

No. 26-1575

**In the United States Court of Appeals
for the Ninth Circuit**

REACH COMMUNITY DEVELOPMENT, *et al.*,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Oregon
D. Or. Case No. 3:25-cv-2257 (Baggio, J.)

BRIEF IN OPPOSITION TO MOTION FOR STAY PENDING APPEAL

Brian D. Netter
Jeffrey B. Dubner
Anna L. Deffebach
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, D.C. 20043

Katie Schwartzmann
PROTECT DEMOCRACY
201 St. Charles Ave., Suite 114
New Orleans, La 70170

Taylor Jaszewski
BRADLEY BERNSTEIN SANDS LLP
1212 Broadway, Suite 1100
Oakland, CA 94612

Daniel F. Jacobson
Lynn D. Eisenberg
Stephen K. Wirth
Brian C. Rosen-Shaud
JACOBSON LAWYERS GROUP PLLC
5100 Wisconsin Ave., NW, Suite 301
Washington, DC 20016
(301) 615-2336
dan@jacobsonlawyersgroup.com

Darin M. Sands
Colin Hunter
BRADLEY BERNSTEIN SANDS LLP
1211 NW Glisan St., Suite 204
Portland, OR 97209

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION.....	1
STATEMENT	4
ARGUMENT	18
I. The Court Should Deny the Motion for a Stay Pending Appeal.....	18
A. The government has not shown that it will be irreparably harmed absent a stay.....	18
B. The government has not made a strong showing on the merits.....	22
1. The district court’s factual findings are uncontested.....	22
2. DHS invaded Plaintiffs’ right to bodily integrity.	23
3. The district court correctly held that DHS acted with time to deliberate.....	29
4. The district court correctly held that DHS’s deliberate indifference to Plaintiffs’ harms shocks the conscience.....	31
C. The district court did not abuse its discretion in crafting relief.....	34
D. The equities and the public interest favor Plaintiffs.....	39
II. The Court Should Deny the Motion to Stay District Court Proceedings	40
CONCLUSION.....	41
FORM 8 CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Albright v. Oliver</i> , 510 U.S. 266 (1994).....	24, 30
<i>Califano v. Yamasaki</i> , 442 U.S. 682 (1979).....	40
<i>Doe #1 v. Trump</i> , 957 F.3d 1050 (9th Cir. 2020).....	18, 21, 22
<i>Estate of Soakai v. Abdelaziz</i> , 137 F.4th 969 (9th Cir. 2025)	28
<i>Foli v. Metropolitan Water Dist. of S. Cal.</i> , 592 F. App'x 634 (9th Cir. 2015).....	29
<i>Guertin v. Michigan</i> , 912 F.3d 907 (6th Cir. 2019).....	24, 27, 29
<i>Index Newspapers LLC v. United States Marshals Serv.</i> , 977 F.3d 817 (9th Cir. 2020).....	18, 20, 22, 38
<i>Leiva-Perez v. Holder</i> , 640 F.3d 962 (9th Cir. 2011).....	18, 20
<i>Madsen v. Women's Health Center</i> , 512 U.S. 753 (1994).....	40
<i>Melendres v. Arpaio</i> , 695 F.3d 990 (9th Cir. 2012).....	42
<i>Mirabelli v. Bonta</i> , 146 S. Ct. 797 (2026)	30
<i>O'Bannon v. Town Court Nursing Center</i> , 447 U.S. 773 (1980).....	26
<i>Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill</i> , 130 F.3d 432 (9th Cir. 1997).....	28

<i>Rodriguez v. Robbins</i> , 715 F.3d 1127 (9th Cir. 2013).....	42
<i>Scott v. Smith</i> , 109 F.4th 1215 (9th Cir. 2024)	22, 30
<i>Tyson v. Sabine</i> , 42 F.4th 508 (5th Cir. 2022)	29
<i>Union Pacific Railway v. Botsford</i> , 141 U.S. 250 (1891).....	23
<i>United States v. Grey</i> , 959 F.3d 1166 (9th Cir. 2020).....	23
<i>Washington v. Glucksberg</i> , 521 U.S. 702 (1997).....	24
<i>Ziglar v. Abbasi</i> , 582 U.S. 120 (2017).....	27
Rules	
Federal Rule of Appellate Procedure 8(a)(1)	42

INTRODUCTION

For eight months, federal officers at an Immigration and Customs Enforcement (ICE) facility in Portland deployed tear gas canisters, pepperballs, and other chemical munitions in response to non-violent protests outside the facility. But officers did not confine their deployments to protecting officers or the property itself. They routinely launched chemical munitions from the street and from the upper levels of the ICE facility directly toward Gray's Landing, an affordable-housing complex located across the street. Chemical munitions shattered apartment windows and landed in the courtyard where children play. Officers also ventured far from the ICE facility, dropping huge quantities of tear gas in the street immediately outside the residential complex. Tear gas flooded hallways and saturated apartments as a result.

Plaintiffs—including small children, elderly veterans, domestic violence survivors, and residents with serious medical conditions—suffered and will continue to suffer grievous injuries: acute respiratory distress, chemical burns, chronic coughing, heart palpitations, and severe PTSD episodes. One Plaintiff had to have an adrenal gland surgically removed because the gas exacerbated her Cushing's disease; further exposure now threatens her life. Children who were healthy before being exposed to this chemical-munitions

campaign now have to take daily medication. Plaintiffs have been forced to sleep wearing gas masks, in bathtubs, and in closets to survive in their own homes. They are trapped in this literally toxic environment; most simply cannot afford to move.

After an evidentiary hearing involving 15 witnesses (five who testified live) and over 100 exhibits—including extensive video evidence that the government did not dispute—the district court issued a 57-page opinion making detailed findings that the Department of Homeland Security (DHS) routinely released massive quantities of tear gas immediately adjacent to Gray’s Landing without justification, knew its deployments were harming residents, and did not care. The court entered a narrow preliminary injunction: DHS may not deploy chemical munitions in quantities likely to reach Gray’s Landing, unless necessary to address an imminent threat to life. The injunction does not prevent DHS from using chemical munitions on or near ICE property to protect officers or the facility. It prevents DHS from saturating a residential building with poison gas.

The government has not come close to justifying the extraordinary relief of a stay pending appeal. It devotes a single conclusory paragraph of its motion to irreparable harm, offering *no evidence* that the injunction has impaired

operations, compromised officer safety, or prevented a response to any threat. And for good reason: by the time the government filed its stay motion, such use of chemical munitions had been barred for 38 days—first under a TRO in *Dickinson v. Trump* and then under the preliminary injunction here—without incident.

The government fares no better on the merits. The district court’s factual findings—which the government does not challenge as clearly erroneous—establish each element of Plaintiffs’ substantive due process claim: DHS invaded Plaintiffs’ well-established right to bodily integrity by knowingly releasing toxic chemicals into their homes and bodies; DHS acted with ample time to deliberate across an eight-month campaign of recurring deployments within individual incidents; and DHS’s conduct shocks the conscience, because DHS continued deploying massive quantities of tear gas adjacent to Gray’s Landing despite repeated, documented notice that it was causing serious harm. Most stunningly, the government has not disputed that DHS created large plumes of tear gas immediately outside of Gray’s Landing for the purpose of generating propaganda videos, including two that DHS posted to its Instagram account.

The injunction is also narrowly tailored and workable in practice. DHS's own declarations establish that its officers understand the impact ranges of each type of chemical munition they deploy. And the Federal Protective Service—the agency primarily responsible for protecting the ICE facility—should not be affected by the injunction at all, because it already confines its chemical-munitions use to the facility and its immediate vicinity and does not use tear gas at all.

Finally, the equities and public interest overwhelmingly favor Plaintiffs. The government points to no concrete harm from the injunction, whereas Plaintiffs face grievous, potentially fatal injuries every day it is not in effect. And the public has a strong interest in enjoining illegal and unconstitutional government conduct.

This Court should deny the government's motion.

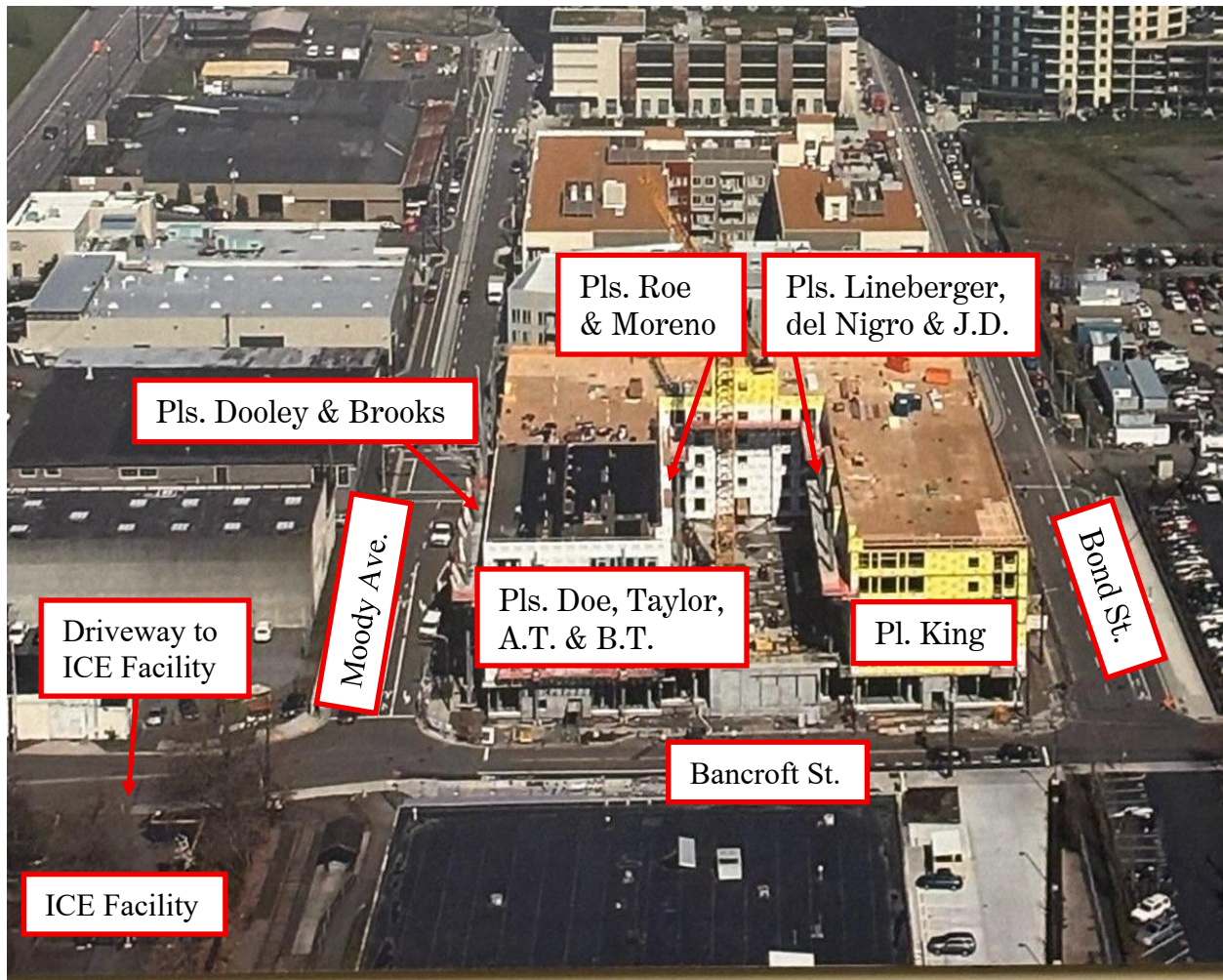
STATEMENT

The record below is voluminous. It includes testimony from 15 witnesses: four Plaintiffs who testified live in court and submitted declarations, one expert for Plaintiffs who did the same, two government witnesses who submitted declarations and whose deposition testimony was admitted, and eight Plaintiffs or employees of Plaintiffs who submitted declarations. The

record includes 72 exhibits that Plaintiffs introduced into evidence—among them numerous videos and photographs—as well as hundreds of pages of DHS incident reports.

The government did not present any live witnesses or visual evidence, and did not dispute the accuracy of any of Plaintiffs' testimony or evidence. The facts below were established upon this largely undisputed record.

1. Plaintiffs include twelve residents of Gray's Landing, an affordable-housing complex in Portland. Op. 4, 8-9. Gray's Landing sits kitty-corner from the Portland ICE facility, at the intersection of S. Moody Avenue and Bancroft Street. The southwest corner of Gray's Landing, where several Plaintiffs live, is closest to the ICE facility, less than 100 feet away. Gray's Landing has an outdoor, U-shaped courtyard that many apartments overlook.



The Portland ICE facility has been the scene of protests against the federal government since at least early June 2025. Although the protests are often loud and crowded, they have been overwhelmingly non-violent since one condemnable incident of property damage in June 2025.¹ Nevertheless, from June 2025 to February 2026, federal officers repeatedly and indiscriminately deployed tear-gas canisters, smoke grenades, pepperballs, and other chemical

¹ See Findings of Fact & Conclusions of Law at 29, *Oregon v. Trump*, No. 3:25-cv-1756-IM (D. Or. Nov. 7, 2025), ECF No. 146.

munitions in the face of protests—often irrespective of protest size or the actions of the protesters. Dkt. 46-6 ¶¶ 6, 11; Dkt. 46-7 ¶ 4; Dkt. 46-1 ¶ 4; Dkt. 46-8 ¶ 4; Dkt. 46-9 ¶ 4. The district court described over two dozen incidents when DHS officers deployed chemical munitions over the course of the relevant eight-month period, Op. 12-25 & n.12, and Plaintiffs testified that there were even more, Tr. 81:6-14, 131:4-11.²

Many times, DHS officers have fired projectile chemical munitions from the street and upper levels of the ICE building using self-described “launchers,” shooting directly toward Gray’s Landing. Chemical munitions fired in this manner have shattered Gray’s Landing apartment windows, Op. 22, 47 (citing Ex. 58, <https://youtu.be/f3uUEfJ779U>), landed in the Gray’s Landing courtyard where children play, *id.* at 42-43, and come to rest immediately under and next to residents’ units, including Plaintiffs’, *id.* at 14 (citing Ex. 1, <https://youtu.be/CMteqdAbzVY>); *id.* at 24 (citing Ex. 56, <https://youtu.be/L4TN3vRLUMQ>).³ The district court found that, at other times, DHS officers walked a block or more away from the ICE facility, circling Gray’s Landing,

² The complete hearing transcript is attached hereto.

³ Plaintiffs’ video exhibits (except Exhibit 19) are available at https://www.youtube.com/playlist?list=PLZZGIWOJfMoKqIGj57J_TvLfam5rak5aN. Exhibit 19 is available at https://youtu.be/NQtm5LATz_o.

and released the chemical munitions from the streets there. *Id.* at 15-16, 42-43 (citing Ex. 19, https://youtu.be/NQtm5LATz_o). Two Plaintiffs testified at the evidentiary hearing that the below images, which they took from their Gray's Landing apartment and its courtyard, reflected the typical saturation of tear gas on Bancroft Street immediately outside Gray's Landing when DHS used gas during this eight-month period.⁴



⁴ Ex. 12 at 4:18, <https://youtu.be/9Zx9IjjSR5/>; Ex. 5 at 0:01, <https://youtu.be/39KHdzPnHec>.



As a result of DHS’s continuous deployment of chemical munitions, as detailed further below, Plaintiffs and others at Gray’s Landing have suffered serious health consequences—acute respiratory distress, burning on their skin, eyes, and throats, permanent or sustained headaches, slurred speech, dizziness, allergic reactions, voice changes, and intense PTSD episodes for a domestic violence survivor. Several Plaintiffs risk severe and irreversible physical harm from further exposure. *See, e.g.*, Op. 7, 50. DHS continued to release large amounts of chemical munitions towards Gray’s Landing despite staff at Gray’s Landing telling DHS that the chemicals were reaching and harming people in the building. *Id.* at 34. And it continued after Plaintiffs filed

their Complaint on December 5, 2025, setting forth the harms that DHS's use of chemical munitions were causing. *Id.* at 34-35.

2. In its 57-page opinion, the district court made detailed findings with respect to five specific incidents during which DHS officers released massive quantities of tear gas that infiltrated Gray's Landing, harming Plaintiffs. *See* Op. 13-25.

In the afternoon of October 4, 2025, federal officers deployed tear gas “to clear the ... driveway and allow a vehicle to depart.” *Id.* at 44; *see* Ex. 1 at 2:30-2:38, <https://youtu.be/CMteqdAbzVY>. As Plaintiff Mindy King captured on video from her apartment, an officer launched “a long-range chemical munition” that travel[ed] east approximately 150 feet away toward Plaintiff King and Gray's Landing.” Op. 45; Ex. 1 at 2:38-2:41, <https://youtu.be/CMteqdAbzVY>. The tear gas canister landed just next to King's balcony and “gas streamed across her balcony.” Op. 45. “The video does not reflect the presence of any protesters this far from the Portland ICE Facility, and Defendants offer[ed] no evidence to otherwise justify this deployment.” *Id.*

On the evening of October 4, 2025, federal officers released massive quantities of chemical munitions immediately adjacent to Gray's Landing—to create a propaganda video for DHS's Instagram account. *Id.* at 14-15, 46.

Although agency incident reports documented no uses of chemical munitions beyond the immediate vicinity of the facility, evidence told a different story. *Id.* “Video evidence documents a large group of federal officers methodically moving protesters eastward on South Bancroft Street away from the Portland ICE Facility in roughly ten-meter increments.” *Id.* at 45; *see* Ex. 19, https://youtu.be/NQtm5LATz_o. Oregon Public Broadcasting filmed and reported that the “[f]ederal officers were flanked by videographers, toting professional equipment and wearing high-visibility vests.” Ex. 20. The videographers “filmed from behind the lines of officers, capturing the show of force,” while “[a]t least two drones swept over the scenes.” *Id.* Once the officers had pushed protesters “a full one-and-a-half to two blocks away from the Portland ICE Facility, [they] deployed large amounts of chemical munitions” immediately next to Gray’s Landing, Op. 46, “dropp[ing] tear gas and other chemical munitions at protesters’ feet and legs,” despite the protesters not having done “anything before officers started using the gas,” Ex. 19, https://youtu.be/NQtm5LATz_o. Tear gas flooded into Gray’s Landing, severely injuring several Plaintiffs. Op. 15-16.

Two days later, DHS posted on its official Instagram account edited footage of chemical munitions deployments outside Gray’s Landing, intercut

with black-and-white footage of a violin player and set to dramatic music. *Id.* at 16-18, 46; Ex. 49 (Instagram post), <https://www.instagram.com/reel/DPeyWCECZv-/>. The following day, DHS posted another montage showing gas enveloping Gray’s Landing, set to “All Night Revival” by Zach Bryan. Ex. 47 (Instagram post), <https://www.instagram.com/reel/DPhKJHSibnG/>. DHS has “not denied that the chemical cloud footage was from October 4, 2025,” Op. 46, nor did DHS deny that they released massive amounts of tear gas that night *specifically to create footage* for these Instagram videos. The below still-frame is from the first Instagram video, showing Gray’s Landing behind a plume of tear gas.⁵

⁵ Screenshot of Ex. 49 at 0:37.

Instagram

Log In



On the evening of January 24, 2026, weeks after Plaintiffs filed this action, federal officers reported deploying at least 85 tear gas munitions that night. Op. 18-19. At least one canister struck Gray's Landing itself, leaving a burn mark. Plaintiffs reported chemical munitions fired every hour from 7:00 p.m. to 11:00 p.m., with gas reaching apartments within minutes of each deployment. *Id.* Plaintiff Roe observed that officers continued deploying tear gas even after the protests had visibly shrunk. *Id.* Chemicals flooded Plaintiff Doe's apartment that night, causing severe coughing. *Id.* at 19. Doe slept in

the closet that night and urinated on herself from fright, while her teenage daughter slept in the bathtub. Dkt. 46-6 ¶ 12. Plaintiff Lineberger similarly suffered impaired breathing, headaches, lost sleep, and anxiety. Op. 19

On January 30, 2026, video evidence shows that protesters were standing on the public sidewalk outside the ICE facility, not engaged in violence, when officers walked out of the facility's gates and started firing chemical munitions onto the street, with at least one tear gas canister launched toward Gray's Landing. Ex. 46, at 0:09-2:13, <https://youtu.be/2hUBj3Jz1t4>; Op. 20. On January 31, 2026, roughly 3,000 protesters—including children and elderly people—participated in an organized march that ended at the ICE facility. Op. 21-22. At 4:32 p.m., federal officers began deploying chemical munitions from both the facility driveway and rooftop. *Id.* at 22. Two minutes later, they shattered a third-story window of Gray's Landing with a long-range tear gas projectile. *Id.* By 4:36 p.m., the gas cloud had reached the north side of Gray's Landing, more than a block from the facility, and security footage captured elderly people and children rushing into Gray's Landing's lobby to escape. *Id.* at 22-23. Inside, the building was no refuge: security cameras showed residents covering their faces and rubbing their eyes in hallways and elevator banks, unable to escape the toxic gas. *Id.* Paramedics who responded to

Plaintiff Roe’s 911 call told her the gas was worse inside the building than outside and led her back outdoors to breathe. *Id.* at 23. Plaintiff del Nigro suffered severe migraines lasting weeks after the incident and a burning rash on her hands, arms, neck, and face despite sealing her apartment with towels and air filters; her son developed hives across his body. *Id.* at 23-24.

On February 1, 2026, federal officers deployed chemical munitions repeatedly over a seven-hour span. *Id.* at 24. Video evidence showed officers “lobbing” munitions far into the crowd of protesters, with gas clouds traveling far up Moody Avenue, down Bancroft Street, and into Gray’s Landing’s courtyard. *Id.* One hour after entering Gray’s Landing that night, Plaintiff King began experiencing symptoms—an extremely dry throat she described as “like swallowing glass”—from residual contamination alone. *Id.* at 24-25. Her condition worsened until she had to seek medical attention. *Id.*

3. In addition to the acute harms caused by the incidents described above, Plaintiffs have suffered serious long-lasting physical and psychological injuries from DHS’s unrelenting use of chemical munitions over eight months. *See id.* at 49-51. They include a child who now needs medications to treat allergic reactions and anxiety, *id.* at 50; Dkt. 46-11 ¶¶ 11-12, and other children who repeatedly had to go to urgent care, Dkt. 46-9 ¶ 7. They include residents

with pre-existing conditions that the tear gas has significantly worsened, such as Cushing's disease, muscular dystrophy, and mast cell activation syndrome. Op. 6-7, 50; Dkt. 46-10 ¶¶ 4, 13-14; Dkt. 46-11 ¶¶ 4-6; Dkt. 46-12 ¶ 6. They include elderly veterans and domestic violence survivors for whom the chemical munitions have triggered intense PTSD episodes. Op. 6; Dkt. 46-2 ¶¶ 9-12, Dkt. 46-4 ¶¶ 20-23; Dkt. 46-6 ¶¶ 3, 7. And they include one Plaintiff who recently had to remove an adrenal gland due to DHS's conduct, Op. 50; Dkt. 46-10 ¶¶ 4, 13, 14; *see* Tr. 35:13-15; and another Plaintiff, an elderly veteran, who has been diagnosed with mild heart failure after falling four times in reaction to the gas, Op. 49.

Aside from these injuries, the everyday threat of being gassed in their own homes has dominated Plaintiffs' lives for months. They had to be constantly prepared to race to shut windows and stuff towels under doors to minimize their exposure to chemicals. Op. 35 n.21. They regularly had to sleep with gas masks on, Op. 34, Dkt. 46-2 ¶ 12, or in bathtubs and closets, Op. 35 n.21; Dkt. 46-6 ¶¶ 11-12; Dkt. 46-9 ¶ 7. Even with "remedial measures to keep their homes clean, chemical particulates settle into their home spaces, such as in their carpets, and onto food left uncovered." Op. 35 n.21 (citations omitted).

4. Following an evidentiary hearing and after “review[ing] hundreds of pages of incident reports documenting [DHS’s] use of force over the past eight months,” the district court found that Plaintiffs are likely to succeed on a Fifth Amendment substantive due process claim. Op. 42. Specifically, the court held that DHS acted with deliberate indifference to the known risk of harm caused by deploying chemical munitions in massive quantities that predictably infiltrate a residential building, in the face of repeated notice, and contrary to DHS’s own use-of-force policies. *Id.* at 42-48. The court determined that “Defendants had extended opportunities to do better but instead displayed a protracted failure even to care.” *Id.* at 44. The court entered a narrowly tailored preliminary injunction prohibiting DHS officers from deploying chemical munitions in quantities likely to infiltrate Plaintiffs’ apartments, unless necessary to address an imminent threat to life. *See id.* at 57.

After waiting ten days from entry of the injunction, the government filed its notice of appeal and motion for a stay pending appeal and administrative stay.

ARGUMENT

I. The Court Should Deny the Motion for a Stay Pending Appeal

A stay pending appeal is an extraordinary remedy: “The bar ... is [even] higher than the [usual] standard for obtaining injunctive relief.” *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 824 (9th Cir. 2020). The movant must make “a strong showing of the likelihood of success of the merits” and that “irreparable injury is likely to occur during the period before the appeal is decided.” *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020). It is not enough to “simply show[] some ‘possibility of irreparable injury’”; rather, the movant “must demonstrate that irreparable harm is probable if the stay is not granted.” *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011) (quotations omitted).

A. The government has not shown that it will be irreparably harmed absent a stay.

The government has not met its burden of demonstrating that irreparable injury is *likely* (not merely possible) during the pendency of the appeal. *Leiva-Perez*, 640 F.3d at 968; *Index Newspapers*, 977 F.3d at 824. The government fails to even meaningfully develop an irreparable harm argument; it devotes just a few conclusory sentences to irreparable harm at the back of its motion. And the government fails to grapple at all with the fact that it has

complied with materially identical restrictions on chemical munitions outside the Portland ICE facility—without incident—for over eight weeks, first under the *Dickinson* TRO, then under the preliminary injunction here.

1. By the time the government filed its motion in this Court, it had been operating under a materially similar injunction for 38 days: first under the TRO in *Dickinson v. Trump*, No. 3:25-cv-2170-SI (D. Or.) (entered February 3, 2026), then under the preliminary injunction here (entered March 6, 2026). During that 38-day period and the three weeks since, DHS has not identified a single instance in which the injunction (or the TRO) prevented officers from responding to a threat, compromised officer safety, or impaired operations at the Portland ICE facility. Nor has DHS ever claimed that the injunctions have not been administrable in practice, even though protests have continued outside the ICE facility nearly every night during this period. *See also* Op. & Order at 33-34, *Dickinson v. Trump*, No. 3:25-cv-2170-SI (D. Or. Mar. 9, 2026) (explaining that DHS complied with TRO for weeks “without problem or prejudice, let alone irreparable harm”).

This Court’s decision in *Index Newspapers* is instructive. There, as here, DHS sought a stay of a preliminary injunction restricting its use of force near a federal facility, arguing that compliance would impose unworkable

operational burdens. In rejecting that argument, the Court held that the fact that a different government entity—the City of Portland—had agreed to operate under “a stipulated preliminary injunction that largely mirror[ed] the preliminary injunction” at issue “strongly undercut[.]” DHS’s irreparable harm argument. 977 F.3d at 833, 836. Here, it is DHS itself that complied with the relevant restrictions, for eight weeks, without incident.

The government’s delays in seeking appellate relief underscore the lack of harm. The government did not appeal the *Dickinson* TRO and then waited 10 days to appeal the preliminary injunction in this case. If the injunction were actually causing the harms that the government claims, more urgency would be expected. There has been none.

2. Even now, the government glosses over the “threshold” irreparable harm requirement. *Leiva-Perez*, 640 F.3d at 968. The stay motion relegates irreparable harm to a single paragraph, Mot. 20, and that paragraph relies entirely on “conclusory factual assertions and speculative arguments that are unsupported in the record.” *Doe #1*, 957 F.3d at 1060. This follows the government’s complete failure below to “explain how they will suffer irreparable injury absent a stay.” Op. 56.

The government does barely more on appeal. It asserts that the injunction violates “the separation of powers,” which, according to the government, “[b]y itself ... constitutes an irreparable harm.” Mot. 20. But *Doe #1* makes clear that these abstract legal concerns, absent any evidence of concrete and imminent harm, cannot support a stay pending appeal. 957 F.3d at 1060. If it did, then the government would *always* be entitled to a stay of any injunction constraining any federal enforcement activity. That cannot be the standard, as it would collapse the stay inquiry into a single factor. *See Doe #1*, 957 F.3d at 1059 (rejecting similar argument).

The government also asserts that the injunction is “an improper constraint” on the executive’s “ability to enforce federal law.” Mot. 20. But the government’s assertion that the injunction is an “improper constraint” is not an irreparable harm argument at all—it is a restatement of the merits. To the extent the government is instead arguing that the injunction’s terms are impractical or confusing for officers in the field, they again do not submit a shred of evidence supporting that assertion. This evidentiary vacuum cannot support a stay. *See Doe #1*, 957 F.3d at 1059-60. Plaintiffs will address the government’s workability argument below. *Infra* Section I.C.

B. The government has not made a strong showing on the merits.

The government has not shown “a *strong* likelihood of success on the merits.” *Index Newspapers*, 977 F.3d at 824.

Under the well-established framework for evaluating substantive due process claims, *see Scott v. Smith*, 109 F.4th 1215, 1228 (9th Cir. 2024), the district court correctly found that plaintiffs were likely to establish the three elements of their claims: (1) DHS burdened Plaintiffs’ right to liberty, and specifically their right to bodily integrity; (2) DHS acted with “time to deliberate”; and (3) DHS acted with deliberate indifference to Plaintiffs’ harms, in a manner that “shocks the conscience.” *Id.*

1. *The district court’s factual findings are uncontested.*

This Court “ordinarily review[s] a district court’s factual findings for clear error.” *United States v. Grey*, 959 F.3d 1166, 1169 n.1 (9th Cir. 2020). But where “the government does not challenge the district court’s factual findings [on] appeal,” this Court accepts the factual findings “as determined by the district court.” *Id.*

Here, for each element of Plaintiffs’ substantive due process claim, the district court made factual findings after an evidentiary hearing and meticulous review of the record. The government does not challenge *any* of these

factual findings in its motion, let alone argue they were clearly erroneous. These findings are amply supported, as described below, but the government’s failure to even contest them means the findings must be taken as established for purposes of this motion.

2. *DHS invaded Plaintiffs’ right to bodily integrity.*

a. As far back as 1891, the Supreme Court recognized that no right is “more carefully guarded ... than the right of every individual to the possession and control of his own person, free from all restraint or interference of others.” *Union Pacific Railway v. Botsford*, 141 U.S. 250, 251 (1891). Since then, the Court has repeatedly described the right to “bodily integrity” as one of the firmly established components of liberty under the Due Process Clause. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); see *Albright v. Oliver*, 510 U.S. 266, 272 (1994).

As the district court recounted, there is a long and rich history of courts recognizing the bodily-integrity right across a “wide variety of factual scenarios,” not limited to forcible medical procedures. Op. 31-32 (citing cases). Of particular relevance here, courts have recognized that government-caused exposure to toxic substances can violate a person’s right to bodily integrity—even when the mechanism of exposure is environmental, rather than directly

inserting a substance into a particular person's body. In the Flint water-contamination litigation, the Sixth Circuit held that "a government actor violates individuals' right to bodily integrity by knowingly and intentionally introducing life-threatening substances into individuals without their consent." *Guer-tin v. Michigan*, 912 F.3d 907, 921 (6th Cir. 2019).

The district court similarly held that DHS's knowing release of toxic chemicals into Plaintiffs' homes and bodies represented "a cognizable deprivation of the constitutional right to bodily integrity." Op. 37. The court rested this conclusion on several interconnected factual findings. The court found that "Defendants have deployed chemical munitions that entered the Resident Plaintiffs' homes and their bodies, causing harm." Op. 33-35. This deployment of gas into Gray's Landing, the court found, has caused Plaintiffs "irreparable physical injury" and made "it difficult or impossible for [them] to eat, sleep, or simply breathe normally while in their own homes." *Id.* at 35, 49. And the court found that "Defendants were specifically notified of the harm that their wide-scale deployments of chemical munitions were having on the Resident Plaintiffs, but Defendants chose to use chemical munitions anyway, often in large quantities." *Id.* at 34.

The government does not dispute any of these findings, but remarkably describes the harms from the chemical munitions as mere “physical discomfort.” Mot. 9. Plaintiffs have alleged that the tear gas and chemicals repeatedly entering their bodies have caused difficulty breathing, Dkt. 46-7 ¶ 5; Dkt. 46-8 ¶¶ 6, 10; Tr. 32:7-12, 83:9-13, burning of skin, noses, and throats, Dkt. 46-2 ¶ 10; Dkt. 46-6 ¶ 8; Dkt. 46-8 ¶ 6; Dkt. 46-9 ¶6, chest tightness and heart palpitations, Dkt. 46-2 ¶ 6, 10, coughing that lasts for days or weeks, Dkt. 46-1 ¶ 6; Dkt. 46-2 ¶ 10; Dkt. 46-6 ¶¶ 8-9, 12; Dkt. 46-12 ¶ 11, and permanent changes to their voices, Dkt. 46-7 ¶ 5; Dkt. 46-8 ¶ 7. The harms that they risk from further exposure include potentially fatal anaphylactic shock or adrenal crises. Op. 6-7; Dkt. 46-10 ¶¶14-16; 46-11 ¶4-5. DHS’s knowing and non-consensual introduction of tear gas and other chemicals into Plaintiffs’ bodies squarely implicates the right to bodily integrity.

b. The government’s lead argument is that Plaintiffs cannot show a “cognizable” deprivation of their rights because any injury they have suffered is merely the “indirect adverse effect” of action directed at third-party protesters. This argument rests on a fundamental misunderstanding of Plaintiffs’ claims and a misreading of *O’Bannon v. Town Court Nursing Center*, 447 U.S. 773 (1980).

O'Bannon held only that nursing home patients had no procedural due process right to participate in an administrative hearing regarding whether to decertify the business that ran the facility. *Id.* at 775. The harm was purely derivative: the nursing home was the direct object of the government's regulatory action; patients were secondarily harmed. The Court's "indirect effects" language addressed only whether patients had a procedural right to intervene in a regulatory proceeding—nothing more.

This case is categorically different. Plaintiffs do not challenge a regulatory decision aimed at someone else that has downstream consequences for them. They challenge DHS's deliberate indifference in firing chemical munitions in volumes that directly harm them, by predictably saturating their apartments, invading their bodies, and causing documented, serious physical injuries. *See* Op. 40. Plaintiffs, in other words, challenge DHS's deliberate indifference *toward Plaintiffs' injuries*. Plaintiffs, unlike the *O'Bannon* plaintiffs, are the object of the government's deliberately indifferent conduct.

The government's position that Plaintiffs cannot assert their own substantive due process rights in these circumstances runs counter to the premise of the deliberate indifference doctrine, which is that an official's conduct need

not intentionally target or harm the plaintiff to violate substantive due process. See *Guertin*, 912 F.3d at 922-28; *Ziglar v. Abbasi*, 582 U.S. 120, 146-47 (2017).

Even if Plaintiffs were considered “bystanders” incidentally impacted by weapons deployed against others, this Court’s precedents would still foreclose the government’s argument. In *Estate of Soakai v. Abdelaziz*, 137 F.4th 969, 977-80 (9th Cir. 2025), *cert. denied*, 2026 WL 568296 (U.S. Mar. 2, 2025), this Court held that a bystander may assert a substantive due process claim where conduct targeted at another person injures the bystander. This Court found “no reason to think that conduct is any less shocking when it injures someone other than the intended target, particularly when harm to a third party is a clear, known risk and is entirely foreseeable.” *Id.* at 980.

c. The government also claims that the district court invented a novel fundamental right by abstracting “bodily integrity” beyond “nonconsensual medical procedures and medical treatment.” Mot. 11. But this Court has held that a person’s right to bodily integrity may be violated outside of medical contexts. *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). And other courts of appeals have held that “[p]hysical force is not a requirement of a violation of the right to bodily integrity.” *Tyson v. Sabine*, 42 F.4th 508, 518 (5th Cir. 2022); see, e.g., *Guertin*, 912 F.3d 907. The government

offers no reason why the right to bodily integrity would not be implicated where DHS releases poison gas knowing it will enter a person's lungs.

The government cites *Foli v. Metropolitan Water Dist. of S. Cal.*, 592 F. App'x 634 (9th Cir. 2015) (mem. dispo.), as a binding "holding" of this Court without disclosing that it is a non-precedential memorandum disposition. Mot. 11-12 & n.2. Regardless, *Foli* supports Plaintiffs. The Court distinguished fluoridated municipal water, which residents can decline to drink, from forced bodily intrusion that triggers constitutional protection. 592 F. App'x at 635. Here, Plaintiffs cannot avoid breathing toxic gases forcibly released into their own homes.

The government argues that other courts have "rejected" claims like Plaintiffs', but their string cite (at 12) provides no support. None of those cases involved the intentional deployment of harmful chemical munitions by government agents directly adjacent to residences. Rather, in every case, the emissions at issue were made by *private* parties, not government agents; the alleged harms involved generalized exposure risks affecting broad populations; and the claims amounted to generalized complaints about ambient air quality or radiation levels or the environment more broadly.

The government’s fundamental error is that it treats substantive due process rights like qualified immunity. Unlike qualified immunity, substantive due process rights are “defined at ... a high level of generality,” *Scott*, 109 F.4th at 1229 (quotations omitted), such as the rights to “marriage, family, [or] procreation, and the right to bodily integrity.” *Albright*, 510 U.S. at 272 (1994). Courts then can and must apply those rights in new factual contexts. Just recently, the Supreme Court held that a parent’s substantive due process “right to raise her child” was likely violated in the novel context of a school not notifying parents of a child’s gender transition. *Mirabelli v. Bonta*, 146 S. Ct. 797, 804-05 (2026) (Barrett, J., concurring). Similarly here, the district court applied the well-established right to bodily integrity to the novel context of DHS knowingly releasing toxic gas into people’s homes over an eight-month period.

3. *The district court correctly held that DHS acted with time to deliberate.*

The district court correctly applied the “deliberate indifference” standard rather than the “purpose to harm” standard for substantive due process violations. The government hardly contends otherwise. It devotes a mere two sentences to arguing that the purpose-to-harm standard should apply, Mot. 13-14, and does not dispute any of the district court’s factual findings that DHS routinely acted with *time to deliberate* when deploying massive amounts

of chemical munitions—knowing the impacts it would have on Gray’s Landing residents.

The government has forfeited any argument that DHS lacked time to deliberate, but the district court’s findings were well-supported in any event. The court found time to deliberate both over the course of the eight-month period in which DHS deployed the munitions dozens of times, and in the context of specific incidents. On the former, the court found “the record reflects eight months of planning, patterned operations, and inter-agency coordination.” Op. 41.

Within individual incidents, unrebutted video evidence documented officers deploying tear gas with time to deliberate. On the evening of October 4, 2025, officers slowly pushed protesters down the street for roughly ten minutes, until they were far from the ICE facility, and then lobbed tear gas canisters at protesters in response to no provocation. Ex. 19, *available at* https://www.youtube.com/watch?v=NQtm5LATz_o; Op. 15, 45. And DHS has never denied that its use of tear gas that night was *pre-planned* to create a propaganda video; videographers trailed the officers while they unleashed tear gas outside Gray’s Landing, and that footage then featured in DHS Instagram

posts two days later. Op. 16-18, 46 (describing evidence); Exs. 47, 49 (Instagram posts).

In other incidents documented on video, officers began firing chemical munitions as soon as the gate to the ICE facility opened, when protesters were merely “standing on the public sidewalk” and officers faced no imminent threat. Op. 20 (citing Exs. 45-46).

The government does not meaningfully contest that DHS had time to deliberate because it is uncontestable.

4. *The district court correctly held that DHS’s deliberate indifference to Plaintiffs’ harms shocks the conscience.*

a. Finally, the district court correctly held that DHS likely acted with conscience-shocking, deliberate indifference to Plaintiffs’ injuries. As the court found and the government does not dispute, “Defendants were specifically notified of the harm that their widescale deployments of chemical munitions were having on the Resident Plaintiffs, but Defendants chose to use chemical munitions anyway, often in large quantities.” Op. 34. That notice came from Gray’s Landing staff, from congressional outreach, and from this lawsuit itself. Op. 43; *see* Dkt. 46-13 ¶5 Ex. 33. Even after Plaintiffs filed declarations documenting their harms, DHS deployed mass volumes of tear gas

next to Gray's Landing on five days over an eight-day span between January 24 and February 1, 2026. *See* Exs. 37-46.

DHS knew that their use of chemical munitions was harming small children, people with medical conditions, domestic violence victims, and other residents, yet they kept doing it anyway.

The government repeatedly states that they have used tear gas and other chemical munitions to disperse “violent, disruptive, or unlawful protests.” *E.g.*, Mot. 1. But it simply ignores the many incidents where video evidence shows, and the district court found, that DHS deployed chemical munitions against peaceful protesters who presented no risk of harm to law enforcement or others. Op. 12-25; *e.g.*, Exs. 2, 19, 44, 46, 55-57 (video evidence).

Most telling, the government has never denied that, on multiple occasions, DHS released tear gas next to Gray's Landing solely to facilitate the creation of propaganda videos. The government has not denied that, throughout October 2025, DHS used mass volumes of tear gas to create “content” for the influencers they had invited to the ICE facility to film. Nor has the government ever denied that, on the evening of October 4, 2025, DHS deployed overwhelming quantities of tear gas down the block from the ICE facility,

right outside Plaintiffs' apartments, so that a videographer could film the scenes for propaganda videos. If that is not shocking, nothing is.

b. None of the government's responses on deliberate indifference hold water. The district court did not find deliberate indifference based solely on "the *quantity* of chemical munitions and their *distance* of impact." Mot. 14 (quoting Op. 42). The district court found deliberate indifference based on a convergence of facts: eight months of large-scale deployments of tear gas up and down the streets surrounding Gray's Landing; FPS's own deputy director's testimony that his officers had "no business" on Moody Avenue or Bancroft Street, where munitions regularly landed; evidence of spent munitions found inside the Gray's Landing courtyard; and "vitally important to the Court's finding of deliberate indifference," repeated, documented notice of harm to residents beginning in July 2025. Op. 42-47.

Nor did the court shift the burden of proof. *Contra* Mot. 14. It drew reasonable inferences from Plaintiffs' un rebutted evidence. DHS's own incident reports failed to document any justification for deployments in areas its own leadership said were off-limits, and the government declined to put forward any evidence at the evidentiary hearing. Op. 42-47.

Finally, the government’s individual-notice argument—that each officer “who subsequently used chemical irritants” needed individual notice of the harms to Plaintiffs—finds no support. *Contra* Mot. 15. The government does not dispute that DHS, its subagencies, and the officials in charge received “repeated notice of [the] physical harm” suffered by Plaintiffs, including when Plaintiffs filed this lawsuit. Op. 44.

C. The district court did not abuse its discretion in crafting relief.

The district court narrowly tailored its injunction to give “due regard to the competing interests between Defendants’ need to do their jobs safely and the Resident Plaintiffs’ right to the most fundamental aspects of liberty.” Op. 56. The injunction prohibits using chemical munitions only when: (1) the chemicals are “likely to reach Gray’s Landing,” and (2) the munitions are not “determined to be necessary to address an imminent threat to life.” *Id.* at 57.

1. DHS’s own statements and conduct shows that the injunction is workable and does not prevent DHS from using less-lethal munitions to protect themselves or the ICE facility. Contrary to the government’s claims, the injunction does not force agents to develop “a mastery of meteorology” and perform “complex calculation[s]” while “making split-second judgments.” Mot. 16.

DHS's own declarations and deposition testimony show that DHS has an understanding of the precise impact ranges on the various types of chemical munitions. DHS states that canisters of oleoresin capsicum (OC) (i.e., pepper spray) can reach up to “roughly twelve to twenty feet.” Op. 10. For pepperballs, “the immediate impact zone ... is a 3-6 [foot] radius.” *Id.* at 11. And for PAVA (synthetic OC), DHS reports that rounds can affect a 15-foot radius from impact. *Id.* Officers thus can know with confidence each of these munitions is not “likely to reach Gray’s Landing” when deployed in and around the driveway to the ICE facility to repel or clear protesters. In contrast, using projectile launchers to shoot pepperballs, PAVA, or other chemical munitions in the direction of Gray’s Landing would be prohibited.

DHS also understands tear gas (*i.e.*, CS gas) has a far wider dispersal radius than the other chemical munitions. The CBP declarant explained that certain CS munitions are used for “area saturation” and “can impact up to 450 feet.” Dkt. 57-2 ¶¶ 9-10. Any DHS officer should reasonably know that tear gas released within 100 feet of Gray’s Landing is “likely to reach” the complex, absent some unique circumstances making clear that it will not. And officers certainly know that when they deploy tear gas down the block from the ICE facility and *immediately next to* Gray’s Landing—as the district court found

they have done repeatedly—the gas will hit the complEx. *E.g.*, Op. 15, 22-24, 45-47. No advanced degrees or complex calculations are needed to know that such uses violate the injunction.

It bears emphasis, moreover, that DHS’s uses of chemical munitions outside the ICE facility are *not* “split-second judgments.” *Contra* Mot. 16. The district court found that the challenged deployments are the product of pre-meditated operational choice, with ample time to reevaluate and revise tactics over the course of repeated incidents, rather than a single rapidly escalating confrontation demanding instantaneous reaction. Op. 44-48. Officers deployed chemical munitions on many dozens of days over eight months in recurring, anticipated fact patterns. Op. 12-25 & n.12. They even deployed tear gas *85 times* in a single evening. *Id.* at 45-47.

2. The government claims the injunction is also not workable because it precludes uses necessary “to protect officer and public safety,” and will force officers into more dangerous confrontations.

The practices of the Federal Protective Service—the component of DHS that “is the primary agency charged with protecting the ICE Facility,” Op. 42—show the government is wrong. “FPS does not authorize its officers to use munitions containing CS.” *Id.* at 11. And a senior FPS official testified

that FPS officers “don’t employ anything [*e.g.*, OC spray, pepperballs, PAVA] down on Moody [or] ... Bancroft”; “we don’t go up to either intersection.” *Id.* at 42. FPS instead focuses on protecting against immediate threats to the ICE facility and its inhabitants, by using certain less-lethal munitions to repel protesters from ICE property, including the ICE driveway. *See id.* The district court’s injunction does not affect FPS’s self-described practices in any way. That alone refutes the notion that the injunction jeopardizes protection capabilities.

Indeed, the government’s force-escalation theory is entirely speculative and unsupported by the record. It points to no incident during 38 days of operating under chemical-munitions restrictions in which officers were forced into a more dangerous confrontation or required to resort to more force. Officers have numerous alternative means to secure the facility, including erecting physical barriers, making arrests, and using targeted, rather than area-saturating, chemical deployments.

3. The government’s separation-of-powers argument conflates enforcing constitutional limits with superintending executive operations. Courts can and often do enjoin unconstitutional executive conduct. That is a core function of Article III, not a transgression of it. Thus, this Court regularly upholds

preliminary injunctions restricting federal law-enforcement practices—including federal officers’ use of force during protests—where constitutional violations are established. *See, e.g., Index Newspapers*, 977 F.3d at 838.

4. Finally, the injunction is not overbroad. It restricts only chemical deployments that are likely to infiltrate Gray’s Landing, and it includes a reasonable exception to protect the lives of law enforcement officers and others. Op. 57. That exception is not, as the government contends (at 19), a Fourth Amendment transplant; it is the court’s calibration of the remedy to the constitutional violation. It provides Plaintiffs with necessary protection against additional grievous injuries without unnecessarily constraining law enforcement officers in the exercise of their duties.

Nor must the injunction be perfectly coextensive with the underlying constitutional violation. *Contra* Mot. 19. It must be “no more burdensome ... than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Courts have long recognized that injunctions may reach beyond the precise unlawful conduct to prevent its recurrence. *E.g., Madsen v. Women’s Health Center*, 512 U.S. 753, 778-79 (1994) (upholding 36-foot buffer zone around clinic, notwithstanding burden on protected speech). The injunction here is proportionate to the constitutional violations and

preventing them from recurring. That the injunction may incidentally capture some deployments of chemical munitions that would not independently shock the conscience does not render it overbroad, where the scope of the injunction is necessary to prevent further violations and thus provide Plaintiffs “complete relief.”

D. The equities and the public interest favor Plaintiffs.

The equities overwhelmingly favor Plaintiffs. The evidence shows that Plaintiffs were suffering grievous physical and psychological irreparable injuries from DHS’s deployment of massive quantities of tear gas outside their homes. One Plaintiff recently had an adrenal gland removed because the tear gas exacerbated her Cushing’s disease, and now post-surgery, more tear gas exposure could present fatal risks. Op. 50; Dkt. 46-10 ¶¶ 4, 13-14. Other Plaintiffs include small children who have repeatedly required urgent medical care and who now depend on medications to manage chronic respiratory conditions and anxiety that did not exist before DHS began deploying chemical munitions near their homes. Op. 50; Dkt. 46-9 ¶ 7; Dkt. 46-11 ¶¶ 11-12. They include elderly residents and domestic violence survivors for whom the chemical munitions have triggered severe PTSD episodes. Op. 6; Dkt. 46-2 ¶¶ 9-12; Dkt. 46-6 ¶¶ 3, 7. One Plaintiff, an elderly veteran, has been diagnosed with mild heart

failure after falling four times in reaction to the gas. Op. 49. Plaintiffs have been forced to sleep wearing gas masks, in bathtubs, or in their dad's closet to avoid exposures. Op. 34-35 & n.21, Dkt. 46-9 ¶ 7.

The district court's extensive factual findings—none of which the government challenges as clearly erroneous—establish that it is Plaintiffs, not DHS, who face irreparable injury. The public has no interest in permitting those constitutional violations to continue. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And federal agencies “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

II. The Court Should Deny the Motion to Stay District Court Proceedings

Finally, the Court should deny the government's extraordinary request for a stay of district court proceedings pending appeal. Mot. 21. The government has not moved the district court for a stay of proceedings, which is normally a prerequisite before moving this Court for a stay. *See Fed. R. App. P. 8(a)(1)*. Nor does the government identify any legal authority or Ninth Circuit precedent for this Court to stay an entire case below in reviewing a preliminary injunction. The government does not argue in its stay motion that the district court lacks jurisdiction in this case, and it cannot invoke the All Writs

Act because staying proceedings below is not necessary in aid of this Court's jurisdiction. A party's speculation that it may, in the future, be forced to respond to discovery requests, is not a basis for this Court to stay an entire district court action.

CONCLUSION

The Court should deny the motion to stay the preliminary injunction pending appeal and to stay district court proceedings.

Respectfully Submitted,

/s/ Stephen K. Wirth

Stephen K. Wirth

Daniel F. Jacobson

Lynn D. Eisenberg

Brian C. Rosen-Shaud

JACOBSON LAWYERS GROUP PLLC

5100 Wisconsin Ave., NW, Suite 301

Washington, DC 20016

(301) 615-2336

dan@jacobsonlawyersgroup.com

Brian D. Netter

Jeffrey B. Dubner

Anna L. Deffebach

DEMOCRACY FORWARD FOUNDATION

P.O. Box 34553

Washington, D.C. 20043

Katie Schwartzmann

PROTECT DEMOCRACY

201 St. Charles Ave., Suite 114

New Orleans, La 70170

Darin M. Sands
Colin Hunter
BRADLEY BERNSTEIN SANDS LLP
1211 NW Glisan St., Suite 204
Portland, OR 97209

Taylor Jaszewski
BRADLEY BERNSTEIN SANDS LLP
1212 Broadway, Suite 1100
Oakland, CA 94612

March 26, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains words, including words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - it is a joint brief submitted by separately represented parties.
 - a party or parties are filing a single brief in response to multiple briefs.
 - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

For the Plaintiffs:

DUBNER LEGAL
By: JEFFREY B. DUBNER
dubnerlegal@gmail.com
Post Office Box 34125
Washington, DC 20043
(202) 596-2920

BRADLEY BERNSTEIN SANDS LLP
By: TAYLOR JASZEWSKI
tjaszewski@bradleybernstein.com
1212 Broadway, Suite 1100
Oakland, California 94612
(202) 774-0052

JACOBSON LAWYERS GROUP PLLC
By: DANIEL F. JACOBSON
dan@jacobsonlawyersgroup.com
By: LYNN D. EISENBERG
lynn@jacobsonlawyersgroup.com
By: STEPHEN K. WIRTH
stephen@jacobsonlawyersgroup.com
5100 Wisconsin Avenue NW, Suite 301
Washington, DC 20016
(301) 823-1148

BRADLEY BERNSTEIN SANDS LLP
By: DARIN M. SANDS
dsands@bradleybernsteinllp.com
1211 NW Glisan Street, Suite 204
Portland, Oregon 97209
(503) 734-2480

For the Defendants:

DEPARTMENT OF JUSTICE
By: MICHAEL B. BRUNS
michael.bruns@usdoj.gov
By: KATHLEEN JACOBS
kathleen.c.jacobs@usdoj.gov
By: SAMUEL HOLT
samuel.holt2@usdoj.gov
1100 L Street NW
Washington, DC 20012
(202) 514-4011

	<u>INDEX</u>	
		<u>PAGE</u>
1		
2		
3	Opening Statement by Mr. Jacobson	9
4	Opening Statement by Mr. Holt	27
5	Plaintiffs' Witnesses:	
6	Diane Moreno	
7	Direct Examination by Mr. Dubner	29
8	Cross-Examination By Ms. Jacobs	46
9	Dr. Rama Rao	
10	Direct Examination by Ms. Eisenberg	51
11	Cross-Examination by Mr. Bruns	63
12	Redirect Examination by Ms. Eisenberg	71
13	Rebecca Roe	
14	Direct Examination by Mr. Jacobson	79
15	Cross-Examination by Mr. Bruns	97
16	Erica Del Nigro	
17	Direct Examination by Mr. Dubner	102
18	Cross-Examination by Ms. Jacobs	118
19	Redirect Examination by Mr. Dubner	124
20	Mindy King	
21	Direct Examination by Mr. Jacobson	129
22	Cross-Examination by Mr. Bruns	147
23	Redirect Examination by Mr. Jacobson	152
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(February 13, 2026; 1:03 p.m.)

P R O C E E D I N G S

THE COURT: Good afternoon, everyone. Please be seated.

THE CLERK: Your Honor, this is the matter of Reach Community Development, et al, versus US Department of Homeland Security, et al. It's case number 25-cv-2257.

This is the time set for an evidentiary hearing on a motion for preliminary injunction.

Counsel, please state your appearance on the record starting with the plaintiff.

MR. DUBNER: Jeffrey Dubner for plaintiffs, Your Honor.

MR. JASZEWSKI: Taylor Jaszewski for plaintiffs, Your Honor.

MR. JACOBSON: Daniel Jacobson for plaintiffs.

MS. EISENBERG: Lynn Eisenberg for plaintiffs.

MR. SANDS: Darin Sands for plaintiffs.

MR. WIRTH: Steven Wirth for plaintiffs.

MR. BRUNS: Michael Bruns, Department of Justice, for defendants.

MS. JACOBS: Kathleen Jacobs, Department of Justice, for defendants.

MR. HOLT: Good afternoon, Your Honor. Samuel Holt

1 for defendants.

2 THE COURT: Thank you all. Thank you for your
3 appearance here and welcome to you and welcome to everyone.

4 Let me say at the outset that for members of the
5 public in attendance today, I welcome you to the courtroom.

6 Unless you are affiliated with one of the litigation
7 teams or are a party to this case, all cell phones or other
8 electronic devices must be turned off during this hearing.
9 Photography or recording in any way is strictly prohibited, as
10 well as transmitting or broadcasting from inside the courtroom.
11 So please be mindful of that.

12 I also understand there are members of the media here
13 today, and they do have permission to take notes on their
14 laptops if they need to do so, but they are also reminded that
15 they are not allowed to transmit, nor allowed to post on social
16 media, nor are they allowed to email or have access online to
17 transmit information from the court while in the courtroom.

18 Please understand that if anyone is found in violation
19 of these rules, you'll be asked to leave the courtroom and you
20 will not be allowed back inside the courtroom during the course
21 of proceedings.

22 The Court also has the power of contempt to enforce
23 this order.

24 Secondly, as to counsel of record, we have a lot to
25 cover today. When you speak, please speak clearly and slowly.

1 I understand there are several transcripts of depositions, and
2 people may want to refer to those, or other reports. Please, if
3 you're reading a document, don't read it fast. Read it slowly.
4 We have a court reporter here who's trying to capture accurately
5 everything that transpires today, and that's important.

6 Relatedly, if during your presentation you're citing
7 to evidence in the record, I ask that you be very specific to
8 the exhibit number, to the pinpoint cite on the exhibit number.
9 Please give me as much specific reference as possible to ease my
10 job in locating those entries in the record as easily as
11 possible.

12 Next, we did have a motion by a party who wishes to
13 intervene.

14 Let me hear from plaintiffs' counsel.

15 Are you asking to respond to that? Or what are you
16 asking the Court to do about that?

17 MR. JACOBSON: Thank you, Your Honor.

18 We oppose that motion. Unless Your Honor, you know,
19 wants us to submit something in writing, I think -- you know, we
20 don't view that motion as warranted and having anything to do
21 with the legal issues in this case. But if Your Honor prefers
22 we submit something in writing, we will, but we don't feel a
23 need to.

24 THE COURT: I'm going to ask you to do that for
25 purposes of the record, please.

1 MR. JACOBSON: Yes, Your Honor.

2 THE COURT: What would be a fair timeline? Just the
3 normal 14 days? Or do you need some additional time?

4 MR. JACOBSON: No. 14 would be great.

5 THE COURT: Very well.

6 And to whatever extent the defense wishes to file a
7 response on that, you're welcome to do so within the typical
8 time frame.

9 Okay. I understand from the communications to the
10 Court in advance of the hearing that plaintiff expects to
11 present the testimony of five witnesses today.

12 How are you all going to break that up? Or what's the
13 plan?

14 MR. JACOBSON: Yes, Your Honor.

15 I'll be delivering our opening statement. Then
16 Mr. Dubner will handle the first witness, Ms. Moreno.
17 Ms. Eisenburg will handle the second witness, who is our expert
18 witness testifying remotely. I will then do the third witness,
19 Ms. Roe. Mr. Dubner will do the fourth witness, Ms. Del Nigro.
20 And then I will do the fifth witness, Ms. King.

21 So there's three of us total.

22 THE COURT: Okay. Thank you.

23 And there was also a request by email about images
24 that were included within a filing, but not as separate
25 exhibits. Are we just going to address that at the proper time?

1 Or do we need to address anything before we get started?

2 MR. JACOBSON: Not for plaintiffs, Your Honor.

3 THE COURT: Okay. Are there any other housekeeping
4 matters from the plaintiffs' perspective before we get started
5 with opening statements?

6 MR. DUBNER: One, Your Honor, a request from one of
7 the witnesses.

8 We're, of course, sequestering the witnesses before
9 they testify. Is it all right with the Court if they watch some
10 of the proceedings after they testify? Or would you prefer them
11 to stay out after their testimony?

12 THE COURT: Any objection from defense?

13 MR. HOLT: I think as long as they're not going to
14 testify again, we don't have a problem with them staying after
15 they have testified.

16 THE COURT: Okay. That's what we'll do then.

17 MR. DUBNER: Thank you.

18 THE COURT: Okay. Anything that the defendants would
19 like us -- or defense counsel would like us to address before we
20 get going?

21 MR. HOLT: Nothing at this time, Your Honor.

22 THE COURT: Okay. Thank you.

23 All right. Proceed with the opening statement,
24 please.

25 //

1 the record will demonstrate that plaintiffs are overwhelmingly
2 likely to establish that the answer is yes to each of those
3 three questions and, therefore, likely to succeed on the merits.

4 Your Honor, this demonstrative here is a blowup of
5 what's in Plaintiffs' Exhibit 21, which is attached to the
6 Salazar declaration at ECF 46-4.

7 This is an aerial shot of Gray's Landing. Gray's
8 Landing is this horseshoe-shaped building right here from when
9 it was under construction about a dozen years ago.

10 Gray's Landing is a very large apartment complex. It
11 has 209 apartments. It's a low-income housing complex, meaning
12 all the residents there must have incomes below a certain
13 threshold to be able to live there. There are a large number of
14 veterans that live there, disabled persons, and children.

15 Gray's Landing sits kitty-corner to the ICE facility
16 which is right here to the southwest side of Gray's Landing.
17 From this -- the ICE driveway, which is right around here, to
18 Gray's Landing is less than a hundred feet.

19 Beginning in June 2025 -- no, I should say,
20 Your Honor, because you'll hear these streets a lot today.
21 Gray's Landing, this portion of the southwest corner sits at the
22 intersection of Bancroft Street, which runs west to east, and
23 Moody Avenue, which runs south to north.

24 Beginning in June 2025, the protests outside the ICE
25 facilities, in response to those protests, federal officers

1 began consistently using chemical munitions, including teargas,
2 smoke grenades of various -- at least four different colors,
3 pepper balls, pepper spray, and they used them from various
4 different locations and from different vantage points at which
5 they were aiming at protesters.

6 Sometimes the federal officers shot these chemical
7 munitions, mainly teargas canisters, from the roof of the ICE
8 facility here, or from the second floor, which you can't see
9 here, but is on the other side, but is an elevation, and they
10 shot these chemical munitions at protesters standing either here
11 outside the ICE driveway, often here, protesters just milling
12 about the intersection, right here, and sometimes even at
13 protesters standing here on Bancroft Street.

14 As Your Honor can see, when the ICE -- or
15 sorry -- when the federal agents are shooting teargas in this
16 direction from an elevated position, they are shooting it
17 directly at Gray's Landing.

18 Just two weeks ago, Your Honor, on January 31st, 2026,
19 officers shooting a long-range teargas munition hit the window
20 of a Gray's Landing apartment right here on the third floor.

21 That's ascribed, Your Honor, in an article that's in
22 footnote 2 of our reply brief. And this is the one exhibit that
23 I'm going to reference that is not yet preadmitted because it
24 was not a separate exhibit, it was just embedded. So if I may
25 offer it now to the Court, this will be Plaintiffs' Exhibit 72,

Opening Statement by Mr. Jacobson

1 and it's an article from Oregon Public Broadcasting.

2 THE COURT: Any objection?

3 MR. HOLT: No objection to it being considered.

4 THE COURT: The Court will receive Plaintiffs'
5 Exhibit 72.

6 (Exhibit No. 72 received.)

7 MR. JACOBSON: And you can see in that story, Your
8 Honor, the shattered window, which is, as I mentioned, right
9 around here on the third floor of Gray's Landing.

10 And it's not just teargas that the officers shoot from
11 this elevated position at long range. They shoot pepper balls
12 from these launchers that they have, and these pepper balls have
13 frequently landed and come to settle inside the courtyard of
14 Gray's Landing, which is in the middle of the facility. That's
15 described in the Lineberger declaration at paragraph 5, which is
16 ECF 46-8, that residents would often come down in the morning
17 and find pepper balls, that are extremely dangerous to be
18 around, just sitting there in the courtyard.

19 In addition to shooting from the roof and at other
20 elevated positions, officers frequently deploy chemical
21 munitions from the street level. They do so from within the ICE
22 driveway. The driveway is right here and it leads out and we'll
23 see some videos later of them doing it from the driveway.

24 But it's not just there. They do it from standing
25 outside the driveway over here, that they either lob or roll or

1 shoot teargas canisters and smoke grenades.

2 The evidence will show -- and we'll show
3 videos -- where ICE and other federal officers march down the
4 street on Bancroft Street and are standing right here, right in
5 front of Gray's Landing, when they release these chemical
6 munitions. And also they do it -- often, they'll just set them
7 to rest right in this intersection here on Moody and Bancroft
8 Street.

9 The wind in this area predominantly blows to the
10 northeast and to the east because the river is just off this
11 demonstrative, and, therefore, it invariably blows towards
12 Gray's Landing.

13 If we could pull up Exhibit 54, which is appended to
14 the supplement -- and that's a video, Your Honor. We'll put it
15 on the screen. This is appended to the supplemental declaration
16 of Roy Brooks at ECF 55-2.

17 Mr. Brooks -- before we have the video, I'll note,
18 Your Honor, Mr. Brooks lives right around here on Moody Avenue,
19 so up this street just a little bit.

20 Are we having video issues?

21 MR. JASZEWSKI: Your Honor, do you mind giving us HDMI
22 access here?

23 THE CLERK: You have it.

24 MR. JACOBSON: Apologies, Your Honor.

25 THE COURT: It's okay. These things happen.

Opening Statement by Mr. Jacobson

1 And this is what, please?

2 MR. JACOBSON: This is Exhibit 54, which is appended
3 to the supplemental Brooks declaration at ECF 55-2, and this is
4 the view from Mr. Brooks' apartment, as I mentioned, a little
5 bit up Moody Avenue.

6 If we can -- is there a way to enlarge it? Or is that
7 as big as it goes?

8 THE COURT: Can we dim the lights a little bit too,
9 please.

10 MR. JACOBSON: And if we could play the first few
11 seconds.

12 (Video played.)

13 MR. JACOBSON: And you can stop it right there.

14 Your Honor, you can see at the very start of this
15 video the teargas is located, and the smoke, largely over here,
16 right outside of the ICE facility.

17 If we can now go and fast forward to the 1:38 mark,
18 please, and let it play for about 20 seconds.

19 (Video played.)

20 MR. JACOBSON: And that's fine right there.

21 THE COURT: And the date of this was?

22 MR. JACOBSON: This was February 1st, just 12 days
23 ago.

24 THE COURT: Thank you.

25 MR. JACOBSON: What we just saw in the video,

1 Your Honor, for the record, is the gas and smoke starting from
2 around the ICE facility and drifting, as it inevitably does,
3 northeast until it comes to hit Mr. Brooks' apartment and
4 envelopes it. All you can see is smoke right now.

5 The evidence will show that on numerous, numerous
6 occasions, officers have deployed these munitions in response to
7 no particularly notable protest activity and rarely in response
8 to any legitimate imminent threats to other officers or the ICE
9 facility.

10 We'll give various examples of this over the course of
11 the day. Two videos we won't show, which I'll note for the
12 record, are in Exhibits 11 and 17, which are both attached to
13 the Roe declaration at ECF 46-2.

14 The evidence will show that defendants use these
15 munitions with plenty of time to deliberate, even when focusing
16 just on individual incidents. We're going to show, again,
17 several examples of that later today.

18 One other example I'll note for the record again, and
19 this one is Exhibit 10, which is also attached to the Roe
20 declaration at ECF 46-2.

21 Not only have officers had time to deliberate within
22 specific nights, specific incidents, they have also certainly
23 had time to deliberate over the eight-month period since last
24 June when they have used teargas, smoke grenades, and other
25 munitions over and over and over again, witnesses will testify

1 at some point multiple times a week, dozens upon dozens of
2 times, and they use them in response to completely recurring
3 predictable protest activity, not anything that takes them by
4 surprise.

5 If ever there was a case where the government had time
6 to deliberate, it is here where they are doing the same conduct
7 in response to the same activity over an eight-month period.

8 Your Honor, as I mentioned, it was several times a
9 week that they were using munitions over the summer of 2025.
10 And then on September 27th, 2025, the President released this
11 announcement that he was planning to send the National Guard to
12 Portland, which he described as, quote, war ravaged, or a war
13 zone.

14 In an effort to bolster the President's -- and
15 substantiate the President's statement that Portland was a war
16 zone and war ravaged and needed the National Guard, defendants
17 orchestrated, arranged with a flock of conservatives who are
18 called influencers that have huge social media followings to
19 descend upon the ICE facility and to capture content that they
20 could use for propaganda purposes.

21 If we could pull up -- and ICE gave these influencers
22 special access to the facility itself. If we can -- and we have
23 a printout for you, Your Honor, but we'll also put it on the
24 screen, Exhibit 23, and this is appended to the Jacobson
25 declaration, 46-3.

1 The man on the left there taking a photo, this is from
2 the roof of the ICE facility, is an influencer named Nick
3 Sortor. The man standing to his right is one of the defendants'
4 declarants in this case, Chief Sullivan from CBP.

5 If we could pull up Exhibit 24, which is also appended
6 to the Jacobson declaration, ECF 46-3.

7 Posing here on top of the ICE facility on the left is
8 a reporter from a media outlet called the Post Millennial, which
9 is a very conservative outlet. Her name Katie Davis court on the
10 left. And on the right is an influencer named -- or who goes by
11 Honey Badger Mom.

12 These were not the only influencers that were given
13 access to the facility. And defendants not only gave them
14 access, they put on a show for them to make the content seem
15 even more dramatic, and that show was using chemical munitions
16 in a way that grievously harmed many of our plaintiffs in this
17 case, and the influencers then did their part to post it.

18 On the afternoon of October 4th, defendants flew Black
19 Hawk helicopters over the ICE facility and then they shot large
20 amounts of teargas on a crowd that was simply milling about
21 outside on the street, not in the driveway.

22 And if we would pull up Exhibit 27, which is attached
23 to the Jacobson declaration, ECF 46-3.

24 During that incident here, we have a Tweet from one
25 of those influencers who we just saw, Nick Sortor, saying

Opening Statement by Mr. Jacobson

1 "Breaking. DHS has deployed" -- all caps -- "Black Hawks over
2 the ICE facility in Portland as rioters get teargassed and
3 pepper-balled by agents."

4 And then if you skip down a little bit, it says "Looks
5 like she's following through," referring to Secretary Noem.
6 Quote, "No Mercy," all caps.

7 There's a similar post from a different influencer
8 called Ben Bergquam at Exhibit 25, which is at ECF 46-3.

9 And as we show in Exhibit 28, which is attached to
10 ECF -- the Jacobson declaration again -- this is 28, if we could
11 look at it. The White House -- we won't play the video,
12 Your Honor. They released -- this is from the official White
13 House X account.

14 If you scroll up -- I don't know if we can scroll up,
15 Taylor.

16 You can't quite see it here, but this was reposted
17 from the White House's official account, and they posted a video
18 montage of clips from outside the ICE facility, including
19 showing teargas and smoke grenades, to present it as a dramatic
20 scene. And most of those clips were taken by Katie Davis court,
21 one of the influencers we just saw posing on the roof. This is
22 the White House posting it.

23 It gets worse.

24 On the evening of October 4th, 2025, and truly one of
25 the most shocking things the Court will ever see, and we'll talk

1 about this a lot today, the White House released -- I mean, not
2 the White House. I'm sorry. Defendants released massive
3 amounts of teargas right next to Gray's Landing, and they did it
4 so they could produce a propaganda video they could post on
5 their Instagram account.

6 THE COURT: That was which day, please?

7 MR. JASZEWSKI: October 4th, 2025, the evening. There
8 was an afternoon incident that day, and then there was an
9 evening incident.

10 As I mentioned, we'll show a lot of evidence for that
11 night. For now, I would like to just show a clip from an Oregon
12 Public Broadcasting video and also from an article posted the
13 same day by the same authors.

14 Exhibit 20, which is appended to the Jacobson
15 declaration, again, is the article. That article describes that
16 on this night, quote, Federal officers were flanked by
17 videographers toting professional equipment and wearing
18 high-visibility vests.

19 Now we'll watch a clip attached to that article from
20 Oregon Public Broadcasting showing what the officers did that
21 night while they were flanked by, quote, videographers.

22 If we could go -- this is Exhibit 19, Your Honor,
23 again, appended to the Jacobson declaration.

24 If we could go to the 42 second mark and play it to
25 around the 2:20 mark.

1 (Video played.)

2 MR. JACOBSON: If we could go back to the 1:30 mark
3 and just keep it paused.

4 Your Honor, this is from right around what we saw was
5 a clip of an officer just casually lobbing a teargas canister
6 about 15 feet away. We'll watch this again later.

7 But what I'll note for your officer [sic] is that when
8 the video mentioned that they were around the corner of Bond and
9 Bancroft Street, that's right here, the southeast corner of
10 Gray's Landing.

11 The building you see in the back on the top right side
12 of the screen, that's Gray's Landing right here. All of that
13 gas went and got sucked into Gray's Landing that night, and some
14 of our plaintiffs will describe the injuries they suffered. And
15 as we'll show later, it is irrefutable that all of this happened
16 to put together an Instagram video that DHS could post on its
17 official Instagram account.

18 And this video, Your Honor, shows the elements I
19 talked about earlier. The officers were facing no threat as
20 they were slowly marching people down the street, they acted
21 with time to deliberate and made a deliberate choice, and they
22 acted in a manner that shocks the conscious with deliberate
23 indifference to all the residents several feet away in that
24 building.

25 Your Honor, plaintiffs filed this lawsuit on

1 December 5th, 2025, but defendants were on notice that chemical
2 munitions were affecting the residents of Gray's Landing even
3 before that.

4 In early June, a Reach -- Reach Community Development,
5 which is one of the plaintiffs in this case that manages the
6 building, one of their employees named Christine Piggott walked
7 up to several officers one afternoon standing outside the ICE
8 facility and told them that their use of teargas and other
9 chemical munitions was seriously injuring her, other staff in
10 the building, residents in the building.

11 What did they say in response? They literally laughed
12 at her. They said, "Oh, no, no. It must be your allergies.
13 All the gas we use is, quote, environmentally friendly," as if
14 this was all a joke.

15 That's described, Your Honor, in the paragraph 5 of
16 the Piggott declaration which is ECF 46-13.

17 Defendants were also on notice from a lawsuit that a
18 Gray's Landing resident filed in August of 2025, which in
19 addition to describing the noise, because it was a noise
20 ordinance lawsuit to try to stop the noise, that lawsuit also
21 described the, quote, "nearly nightly toxic environment" that
22 the officers' use of chemical munitions was causing to residents
23 of Gray's Landing. That was in August before this video.

24 THE COURT: That suit, that was filed in Multnomah
25 County?

Opening Statement by Mr. Jacobson

1 MR. JACOBSON: I believe that's -- it was in state
2 court, Your Honor. Yes.

3 THE COURT: And was it filed by some of your same
4 clients?

5 MR. JACOBSON: No. It was one -- my understanding is
6 it was one individual resident who filed it, but not any of our
7 plaintiffs.

8 THE COURT: Do you know the name of that case?

9 MR. JACOBSON: Your Honor, the case is described in
10 Exhibit 32, which is appended to the Jacobson declaration, 46-3.
11 I can find it during -- you know, when I'm not talking,
12 Your Honor, and present it later.

13 THE COURT: Thank you.

14 MR. JACOBSON: Beyond this concrete notice, there's
15 also the fact that Gray's Landing is a massive apartment complex
16 that officers could obviously see with their own eyes when they
17 were using these munitions.

18 And, in fact, one of defendants' declarants in this
19 case, Mr. Cantu, testified at his deposition that it was obvious
20 that Gray's Landing was an apartment complex. That's at the
21 Cantu deposition transcript, page 23, line 9, to page 24,
22 line 2.

23 And in any event, defendants were certainly on notice
24 about the harm they were causing to residents after we filed
25 this lawsuit in December.

1 In fact, on January 22nd, 2026, three declarants,
2 senior DHS officials, filed declarations in this case and that
3 were attached to defendants' opposition to our original
4 preliminary injunction motion. So quite obviously they knew
5 about this case, they knew what was alleged, they knew what the
6 plaintiffs were, and they knew the harms they were causing.

7 And in those declarations and in that opposition,
8 defendants made much of the fact that there hadn't been teargas
9 released in mass quantities since late October 2025. The
10 obvious reason for that, Your Honor, is that in November and
11 December, the weather got quite cold and rainy, so the
12 protesters died down. But nevertheless, defendants made much of
13 this fact in their opposition to our original injunction.

14 Well, two days after they filed that opposition, Alex
15 Pretti was killed in Minneapolis. That was on January 24th,
16 2026. That evening, there were protests outside the ICE
17 facility, and defendants deployed teargas six different times
18 that night spaced out almost perfectly in hour intervals. The
19 second to last time, defendants came out, and in their words of
20 one of their declarants, quote, saturated the area with teargas
21 and smoke. That's at paragraph 27 of Mr. Cantu's declaration.

22 Starting on that night, January 24th, over the course
23 of nine days, from then until February 1st, defendants deployed
24 heavy amounts of teargas five different times in nine days, and
25 on many of those days, multiple times within the day.

Opening Statement by Mr. Jacobson

1 On January 30th, 2026, literally as we were filing our
2 preliminary injunction brief that night -- that night,
3 defendants deployed teargas against a crowd that was simply
4 standing peacefully in the street.

5 If we can pull up Exhibit 46, and this is appended to
6 the Jacobson declaration at ECF 46-3.

7 And play the first 50 seconds, and this will be, like,
8 my last video, Your Honor.

9 (Video played.)

10 MR. JACOBSON: We can stop it there.

11 What I can tell you is if you keep watching that,
12 Your Honor, there's more teargas that starts flowing down that
13 was deployed later farther down the street.

14 This video standing alone proves our case, Your Honor.
15 The officers -- this was on January 30th. Everybody knew the
16 harm that was being caused to Gray's Landing residents. There
17 is no doubt that they were on notice.

18 The officers walked slowly out of those gates with a
19 plan to use teargas. They deliberated upon it, they had a plan,
20 and they executed it, and they did it when they were facing no
21 threat at all. We can all see it with our eyes, that those
22 people were just standing on the street.

23 I'd like to conclude my opening, Your Honor, with
24 talking about the most important people in this case, who are
25 the residents of Gray's Landing that are plaintiffs. And in

1 particular, I'd like to speak very briefly just about the
2 residents who are not here to testify today.

3 Plaintiff Jane Doe lives right here on the southwest
4 corner of the Gray's Landing complex closest to the ICE
5 facility. She is a long-time domestic violence survivor. Her
6 abuser once shot her in the head pointblank with a gun, and she
7 survived, and she suffers from incredibly -- PTSD.

8 Every time the officers, federal officials, use these
9 munitions outside her apartment, the PTSD gets triggered. On
10 several occasions, as she describes in her declaration, she's
11 run to hide in her closet and to sleep there, but she's so
12 overwhelmed she's urinated on herself.

13 She lives in that apartment with her young daughter,
14 who was pregnant when this case started, but tragically has now
15 lost the pregnancy.

16 Plaintiff Whitfield Taylor also lives on the southwest
17 corner closest to the ICE facility. He lives there on behalf of
18 his two daughters, who are also plaintiffs to this case, and
19 they are age 7 and 9.

20 In his declarations, he describes how the teargas
21 inevitably gets into his building despite all of his best
22 efforts to put wet towels under the door, seal the windows, how
23 his daughters have gotten sick and he's had to take them to
24 urgent care, and how his daughters, because they're so scared,
25 have taken to sleeping in his closet of his bedroom and building

1 a fort that they hide under just to feel some sense of safety.

2 Plaintiff Susan Dooley is a 72-year-old Air Force
3 veteran who suffers from fibromyalgia, asthma, and diabetes, and
4 has to use a walker to get around. She lives up here on Moody
5 Avenue.

6 Her experience was particularly bad with the
7 teargassings in October when defendants were putting on a show
8 for the influencers. She describes in her declaration how she
9 fell four different times that month from the exposures when she
10 got dizzy. She describes how she's had respiratory problems,
11 shortness of breath, and even to this day she slurs her speech.
12 That was not the case before all this happened.

13 Plaintiff Janice Lineberger lives overlooking the
14 courtyard of Gray's Landing. She is also an elderly resident of
15 Gray's Landing. She described how the chemical munitions have
16 caused her constant dizziness, headaches, and burning in her
17 eyes and throat. She even describes how her voice now sounds
18 like she was a chain smoker for decades. It never used to be
19 like that before.

20 Finally, Plaintiff Roy Brooks lives here at Moody
21 Avenue. He suffers from muscular dystrophy, Your Honor. What
22 that means, that when he loses muscle tone because of stress or
23 lack of sleep, that muscle loss is permanent. The muscle can't
24 grow back. He describes how that's happened as a result of
25 defendants' actions.

Opening Statement by Mr. Holt

1 liberty or property interest, and the evidence you hear today
2 will not change the fact that the conduct at issue, law
3 enforcement's use of crowd control tactics to disperse unlawful
4 crowds, does not even come close to shocking the conscious.

5 Plaintiffs ask this Court to accept their novel,
6 unprecedented substantive due process theory. The Court should
7 decline plaintiffs' invitation and this Court should deny
8 plaintiffs' motion for preliminary injunction.

9 Thank you.

10 THE COURT: Thank you, Mr. Holt.

11 At this time, would plaintiffs like to call their
12 first witness?

13 MR. JACOBSON: Your Honor, if it's okay, we'll move
14 the demonstrative over there --

15 MR. DUBNER: And plaintiffs will call to the stand
16 Ms. Diane Moreno.

17 Your Honor, given the location of the witnesses, is it
18 okay to conduct the exam from here?

19 THE COURT: Certainly. Wherever you're most
20 comfortable.

21 MR. DUBNER: Thank you, Your Honor.

22

23 DIANE MORENO,

24 having been first duly sworn or affirmed, is examined and
25 testifies as follows:

1 THE CLERK: Please have a seat.

2 State your name and spell it.

3 THE WITNESS: My name is Diane Moreno. D-i-a-n-e, and
4 my last name, M-o-r-e-n-o.

5 THE COURT: When you're ready.

6

7

DIRECT EXAMINATION

8

BY MR. DUBNER:

9

Q. Good afternoon, Ms. Moreno.

10

A. Hi.

11

Q. Have you ever testified in court before?

12

A. No.

13

Q. Have you ever been a plaintiff in a lawsuit before?

14

A. No.

15

Q. So I just want to give you a couple sort of

16

guidelines.

17

First, the court reporter is transcribing your

18

testimony. So for her sake, please answer any questions

19

verbally instead of nodding or shaking your head.

20

A. Yes.

21

Q. And let's try not to talk over each other. All right?

22

A. Yes.

23

Q. Could you tell the Court where you live?

24

A. I live at Gray's Landing.

25

Q. How long have you lived at Gray's Landing?

1 A. Roughly four years.

2 MR. DUBNER: And permission to approach a little bit,
3 Your Honor?

4 THE COURT: Yes. Feel free to move about.

5 BY MR. DUBNER:

6 Q. I'd like to direct your attention to the photo here,
7 which is Exhibit 21 attached to the Salazar declaration at 46-4.

8 Do you recognize this building?

9 A. Yes.

10 Q. What is it?

11 A. It's Gray's Landing.

12 Q. Could you point out where on the building your
13 apartment is?

14 A. It's just inside the courtyard right here on the
15 fourth floor.

16 Q. And for the record, are you pointing to the west side
17 of the building's courtyard near the south end?

18 A. Yes.

19 Q. What floor do you live on?

20 A. Fourth.

21 Q. And what is the building in the bottom left corner of
22 the picture here?

23 A. That's the ICE facility.

24 Q. About how far from your part of the Gray's Landing
25 building would you say that is?

1 A. Less than 80 feet.

2 Q. Have there been protests outside Gray's Landing in the
3 recent months?

4 A. Yes.

5 (Discussion held off the record.)

6 MR. DUBNER: Apologize for the crackle.

7 BY MR. DUBNER:

8 Q. Sorry, Ms. Moreno.

9 Have there been protests outside Gray's Landing in
10 recent months?

11 A. Yes.

12 Q. Around when did they start?

13 A. Around June.

14 Q. How has the federal government responded to those
15 protests?

16 A. With teargas, pepper balls, rubber bullets, loud
17 speakers, flash bangs, various forms of chemicals and crowd
18 control measures.

19 Q. Over the course of the time since they started using
20 them, about how often would you say that you've seen them or
21 experienced them using them?

22 A. At least 20 times. Like, too many to count at this
23 point. It all blurbs together a lot.

24 Q. How has the government's use of those chemical weapons
25 and other munitions affected you?

1 A. There's been multiple nights I've had to spend nights
2 in the bathtub or even not at home, getting hotel rooms because
3 of the teargas in the neighborhood and in the home is so bad,
4 multiple nights in the bathtub with a towel under the door with
5 my cat with the fan on, because there's no windows in our
6 bathrooms, so it's the best place.

7 Q. And you said the gas gets into your home. Can you
8 talk a little bit more about what that's like?

9 A. It causes eye irritation, coughing, my eyes water,
10 nose. I've had sinus problems. Just sitting in your own home,
11 there's no air flow and it's hard to breathe when there's
12 teargas in there.

13 Q. And do you have a sense from your perspective of how
14 the teargas gets into your home?

15 A. One reason I've seen it is through the parking garage
16 on the street on the side that faces the ICE facility. There's
17 been nights where teargas canisters have rolled into the parking
18 garage.

19 Q. Can you show on the map where roughly the garage is?

20 A. It's right here, right -- basically where that car is
21 at, and they come out right here, and it's underneath. It's a
22 basement garage.

23 Q. And for the record, are you pointing to the western
24 Moody Street side of the building toward the south?

25 A. Yes.

1 Q. You described some of the physical reactions you get
2 when teargas gets into your apartment.

3 About how long did those tend to last?

4 A. Couple weeks. I am still dealing with some issues
5 from the previous time of teargas getting in there. I've been
6 very hoarse, stuffed up, different respiratory problems.

7 Q. Have you ever sought medical treatment for what you've
8 been experiencing from teargas?

9 A. Yes. I've gone to urgent care several times due to
10 respiratory problems.

11 Q. And have they prescribed any medications or anything
12 of the sort?

13 A. Yes. They gave me a steroid inhaler called
14 Fluticasone, and as well as an inhaler for asthma and
15 respiratory -- Albuterol.

16 Q. Had you needed either of those medications before the
17 teargas started?

18 A. No.

19 Q. Did they make any other recommendations to you?

20 A. Not to be in teargas.

21 Q. And you're sort of laughing a little bit about that.
22 Can you say why that's kind of --

23 A. Because I don't have a choice. I don't go out there
24 and get in the teargas. I get it in my home.

25 Q. In your declaration, you refer to a medical condition

1 called Cushing's disease. Could you explain what that is?

2 A. Yeah. Cushing's is the overproduction of cortisol
3 caused by tumors in your endocrine system, either your pituitary
4 or adrenal glands. The overproduction is -- normal level of
5 high cortisol is 45. I was in the hundreds up until a couple
6 years ago. This year my cortisol was 258.

7 Q. And what symptoms do you get from having periods of
8 high cortisol like that?

9 A. Cognitive dysfunction, muscle weakness. It also eats
10 muscles, causes muscle breakdown. Your heart is a muscle, so
11 you can have heart problems. Like I said, cognitive
12 dysfunction. You can also have -- just general stress on your
13 life causes your symptoms to get worse. There's days that it's
14 just very hard for me to get out of bed from the pain.
15 Different things.

16 Q. And if you need any water or anything, please just let
17 me know.

18 A. I appreciate it.

19 Q. And how has the teargas affected your Cushing's
20 disease?

21 A. I'm not supposed to stress, and not being able to go
22 home some nights or being home and having to find somewhere to
23 go, or even just being stuck there because I don't have the
24 money to where I can't get out because it's not safe, it's very
25 stressful. Not feeling safe and happy in your own home is a big

1 stressor and that is a big reason due to teargas.

2 Q. Had you ever had cortisol spikes up to, as you were
3 saying, the 200s before the teargas started?

4 A. No.

5 Q. What sort of long-term or severe risks, if any, does
6 having those sorts of extremely high levels cause for you?

7 A. You can have heart attacks, a stroke. You have an
8 increased risk of stroke, heart attacks, muscle weakness, muscle
9 degradation, so your muscles break down. Also cognitive issues,
10 mental dysfunction is a big one, especially if you're not -- if
11 you're already physically stressed out and then add mental
12 stress, it doesn't go well together.

13 Q. Do you plan to get any medical treatment to deal with
14 those risks?

15 A. Yes, I have surgery planned on March 9th.

16 Q. And could you say a little more about what that
17 surgery is?

18 A. Yes. Because I've had two brain surgeries before and
19 my cortisol has been so high, they recommended removing my left
20 adrenal gland, your adrenal glands make cortisol in your body.
21 Your pituitary glands tell --

22 THE COURT REPORTER: Please slow down for me.

23 THE WITNESS: So your pituitary tells your adrenal
24 glands to make cortisol, so they recommended removing my left
25 adrenal gland to limit my body's ability to make cortisol.

1 BY MR. DUBNER:

2 Q. And so what risks, if any, does having your adrenal
3 gland removed create?

4 A. So I will basically trade Cushing's for Addison's
5 disease. When I have my left adrenal gland removed, my right
6 one will cease to function. It has to reboot, in a way. It's
7 not -- it will have to overcompensate for missing one.

8 So I won't be making any cortisol, which is -- it can
9 be deadly. If you miss a dose of hydrocortisone, you can go
10 into heart failure and your blood pressure drops within a few
11 hours. It's called an Addison crisis.

12 Q. And about how long does that period last?

13 A. It could be anywhere from two weeks to three months
14 after the surgery.

15 Q. And then after that time, you said you'll be getting
16 your left adrenal gland removed, is it possible you would have
17 to have both --

18 A. Yes.

19 Q. -- removed?

20 And in what circumstance might that be necessary?

21 A. If my cortisol production doesn't -- if my other
22 adrenal gland starts to produce and it produces, it can produce
23 too much as well. There is cases where even with one it can
24 take over the job of your left one. So if I still have high
25 cortisol, I will be taking my other adrenal gland, which means I

1 will have Addison's disease and will make no cortisol or any
2 kind of steroids or hormones necessary for vital functions of
3 your body.

4 Q. And you said before the -- after the surgery was a
5 range of weeks to months. How long would this be if you do need
6 to get them both removed?

7 A. It would be indefinite.

8 Q. And why are you -- why did you choose to get the
9 surgery now?

10 A. I don't have a choice. My body is not doing well.
11 I've been -- I've had high cortisol for a couple years now and
12 it's very detrimental to my health. I have high blood pressure,
13 different various things.

14 Q. You've said that there are protests outside Gray's
15 Landing. Are those also stressful?

16 A. Yes.

17 Q. Is the stress from the government's use of chemical
18 weapons and other explosive munitions different from the stress
19 of the protesters?

20 MS. JACOBS: Objection. Leading.

21 THE COURT: Overruled. I'll allow it.

22 THE WITNESS: No.

23 BY MR. DUBNER:

24 Q. And let me rephrase the question.

25 In terms of your high cortisol levels, what over the

1 last several months do you attribute them to most?

2 A. The noise, the chemical weapons, the not being able to
3 get home safely. It's kind of a mix of everything.

4 Q. Yeah.

5 And when you say "not being able to get home safely,"
6 what is it that makes you feel unable to get home safely?

7 A. There's been nights I've been hit by rubber bullets in
8 the crowd. There was a day that there was no parking on the
9 south waterfront and I had to park down the road, down Corbett
10 neighborhood, and the only way for me to get home was to walk by
11 the ICE facility through the crowd. I was almost to my house at
12 that point, I was across the street, and I was hit from behind
13 with rubber bullets and then turned around to be hit with more
14 because I wasn't sure what was going on. I did not realize I
15 was being hit with rubber bullets at the time.

16 Q. And why don't we turn to that.

17 Roughly, what date was that?

18 A. That -- there's multiple dates for those.

19 Q. We want to start with the one you were just talking
20 about.

21 A. That was October -- or January 26th. Or 24th, I
22 believe. I'm sorry. My days are a little mixed up when I can't
23 get sleep.

24 Q. Yeah.

25 So you were talking -- why were you walking towards

1 the building at that time?

2 A. There's people from -- there's a park down the road
3 from our house that a lot people start the march for the protest
4 at, and then they come down both ways on the -- on the one-ways.
5 So I was not able to get home or find parking just due to the
6 sheer amount of people.

7 Q. And you said that you were -- can you point out
8 roughly where you were when you were hit by rubber bullets?

9 A. I was about right here (indicating).

10 Q. And you're -- are you pointing to the lower left
11 corner of Gray's Landing?

12 A. Yes.

13 Q. Did you -- could you see where those rubber bullets
14 were fired from?

15 A. Yes. Just outside of the street outside of the ICE
16 facility.

17 Q. And were you also exposed to any teargas around that
18 time?

19 A. Yes. Multiple canisters.

20 MS. JACOBS: Objection. Leading.

21 BY MR. DUBNER:

22 Q. Can you talk a little bit about what you observed
23 regarding the teargas?

24 A. I saw green smoke, white smoke, orange smoke, as well
25 as flash bangs.

1 Q. And what did you experience physically?

2 A. Coughing, eye irritation, skin irritation, respiratory
3 problems, sinus issues.

4 Q. I'm going to show you what's labeled as Plaintiffs'
5 Exhibit 71, which is in paragraph 11 of your declaration at
6 ECF 46-10.

7 Sorry. This is Exhibit 70.

8 Do you recognize this photo?

9 A. Yes.

10 Q. Sorry.

11 A. Oh.

12 Q. We'll stick with this one.

13 This is Exhibit 71, again, from paragraph 11 of
14 ECF 46-10.

15 Could you say what this photo is?

16 A. It's a picture of my right knee, inside of my knee.

17 Q. And what is -- what is shown on the picture?

18 A. A rubber bullet wound.

19 Q. About how long did that bruising last?

20 A. Three weeks. I still -- as I showed you the other
21 day, it's still visible to this day very, very light. But it's
22 now healing.

23 Q. And about how many bruises did you have after being
24 shot by rubber bullets?

25 A. Five -- five to six.

1 Q. And could you describe where all you were hit?

2 A. I was hit in my groin area, my arms, my legs, my back,
3 several areas on my arms.

4 Q. Could you describe how painful it was?

5 A. It was very painful.

6 I also use my legs for work, so working with a bruise
7 in the crook of my knee was very difficult for a week.

8 Q. And the -- you said that when they -- the people who
9 shot you were standing roughly outside of the ICE facility,
10 where was the teargas fired from?

11 A. It was also fired from the same vicinity. There were
12 also officers right here on the train tracks firing canisters.

13 Q. And how close to Gray's Landing did the canisters land
14 and start releasing?

15 A. One of them hit the window, broke out the window.
16 There was several on the property.

17 The window was not that day. I'm sorry. Let me
18 rephrase that. That was not that day. The window was a couple
19 days later. That day was just the ones on the property. My
20 apologies for the mistake.

21 Q. Thank you for clarifying.

22 A. Uh-huh.

23 Q. We'll talk about that and the other incident you
24 mentioned in a moment.

25 But first, I wanted to read you a paragraph from the

1 declaration of a DHS employee named Roberto Cantu and I'm going
2 to ask if you have any basis to dispute it.

3 This is paragraph 33 from ECF 50-1?

4 MR. DUBNER: And if you could enlarge that, Taylor,
5 please. Thank you.

6 BY MR. DUBNER:

7 Q. And I'll tell you, for the record, "FPS" stands for
8 federal protective services.

9 "FPS authorizes its personnel to use riot control
10 agents against specific subjects engaged in unlawful conduct or
11 otherwise actively resisting arrest. FPS does not permit the
12 use of OC spray indiscriminately against groups of people where
13 bystanders would be unreasonably affected or against individuals
14 not involved in criminal acts. Whenever reasonably possible, a
15 verbal warning is issued prior to the use of riot control
16 agents."

17 In your experience, does that accurately describe how
18 the federal government has used riot control agents in response
19 to the protests?

20 A. Absolutely not.

21 Q. How do you know?

22 A. Because I've been witness to it. I've not been given
23 warnings. I have been several blocks from my home in previous
24 incidents and been teargassed with no warning and no kind of
25 idea of what was happening.

1 Q. And were you involved in any criminal activity when
2 you were shot with rubber bullets and teargassed on
3 January 24th?

4 A. No.

5 Q. Were you resisting arrest?

6 A. No.

7 Q. You also mentioned October 4th -- sorry to be jumping
8 around in time a little bit, but if you can describe what
9 happened to you on that day.

10 A. October 4th was the worst day I have dealt with in the
11 times of the teargas.

12 I was already experiencing it inside. I called my
13 partner to come pick me up. I knew it was going to get bad. I
14 needed to get me and my cat out of there before it got bad.

15 I asked for him to meet me at this location, kind
16 of --

17 THE COURT: Excuse me. Could you please move that
18 diagram? I'm having difficulty seeing.

19 (Discussion held off the record.)

20 THE WITNESS: As I said, I asked my partner to meet me
21 right here, as the protesters were blocking this part of the
22 road and this part of the road.

23 I came out of the front door of Gray's Landing, which
24 is on this side, the opposite side of ICE, and all chaos broke
25 loose. There were protesters coming from this road, this road,

1 and just everywhere screaming "ICE is coming."

2 I tried to go down this way, got blocked by ICE and
3 flash bangs. I cut through a courtyard that goes through this
4 building and popped out down here by the OHSU building, all
5 while teargas and ICE agents were pushing on each -- all the way
6 down to here and multiple canisters were going, as well as
7 canisters on this side and flash bangs. And then they pushed
8 this way and kind of cut -- they corralled everybody down to
9 this little area.

10 He picked me up down here at the building, retching,
11 almost throwing up, mucus coming out of everywhere. I got hit
12 with so many teargas and rubber bullets that night and flash
13 bangs, it was very disorientating and confusing. I had no idea
14 where -- what was going on. I had to figure out where even on
15 the street I was at that point because the smoke was so thick.

16 BY MR. DUBNER:

17 Q. And when you saw the officers firing teargas that
18 affected you, about how far away from you were they?

19 A. They were within 50 feet, I'd say.

20 Q. Did you receive any warning before being subject
21 either to teargas or rubber bullets?

22 A. No.

23 Q. Do you have any reason to think that they were -- that
24 they hit you on purpose?

25 A. Yes.

1 Q. And what is that?

2 A. I saw them look at me as they were hitting me. I said
3 multiple times, "I live in the building. I'm just trying to
4 leave."

5 Q. And let's compare this to Mr. Cantu's claim again.

6 Were you engaged in unlawful conduct?

7 A. No.

8 Q. Were you resisting arrest?

9 A. No.

10 Q. And also in your declaration, I believe you said you
11 went east on Bancroft Street.

12 Now that you're looking at a map, do you have a sort
13 of slightly different recollection of the geography?

14 A. Yes.

15 Q. And could you explain a little bit -- you said a
16 moment ago -- explain a little bit more about why you were
17 confused about the streets.

18 A. Because of the gas and everything that happened,
19 because they were coming from every way.

20 Q. Yeah.

21 And aside from that, do you affirm everything that's
22 in your declaration?

23 A. Yes.

24 Q. And then one last subject for you, Ms. Moreno.

25 You referred to a window breaking --

1 A. Yes.

2 Q. -- in January.

3 Could you describe what happened then?

4 A. Yes.

5 I was sitting in my home. It was another day of
6 teargas and just chaos of the day. I smelled the teargas at
7 first, and then I'd heard a large bang and people screaming.
8 Come to find out, the neighbor's window was broken out a floor
9 below me.

10 Q. And do you have an understanding how the neighbor's
11 window broke?

12 A. With a rubber bullet, was from my understanding.

13 Q. And do you have any sense of where rubber bullets or
14 other munitions were being fired from that day?

15 A. From the ICE facility on the street.

16 MR. DUBNER: Thank you, Ms. Moreno. Appreciate your
17 time.

18 THE COURT: Cross-examination?

19 MS. JACOBS: Yes, Your Honor.

20

21 CROSS-EXAMINATION

22 BY MS. JACOBS:

23 Q. Hi, Ms. Moreno.

24 A. Hi.

25 Q. My name is Kathleen Jacobs, and I am here from the

1 Department of Justice and represent the defendants in this case.

2 I had a couple of questions to go over related to the
3 testimony that you just gave, but I just wanted to make sure
4 that I am clear, you have not submitted medical records within
5 the scope of this litigation and along with your declaration; is
6 that correct?

7 A. No.

8 Q. No, you have not?

9 A. No. I have not been asked to.

10 Q. Okay. And -- okay.

11 Next, I would like to ask you one question
12 about -- what date was it that you said the neighbor's window
13 had gotten broken?

14 A. It would have been January 31st.

15 Q. Okay. But you didn't include that information in your
16 declaration; correct?

17 A. I did the declaration before that happened.

18 Q. Okay. And then whenever you were testifying, I
19 believe it was related to October 4th, you described it as
20 chaotic.

21 Do you recall that?

22 A. Yes.

23 Q. And, in fact, you used that in the context of
24 describing protesters were everywhere. Is that accurate?

25 A. Yes.

1 Q. And so it would be safe to assume, then, that it
2 wasn't the most quiet of evenings; is that correct?

3 A. That's not why I said the protesters were everywhere.

4 Q. That's -- yes.

5 But you would agree with me, if it's chaotic,
6 protesters are everywhere, would you say that the environment
7 was loud?

8 A. Yes.

9 Q. Okay. So to the extent a warning could have been
10 given, it could have been that you just could not have heard it;
11 is that correct?

12 A. No. They would have used a loud speaker, as they have
13 in the past.

14 Q. And earlier in your testimony you said, "I don't go
15 out there. I get it in my home."

16 And if I recall correctly, your apartment faces the
17 interior of the courtyard; is that correct?

18 A. Yes.

19 Q. And so you have not been present outside the ICE
20 facility to specifically view whatever is occurring for law
21 enforcement to deploy various munitions; is that right?

22 A. I did not say I never go out there. There are times
23 that I go, if things are getting loud, to judge the situation.
24 So there has been multiple times that I have viewed them fire
25 off teargas.

1 Q. Okay. But you did not include any of that
2 information, then, in your declaration; correct?

3 A. I think I did say a couple times I saw them --

4 Q. But you would agree with me that many times you were
5 not viewing exactly why a particular law enforcement officer
6 would be deploying munitions; is that correct?

7 A. Yes. I also have a live cam that my neighbor has that
8 I'm able to view at any time too before.

9 Q. Okay. But you didn't include that information in your
10 declaration?

11 A. No.

12 Q. And you're not a trained law enforcement officer; am I
13 right?

14 A. No.

15 Q. And you don't have training with munitions; correct?

16 A. No.

17 Q. And, in fact, you could agree with me that you do not
18 know every instance -- or you do not know necessarily the reason
19 why a particular law enforcement officer would be utilizing
20 various munitions in response to unlawful conduct; correct?

21 A. Yes.

22 Q. And in your declaration, you stated in paragraph 17,
23 "I understand that protests have sometimes caused damage"; is
24 that correct?

25 A. Yes, in the beginning.

1 Q. And when we refer to "cause damage," you can agree
2 with me that that would be unlawful activity; correct?

3 MR. DUBNER: Objection. Calls for a legal conclusion.

4 THE COURT: I'm going to allow her to answer it.

5 Go ahead. You can answer that question.

6 THE WITNESS: I would say spray painting doesn't
7 include that kind of force. That's the damage that I've seen,
8 is spray painting.

9 BY MS. JACOBS:

10 Q. Okay. And you don't know spray painting to be
11 unlawful?

12 A. Yes, it's unlawful.

13 MS. JACOBS: Okay. I'll pass the witness.

14 THE COURT: Thank you.

15 Redirect?

16 MR. DUBNER: No redirect, Your Honor.

17 Thank you, Ms. Moreno.

18 THE COURT: Thank you, Ms. Moreno. You may step down.

19 We need to take a break for a technical reason,
20 please.

21 (Recess taken from 2:06 to 2:10.)

22 THE COURT: Okay, folks. We're going to get started
23 again in just a couple of minutes.

24 Thanks, Pat.

25 Okay. Whenever you're ready, if you could call your

1 next witness, please.

2 MS. EISENBERG: Thank you, Your Honor. Plaintiffs
3 call Dr. Rama Rao.

4 THE WITNESS: Hello. Are you able to hear me okay?

5 THE COURT: We can. Thank you.

6 Hi. Good afternoon. This is the judge speaking.

7 If could please raise your right hand.

8

9 DR. RAMA RAO,

10 having been first duly sworn or affirmed, is examined and
11 testifies as follows:

12 THE COURT: Very well. Thank you.

13 If you could please state your full name for the
14 record and spell your last name.

15 THE WITNESS: My name is Rama B. Rao.

16 Would you like me to spell it, you said?

17 THE COURT: Yes. Just the last name, please.

18 THE WITNESS: R-a-o, like orange.

19 THE COURT: Thank you.

20 When you're ready, Counsel.

21 MS. EISENBERG: Thank you very much, Your Honor.

22

23 DIRECT EXAMINATION

24 BY MS. EISENBERG:

25 Q. Thank you for being here, Dr. Rao.

1 Can you please tell us your current position?

2 A. I am the associate professor of clinical emergency
3 medicine at Weill Cornell Medicine for the New York Presbyterian
4 Hospital and chief of the division of medical toxicology.

5 Q. What is medical toxicology?

6 A. Medical toxicology, the way I practice in clinical
7 toxicology is understanding how chemicals affect the body, how
8 people get injured or sick, how to diagnose it, how to treat it,
9 and, importantly, how to prevent illness from chemical
10 exposures.

11 Q. Thank you.

12 Can you briefly describe your educational and
13 employment background as relevant to this case?

14 A. Sure.

15 I went to undergraduate at the State University of New
16 Jersey. I then went to medical college at Mount Sinai, which is
17 now the Icahn School of Medicine. I trained at Albert Einstein
18 School of Medicine and Emergency Medicine, performed my
19 residency there, and then two years in medical toxicology
20 fellowship. After that, I -- additional time in Bellevue, NYU,
21 and I came to my current position.

22 Q. Thank you.

23 Have you studied the effects of teargas on people?

24 A. Yes, I have.

25 Q. And have you studied how chemicals like teargas move

1 through the air?

2 THE COURT: Can you pause for a moment? I'm getting
3 feedback.

4 (Discussion held off the record.)

5 THE COURT: You're a fast talker. So take a deep
6 breath. Everything you have to say is important.

7 MS. EISENBERG: Admittedly, that was my version of
8 slow, but I will try very hard to go more slowly.

9 BY MS. EISENBERG:

10 Q. So I think what I was saying was, have you studied how
11 chemicals like teargas move through the air?

12 A. Yes. It's -- in fact, I taught a course in
13 environmental medicine where we studied pollutants and other
14 chemicals that people could inhale.

15 MS. EISENBERG: And for the record, Dr. Rao included a
16 more fulsome description of her relevant education and
17 employment background in her declaration, which is at
18 Exhibit 35, which is at ECF 46-5, beginning at page 37.

19 And, Your Honor, for purposes this hearing, the
20 defendants have stipulated that Dr. Rao is an expert in
21 emergency medicine and medical toxicology, and I'd like to
22 tender her as an expert at this time.

23 THE COURT: Very well.

24 MS. EISENBERG: Thank you.

25 BY MS. EISENBERG:

1 Q. So turning to this case, can you briefly describe what
2 you were tasked with?

3 A. I was asked to look at whether the release of teargas
4 in the environment around Gray's Landing was causing harmful
5 effects to the plaintiffs in the case.

6 Q. And to do that, what did you review?

7 A. I reviewed the medical literature, peer-reviewed
8 medical literature, the evidence provided to me in the form of
9 videos, the declarations, the motion, some government websites,
10 some of my own clinical background and expertise.

11 Q. And did you feel like you had enough information to
12 undertake your assignment?

13 A. I did.

14 Q. And were you able to reach a conclusion?

15 A. Yes.

16 Based on what I reviewed, ostensibly, the harms that
17 have befallen the plaintiffs were the result of teargas exposure
18 and are likely to continue if teargas continues to be released
19 into the environment around Gray's Landing.

20 Q. So taking a step back, defendants in this case have
21 stated that, among them, they use a variety of different
22 chemicals; CS, OC, PAVA.

23 In your declaration, you called all of those teargas.
24 You didn't differentiate them. Why is that?

25 A. Because toxicologically, they fall into the same

1 toxidrome, meaning the toxicological syndrome that befalls a
2 person that's exposed to them, mainly the harmful painful
3 effects of the chemical when it touches the skin and the eyes
4 and it gets deeper into the system.

5 Q. So they all work in similar ways?

6 A. They all work in similar ways. They all enter the
7 body in a very similar way, either on the skin or through
8 inhalation.

9 Q. So how do these gases work? When somebody comes
10 across CS or OC, what can they generally expect to feel?

11 A. The very first thing they would likely feel is pain
12 and stinging and burning in the eyes followed by tearing, which
13 is one of the reasons it's termed "teargas."

14 This is followed typically by burning in the nose and
15 the mouth, the soft pink fleshy areas of skin we call mucosa.
16 If they inhale deeper, they may have sore throat, vomiting.

17 If they get a large enough exposure, they'll have
18 shortness of breath, fluid in their lungs, low oxygen levels.
19 They may faint or have abnormal heart rhythms and they may have
20 vomiting.

21 Q. And medically what's happening to them at this time?
22 Sort of why are they having those symptoms?

23 A. They're having them mostly because it is stimulating
24 pain receptors. They were designed to repel enemy combatants in
25 war about a hundred years ago, and so they're designed to be

1 painful to incapacitate, typically, soldiers. That was how it
2 was originally designed and that's what could be expected of
3 anybody that encountered them and inhaled them.

4 Q. And do they affect everybody who comes across them in
5 the same way?

6 A. No. In fact, most of the time there are people that
7 are especially vulnerable, so we can think about infants. And I
8 understand from the material provided to me that a certain
9 percentage of people that live at Gray's Landing are under the
10 age of 5, which is very problematic, because newborns and
11 infants have much smaller airways, so you can imagine, if you
12 start developing mucus, if you clog and inflame the airway, that
13 it's much harder to clear that when you're very tiny.

14 And also, that age group is -- has a higher
15 respiratory rate per body surface area, so meaning much like a
16 canary that's brought into the mines in the old days where the
17 miners would go down, they did that on purpose because canaries
18 are smaller, they have a high metabolic rate, and if there's a
19 poisonous gas in the line, the canary would stop singing and
20 die, and they would have time to retreat.

21 And so children are ostensibly like that. They have a
22 higher metabolic rate that would be very vulnerable.

23 Similarly, older people and people with illnesses of
24 the lungs and heart would be expected to be more severely
25 impacted by these products.

1 Q. In your declaration you also spoke of something called
2 the dosing effect as affecting sort of how somebody would react
3 to these chemicals. Can you explain what that is?

4 A. Yeah.

5 In toxicology, there's something called the dose
6 response curve, and we can't really create a dose response curve
7 for these agents because it wouldn't be ethical to do that, to
8 expose people on purpose.

9 But the higher the dose in toxicology in general, and
10 what seems to play out in the medical literature from -- from
11 these teargas agents, is that the bigger the -- or the more
12 frequent the exposure to these -- I mean, sorry -- these gases,
13 the more severe the outcome, the more clinically severe the
14 patient will experience things.

15 Q. So when you say "the bigger the dose," that doesn't
16 necessarily mean sort of at one time being closer to it. It
17 could also mean repeated doses?

18 A. That's right.

19 So it seems that when you look at places in the world
20 where there have been repeated dosing, and even in Portland,
21 even in Portland in 2020 when people were getting exposed
22 repeatedly, they had higher and longer, more severe experiences
23 that were adverse -- adverse events of the lungs, headache,
24 nausea, PTSD. So the more exposures, the more problems.

25 Q. What about sort of constant longer term exposures if,

1 say, it was in your home?

2 A. Now, you know, that is something that's a gray area of
3 science, to be honest, and the real problem there is that once
4 these -- they're not truly gases, they're aerosols. But once
5 they have been dispersed -- we call them gases because they look
6 like a cloud. Once they're dispersed, they land on objects and
7 then they can be a source of ongoing exposure.

8 And so for example, in Scotland, several people in
9 furniture stores across Scotland were getting very ill. They
10 were getting tearing and coughing and nausea and headaches. And
11 it wasn't clear what that was from, but it was all happening in
12 these -- in particular, furniture stores, and they traced it
13 back to these pieces of furniture being sprayed with teargas.

14 And those became a source because the -- the teargas
15 elements wound up settling on the surface on the packaging. So
16 even people in the room that were as far away as 10 feet were
17 getting symptomatic.

18 So when we talk about households that are repeatedly
19 getting contaminated, there is sort of a constant low-level
20 exposure. It's very rare to be able to study that, because most
21 places in the world where something like that has occurred, it
22 has happened during a time of war or civil unrest.

23 Q. So some of the symptoms that you were discussing
24 before, are those symptoms, are those potential harms well
25 known?

1 A. Yes, they're very well known, and they can happen even
2 in healthy people. It should be remembered that while there are
3 groups that are very vulnerable, even Army recruits that have
4 been exposed to these agents during training have fallen ill
5 enough to wind up in the hospital, and in one case series, four
6 very fit Army recruits wound up in the intensive care unit with
7 profoundly low oxygen.

8 Q. You mentioned you reviewed the declarations of the
9 plaintiffs in this case; is that correct?

10 A. That's right. That's right.

11 Q. Are the injuries that are described -- the symptoms
12 that were described in those declarations consistent with the
13 science on exposure to teargas?

14 A. Yes, very much so.

15 Q. And did you notice any patterns sort of across the
16 declarations?

17 A. Yes. There were a few -- pardon me. There were a few
18 things that were very striking to me.

19 One was many of them mentioned October 4th and the
20 month of October as being a very heavy time of exposure to
21 teargas. And a handful of them wound up on respiratory inhaler
22 drugs, inhalers for things like asthma even though they didn't
23 have asthma. At least three individuals wound up on those
24 medications as a result of having a problem with their
25 breathing. One person who had asthma had worsening of her

1 asthma.

2 And really strikingly to me, the dog, after October
3 4th -- one of the owners of a dog mentioned that their dog was
4 coughing for at least a week after. And I found that very
5 striking because it makes sense that these agents are
6 not -- they don't discriminate between any kind of mammal.
7 They're going to affect them the same way.

8 Q. And so you noticed that they were reporting symptoms
9 on the same days across --

10 A. Yeah. They were reporting on the same days, and even
11 children in that month missed school, people missed work during
12 that time, like, people in the Reach staff office missed work.
13 So -- and it made sense from the dose response that we talked
14 about earlier, which is that was a period of heavy deployment.

15 And even one of the plaintiffs, I believe it was
16 Ms. Salazar, wrote about how on the videos taken from the
17 internal monitoring in October -- and it might have been
18 October 4th -- showed thick clouds of gases in the hallways and
19 then people coming into the hallway coughing and tearing. So it
20 seems very likely that this is a contamination of that
21 environment.

22 Q. Would you expect those kinds of patterns of symptoms
23 to be reported absent exposure to something like teargas?

24 A. It would be very unlikely.

25 Q. So given that, would you say that it's likely that the

1 symptoms came from teargas, just to sort of say it another way?

2 A. Yes. Yes. Absolutely.

3 Q. So I want to talk a little bit more -- you mentioned
4 that you've studied sort of how these gases move through the
5 environment to eventually reach individuals.

6 When they're released into the air, what do they do
7 once they're released?

8 A. So all gases will move from a higher to a lower
9 concentration, and that means that -- that word "dissipate"
10 comes up a lot, but it really just means that it disperses. It
11 doesn't disappear.

12 And the problem with this particular class of
13 chemicals is they're released into the environment. They float,
14 they're airborne, so it's wherever the air is going to take
15 them. It could be towards the ICE facility. It could be
16 towards Gray's Landing. It could be towards the larger roads on
17 the other side. It's going to go wherever the air current is
18 going to take them.

19 And the videos -- my take from those videos is exactly
20 that, that you can see that complex, and much of the time it's
21 abutting -- going right up the side of the building at Gray's
22 Landing.

23 Q. But you mentioned that word "dissipate." The
24 government has said that they use munitions -- that they use
25 chemicals that dissipate quickly.

1 Does that mean that the harm has disappeared?

2 A. No. Because they remain chemically active. A few of
3 the people in those -- in their declarations mention that they
4 could smell something, and, you know, you smell things because
5 they're present. Like, when you walk outside in the winter and
6 someone is burning a fire in their home, a wood-burning fire,
7 you can smell it. Or a cigarette, you can smell it. It's
8 because the chemicals are present.

9 And the difference between those and teargas is that
10 the presence of that teargas will elicit a very adverse
11 response, and so it doesn't reduce or eliminate the harm.

12 Q. So once a chemical enters an indoor space, say,
13 through an open window, would you expect it to disappear?

14 A. No. In fact, it might be a little bit harder. It
15 might really be contained in that space before it settles, and
16 then anything in that room is fair game once it settles on that.
17 So it could be a toy, a blanket, a bottle. It could be clothing
18 or carpeting, some things that would be much harder to
19 decontaminate.

20 Q. Just a few other questions.

21 Are you aware of anything, from your experience or in
22 the medical literature, that evaluates the kind of sustained
23 indoor exposure to these chemicals over a period -- over a long
24 period of time that the plaintiffs are complaining of here?

25 A. There are very vague descriptions, and I say that very

1 honestly because the places in the world that have
2 experienced -- where civilians, nontarget civilians have
3 experienced this within their homes have usually been in times
4 of war and it's very difficult to gather data during times like
5 that. In fact, many scientists and the patients themselves have
6 fear of reprisal in those settings. So studying teargas effects
7 in a prolonged way becomes very difficult.

8 But I will say, when it's been used in incarcerations,
9 the consequences are equally severe and prolonged. Many people
10 go on to have reactive airway disease, that's similar to asthma,
11 requiring new medications to be on for prolonged periods.

12 Q. Is it something that could be affirmatively tested?
13 Could you run, you know, a scientific experiment testing the
14 effects?

15 A. You couldn't do it in humans, not ethically.

16 MS. EISENBERG: Thank you.

17 No further questions at this time.

18 THE COURT: Cross-examination?

19

20 CROSS-EXAMINATION

21 BY MR. BRUNS:

22 Q. Good afternoon, Dr. Rao. My name Michael Bruns. I'm
23 an attorney with the Department of Justice.

24 I just have a few questions over the state of the
25 science for the use of these kinds of agents and your opinion.

1 So you've not analyzed the agents used in the
2 chemical-based crowd control devices used in this case; is that
3 right?

4 A. Can you be more specific about "analyze," the word
5 "analyze," so that I understand the question? I'm sorry.

6 Q. Have you done any analysis on the specific agents used
7 in the munitions in this case?

8 A. Well, I was -- in preparation for this testimony, I
9 was given information from Mr. Sullivan and Mr. Cantu, and the
10 descriptions of the agents that were used in that case were ones
11 that I was familiar with. But I don't know if that's a complete
12 list. I didn't see anything from ICE particularly, that group.
13 So I'm not sure whether that was a comprehensive list or an
14 incomplete list of agents.

15 Q. And you haven't analyzed any policies that defendants
16 use to mitigate harm in the use of these agents?

17 A. Only what was provided to me in preparation of this
18 testimony in their materials.

19 Q. Can you name any policies that you've reviewed, then?

20 A. Well, they talk about the policies that they adhere
21 to, and so I would be happy to pull that up or -- but I remember
22 that they spoke about using them in accordance with their
23 policies.

24 Q. You haven't examined any patients in connection with
25 this case?

1 A. No, definitely not.

2 Q. You haven't reviewed any of their medical records?

3 A. No, I did not.

4 Q. Moving on to the use of these agents, you would agree
5 with me that the long-term effects of exposure to the
6 particulates from chemical-based crowd control agents have not
7 been definitively reported?

8 A. They have been reported, so I'm not sure I would agree
9 that they have not been definitively reported. Everybody's
10 definition of "definitively" -- you know, it's science, so it's
11 always evolving.

12 But there's definitely -- there's definitely some data
13 about long-term exposure, and you'd really have to define "long
14 term."

15 Q. So your testimony today is that the long-term effects
16 of exposure to the particulates from chemical-based crowd
17 control agents has been definitively reported?

18 A. No, no, I'm not saying that.

19 Q. So it has not been definitively reported?

20 A. I don't think that -- I think it's evolving. I don't
21 think we know enough. I would agree with that, that we don't
22 know enough.

23 Q. And you would agree that repeated exposures to
24 chemical-based crowd control agents are less well studied?

25 A. Yes, which is probably why it's so important we use a

1 precautionary principle here since the benefits of these agents
2 are very limited for the general public.

3 Q. And you would agree that low concentration exposure
4 over a period of hours or days is even less understood?

5 A. I'm not sure about that. That is understood. Over a
6 period of hours or days is understood. People will get sick.

7 Q. Do you recall submitting a declaration in connection
8 with this case?

9 A. Yes.

10 Q. Do you have it in front of you?

11 A. Yes.

12 Q. If I could direct you -- and this is ECF 46-5 --

13 A. Uh-huh.

14 Q. -- paragraph 49.

15 A. Okay. Give me one second to flip to that.

16 Yeah. Yes. Okay. I see that. Lower concentration
17 over a period are less understood than repeated exposures, but I
18 go on to describe how it can be (indiscernible) threatening in
19 some cases.

20 Q. But you would agree that it's less understood?

21 A. Yes, but not less dangerous.

22 Q. And you would agree that the chemical components used
23 in teargas can have breakdown products?

24 A. All of these -- both the propellants that are used
25 to -- because these are usually powders and they need to be

1 aerosolized and they need to be propelled into the air. So all
2 of those things have potential breakdown products.

3 Q. And little is known about the impact or contamination
4 from those breakdown products when deployed using explosives or
5 reaching high temperatures; is that right?

6 A. That's right.

7 Q. And currently, there's not a firm understanding of
8 what chemical constituents from these munitions are absorbed by
9 the body?

10 A. That's correct.

11 In fact, there have been some very interesting
12 descriptions of cases where people have gotten very, very -- one
13 case in particular of someone exposed to teargas who got
14 assessed and then later presented with a condition called
15 methemoglobinemia and he had a high cyanide level. That was
16 very striking to me because generally a high methemoglobin level
17 would be protective against cyanide.

18 Q. Thank you, Dr. Rao.

19 If you could just answer yes or no unless something is
20 not clear.

21 And there's not a firm understanding of what breakdown
22 products from chemical-based control agents are absorbed by the
23 body?

24 A. No.

25 Q. Repeated exposures, chronic low exposures, and dermal

1 exposures of chemical-based crowd control agents are not well
2 characterized?

3 A. They are not.

4 Q. And exposures to children, pregnant, lactating, or
5 menstruating women are not well characterized?

6 A. I wouldn't agree a hundred percent with that.
7 What -- they're not diffusely well understood. But the ones
8 that we have a characterization of are really catastrophic,
9 absolutely catastrophic.

10 Q. So are you saying it is well characterized for that
11 group?

12 A. I would say that the little that we know is extremely
13 ominous for children to be exposed to these agents.

14 Q. So coming back to my question, would it be a yes or a
15 no that the exposure to this group is not well characterized?

16 A. Well, when you talk about a group, you could say, as a
17 group, we don't know that much, but individual cases have been
18 catastrophic.

19 Q. Okay. So the answer is, yes, it is not well
20 characterized?

21 A. That's correct.

22 Q. Exposures to fetal development are similarly not well
23 characterized?

24 A. Correct.

25 Q. And you'd agree that the medical literature regarding

1 the severity of acute and chronic exposure to teargas is
2 limited?

3 A. Can you repeat that one more time? I apologize.

4 Q. No problem. I'm probably talking a little fast.

5 A. No, no. I'm just trying to process. Thank you.

6 Q. The medical literature regarding the severity of acute
7 and chronic exposure to teargas is limited?

8 A. That's right. It is very limited.

9 Q. You do not have information about the concentration or
10 clinical exposures to solvents or propellants used in teargas?

11 A. No, definitely not.

12 Q. You would agree that the comparative effects of
13 teargas between children and adults has not been exhaustively
14 studied?

15 A. It will never be studied, certainly not in an ethical
16 fashion.

17 Q. You would agree that the long-term impacts of an agent
18 on a child's nervous system is not known?

19 A. That's absolutely correct.

20 Q. And because of these limitations, you had to
21 extrapolate from what is known about these agents to form your
22 opinion?

23 A. That's right.

24 Q. In your declaration, you offered an opinion that
25 Gray's Landing is a U-shaped building that creates a canyon that

1 likely impedes the dispersion of gases and concentrates some
2 gases.

3 Is that still your opinion?

4 A. Yes.

5 Q. Are you holding yourself out as an expert in
6 aerodynamics?

7 A. No.

8 Q. Particle physics?

9 A. No.

10 Q. Fluid mechanics?

11 A. No.

12 Q. Have you gone to Gray's Landing?

13 A. No, I have not.

14 Q. Have you looked at its air currents and done any
15 analysis on it?

16 A. No, I have not.

17 Q. Just a few more questions.

18 Have you been to the protests at this ICE facility?

19 A. No, I have not.

20 Q. But you have protested against President Trump before;
21 is that right?

22 A. It's possible.

23 Q. You went to the Women's March in 2017; right?

24 A. I did.

25 MR. BRUNS: No further questions.

1 THE COURT: Redirect?

2 MS. EISENBERG: Yes, Your Honor. Just a few
3 questions. Thank you.

4

5 REDIRECT EXAMINATION

6 BY MS. EISENBERG:

7 Q. Defense counsel read part of your declaration at
8 paragraph 49. I'm going to reread what -- if you wouldn't mind
9 just pulling it back up in front of you.

10 I'm going to reread what he read to you and ask you to
11 finish the sentence, which he didn't finish.

12 "Lower concentration exposures over a period of hours
13 or days especially from contamination are less understood."

14 Is that the end of the sentence?

15 A. No. It says "But have (indiscernible) serious and
16 life-threatening injury."

17 Q. Would you just mind reading the next sentence as well?

18 A. "Symptoms caused by the exposure may progress from
19 irritation of the eyes, nose, and mouth, to life-threatening
20 pulmonary injury over 24 hours."

21 Q. Thank you.

22 A. Yeah.

23 Q. What does it mean for something to be, quote, "not
24 well characterized," as you used in your declaration?

25 A. Well, it means that the scientific -- the gold

1 standard in scientific literature about toxicology or medicine,
2 in general, which is that -- let's say it's a therapeutic drug.
3 You give the drug to one population and you give a placebo to a
4 similar population, look at an outcome, a desired outcome. We
5 can't do that with things that are poisonous. It's not ethical.
6 Can't be done. So it will never be well characterized.

7 Q. Thank you.

8 And you said, as a toxicologist, part of what you have
9 to study is how chemicals reach individuals, how they move
10 through. And so have you studied the way chemicals might react
11 in the air or how gases react in the air when they hit a
12 building, when they are pushed by the wind, et cetera?

13 A. Yes, and we've studied pollutants and how pollution --
14 how chemical reactions happen on particles of pollution that are
15 floating in the air and soot and the way it interacts with
16 sunlight.

17 But, really, you just have to look at the video of
18 these huge clouds going up against the building. You don't
19 really have to be a scientist to understand that.

20 MS. EISENBERG: No further questions.

21 Thank you.

22 THE COURT: I have a couple of questions, Doctor.
23 This is the judge speaking.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: My first question is, while I understood

1 from your direct testimony that you consider CS, OC, and PAVA
2 all to be classified as teargas, can you please tell me what CS
3 is?

4 THE WITNESS: Sure.

5 It is -- it stands for chlorobenzylidene
6 malononitrile, which is a long word. But it is a class of
7 chemical agent that is a powder at room temperature, it is
8 dissolved in a solvent, and it is propelled through the air, and
9 it will either land on something and explode or it will -- there
10 will be a pyrotechnic in it and then it will form a gas cloud.

11 And I call it a gas. It's technically an aerosol.
12 But because it looks like a particle cloud, people call it a
13 gas.

14 And it is one of about a dozen different teargas
15 agents, and there's probably more worldwide that are used for
16 this purpose.

17 THE COURT: When you look at the videos, such as those
18 that were provided to you in this case, and you see the smoke or
19 the clouds -- and I think you just referred to that on
20 redirect -- are you able to tell by looking at the video whether
21 the clouds that you are seeing are smoke clouds versus some sort
22 of teargas cloud?

23 THE WITNESS: No, no. In fact, when I was reviewing
24 it, I called them "particulate clouds" because I can't. But in
25 the video, what is striking to me is there's one voice that says

1 "spicy," which is not an uncommon complaint because certainly
2 from OC gas, it's derived from chili pepper, or the chemical, it
3 is a synthetic chemical that aligns with chili peppers, that
4 sort of very potent feeling. So one person says "spicy" and
5 several people are coughing.

6 So while it could be that these are smoke -- smoke
7 bombs really just to create a veil that people can't see through
8 or to push them back so they think that it's teargas, the
9 reactions of the people in the video suggest that at least some
10 of what's being released is teargas.

11 And then there are smaller munitions that are putting
12 off smaller streams of gas that are likely pepper balls. Which
13 "pepper ball" can be used a little bit loosely. There is a
14 trade name PepperBall and then there is a generic term "pepper
15 ball," which could be a different agent, but typically that's
16 P-A-V-A, or PAVA, and that's similar --

17 THE COURT: I'm sorry. Go ahead.

18 THE WITNESS: No. That's fine. Go ahead.

19 THE COURT: And when we're looking at this smoke
20 that's displayed in the video s, if it has a vibrant color, such
21 as green, is that indicative of smoke versus some sort of
22 teargas? Or is color not an indicator of what the gas is made
23 of?

24 THE WITNESS: It may not be an indicator, or it may be
25 combined. It depends on the manufacturer, because some

1 manufacturers actually put more than one agent in a -- for
2 example, there's something called a stinger, and a stinger can
3 have OC or PAVA or CS, or depending on the trade name or
4 the -- the generic name, it can have more than one agent in it.
5 And some of these may have smoke. But I couldn't tell you that
6 for sure.

7 THE COURT: Thank you.

8 And the last question I had was, the declaration of
9 Roberto Cantu, in paragraph number 6, says "FPS does not
10 authorize the use of," and then it proceeds to list the longer
11 name for CS -- and I won't try to pronounce that. And then
12 places CS in a parenthetical. "CS gas, commonly known as
13 teargas, or any other chemical munition as part of its public
14 order policing operations."

15 Do you recall reviewing that paragraph in Mr. Cantu's
16 declaration?

17 THE WITNESS: Yes. Except that in that declaration,
18 there are two very striking things, Your Honor. One is that
19 they mention using OC, which is a chemical munition designed to
20 repel from an MK-9 fogger. So that was one thing.

21 But the other thing that was incredibly striking to me
22 was, in that declaration, a person suffered cardiac arrest. It
23 would not be obvious to anybody reading that if they were a lay
24 person. But an individual started to stare, became
25 unresponsive, and an automated external defibrillator was placed

1 on that individual, and that is a device that analyzes heart
2 rhythms and will advise that a shock is given to the heart in
3 only two types of heart rhythm. If the person is alive,
4 it -- or the person is completely dead, it will not advise a
5 shock. But if it's in that -- these two specific heart rhythms,
6 it will advise a shock.

7 And in that declaration, it said "shock advised." A
8 shock was administered, the patient was transported to the
9 hospital.

10 And, Your Honor, I can't emphasize enough that this is
11 the problem with these agents. We know what they can do to a
12 broad population of people. We know that they can cause tearing
13 and irritation. And maybe for a lot of people, that's an
14 annoyance. But we cannot predict who the population is that are
15 getting it because these are so indiscriminate. They travel
16 wherever the wind is going to blow, and they're almost certainly
17 getting into the nearby buildings, not just Gray's Landing.
18 They're almost certainly getting even into the ICE facility.

19 And the fact that people are wearing gas masks and
20 they're not trained in the use of that is very worrisome to me.
21 I worry that people are going to come to harm out of their
22 desperation to escape these chemicals.

23 So -- well, I'll let you ask me questions, but -- this
24 is important.

25 THE COURT: Thank you.

1 I want to go back to that language, and I think the
2 documents to which you're referring may have been the Federal
3 Protective Services incident reports that were cross-referenced
4 in the declaration.

5 But going back to the declaration itself, I'm trying
6 to understand this line in Mr. Cantu's declaration in paragraph
7 number 6 about how FPS does not authorize the use of CS gas,
8 commonly known as teargas, or any other chemical munition.

9 Would that include OC? Would that include pepper
10 balls? Or is this reference, in your training and experience,
11 unique to CS? And if so, does CS pose a danger unique to itself
12 versus the other types of teargas chemicals that you've talked
13 about today?

14 THE WITNESS: I -- I don't know how they're defining
15 "chemical munitions." They may have a different definition. To
16 me, if a munition releases a toxic gas, it's a chemical
17 munition. But they may, in their policies and procedure, have a
18 very different view of that or a different understanding.

19 And I'm not sure if it was in his declaration or in
20 Mr. Sullivan's declaration where it was mentioned about a radius
21 of distribution and that it would be unlikely to reach the
22 housing -- the pepper balls, they give off maybe -- maybe what
23 they're referring to is a smaller quantity, but they can still
24 reach wherever the wind is going to carry them.

25 Now, I don't have data to say inhaling CS is better or

1 worse than inhaling OC. That data may exist, but I don't know
2 of it.

3 THE COURT: Thank you for answering my questions.

4 Any further follow-up from plaintiffs' counsel based
5 on my questioning of the witness?

6 MS. EISENBERG: No. Thank you, Your Honor.

7 THE COURT: Anything more from defense counsel?

8 MR. BRUNS: No, Your Honor.

9 THE COURT: Okay. Thank you.

10 All right, Doctor. Thank you for your appearance
11 today.

12 THE WITNESS: Thank you so much. Bye-bye.

13 THE COURT: And, Counsel, we'll take just a ten-minute
14 break around 3:15 or so, but just maybe keep that in mind. You
15 can break whenever it works for your witness schedule, please.

16 MR. JACOBSON: Before we swear the witness, I just
17 wanted to let you know that Ms. Roe is proceeding synonymously
18 in this case for reasons she can explain.

19 THE COURT: I understand why from her declaration.

20 Any objection from the defense to using the pseudonym
21 for purposes of the oath?

22 MR. BRUNS: No objection.

23 THE COURT: Very well. So we will proceed to
24 use -- ma'am, you can use the name you're using in the context
25 of the litigation --

1 THE WITNESS: Thank you.

2 THE COURT: -- when you're asked to state your name.

3 Okay?

4 THE WITNESS: Thank you.

5 THE COURT: Okay.

6

7

REBECCA ROE,

8 having been first duly sworn or affirmed, is examined and

9 testifies as follows:

10 THE CLERK: Please state your name and spell it.

11 THE WITNESS: Rebecca Roe. R-e-b-e-c-c-a, R-o-e.

12 THE COURT: When you're ready.

13 MR. JACOBSON: Thank you, Your Honor.

14

15

DIRECT EXAMINATION

16 BY MR. JACOBSON:

17 Q. Thank you, Ms. Roe, for being here today.

18 Before I ask you any questions, what emotions are you
19 feeling right now?

20 A. I'm terrified.

21 Q. Okay. We'll get through this together.

22 A. Okay.

23 Q. Is Rebecca Roe your real name?

24 A. No.

25 Q. And without going into all the details, why was it

1 necessary for you to proceed synonymously rather than using your
2 real name in this case?

3 A. I'm a DV survivor, a domestic violence survivor.

4 Q. And do you have any medical conditions as a result of
5 that history?

6 A. Yes. I have PTSD and I have anxiety.

7 Q. And did that history of domestic violence play a role
8 in your decision to move to Gray's Landing?

9 A. Yes. It had everything to do with moving to Gray's
10 Landing. Gray's Landing seemed like the only option that was
11 safe and peaceful.

12 Q. And around how long have you lived at Gray's Landing?

13 A. Just under two years.

14 Q. And before the events in question in this case that
15 occurred last summer, what was it like living at Gray's Landing?

16 A. I felt safe and it was peaceful.

17 Q. And do you see a laser pointer there? Is it still
18 there? If we could just use this demonstrative here, can you
19 point to where your apartment is? And I'd ask that you just
20 describe it out loud so it's clear for the transcript.

21 A. Okay. I might be a little shaky, so bear with -- I am
22 along the west wing here. I face towards the courtyard. I'm
23 about -- just shy of halfway down this wing here on the fourth
24 floor, and, again, I face the courtyard.

25 Q. So you have a window that overlooks the courtyard?

1 A. Yes.

2 Q. Okay. Thank you.

3 When did the use of chemical munitions by federal
4 officers begin last year?

5 A. Mid June.

6 Q. And how often would you say they used teargas and
7 smoke grenades in that time?

8 A. About twice a week.

9 Q. And how about in July and August 2025?

10 A. Twice a week.

11 Q. Sorry. Could you say that again?

12 A. Twice a week.

13 Q. How about in the first half of October?

14 A. It was about once a week.

15 Q. When federal officers would use the chemical munitions
16 and you were inside your apartment, could you feel it?

17 A. Yes, I could feel it. I could see it. I could taste
18 it. I could smell it.

19 Q. And can you explain, using the diagram here, to the
20 Court how it is that the gas could get inside your apartment if
21 you were not facing the ICE facility?

22 A. Yes.

23 The gas would travel down from -- from the facility
24 down -- goodness, bear with me -- down Bancroft and up through
25 the courtyard here and then on in.

1 Q. And if we could pull up Plaintiffs' Exhibit 56.

2 MR. JACOBSON: Apologies, Your Honor.

3 THE COURT: Not at all.

4 MR. JACOBSON: There it is.

5 If we could go to the 6:15 mark on this video, please,
6 and let's play the video for about 20 seconds. I'll focus your
7 attention on right side of the screen.

8 (Video played.)

9 MR. JACOBSON: And we can stop it right there.

10 BY MR. JACOBSON:

11 Q. Ms. Roe, can you describe what we just saw in this
12 video?

13 A. Yes. The smoke is traveling down Bancroft and up.
14 It's starting to go up through the courtyard.

15 Q. And is that the phenomenon you were just describing a
16 moment ago?

17 A. Yes.

18 Q. Going back to the summer months of 2025, how
19 frequently would you feel the gas inside your apartment when it
20 was being used?

21 A. Whenever the munitions took place.

22 Q. And was there a particular challenge in the summer
23 months to keeping the gas outside your apartment?

24 A. Yes. We -- the building does not have central AC, so
25 we had personal AC units. And they're the snorkel type, which

1 means the hose goes out the window, so whenever there was a
2 munition, you would have to pull the hose in and then shut your
3 window in time prior to the gas entering your apartment.

4 Q. And why didn't you just keep the windows closed all
5 the time in that case?

6 A. During the summer months, and even partially the fall,
7 my room would exceed 100 degrees.

8 Q. Thank you.

9 When the gas would get inside your apartment, what
10 physical effects did you generally feel?

11 A. The most prominent were the heart palpitations,
12 difficulty breathing, dizziness, and of course the burning, you
13 know, along your respiratory tract and your eyes.

14 Q. And did the symptoms go away the next day? Or did
15 they tend to linger?

16 A. They lingered. But as each successive gassing event
17 took place, they remained for longer until they didn't go away.

18 Q. And did you at some point start taking measures in
19 terms of things you would wear inside your apartment to mitigate
20 these effects?

21 A. Yes. I have a gas mask in my bedroom. I have one in
22 my living room.

23 Q. And when you --

24 A. And I have one in my backpack.

25 Q. When you say a "gas mask," is this, like, an N95? Or

1 something different?

2 A. No. It's specifically designed for the gases that
3 we're experiencing.

4 Q. So one of those big masks with the --

5 A. Yes.

6 Q. And did you ever use that mask inside your bedroom?

7 A. Yes. I've slept with it on.

8 Q. We talked about your physical symptoms.

9 Now, how about psychologically? How did the gas
10 getting inside your apartment affect you psychologically?

11 A. It's triggered me.

12 Q. Has it triggered any condition you had?

13 A. It's triggered PTSD, yeah, and anxiety. Excuse me.

14 Q. No. Thank you.

15 Shifting gears, did you start to do something to
16 document what's happening outside Gray's Landing at some point?

17 A. Yes. I started filming.

18 Q. And why did you do that?

19 A. I am filming to ultimately convey what it's like for
20 somebody with PTSD.

21 Q. What it's like for somebody with PTSD going through
22 this?

23 A. Yes, yes.

24 Q. I'm going to show you some of the videos you took over
25 the summer of 2025.

1 Did you have a chance to review these videos before
2 today's hearing?

3 A. Yes.

4 Q. I'll start with Plaintiffs' Exhibit 12.

5 MR. JACOBSON: And, Your Honor, these are all attached
6 to Ms. Roe's declaration.

7 (Video played.)

8 MR. JACOBSON: Pause it.

9 Is this 12? Okay. Yeah. I'm sorry. If we could
10 play the first few seconds again.

11 (Video played.)

12 BY MR. JACOBSON:

13 Q. Did you recognize that video, Ms. Roe?

14 A. Yes.

15 Q. Did you film that video?

16 A. Yes.

17 Q. And do you recall where you were standing when you
18 filmed that video?

19 A. Yes. I was at the Gray's Landing courtyard -- bear
20 with me here. There we go. Along this side of the building of
21 the courtyard, rather.

22 Q. Thank you.

23 And do you recall what date this video was filmed?

24 A. July 4th.

25 MR. JACOBSON: And if we could skip ahead to the 4:15

1 mark and play it for about 40 seconds.

2 (Video played.)

3 MR. JACOBSON: And we can stop there.

4 BY MR. JACOBSON:

5 Q. Can you describe for the record what we just saw?

6 A. Excuse me.

7 That is gas traveling -- the teargas traveling
8 down -- again, down Bancroft and heading towards the courtyard.

9 Q. And, again, I'll just point to it to make it easier.
10 When you say you were in the courtyard, did you mean
11 here?

12 A. Yes. It traveled from the facility -- excuse
13 me -- the facility on -- oh gosh. I'm --

14 Q. It's okay.

15 A. And then up.

16 Q. And who is that coughing at the very end of the video?

17 A. That was me coughing.

18 Q. Would you describe the scene that we just saw as
19 typical or atypical of the gassing events that occurred last
20 summer?

21 A. It's typical.

22 MR. JACOBSON: Let's now pull up Exhibit 16.

23 BY MR. JACOBSON:

24 Q. Ms. Roe, do you recognize this video?

25 A. Yes.

1 Q. Did you take this video?

2 A. Yes.

3 Q. And do you recall where you were when you took this
4 video?

5 A. I was in the courtyard again.

6 Q. And do you recall roughly the date of this video?

7 A. August 18th.

8 Q. Thank you.

9 MR. JACOBSON: And if we could show the first
10 20 seconds.

11 (Video played.)

12 MR. JACOBSON: That's fine right there.

13 Thank you.

14 BY MR. JACOBSON:

15 Q. Ms. Roe, can you describe what we just saw in that
16 video?

17 A. Again, federal agents are going down Bancroft and
18 following the protesters, and their gas is coming -- they're
19 shooting gas along as they're traveling down Bancroft.

20 Q. And could you point on the map to roughly where they
21 were standing here?

22 A. Yes.

23 At the end, they were right where I was positioned.
24 They had stopped just shy of where I'm at.

25 Q. So they came out of the ICE facility --

1 A. Yes. They came down the driveway, down Bancroft, and
2 ended about here.

3 Q. How far do you think you'd estimate they were from you
4 at the end?

5 A. It's just merely the distance from the second floor on
6 down. So maybe, I don't know, 30 to 40 feet.

7 Q. From your vantage point, when you were watching this,
8 from -- just from what you could see, were the officers facing
9 any imminent risk before they started this march down Bancroft
10 Street?

11 A. No.

12 Q. Would you describe the scene we just saw as typical or
13 atypical of the gassing events that occurred last summer?

14 A. Typical.

15 Q. I'd like to now fast-forward to this year and the
16 recent incidents of teargassing.

17 Where were you on the night of January 24th, 2026?

18 A. I was in my apartment.

19 Q. And what happened while you were in your apartment
20 that night?

21 A. More different gassing events took place.

22 Q. And did you feel them while you were in your
23 apartment?

24 A. Yes, I felt the first one.

25 Q. And what was the feeling?

1 A. I could smell it. I actually could see it, taste it,
2 and then of course I had palpitations and difficulty breathing.

3 Q. At some point that night did you leave your apartment?

4 A. Yes.

5 Q. And why did you do that?

6 A. I went down to the courtyard to document.

7 Q. Why did you do that?

8 A. Because I want people to know what it's like.

9 Q. And when you went down to the courtyard, did the crowd
10 dissipate at some point after then?

11 A. Yes. The crowd had thinned somewhat then, yes.

12 Q. Did the officers use teargas again after that point?

13 A. Yes. There were two more incidents.

14 MR. JACOBSON: Let's pull up Plaintiffs' Exhibit 38.
15 Just play the first few seconds.

16 (Video played.)

17 MR. JACOBSON: We can pause it right there.

18 BY MR. JACOBSON:

19 Q. Ms. Roe, do you recognize this video?

20 A. Yes.

21 Q. Where did you take it? Where were you standing?

22 A. I was -- excuse me -- I had come down from the
23 courtyard at that point and I traveled down Bancroft. And
24 there's a bench about right here just before Moody and I stood
25 about right here.

1 Q. So you were at street level this time?

2 A. Yes, I was street level.

3 Q. Do you recall around what time you took this video?

4 A. Around 10:50.

5 MR. JACOBSON: Let's play the first 45 seconds of this
6 video.

7 (Video played.)

8 MR. JACOBSON: We can stop it there.

9 BY MR. JACOBSON:

10 Q. Can you describe what we just saw in the video?

11 A. There -- they're continuing to gas the protesters
12 along the street there.

13 Q. Was their use of gas limited to the ICE driveway that
14 we just saw?

15 A. No. It extended beyond the driveway.

16 Q. Can you point on the map to where it extended to?

17 A. It had extended to about around here.

18 Q. And from your vantage point, just from what you could
19 see at this time, were the officers or the building facing any
20 imminent threat before that use of teargas?

21 A. No.

22 Q. Let's now talk about Saturday, January 31st, 2026.

23 At some point, did you learn there was a large march
24 happening near the ICE facility that afternoon?

25 A. Yes.

1 Q. What did you do?

2 A. I put on my goggles and my gas mask and I went down,
3 and then almost halfway down Moody, I started to go into the
4 crowd a little bit because ideally I wanted to get up top to get
5 a good view because there was so many people.

6 Q. So you were standing on Moody Street; is that right?

7 A. Yes, I was on Moody Street in the pack here.

8 Q. What was the crowd like, just from what you could see?

9 A. It was a massive -- massive, tightly-packed crowd that
10 was very calm and very peaceful.

11 Q. Were there children in the crowd?

12 A. Yes.

13 Q. Were there elderly persons in the crowd?

14 A. Yes.

15 Q. And what happened then?

16 A. That's when I experienced the largest gas event I've
17 ever experienced.

18 Q. And can you describe in what direction the gas moved?

19 A. The gas was -- it had moved all along here and up
20 here. I mean, it was everywhere. But a lot of it up here and
21 along here.

22 Q. And at some point after that did you go back to your
23 apartment?

24 A. Yes.

25 Q. And what did you do when you were in your apartment?

1 A. I dropped off my gear, proceeded to vomit. I started
2 to -- my head started to spin. And I was still having trouble
3 catching my breath and I was experiencing heart palpitations, so
4 I decided to contact 911.

5 Q. And did they send the paramedics?

6 A. Yes.

7 Q. And what did you do when the paramedics arrived?

8 A. I went down to the front doors, and the police, medics
9 were there, which was confusing. I was disoriented anyway, but
10 it was confusing to me. And they motioned for me to come to the
11 door, and so I did.

12 And there were two. One stood with me and the other
13 went into the building to assess. And they -- he came back and
14 said that the gas was worse in the building than outside the
15 building and had me -- led me outside to help me breathe
16 outside.

17 Q. Has that incident still affected you for a while after
18 it happened?

19 A. Yes. I'm still experiencing issues.

20 Q. I'd like to talk about one final incident, and that
21 was on February 1st, 2026.

22 Where were you trying to go that evening?

23 A. I was attempting to go to the doctor because my eyes
24 were still blurry.

25 Q. And were you able to make it to the doctor?

1 A. I was not.

2 Q. Why not?

3 A. There was another protest and TriMet had shut down
4 mass transit going to and from the south waterfront.

5 Q. And so what did you do then?

6 A. Bear with me here.

7 The bus stop is right here, and I could hear the
8 crowd, and I had my gas mask with me and my goggles. So I
9 decided to walk down to the facility --

10 THE COURT: I'm sorry. Could you use street
11 references just so --

12 THE WITNESS: I apologize.

13 THE COURT: That's okay. That's okay. I just want to
14 make sure I'm tracking.

15 THE WITNESS: Yes.

16 This here is Macadam, and that's where the bus stop
17 was. I walked down Macadam, where Macadam and Bond meet, and
18 the ICE facility is right here, and I walked partway down
19 Bancroft.

20 BY MR. JACOBSON:

21 Q. And did you stop on Bancroft Street then?

22 A. Yes.

23 Q. Just using this photo where left is west, were you to
24 the west of Bancroft -- of the ICE driveway? Or to the east?
25 To the left or the right?

1 A. To the left.

2 Q. Thank you.

3 I'll note for the record, that's west.

4 I'll represent to you -- how close were you to the
5 driveway?

6 A. I wasn't very close to my driveway. I had my iPhone,
7 I didn't have my camera, so I had to get close to get anything
8 visible. Yeah. I was --

9 Q. Could you see all the way up to the front of the
10 driveway where it met the gate?

11 A. Yes.

12 Q. I'll represent to you, Ms. Roe, that a DHS official
13 filed a declaration in this case saying that around 6:40 p.m.
14 that night protesters were banging on the front door of the
15 building and trying to break the front gate by rocking it.

16 Is that an accurate depiction from what you could see
17 that evening?

18 A. No.

19 Q. There were not -- you didn't see protesters trying to
20 rock the gate to try to break it down?

21 A. No.

22 MR. JACOBSON: Let's pull up Plaintiffs' Exhibit 55.

23 (Video played.)

24 MR. JACOBSON: And you can just pause it right there.

25 //

1 BY MR. JACOBSON:

2 Q. Do you recognize this video?

3 A. Yes.

4 Q. Is this the video you took on February 1st, 2026?

5 A. Yes.

6 Q. And were you standing where you just described,

7 slightly to the west of the ICE driveway?

8 A. Yes.

9 Q. And what building is that in the backdrop there?

10 A. Gray's Landing.

11 Q. In the top left of the screen?

12 A. Yes, yes.

13 MR. JACOBSON: If we can now play the first 20 seconds
14 of this video.

15 (Video played.)

16 MR. JACOBSON: And we can stop it right there.

17 BY MR. JACOBSON:

18 Q. Can you describe for the record what we just saw?

19 A. Federal agents came out of the gate, came out into the
20 driveway shooting and lobbing chemical munitions.

21 Q. And from what you can see, who fired the first
22 munitions? The protesters or the agents?

23 A. The federal agents.

24 MR. JACOBSON: Let's now go to the 1:45 mark and we'll
25 play it for about 30 seconds.

1 And this will be our last video.

2 (Video played.)

3 MR. JACOBSON: We can stop it right there.

4 BY MR. JACOBSON:

5 Q. Can you describe what we just saw in that video?

6 A. Agents deploying chemical munitions, shooting them and
7 lobbing them.

8 Q. And were they lobbing them -- were they lobbing them
9 at a short distance or a long distance?

10 A. They were lobbing them way out into the crowd.

11 Q. And from -- you were standing right there. From what
12 you could see, were the agents facing any imminent threat at the
13 moment they were standing around here lobbing them?

14 A. No.

15 Q. I'd like to ask you one concluding question, Ms. Roe.
16 Are you able to move to a new building easily if you
17 would want to?

18 A. No.

19 Q. Why not?

20 A. I'm currently not in a condition to be able to work.
21 And I'm working on SSDI right now, so I'm not receiving
22 anything.

23 MR. JACOBSON: Ms. Roe, I'd like to thank you so much
24 for your bravery to be here today.

25 Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: Cross-examination? Or do you want to take
3 a break first?

4 How are you doing, ma'am? Let me check with you.

5 THE WITNESS: I'm okay. Thank you.

6 THE COURT: Why don't we -- about how long do you have
7 for cross?

8 MR. BRUNS: Less than five minutes.

9 THE COURT: Okay. Why don't we proceed then.

10

11

CROSS-EXAMINATION

12 BY MR. BRUNS:

13 Q. Good afternoon, Ms. Roe. My name is Michael Bruns.
14 I'm an attorney with the Department of Justice.

15 I just wanted to get a few clarifying but specific
16 information about your testimony today, and thank you for being
17 here.

18 So you testified that your apartment overlooks the
19 courtyard?

20 A. Yes.

21 Q. So when you're in your apartment and they are using
22 these munitions, you can't see them using it?

23 A. I can hear it, and I can see the reflection off the
24 building.

25 Q. Can you see the protesters while you're in your

1 apartment?

2 A. At times, yes.

3 Q. Are you about a hundred feet away?

4 A. I think so.

5 Q. Can you see to the front of the crowd from your

6 apartment?

7 A. The front of the crowd, meaning in the driveway? Or

8 that's --

9 Q. Yes, ma'am.

10 A. No. No.

11 Q. We saw a couple videos in connection with your

12 testimony today.

13 When you are filming them from the courtyard, are you
14 using a zoom on your camera?

15 A. I have a prime lens, yes.

16 Q. And so you are physically about 80 to a hundred feet
17 away from the protests at that point?

18 A. I think that's a fair assessment, yes.

19 Q. Can you make out what individual protesters are saying
20 from that vantage point?

21 A. At times.

22 Q. At times, but not all the time?

23 A. No.

24 Q. It's true that you're unaware why federal officers
25 would use teargas and chemical munitions; right?

1 A. I don't understand the question.

2 Q. You don't know why the officers are using teargas or
3 munitions?

4 A. I think it -- boy, I'm not sure how to answer that. I
5 think it varies, depending upon interpretation. That's -- how
6 do I answer that as an absolute? You can't. It depends upon
7 people's interpretation of what's a threat and what's not.

8 Can you ask the question again, please?

9 Q. No, that's -- that's a fine answer.

10 Do you have any training in assessing whether
11 something is a threat?

12 A. No, no.

13 Q. Do you have any training on assessing whether someone
14 is engaging in unlawful behavior?

15 A. No.

16 Q. You testified about one of the protests involving
17 a -- I believe you characterized it as a massive, massive crowd?

18 A. Yes.

19 Q. Could you see to the front of the crowd when you saw
20 the protest?

21 A. No. I was along -- halfway along Moody, and it was
22 just a sea of people, so all I could see were people that I was
23 closest to.

24 Q. You also testified in connection to a video -- and I
25 apologize, I wasn't able to catch the exhibit number, but it was

1 in reference to a march that went along Bancroft Street and it
2 went right under the courtyard.

3 Do you recall that incident?

4 A. Yes.

5 Q. Were you able to see the beginning of the march from
6 your vantage point?

7 A. Which exhibit are you talking about?

8 Q. I'm -- if plaintiffs' counsel knows, I'm not -- I
9 wasn't able to catch it during the course of the testimony.

10 A. I think it's 16.

11 You're saying "march." It's -- I think that's in
12 reference to the agents going along Bancroft. It's not a march.

13 Q. That's -- that's right.

14 A. Okay. I needed clarification. I apologize.

15 Can you ask the question again? Now I lost my train
16 of thought.

17 Q. Were you able to see the beginning of when they
18 started walking along Bancroft?

19 A. Yes.

20 Q. Were you able to see why they started the beginning of
21 the march, or the walk?

22 A. I saw agents coming out and using chemical munitions
23 and following protesters down.

24 Q. And at that point, they were about 80 to 100 feet
25 away?

1 A. At which point?

2 Q. At the beginning of the walk.

3 A. Yes.

4 MR. BRUNS: No further questions.

5 THE COURT: Redirect?

6 MR. JACOBSON: No, Your Honor.

7 THE COURT: You may step down. Thank you very much
8 for being here today.

9 THE WITNESS: Thank you.

10 THE COURT: Is this a good time to take a ten-minute
11 break?

12 MR. JACOBSON: Yes, Your Honor.

13 THE COURT: Okay. We'll be in recess for ten minutes.
14 Thank you very much.

15 (Recess taken from 3:24 to 3:38.)

16 THE COURT: Please be seated.

17 Plaintiffs, are you ready to call your next witness,
18 please?

19 MR. DUBNER: Yes, Your Honor.

20 Plaintiffs call Erica Del Nigro.

21 THE COURT: Thank you.

22

23 ERICA DEL NIGRO,

24 having been first duly sworn or affirmed, is examined and

25 testifies as follows:

1 THE CLERK: Please have a seat, and state your name
2 and spell it.

3 THE WITNESS: My name is Erica Del Nigro. E-r-i-c-a,
4 last name, Del Nigro, D-e-l, space, N-i-g-r-o.

5 THE COURT: When you're ready.

6 MR. DUBNER: Thank you, Your Honor.

7

8 DIRECT EXAMINATION

9 BY MR. DUBNER:

10 Q. Good afternoon, Ms. Del Nigro. Thank you for being
11 here today.

12 Have you ever testified in court before?

13 A. No.

14 Q. Just to go over a couple quick ground rules, the court
15 reporter is transcribing your testimony, so please answer
16 questions verbally instead of nodding or shaking your head.

17 A. Okay.

18 Q. And we'll try not to talk over each other. All right?

19 A. All right.

20 Q. Thank you.

21 You filed a declaration in this case; correct?

22 A. Correct.

23 Q. Do you affirm everything in that declaration is
24 accurate, to the best of your knowledge?

25 A. Yes.

1 Q. Could you tell the Court where you live?

2 A. I live at Gray's Landing in Portland, Oregon.

3 Q. How long have you lived at Gray's Landing?

4 A. A year.

5 Q. Do you live with anybody?

6 A. My son, who's 12.

7 Q. I'd like to direct your attention to the photo next to
8 you, which is Exhibit 21.

9 Do you recognize this building?

10 A. Yes.

11 Q. What is it?

12 A. Gray's Landing, my apartment building.

13 Q. And I believe you have a laser pointer up there. Can
14 you point out and describe where in the building your apartment
15 is?

16 A. Sure.

17 I'm right in there.

18 Q. Can you just explain for the record where you're
19 pointing to?

20 A. I was pointing to the courtyard area here, third
21 floor.

22 Q. And what is the building in the bottom left of the
23 picture?

24 A. That's the ICE building across the street from us.

25 Q. Can you see that building from your apartment windows?

1 A. Yes. I could see it from my bedroom as well as the
2 living room.

3 Q. In your declaration, you say that you have something
4 called mast cell activation syndrome.

5 Can you explain what that is?

6 A. Yes.

7 Basically, my body is really sensitive to toxins and
8 chemicals, and when exposed, my body has a lot of inflammatory
9 issues and pain issues due to that.

10 Q. And what kinds of toxins and pathogens are the sort of
11 thing that can trigger your mast cell activation syndrome?

12 A. Well, I've noticed that teargas is definitely one of
13 them. Stuff that's, like, airborne, like, if there's really
14 severe wildfires, as well as, like, heavily processed food, or
15 just, like, anything that's toxic chemicals.

16 Q. And what symptoms does -- do you experience when your
17 MCAS gets triggered?

18 A. I usually experience gastrointestinal issues as well
19 as migraines and skin issues, hives, burning, as well as
20 menstrual issues and urinary tract issues as well.

21 Q. And are there any severe or life-threatening risks
22 that mast cell activation syndrome can cause?

23 A. Yes. It's especially been affecting my upper
24 respiratory lately, and so I now have an inhaler and epi pen for
25 when my throat starts to get tight or I have difficulty

1 breathing.

2 Q. And why do you carry that epi pen?

3 A. My doctor has me carrying it now because one of the
4 exposures I had to the teargas, I got full body hives and
5 respiratory -- tightness in the chest and throat.

6 Q. Let's talk about the teargas.

7 Around when did you start experiencing exposure to
8 teargas?

9 A. I want to -- it was this last summer. I want to say
10 it was definitely by June.

11 Q. And what was going on that led to you getting exposed
12 to teargas?

13 A. I mean, there was protesters outside. There wasn't
14 huge crowds, necessarily. And I'm not sure why they were using
15 teargas when I was exposed to it. Sometimes I -- I would be
16 coming back from the grocery store. Yeah.

17 Q. And if you could continue, if you're comfortable, what
18 would happen sometimes when you were coming back from the
19 grocery store?

20 A. If I was to park on the side street, which I did when
21 I first moved in, I would walk into the street and sometimes
22 teargas would go off, and my son and I would get exposed and
23 have to run up the stairs into the courtyard to get into the
24 building safely.

25 And sometimes that would happen when we were coming

1 home. Sometimes we would experience it when we were in the
2 courtyard, sometimes when we were in our actual apartment, in
3 our home.

4 Q. Let's talk about times when you were on the street.

5 Were there protests around when there was teargas?

6 A. There -- there were protesters. They -- there weren't
7 that many in the early summer. And it was pretty sociable.
8 They would usually play music or have a barbecue.

9 And so at first, the protesting was really alarming
10 for my son and I, but a therapist that we started seeing said it
11 would be good for us during the day hours to introduce ourselves
12 and just get comfortable with the situation. And so we would
13 try to go down in the daytime at first, and everyone seemed
14 friendly and mellow, and there wasn't too many people most of
15 the time.

16 Q. And when you would go down and meet some of the
17 people, would you ever get teargassed at that point?

18 A. Yeah. There were times we -- kind of our rule of
19 thumb was to try to get inside before 10:00 p.m. Usually they
20 would come out in formation and release teargas no matter what
21 was going on.

22 But there were times where we experienced that before
23 10:00 p.m., and like I said, it didn't seem like there was any
24 reason. And we weren't in front of the building. We were
25 actually in front of our -- backside of our apartment building,

1 and we still got exposed.

2 Q. When you said you weren't in front of the building,
3 which building were you not in front of?

4 A. ICE. We weren't even in front of the ICE building.
5 Yeah.

6 Q. Could you point on the picture to roughly where you
7 were some of those times?

8 A. Sure.

9 So there's a back door to our building here, and
10 sometimes the protesters, once the school had to shut down
11 across the street, would be there with the barbecue. And
12 sometimes they would be with a barbecue over here. And then the
13 ICE building is all the way over here.

14 Q. And I think you said the people were friendly.

15 Did you join people for a barbecue or anything like
16 that?

17 A. Yeah. Yeah. My son would smell the barbecue and hear
18 the music and want to go downstairs to say hi. But after
19 experiencing teargas a couple times, I decided to never let us
20 go down there. Yeah.

21 Q. And how did you experience teargas in relation to the
22 barbecues?

23 A. We were just standing outside of the door to the
24 courtyard of the back of our building, and all of a sudden,
25 teargas would be released, usually without warning. And then we

1 would have to run into the courtyard, upstairs, back in the
2 building.

3 Q. Were you able to get inside all the time before they
4 started using the weapons?

5 A. No, no, usually because there wasn't much of a
6 warning, they would march out fairly quickly, and -- and we
7 didn't -- yeah. We didn't ever get a warning; so --

8 Q. When you say you didn't ever get a warning, did you
9 hear any verbal warnings from the federal agents or anything
10 like that?

11 A. Sometimes they would have loud speakers that would go
12 off constantly at night. But they would just be saying that
13 there could be harm of them releasing teargas.

14 But we would never stay outside if we heard those
15 speakers going off. Yeah. That usually would happen, actually,
16 after they would initially teargas.

17 Q. And just to make sure I understood correctly, are you
18 saying that they would give the first warning usually after they
19 had started?

20 A. Yeah. That's what it seemed like, in my opinion.

21 Q. And so that was the summer that you described.

22 Could you talk about the fall and what the situation
23 was like then?

24 A. Sure.

25 It actually kind of mellowed out towards -- at some

1 point. And then I want to say in October, it got extremely
2 worse. I don't know why or what at that point. I mean, we kind
3 of would just try to keep to ourselves.

4 But it did become worse, and we started experiencing
5 more issues with teargas entering our building even if we were
6 in the home with the windows shut.

7 Q. Let's talk about the teargas getting into your
8 building.

9 How could you detect that there was teargas in your
10 building?

11 A. Normally, my son and I would experience chest
12 tightness and wheezing. And then another issue that started in
13 the fall was burning on our skin, which I would immediately
14 think to bathe to help it, but it tends to make it worse. And
15 so I ended up in October dealing with full-body hives for six
16 weeks. My son also experienced hives from the waist down and on
17 his hands and neck this last time that they used teargas; so --

18 Q. And we'll come back to the last time in a moment.

19 But around when are you referring to when you say "the
20 last time"?

21 A. For me, it was in October.

22 Q. And -- well, first for your son, the last time, are
23 you talking about January or February or in that area?

24 A. January. Yeah.

25 Q. And then for yourself, what sort of symptoms were you

1 experiencing in the summer or the early fall?

2 A. A lot of mouth and eye inflammation and migraines, as
3 well as nausea, especially in the morning. I'd have really bad
4 stomach pains and throw up, dizziness, burning skin, and a lot
5 of eye pain.

6 Q. Do you have a sense of how the teargas would get into
7 your apartment?

8 A. It seemed like the windows were the main source
9 because of the courtyard. But once we kept those sealed, it
10 seemed like it could have been coming in from the back doors of
11 the building into the hallways and vent system somehow.

12 Q. How long after you would get exposed in your
13 apartment -- about how long would your symptoms last?

14 A. Well, the first 24 hours after would always be really
15 difficult on us, but I would experience them for weeks and weeks
16 at a time. It's been ongoing. I'm still dealing with a lot of
17 upper respiratory chest pains, issues, and migraines. I was
18 having those issues for the last two to three weeks.

19 Q. And around when did those issues start?

20 A. That was after the teargassing in -- or January.

21 Q. Have you sought medical treatment for the reactions
22 you've been having?

23 A. Yes. We've gone to urgent care, as well as my primary
24 care doctor, as well as a second doctor for another opinion.

25 Q. And what have those doctors told you about what seems

1 to be causing your symptoms?

2 A. They have all been really clear that it was due to
3 teargas exposure. I was hoping for a different explanation,
4 but --

5 Q. Have they had any recommendations for you?

6 A. Yeah. They all believe that it's not safe to continue
7 living where we live and to immediately look for somewhere new
8 to live.

9 Q. Is that an option for you, to find somewhere new to
10 live?

11 A. That's been really difficult for us. We're fortunate
12 to be in low-income housing, and it took us a long time to be
13 able to get into the spot that we're at, and it's been difficult
14 to find a new spot to move into that's affordable.

15 Q. Thank you.

16 And were there any treatments that the doctors
17 recommended? Starting with you. We'll talk about your son in a
18 little bit.

19 A. Sure.

20 Steroid creams and prescription pills, as well as
21 inhalers. Also, antidepressants and antianxiety medication and
22 anti- -- prescription antihistamines.

23 Q. How, if at all, have you changed your behavior since
24 the teargas started?

25 A. I've become a lot less sociable. I don't feel safe

1 leaving the house because I'm nervous when I come back that I
2 won't be prepared for what's going on across the street.

3 I also don't feel comfortable, like, having hobbies or
4 going out anymore because I don't know how my body is going to
5 be behaving and if I'm going to be exposed to anything
6 beforehand.

7 And it's made it difficult for me to be a parent.
8 I've been having so many migraines and, like, gastrointestinal
9 issues. It's hard to do homework with my son or volunteer as
10 much as I used to at his school.

11 Q. And how has this been affecting your son?

12 A. They are very anxious, especially around bedtime.
13 They always have to make sure they have an N95 mask next to them
14 or on them when they go to bed. And they also like to have a
15 ventilator mask that was supplied to us by protesters, and also
16 ear plugs, and we have to sleep with the TVs on loud just so
17 that we don't hear the megaphones and flash bangs and stuff like
18 that.

19 Q. And when you say "megaphones," are those megaphones
20 the protesters are using or that ICE is using?

21 A. ICE has their own sort of, like, system that they use.
22 It's louder than megaphones. I don't know what it is.

23 Q. And what sort of physical symptoms has your son been
24 experiencing?

25 A. He's also experienced painful hives and rashes as well

1 as stomach issues, and he's had really bad panic attacks and
2 nightmares at night. Yeah.

3 Q. Has he had any respiratory issues?

4 A. Yes. He has tightness in his chest and wheezing,
5 especially if we do try to walk to school at all because
6 it -- his school is about a couple blocks away from the ICE
7 building and there's trolley tracks that we used to walk down
8 behind the ICE building to get to his school, and if we ever
9 walk by that area, he seems to have really bad asthmatic
10 attacks.

11 Q. Have doctors prescribed any medication for them?

12 A. Yes. They got prescribed initially an albuterol
13 inhaler, as well as prescription antihistamines. And now they
14 have moved him on to a stronger inhaler just this last January,
15 or this last month.

16 Q. Had he needed an inhaler before the teargas started?

17 A. No.

18 Q. And how has his behavior changed in -- over the last
19 several months?

20 A. He used to feel really, really safe in our
21 neighborhood, safe to go biking and walk to the river and fish,
22 and he no longer feels safe to walk to school, to walk to the
23 river or bike, even with me.

24 And they just have really horrible nightmares. If
25 they hear any sort of loud noise on TV or from neighbors, he

1 constantly thinks that the teargas is about to come. And so
2 that's been difficult to see -- see that happening to my son.

3 Q. You mentioned the courtyard.

4 How did you use the courtyard when you first moved to
5 Gray's Landing?

6 A. It was great. When we first moved in, people were
7 planting things, like, gardens to grow food. And a lot of kids
8 would play out there, there was things for the kids to play on,
9 and it was just a great place to hang out and meet neighbors and
10 barbecue.

11 And then after the teargassing, it became a really
12 frightening place to be. There were times I would barbecue with
13 neighbors in the courtyard and teargas was released and we had
14 to end barbecuing. I don't think the barbecues are used much
15 anymore for that reason.

16 Q. And I know on the picture we have there, it looks like
17 a construction site.

18 Is that -- what does the courtyard look like normally
19 now?

20 A. Yeah. It's right here, and there's usually, like, a
21 lot of nice trees and planters that we would grow herbs and
22 vegetables in, and then two, like, dinosaur-looking play things
23 for the kids, and then seats and tables to eat at, and two
24 barbecues.

25 Q. Have you or your son found any pepper balls or

1 remnants of munitions in the courtyard or in the street?

2 A. We have seen them. And my son always wants to try and
3 touch them, and that's been an issue. Yeah.

4 Q. How -- in what way was it an issue?

5 A. Because if we were to touch that, it would cause major
6 issues with hives and upper respiratory, as far as our doctors
7 have told us.

8 Q. And let's talk about pepper balls for a moment.

9 You said there were times when the use of teargas sort
10 of calmed down a little bit?

11 A. Yes.

12 Q. Were they still using other chemical weapons at that
13 point?

14 A. Yes.

15 Q. And what would they be using then?

16 A. I believe they were using rubber bullets that had
17 pepper spray on them. That's what it seemed. And, like, little
18 balls that had pepper spray on them.

19 Q. And how, if at all, did those affect you and your son?

20 A. It still affected our upper respiratory issues,
21 unfortunately. Yeah. Unfortunately, it was still affecting
22 wheezing, tightness in the chest, and swelling in the throat.

23 Q. Just a couple more lines of questions.

24 First, you talked about the last time that they were
25 using teargas.

1 Can you tell us a little bit about what happened in
2 January?

3 A. Sure. That was really frightening.

4 There was a march that came down the street. We
5 looked out the windows. It seemed like it was a lot of kids and
6 family, a lot of music and snacks. And my son wanted to go
7 downstairs and check it out, but I told him to stay upstairs and
8 I was going to go.

9 And when I went downstairs, it was really cool to see,
10 like, a lot of really little kids and families down there, which
11 wasn't that common usually. And I would say within two minutes
12 of getting downstairs, there was ICE people that came out onto
13 the rooftops of the building, and then within 30 seconds, they
14 released teargas. Someone in front of me was in a wheelchair
15 and almost ran me over trying to get out. There was some kids
16 crying, holding their moms' hands. I was, like -- I had a major
17 panic attack after that.

18 Getting in the building, there was a lot of residents
19 that were frantic, wanting to leave and not being able to
20 because transit was down, and people couldn't come to pick
21 people up.

22 So I ran back in the apartment and turned on the air
23 filter on full blast and put towels under doors and put us in
24 the room that doesn't have a vent in it.

25 Q. And did you detect any teargas in the building before

1 you were able to get into that room?

2 A. Yeah. And there was residents that were trying to
3 keep the doors shut to make sure that people at the protest
4 weren't keeping the doors open and letting teargas in.

5 Q. And how did the teargas in January affect you and your
6 son?

7 A. I ended up getting really severe migraines for a few
8 weeks after that. My son ended up getting hives on his whole
9 groin, as well as his ankles and his hands. I got a burning
10 rash on my hands and arms, neck, and face. And we just got
11 really frightened to see a lot of kids and families screaming
12 and crying. It was a lot on us mentally.

13 Q. Did you see any violence before the teargas began
14 being used that day?

15 A. No, no. Not at all. I wouldn't have gone downstairs
16 if I would have thought that. It -- there was tables with lots
17 of snacks, there was lots of kids and families. It seemed like
18 a -- like a big happy festival to my son and I. Yeah.

19 Q. And then one last line of questions for you.

20 Have you observed any efforts by DHS to clean up after
21 they use chemical weapons?

22 A. Yeah. Not often. Sometimes in the early morning
23 hours, they will have someone spray down their driveway from the
24 fence forward, and they usually spray ammunition and residue
25 towards the street and our sidewalk.

1 Q. And when you say "towards the street," do you mean the
2 street towards Gray's Landing?

3 A. Yes.

4 Q. And when have you seen that in relation to their use
5 of chemical weapons?

6 A. I've seen it as of this year, 2026. And it's usually
7 the morning after, just not consistently.

8 Q. Have you ever seen them clean Bancroft Street?

9 A. No.

10 Q. Have you ever see them clean Moody Street?

11 A. No.

12 MR. DUBNER: Ms. Del Nigro, thank you for your time.

13 No further questions.

14 THE COURT: Cross-exam.

15

16 CROSS-EXAMINATION

17 BY MS. JACOBS:

18 Q. My name is Kathleen Jacobs. I represent the
19 defendants in this matter, and I'm from the Department of
20 Justice.

21 In this case, have you submitted any medical records
22 for yourself as -- within this litigation?

23 A. I have not submitted any of the medical records.

24 Q. Okay. And you've also not submitted any medical
25 records for your son; is that correct?

1 A. I don't believe so.

2 Q. Okay. Earlier in -- when you were testifying, you
3 stated that, as it relates to protest activity, that initially
4 you found it alarming.

5 Do you recall that?

6 A. Okay.

7 Q. Is that a yes?

8 A. I don't recall that, but I -- I believe you.

9 Q. Okay. And you'd also stated that when you were
10 observing the protests, you were not sure why they were using
11 teargas.

12 Do you remember saying that?

13 A. Yes.

14 Q. And so you would agree with me -- well, I guess let me
15 ask a question first.

16 A. Sure.

17 Q. Are you a law enforcement officer?

18 A. No, I am not --

19 Q. Are you trained --

20 A. -- an officer.

21 Q. -- in chemical munitions?

22 A. No.

23 Q. And so you could also agree with me that you were not
24 trained to identify a perceived threat such that would
25 necessitate munitions; is that right?

1 A. If I felt like we weren't safe in our building due to
2 protesters, I would want the government to keep us safe. But I
3 never felt unsafe around the protesters or in my building just
4 based on the protests, just only when chemical weapons were
5 used.

6 Q. Right. That wasn't exactly my question, so just
7 listen a little bit more closely.

8 So you are not trained to identify a threat such that
9 would necessitate chemical munitions; is that right?

10 A. No, I'm not trained.

11 Q. And whenever you've viewed some of the protests, is
12 that typically from your apartment?

13 A. Yes.

14 Q. And that's, you know, probably just over a hundred
15 feet away. And so you don't necessarily know exactly what is
16 happening at the ICE facility at any given moment?

17 A. When I'm in my apartment, I don't. But there have
18 been times where we've parked our car across the street on Bond
19 and walked in the back building and we could see what's going
20 on.

21 Q. Okay. But just whenever -- I was asking about when
22 you're in your apartment, you're not necessarily able to see
23 exactly what's occurring outside the ICE facility?

24 A. No.

25 Q. And to that end, though, you cannot necessarily

1 observe what a law enforcement officer is observing in that
2 instance; correct?

3 A. Correct.

4 Q. And so you don't really for sure know exactly what's
5 occurring to necessitate the officer to deploy any chemical
6 munition; right?

7 A. Yes.

8 Q. And earlier you said that -- you made a comment about
9 residents standing at the doors of the building to keep -- to
10 make sure that the doors are not being kept open --

11 A. Yes.

12 Q. -- by protesters.

13 Do you recall that?

14 A. Yes.

15 Q. And so am I to understand that to mean that there have
16 been times when protesters have left the doors open to the
17 residents?

18 A. Not that I know of.

19 Q. Okay.

20 A. They automatically close, so -- and I've never seen
21 anyone hold them open.

22 Q. Okay. But you did say that there were people there
23 making sure that they remained closed?

24 A. Yeah. They were frightened residents that knew gas
25 was outside wanting to make sure that it didn't get in the

1 building.

2 Q. As it relates to what you have observed outside of the
3 facility, you described a march.

4 Would you have characterized -- and I think it was
5 January 31st; is that right?

6 A. I believe so.

7 Q. And would you characterize that as a pretty large
8 crowd that day?

9 A. I would say so. Bigger than normal.

10 Q. Okay. And would it also be fair to say that, similar
11 to your prior testimony, you were not able to personally observe
12 what was occurring at the ICE facility to necessitate the
13 deployment of chemical munitions? Right?

14 A. Correct.

15 Q. Have you ever observed any instances of vandalism at
16 the ICE facility?

17 A. No.

18 Q. Have you observed trash on the ground in front of it
19 or anything like that?

20 A. After, in the mornings, I did notice, especially in
21 their driveway.

22 Q. And whenever you say that they are cleaning the
23 facility, have you discussed with anybody that works at the
24 facility that they're doing it specifically to remove residue?

25 A. No.

1 Q. And so you don't know that they're potentially
2 cleaning that driveway because of things that protesters have
3 left the night before; right?

4 A. I'm not sure.

5 Q. And, in fact, if the deputy regional director
6 testified with your -- to your lawyers to say that he is not
7 aware of any decontamination efforts, you wouldn't have any
8 reason to dispute that, would you?

9 A. I'm a little confused by that question.

10 Q. Yeah. No. That's fair.

11 You wouldn't have any reason -- if somebody who worked
12 for FPS has indicated that they are unaware of any specific
13 efforts to decontaminate such as you have described, you cannot
14 say that that is incorrect?

15 A. I cannot say why they were spraying down their
16 driveway.

17 Q. Right.

18 So it's not necessarily for decontamination, as you
19 claimed; right? Or you can't say that?

20 A. I can't say that for sure. It just seemed like after
21 nights where they used teargas heavily was the times I saw them
22 spray the driveways down.

23 Q. Okay. But you don't know specifically why; right?

24 A. I never spoke to anyone there.

25 Q. And today you testified to some pretty specific facts

1 that were not included in your declaration; is that right?

2 A. I may have.

3 Q. And you listed -- or you specifically discussed
4 particular incidents or days that you did not include in your
5 declaration; right?

6 A. Okay.

7 Q. And so were you unaware of those at the time that you
8 signed your declaration?

9 A. I -- I may have. It's been really difficult with all
10 of my anxiety and PTSD to recall everything when I did my --

11 Q. Declaration?

12 A. Yes. Declaration.

13 Q. And -- but as you sit here today, I guess some of
14 those encumbrances have been alleviated to recall facts that
15 were not previously submitted?

16 A. Sure.

17 MS. JACOBS: Okay. I'll pass the witness.

18 THE COURT: Redirect?

19 MR. DUBNER: Brief redirect, Your Honor.

20

21 REDIRECT EXAMINATION

22 BY MR. DUBNER:

23 Q. Thank you, Ms. Del Nigro.

24 First, I want to go back to counsel's question about
25 you finding the protests alarming at first.

1 When you were talking about that in your direct
2 testimony, when and why did you think the protests might be
3 alarming?

4 A. There had always been, like, some protests in the
5 area, like, Tesla and stuff like that, but these particular ones
6 were more alarming because we experienced teargas from them.

7 Q. And aside from the teargas, you spoke before about
8 being sort of afraid of the protests at first and then your
9 therapist encouraging you to come down and see them?

10 A. Yes.

11 Q. Once you had more first-hand experience with the
12 protest and the protesters, did you still find them alarming?

13 A. No. I think -- I just watched the news and it looked
14 really scary on the news. And when I mentioned that to our
15 therapist, she said maybe you need to go downstairs during the
16 day to see what it's really like.

17 Q. And then counsel asked you about your ability to
18 observe the facility and what was happening right in front of
19 the ICE building.

20 When you saw or experienced the government using
21 chemical munitions, were they only releasing them right in front
22 of the building?

23 A. No. There were times that stuff would get to our
24 courtyard. Someone in the building's window was broken recently
25 from one of the munitions; so --

1 Q. And when you would be down, you said, at barbecues or
2 otherwise at the protests on Bancroft Street, would they
3 sometimes use sort of long-range weapons fired from the facility
4 that reached to you?

5 A. Sure seemed like it because they were -- we were
6 finding them, like, all the way down in here and stuff. We
7 stopped walking -- whoops -- to school this way and stopped
8 walking this way, but every once in a while we would try to go
9 this way and we would still find ammunition down in here. And
10 there was times we would see ICE people here chasing protesters,
11 I guess.

12 THE COURT: Could you please -- I'm sorry to ask this,
13 but could you please restate your answer with reference to the
14 street names?

15 THE WITNESS: Sure.

16 So let's see here. This is Lowell, this is Bancroft,
17 and then this is Bond. And so we would find ammunition even on
18 Bancroft and down farther on Bond towards this parking lot,
19 which is the Spaghetti Factory.

20 BY MR. DUBNER:

21 Q. And just to check, because I know you don't usually
22 see your building from this angle, is it possible that this
23 street at the bottom of the entrance to the courtyard is
24 Bancroft?

25 A. Yes.

1 Q. So that would make this street --

2 A. Sorry.

3 Q. -- on the east, what street would that be?

4 A. Bond. Bond.

5 Q. Thank you.

6 A. Sorry about that.

7 Q. One more thing to wrap up on that question.

8 When you would be in the protests and teargas or other
9 munitions would be used near where you were, as counsel said,
10 you couldn't see what was going on in the facility. But you
11 could see what was going on where you were; right?

12 A. Yes.

13 Q. And did you see violence or threats to federal
14 officers at that time?

15 A. No.

16 Q. Did you see property damage at that time?

17 A. No.

18 Q. And then just one last thing.

19 In terms of cleaning the driveway, have you observed
20 that on mornings when there weren't chemical weapons used the
21 night before?

22 A. No.

23 Q. And while you don't know what residue there may have
24 been, did you observe what direction anything was washed off?

25 A. Just straight ahead and -- actually, I would say it

1 was this direction, from their driveway towards here.

2 MR. DUBNER: Thank you so much, Ms. Del Nigro.

3 No further questions from me.

4 THE COURT: I have one question, please.

5 You mentioned at the beginning of your testimony, if I
6 understood it correctly, coming out of your building, and if I
7 understood, that the officers were marching, I guess, that would
8 be east down the street --

9 THE WITNESS: Yes.

10 THE COURT: -- close to the courtyard?

11 THE WITNESS: Yes.

12 THE COURT: And they were launching munitions from
13 close to the courtyard?

14 THE WITNESS: Yes. Yes. There were times where they
15 would often go east down -- down here and still be shooting and
16 launching ammunitions.

17 THE COURT: So a full block east of the ICE building?

18 THE WITNESS: Oh, yeah. Definitely.

19 THE COURT: More than that?

20 THE WITNESS: From what I witnessed, definitely a full
21 block.

22 THE COURT: Okay. Thank you.

23 Any follow-up based on my question?

24 MR. DUBNER: No, Your Honor. Thank you.

25 THE COURT: From the defense?

1 MS. JACOBS: No, Your Honor.

2 THE COURT: Thank you. You may step down.

3 THE WITNESS: Thank you.

4 THE CLERK: You're calling your next witness?

5 MR. JACOBSON: Yes.

6 Plaintiff will call their final witness, Wendy King.

7

8 MINDY KING,

9 having been first duly sworn or affirmed, is examined and
10 testifies as follows:

11 THE CLERK: Please have a seat.

12 State your name and spell it.

13 THE WITNESS: Thank you.

14 My name is Mindy King, M-i-n-d-y, K-i-n-g.

15 THE COURT: When you're ready, Counsel.

16 MR. JACOBSON: Sorry.

17

18 DIRECT EXAMINATION

19 BY MR. JACOBSON:

20 Q. Good afternoon, Ms. King.

21 Can you please state your full name for the record?

22 A. Yeah. Mindy King.

23 Q. And how long have you lived at Gray's Landing,
24 Ms. King?

25 A. Just over ten years.

1 Q. Does anyone live with you in your apartment?

2 A. Yeah. My two children.

3 Q. And how old are they?

4 A. My oldest is 19 and my youngest is 14.

5 Q. Until the events of last summer, how had it been

6 living at Gray's Landing?

7 A. Amazing. I'm so grateful to have that community and a
8 place to call home. I've been nothing but grateful. It's been
9 a safe place for my family.

10 Q. Okay. Thank you.

11 Do you see that pointer there in front of you
12 somewhere?

13 A. Uh-huh.

14 Q. Can you show us on this map as you're doing it where
15 you live within Gray's Landing?

16 A. Yeah.

17 So this is Bancroft Street along here and then this is
18 the courtyard, and these are my windows right here on the second
19 floor at the corner. So I have windows on the Bancroft side and
20 the courtyard side.

21 Q. And from where you live, can you see the ICE facility?

22 A. Yes.

23 Q. Can you see all the way up to the end of the driveway
24 from the ICE facility?

25 A. Yes.

1 Q. When did the use of chemical munitions by federal
2 officers begin last year?

3 A. Around June.

4 Q. How frequently would you say the officers used teargas
5 and other chemical munitions over the summer?

6 A. If I had to guess, I would say easily two to three
7 times a week.

8 Q. What about in October 2025 after the President
9 announced he intended to send National Guard to Portland?

10 A. It was very similar. The only difference was the
11 volume of influencers that were around.

12 MR. JACOBSON: And if we could pull up Exhibit 5,
13 which, Your Honor, is -- from the King declaration, which is
14 ECF 46-1, which is where all but one of the videos I'll show
15 Ms. King is from.

16 BY MR. JACOBSON:

17 Q. Can you orient us, Ms. King, at what we're looking at,
18 from what vantage point?

19 A. Yeah.

20 This is my deck looking down onto Bancroft.

21 Q. And who took this image?

22 A. That would be me.

23 Q. In this image with the gas coming down Bancroft
24 street, was that typical or atypical of what happened during the
25 incidents in 2025 where teargas was used?

1 A. Unfortunately, this was very typical.

2 Q. At some point last year, did you buy equipment to wear
3 to protect against the gas?

4 A. Yes, I did.

5 Q. And what was that?

6 A. I had to purchase gas masks for me and my children.

7 Q. And for your younger child, what did you have to do to
8 help him use his mask?

9 A. I realized that one of the most important things that
10 makes the gas mask functional is the seal along the outside.
11 And my child has long hair, and at 14, I never had to teach him
12 how to pull his hair back. I think he would have run from a
13 ponytail holder. But I had to teach him to pull his hair back
14 so that he could get the full seal on his own knowing that at
15 any moment I would need to instruct him to do that.

16 Q. And how did you feel having to teach him that?

17 A. Gut wrenching. I would have never guessed that in my
18 home I would be at risk for this.

19 Q. Across the summer of 2025 and October 2025, did you
20 often see from your apartment the moment that officers first
21 deployed teargas on a given day?

22 A. Yes.

23 Q. And in general, what was your perspective based on
24 what you could see on whether they usually faced imminent
25 threats when they used teargas and other smoke?

1 A. I never saw an imminent threat. There never seemed to
2 be a rhyme or reason, or a consistent reason.

3 Q. Did it correlate with crowd size or not?

4 A. No. It never seemed to be crowd size or activity from
5 the protesters.

6 Q. Shifting gears.

7 At some point, did you start doing anything to
8 document what was happening outside Gray's Landing?

9 A. Yeah, absolutely. It started as me just taking
10 videos, and then I ended up going live stream.

11 Q. And why did you do that?

12 A. I wanted people to be able to witness for themselves
13 and not have to depend on somebody else to give them
14 information.

15 Q. Prior to October 2025, so over the summer, do you
16 believe that federal officers knew you were videotaping their
17 actions?

18 A. Yes.

19 Q. And what makes you think that?

20 A. I -- there was a particular time that comes to mind
21 where they were detaining a protester --

22 Q. Can you show us on the map where that was?

23 A. Yeah.

24 It would be -- so this is, again, my apartment here at
25 the corner of Bancroft and the courtyard, and the detainment

1 was happening here at Moody and Bancroft.

2 Q. And did the officers do something that made you think
3 they knew you were recording?

4 A. Yes. As they were detaining -- there were a couple
5 people detaining the person, and then there were officers or
6 agents surrounding where they were detaining the person, and
7 those officers were watching me, looking at me, and, in fact,
8 one of them took a flashlight and pointed it at me to try to
9 obstruct my ability to video.

10 Q. I'd like to now talk about the events of October 4,
11 2025, that you described in your declaration --

12 A. Uh-huh.

13 Q. -- both the afternoon events and the evening events,
14 and as part of that, I'm going to show you a series of videos
15 that you took.

16 Did you review those videos prior to today's
17 testimony?

18 A. Yes.

19 Q. Let's start with the afternoon incident.

20 Were you home that afternoon?

21 A. Yes.

22 Q. Were you filming the ICE facility that afternoon?

23 A. I was. I was live streaming and filming. Uh-huh.

24 MR. JACOBSON: Can we pull up Plaintiffs' Exhibit 1
25 and just play the first few seconds.

1 (Video played.)

2 MR. JACOBSON: And you can stop it right there.

3 BY MR. JACOBSON:

4 Q. Do you recognize this video?

5 A. Yes.

6 Q. Did you take this video?

7 A. Yes, I did.

8 Q. Okay.

9 MR. JACOBSON: Now, let's go to the
10 two-minute -- sorry -- the 2:15 mark.

11 (Video played.)

12 MR. JACOBSON: And we can pause it right there.

13 BY MR. JACOBSON:

14 Q. Who was talking at the end of that video?

15 A. That's me.

16 Q. And can you describe for the record what we just saw
17 on that video?

18 A. Yeah. That was the beginning of teargas.

19 Q. And what was happening when they started teargassing?

20 A. It looks like they call out to let a car out of the
21 driveway.

22 Q. From where you were standing while you were watching
23 this, did you see any provocation by the protesters that
24 necessitated that use of chemical munitions?

25 A. No.

1 Q. Let's now play it to the 20:50 [sic] mark, and,
2 Ms. King, I'd ask -- direct your attention and the Court's
3 attention to the far side of the street up near the top, and
4 we'll play it from there.

5 (Video played.)

6 MR. JACOBSON: Pause it right there.

7 Let's go back and play it again at the 2:30 mark and
8 play it at half speed, if possible. And, again, I'll focus your
9 attention near the top of the screen.

10 BY MR. JACOBSON:

11 Q. Well, let me ask you, what did we just see?

12 A. That was a teargas canister that was launched and
13 landed underneath my deck.

14 Q. And before we watch the video again, where was it
15 launched from?

16 A. Right near the driveway, kind of more towards the
17 Macadam side.

18 Q. Can you show us on the map where the officer was
19 standing?

20 A. Yeah. On this map here?

21 Q. Yes.

22 A. Yeah. I would say right around here.

23 Q. And where did it land?

24 A. Right there on the sidewalk underneath the apartment
25 deck.

1 Q. Let's watch that one more time.

2 (Video played.)

3 BY MR. JACOBSON:

4 Q. Now, let's now talk about the incident on the night of
5 October 4th.

6 Before we show any videos, can you just describe in
7 your own words what you experienced that evening from before gas
8 to the gas?

9 A. Yeah.

10 I was live streaming in my apartment. I got a phone
11 call from a friend, so I stepped in and was -- had closed up my
12 apartment and was talking to her on the phone when I started to
13 hear teargassing. So I watched out my window and actually stood
14 up on my couch. I watched as they teargassed. I watched as a
15 hummingbird flew up out of the tree and into the teargas.

16 I then realized my puppy was playing in the bathroom,
17 which he shouldn't ever be playing in there, so I went to catch
18 her. And as I entered the hallway that is right next to my
19 bathroom and my front door, I realized that teargas was in our
20 apartment, which I did not expect because I had all the windows
21 closed. So every entry point that would normally be at risk was
22 taken care of, so I wasn't concerned. I realized that teargas
23 had been getting in through my front door.

24 Q. So if I may clarify --

25 A. Yes.

1 Q. -- are you saying it was not coming in through the
2 windows?

3 A. Correct.

4 Q. Where was it coming in through?

5 A. The interior hallways through the front door of the
6 Gray's Landing building.

7 Q. And was your son home at the time?

8 A. Yes.

9 Q. And what did you do with him?

10 A. As soon as I recognized that teargas was coming in, I
11 alerted him to get his gas mask, which was in his room with him
12 at his computer desk. I took towels, I placed wet towels
13 underneath the door. I had previously had somebody on my live
14 stream mention that if I took my box fan with filters and
15 pointed it directly at the door, that it would create positive
16 pressure, which would keep the gas from continuing to come into
17 my apartment. So I did all of those things. I made sure that
18 my son Jax put blankets underneath his door.

19 Q. And when you say your son Jax, is that your older or
20 younger son?

21 A. My 14-year-old.

22 Q. And did he have to put his gas mask on?

23 A. Yes.

24 Q. What did you feel physically from the teargas?

25 A. For one, burning, burning eyes. You know, all of the

1 things that you experience with teargas; throat, coughing,
2 burning on my skin.

3 Q. Did you continue -- did those go away quickly or
4 continue for a period after?

5 A. No, because I still had to get my pets -- so it was a
6 period of time that I was exposed before the air was cleared
7 with the air filters.

8 So for weeks afterwards, both me and my
9 puppy -- because my puppy was actually the first one to be
10 teargassed. She had a barking cough, a deep cough that she
11 barked for several weeks, and I continued to have similar
12 symptoms of super dry throat, soreness, and the inability to
13 speak a sentence without coughing.

14 Q. Did you come to learn that your neighbors experienced
15 similar events that evening?

16 A. Each time and the day after that I would run into
17 somebody, my first thing was "Are you okay?" And in the
18 conversation, I noticed that each person I spoke with also
19 couldn't complete a sentence without coughing.

20 Q. Let's now watch some video from that night and pull up
21 Exhibit 8.

22 MR. JACOBSON: And this is the one video, Your Honor,
23 that's from a different declaration. This is from the Roe
24 declaration, ECF 46-2.

25 If we can go to the 45-second mark and just play it

1 for about 15 seconds, please.

2 (Video played.)

3 MR. JACOBSON: And pause it right there.

4 BY MR. JACOBSON:

5 Q. Can you just orient us, Ms. King, as to what streets
6 or intersection we're looking at and from what vantage point?

7 A. Yeah. That would be Bancroft and Moody, and that's
8 Gray's Landing in the back.

9 Q. So can you show on the map from what vantage point was
10 this video being taken?

11 A. Yeah. That would be this intersection here of -- this
12 is Bancroft and this is Moody would be right in this
13 intersection, and it's showing this corner of --

14 Q. The intersection is where the people were standing?

15 A. Yes.

16 Q. Okay.

17 A. And then it looks like the video is actually being
18 filmed up further a little closer to Macadam.

19 Q. Thank you.

20 MR. JACOBSON: We can now go to the 14:10 mark.

21 I'm sorry. I'm in the wrong exhibit. If we could
22 just go back to where we were, which was around the 1-minute
23 mark. Play it to 1:08.

24 (Video played.)

25 MR. JACOBSON: Pause it right there.

1 BY MR. JACOBSON:

2 Q. Ms. King, do you see someone standing there in a
3 yellow vest?

4 A. Yes.

5 Q. Where are they on the screen?

6 A. To the right, right side of the screen.

7 Q. Can you describe what they're wearing?

8 A. Yeah. He's wearing a yellow press vest, a helmet, gas
9 mask.

10 Q. And what's this person doing? Can you tell?

11 A. Yes. He is videoing.

12 Q. Let's now pull up Exhibit 2. And this is back now to
13 your declaration, and if we could play just the first few
14 seconds.

15 (Video played.)

16 MR. JACOBSON: That's fine.

17 BY MR. JACOBSON:

18 Q. Do you recognize this video?

19 A. Yes.

20 Q. Did you take this video?

21 A. Yes, I did.

22 MR. JACOBSON: Now go to the 14:10 mark, and once
23 you're there, let me know when you're there. If we can play it
24 to the 14:42 mark.

25 And I will point your -- I'll direct your attention to

1 the bottom left of the screen, Ms. King.

2 (Video played.)

3 MR. JACOBSON: You can stop it right there.

4 BY MR. JACOBSON:

5 Q. Can you describe what we just saw in the bottom left
6 side of the screen?

7 A. Yeah. It is a press vest person in a press vest
8 filming the teargassing.

9 Q. And as that person started the video walking from off
10 screen -- well, let's situate us.

11 Where is that person standing on here?

12 A. That would be right about here.

13 Q. And so where does he appear to be filming? In what
14 direction?

15 A. Here towards this intersection here of Bancroft and
16 Bond.

17 Q. And so when that person first at the beginning of the
18 video was walking west on Bancroft Street, was anything
19 following him?

20 A. Yeah. The teargas.

21 Q. Okay. And then what did he do?

22 A. He appears to be videoing.

23 MR. JACOBSON: If we can go now to Plaintiffs'
24 Exhibit 61.

25 THE COURT: Whoever is tapping, please stop. I'm

1 hearing that.

2 MR. HOLT: That's my -- I'm sorry.

3 MR. JACOBSON: And, Your Honor, this video, Exhibit 61
4 is from the Jacobson supplemental declaration, ECF 55-5.

5 And if we could just play it to the 8-second mark.

6 (Video played.)

7 MR. JACOBSON: Right there.

8 BY MR. JACOBSON:

9 Q. Do you see that same gentleman?

10 A. Yes.

11 Q. And what's he doing?

12 A. He appears to be videoing.

13 MR. JACOBSON: And now let's play to the end of the
14 video.

15 (Video played.)

16 MR. JACOBSON: You can stop there.

17 BY MR. JACOBSON::

18 Q. Can you describe where that gentleman just went in the
19 video?

20 A. Yeah. He followed the agent into the driveway and
21 into the ICE facility.

22 MR. JACOBSON: Sorry. Let's now pull up Exhibit 49,
23 which is from the Deffebach declaration at ECF 55-1.

24 BY MR. JACOBSON::

25 Q. Ms. King, what social media platform are we looking

1 at?

2 A. It looks like Instagram.

3 Q. And can you see whose account this is on Instagram?

4 A. It looks like it's DHS.gov.

5 Q. Can you see what date this video was posted?

6 A. It looks like October 6th.

7 Q. So two days after the events we were just watching?

8 A. Yes.

9 MR. JACOBSON: And if we could play the full video,
10 please.

11 (Video played.)

12 BY MR. JACOBSON:

13 Q. Ms. King, from what you could see, can you tell where
14 that video was shot?

15 A. Yes. That was on Bancroft.

16 MR. JACOBSON: And can we go back to the 36-second
17 mark. Right there.

18 BY MR. JACOBSON:

19 Q. In that shot, what building is that on the top left
20 side of the screen?

21 A. That is Gray's Landing, and that is, in fact, my
22 apartment with the lights on right there by the blue light.

23 Q. And can you describe for the record what is going on
24 in the street next to your apartment?

25 A. Yeah. They are throwing teargas and teargassing the

1 entire street in an extreme manner.

2 Q. Let's go now to -- can you just show us on the map,
3 just to close the loop, and orient us where they are standing,
4 roughly?

5 A. Yes. That would be right around here --

6 Q. And the gas is where?

7 A. -- on Bancroft. And the gas is all up Bancroft
8 towards Bond and likely far beyond that.

9 MR. JACOBSON: And let's go now to Exhibit 19. This
10 is the exhibit I showed in the opening from the Jacobson
11 declaration, ECF 46-3.

12 BY MR. JACOBSON:

13 Q. And, Ms. King, this is from Oregon Public
14 Broadcasting, I'll represent to you.

15 MR. JACOBSON: Can we go to the 45-second mark and
16 play it to the 1:27 mark.

17 (Video played.)

18 MR. JACOBSON: Pause it right there, and can we just
19 replay that last three seconds, five seconds.

20 (Video played.)

21 MR. JACOBSON: Stop it right there.

22 BY MR. JACOBSON:

23 Q. Can you describe what we just saw at the end of that
24 video?

25 A. Yeah. That is an agent throwing a teargas canister.

1 Q. And roughly where was he standing? Can you tell using
2 the --

3 A. Yeah. That would be right around where this white car
4 is, here.

5 Q. And your apartment is where?

6 A. Right here on the corner.

7 Q. And from what you can see in this video, was this
8 agent facing any imminent threat at the time he tossed that
9 canister?

10 A. No.

11 Q. Given everything we just saw, the videos, the man in
12 the yellow vest filming, the DHS video posted to Instagram, and
13 this video from Oregon Public Broadcasting, what do you infer
14 about why federal officers used teargas that night?

15 A. It appears to be to make propaganda.

16 Q. Given the injuries you suffered that night, how does
17 that make you feel?

18 A. Absolutely enraged. It's unbelievable, unfathomable.

19 Q. I'd like to now close by talking just briefly about
20 the recent incidents in 2026.

21 Did you go away from Portland for a period of time in
22 January?

23 A. I did, yes.

24 Q. And what were the dates of your trip? When did you
25 leave? When did you come back?

1 A. I left the morning of January 24th and came back right
2 before the middle of the night on February 1st.

3 Q. So to the extent there were incidents between
4 January 24th and February 1st, were you in Portland?

5 A. No, I was not.

6 Q. What happened when you got back from your trip in
7 relation to any residue you found?

8 A. Yeah.

9 Well, for one, every time I come back from anywhere,
10 the first thing I do is open my windows for fresh air. I did
11 that as always. Within an hour or so, I started to feel
12 symptoms that I felt prior when being exposed to teargas,
13 including the extremely dry throat. It feels like I'm
14 swallowing glass. And that has continued to get worse to the
15 point where I had to seek medical attention.

16 MR. JACOBSON: Thank you very much, Ms. King.

17 THE WITNESS: Thank you.

18 THE COURT: Cross-examination?

19 MR. BRUNS: Thank you, Your Honor.

20

21 CROSS-EXAMINATION

22 BY MR. BRUNS:

23 Q. Hi, Ms. King. My name is Michael Bruns. Excuse me.
24 I am an attorney with the Department of Justice. I just have a
25 few questions to clarify some of your testimony.

1 You testified that, from your perspective, you didn't
2 see officers in any imminent harm; is that correct?

3 A. Yes.

4 Q. Are you a law enforcement officer?

5 A. I am not.

6 Q. Are you trained to assess dangerous situations?

7 A. Yes. I -- it is part of what I do at work. Not in a
8 law enforcement way, but, yes, absolutely.

9 Q. What is that training?

10 A. For one, I've -- in my job as a -- at OHSU, at the
11 hospital, I've been trained in active shooter kind of training.
12 I've been trained in chemical agent training or chemical -- you
13 know, if the hospital were to experience a chemical attack.
14 Yeah. Just general threats that a hospital might come against.
15 We get a lot of training to assess those situations and keep our
16 employees and community members safe.

17 So, no, I'm not law enforcement, but I am -- it is
18 something I value and have some training in, yes.

19 Q. So you have training for threats that might appear at
20 a hospital, but no training of threats that might occur at a
21 protest?

22 A. No. I've not ever received training regarding threats
23 in my home from chemical agents.

24 Q. So you would agree, then, that there could be a
25 legitimate law enforcement reason for pushing protesters past

1 the intersection?

2 A. There was none that I witnessed.

3 Q. But you wouldn't be trained to assess whether there
4 was or wasn't one; right?

5 A. No. I would just be using my common sense.

6 Q. So it's possible that there could have been one to a
7 trained officer on the ground?

8 A. Yeah. I can't say that a hundred percent
9 there's -- there wasn't, but --

10 Q. You provided testimony on one of your videos,
11 Exhibit 1, that was where the gas canister landed near your
12 apartment; is that right?

13 A. Yes.

14 Q. And in your declaration, you stated that you believed
15 the gas canister was fired intentionally at your apartment
16 because you were filming; is that right?

17 A. Yes.

18 Q. Now, that was shot from over 150 feet away; isn't that
19 correct?

20 A. Yes.

21 Q. And it was shot from behind a cloud of gas?

22 A. Yeah. The -- it was still small at that point, but,
23 yes, there was gas that had been deployed closer to the
24 driveway. Yes.

25 Q. And 150 feet, that's about half the length of a

1 football field?

2 A. I don't know. I don't watch football. Never played
3 it.

4 Q. Fair enough.

5 A. I do know it is actually about 200 -- just shy of
6 200 feet.

7 Q. 200 feet?

8 A. Uh-huh.

9 Q. And how big is your patio or your deck where you were
10 filming?

11 A. My deck is probably two feet by eight feet, I would
12 guess.

13 Q. So it's your testimony that an officer with his sight
14 obscured by gas was intentionally shooting a gas canister from
15 200 feet away and was able to hit that two-by-eight piece of
16 ground?

17 A. Yes. I'm not saying he hit my -- my specific deck. I
18 do -- I do believe the intention was to cause enough gas in the
19 area that my video would not be able to be used.

20 Q. You also testified about taking a video of someone
21 being detained.

22 Do you remember that testimony?

23 A. Yes, I do remember that. Yeah.

24 Q. And you testified that officers shone lights at your
25 camera so you couldn't take a video?

1 A. Yes. Yes.

2 Q. Was that video submitted as part of the video in this
3 case?

4 A. That was during a live stream on TikTok, and those
5 just naturally disappear. I think it's after a month they
6 disappear. So it's not -- unfortunately, I didn't realize at
7 that point that TikTok's videos do disappear. So I no longer
8 have access to those videos.

9 Q. And when you're doing your live streams and your
10 videos, you're doing it from the deck of your apartment?

11 A. Yes.

12 Q. That's about --

13 A. Yes.

14 Q. Sorry. That's about 100, 150 feet away from the ICE?

15 A. From where they were actually detaining.

16 Or are you speaking of the -- when they detained this
17 person?

18 Q. I'm drawing back to more general when you're filming
19 the protests. Is that about 100, 150 feet away from protests?

20 A. It's very close to 200 feet. I know because there's
21 somebody who's been trespassed, can't go within 200 feet, and
22 the light post that my window is at is -- so I know it's
23 200 feet.

24 Q. And the protests, they're typically crowd s of various
25 sizes?

1 A. Yes, it does vary for sure.

2 Q. And it's difficult to see the front of the crowd from
3 200 feet away; is that right?

4 A. No. I would say they're about five to 10 feet from
5 where that gate that opens, to where my visibility point is.
6 There's about, I would say, probably five to 10 feet where I
7 cannot see at the gate, but I can see the entire driveway.

8 Q. Can you make out from 200 feet away what any
9 individual protester is doing?

10 A. I can, yes. Yes.

11 MR. BRUNS: No further questions.

12 THE COURT: Redirect?

13 MR. JACOBSON: Just one, Your Honor.

14

15 REDIRECT EXAMINATION

16 BY MR. JACOBSON:

17 Q. Ms. King, you were asked various questions about what
18 you could and could not see in the driveway.

19 Do you recall that just now?

20 A. Yes.

21 Q. Have you been presented with any security camera
22 footage from the ICE facility to contradict what you think
23 you've seen?

24 A. No, I have seen no contradictory video or evidence.

25 MR. JACOBSON: Thank you.

1 THE COURT: Thank you. You may step down.

2 Thank you.

3 THE WITNESS: Thank you.

4 MR. JACOBSON: Your Honor, that's our final witness.

5 THE COURT: Okay. Thank you.

6 And would the defense like to present any evidence
7 beyond what's already in the record?

8 MR. HOLT: No, Your Honor.

9 THE COURT: Okay. Very well.

10 So we are almost out of time today. I have a number
11 of questions that I wanted to ask following up on the paper
12 exhibits, but let me ask how folks propose that we proceed.

13 We can start with plaintiffs' counsel.

14 MR. JACOBSON: Yes, Your Honor.

15 I don't know what -- we are here and we're able to
16 stay for as long as Your Honor has today. We obviously can be
17 here on Tuesday, if that's preferable for Your Honor. We can
18 also answer questions in writing. Basically, we'll do whatever
19 Your Honor wants.

20 THE COURT: Thank you.

21 How about for the defendants?

22 MR. HOLT: Your Honor, we're available according to
23 what the Court wants. I'm -- I'm happy to answer specific
24 questions.

25 There are specific cites of the deposition transcripts