intent of discouraging lawful protest and therefore constitute an illegal prior restraint on the First Amendment right of Oregonians to peacefully protest racial inequality.” (*Id.* ¶¶ 22-23.)

In sum, Defendants fail to represent “the interest of the community in maintaining peace and order on its streets.” *Feiner*, 340 U.S. at 320. Whereas journalists and legal observers serve a critical public purpose of reporting the abuses perpetrated by the federal agents and decried by

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control devices as had been placed on the City. City commissioners Hardesty and Eudaly have similarly publicly condemned the Federal Entities’ “escalation of violence” and “reckless and aggressive behavior.” (City Opp. at 5 (citations omitted).)

<sup>12</sup> See n.1, *supra*.

<sup>13</sup> The Oregon Attorney General also moved for a TRO restraining Defendants from “detaining, arresting, or holding individuals without probable cause or a warrant” and requiring them to “[i]dentify themselves and their agency before detaining or arresting any person” and “[e]xplain to any person detained or arrested that the person is being detained or arrested and explain the basis for that action.” *Rosenblum, Motion for Temporary Restraining Order*, Dkt. 5, at 1.

public officials. The balance of equities and the public's interest weigh heavily in favor of Plaintiffs.

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that this motion for a temporary restraining order and preliminary injunction be granted.

Dated: July 22, 2020

Respectfully Submitted,

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