

July 23, 2020

BY EMAIL: foia@hq.dhs.gov

Jimmy Wolfrey
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Re: Request for Expedition of Freedom of Information Act Request

Dear Mr. Wolfrey:

Pursuant to Department of Homeland Security (“DHS”) regulations, 6 C.F.R. § 5.5(e)(iii)(2), Citizens for Responsibility and Ethics in Washington (“CREW”) requests that you authorize the expedition of three Freedom of Information requests CREW made today to DHS’s Chief FOIA Officer, U.S. Customs and Border Protection (“CBP”), and U.S. Immigration and Customs Enforcement (“ICE”). I have enclosed copies of these requests.

In all three requests CREW seeks copies of all documents and communications from June 2, 2020 to the present that explain or pertain to: (1) the decision to deploy federal law enforcement agents, officers, or other personnel in response to the ongoing protests over racial justice in Portland, Oregon and Chicago, Illinois; (2) any decisions or plans to deploy federal law enforcement agents, officers, or other personnel in response to the ongoing protests over racial justice in Albuquerque, New Mexico; Baltimore, Maryland; Detroit, Michigan; Kansas City, Missouri; New York City; Oakland, California; and Philadelphia, Pennsylvania; (3) any communications with local elected leaders in Oregon, including but not limited to the Oregon Governor’s office, Attorney General’s office, or office of the Mayor of Portland, related to the deployment of federal law enforcement agents, officers, or other personnel in response to the ongoing protests; and (4) any policies to which law enforcement officers under the auspices of the Department of Homeland Security are bound governing the treatment of protesters in the above-mentioned cities.

CREW seeks expedition because the subject matter of the request is of widespread and exceptional media interest and the requested information involves possible questions about the government’s integrity, which clearly affect public confidence. For approximately the last 60 days, Portland, Oregon, and cities around the country has been the site of major anti-racism protests in response to the killing of

George Floyd in police custody.¹ These protests, while mostly peaceful, have at times tested the limits of local law enforcement, and have earned the ire of President Trump, who is portraying such protests, especially in Democratic Party-led cities, as attempts by the “Radical Left Democrats” to “destroy our Country [sic] as we know it.”² On Monday, July 20, Trump told reporters that “I’m going to do something — that, I can tell you,” “Because we’re not going to let New York and Chicago and Philadelphia and Detroit and Baltimore and all of these — Oakland is a mess.”³

As became apparent last week in Portland, senior administration officials have operationalized the President’s rhetoric by authorizing an increasingly aggressive and militarized response to the ongoing protests.⁴ DHS has activated approximately 2,000 officials from Customs and Border Protection, Immigration and Customs Enforcement, the Transportation Security Administration and the Coast Guard on standby for rapid deployment to protect federal buildings from protesters.⁵ State and local reactions to such deployments, over which localities have effectively zero control, have ranged from lukewarm to hostile. In Portland, Deputy Police Chief Chris Davis stated his “preference would be to not have [federal agents] outside their buildings unless it’s a life/safety kind of an issue... I would prefer to police the outside of [federal] buildings and all of the others downtown with local and state resources.”⁶

These deployments of mixed units of militarized federal law enforcement have generated a steady stream of allegations of excessive use of force and abuses of power. In one incident, federal agents outside Portland’s federal courthouse on Saturday, July 15 were filmed repeatedly striking Navy veteran Christopher David—who approached the police line unarmed and with no apparent malice—with batons and mace.⁷ When asked about the video DHS Deputy Secretary Kenneth Cuccinelli stated that “maintaining an appropriate [federal] response is an ongoing obligation.”⁸ In other even more alarming incidents, roving federal officers outfitted in fatigues, carrying rifles, but wearing no visible agency identification, were filmed pulling protesters including one Mark Pettibone, into unmarked minivans.⁹ U.S. Customs and Border Patrol claimed

¹ Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis and Robin Stein, *How George Floyd Was Killed In Police Custody*, N.Y. TIMES, May 31, 2020, available at <https://nyti.ms/30ATXaD>.

² Donald Trump (@realDonaldTrump), TWITTER (Jul. 19, 2020 12:56 P.M.), <https://twitter.com/realDonaldTrump/status/1284894845614600194>.

³ Peter Baker, Zolan Kanno-Youngs, and Monica Davey, *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, July 20, 2020, available at <https://nyti.ms/3hoygBj>.

⁴ *Portland Protests: US Federal Agents ‘Will Not Retreat’, Chad Wolf Says*, BBC NEWS, July 21, 2020, available at <https://www.bbc.com/news/world-us-canada-53489995>.

⁵ Peter Baker, Zolan Kanno-Youngs, and Monica Davey, *Trump Threatens to Send Federal Law Enforcement Forces to More Cities*, N.Y. TIMES, July 20, 2020, available at <https://nyti.ms/3hoygBj>.

⁶ *They’re Not Under Our Control: Deputy Police Chief Testifies About Portland Protests, Federal Response*, KGW8 (NBC), July 20, 2020, 5:28 P.M., available at <https://bit.ly/32PMIUt>.

⁷ John Ismay, *A Navy Veteran Had A Question for the Feds in Portland. They Beat Him In Response*, N.Y. Times, July 20, 2020, available at <https://nyti.ms/3fSHrtt>.

⁸ *Id.*

⁹ Katie Shepherd, Mark Berman, *‘It Was Like Being Preyed Upon’: Portland Protesters Say Federal Officers in Unmarked Vans are Detaining Them*, WASH. POST, July 17, 2020, available at <https://wapo.st/2WMiw39>.

responsibility in that instance, alleging that Pettibone “had information indicating the person in the video was suspected of assaults against federal agents or destruction of federal property.”¹⁰ Despite this justification, they ultimately declined to charge him or even inform him of why he was detained, dropping him back on the street in front of the federal courthouse.¹¹

The federal policing tactics in Portland are raising serious constitutional concerns and worry for the state of the Republic, prompting comment from Senator Jeff Merkley (D-OR) on July 16 that "authoritarian governments, not democratic republics, send unmarked authorities after protesters."¹² On July 17, the U.S. Attorney for the District of Oregon formally requested a DHS investigation into the matter. By the weekend, numerous constitutional experts joined the chorus calling for these tactics to be halted. One such expert, Andrew Crespo, a professor of criminal procedure at Harvard Law, stated that at least in the Pettibone incident, there were clear violations of Pettibone’s right to be free from unlawful search and seizure under the Fourth Amendment.¹³ At least one state concurs and has already taken legal action to halt the federal government responses to these protests. On July 17, the State of Oregon sued DHS, CBP, the US Marshals and the Federal Protective Services in the District Court for the District of Oregon.¹⁴ Oregon is asserting that federal snatch-and-grab tactics are violating protesters First, Fourth, and Fifth Amendment rights, and are seeking a permanent injunction against such behavior.¹⁵ “Ordinarily, a person exercising his right to walk through the streets of Portland who is confronted by anonymous men in military-type fatigues and ordered into an unmarked van can reasonably assume that he is being kidnapped and is the victim of a crime. [Federal officers] are injuring the occupants of Portland by taking away citizens’ ability to determine whether they are being kidnapped by militia... or arrested.”¹⁶

Shocking images of violent and potentially unconstitutional federal police interactions with protesters are reaching television screens across America nearly every night. The public has an overwhelming interest in understanding exactly how the federal government is justifying sending paramilitary units into American cities, often against the wishes of the local governments in these jurisdictions. The records CREW requests will shed light on the factors DHS considered in making these decisions, including what outside interests may have been brought to bear in the process. The American public has the right to understand the particulars of the decision-making in these paramilitary operations and the parameters of the federal deployments to Portland, Chicago, and should President Trump be believed, other cities around the country as well.

¹⁰ *Id.*

¹¹ Jonathan Levinson, Federal Law Enforcement Use Unmarked Vehicles to Grab Protesters Off Portland Streets, OR. PUB. RADIO, July 16, 2020, 2:45 P.M., available at <https://bit.ly/3hscBs0>.

¹² Amir Vera, Konstantin Toropin, and Josh Campbell, *US Attorney Requests DHS Investigation After Video Shows Masked, Camouflaged Federal Authorities Arresting Protesters in Portland*, CNN, July 20, 2020, available at <https://cnn.it/2Ct6y7L>.

¹³ Andrew Crespo (@AndrewMCrespo), TWITTER (July 21, 2020), available at <https://bit.ly/30QE6VB>.

¹⁴ Complaint at 1, *Rosenblum v. John Does 1-10*, ECF No. 3:20-cv-01161-HZ (D. Or. 2020)

¹⁵ *Id.* at 4-6.

¹⁶ *Id.* at 5.

Moreover, the urgency of obtaining the requested records is particularly acute because both the demonstrations and the federal response are ongoing and evolving daily. The actions of DHS personnel undoubtedly affect the safety of demonstrators, further highlighting the public's need for a full understanding of DHS's decision-making process.

CREW's primary purpose is to inform the public about the activities of government officials and those who influence public officials. Toward that end, CREW uses statutes like the FOIA to gather information the public needs to hold public officials and agencies accountable. The requests for which CREW seeks expedition will further those goals.

I certify the following is true and correct.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', written in a cursive style.

Anne L. Weismann
Chief FOIA Counsel

Encls.