

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 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 a 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
7881FE84F634486...

Gabriel Trumbly