

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

Kelly K. Simon, OSB No. 154213
ksimon@aclu-or.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OREGON
P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

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 MATTHEW BORDEN IN SUPPORT OF PLAINTIFFS' MOTION FOR CONTEMPT AND SANCTIONS

I, Matthew Borden, declare:

1. I am counsel of record for the Plaintiffs and have been admitted *pro hac vice* to practice before the Court in this matter. I make this declaration based on personal knowledge. If called as a witness, I could and would testify competently to the facts below.

2. Attached as **Exhibit 1** is a true and correct copy of an email I sent to Joshua Gardner, counsel for Defendants U.S. Department of Homeland Security and U.S. Marshals Service (the “federal defendants”), on July 27, 2020, summarizing a phone call with him earlier that day. On that phone call, I told him about the many of the instances of violence against journalists and legal observers discussed in Plaintiffs’ motion for contempt and sanctions. For each incident, I identified the date, time, precise location and nature of occurrence so that the federal defendants could investigate and provide an explanation of what happened the next day. Specifically, I requested that the federal defendants identify the officers involved, the commanding personnel involved, and what steps they had taken to comply with Court’s temporary restraining order (Dkt. 84) (“TRO”).

3. In the intervening period between the time Mr. Gardner and I spoke, Plaintiffs learned of additional and new acts of violence against journalists by the federal defendants.

4. I had a follow-up phone call with Mr. Gardner on July 28, 2020. On the call, Mr. Gardner was unable to provide me with any further information on what officers were involved in these incidents, or why they took place. Nor was he able to tell me which supervisors were involved in supervising those officers or who was responsible for implementing the Court’s TRO.

5. Mr. Gardner also informed me that at this point, the federal defendants would not stipulate to extending the TRO.

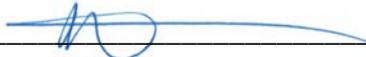
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I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: July 28, 2020



Matthew Borden

EXHIBIT 1

From: Matt Borden
Sent: Monday, July 27, 2020 12:54 PM
To: Gardner, Joshua E (CIV)
Cc: Athul Acharya; Gunnar Martz
Subject: RE: Index Newspapers LLC, et al v. City of Portland et al, No. 3:20-cv-01035-SI

Josh,

Thanks for the productive call this morning. Here is a brief summary from the notes Athul and I took:

The federal defendants' violations of the TRO: On our call, we detailed specific instances of TRO violations of which we were aware, including the dates, times and locations. We asked you to provide the identifications of the officers involved in these events, and the names of all individuals responsible for making sure that the federal defendants comply with the Court's TRO, and to provide any reasons why defendants believe that these acts do not constitute contempt of court. You stated that you would investigate these issues with your client and report back. The specific events that we raised were the July 23 shooting and intimidation of Rebecca Ellis, the July 23 shooting of Jonathan Levinson, the July 23 shooting and tear-gassing of Brian Conley, the July 24 shooting of Kat Mahoney and Rachelle Collins, the July 24 shooting of Haley Nicholson, and the July 25 pepper-spraying of four legal observers including Ms. Mahoney and Brice Knivila. You told me that Ms. Ellis may have been inadvertently shot when federal agents were firing at protesters, but you would confirm that explanation and provide details.

TRO extension: We discussed whether your client would stipulate to a 14-day extension of the TRO to give us some breathing room on discovery and PI briefing. You indicated that that was unlikely, but that you would check. We are willing to do so, and if the federal defendants do not agree to move the hearing, they will need to provide the requested discovery more quickly

PI hearing: We discussed whether it made sense to have an evidentiary hearing for the PI. We think it does, but have a number of practical questions about the logistics of having one or how that would work in light of COVID. The federal defendants did not take a position either way.

Discovery:

- We explained that the goal of our discovery was to provide evidence for our retaliation and access claims and to contest the federal defendants' argument that the possibility of injury to Plaintiffs was too remote and that we are willing to narrow our discovery to those issues
- We asked for any policies, directives, or training regarding journalists or legal observers and crowd control. We think these items ought to be readily available. You said that you would check.
- We also emphasized the need for all communications to and among field agents regarding press and legal observers, and also communications related to implementation of the TRO. We suggested a number of keywords to narrow the search, including "press," "reporter," "media," "journalist," "legal observer," "ACLU," and "NLG." You suggested that some of these communications might be privileged, and burdensome to collect. You stated that you would talk to your client later today about burden and get back to us after you do.
- We also discussed the Rule 30(b)(6) deposition notice and our interrogatories. You said that it would be burdensome to prep a designee on every topic and suggested that in some instances responses to the interrogatories might suffice. We stated that if the government provided very detailed responses to some of the written discovery, it could obviate the need for a deposition, but that it would be impossible to tell until we'd seen the responses.
- We also indicated that the government should be working on its responses to the written discovery now

Follow-up:

- You mentioned that you were aware of instances of protesters masquerading as press. We asked if you had any evidence of any federal agent being injured, or any federal property being damaged, by such a person. You were unable to cite any such instance on the call. Please inform us as soon as you become aware of any such incident.
- We also asked for the name of the supervisors responsible for implementing the TRO and any steps they have taken to secure compliance. You were unable to provide us with either item of information. Please do so as soon as possible.
- We scheduled a follow-up call for tomorrow at 10:15 a.m. Pacific / 1:15 p.m. Eastern

Here is a dial in we can use:

Dial-in Number: +1 (267) 9304000

Participant Access: 507 794 018

I have done my best to accurately capture our discussion. Please let me know if I have misstated or omitted anything.

I look forward to talking tomorrow.

Regards,

Matt

Matthew Borden

BRAUNHAGEY & BORDEN LLP

Office: (415) 599-0212

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Sent: Monday, July 27, 2020 8:37 AM
To: Matt Borden <borden@braunhagey.com>
Subject: RE: Index Newspapers LLC, et al v. City of Portland et al, No. 3:20-cv-01035-SI

Sounds good – I will call you at 1:15 EST.

Josh

From: Matt Borden <borden@braunhagey.com>
Sent: Monday, July 27, 2020 11:34 AM
To: Gardner, Joshua E (CIV) <jgardner@CIV.USDOJ.GOV>
Subject: RE: Index Newspapers LLC, et al v. City of Portland et al, No. 3:20-cv-01035-SI

Josh, thanks for the quick response. How does 10:15 PST work for you? The number below is my direct dial. I will probably try to loop in one of my associates. I look forward to talking.

Regards,

Matt

Matthew Borden

BRAUNHAGEY & BORDEN LLP

Office: (415) 599-0212

From: Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>
Sent: Monday, July 27, 2020 4:52 AM
To: Matt Borden <borden@braunhagey.com>
Subject: Index Newspapers LLC, et al v. City of Portland et al, No. 3:20-cv-01035-SI

Matt:

Good morning. I understand you wanted to discuss some issues concerning alleged non-compliance with the TRO and the discovery you recently served. I'm generally wide open today to discuss these issues with you. Please let me know a good time to talk and number to reach you at and I can give you a call at your convenience.

Regards,

Josh

Joshua E. Gardner
Special Counsel
Federal Programs Branch
United States Department of Justice, Civil Division
1100 L Street, NW., Rm. 12200
Washington, D.C. 20005
Telephone: (202) 305-7583
Fax: (202) 616-8460

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borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

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Defendants.

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

**DECLARATION OF BRIAN CONLEY
REGARDING EVENTS OF JULY 23-25 &
27-28, 2020**

I, Brian Conley, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a plaintiff in this case. I have been a journalist for twenty years and have trained journalists in video production across a dozen countries internationally. I have worked in warzones, such as Iraq, Afghanistan, Libya, and Burundi. For many years, I have covered protests in places such as Beijing, New York, Washington, D.C., Miami, Quebec City, and Oaxaca, Mexico, among others. I have documented a great deal of the recent protests in Portland. If called as a witness, I could, and would, testify competently to the facts below.

2. On the night of July 23, 2020, I was reporting on the protests in downtown Portland in front of the Hatfield Courthouse. I was using a large, Micro Four Thirds interchangeable camera with a telephoto lens and external 20W LED light mounted on it. I was wearing a photographer's vest that said "PRESS" on it. I was also wearing a helmet that said "PRESS" in big block letters across the front. I was there in my capacity as a member of the media. I did not protest or demonstrate.

3. Around 4:00 a.m. in the morning of July 24, I was documenting a line of federal agents across the intersection of SW 3rd Ave. and SW Salmon St. in front of the Hatfield Courthouse. At that hour, the crowd consisted of mostly press and a few individual protestors – far fewer than the federal agents lined up on the street.

4. One protestor, who was holding flowers, danced towards the federal agents as they began their retreat. While this was happening, my camera was repeatedly blinded by the light from the gun of a federal agent positioned at the Courthouse who was taking aim at me.

5. Suddenly, one of the agents grabbed the dancing woman. When this occurred, a protestor tried to grab her back.

6. While a group of federal agents was subduing the dancing woman and the person who was trying to grab her, other federal agents began to inundate the street with tear gas even though the few people there were mainly press, and nobody else was doing anything to intervene in the arrest. I yelled "PRESS!" over and over in the hopes that the federal agents would not tear

gas me any further, and continued to try to document the arrest.

7. Suddenly, without warning, the federal agent at the Courthouse shot me multiple times in my chest and my foot with incredibly painful impact munitions. I was not in front of the few remaining protestors. There was nobody else nearby except press and a few medics. The pain was immense, but I continued to document what was happening.

8. Here is a true and correct copy of the original video documenting this portion of this incident: <https://youtu.be/VMI5UXYXmDg?t=154> (+2:34).

9. Minutes later, a federal agent threw a tear gas cannister right at my head. There was no warning. It was shooting flames and exploded above me. A colleague shouted at the federal agents: “You threw that right in the head of press! We’re press!” I also continued to yell that I was press.

10. Here is a true and correct copy of the original video documenting this portion of this incident: <https://youtu.be/VMI5UXYXmDg?t=427> (+7:07). The remaining video shows the federal agents continuing to aim at and target members of the press.

11. I also covered the protests on the night of July 24, 2020, when federal agents threw tear gas cannisters at me at least a half-dozen times over the night.

12. Early in the morning of July 25, I was documenting the federal agents push a crowd of protests down the street. Suddenly, and without warning, the federal agents discharged massive amounts of tear gas for no discernible reason. They were not asking the crowd to disperse or giving warnings before launching the gas cannisters. They discharged tear gas right at a group of press, including me.

13. Here is a true and correct copy of the original video documenting this portion of this incident: <https://twitter.com/BaghdadBrian/status/1287520893078368257>.

14. A bit later, I documented as the federal agents moved the crowd up SW 3rd Ave., a full block away from the Courthouse, to SW Taylor St. The crowd was moving, but the federal agents fired off dozens of rounds at the retreating crowd.

15. Here is a true and correct copy of the original video documenting this portion of

this incident: <https://twitter.com/BaghdadBrian/status/1287520895406202880>.

16. Here is a true and correct copy of a photograph of my camera that I took after I got home, showing that even the back of the camera – which could only be covered by being completely enveloped – is coated in chemical residue from the federal agents’ weapons:



17. I did not cover the protests on Saturday or Sunday nights.

18. I went back to cover the protests on Monday night, July 27. I was standing in the middle of the street, documenting a line of federal agents, just before 1 a.m. on July 28. There were a group of maybe six protestors with shields behind me. They were not throwing anything at the federal agents. I yelled that I was press as I documented.

19. Without any warning or provocation, dark-uniformed federal agents unleashed a barrage of munitions—concussion grenades, tear gas, rubber bullets, many pepper-balls, and possibly stingers—directly at me. I was hit multiple times as gas and concussion grenades went

off around me.

20. I moved to the side and continued to yell that I was press. The federal agents paused their barrage momentarily, and one shined their light at me. Then they resumed firing. For no reason, a federal agent threw a flashbang directly at me. At that point, there was nobody near me or anybody else they could have been aiming at.

21. Here is a true and correct copy of my original video documenting this entire incident: <https://twitter.com/baghdadbrian/status/1288067667841056768>.

22. After the incident, I took off my helmet and noticed that the federal agents' use of force had rearranged the "PRESS" stickers on my helmet. Here is a copy of a photograph I took after this incident:



23. Less than an hour later, I walked past the line to face west where more action was going on. I stood there and observed. As federal agents retreated, one camouflaged agent stopped to shine his light on me. I told him I was press. He was apologetic and told me he had to double check.

24. I moved to the side and continued to yell that I was press. For no reason, a federal agent threw a flashbang directly at me. There was nobody behind me or anybody else they could have been aiming at. The other federal agents were clearly aiming at protestors a down the street and their weapons were trained at a different angle.

25. I want to continue covering the protests, but after what happened on July 27-28, I can barely walk. I am concerned about the increasingly risks I find myself exposed to when documenting the federal response to these protests. I am especially fearful because if federal agents won't even follow this Court's Order, then I have nowhere else to turn.

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

Dated: July 28, 2020

DocuSigned by:
Brian Conley
CC61FC5D7E6648B...

Brian Conley

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

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Attorneys for Plaintiffs

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Defendants.

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

DECLARATION OF REBECCA ELLIS REGARDING EVENTS OF JULY 23-24, 2020

I, Rebecca Ellis, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a staff reporter for OPB, and have been employed in that position for about a year. Before that, I was at NPR. I have attended the protests in Portland for the purpose of observing 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 wear my press pass issued by OPB. It has my name, my photograph, and the OPB logo.

3. I attended the protests on the night of July 23, 2020, and into the morning of July 24, 2020, to report for OPB. Around 1:30 a.m., I saw a number of federal agents exit the Hatfield Courthouse and begin walking up SW Main Street. I saw 3-4 members of the press in the crosswalk on the east side of SW 3rd Avenue across SW Main., so I joined them and filmed the federal agents as they approached.

4. All of a sudden, a federal agent fired a munition directly at me, hitting me in the hand. A video I took accurately depicting this event can be viewed here: <https://twitter.com/Rjaellis/status/1286578718693978113>. I also suffered a single burn on my arm.

5. Around ten minutes later, I was on SW Salmon Street, with a number of other members of the press. Despite the TRO permitting press to remain and report after the issuance of a dispersal order, federal agents forced me and my colleagues to exit the area and prevented us from reporting. One agent shouted in our faces “MOVE, MOVE,” and “WALK FASTER!” Another agent, next to him, kept pace holding his gun. These two agents together prevented me and my colleagues from reporting on what was going on behind them. A video I took accurately depicting these events can be viewed here: <https://twitter.com/Rjaellis/status/1286581690626748416>.

6. Federal agents prevented me from doing my job twice on the night of July 23-24. I intend to continue covering the protests, but I am fearful for my safety.

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

Dated: July 26, 2020

DocuSigned by:
Rebecca Ellis
E097E09FF3684B3...

Rebecca Ellis

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

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acharya@braunhagey.com

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Defendants.

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

DECLARATION OF KATHRYN ELSESSER REGARDING EVENTS OF JULY 24-25, 2020

I, Kathryn Elsesser, declare:

1. I am an Oregon resident who lives in Portland. I have been a freelance photographer since 2010. My photos documenting the federal agents' response to Friday night's protests were published around the world by Bloomberg, CBS News, and Yahoo, among others, including many international publications. If called as a witness, I could, and would, testify competently to the facts below.

2. On July 24, 2020, I covered the Portland protests on assignment for the world's oldest news agency, the Agence France-Presse (AFP). I did not protest or demonstrate. I was using two Nikon cameras, one of which I had with me for only part of the night. I was wearing a press pass from the American Society of Media Photographers. I was also wearing a helmet with "PRESS" written on it in big letters across the front.

3. Around midnight, I was documenting the scene close to the fence in front of the Hatfield Courthouse when a federal agent threw a flashbang into a mixed group of press and protestors. When it exploded, I felt like I was in the middle of a bomb going off. I could not hear anything other than a high-pitched ringing. I was very scared that I was going to go deaf. I walked away as fast as I could until my hearing eventually returned.

4. I decided to wrap up my coverage for the night about two hours later, shortly after 2 a.m. on July 25. I thought it was time to go because I had completed my assignment and I did not have a bullet-proof vest, and I was worried that the federal agents would hurt me. I was standing, by myself, across the street, at the edge of the park. There was no one else near me.

5. Suddenly, without warning or reason, I felt a hard, searing, burning pain in the back of my arm. As soon as I felt the impact, I knew that something very bad had happened: A federal agent had shot me from across the street with some type of bullet.

6. Because there was no one else around me, federal agents must have been targeting me from across the street. But I have no idea why. There was no reason to shoot me. I was in the process of walking away. I was alone. The only thing I could think of was that some of the last

shots I had just documented were of federal agents cloaked in silhouette near where the shot came from.

7. I made a beeline through the park to a nearby volunteer medical clinics. They dressed my wound, and a nurse asked to photograph it. This is a true and correct copy of their photograph:



8. Another photojournalist – who was clearly labeled as press – was receiving treatment after having been shot in the head. He seemed very upset but, fortunately, had been wearing a helmet.

9. I met a third photojournalist who was shot at by federal agents despite being clearly labeled as press. He showed me his camera bag, which a bullet had completely destroyed.

10. While being examined at the medical tent, I learned of yet a fourth photojournalist who had been shot. I do not think these shootings were mere accidents or coincidental.

11. Another renowned photographer, Susan Seubert, was standing by herself near the Courthouse when a group of federal agents came out and threw a flashbang right at her. Again, she was by herself. Again, I do not think this was an accident or coincidence.

12. Here is a true and correct copy of a photograph of my arm taken on July 27:



13. If I am asked to cover the protests again, I would refuse unless I had a bullet-proof vest (which are in short supply in Portland at the moment) to wear because I am fearful that federal agents would injure me or worse.

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

Dated: July 27, 2020

DocuSigned by:
Kathryn Elsesser
DB82AE3129EC49F...

Kathryn Elsesser

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borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

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Defendants.

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

**DECLARATION OF JUSTIN GRINNELL
REGARDING EVENTS OF JULY 25-27,
2020**

I, Justin Grinnell, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a student at Portland State University, studying English. I am the Managing Editor of the *Portland State Vanguard*, Portland State's student-run newspaper, where I have worked since November 2019. I have covered a great deal of the recent protests in Portland for the purpose of documenting and reporting on them for the *Vanguard*. If called as a witness, I could, and would, testify competently to the facts below.

2. I covered the protests in downtown Portland outside the Hatfield Courthouse on July 25 and 26, 2020. I did not protest or demonstrate. I was documenting with my Panasonic camera. I was wearing a hat that said "PRESS" across the front and back in large letters written on yellow tape. I label my backpack with the same yellow tape that reads "PRESS." I was also wearing a press pass from the *Vanguard*.

3. Just before 2:30 a.m. on July 26, I documented as federal agents filled Portland's streets with tear gas and fired crowd control munitions to disperse protestors after declaring the gathering a riot. The federal agents advanced in a line past me. I had gathered with a group of press to the side. There were no protestors around us. None of us were doing anything dangerous. Suddenly, and without warning, a federal agent left the line to kick a flaming tear gas canister directly at the journalists.

4. Here is a true and correct copy of the original video documenting this portion of this incident: <https://twitter.com/psuvanguard/status/1287317488527486976>.

5. I returned to cover the protests for the *Vanguard* later in the night of July 26. In the early hours of July 27, I documented as federal agents forced everyone, including me and other journalists, west down SW Main St. towards SW 4th Ave. One federal agent waved at me to move backwards as he fiddled with the pin of a flashbang or stun grenade, a foot or so in front of me. More federal agents followed, and they pushed and dispersed me and the other journalists I was standing with, forcing us in the opposite direction from where the federal agents were advancing on protestors.

6. Here is a true and correct copy of the original video documenting this portion of this incident: <https://twitter.com/psuvanguard/status/1287690542415929345>.

7. I do not understand why the federal agents pushed and dispersed me or the other journalists with whom I was standing. I was following the federal agents' orders. All the press I was standing with appeared to be properly identified and were clearly just documenting what was happening. None of us were posing any danger to the federal agents or to the Courthouse.

8. A while later, a federal agent launched a tear gas canister at a group of press I was standing with. There were no protestors nearby, just clearly identified members of the press.

9. I plan to continue covering the protests, but I am very fearful for my safety when I am around the federal agents on the streets of Portland.

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

Dated: July 28, 2020

DocuSigned by:
Justin Grinnell
E311EE324AAD454...

Justin Grinnell

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

Kelly K. Simon, OSB No. 154213
ksimon@aclu-or.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OREGON
P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

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 DANIEL HOLLIS REGARDING EVENTS OF JULY 25-26, 2020

I, Daniel Hollis, declare:

1. I am a California resident who lives in the City of Los Angeles. I am a videographer with VICE News, for whom I have been doing news and documentary coverage for five years. I have covered many chaotic and dangerous situations in my career, including conflict zones in Iraq and Syria, former Taliban areas in Pakistan, child sex-trafficking raids in the Philippines, Iranian militias, gangs, mafia, domestic terrorism, armed militias, migrant crises, and so on. If called as a witness, I could and would testify competently to the facts below.

2. I covered the Portland protests on two nights for VICE News. Both nights, I wore a press pass issued by VICE and a helmet with "PRESS" on it in bright orange tape. I also carried a large, professional video-recording rig. This is a true and accurate copy of a photograph of me, in Syria, using the same camera rig as I was using in Portland on the night of July 25-26:



3. On the night of July 25-26, I had been doing relatively sedate interviews with protesters. Around 1:00 or 1:30 a.m., I decided to see what was going on near the front. The fence in front of the federal courthouse had been broken, and the mass of protesters were in front of it, on SW 3rd Avenue, in a “shield wall” formation.

4. I walked to the intersection of SW 3rd Avenue and SW Main Street to try to get wide-angle footage of the protesters and the building. To do this, I went away from the mass of protesters. As a videographer, I am often trying to find space to get the footage I need.

5. As I reached the intersection, I looked to my right, down SW Main Street, and saw that a number of federal agents had massed outside the courthouse. I turned to record them and almost immediately, they fired munitions at me and one hit me just to the left of my groin. I believe it was a tear-gas canister, which I understand are not designed to be shot at the body.

6. I spun around to turn and run, and another munition hit me in the lower back, just above my buttocks.

7. When the federal agents shot me, there were very few people near me, and nearly all of them were clearly marked press. As I review my footage of the event, a true and correct copy of which can be viewed at <https://tinyurl.com/FedsShootVICE>, I see two NLG legal observers with green helmets between me and the agents, one photographer to my immediate left, and behind him my colleague Alzo Slade and another clearly marked photographer in a high-visibility vest. The nearest protesters were several yards behind us and not doing anything threatening whatsoever. The mass of protesters were around the building from the federal agents and had yet to see them.

8. After the federal agents shot me, I turned and ran and returned to my hotel.

9. As I mentioned above, I have covered conflict zones around the world. I spent almost a month in February 2020 reporting on ISIS sleeping cells in Northern Syria. This past weekend had me more concerned for my personal safety than any of those places. I have been around heavily armed soldiers, militias, and gangs countless times, but have never had weapons aimed or discharged directly at me. The federal agents I have seen in Portland have been less

willing to distinguish between press and putative enemies than any armed combatants I have seen elsewhere. In fact, these federal agents seem entirely unwilling to distinguish among press, violent protesters, the Wall of Moms, the Wall of Dads, the Wall of Vets, or anyone else.

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

Dated: July 28, 2020

DocuSigned by:

Daniel Hollis

9F9CA219F23D4B5...

Daniel Hollis

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

Kelly K. Simon, OSB No. 154213
ksimon@aclu-or.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OREGON
P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

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Defendants.

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

**DECLARATION OF BRUCE KNIVILA
REGARDING EVENTS OF JULY 25, 2020**

I, Bruce Knivila, declare:

1. I am an Oregon resident who lives in the City of Portland. I am an independent attorney and unpaid legal observer. I have attended the Portland protests for the purpose of documenting police and federal agents' interaction with protesters. If called as a witness, I could and would testify competently to the facts below.

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

3. On the night of July 25, 2020, I was attending the protests in downtown Portland as a legal observer. I was there with a fellow legal observer, Kat Mahoney. During the events described below, two other legal observers in green National Lawyers' Guild headwear (one helmet and one hat) were with us.

4. At about 11:15 p.m., I was at the northeast corner of the federal courthouse on SW Salmon Street, immediately in front of the fence. I recorded a video of the following events, a true and correct copy of which can be viewed here: <https://tinyurl.com/FedsMaceLOs>.

5. At about 3:30 into the video, one federal agent indiscriminately sprayed protesters to my right with mace or pepper spray. It is unclear why federal agents sprayed these protesters because they were not engaged in any unlawful or dangerous behavior (one person had touched the fence that stood between us and the officers, but not in such a way as to bring it down). This federal agent was able to recognize that my companions and I were legal observers, and avoided spraying us.

6. At about 5:20 into the video, a federal agent again indiscriminately maced the protesters to my right, but again stopped himself before he reached my group, which now consisted of legal observers and press.

7. At about 6:20 into the video, a federal agent shot a burst of tear gas into the crowd through a cannon. He may or may not have intended to aim at me, but I was in his line of fire and suffered the effects of the tear gas.

8. At about 7:14 into the video, a federal agent popped open a canister of tear gas and dropped it right at the feet of an NLG legal observer to my left. By this time, everyone to the

left of me was either a legal observer or a member of the press, all clearly identified as such. We were all inundated with tear gas, and this officer can only have intended to tear gas legal observers and journalists in violation of this Court's TRO.

9. At about 9:20 into the video, a federal agent sprayed me, Ms. Mahoney, and at least one of the NLG legal observers with mace or pepper spray. There were no protesters behind us that he could have been aiming at. He did not warn us first. The only reason he could have had to spray us was that he was retaliating against us for documenting the federal agents' unnecessary violence against the demonstrators that we had been witnessing and recording.

10. At about 10:32 into the video, a federal agent again sprayed an NLG legal observer with mace or pepper spray.

11. My face was mostly covered, but the exposed parts of my face and both arms were doused with the toxic chemicals sprayed by the federal agent. The toxic chemicals caused intense burning sensations on my face and arms, and also in my eyes when I took my mask off several hours later. Twenty-four hours later, my arms are still burning and numb.

12. I intend to continue covering the protests, but I am fearful for my safety. I am especially fearful because if federal officers won't even follow this Court's orders, then I have nowhere else to turn.

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

Dated: July 26, 2020

DocuSigned by:
Bruce Knivila
66D2C508B7A3442...
Bruce Knivila

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

Kelly K. Simon, OSB No. 154213
ksimon@aclu-or.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OREGON
P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

Attorneys for Plaintiffs

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DISTRICT OF OREGON
PORTLAND DIVISION

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Defendants.

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

DECLARATION OF JONATHAN LEVINSON REGARDING EVENTS OF JULY 23-24, 2020

I, Jonathan Levinson, declare:

1. I am an Oregon resident who lives in the City of Portland. I am a staff reporter for OPB. My work has also appeared on NPR and ESPN, and in the *Washington Post*, the *Wall Street Journal*, and *Al Jazeera*. I have attended the protests in Portland for the purpose of observing and reporting on them. If called as a witness, I could and would testify competently to the facts below.

2. I have experience in conflict zones. I spent five years as an infantry officer in the U.S. Army, with two deployments to Iraq. As a reporter, I have covered the Libyan civil war, done work in Afghanistan, Yemen, Gaza, and the West Bank, and lived for four years in Mexico, where I reported from areas with some of the highest rates of violence against journalists in the world. I have also reported on a majority of the nights of the 2020 Portland protests.

3. When I report on the protests, I wear my press pass issued by OPB. It has my name, my photograph, the OPB logo, and the word "MEDIA." I also wear a helmet that says "PRESS" in very big letters on the front and back. I also carry two cameras, a Sony A7R III with a large 70-200mm lens, and a Sony A7R IV with a 24-70mm lens.

4. I was covering the protests on the night of July 23, 2020, and into the morning of July 24. Around 1:00 a.m., federal agents had cleared the area next to the courthouse and there were few protesters in the immediate vicinity, so I decided to take some pictures through the fence of the officers inside.

5. One agent was standing on a platform near the north side of SW 3rd Avenue. I was trying to take a photograph, but I had trouble focusing through the fence. As I looked from him to my lens and back at him, I saw him raise his weapon, deliberately point it at me, and fire several rounds. My camera and lens were splattered with paint.

6. Based on my position and the position of people around me, there is almost no chance the agent was aiming at anyone other than me.

7. I intend to continue covering the protests, because I believe the events unfolding in Portland right now are of historic significance. I am fearful for my safety, however, because hours after the court issued a restraining order, I saw federal agents brazenly violate it.

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

Dated: July 26, 2020

DocuSigned by:
Jonathan Levinson
A414522E389440C...

Jonathan Levinson

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

Kelly K. Simon, OSB No. 154213
ksimon@aclu-or.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OREGON
P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

Attorneys for Plaintiffs

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Defendants.

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

DECLARATION OF KAT MAHONEY REGARDING EVENTS OF JULY 23-25, 2020

I, Kat Mahoney, declare:

1. I am an Oregon resident who lives in the City of Portland. I am an independent attorney and unpaid legal observer, a role that I have served in since 2017. I have attended the Portland protests nearly every night for the purpose of documenting police interaction with protesters. If called as a witness, I could and would testify competently to the facts below.

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

3. On the night of July 23 and into July 24, 2020, I was attending the protests in downtown Portland as a legal observer. I was there with a fellow legal observer, Rachelle Collins.

4. At around 12:45 a.m., I was on SW 3rd Avenue facing the federal courthouse. Federal agents began aggressively firing through the fence at protesters on the other side. As they began approaching my position, I moved north on SW 3rd Avenue away from them, and then slightly onto SW Salmon Street to continue filming and observing the events taking place.

5. Suddenly, for no reason, a federal agent shot a pink paint bullet directly at my head. A paint bullet also hit Rachelle on her neck.

6. This is a true and accurate copy of a picture Rachelle took of my head immediately after the federal agent's paint bullet hit me.



7. After the federal agent shot me, I felt shocked and surprised that he would do this because it was my understanding that the Court had issued a TRO telling the federal agents that they could not continue to target legal observers.

8. There was no discernible reason to shoot in our direction. There were members of the press a few inches to our left, and we were 6 to 10 feet away from protesters, who were not doing anything violent. Based on our position and the position of people around us, I believe that the federal agents targeted us because of our blue ACLU legal observer vests.

9. On the evening of July 25, federal agents maced me and three other legal observers at point-blank range. I recorded a video of the following events, a true and correct copy of which can be viewed at <https://tinyurl.com/FedsMaceLOs2>.

10. At around 11:33 p.m., I and three other legal observers were standing on SW Salmon Street, a few feet east of the intersection with SW 3rd Avenue. I was wearing my blue ACLU legal-observer vest, as was another ACLU legal observer. With us were two NLG legal observers wearing green NLG legal-observer headwear (one hat and one helmet).

11. One federal agent walked along the fence spraying mace at protesters as though he were watering a line of flowers. Me and the other three legal observers were recording. The protesters he maced had not done anything to merit such treatment; one may have touched the fence but not in any kind of threatening or violent way. This agent stopped before he reached us. These events take place from 0:06 to 0:10 of the above video.

12. Then, another federal agent walked up with a can of mace, pointed it at roughly head-level, and casually pulled the trigger, even as we were pointing to our respective legal-observer indicia and yelling that we were legal observers. We were inundated with mace. When he was done covering us in mace, he stepped back into his formation. These events take place from 0:13 to 0:20 of the above video.

13. We yelled and asked for his name, but neither he nor any other federal agent identified themselves to us. We informed the agents that they were in violation of the Court's order and that they were in contempt of court, but they did not care about that, either.

14. Some mace ran down the seam of my respirator, along the edges of my hairline. That area continued to burn for the entire night until I was able to go home and shower.

15. I intend to continue covering the protests, but I am fearful for my safety. Federal agents' actions have forced me to play it safer, for example, by deterring me from going behind a skirmish line to observe how federal agents treat protesters who remain behind. I submitted a declaration in support of Plaintiffs' motion for a temporary restraining order against the federal agents explaining how federal agents had purposefully tear-gassed me while I wearing my legal observer vest and was observing from a public park far from protesters. This is the fourth declaration I have submitted in this case. I am especially fearful because if federal officers won't even follow this Court's orders, then I have nowhere else to turn.

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

Dated: July 26, 2020

DocuSigned by:

C65E3388AA13457...
Kat Mahoney

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

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ksimon@aclu-or.org
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P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

Attorneys for Plaintiffs

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Defendants.

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

DECLARATION OF HALEY NICHOLSON REGARDING EVENTS OF JULY 24-25, 2020

I, Haley Nicholson, declare:

1. I am an California resident who is attending law school in the City of Portland. I am a legal observer with the National Lawyers' Guild. I have attended the protests in Portland for the purpose of observing them. If called as a witness, I could and would testify competently to the facts below.

2. I attended the protests in downtown Portland as a legal observer on the night of July 24, 2020. It was my second night serving as a legal observer. I was wearing a green NLG hat, which this Court's temporary restraining order against federal agents specifies is a sufficient indicium of being a legal observer. For this reason, I thought I was safe from federal agents.

3. At around 11:50 p.m., I was observing and recording events on SW 3rd Avenue, near the intersection with SW Salmon Street. I recorded the following events on video, a true and correct copy of which can be viewed here: <https://tinyurl.com/FedShootsLO>.

4. At the time video begins, I was facing northeast. I rotated around to face east-southeast, where a federal agent had me in his sights with a 40mm shotgun. As soon as I saw him, he shot me.

5. The federal agent shot me from a distance of about 4 feet. My understanding is that 40mm bullets should not be used at a distance of less than 15 feet. He also shot me in the chest, directly above the heart. Again, my understanding is that 40mm bullets should be aimed at large muscle groups, not at major organs where they can cause severe injury or death.

6. This is a true and correct copy of a photograph of my chest where the agent shot me, taken 24 hours later:



7. Another legal observer who was with me also captured the above events on camera, and a true and correct copy of that video can be viewed here: <https://tinyurl.com/FedShootsLO2>. This video shows that the federal agent waited for me to turn and fully face him before he shot at my heart.

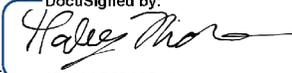
8. I thought that I was safe because of the Court's TRO. After the federal agent shot me, I was utterly in shock that he felt free to violate this Court's order so brazenly.

9. I returned to downtown to serve as a legal observer on the night of July 25. I saw federal agents point their guns at me and a group of legal observers several times. Between that and my experience the previous night, I left early.

10. I no longer feel safe serving as a legal observer. I want and intend to continue to serve, but because federal agents do not seem to care about this Court's order, I am purchasing protective equipment to help keep me safe.

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

Dated: July 26, 2020

DocuSigned by:

37892CD5BA6B444...
Haley Nicholson