



August 5, 2020

Senator Ron Johnson, *Chair*
Senator Gary Peters, *Ranking Member*
Senate Committee on Homeland Security & Governmental Affairs

RE: Amnesty International Statement for Hearing on “Oversight of DHS Personnel Deployments to Recent Protests”

Dear Chairman Johnson, Ranking Member Peters, and Members of the Committee:

On behalf of Amnesty International USA and our members and supporters in the United States, we hereby submit this statement for the record. This hearing comes on the heels of alarming reports of excessive force by Department of Homeland Security (“DHS”) officers against protesters in multiple cities, in violation of the public’s rights to freedom of expression and assembly.

Amnesty International is the world’s largest grassroots human rights movement, comprising a global support base of millions of individual members, supporters, and activists in more than 150 countries and territories. Amnesty has fought for decades to protect the right to peacefully protest: from the historic uprising in Tahrir Square in 2011 to the roar of protests across Latin America and the Caribbean in 2019. In 2014, a team of Amnesty researchers monitored protests challenging police killings of Black people in Ferguson, Missouri – a precursor to the nationwide protests of today.

This week, we published “The World Is Watching: Mass Violations by U.S. Police of Black Lives Matter Protesters’ Rights,” about police violence in the wake of historic civil rights protests across the country.¹ Ever since the torture and extrajudicial execution of George Floyd on May 25, people have taken to the streets across the United States to call for accountability for the police killings of Black people and an end to systemic racial injustice and police violence. In response, police forces throughout the country have erupted in violence and engaged in excessive use of force: between May 26 and June 5, Amnesty International documented at least 125 separate incidents of police violence against protesters in 40 states and the District of Columbia, including beatings, misuse of tear gas and pepper spray, and inappropriate and, at times, indiscriminate firing of less-lethal projectiles.² These acts were committed by agents of state and local police departments, as well as by National Guard troops and personnel from several federal agencies, including DHS.

DHS agents have played a key role in protest crackdowns: according to one recent report, Customs and Border Protection (CBP) alone deployed over 2,000 personnel in response to the

¹ Amnesty International, “The World Is Watching: Mass Violations by U.S. Police of Black Lives Matter Protesters’ Rights,” Aug. 2020, <https://www.amnestyusa.org/worldiswatching/>.

² Amnesty International, “Unlawful Use of Force by Police at Black Lives Matter Protests,” June 2020, <https://www.amnesty.org/en/latest/news/2020/06/usa-unlawful-use-of-force-by-police-at-black-lives-matter-protests/>.

protests in an unknown number of cities.³ Following President Trump's June 26 executive order calling for prosecution of people who deface federal monuments or statues, the administration commenced "Operation Diligent Valor," under which it deployed teams of over 100 DHS agents, including a CBP Border Patrol Tactical (BORTAC) unit, to Portland, Oregon.⁴ BORTAC has been previously used by this administration for political ends to surveil, police, and arrest undocumented immigrants in cities that declined to cooperate with its anti-immigration policies.⁵

According to an internal DHS memorandum, the agents sent to Portland had never been trained in crowd control of mass demonstrations.⁶ Multiple media reports have documented federal agents using excessive force, purportedly in defense of the federal courthouse in Portland, and collectively punishing protesters exercising their rights to freedom of expression and assembly.⁷ Videos depict camouflage-clad officers with generic "POLICE" patches on their clothing and without any other identifying information such as their names or agency affiliation using force to arrest and whisk away protesters in unmarked vehicles.⁸

In recent weeks, CBP confirmed that its agents seized and detained protesters in unmarked vans. A Portland protester named Mark Pettibone, was detained by several men in green military uniforms and searched and taken in an unmarked minivan to a federal courthouse where he was held for several hours. Pettibone said that the CBP agents never told him why he was arrested, nor did they provide him with any paperwork, citation, or record of his arrest, which amounts to arbitrary arrest and detention in violation of domestic and international law.⁹ Recent reports suggest that those arrested for the minor crimes of vandalism of federal property or failure to disperse are required to refrain from attending "any other protests, rallies, assemblies or public gathering in the state of Oregon" while their case is pending – an indefinite condition since federal courts are shuttered for the foreseeable future due to the COVID-19 pandemic – in clear violation of their rights to freedom of expression and assembly.¹⁰

On July 22, federal law enforcement officers unleashed multiple rounds of tear gas on a crowd of hundreds of people, including Portland Mayor Ted Wheeler, who described DHS as waging "urban warfare" on Portland.¹¹

³ Ken Klippenstein, "The Federal Response to Protests Extends Far Beyond Portland," *The Nation*, July 23, 2020, <https://www.thenation.com/article/society/cbp-deployment-harris/>.

⁴ Marissa J. Lang, Josh Dawsey, Devlin Barrett & Nick Miroff, "Operation Diligent Valor: Trump showcased federal power in Portland, making a culture war campaign pitch," *Washington Post*, July 24, 2020, https://www.washingtonpost.com/national/portland-protests-operation-diligent-valor/2020/07/24/95f21ede-cce9-11ea-89ce-ac7d5e4a5a38_story.html.

⁵ Caitlin Dickerson, Zolan Kanno-Youngs & Annie Correal, "'Flood the Streets': ICE Targets Sanctuary Cities With Increased Surveillance," March 5, 2020, <https://www.nytimes.com/2020/03/05/us/ice-bortac-sanctuary-cities.html>.

⁶ Sergio Olmos, Mike Baker & Zolan Kanno-Youngs, "Federal Officers Deployed in Portland Didn't Have Proper Training, D.H.S. Memo Said," *New York Times*, July 18, 2020, <https://www.nytimes.com/2020/07/18/us/portland-protests.html>.

⁷ Katie Shepherd & Mark Berman, "'It was like being preyed upon': Portland protesters say federal officers in unmarked vans are detaining them," *Washington Post*, July 17, 2020, <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Dara Lind, "'Defendant Shall Not Attend Protests': In Portland, Getting Out of Jail Requires Relinquishing Constitutional Rights," *ProPublica*, July 28, 2020, <https://www.propublica.org/article/defendant-shall-not-attend-protests-in-portland-getting-out-of-jail-requires-relinquishing-constitutional-rights>.

¹¹ Lauren Thiessen, 'This is urban warfare': Protests escalate in Portland, Oregon" *N.Y. Daily News*, July 26, 2020, <https://www.nydailynews.com/news/national/ny-this-is-urban-warfare-protests-escalate-in-portland-ore-20200726-7k2zs6o2enfctdrd3maz55wxca-story.html>.

Local and state leaders have questioned the federal agents' legal authority to police demonstrations and conduct arrests, and have called for their withdrawal from Portland. On July 23, a federal court issued a temporary restraining order barring federal officers, including DHS agents deployed to Portland, from arresting, threatening to arrest, or using physical force against someone whom they should "reasonably know" is a journalist or a legal observer unless they have probable cause to believe that person has committed a crime.¹² The court stated that journalists and legal observers are not required to follow federal agents' orders to disperse or to stop documenting a protest.¹³ However, agents proceeded to ignore and violate the order just hours after it was issued: the ACLU of Oregon cited numerous instances in which the federal agents have violated the order by firing less-lethal munitions, such as rubber bullets, and using pepper spray against people who were clearly marked as press or legal observers.¹⁴

Amnesty International strongly denounces the deployment of these DHS agents to Portland and their excessive use of force against protesters. Their presence in Portland has only served to inflame tensions and increase violence. We are alarmed that senior DHS officials, including Ken Cuccinelli, have suggested that DHS agents might deploy similar approaches in other cities, and that deployments are reportedly taking place in Seattle and Chicago.¹⁵ Multiple former DHS Secretaries and senior officials have denounced DHS's actions in Portland, describing how the administration is using the agency in a manner "not consistent with its mission."¹⁶

DHS agents should not be deployed to conduct domestic law enforcement unless under exceptional and temporary circumstances, based on a clear needs assessment of their added value – if any – in a concrete situation. They should be specifically prevented from the policing of protests, due to their lack of training on crowd control and facilitating the right to peaceful assembly. We are especially alarmed by the deployment of CBP agents to Portland, given CBP's abysmal track record of using excessive – sometimes lethal – force and violating the rights of those it encounters, as Amnesty International has long documented.¹⁷ The agency's history of abuses against immigrants and border rights activists are a clear precursor to the brutal crackdowns against people exercising their right to protest today.

Americans across the country are exercising their rights to freedom of expression and assembly. All law enforcement agencies, including DHS and CBP, are required to uphold, protect, and facilitate these human rights. Amnesty International therefore urges Congress to:

¹² Maxine Bernstein, "Judge temporarily bars federal officers from using force, threats, dispersal orders against journalists, legal observers," The Oregonian, Jul. 23, 2020, <https://www.oregonlive.com/portland/2020/07/judge-inclined-to-restrain-federal-law-enforcement-from-using-force-threats-dispersal-orders-against-journalists-legal-observers.html>.

¹³ ACLU of Oregon, "Order in ACLU Lawsuit Blocks Trump's Militarized Agents from Attacking and Arresting Journalists and Legal Observers at Portland Protests," July 23, 2020, <https://aclu-or.org/en/press-releases/federal-court-issues-restraining-order-federal-agents-portland>.

¹⁴ Tucker Higgins, "Feds are flouting court order to stop targeting journalists and observers at Portland protests, ACLU tells judge," CNBC, July 28, 2020, <https://www.cnbc.com/2020/07/28/portland-protests-feds-are-flouting-court-order-to-stop-targeting-journalists-aclu-says.html>.

¹⁵ Kevin James, "DHS team deployed to Seattle; unit on standby in case of new unrest in city," USA Today, July 24, 2020, <https://www.usatoday.com/story/news/politics/2020/07/24/dhs-team-deployed-seattle-unit-standby-case-protests/5503909002/>.

¹⁶ See, e.g., Rachel Janfaza, "Ex-DHS Sec. Tom Ridge says presence of federal authorities in Portland 'not consistent' with agency's mission," CNN, July 27, 2020, <https://www.cnn.com/2020/07/27/politics/ridge-portland-force-not-consistent/index.html>; Luke Barr, "Trump administration has taken a 'belligerent, aggressive tone' with Oregon officials: Former DHS Secretary Michael Chertoff," ABC News, July 22, 2020, <https://abcnews.go.com/Politics/trump-administration-belligerent-aggressive-tone-oregon-officials-dhs/story?id=71925276>.

¹⁷ See, e.g., Amnesty International, "Saving Lives Is Not a Crime," July 2019, <https://www.amnesty.org/en/documents/amr51/0583/2019/en/#:~:text=USA%3A%20Saving%20lives%20is%20not,by%20the%20USA%20%7C%20Amnesty%20International>.

- Place strict limitations on funding for DHS to ensure its agents are not used, under the pretext of protecting federal property, to prevent constitutionally protected public assembly and free speech. Any future funding for DHS must include strict safeguards against unlawful use of force by agents and redress mechanisms for individuals who have suffered such use of force. Given DHS's history of unchecked abuses towards immigrants, border activists, and protestors, Congress should carefully examine options for wholesale reform of the agency – including possible dissolution of DHS and transfer of its functions across other federal agencies.
- Call on DHS to:
 - Immediately halt arrests and use of physical force against protesters;
 - Immediately withdraw all DHS agents, including CBP agents, from Portland and any other cities in which agents have been deployed for protest response;
 - Refrain from deploying any DHS agents, including CBP agents, to Seattle, Oakland, Washington, D.C., or any other city for purposes of policing protests.

For further information, please contact Charanya Krishnaswami, Americas Advocacy Director, at ckrishna@aiusa.org.

Sincerely,



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