



TESTIMONY
OF
KEN CUCCINELLI II
SENIOR OFFICIAL PERFORMING THE DUTIES OF THE DEPUTY SECRETARY
U.S. DEPARTMENT OF HOMELAND SECURITY
REGARDING A HEARING ON
“THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE: PROTECTING SPEECH BY
STOPPING ANARCHIST VIOLENCE”

BEFORE THE

U.S. SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION

August 4, 2020
Washington, D.C.

Chairman Cruz, Ranking Member Hirono and distinguished members of the Committee:

Thank you for the opportunity to testify today on the Department of Homeland Security's (DHS) role in protecting against the continued assaults by criminals and violent extremists in the city of Portland, Oregon and more specifically, the Federal Courthouse and federal law enforcement officers there.

For more than two months now, federal property and federal law enforcement officers in Portland have been under assault – in July it occurred every single night. Violent extremists in Portland have perverted the peaceful protests in the aftermath of George Floyd's tragic death.

As we begin, it is important to be crystal clear about this: Rioters are not protestors and protestors are not rioters. To confuse the two, regardless of motive, does a grave disservice to the critical place for peaceful protest in our country and it does a grave disservice to our country's brave law enforcement officers who protect those rights.

Let me be clear, the Department fully supports the rights of peaceful protestors. The principles of justice and equality under the law are the core of who we are as a republic, and the right of the people to peaceably assemble and voice their concerns is a fundamental human liberty rightly enshrined in our Bill of Rights. We will never abandon our mission to safeguard those precious and hard-fought freedoms.

But DHS did not have to expand its presence in Portland because of peaceful protestors, and that is why I am sitting before you today. For more than sixty days, the situation in Portland has devolved into nothing more than continuous, nightly riots and life-threatening violence targeting federal law enforcement and the institutions they diligently defend under the mandate given to them by Congress.

Since July 4 of this year, there have been over 270 injuries to federal law enforcement officers in Portland at the hands of violent anarchists hell-bent on assaults and destruction.

These rioters have assaulted federal property, federal officers, local law enforcement personnel and facilities with hammers, lasers, baseball bats, fireworks, Molotov cocktails, chemicals and other weapons. As a result of this constant onslaught, Federal Protective Service (FPS) Officers have suffered a litany of injuries:

- 35 officers have reported eye-injuries due to being targeted with higher power laser-pins causing momentary-blindness, blurred-vision, dark spots in their vision and headaches.
- An FPS Special Agent received an injury to his foot due to nails that were purposely placed at the front entrance of the Courthouse.

- An FPS Special Agent received several burns to his upper right torso and extremities from an undetermined liquid that was thrown at him from a violent opportunist.
- An FPS Inspector was injured by a commercial grade firework receiving several lacerations and 3rd degree burns as the firework burned through his uniform. 25 additional FPS Officers have reported receiving minor burns, lacerations and hearing issues resulting from the fireworks

What our officers faced continuously in Portland until the end of July was nothing less than a violent mob, one that had often been encouraged by local officials – among others – who repeatedly refused to maintain basic law and order, have sometimes encouraged more violence, and have refused to share basic public safety information with the Department. Furthermore, the unreasonable demands that federal law enforcement leave Portland, if acquiesced in, would have unquestionably resulted in the destruction of the Federal Courthouse and endangered the safety of its personnel. Your federal law would not allow that.

Mr. Chairman, as you well know, Congress, in 40 U.S.C. § 1315 directs the Secretary to use DHS law enforcement personnel in order to protect Federal property and persons on that property. The Federal Protective Service protects over 9,000 federal facilities every day pursuant to that law – and it is a role FPS has performed at the Hatfield Federal Courthouse since it opened in 1997. 40 U.S.C. § 1315 is further pursuant to Article I, Section 8, clauses 1, 9 and 18 of the Constitution. Contrary to what some may think, you should be pleased to know that we do not have the option, nor do we ever intend to abandon the mission Congress gave us.

Some complain that we were not invited to Portland. The complaint is absurd on its face. DHS does not need permission from governors or mayors to do our duty and we do not enforce federal law ‘on request’ of state and local leadership. We have the authority and the mission, and we are going to enforce federal law. Period.

In most of America, that mission takes place with smooth and easy partnerships with local and state law enforcement – regardless of other politics. To its shame, Portland has been unique in this regard, and the result was a delaying of the inevitable solution to the problem that we have been calling for since the beginning of the violence.

Some people who are more interested in telling a story than in truth have made up a number of lies related to federal officers in Portland.

Here are some facts for the record and for anyone who still cares about truth:

- All DHS law enforcement personnel in Portland are trained in the conduct of appropriate tactics and procedures to conduct our missions while protecting civil liberties and promoting public safety and the safety of our officers. This was carefully reviewed by FPS for each officer before they were assigned to Portland.

- DHS law enforcement officers who interact with crowds are all identifiable both by their law enforcement agency and individually. They are in their respective uniform, with appropriate insignia – to include the words “POLICE” as well identifying the agency for which they work. The names of agents are no longer displayed, as they are the target of recent doxing incidents, which puts both them and their families in grave danger. To address concerns about military-like appearance of some of Customs Border Protection’s (CBP) officers’ uniforms, which are the normal uniforms used by some CBP teams in the course of regular duty, we are moving rapidly to replace those uniforms for those personnel.
- The use of unmarked vehicles by law enforcement is common to avoid unnecessary, potential attacks by lawless criminals, such as the ones assaulting our officers in Portland on a nightly basis. Violent extremists across the country have intentionally attacked marked police vehicles and attempted to set them on fire – including with officers inside – which creates significant danger for the public and our officers. Additionally, the regular use of unmarked vehicles by every sizable law enforcement agency in America is utterly common. It is an element of basic law enforcement procedures.

In closing, Mr. Chairman, let me affirm to the Committee and the American People that DHS will not back away from our responsibilities to protect federal property, the people using those properties, and our brave law enforcement officers.

We remain disappointed that select federal, state and local leaders prefer to demonize law enforcement while kowtowing to violent criminals who set fire to our cities, destroy local businesses, and target law enforcement officers for harm or even death. I would remind this committee that it was a DHS law enforcement officer who was the first killed in the violence following George Floyd’s tragic death. PSO Patrick Underwood was gunned down while protecting a federal building and a peaceful protest in Oakland, California. PSO Underwood was African-American. His white partner also suffered three bullet wounds, but survived.

As I sit here, I am unaware of a single one of the politicians who have demonized law enforcement around the country, expressing regret at the death of PSO Underwood. That difference speaks volumes.

DHS knows the difference between peaceful protesting, and violence and terrorism.

This nation is safer when federal, state and local officials work together to investigate and arrest violent criminals, and it is stronger when elected leaders unite behind the rule of law and the right of every American to peaceably assemble.

But the Department will continue our mission with or without that support. This Department will not be intimidated by the violent criminals or those who excuse them for political gain at the peril of the communities and citizens they serve.

This country cannot survive allowing mob rule to replace the rule of law.

Those hurling Molotov cocktails and explosives in Portland are not just attacking a federal Courthouse. They are attacking the very foundation that makes the enjoyment of our natural rights possible – the rule of law itself.

I look forward to responding to your questions. Thank you.