



**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

The Honorable Tom Cotton  
United States Senate  
Washington, DC 20510

Dear Senator Cotton:

This responds to your letter to the Attorney General, dated January 31, 2022, regarding the legal representation of federal law enforcement officers who are subject to civil lawsuits arising from the protests in Portland, Oregon in the summer of 2020.

The Department of Justice (Department) strongly supports the provision of representation for federal officers acting in the line of duty. The Department has received numerous representation requests in connection with official law enforcement conduct relating to the Portland protests. We are providing direct representation or paying for private counsel for over 70 federal employees in response to these requests. To date, we have denied only a single request for representation arising from these events, and three requests remain under review.

The Department has long recognized that it serves the government's interest to make representation available to federal employees who face personal liability because of their on-the-job conduct. The authority to represent federal employees in their personal capacity flows from 28 U.S.C. §§ 516–517, and 28 C.F.R. §§ 50.15 and 50.16 set forth procedures related to personal-capacity representation. Those regulations permit representation of federal employees who are sued personally for conduct occurring within the scope of their employment, if representation is in the interest of the United States.

The Department gives each request for representation submitted under these regulations careful consideration, making decisions on a case-by-case basis, following a review of the available facts. Information received in connection with a representation request is subject to the attorney-client privilege and protected from disclosure. 28 C.F.R. § 50.15(a)(3). In considering representation requests, the Department assesses whether the conduct at issue fell within the scope of employment; additional facts that have been uncovered by the Department and internal investigating authorities; and whether there has been any intentional wrongdoing or violation of any law or internal rules or practices. Thus, there are occasionally instances where, based on a review of the facts, it is not in the interest of the United States to provide representation.

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In light of significant confidentiality interests and applicable privileges, the Department cannot comment further on any specific representation decision.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter S. Hyun  
Acting Assistant Attorney General

cc: The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary

The Honorable Charles E. Schumer  
Majority Leader