

**DHS Had Authority to
Deploy Federal Law
Enforcement Officers to
Protect Federal Facilities in
Portland, Oregon, but Should
Ensure Better Planning and
Execution in Future
Cross-Component Activities**





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

April 16, 2021

MEMORANDUM FOR: The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V CUFFARI** Digitally signed by
Inspector General JOSEPH V CUFFARI
Date: 2021.04.16
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SUBJECT: *DHS Had Authority to Deploy Federal Law Enforcement
Officers to Protect Federal Facilities in Portland, Oregon,
but Should Ensure Better Planning and Execution in
Future Cross-Component Activities*

Attached for your information is our final report, *DHS Had Authority to Deploy Federal Law Enforcement Officers to Protect Federal Facilities in Portland, Oregon, but Should Ensure Better Planning and Execution in Future Cross-Component Activities*. We incorporated the formal comments provided by your office.

The report contains two recommendations aimed at improving DHS' preparedness for protecting Federal property. Your office concurred with both recommendations. Based on the information you provided in response to the draft report, we consider both recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act of 1978, as amended*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the final report on our website for public dissemination, including your formal comments as an appendix to the report.

Please call me with any questions, or your staff may contact Thomas Kait, Acting Deputy Inspector General for Audits, at (202) 981-6000.

Attachment

cc: Director of the Federal Protective Service



DHS OIG HIGHLIGHTS

DHS Had Authority to Deploy Federal Law Enforcement Officers to Protect Federal Facilities in Portland, Oregon, but Should Ensure Better Planning and Execution in Future Cross-Component Activities

April 16, 2021

Why We Did This Inspection

Beginning on May 29, 2020, the Federal Protective Service (FPS) experienced challenges protecting Federal property in Portland, Oregon. FPS requested assistance from DHS law enforcement officers. Our objective was to assess the authority, preparation, and activities of DHS law enforcement officers deployed to protect Federal property.

What We Recommend

We made two recommendations to improve DHS' preparedness for protecting Federal property.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Under 40 United States Code (U.S.C.) § 1315, the Department of Homeland Security had the legal authority to designate and deploy DHS law enforcement officers from U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and United States Secret Service to help FPS protect Federal facilities in Portland, Oregon. However, DHS was unprepared to effectively execute cross-component activities to protect Federal facilities when component law enforcement officers first deployed on June 4, 2020. Specifically, not all officers completed required training; had the necessary equipment; and used consistent uniforms, devices, and operational tactics when responding to the events in Portland.

This occurred because DHS did not have a comprehensive strategy that addressed the potential for limited state and local law enforcement assistance, as well as cross-designation policies, processes, equipment, and training requirements. Without the necessary policies, training, and equipment, DHS will continue to face challenges securing Federal facilities during periods of civil disturbance that could result in injury, death, and liability.

Additionally, we previously reported concerns regarding DHS' delegation of authority and that the Director of FPS did not properly identify DHS employees by name who could exercise authority under 40 U.S.C. § 1315(b)(1).

DHS Response

DHS concurred with both recommendations.



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Abbreviations

CBP	U.S. Customs and Border Protection
FPS	Federal Protective Service
FSA	Facility Security Assessment
ICE	U.S. Immigration and Customs Enforcement
MOU	Memorandum of Understanding
OPS	Office of Operations Coordination
PACT	Protecting American Communities Task Force
SRT	Special Response Team
U.S.C.	United States Code
USCH	U.S. Courthouse



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Background

Pursuant to 40 United States Code (U.S.C.) § 1315, the Department of Homeland Security is the primary Federal agency responsible for the protection of buildings, grounds, and property owned, occupied, or secured by the Federal Government. Within DHS, the mission of the Federal Protective Service (FPS) is to protect Federal facilities and their occupants. FPS has broad authorities and jurisdiction to prevent, investigate, mitigate, and defeat threats to facilities and the people who work within or visit those facilities. FPS currently employs over 1,300 law enforcement officers, security specialists, special agents, and mission support staff across more than 9,500 facilities nationwide.

FPS conducts Facility Security Assessments (FSA) for assigned facilities across the country. Each FSA rates risk to facilities based on factors including mission criticality, symbolism, facility population and size, and threat to tenant agencies. These assessments seek to provide real-time decisional advantages, such as warning of potential threats and providing insight into current events, situational awareness, and updates on specific topics.

According to FPS, it would not be able to accomplish its mission without strong partnerships with other Federal, state, and local law enforcement agencies. FPS works with its partners to provide security during critical incidents and demonstrations to protect protesters, and Federal employees and property. FPS establishes Memorandums of Understanding (MOU) and Memorandums of Agreement with state and local law enforcement organizations to coordinate law enforcement activities, including the protection of Federal property and persons. The memorandums are mutual agreements between FPS, state, and local jurisdictions that describe law enforcement responsibilities, but are non-binding and do not require state and local law enforcement to assist FPS.

Under 40 U.S.C. § 1315, the Secretary can “designate employees of [DHS] ... as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.” This practice is commonly referred to as “cross-designation.” In 2005, the United States Attorney General approved the guidelines¹ for the exercise of law enforcement authorities by DHS law enforcement officers and agents under 40 U.S.C. § 1315. The guidelines require officers to complete basic law enforcement or criminal investigator training, prior to exercising authorities under 40 U.S.C. § 1315. Officers must also complete periodic refresher training.

¹ *Guidelines for the Exercise of Law Enforcement Authorities by Officers and Agents of the Department of Homeland Security Under 40 U.S.C. § 1315*, Office of the Attorney General, Feb. 18, 2005.



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Since 2015, DHS has used its authority five times under 40 U.S.C. § 1315 to designate component law enforcement personnel to protect Federal property and the safety of persons on the property. For example, DHS used the authority to deploy U.S. Customs and Border Protection (CBP) officers to protect Federal property in Baltimore, Maryland, during violent civil disturbances.

In Portland, Oregon, FPS is responsible for protecting 34 facilities, including the Mark O. Hatfield U.S. Courthouse (Hatfield USCH). According to FPS officials, seven full-time employees are assigned to the Portland geographic area. Beginning on May 29, 2020, Portland experienced daily protests that were mainly nonviolent. However, there were nightly incidents involving civil disturbance,² including violent protests, riots,³ vandalism, destruction, and direct attacks against officers around Federal facilities.⁴ The largest protest reported by FPS involved 10,000 people near the Hatfield USCH and included some individuals throwing bottles and lighting fireworks in the direction of Portland Police Bureau officers. As shown in Figure 1, the vandalism and destruction to the Hatfield USCH included graffiti and broken windows. To assist FPS in Portland, on June 4, 2020, DHS began deploying officers, relying on its authority under 40 U.S.C. § 1315.⁵

Portland has experienced civil disturbance in the past. In June 2018, a U.S. Immigration and Customs Enforcement (ICE) facility in Portland was closed due to an occupation by protesters who surrounded the facility and prevented

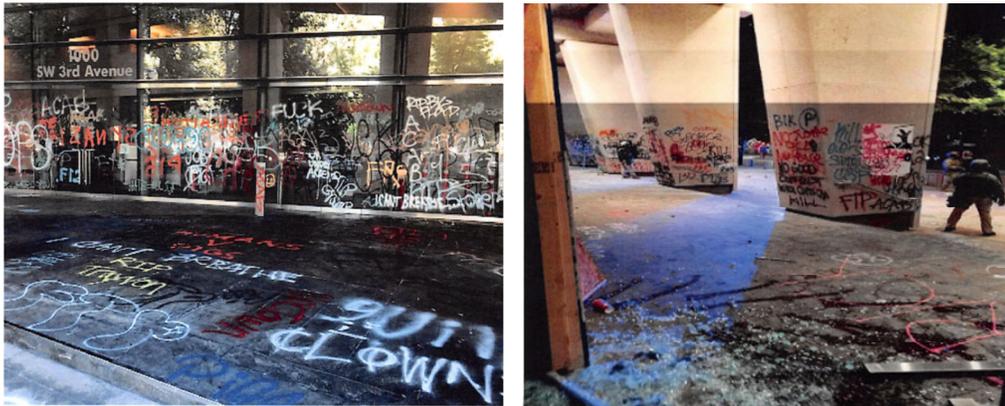


Figure 1. Damage to Hatfield USCH

Source: DHS photos

² Civil disturbance, also known as civil disorder, is a public disturbance involving three or more people who commit violent acts that cause immediate danger or injury to people or property.

³ A riot is defined as a violent disturbance of the peace by a crowd.

⁴ FPS produced daily incident reports that described civil disturbance, damage, and violence at FPS protected facilities in Portland.

⁵ *Designation of 40 U.S.C. § 1315 Law Enforcement For United States Immigration and Customs Enforcement Personnel*, DHS, June 4, 2020.



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Government operations and free movement of Federal employees.⁶ According to an FPS official, the Mayor, who is also the Police Commissioner, directed the Portland Police Bureau not to assist FPS.

On June 26, 2020, the President issued Executive Order 13933, *Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence*. The purpose of the Executive Order was to address “a sustained assault on the life and property of civilians, law enforcement officers, government property, and revered American monuments....” According to the Executive Order, “... the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security shall provide, as appropriate and consistent with applicable law, personnel to assist with the protection of Federal monuments, memorials, statues, or property.” On the same day, FPS created the draft operation plan, “Operation Diligent Valor,” to prevent, protect, respond to, and recover from attacks on Federal property in FPS Region 10,⁷ which includes Portland.

On June 30, 2020, the Acting Secretary of Homeland Security issued a memorandum creating the Protecting American Communities Task Force (PACT) to prepare to protect Federal facilities and property during the July 4, 2020 holiday weekend.⁸ The Acting Secretary created the PACT to assess potential civil unrest and property destruction, and coordinate component law enforcement resources to ensure the protection of people and property at multiple locations across the country.⁹ The PACT required components to coordinate with DHS Office of Operations Coordination (OPS) and FPS to complete cross-designation requirements.

The Acting Secretary’s memorandum assigned OPS as the departmental lead for information sharing, reporting, and cross-coordination responsibilities and FPS to continue to serve as the departmental lead for protection of Federal facilities and property. OPS’ mission is to coordinate and integrate operations to support the Department. OPS’ goals include being the primary integrator of operations and decision support to the Department and advancing coordination capabilities in support of integrated Department operations during both steady state and crisis situations.¹⁰ Following the July 4, 2020 holiday weekend, civil disturbance continued in Portland.

⁶ FPS, After Action Report, *Operation Nail Head 1*, Oct. 23, 2018.

⁷ FPS Region 10 includes the states of Alaska, Washington, Idaho, and Oregon.

⁸ *DHS Support to Protect Federal Facilities and Property*, DHS, June 30, 2020.

⁹ Locations specifically identified in the June 30, 2020 memorandum included Portland, Oregon; Seattle, Washington; and the District of Columbia.

¹⁰ *DHS Office of Operations Coordination, Strategic Plan Fiscal Year 2020 to 2024*, Jan. 22, 2020.



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FPS officials stated that prior to the civil disturbance in 2020, there was a good working relationship with the Portland Police Bureau. However, on July 22, 2020, the Portland City Council voted to cease cooperation between the Portland Police Bureau and Federal law enforcement. The Portland City Council viewed Federal operations in Portland as an “unprecedented and unconstitutional abuse of power” by the Federal Government.¹¹ According to the Portland City Council resolution, “the Portland Police Bureau shall not provide, request, or willingly receive operational support ... from any agent or employee representing or constituting part of deployment under executive order from the president, be they from Department of Homeland Security, the U.S. Marshals Service, the Federal Protective Service, U.S. Customs and Border Protection or any other service.”¹² The resolution also stated that “any member of the Portland Police Bureau who provides, requests, or willingly receives operational support ... from militarized federal forces ... will be subject to discipline for violating the policies of the elected City Council.”

On July 30, 2020, Oregon State Police personnel were sent to Portland to assist DHS with protecting Federal property.¹³ On August 13, 2020, it was reported¹⁴ that the Oregon State Police withdrew their assistance to DHS in Portland as a result of a lack of prosecutions from the Multnomah County District Attorney’s Office.¹⁵ The National Guard was activated on November 4, 2020. According to FPS officials, civil disturbance in Portland occurred as recently as February 5, 2021, when a group of protestors attempted to prevent an FPS contractor from leaving a Federal facility and threw projectiles at FPS officers. See Figure 2 for a timeline of the civil disturbance in Portland.

¹¹ Portland City Council Resolution No. 37496 (July 22, 2020). The Portland City Council referred to Federal law enforcement as “militarized federal forces” in its resolution.

¹² Ibid.

¹³ DHS, *Portland Riots Read-out: July 31* (July 31, 2020), <https://www.dhs.gov/news/2020/07/31/portland-riots-read-out-july-31>.

¹⁴ Andrew Hay, *Oregon State Police leaving Portland over lack of prosecutions*, Reuters (Aug. 13, 2020), <https://www.reuters.com/article/global-race-portland-protests/oregon-state-police-leaving-portland-over-lack-of-prosecutions-idINKCN25A08J?edition-redirect=in>.

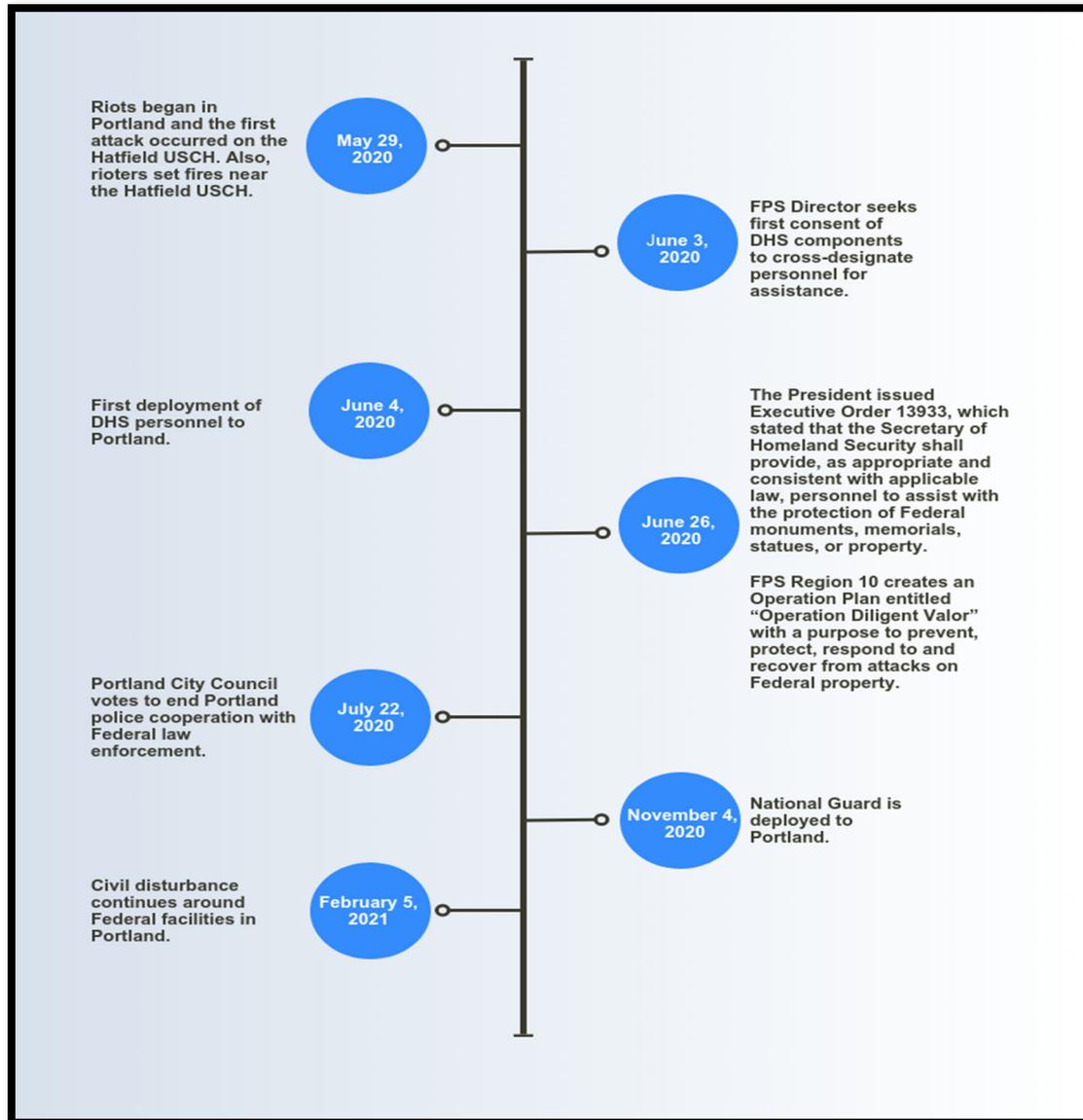
¹⁵ *Policy Regarding Protest Related Cases*, Multnomah County District Attorney, Aug. 11, 2020. www.oig.dhs.gov



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Figure 2. Timeline of Civil Disturbance in Portland



Source: Office of Inspector General (OIG) analysis based of DHS data

Between June 4 and August 31, 2020, 755 DHS officers participated in Operation Diligent Valor at various times. Officers deployed to Portland included those from special response teams, special operations groups, rapid protection forces, and other officers from FPS, CBP, ICE, and United States Secret Service (Secret Service), as described in Table 1. From May 29, 2020 through August 31, 2020, DHS officers made 62 arrests, while local police declared 25 riots and made 682 arrests. According to FPS officials, damage to the Hatfield USCH caused by civil disturbance was approximately \$1.6 million. The estimated cost of Operation Diligent Valor as of August 31, 2020, was \$12.3 million.



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Table 1. DHS Law Enforcement Deployed to Portland as of August 31, 2020

Component	Group	Group Description	Total
FPS	Rapid Protection Force	Team of FPS personnel who are trained and supported to bring enhanced capabilities to situations involving terrorist threats, critical incidents, special events, natural disasters, and surge operations; composed of FPS Inspectors and Special Agents.	179
	Federal Protection Officers	Law enforcement officers and trained security experts who provide security assessments, inspections, and oversight for contract guards, and respond to crimes in progress; composed of FPS Inspectors and Special Agents.	
CBP	Border Patrol	Provides an immediate response capability to emergent and high-risk incidents requiring specialized skills and tactics; composed of Border Patrol Agents.	337
	Office of Field Operations Special Response Team	Interdicts threats, develops and deploys advanced tactics and training, and tests and evaluates new technology and equipment; composed of CBP Officers.	70
ICE	Enforcement and Removal Operations Special Response Team	Conducts high-risk enforcement actions and other specialized duties or activities, as authorized, in furtherance of ICE's immigration enforcement and public safety missions, within the scope of ICE authorities; composed of Enforcement Officers.	85
	Homeland Security Investigations Special Response Team	Conducts high-risk enforcement operations and other specialized duties within the scope of its training and capabilities; composed of Special Agents.	82
Secret Service	Special Agents	Special Agents assigned from the Portland Resident Office.*	2
Total			755

*Special Agents from Secret Service conducted limited investigative procedures and did not engage with the public.

Source: OIG analysis of DHS data

Throughout Operation Diligent Valor, the media reported¹⁶ concerns regarding DHS officers in Portland, such as DHS' authority to deploy Federal officers to Portland, uniforms, cell phone surveillance, and the use of less-lethal devices. Our objective was to assess the authority, preparation, and activities of DHS officers deployed to protect Federal property.

¹⁶ For example, *House leaders 'alarmed' federal officers policing protests*, Associated Press (July 19, 2020), <https://apnews.com/7c8c1a311b5c668a8cd4f757453bcf5c>.



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Results of Inspection

Under 40 U.S.C. § 1315, DHS had the legal authority to designate and deploy DHS law enforcement officers from CBP, ICE, and Secret Service to help FPS protect Federal facilities in Portland, Oregon. However, DHS was unprepared to effectively execute cross-component activities to protect Federal facilities when component law enforcement officers first deployed on June 4, 2020. Specifically, not all officers completed required training; had the necessary equipment; and used consistent uniforms, devices, and operational tactics when responding to the events in Portland.

This occurred because DHS did not have a comprehensive strategy that addressed the potential for limited state and local law enforcement assistance, as well as cross-designation policies, processes, equipment, and training requirements. Without the necessary policies, training, and equipment, DHS will continue to face challenges securing Federal facilities during periods of civil disturbance that could result in injury, death, and liability.

Additionally, we previously reported concerns regarding DHS' delegation of authority and that the Director of FPS did not properly identify DHS employees by name who could exercise authority under 40 U.S.C. § 1315(b)(1).

DHS Had the Authority to Deploy Officers to Protect Federal Facilities, but Was Unprepared to Execute Cross-Component Activities

Under 40 U.S.C. § 1315, the Secretary of Homeland Security has the authority to designate employees of DHS as officers for duty in connection with the protection of Federal property in Portland. This authority extends to persons on the property, including duty areas outside the property to the extent necessary to protect the property and persons on the property. According to 40 U.S.C. § 1315, designated officers have the authority to:

- enforce Federal laws and regulations for the protection of persons and property;
- carry firearms;
- make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;
- serve warrants and subpoenas issued under the authority of the United States;



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- conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property; and
- carry out activities for the promotion of homeland security as the Secretary may prescribe.

Between June 4, 2020 and August 31, 2020, DHS repositioned and deployed 755 officers at various times from FPS, CBP, ICE, and Secret Service to assist FPS with protecting the Federal facilities in Portland, Oregon. In our review of 63 officer training records, we found officers met basic law enforcement training requirements as outlined in Attorney General guidelines regarding 40 U.S.C. § 1315.

Although DHS had the authority and met the Attorney General training guidelines, we previously reported and made two recommendations regarding the Director of FPS' authority to designate DHS employees under 40 U.S.C. § 1315 and proper, by-name, designation of any DHS employees authorized to exercise authority under 40 U.S.C. § 1315 to protect Federal property and persons on that property.¹⁷ DHS did not concur with the recommendations. Without properly identifying individuals, DHS risks law enforcement officers acting outside the scope of their authority. See Appendix D for previously reported recommendations and status.

Not All DHS Officers Were Properly and Consistently Trained

Before they could execute 40 U.S.C. § 1315 authority, the Director of FPS required officers to receive a legal briefing on pertinent authorities and jurisdiction, including criminal statutory provisions enforceable on Federal property. FPS used a cross-designation roster to identify which officers completed the legal training. We compared FPS' August 7, 2020 cross-designation roster of 4,574 trained officers to the 222 CBP, ICE, and Secret Service officers deployed to Portland as of that date. We determined 36 of the 222 officers did not appear on the cross-designation training roster prior to their deployment to Portland. See Table 2 for a breakdown by component.

¹⁷ *Management Alert - FPS Did Not Properly Designate DHS Employees Deployed to Protect Federal Properties under 40 U.S.C. § 1315(b)(1)*, OIG-21-05, Nov. 2, 2020.
www.oig.dhs.gov



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Table 2. August 7, 2020 Cross-Designation Training Roster Analysis

	CBP	ICE	Secret Service	Total
Total Officers Deployed	162	58	2	222
Officers without Evidence of Cross-Designation Training prior to Deployment	27	7	2	36

Source: OIG analysis of DHS component deployment rosters and August 7, 2020 FPS Cross-Designation Training Roster

Deploying officers who are not properly trained increases the risk of officers acting outside of their authority. Officers who used force in Portland without evidence of 40 U.S.C. § 1315 cross-designation training presented an even greater risk of liability to DHS. In fact, 14 of the 36 officers for whom we found no evidence of cross-designation training used less-lethal devices or munitions against a person while deployed in Portland. During our inspection, FPS took steps to improve the training process by issuing officers a memorandum after successful completion of cross-designation training and designating individuals by name. We acknowledge this improvement, but issuing a memorandum after training is completed does not address the lack of a coordination process to ensure only trained individuals are deployed.

We also determined that not all officers were properly trained to respond to riots and to conduct crowd control operations. DHS law enforcement operations in Portland were mainly focused on riot and crowd control activities. However, only 7 of 63 officers we reviewed received riot and crowd control training. Although this type of training is not required to execute 40 U.S.C. § 1315 authority, FPS officials from the Office of Training and Professional Development issued a memorandum stating that “DHS Component law enforcement officers cleared for cross-designation can only provide support consistent with their current law enforcement skill sets and equipment.” Additionally, in survey responses and interviews with deployed officers, many identified a need for additional training in these areas. Some officers questioned their involvement in the operation due to a lack of riot and crowd control training. A lack of training in these areas may increase the risk of injuries to officers and the public.

In addition to a lack of training, we determined components had inconsistent annual recertification training requirements for less-lethal devices.¹⁸ DHS officers are permitted to use less-lethal devices to control subjects in the course of their official duties, as authorized by law. DHS officers in Portland used less-lethal weapons, such as compressed air launchers, 40MM munition launchers, and Pepper Ball launchers, to help control crowds. See Figure 3 for

¹⁸ Less-lethal devices are instruments and weapons that are designed or intended to be used in a manner that is not likely to cause death or serious bodily injury.



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pictures of the FN303, 40MM, and Pepper Ball launching systems and Appendix C for photos and descriptions of less-lethal devices used by DHS officers in Portland.

Figure 3. Pictures of the FN303, 40MM, and Pepper Ball Launching Systems



Source: OIG obtained from CBP U.S. Border Patrol

According to the components' (ICE, CBP, FPS) use of force policies, officers are required to complete an initial certification for each less-lethal device issued. All 63 officers we reviewed accomplished the less-lethal device training certification.

However, annual recertification training requirements varied across the components and operational directorates. For example, FPS and CBP policies require annual recertification on specific less-lethal devices, such as FN303 and Pepper Ball launching systems, while ICE does not require recertification for devices used by its Enforcement and Removal Operations and Homeland Security Investigations Special Response Teams (SRT). According to officials in ICE's Office of Firearms and Tactical Programs, SRTs achieve proficiency on less-lethal devices through training as required by their respective SRT handbooks. For instance, the ICE Enforcement and Removal Operations SRT handbook requires 7 hours of annual training on broad categories of less-lethal devices, such as diversionary devices, chemical munitions, and specialty impact munitions. The ICE Homeland Security Investigations SRT handbook requires 8 hours of general training per month. Having a consistent DHS less-lethal training policy may ensure a more effective approach in cross-component operations in the future.

We previously reported DHS' training inconsistencies for less-lethal devices in OIG report, *DHS Lacks Oversight of Component Use of Force*¹⁹ (OIG-17-22). As of January 2021, DHS had yet to address our recommendation to establish a formal entity to oversee component use of force activities, including establishing consistent requirements for less-lethal training.

¹⁹ *DHS Lacks Oversight of Component Use of Force*, OIG-17-22, Jan. 12, 2017, <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-22-Jan17.pdf>.
www.oig.dhs.gov



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Not All DHS Officers Had Necessary Equipment

DHS officers did not have the necessary equipment to protect themselves during riots and violent protests in Portland. During the event in Portland, DHS officers were attacked with lasers, fireworks, and Molotov cocktails and struck by projectiles including frozen liquids, unknown chemicals, feces, and rocks. See Figure 4 for an example of a laser directed at officers. FPS' Standardized Operational Planning Process includes a checklist of equipment for critical incidents and special events, such as riot gear, riot baton, crowd-control shield, and certain less-lethal devices. However, some officers did not have shin guards, face shields, and protective eyewear when responding to the events in Portland.



Figure 4. Laser Directed at Law Enforcement Officers

Source: FPS photos

From June 13, 2020 through July 30, 2020, DHS officers reported 689 injuries including eye irritation, blurred vision, and headaches caused by laser attacks; temporary hearing loss and headaches from fireworks and mortars; and wounds from projectiles. See Figure 5 for fireworks used at the Hatfield USCH.

Other officers said there were not enough less-lethal devices and munitions to respond effectively. Finally, officers also reported problems with radio communications, such as the inability to communicate with DHS officers from other components. Because of the communications issues in Portland, FPS requested 100 additional FPS radios. Despite identified equipment issues, many DHS officers stated that efforts to protect the facilities were effective.



Figure 5. Example of Fireworks at the Hatfield USCH

Source: FPS photo



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FPS identified similar equipment issues in an after-action report from operations in Portland in 2018.²⁰ The report found that officers did not have appropriate riot control equipment and experienced intra-agency communication problems throughout the operation. Additionally, a senior FPS official noted that since DHS was established, it has not made progress toward improving interoperable communications during emergencies. In November 2012, we issued *DHS' Oversight of Interoperable Communications*²¹ (OIG-13-06), concluding that DHS did not ensure components had interoperable communications, including the ability to access and communicate over a common channel. As of November 25, 2020, 152 days after the operation began, FPS had not completed an after-action report for Operation Diligent Valor to identify and address ongoing issues in Portland.

Not All DHS Officers Used Consistent Uniforms, Devices, and Tactics in Portland

DHS officers deployed to protect Federal facilities in Portland did not wear consistent uniforms. Officers from FPS, CBP, and ICE all responded to Portland wearing their respective component-issued uniforms. See Figure 6 for an example of the different uniforms worn by CBP and FPS officers. During the operations, both citizens and Congress raised concerns regarding a lack of proper identification on officers' uniforms. Wearing consistent uniforms would present a unified front, but DHS did not establish a uniform for cross-designation operations. All DHS law enforcement officers' uniforms included "Police" markings, along with patches or badges identifying their component. In our review of DHS photos taken during operations in Portland and through interviews with officers, we found DHS officers complied with component uniform policies and their uniforms were appropriately marked per their respective component policies. The public and Congress also raised concerns about DHS officers' use of camouflage uniforms. For example, CBP Border Patrol and ICE SRT officers initially wore camouflage uniforms similar to the CBP officer shown in Figure 6. Due to public concern, some CBP Border Patrol officers transitioned from these uniforms to available alternative ones.



Figure 6. Example of Different Uniforms Worn By CBP and FPS Officers

* CBP officer on the left and FPS officer on the right.
Source: CBP and FPS photos

²⁰ FPS, *After Action Report, Operation Nail Head 1*, Oct. 23, 2018.

²¹ *DHS' Oversight of Interoperable Communications*, OIG-13-06, Nov. 2, 2012, https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-06_Nov12.pdf.
www.oig.dhs.gov



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In addition, although FPS served as the DHS lead for the protection of Federal facilities in Portland, CBP and ICE use a variety of less-lethal devices unavailable to FPS. For example, ICE and CBP used the 40MM munitions launcher, which FPS does not use. See Table 3 for examples of the less-lethal devices used by components in Portland. Also, we found inconsistencies in the components’ policies describing how to use less-lethal weapons. For instance, for the FN303 compressed air launcher, CBP policy describes how to use the device at different ranges from the target, while FPS’ policy does not include a range. In another example, ICE’s use of force policy indicates that the 40MM launcher is deadly force when fired at someone, while the CBP use of force policy only directs officers not to target a person’s head or neck. In addition to these policy differences, some officers questioned the tactics used by other components, such as when to engage rioters with force. Without consistent policies and tactics for multi-component operations, DHS risks confusion, limited coordination, and unintended injuries when protecting Federal facilities.

Table 3. Examples of Less-Lethal Devices Used by Components in Portland

Less-Lethal Devices	FPS	CBP	ICE
Oleoresin Capsicum Spray	✓	✓	
FN303 Compressed Air Launcher	✓	✓	
Pepper Ball Launching System	✓	✓	✓
Riot Control Grenade		✓	✓
Triple Chaser Grenade		✓	✓
Pocket Tactical Grenade		✓	
SAF Smoke Grenade		✓	✓
Stinger Grenade		✓	✓
40MM Munitions Launcher		✓	✓
Flashbang Grenade		✓	✓

Source: DHS OIG analysis of DHS component use of force reports

DHS and FPS Did Not Have an Established Cross-Component Strategy to Ensure Effective Operations

DHS was unprepared to execute cross-component activities in Portland. Specifically, DHS and FPS have not developed a written plan, policy, or process to ensure a coordinated, multi-component response to civil disturbance at Federal facilities. Although FPS had an internal operation plan, the Department did not have any cross-designation strategies or plans in place to help components properly prepare to execute 40 U.S.C. § 1315 to protect Federal property. Through the PACT, the Acting Secretary assigned responsibilities for components to coordinate with OPS and FPS, but did not assign a component or office to develop a written strategy. Such a plan, policy, or process would ensure officers:



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- are properly and consistently trained, prior to being deployed to assist FPS, on cross-designation, riot and crowd control, and less-lethal device use;
- have the necessary equipment to respond effectively to riots and violent protests, including protective equipment and interoperable communications; and
- use consistent uniforms, devices, and tactics.

FPS Region 10 drafted an operation plan, which included the event description, purpose and concept of the operation, risk summary, requested personnel, needed supplies and equipment, personnel reporting requirements, and coordination with outside agencies. However, FPS' operation plan only described the type of equipment, tactics, and use of force policies for FPS officers and did not include a strategy for leading a consistent and united multi-component response.

Also, FPS did not create a strategy or contingency plan to address the anticipated threats of civil disturbance to Federal properties in Portland and the potential for limited state and local law enforcement support. FPS' December 2018 FSA identified the Hatfield USCH as high-risk.²² According to the assessment, "civil disturbance will not only continue throughout the current presidential administration, but increase in frequency and impact." Although FPS had MOUs with Oregon State Police and the Multnomah County Sheriff's Office, the MOUs are non-binding and do not require state and local law enforcement to assist FPS. FPS did not have an MOU in place with the Portland Police Bureau, the primary police department with jurisdiction around the Hatfield USCH. According to FPS, it relies on state and local law enforcement to support the protection of Federal property. However, it did not use its FSA and the potential for limited state and local law enforcement support to develop a contingency plan for protection of Federal facilities. Contingency plans could help FPS better plan for the protection of persons and property in high-risk locations and inform Department strategies for multi-component operations assisting FPS with its protective service mission.

Without the necessary policies, processes, training, and equipment, DHS will continue to face challenges securing Federal facilities, particularly high-risk facilities, during periods of civil disturbance. Further, limited planning and preparedness could result in injury, death, and risk of liability.

²² *Facility Security Assessment-Mark O. Hatfield U.S. CRTHSE*, FPS, Dec. 14, 2018.
www.oig.dhs.gov



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Recommendations

Recommendation 1: We recommend the Secretary, in coordination with DHS components and FPS, establish and implement a plan, policy, and process to improve preparedness for multi-component response to future incidents of civil disturbance at Federal facilities, including:

- A. a process for designating DHS component personnel under 40 U.S.C. § 1315 and verification of required legal training completion;
- B. equipment and training needs and requirements; and
- C. consistent tactics and operational policies.

Recommendation 2: We recommend the Director of the Federal Protective Service establish contingency plans, including necessary equipment, for responding to civil disturbance at high-risk Federal facilities based on Facility Security Assessments, non-binding agreements with state and local law enforcement, and expected level of support.

Management Comments and OIG Analysis

DHS concurred with both recommendations. We included a copy of DHS' management comments in their entirety in Appendix B. We also received technical comments on the draft report and made revisions as appropriate.

We consider both recommendations open and resolved. A summary of DHS' management responses and our analysis follow.

DHS Comments to Recommendation 1: DHS concurred with our recommendation. FPS will develop governance documents and processes for a comprehensive, cohesive, and transparent approach to civil disturbances at Federal facilities. These efforts will include finalizing a policy document for designating DHS component personnel under 40 U.S.C. § 1315 and verification of required legal training completion; completing a Public Order Policing directive reflecting multi-component support; additional training; procurement of equipment; and sharing this policy document with other DHS operational components. Estimated Completion Date: June 30, 2022.

OIG Analysis of DHS' Response: DHS' proposed actions are responsive to the recommendation. We consider the recommendation open and resolved until DHS develops and implements governance documents and processes for a comprehensive, cohesive, and transparent approach to civil disturbances at Federal facilities.

FPS Comments to Recommendation 2: FPS concurred with our recommendation. FPS will establish a contingency plan for responding to civil



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disturbances at high-risk Federal facilities. Estimated Completion Date: March 31, 2022.

OIG Analysis of FPS' Response: FPS' proposed actions are responsive to the recommendation. We consider the recommendation open and resolved until FPS establishes a contingency plan for responding to civil disturbances at high-risk Federal facilities.



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Appendix A

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

Our objective was to assess the preparation, activities, and authority of DHS law enforcement officers deployed to protect Federal property. We limited the scope of our review to the protection of Federal property in Portland, Oregon, in response to civil disturbance from June through August 2020. To understand these processes, we obtained and reviewed relevant authorities and applicable DHS guidance, policies, and procedures. We interviewed officials from FPS Headquarters, FPS Region 10, DHS Office of Operations Coordination, CBP Office of Field Operations, CBP Border Patrol, CBP Air and Marine Operations, ICE Homeland Security Investigations, and ICE Enforcement and Removal Operations. We interviewed 19 officers deployed to Portland from CBP, FPS, Secret Service, and ICE. We administered a survey to 354 officers deployed to Portland and received 35 responses. Based on the limited number of survey responses, we used the information gathered only to supplement and corroborate other inspection procedures. We also interviewed officials from the U.S. Marshals Service stationed at the Hatfield USCH in Portland, Oregon. Additionally, we visited the FPS Training Facility in Alexandria, Virginia.

We reviewed tactics, photos, and a limited selection of injury, intelligence, and use of force reports applicable to operations in Portland. We also reviewed DHS coordination with state, local, and other Federal law enforcement agencies and DHS Memorandums of Understanding and Agreements associated with the protection of Federal property. Special Agents deployed from Secret Service conducted limited investigative procedures and did not engage with the public. Therefore, we did not include Secret Service in our review of uniform policies, use of force policies, and injury reports.

We reviewed a limited selection of training records for officers deployed to protect Federal facilities. To review cross-designation training completion, we compared FPS' August 7, 2020 cross-designation roster of 4,574 trained officers to 222 officers shown on component deployment rosters as of that date. We identified 36 officers without evidence of cross-designation prior to deployment to Portland. Additionally, we reviewed a limited selection of 73 deployed officers to determine whether their training completion date was prior to their deployment date. Finally, we reviewed a limited selection of training records for 63 deployed officers to determine whether they met basic Attorney General requirements regarding 40 U.S.C. § 1315, contained evidence of riot and crowd control training, and showed evidence of less-lethal device training.



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To ensure the validity and reliability of data obtained from computer-based systems significant to our inspection findings, we interviewed FPS personnel and conducted a walkthrough of the computer-based systems and associated controls surrounding the cross-designation training roster. Additionally, we performed limited testing of component deployment rosters by tracing and verifying information to use of force reports and travel documentation. We performed limited testing of component training records by tracing and verifying training records to underlying supporting documentation. We also used corroborating documentation and interviews to test the use of force and injury reports. Based on these procedures, we determined the data used from computer-based systems was sufficiently reliable to support our inspection objectives.

Finally, during our review, we elicited information from the components regarding their use of cell phone surveillance equipment in Portland. The components reported that no equipment was deployed to obtain cell phone information or locations during operations in Portland. According to ICE officials, the cell phone information obtained during the operation was done through applicable consent procedures or the search warrant process.

We conducted this inspection between August and December 2020 pursuant to the *Inspector General Act of 1978, as amended*, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based upon our inspection objectives.



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Appendix B
DHS Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20528



April 7, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Jim H. Crumacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

SUBJECT: Management Response to Draft Report: "DHS Had Authority to Deploy Federal Law Enforcement Officers to Protect Federal Facilities in Portland, Oregon, but Should Ensure Better Planning and Execution in Future Cross-Component Activities" (Project No. 20-060-AUD-DHS)

JIM H
CRUMPACKER
Digitally signed by
JIM H CRUMPACKER
Date: 2021.04.07
09:01:12 -04'00'

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The Department is pleased to note OIG’s recognition of DHS’ authority under 40 U.S.C § 1315 to designate and deploy DHS law enforcement officers to help Federal Protective Service (FPS) personnel protect Federal facilities in Portland, Oregon (OR). DHS remains committed to: 1) impartially protecting First Amendment rights without regard to content, while also holding individuals accountable for violations of Federal law; 2) continually improving our approach to public order policing; and 3) further synchronizing efforts across the Department’s components.

The circumstances in Portland, OR were particularly challenging because of the level of violence directed against law enforcement officers and facilities, the persistence of that violence over time, and the extent to which local law enforcement was prohibited by their political leadership from cooperating with federal counterparts. For example, during the deployment to Portland, OR, between June 26 and September 30, 2020, FPS personnel reported 205 injuries, such as to the ankle, back, eye, foot, hand, groin, knee, and shoulder, as well as contact with chemicals and objects.¹ Furthermore, DHS and other law enforcement officers were attacked with Molotov cocktails and other incendiaries,

¹ This data was sourced from situation reports and from the Department of Labor’s Employees’ Compensation Operations and Management Portal.



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wrist rockets, and chemicals during the civil disturbance. Multiple arrestees also possessed more frequently seen weapons including knives, machetes, and pipe bombs.

Protester tactics, techniques, and procedures infrequently seen by law enforcement officers were also often introduced in Portland. For example, the OIG's report noted that officers were attacked with lasers, commercial grade fireworks, frozen liquids, and other projectiles. Regardless, the Department responded quickly to these new threats, for example, by assessing available, off-the-shelf laser protective eyewear and quickly procuring it for deployed personnel. DHS components have also since continued research to identify better personal protective equipment, and FPS initiated delivery of laser-protective gas mask inserts to provide eye protection when officers are wearing their masks without compromising respiratory protection.

Another example of novel tactics was the use of Unmanned Aircraft Systems (UAS) that repeatedly threatened public safety due to unsafe flight operations, and which conducted illegal intelligence, surveillance, and reconnaissance activities. The Department carried out successful counter UAS operations that responded effectively to this emerging threat. Over the course of one 120 day period, there were 1,784 UAS flights in violation of the Federal Aviation Administration's (FAA) Temporary Flight Restrictions,² and five custodial arrests for violation of Title 49 U.S.C § 46307, "Violation of National Defense Airspace," were made.

DHS is committed to improving its public order policing capability. For example, FPS conducted a Public Order Policing Summit from January 13-14, 2021, attended by a wide range of Federal, state, local, international, and academic partners to assess the state of the art and identify opportunities for enhancing effectiveness. As a result of the Summit, FPS is now developing a doctrine specific to FPS public order policing, which will drive policy, training, and equipment selection for FPS, and will be shared with other DHS operational components for situational awareness.

The draft report contained two recommendations with which the Department concurs. Attached find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment

² FAA Notices to Airmen: 1) Flight Data Center (FDC) 0/3569 ZSE OR..AIRSPACE PORTLAND, OR..TEMPORARY FLIGHT RESTRICTION (August 17-September 16, 2020); and FDC 0/0531 ZSE OR..AIRSPACE PORTLAND, OR..TEMPORARY FLIGHT RESTRICTIONS (September 16-October 16, 2020).



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Attachment: Management Response to Recommendations Contained in 20-060-AUD-DHS

OIG recommended that the DHS Secretary, in coordination with DHS components and FPS:

Recommendation 1: Establish and implement a plan, policy, and process to improve preparedness for multi-component response to future incidents of civil disturbance at Federal facilities, including:

- A. a process for designating DHS component personnel under 40 U.S.C. § 1315 and verification of required legal training completion;
- B. equipment and training needs and requirements; and
- C. consistent tactics and operational policies.

Response: Concur. FPS Operations (OPs); Training & Professional Development (TPD); and Policy, Communications & Engagement are developing the processes, philosophy, governance documents, training curricula, tactics, and equipment requirements for a comprehensive, cohesive, and transparent approach to civil disturbances at Federal facilities. This effort includes:

1. Finalizing a policy document for designating DHS component personnel under 40 U.S.C § 1315 and verification of required legal training completion.
2. Completing a Public Order Policing directive that will reflect multi-component support integration by September 30, 2021. FPS TPD will also develop and deliver training curriculum, including training instructors, by December 31, 2021, and instruction to all FPS field elements by June 30, 2022. FPS' initial training plans anticipate curricula to follow an Incident Command System, and that the training will be crafted to focus at the officer's appropriate level (i.e., line, supervisor, executive). FPS senior leadership engaged DHS Federal Law Enforcement Training Centers to encourage the development of common public order policing training at the entry level as part of initial law enforcement training for all components. Following the development of curricula, and concurrent with the training of instructors, FPS will procure the appropriate equipment as dictated by the training needs.

Once the Public Order Policing directive is complete, FPS will socialize this directive with other DHS operational components to ensure a consistent training approach within all DHS components. This should ensure that component tactics and operational policies are consistent among components expected to respond as a cohesive team to civil disturbance incidents.

Overall Estimated Completion Date (ECD): June 30, 2022.

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OIG recommended that the Director of the Federal Protective Service:

Recommendation 2: Establish contingency plans, including necessary equipment, for responding to civil disturbance at high-risk Federal facilities based on Facility Security Assessments, non-binding agreements with state and local law enforcement, and expected level of support.

Response: Concur. FPS OPs will establish a contingency plan for responding to civil disturbances at high-risk Federal facilities. ECD: March 31, 2022.



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Appendix C
Photos and Descriptions of Less-Lethal Devices Used by
Components in Portland

Less-Lethal Devices	Description	FPS	CBP	ICE
<p>Oleoresin Capsicum Spray</p> 	<p>A short-range less-lethal device capable of delivering 20 to 25 short bursts of chemical irritant at a range of 10 to 12 feet.</p>	<p align="center">✓</p>	<p align="center">✓</p>	
<p>FN303 Compressed Air Launcher</p> 	<p>Less-lethal impact/chemical irritant delivery system powered by compressed air capable of delivering a variety of projectiles, including PAVA powder projectiles. The removable magazine holds 15 .68 caliber projectiles.</p>	<p align="center">✓</p>	<p align="center">✓</p>	
<p>Pepper Ball Launching System</p> 	<p>Less-lethal impact/chemical irritant delivery system powered by compressed air capable of delivering a variety of projectiles, such as PAVA powder projectiles. The removable “hopper” holds about 180 projectiles and can fire 10 to 12 projectiles per second.</p>	<p align="center">✓</p>	<p align="center">✓</p>	<p align="center">✓</p>
<p>Riot Control Grenade</p> 	<p>A high volume, continuous discharge grenade designed for outdoor use in crowd control situations. Once activated, the device expels chemical irritant for about 20 to 40 seconds.</p>		<p align="center">✓</p>	<p align="center">✓</p>
<p>Triple Chaser Grenade</p> 	<p>A fast burning, medium volume canister designed for outdoor use in crowd control situations. It contains three separate canisters with separating charges between each section. When activated, the grenade will separate into three distinct sub-munitions about 20 feet apart, which expel chemical irritant for about 20 to 30 seconds.</p>		<p align="center">✓</p>	<p align="center">✓</p>
<p>Pocket Tactical Grenade</p> 	<p>A quick burning, smaller volume, continuous discharge grenade that produces less chemical irritant than the Riot Control or Triple Chaser grenades.</p>		<p align="center">✓</p>	



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<p>SAF Smoke Grenade</p> 	<p>A high volume, quick burning continuous discharge grenade that can be used for concealing the movement of agency personnel or as a carrying agent/multiplier for smaller chemical munitions.</p>		✓	✓
<p>Stinger Grenade</p> 	<p>Used as a crowd management tool in both indoor and outdoor environments, the Stinger is capable of projecting 25 .60 caliber rubber balls within a 50-foot radius. The Stinger may also disperse chemical munitions, such as Oleoresin Capsicum powder.</p>		✓	✓
<p>40MM Munitions Launcher</p> 	<p>Less-lethal specialty impact/chemical munition delivery system designed to deliver an impact, chemical, or combination projectile with more accuracy, higher velocity, and longer range than the hand thrown versions of the projectiles.</p>		✓	✓
<p>Controlled Noise and Light Distraction Device (Flashbang)</p> 	<p>A pyrotechnic device that, once activated, emits a bright light and loud noise to momentarily disorient and confuse subjects. It produces 175 dB of sound output at 5 feet and 6 to 8 million candelas for 10 milliseconds.</p>		✓	✓

Source: Pictures and descriptions from CBP U.S. Border Patrol. For component use of less-lethal devices, we reviewed use of force reports.



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Appendix D
Previously Reported Recommendations and Status for
Management Alert - FPS Did Not Properly Designate DHS
Employees Deployed to Protect Federal Properties under 40
U.S.C. § 1315(b)(1), OIG-21-05, Nov. 2, 2020

Recommendation 1: On November 2, 2020, we recommended the Acting Secretary of Homeland Security ensure the Under Secretary for Management, the Director of the FPS, and anyone else seeking to designate DHS employees under 40 U.S.C. § 1315(b)(1) have received properly delegated authority to do so.²³

DHS did not concur with the recommendation. DHS stated that it has consistently maintained its legal position in relevant legal proceedings that Mr. McAleenan validly served as Acting Secretary. Until a Federal court definitively determines that question, it is premature to take additional steps to ensure that the FPS Director has designation authority under 40 U.S.C. § 1315.

On February 4, 2021, DHS provided an updated response to Recommendation 1. DHS continued to assert that former Acting Secretary McAleenan was validly serving as Acting Secretary when he delegated the authority to designate DHS employees under 40 U.S.C. § 1315(b)(1) to the Under Secretary for Management. Although the Department's position is that the authority was properly delegated, out of an abundance of caution, the FPS Office of the Director, in coordination with DHS' Office of General Counsel, will review whether any additional steps, to include ratification of the delegations, should be taken to ensure that the FPS Director has the authority to designate DHS officers under 40 U.S.C. § 1315(b)(1). DHS estimates that these actions will be completed by May 31, 2021.

Recommendation 2: On November 2, 2020, we recommended the Director of the Federal Protective Service or his designee, exercising properly delegated authority to designate DHS employees under 40 U.S.C. § 1315(b)(1), designate by name any DHS employees authorized to exercise authority under that statute to protect Federal property and persons on that property.

DHS did not concur with the recommendation. DHS stated that the FPS Director properly designated officers under 40 U.S.C. § 1315(b)(1), which made

²³ In describing the basis for our finding regarding this recommendation, we noted that Chad F. Wolf signed two documents framed as ratifications in an effort to validate certain actions that he and Kevin K. McAleenan took in their putative service as Acting Secretary. Those documents did not address the validity of DHS Delegation 00002, rev. 00.3, *Delegation to the Under Secretary for Management* (Oct. 25, 2019) and DHS Delegation 02500, *Delegation to the Director, Federal Protective Service* (Dec. 18, 2019).



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this recommendation unnecessary. DHS suggested that OIG improperly construed 40 U.S.C. § 1315(b)(1) as requiring by-name designation of officers, and did not acknowledge that FPS maintains a list of employees who completed FPS' cross-designation process.

On February 4, 2021, DHS provided an updated response to Recommendation 2. DHS continued to disagree with the recommendation. However, the FPS Director instructed FPS to leverage its technology to modify the online § 1315 legal training to automatically generate individual officer designation letters signed by the FPS Director upon the officer's certified completion of training. According to DHS, this results in an immediate, individual, by-name letter to each designated DHS employee upon the completion of training. FPS implemented this process on October 1, 2020.

Current Status: Although DHS and OIG have not agreed on the reported findings and recommendations, DHS' planned corrective actions are responsive to the intent of the recommendations. We informed DHS on February 19, 2021, that these recommendations will remain open until DHS provides support that the Under Secretary for Management, the Director of the Federal Protective Service, and anyone else seeking to designate DHS employees under 40 U.S.C. § 1315(b)(1) has received properly delegated authority to do so.



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Appendix E
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