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Statement for the Record
of
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U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution
the Hearing on
“The Right of the People to Peaceably Assemble”
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Chairman Cruz, Ranking Member Hirono, and members of the Subcommittee, thank you for the opportunity to submit a statement for the record for the hearing on “The Right of the People to Peaceable Assemble.”

When I was elected Attorney General in 2012, I never imagined I would be writing testimony like this — or finding myself in such direct conflict with the actions of the federal government. That’s because for many years I served my state as a judge. Before that, I served as a federal prosecutor. In those roles I developed a deep appreciation for many remarkable officers of the law who did their best to enforce important federal laws.

Recently, though, uninvited federal agents have conducted an armed operation in the state of Oregon. They have targeted Oregonians, over the repeated objections of state and local leaders. These agents deployed tear gas, “less-than-lethal” munitions, and other forms of violence against protesters. In the process, they severely injured a number of Portlanders. They swept protesters up into unmarked, rented vehicles and held them incommunicado for hours in unidentified locations before letting them go without explanation. These agents were hard, if not impossible to identify — both by name and by agency. They were poorly trained for their assignment — if they were trained at all. Overall, rather than de-escalate the situation here, they made things markedly worse.

In the process, the federal agents who were sent here infringed protesters’ First, Fourth, and Tenth Amendment rights. That is, they impeded basic democratic values and constitutional rights: the right to organize, to assemble, to march, and to speak out. They interfered with Portlanders’ ability to protest very real systemic racism and to object to longstanding police mistreatment of the Black community. They swept up and detained Portlanders unlawfully. That’s why I sued the relevant federal agencies on behalf of the state of Oregon. My lawsuit is still pending.

Those who wanted to use this federal invasion of Portland as a political stunt grievously mischaracterized the situation on the ground here. Yes, we had — as every place does — a few

bad actors bent on causing damage. They sprayed graffiti on buildings, including the federal courthouse. They set off fireworks. They rattled fences. According to estimates provided by the local U.S. Attorney, over the course of nearly 70 days of regular protests and demonstrations, they did something like \$50,000 worth of damage to the U.S. Courthouse all these federal agents were sent to protect. For this, they were met with extreme federal police violence the likes of which Portlanders have not previously experienced: Huge nightly quantities of tear gas. Even larger volumes of flash bang grenades and other hurtful munitions. And massive assaults on crowds for several blocks beyond the perimeter of the courthouse they were sent to protect. If you were to listen to the folks in Washington, D.C., who wanted to politicize the situation on the ground here in Portland, you'd have thought we'd lost control of our city — and ceded it to the hands of anarchists. That simply is not true. The real anarchists here were the ones sent by the federal government.

We are fortunate our governor was able — finally, after several attempts — to convince federal authorities to pull their agents out of downtown. As you've likely read in media accounts, the result of their departure has been a marked cooling of tempers and virtual elimination of acts of violence against the federal courthouse. While those agents were here, however, things got so bad a federal judge here had to enjoin their attacks against media and legal observers documenting these events. In these United States, that sort of conduct should be unheard of. It is hard to know which aspect of this we should find more troubling — and more un-American. Is it the underlying idea that using force to quell protests opposing police brutality is a legitimate aim of the federal government? Or is it the violence itself, the terror and the many injuries — some of them horrific — that were inflicted on Portland protesters?

I know that a picture paints a thousand words, and there are literally thousands of pictures and videos to be found on social media that show very clearly what happened in Portland. And, as I mentioned earlier, there are also plenty of misleading images out there —including, rather pathetically, attempts to pretend that an image of Ukrainian protesters engaging police officers actually represents what was occurring in Portland. But the complaint filed in Oregon by the ACLU objecting to the apparent tactic of targeting protest medics — to offer just one example — contains numerous photographs documenting multiple injuries suffered by just one small subset

of people at the protests. People who were at the protests to provide care to others who are injured by federal officers were themselves targeted by those same federal officers. Numerous online photos and videos document what happened to Donovan La Bella – shot in the head and gravely injured with a so-called “less lethal” munition while holding a stereo with two hands outstretched over his head – are also readily available. Journalists and others who were doing nothing more than observing and documenting officers’ actions in response to protesters likewise were targeted. Even Portland’s mayor was tear gassed. And, let me speak plainly, Mayor Wheeler is not the rowdy type. All of this is extensively documented.

I do not deny that there also were a number of instances of protesters in Portland doing dangerous things. I understand that sometimes police work requires the use of force in defense of lives and public safety. And I repeat that during my years as a federal prosecutor I had occasion to work with many great federal law enforcement agents doing hard, important work. All that notwithstanding, the federal use of force in response to events in Portland was completely disproportionate to any actual threat posed by the largely peaceful protesters.

The use of force becomes even more chilling when taken in the context of the apparent federal mission here. Based on public comments by federal authorities, beginning with the President himself, it almost seems as if excessive force was the real point of this exercise. Specifically, the clear inference from their remarks is that these officers were deployed here not to enforce federal laws — or even to defend federal property and personnel — but to provoke confrontation and assault protesters. In fact, the language they used includes the expression “dominate.” The actions of federal officers on the ground here showed they took that message to heart. Moreover, I saw no evidence they were doing anything to single out the so-called “violent anarchists” their leaders repeatedly invoked.

These federal officers certainly did not restrain themselves from deploying force against a “Wall of Moms” clad in yellow who took it on themselves to stand locking arms between the protesters and the federal force — or against a similarly well-identified group of dads. A doctor and assistant professor from our local medical school (the world-renowned Oregon Health Sciences University) was shot with impact munitions at least four times while serving as a medic

for injured protesters — clad in a white doctor’s coat and holding a sign explaining his role. Worse, last week a federal judge found that the federal government was effectively telling people in Oregon that they must “forgo constitutionally protected activity if they wish to avoid government force and interference.”

Quelling lawful protest, of course, is not proper for any government obligated to respect the First Amendment to the United States Constitution. As many of us learned in school, the Bill of Rights was adopted for the specific purpose of protecting personal liberties from the specter of federal government overreach. The rights to speak out, to peaceably assemble, and to report news to the public: all were important enough to take their place in the people’s very first addition to the document establishing our federal government. Deploying force against peaceful protesters in the hope that fear will get them off of the streets is simply not lawful — or Constitutional. If the darker speculations many of us have heard are true — that is, if the true goal of this exercise was to generate exactly the sorts of turmoil the President has been working into his campaign advertising – well, that would be worse yet.

The President speculated many weeks ago that Minnesotans “wouldn’t have minded an occupying force” in the aftermath of George Floyd’s death. He went on to say, “I wish we had an occupying force in there.” Well, I can tell you with absolute certainty that the State of Oregon very much minded the occupying force the President deployed to our city. The unlawful violence they unleashed in pursuit of their unlawful goal to quell protests they dislike was a direct affront to the sovereignty of my state — and a seriously harmful development in downtown Portland. This should not have happened here. And it should not happen anywhere in America. I hope you in Congress will find ways to rein in this madness.