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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ELLEN ROSENBLUM, Oregon Attorney
General,

Plaintiff,

v.

JOHN DOES 1-10; the UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES CUSTOMS
AND BORDER PROTECTION; the UNITED
STATES MARSHALS SERVICE and the
FEDERAL PROTECTIVE SERVICE,

Defendants.

Case No.

COMPLAINT

Plaintiff Ellen Rosenblum, Oregon Attorney General, alleges the following facts and
claim for relief:

PARTIES, JURISDICTION, AND VENUE

1.

Ellen Rosenblum is the Attorney General for the State of Oregon and has the power to appear for the State of Oregon and its agencies, pursuant to ORS 180.060 and common law, and for its citizens under the doctrine of *parens patriae*.

2.

On information and belief, John Does 1-10 are employed by the United States government in a law enforcement capacity. They have made it impossible for them to be individually identified by carrying out law enforcement actions without wearing any identifying information, even so much as the agency that employs them.

3.

The United States Department of Homeland Security is a Cabinet-level department of the U.S. government. Its stated missions involve anti-terrorism, border security, immigration and customs. It was created in 2002, combining 22 different federal departments and agencies into a single Cabinet agency.

4.

United States Customs and Border Protection is an agency within the Department of Homeland Security. Its stated mission statement is “To safeguard America's borders thereby protecting the public from dangerous people and materials while enhancing the Nation's global economic competitiveness by enabling legitimate trade and travel.”

5.

The United States Marshals Service is an agency within and under the control of the United States Department of Justice. According to a Fact Sheet on its website, “it is the enforcement arm of the federal courts, involved in virtually every federal law enforcement initiative.”

6.

The Federal Protective Service is another agency within and under the control of the Department of Homeland Security. Its stated mission on its website is “To prevent, protect, respond to and recover from terrorism, criminal acts, and other hazards threatening the U.S. Government’s critical infrastructure, services, and the people who provide or receive them.”

7.

This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1367, and the U.S. Constitution, First, Fourth, and Fifth Amendments, and under 28 U.S.C. § 2201.

8.

Declaratory and injunctive relief is sought as authorized in 28 U.S.C. §§ 2201 and 2202.

9.

Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiff Ellen Rosenblum is a resident of the State of Oregon, and the events giving rise to this complaint occurred and are likely to continue occurring in the State of Oregon, within the City of Portland.

ALLEGATIONS

10.

On information and belief, federal law enforcement officers including John Does 1-10 have been using unmarked vehicles to drive around downtown Portland, detain protesters, and place them into the officers’ unmarked vehicles, removing them from public without either arresting them or stating the basis for an arrest, since at least Tuesday, July 14.

11.

The identity of the officers is not known, nor is their agency affiliation, according to videos and reports that the officers in question wear military fatigues with patches simply reading “POLICE,” with no other identifying information.

12.

In one widely reported incident, in the early hours of Wednesday, July 15, Mark Pettibone alleges that he was confronted by armed men dressed in camouflage who took him off the street, pushed him into a van, and drove him through downtown until unloading him into a building, which is believed to have been the Mark O. Hatfield United States Courthouse.

13.

Pettibone alleges that he was put into a cell and read his Miranda rights, but was not told why he was arrested, nor was he provided with a lawyer. He alleges that he was released without any paperwork, citation, or record of his arrest.

14.

U.S. Customs and Border Protection has been reported by the Washington Post to have taken responsibility for pulling Mr. Pettibone off the streets of Portland and detaining him.

15.

On information and belief, unidentified federal officers including John Does 1-10 have likewise detained other citizens off the Portland streets, without warning or explanation, without a warrant, and without providing any way to determine who is directing this action. There is no way of knowing, in the absence of those officers identifying themselves, whether only U.S. Customs and Border Protection is engaging in these actions. The Marshals Service and other Homeland Security agencies reportedly have been sent to Portland to respond to the protests against racial inequality.

16.

Oregonians have the right to walk through downtown Portland at night, and in the early hours of the morning.

17.

Ordinarily, a person exercising his right to walk through the streets of Portland who is confronted by anonymous men in military-type fatigues and ordered into an unmarked van can reasonably assume that he is being kidnapped and is the victim of a crime.

18.

Defendants are injuring the occupants of Portland by taking away citizens' ability to determine whether they are being kidnapped by militia or other malfeasants dressed in paramilitary gear (such that they may engage in self-defense to the fullest extent permitted by law) or are being arrested (such that resisting might amount to a crime).

19.

State law enforcement officers are not being consulted or coordinated with on these federal detentions, and could expend unnecessary resources responding to reports of an abduction, when federal agents snatch people walking through downtown Portland without explanation or identification.

20.

Defendants' tactics violate the rights of all people detained without a warrant or a basis for arrest, and violate the state's sovereign interests in enforcing its laws and in protecting people within its borders from kidnap and false arrest, without serving any legitimate federal law enforcement purpose.

FIRST CLAIM FOR RELIEF

(Violation of First Amendment rights, against all defendants)

21.

The Attorney General restates and reincorporates all previous paragraphs of the complaint.

22.

Citizens peacefully gathering on the streets of Portland to protest racial inequality have the right to gather and express themselves under the First Amendment to the United States Constitution.

23.

Defendants' actions are undertaken with the intent of discouraging lawful protest and therefore constitute an illegal prior restraint on the First Amendment right of Oregonians to peacefully protest racial inequality. Citizens who are reasonably afraid of being picked up and shoved into unmarked vans—possibly by federal officers, possibly by individuals opposed to the protests—will feel compelled to stay away, for their own personal safety, and will therefore be unable to express themselves in the way that they have the right to do.

SECOND CLAIM FOR RELIEF

(Violation of citizens' Fourth and Fifth Amendment rights, against all defendants)

24.

The Attorney General restates and reincorporates all previous paragraphs of the complaint.

25.

The Fourth Amendment prohibits unreasonable seizures, and in particular prohibits federal officials from seizing a person without a warrant or an exception to the warrant requirement. And the State of Oregon has enacted laws that make it a crime to detain a person without authority.

26.

On information and belief, defendants did not have a warrant to seize Pettibone or the other citizens who have been detained, and will continue to seize individuals off the street without a warrant, in the absence of an injunction, and no exception to the warrant requirement justified or will justify those seizures.

27.

Defendants' conduct described above constitutes an unreasonable seizure of Pettibone and the other citizens who were or will be detained.

28.

The Fifth Amendment prohibits federal officers from depriving a person of life, liberty, or property without due process of law.

29.

On information and belief, defendants did not afford and will not afford Pettibone and the other citizens who were or will be detained due process of law.

THIRD CLAIM FOR RELIEF

(Declaration of rights pursuant to 28 U.S.C. § 2201, against all defendants)

30.

The Attorney General restates and reincorporates all previous paragraphs of the complaint.

31.

In a case of actual controversy within its jurisdiction, any court of the United States may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought, under 28 U.S.C. § 2201.

32.

There is an actual controversy within the jurisdiction of this Court, inasmuch as one or more federal defendants have engaged in actions endangering Oregon's citizens and the people walking Portland's streets. They have prevented the Attorney General from knowing which agencies and which officers are acting. No federal authority has agreed to stop this practice.

33.

Oregon's citizens are at risk of kidnapping by militias and other civilian "volunteers" taking it onto themselves to pull peaceful protesters into their cars, in a manner that resembles

the federal actions described above. And Oregon's own police agencies are therefore injured, by roving federal officers confusing citizens about whether they are obligated to comply with armed men ordering them into unmarked vans.

34.

The Attorney General is entitled to a declaration that the acts at issue are unlawful, and an injunction precluding defendants from continuing in them.

FOURTH CLAIM FOR RELIEF
(Public nuisance, against all defendants)

35.

The Attorney General restates and reincorporates all previous paragraphs of the complaint.

36.

The Attorney General has authority under Oregon law to sue to abate a public nuisance.

37.

Defendants' actions described above constitute a public nuisance because they unreasonably interfere with the general public's right to public safety, public peace, public comfort, and public convenience.

PRAYER FOR RELIEF

WHEREFORE, Attorney General prays for a judgment and the following relief:

1. A declaration, pursuant to 28 U.S.C. § 2201, that the tactics described in this complaint violate the First Amendment rights of the State's citizens by restraining their ability to gather in peaceful protest, for fear of being thrown into a van by anonymous agents;
2. A declaration, pursuant to 28 U.S.C. § 2201, that the tactics described in this complaint violate the Fourth and Fifth Amendment rights of the State's citizens –

that it is unlawful for federal law enforcement to pull people off of the streets without probable cause, using unmarked cars and unidentified officers;

3. An injunction permanently restraining defendants from engaging in tactics described above, and specifically requiring that defendants and their officers and agents:
 - a) Identify themselves and their agency before detaining or arresting any person off the streets in Oregon;
 - b) Explain to any person detained or arrested that the person is being detained or arrested and explain the basis for that action;
 - c) Not arrest individuals without probable cause or a warrant.
4. Such other relief as this Court may deem proper.

DATED July 17, 2020.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Sheila H. Potter

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**DECLARATION OF MARK PETTIBONE IN
SUPPORT OF ROSENBLUM'S MOTION
FOR A TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

I, Mark Pettibone, declare:

1. I am a resident of Portland, Oregon and a citizen of the United States of America. I make this affidavit based on my own personal knowledge and I am competent to testify about the matters contained in this declaration.

2. In the early morning of July 15, 2020, around 2:00 a.m., I was walking home in downtown Portland after peacefully taking part in a demonstration in support of Black Lives Matter.

3. Without warning, men in green military fatigues and adorned with generic "police" patches, jumped out of an unmarked minivan and approached me.

4. I did not know whether the men were police or far-right extremists, who, in my experience, frequently don military-like outfits and harass left-leaning protesters in Portland. My first thought was to run. I made it about a half-block before I realized there would be no escape from them.

5. I sank to my knees and put my hands in the air

6. I was detained and searched by these men. One man asked me if I had any weapons. I did not. They drove me to the federal courthouse in Portland and placed me in a holding cell. Two officers read my Miranda rights to me and asked if I would waive those rights to answer a few questions. I refused to waive my rights.

7. No one told me why I had been detained, provided me with any record of an arrest, or explained what probable cause they had to detain me.

8. As far as I know, I have not been charged with any crimes.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on July 17, 2020.


MARK PETTIBONE