



1 On August 15, Victim 1 was downtown filming the protests. While filming, he saw Defendant  
2 holding a paintball gun and standing with a group of men wearing clothing with American flags. That  
3 group was known to Victim 1 as the “Patriot Prayer” group. As Victim 1 filmed, Defendant pointed  
4 his paintball gun at Victim 1 and fired, shooting Victim 1 in the face near the corner of his left eye.  
5 Defendant aimed his paintball gun at numerous other protesters and fired multiple shots into the crowd  
6 in addition to the shot that hit Victim 1. Defendant shouted at Victim 1 that he would “shoot him with  
7 a real gun” and that he “had one and will open fire.” Defendant and the other “Patriot Prayer”  
8 members also sprayed mace at various protesters. Victim 1 suffered damage to his retina as a result  
9 of the shot to his face. Photos and video collected during the incident show Defendant pointing and  
10 shooting his paintball gun, including the shot that struck Victim 1. Pictured below is Defendant with  
11 his finger on the trigger of his paintball gun.  
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24 Defendant again came to Portland armed on August 22, 2020. That day, protesters had  
25 gathered in Chapman Square. Victim 2 was at Chapman Square observing the protests. As she walked  
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1 through the park, she spotted Defendant and made eye contact with him. Suddenly, Defendant raised  
2 his paintball gun and shot her once in the chest, striking the bottom of her right breast. The shot left a  
3 large bruise and caused lasting pain. She moved away from Defendant and went to the area of SE 3<sup>rd</sup>  
4 and Madison. Later, Defendant approached her area. He pepper sprayed two people near Victim 2.  
5 He then turned to Victim 2 and sprayed her directly in the face. Victim 2 described that it took an  
6 hour before she was able to open her eyes without excruciating pain. Other witnesses to the events on  
7 the 22<sup>nd</sup> described seeing Defendant pointing an actual firearm at protesters. When interviewed  
8 Defendant admitted that he'd drawn his Ruger 357 Magnum Revolver and aimed it at protestors.  
9 Photos collected of the incident, like the ones below, show Defendant drawing his handgun and  
10 holding his finger on the trigger.  
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Defendant was indicted by a Grand Jury for twelve crimes as a result of his actions on August 15 and 22. Some are Ballot Measure 11 offenses. His charges include two counts of Assault in the Second Degree, Unlawful Use of a Weapon with a Firearm, two counts of Unlawful Use of a Weapon, Attempted Assault in the Second Degree, Pointing Firearm at Another, two counts of Unlawful Use of Mace in the Second Degree, Assault in the Fourth Degree, Attempted Assault in the Fourth Degree, and Menacing. His bail on all twelve charges is set at the presumptive bail amount, a collective \$534,000, including \$250,000 on each count of Assault in the Second Degree. As explained more fully below, bail in this case is set appropriately and Defendant should not be released pending his trial on these offenses.

1 **II. ARGUMENT**

2 **A. The Statutory Release Criteria, as Applied to Defendant, Do Not Support Release.**

3 Each of the statutory factors involved in making a release decision cut against Defendant's  
4 release. ORS § 135.230 provides guidance to the court in making its release decision. This statute  
5 provides a nonexclusive list of ten criteria that the court should consider:

6 (7) 'Primary release criteria' includes the following:

- 7 (a) The reasonable protection of the victim or public;
- 8 (b) The nature of the current charge;
- 9 (c) The defendant's prior criminal record, if any, and, if the defendant previously  
10 has been released pending trial, whether the defendant appeared as required;
- 11 (d) Any facts indicating the possibility of violations of law if the defendant is  
12 released without regulations; and
- 13 (e) Any other facts tending to indicate that the defendant is likely to appear.

14 \* \* \*

15 (11) 'Secondary release criteria' includes the following:

- 16 (a) The defendant's employment status and history and financial condition;
- 17 (b) The nature and extent of the family relationships of the defendant;
- 18 (c) The past and present residences of the defendant;
- 19 (d) Names of persons who agree to assist the defendant in attending court at the  
20 proper time; and
- 21 (e) Any facts tending to indicate that the defendant has strong ties to the  
22 community.

23 The primary release criteria cut strongly against Defendant's release. The nature of the  
24 charges are serious. They are violent felonies subject to Ballot Measure 11. They carry mandatory  
25 minimum 70 month prison sentences on the separate Assault in the Second Degree counts. This  
26 case involves two completely separate instances of violence. During each instance, Defendant was  
27 heavily armed. He used a paintball gun to shoot at not only the named victims in this case, but also

1 other members of the public. Defendant threatened to use an actual gun against Victim 1 based on  
2 Victim 1's report to police. On the second incident, Defendant pointed an actual firearm at a large  
3 crowd of people and held his finger on the trigger.

4 The protection of the public weighs heavily against Defendant's release. Defendant's  
5 willingness repeatedly to attend Portland protests while armed will not suddenly dissipate upon  
6 release. Social media posts by Defendant himself display his belief that violence is the appropriate  
7 response to the protests occurring in Portland. Attached to the State's Memorandum are a sampling  
8 of Defendant's social media posts for the Court's reference. They include statements encouraging  
9 others to join him in bringing firearms to protests. In one, he encourages showing up to the protests  
10 with unloaded guns and states: "I know the first thing that's going to pop into your heads is 'what  
11 good is a firearm if it isn't loaded'. [sic] I agree but I also know it takes me about 2 seconds to  
12 load an AR-15." (Attachment A). In another, he describes the violence that he and his group have  
13 generated, writing, "THIS GROUP IS ACTIVLY [sic] FIGHTING THE LEFT. Not figuratively.  
14 We get toe to toe whith [sic] these "people". [sic] To date I've helped get 83 of these clowns  
15 arrested. 3 by way of the hospital . . .". (Attachment B). He states in reference to the protests that  
16 "it IS a civil war." (Attachment C). He makes posts that display his willingness to shoot other  
17 people, stating "This cat seriously almost got shot" and "Do not violate me... it will be hazardous  
18 to your health." (Attachment D). He brags about his access to guns. (Attachment E).

19 Further, Defendant will continue to engage in this violent behavior and is unlikely to follow  
20 court orders on release. In the social media post below, Defendant explains that he won't be told  
21 "how to defend myself" and that the "lefty judges, DAs, city council, and mayors can get bent."  
22 He references a statement made by Donald Trump about democrats and states "I dont [sic] think  
23 I'm going to let them govern me anymore."  
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Alan Swinney  
@Alwuzhere · Aug 16, 2020 · 3.9k

Haha. One of the terrorists is crying to the Portland police about getting hit by a paintball. I dont know all the details but he said they were pushing assault charges. Heres the thing. I know the lefties in charge of Portland would love to hymn me up on the assault charges but if they think I'm going to turn myself in to an argy mob, they are insane lol. Whoever's in charge of Portland can fuck all the way off. You're not going to tell me how I can defend myself. I guess your just going to have to rely on your defunded police department to pick me up 😏 I say again... All you lefty judges, DAs, city council, and mayors can get bent. Americans are going to be treating you like tyrants VERY soon. Dont tread on me. "Democrats have become too extream to govern". That's what Trump says. I believe him. I dont think I'm going to let them govern me anymore. Take the charges and stick em up your ass.

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The city of Portland has experienced over 100 consecutive days of protest. During this time there have been instances of violence including homicide and arson. When Defendant attends the protests, he engages in conduct that antagonizes others and incites violence. It is an entirely possible, and perhaps likely, proposition that if he is released he will go back to the protests and be involved in an incident of homicide or other extreme violence.

The secondary release criteria also cut against Defendant's release. Defendant is not from Portland and is actually a resident of Texas, according to the Recognizance Officer's report. He has a Texas ID number. He does not maintain gainful employment in the Portland area and does not have ties to Portland. He is facing a prison sentence. He is unlikely to appear for court and presents a flight risk. Under the primary and secondary release criteria, Defendant's release should be denied.

1 **B. The Presumptive Bail Set in this Case is Supported by Law and Should not be Lowered.**

2 The bail in this case is appropriate and not unconstitutionally excessive. When a case  
3 involves violent felony charges that are subject to Ballot Measure 11 pretrial release is governed  
4 by ORS § 135.240(5). Oregon law now requires that *some* amount of security be set in all Ballot  
5 Measure 11 cases. *Id.* (stating that “the court shall set a security amount of not less than \$50,000  
6 for defendant charged with offense listed in ORS § 137.700. . .” and may not release defendant *on*  
7 *any form of release other than security release*). This case includes Ballot Measure 11 charges and  
8 is subject to the statutory minimum bail amounts as set out by ORS § 135.240(5).

9  
10 Article I, Section 16 of the Oregon Constitution, provides that “[e]xcessive bail shall not  
11 be required.” In *State v. Sutherland*, 329 Or 359, 987 P2d 501 (1999), the Oregon Supreme Court  
12 upheld the constitutionality of the statutory release provisions of ORS § 135.240(5). The Court  
13 held that “any defendant who wished to make an ‘as applied’ challenge to the propriety of imposing  
14 the specified security release amount of \$50,000 *or higher* under ORS § 135.240(5) has a  
15 constitutional right to a hearing to address that question.” *Id.* (emphasis added).

16  
17 *1. Bail is Not Clearly Excessive in This Case.*

18 The bail in this case is not clearly excessive and should be upheld. Several Oregon cases  
19 have dealt with defense challenges to the amount of bail and shed light on the bounds of excessive  
20 bail. In *Cooper v. Burks*, 299 Or 449, 702 P2d 1107 (1985), the defendant was arrested pursuant  
21 to a warrant which established a security amount at \$250,000. At a hearing, the court reduced the  
22 security on the Class B controlled substance charges to \$100,000. The appellate court concluded  
23 the circuit court acted within its authority, under the circumstances of the case, in setting the  
24 security amount at \$100,000.  
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1 Another guiding case is *Liberian v. Burks*, 293 Or 457, 466, 650 P2d 83 (1982). In that  
2 case, a security amount of \$3 million was set on charges of possession of a controlled substance  
3 and conspiracy to deliver a controlled substance. The court concluded that the bail was excessive,  
4 and “that bail of \$3 million is an amount which, if not designed to make it impossible, as a practical  
5 matter, for the prisoner to secure his release, was unreasonably large and impermissible.” *Id.*  
6

7 Here, \$534,000 bail for this case is reasonable given the serious nature of the crimes and  
8 the other negative release criteria factors. Unlike the cases above which involved security  
9 pertaining to drug offenses, the charges in this case involve serious violence. Defendant assaulted  
10 two different victims. His actions involved extreme risk to other members of the public. He  
11 engaged in the violent conduct on more than one separate occasion. Defendant is a flight risk  
12 because he is from a different state and is facing prison time. Thus, the bail in this case is not  
13 clearly excessive and should not be disturbed.  
14

15 *2. The Burden is On Defendant to Show That That Amount of Bail is Excessive.*

16 The amount of security set in a case is within the sound discretion of the court and the  
17 burden of proof is on the defendant to establish that the security amount set by the court is  
18 excessive. *See Delaney v. Shobe*, 218 Or 626, 628, 346 P2d 126 (1959).<sup>1</sup> The Supreme Court  
19 noted, “it is settled law that the determination of the amount of bail is committed to the sound  
20 discretion of the court and its decision will not be disturbed except in a clear abuse of discretion.”  
21 The Court went on to conclude that “. . . unless it appears plainly on the face of the particular case  
22 that the bail is excessive, the plaintiff has the burden of establishing such abuse by evidence.” *Id.*  
23 at 628. Under *Delaney v. Shobe*, the factors that this Court should consider are:  
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26 <sup>1</sup> Although *Delaney* is an old case, its holding that a defendant bears the burden of proving bail is excessive was re-  
27 iterated by the Oregon Supreme Court in *State v. Sutherland*, 329 Or at 367.

- 1 (1) the ability of the accused to pay bail;
- 2 (2) the nature of the offense;
- 3 (3) the penalty for the offense;
- 4 (4) the character and reputation of the accused;
- 5 (5) the health of the accused;
- 6 (6) the character and strength of the evidence;
- 7 (7) the probability of the accused appearing at trial;
- 8 (8) forfeiture of other bonds; and
- 9 (9) whether the accused was under bond in other cases.

10  
11 *Id.*

12 The *Delaney* factors weigh against bail being excessive as applied to this Defendant in this  
13 case. The nature of the charges in this case are serious. They involve violence to other people. As  
14 a result of his conduct, Defendant injured two complete strangers. Defendant pointed an actual gun  
15 at other humans in a crowded public place. Defendant threatened one victim and stated that he  
16 would shoot him with a real gun. The penalty for Defendant's offenses is steep. Under Ballot  
17 Measure 11, the two counts of Assault in the Second Degree each carry a mandatory minimum  
18 sentence of 70 months of prison. Defendant's character and reputation cuts against release because  
19 he has shown through his own social media posts that he intends to continue engaging in violence  
20 and is unlikely to obey court ordered conditions. The evidence in this case is strong. Numerous  
21 videos and photos capture Defendant's conduct, and there were many eyewitnesses to the events.  
22 Further, under *Delaney v. Shobe* the defendant must put forth evidence that the bail is excessive as  
23 applied. Defendant will not be able to sustain his burden and this Court should therefore not disturb  
24 the bail set in this case.  
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1 **III. CONCLUSION**

2 Defendant poses a safety risk to the community. All statutory factors cut against his release  
3 pending trial for the serious offenses involved in this case. Additionally, his bail is set at a  
4 constitutionally permissible amount. Defendant advocates for violence, seeks out conflict, has  
5 access to firearms, and has explicitly stated that he will not abide by court orders. Defendant has  
6 engaged in acts of violence around the United States and believes that he is engaged in a Civil  
7 War. Further, the defendant is widely known by the people who oppose his set of beliefs and his  
8 release may lead to additional homicides on both sides of the ideological spectrum. This Court  
9 should deny Defendant's request for release or any reduction in bail.  
10

11 Respectfully submitted this 16th day of October, 2020.

12  
13 By: /s/ Leslie Wu  
14 Leslie Wu, OSB # 184815  
15 Deputy District Attorney  
16 Multnomah County, Oregon

17 By: /s/ Nathan Vasquez  
18 Nathan Vasquez, OSB # 014437  
19 Deputy District Attorney  
20 Multnomah County, Oregon  
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27

CERTIFICATE OF SERVICE

I hereby certify that I served the within State’s Memorandum In Opposition to Release or Bail Reduction on the 16th day of October 2020, by emailing a certified true copy thereof, certified by me as such, addressed to:

Attorney for Defendant:  
Eric Brad Wolfe  
Attorney at Law  
ewolfe@007law.com

On this 16th day of October, 2020.

By: /s/ Leslie Wu  
Leslie Wu, OSB # 184815  
Deputy District Attorney  
Multnomah County, Oregon

By: /s/ Nathan Vasquez  
Nathan Vasquez, OSB # 014437  
Deputy District Attorney  
Multnomah County, Oregon

6:56



36%



Alan Swinney

@Alwuzhere • 2 hours ago



Open carry is allowed in Portland without a CCL as long as the weapon isnt loaded. If you're planning on attending the flag wave at the justice center tomorrow and want to open carry, just make sure it's not loaded if you dont have a CCL. I know the first thing that's going to pop into your heads is "what good is a firearm if it isnt loaded". I agree but I also know it takes me about 2 seconds to load an AR-15. We have to play by the rules. We can beat them easily even if we play by the rules. OUR GOAL IS A PEACEFUL FLAG WAVE. We arent going there to shoot anyone or harm anyone. If the mob gets violent however, and the police arent there to control them, we will handle it. This isnt a game. You will not silence my free speech. You will not violate my right to peacefully assemble. You will not violate my freedom of movement. I was with a group of Americans that destroyed the 4th largest Army in the world. We'll beat you too. If you're smart, you'll leave us alone tomorrow.



ATTACHMENT A



Alan Swinney

@Alwuzhere · Jul 16, 2020 · 8.6k



We'll be having a flag wave in a town called Sandy on Friday and possibly Saturday also depending on how Friday goes. It's a little town outside Portland. My plan is to hit these little towns and recruit, then we all go into Portland together. I'll get some videos and post them here. If you're in the Portland area come on out. Flag waves are tons of fun, and there are just enough libtards around to make it even more entertaining. If you have people from Oregon following, please echo this post. If all this stuff has been pissing you off, here's your chance to do something. Even if you can't be here yourself, echoing this post will boost our numbers. THIS GROUP IS ACTIVELY FIGHTING THE LEFT. Not figuratively. We get toe to toe with these "people". To date I've helped get 83 of these clowns arrested. 3 by way of the hospital, and 5 off to prison. Come help us! We can do more if we work together.

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ATTACHMENT B



Alan Swinney

@Alwuzhere · Jul 17, 2020 · 179k



This isnt turning into a civil war. It IS a civil war. How do I know? Because they are throwing explosives at me. The fighting has already started. When you get tired of losing, contact me. Upvote and echo this post. We need numbers. I'm currently camped out (deployed) in the national forest outside of Portland. We move between here and Rainer national forest outside of Seattle. When you have time, come join us. We backup local sheriff's and patrol the perimeter of each city. We need guys. We need vets. Patriots. Come join us. Bring a tent and bedroll. Camping in the national forest is free and its breathtaking here. Aside from kicking terrorists asses, theres hiking, gold panning, kayaking.. We have an old school civil war camp set up. History is being written right now. Come be a part of it. We can beat these people easily. It's time to get started.

If you cant be here but would still like to help, echo and upvote. You can recruit from anywhere. MAGA!

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ATTACHMENT C



Alan Swinney

@Alwuzhere · Jul 22, 2020 © 16k



This cat seriously almost got shot. He was screaming at me and started to charge me so I reached for my weapon and he stopped. He was foaming at the mouth with rage. YOU WILL NOT TERRORIZE ME! Do not violate my right to free speech. Do not violate my right to peacefully assemble. Do not violate my freedom of movement. Do not violate me... It will be hazardous to your health. You wont make me afraid to walk down the sidewalk. I fought a war for this country. I'll fight another one for it.

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ATTACHMENT D





Alan Swinney

@Alwuzhere · Aug 13, 2020 © 2.1k



Antifa is supposedly looking for me out here in the National Forest. They're camping out here too. They are looking for me but I already have intel that they are all camped out at Government Camp down the road. It's easy to find me. I'm going to give you a hint. Listen for all the gunfire and explosions. That's where I am.

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ATTACHMENT E



Alan Swinney

@Alwuzhere · Aug 16, 2020 · 3.9k



Haha. One of the terrorists is crying to the Portland police about getting hit by a paintball. I dont know all the details but he said they were pushing assault charges. Heres the thing. I know the lefties in charge of Portland would love to hymn me up on the assault charges but if they think I'm going to turn myself in to an argy mob, they are insane lol. Whoever's in charge of Portland can fuck all the way off. You're not going to tell me how I can defend myself. I guess your just going to have to rely on your defunded police department to pick me up 😏 I say again... All you lefty judges, DAs, city council, and mayors can get bent. Americans are going to be treating you like tyrants VERY soon. Dont tread on me. "Democrats have become too extream to govern". That's what Trump says. I believe him. I dont think I'm going to let them govern me anymore. Take the charges and stick em up your ass.

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ATTACHMENT F