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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

October 23, 2025

VIA E-FILING THROUGH CM/ECF ONLY

Molly C. Dwyer
Clerk of the Court
The James Browning Courthouse
95 7th Street
San Francisco, CA 94103
(By electronic filing)

RE: State of Oregon v. Trump, No. 25-6268
Plaintiffs' Letter Under Federal Rule of Appellate Procedure 28(j)

Dear Ms. Dwyer:

Plaintiffs write to alert the Court of a material factual error by defendants on which the panel relied to grant a stay pending appeal. Given that reliance, and the gravity of the interests at stake, plaintiffs ask that the panel immediately withdraw its order or, in the alternative, that the en banc court immediately vacate it.

The panel majority held that defendants were likely to prevail under 10 U.S.C. § 12406(3) because the record showed a colorable inability to execute federal law. (Order 23-31). Central to that determination was the majority's acceptance of defendants' averments that protests had forced the redeployment of 115 Federal Protection Service officers, "nearly 25% of FPS officers nationwide," to Portland. (*Id.* at 27-31). The dissent noted that defendants' declaration on the actual extent of the deployment was "carefully worded" to the point of "vague." (Dissent 16-21). But defendants' counsel emphasized at oral argument the "magnitude" and "unsustainab[ility]" of having 115 FPS offices redeployed; then, when asked directly whether all 115 officers remained in Portland, counsel stated only that "some" had gone home but "many" remained. (Oral arg., 10/9/2025, at 9:48-9:58, 11:04-12:09).

However, in discovery produced last night, defendants admitted that 115 FPS officers have *never* been redeployed to Portland. Only a *fraction* of that number was ever in Portland at any given time before the President's directive:

6/16/2025 - 7/15/2025: 27
7/15/2025 - 8/12/2025: 31
8/12/2025 - 9/10/2025: 29
9/10/2025 - 10/5/2025: 20

(Dkt. 108-1 at 4-5).[1]

Critically, armed with the Court's stay order, defendants have now moved to dissolve the second TRO in this case, and the district court has scheduled a hearing on that motion for October 24, 2025, at 10:00 a.m. This Court must act swiftly to prevent defendants from attempting to benefit from their own material mistake to deploy military forces to peaceful civilian streets, contravening the rule of law and our nation's history and traditions. The panel majority's stay order should be withdrawn or vacated immediately.

Respectfully submitted,

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[1] The interrogatory response appears to have a typo on the time periods for FPS "waves" 2 and 3, which plaintiffs have endeavored to correct.