



534 FOURTH ST., SUITE B, SAN RAFAEL, CA 94901
415.460.5060 FirstAmendmentCoalition.org

June 30, 2022

Chief Michel R. Moore
Chief of Police, Los Angeles Police Department
contact.lapdonline@gmail.com

Commissioner Eileen Decker, President
Commissioner William J. Briggs, II, Vice President
Commissioner Dale Bonner
Commissioner Maria Lou Calanche
Commissioner Steve Soboroff
Board of Police Commissioners, Los Angeles Police Department
policecommission@lapd.online

Via Electronic Mail

RE: Brutality Against Journalists at June 24, 2022 Abortion Rights Protests in Los Angeles

Chief Moore and Commissioners:

LAPD's treatment of journalists at demonstrations in downtown Los Angeles in response to the Supreme Court's ruling last Friday, June 24, 2022, was an unacceptable continuation of LAPD's refusal to respect the First Amendment rights of journalists—and particularly journalists of color, independent journalists, and journalists who have been critical of LAPD and other law enforcement agencies. Our concerns about the Department's treatment of journalists are not new. Almost exactly one year ago, the ACLU Foundation of Southern California wrote to your department about troubling incidents involving LAPD officers detaining, arresting, harassing, and otherwise interfering with journalists' First Amendment rights to gather and disseminate information to the public.¹ Even then, our concerns were not new—the letter included a discussion of LAPD's persistent problems with mistreating journalists at protests.²

¹ Numerous journalists have since filed lawsuits arising from these incidents. See Kevin Rector, *Knock LA journalists sue Los Angeles over LAPD arrests at Echo Park protest*, LA Times (May 9, 2022), <https://www.latimes.com/california/story/2022-05-09/knock-la-journalists-sue-los-angeles-over-lapd-arrests-at-echo-park-protest>; Kevin Rector, *Photojournalists sue LAPD, L.A. County sheriff over alleged abuses at protests*, LA Times (May 5, 2021), <https://www.latimes.com/california/story/2021-05-05/photojournalists-sue-lapd-l-a-county-sheriff-over-alleged-abuses-at-protests>.

² The ACLU's June 24, 2021 letter is included here as Attachment A. The April 21, 2021 open letter to Southern California Law Enforcement Agencies is included here as Attachment B.

EXECUTIVE DIRECTOR Hector O. Villagra

CHAIR Marla Stone **VICE CHAIRS** Sherry Frumkin and Frank Broccoli !

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*deceased

The Department did not respond to or acknowledge ACLU’s letter or request for a meeting to discuss the Department’s policies relating to journalists covering protests. After the wave of LAPD officers’ egregious abuse of journalists at protests on June 24, 2022,³ we find ourselves wondering if the Department ever even read the letter.⁴ Either way, it certainly did not get the message: the First Amendment unambiguously protects newsgathering, and police interference with the exercise of that right raises grave Constitutional concerns.

People took to social media on Friday to document shocking instances of excessive force against members of the media, who clearly identified themselves as such and were obviously engaged in newsgathering.⁵ For example, there are multiple videos from different angles of officers shoving journalists Lexis-Olivier Ray and Joey Scott. One video shows multiple officers approaching Mr. Ray and Mr. Scott, who both have “Press” clearly written either on their clothing or on their helmet.⁶ The videos show them standing on the sidewalk on an overpass taking pictures or videos. They can be heard identifying themselves as press as the officers closed in on them.⁷ One of the officers shoved Mr. Ray towards the railing using his baton, nearly pushing him over the overpass. A second officer hit Mr. Scott with his baton, throwing him to the ground. Mr. Scott can be heard telling the officer he was press and had a legal right to be there. An officer responded that he did *not* because he was in the middle of the street—despite officers just having forcefully moved Mr. Ray and Mr. Scott from the sidewalk into the street.

³ See, e.g., Erum Salam, *Fears of violence against pro-choice protests intensify amid wave of attacks*, The Guardian (June 28, 2022), https://www.theguardian.com/us-news/2022/jun/28/peaceful-pro-choice-protests-violence-attacks-police?CMP=oth_b-aplnews_d-1; Trone Dowd, *Videos Show Cops Beating Journalists and Protestors at Abortion-Rights Rallies*, VICE News (June 27, 2022), <https://www.vice.com/en/article/y3pgvk/la-police-beat-abortion-rights-protesters>; Julia Paskin et al., *LAPD Under Scrutiny For Treatment of Press and Demonstrators At Abortion Rights Rallies*, LAist (June 27, 2022), <https://laist.com/news/criminal-justice/lapd-under-scrutiny-for-treatment-of-press-and-demonstrators-at-abortion-rights-rallies>; Kevin Rector, *LAPD treatment of journalists denounced, again, after abortion rights protest downtown*, LA Times (June 25, 2022), <https://www.latimes.com/california/story/2022-06-25/lapd-treatment-of-journalists-denounced-again-after-abortion-rights-protest-downtown>.

⁴ The Department has otherwise been delayed in its response to widespread complaints about the detention of journalists. For example, on March 31, 2021, the Los Angeles City Council requested that LAPD complete a report on “the detaining of journalists in recent protest demonstrations, procedures surrounding issuing press credentials, and crowd control procedures involving journalists.” Public Safety Committee Report, File No. 21-0355 (Mar. 31, 2021), available at <https://bit.ly/3bFtQsb>. To date, the Department has not produced a report covering all of the items in the City Council’s request.

⁵ See Tyler Valeska (@tbvaleska), TWITTER (June 24, 2022, 9:38 PM), <https://bit.ly/3npPUcT> (thread collecting footage).

⁶ Josh Pacheco (@JoshMPacheco), TWITTER (June 24, 2022, 7:48 PM), <https://twitter.com/joshmpacheco/status/1540527305243729920?s=21&t=JGmFeRlv1ms9kZQ-YYP0hA>.

⁷ *Id.* at 00:14 seconds; Lexis-Olivier Ray (@ShotOn35mm), TWITTER (June 24, 2022, 7:58 PM), <https://twitter.com/shoton35mm/status/1540529890344071168?s=21&t=JGmFeRlv1ms9kZQ-YYP0hA>.

Another incident captured in videos on Twitter shows multiple officers forcefully pushing and throwing down journalist Tina Desiree Berg as she was standing on the sidewalk and recording.⁸ She was thrown against a railing by one officer and shoved to the ground by another. In the video, she can be seen displaying a yellow press pass to the officers.

Reviewing footage from the most recent incidents of last Friday alongside the many examples of abuse detailed in our previous letters reveals a clear and disturbing pattern. LAPD's aggression towards journalists appears focused primarily on journalists of color, journalists working independently or for smaller news outlets, and journalists who have previously written negatively about LAPD and other law enforcement agencies.⁹ Documented instances of LAPD officers harassing journalists strongly suggest ongoing, targeted retaliation against individuals who shed light on the police actions LAPD would prefer the public never saw. Such retaliation is a brazen violation of the First Amendment, and we intend on continuing to monitor and document this pattern.

We also note that while this letter focuses on attacks on journalists, we are also aware of videos documenting police aggression towards protesters at the June 24 demonstrations.¹⁰ These events arise in a broader context of LAPD's mismanaging crowds and protests, harassing journalists, and using excessive force against protesters.¹¹

⁸ Samuel Braslow (@SamBraslow), Twitter (June 24, 2022, 9:13 PM), <https://twitter.com/SamBraslow/status/1540548658365550592>; Lexis Olivier-Ray (@ShotOn35mm0), TWITTER (June 24, 2022, 9:04 PM), <https://bit.ly/3NxclY8>.

⁹ See, e.g. Lexis-Olivier Ray (@ShotOn35mm), TWITTER (Oct. 28, 2020, 12:26 AM), <https://twitter.com/ShotOn35mm/status/132135270989907073?s=20&t=kE-EAGirCD0CVYI42xQ58A> ([journalist's footage of being attacked](#)); James Queally, Kevin Rector, A journalist accused the LAPD of assault. Then police tried to have him prosecuted, LA Times (Mar. 18, 2021), <https://www.latimes.com/california/story/2021-03-18/journalist-accused-lapd-assault-police-tried-to-have-him-prosecuted> (describing incident with Lexis-Olivier Ray); [Journalist receives failure to disperse charge four months after documenting Dodgers celebrations](#), U.S. Press Freedom Tracker (Mar. 9, 2021), <https://pressfreedomtracker.us/all-incidents/journalist-receives-failure-to-disperse-charge-four-months-after-documenting-dodgers-celebrations/>. LAPD also targeted this same reporter at the abortion rights protest last week.

¹⁰ See e.g., Travis Schlepp, *'Full House' star shoved by LAPD officer during abortion rights protest*, KTLA News (June 27, 2022) <https://bit.ly/3R1oIi4>; Vishal Singh (@VPS_Reports), Twitter (June 24, 2022, 11:07 PM), https://twitter.com/VPS_Reports/status/1540577435556511745?s=20&t=O152-ZHdmMoLu1gh3dF-Qg.

¹¹ See, e.g. Sean Beckner-Carmitchel, *LAPD and DHS Attack Pro-Abortion Protestors in Downtown LA, KnockLA* (May 5, 2022) <https://bit.ly/3OTFg9Q>; Manisha Krishnan, *Videos Show LAPD Beating and Shoving Protesters at Abortion Rights Rally*, VICE News (May 4, 2022) <https://bit.ly/3OVFOaF>; David Folkenflik & Marc Rivers, *When police cracked down on reporters on one chaotic night in LA's Echo Park*, NPR (March 31, 2022), <https://www.npr.org/2022/03/31/1087495900/echo-park-protest-lapd-journalist>. David Folkenflik, *From kid gloves to rubber bullets: How the LAPD's ties to news media unraveled*, NPR (March 31, 2022), <https://www.npr.org/2022/03/31/1089643078/lapd-media-echo-park-history>; Joel Simon, *Op-Ed: Arresting reporters in L.A. sends a dangerous message to repressive governments*, LA Times (Dec. 7, 2021), <https://www.latimes.com/opinion/story/2021-12-07/los-angeles-police-journalists-arrests-reforms>; Kevin Rector, *LAPD report on Echo Park homeless camp cleanup finds 'room for improvement'*, LA Times (July 31, 2021), <https://www.latimes.com/california/story/2021->

We have previously detailed our First Amendment concerns. Since our last letter, the First Amendment’s vigorous protection of newsgathering has not changed. What *has* changed is that the California legislature took concrete steps strengthen the press freedoms guaranteed by the First Amendment. In October 2021, Governor Newsom signed Senate Bill 98, which added language to Cal. Penal Code 409.7 to ensure that when law enforcement “establish[es] a police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged in [First Amendment protected] activity,” members of the media shall be permitted to enter and shall not be subject to dispersal orders. Section 409.7(a). The events of June 24 show no indication that LAPD has developed and implemented a clear, consistent policy in compliance with SB-98.¹²

It is our understanding that a coalition of journalists, former law enforcement officers, and media lawyers has provided LAPD with extensive guidance and training suggestions for implementation of SB-98, including a description—supported by jurisprudence—of who qualifies for § 409.7 protections. It is also our understanding that despite these efforts at partnership with LAPD, the Department has not engaged the journalist groups about SB-98 implementation or training since late last year. It is unclear whether the Department heeded this guidance in developing an internal policy and training with respect to journalists at protests. LAPD’s conduct towards journalists on June 24 suggests a complete disregard for the text of Section 409.7 and a betrayal of the California legislature’s recognition of the vital role journalists play as “surrogates for the public.” *Index Newspapers LLC v. United States Marshals Service*, 977 F.3d 817, 830 (9th Cir. 2020).

Again, LAPD must take concrete steps to address these concerns or risk continued violations of the First Amendment and California law:

- 1) Thoroughly investigate each of the incidents detailed above, as well as any other reported incident involving LAPD’s harassment of or interference with journalists at the demonstrations on June 24;
- 2) Terminate officers engaged in unlawful harassment and retaliation against journalists and protesters;
- 3) Direct the Office of Inspector General to report back on the sufficiency of these investigations and the ultimate discipline imposed;

[07-31/lapd-report-on-echo-park-closure-protests](https://www.latimes.com/local/lanow/story/2021-07-31/lapd-report-on-echo-park-closure-protests); Kevin Rector et al., *LAPD investigates claims of excessive force at Wi Spa protest*, LA Times (July 20, 2021), <https://lat.ms/3NwYLnF>; Eric Leonard, *Federal Judge Limits LAPD Use of ‘Less Lethal’ Weapons at Protests*, NBC Los Angeles (April 19, 2021), <https://bit.ly/3a0vvbc>; Nicholas Bogel-Burroughs et al., *L.A.P.D. Severely Mishandled George Floyd Protests, Report Finds*, New York Times (March 29, 2021), <https://nyti.ms/3R1JD4D>.

¹² See Lexis-Olivier Ray (@ShotOn35mm), TWITTER (June 24, 2022, 11:37 PM), <https://twitter.com/ShotOn35mm/status/1540584988088729600?s=20&t=hGBPzk9rN6VBUm-v9JghbA> (officer denying access to journalists, “designating” media area and then immediately removing journalists from it).

- 4) Announce clear policies with respect to allowing journalists access to protests and areas closed pursuant to dispersal orders to *meaningfully* cover police action;
- 5) Complete the report on “the detaining of journalists in recent protest demonstrations, procedures surrounding issuing press credentials, and crowd control procedures involving journalists” requested by LA City Council on March 31, 2022;
- 6) Complete the Internal Affairs investigation of the detention of journalists at the Echo Park Lake encampment protests in 2020 and publish the findings; and
- 7) Continue discussions with journalists to develop and announce a policy for identifying journalists and develop training for officers about protections afforded to members of the press.

We appreciate your attention to this matter and look forward to your prompt response.

Sincerely,



Zoë McKinney
First Amendment and
Democracy Staff Attorney
(213) 977-5244
ZMcKinney@aclusocal.org



Peter Eliasberg
Chief Counsel
Manheim Family Attorney for
First Amendment Rights
(213) 977-5228
PEliasberg@aclusocal.org



David Loy
Legal Director
First Amendment Coalition
(415) 460-5060

ATTACHMENT A



June 24, 2021

Chief Michel R. Moore
Chief of Police, Los Angeles Police Department
contact.lapdonline@gmail.com

Commissioner Eileen Decker, President
Commissioner William J. Briggs, II, Vice President
Commissioner Dale Bonner
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Via Electronic Mail

RE: Journalists' Rights to Access and Cover Public Protests

Chief Moore and Commissioners:

We are concerned with LAPD's problematic practices toward journalists at recent protests, as well as what appears to be a departure from the department's previous policy of allowing journalists covering protests to self-identify as media. We understand you have met with journalist groups with similar concerns, and we join in urging you to cease interfering with journalists at protests and, per your previous policy, recognize journalist self-identification during protests.¹

The Department's troubling treatment of journalists covering recent protests—detaining, arresting, harassing, and otherwise interfering with their First Amendment rights to gather and disseminate information to the public—has been well-documented. In May 2020, LAPD officers shot KCRW reporter Cerise Castle with a rubber bullet as she held her press badge above her head.² That same day, LAPD officers fired rubber bullets at then-Daily Bruin reporter Jintak

¹ On April 21, 2021, we sent an open letter to Southern California law enforcement agencies, supporting the demands made by a coalition of journalist groups that routinely cover protests in Southern California. ACLU SoCal (@ACLU_SoCal), TWITTER (Apr. 21, 2021), https://twitter.com/ACLU_SoCal/status/1384981237836644355?s=20.

² *LA journalists endure police violence during George Floyd protests*, KCRW: PRESS PLAY WITH MADELEINE BRAND (June 1, 2020), <https://www.kcrw.com/news/shows/press-play-with-madeleine-brand/protests-peaceful-violent-rights-race/journalists-violence-police>.

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*deceased

Han, who identified as press to police and wore a press helmet, press vest, and press pass.³ Also on that day, an LAPD officer “jabbed” freelance journalist Lexis-Olivier Ray in the stomach with a baton, sending him “flying back a couple feet,” despite the fact that he identified himself as a journalist, attempted to separate himself from protestors, and wore two cameras around his neck.⁴ In August 2020, LAPD shot photojournalist Ringo Chiu in the abdomen with a rubber bullet,⁵ and, after taking five months to investigate a formal complaint to the Professional Standards Bureau, took another five months to issue its finding that Mr. Chiu’s claim of “unauthorized force” by LAPD was considered “*Unfounded*,” meaning that “based upon the preponderance of evidence standard . . . the acts alleged did not occur in the manner . . . described” (emphasis in original).⁶ In October 2020, LAPD tackled Ray to the ground as he covered the Dodgers World Series celebrations for L.A. Taco, attacking him with batons and damaging his equipment, all while he identified himself as press and wore his organization’s badge (and months later, threatened him with charges).⁷ Of course, this list of incidents by LAPD is not exhaustive and represents only a fraction of LAPD’s concerning behaviors.

Notably, on March 25, 2021, LAPD detained or arrested several reporters covering protests at Echo Park Lake, including Los Angeles Times reporter James Queally, who wore LAPD-issued credentials around his neck and repeatedly mentioned his affiliation,⁸ and Spectrum News 1 reporter and anchor Kate Cagle, who wore her LA County press pass and also identified herself as a reporter.⁹ Officers kettled approximately 200 people on Lemoyne Street between Park Avenue and Sunset Boulevard, which included at least twelve journalists present in a professional capacity and actively engaged in newsgathering. Our understanding is that despite

³ *Multiple journalists covering protests in Los Angeles assaulted*, U.S. PRESS FREEDOM TRACKER (May 30, 2020), <https://pressfreedomtracker.us/all-incidents/multiple-journalists-covering-protests-los-angeles-assaulted/>.

⁴ *Id.* Importantly, these were not the only journalists harassed on May 30, 2020. Freelance news photographer Nicholas Stern, who recently filed a federal lawsuit following his injuries, alleged he was struck with a baton repeatedly and twice shot with projectiles at a May 30 protest. *See* Kevin Rector, *Photojournalists sue LAPD, L.A. County sheriff over alleged abuses at protests*, LA TIMES (May 5, 2021), <https://www.latimes.com/california/story/2021-05-05/photojournalists-sue-lapd-l-a-county-sheriff-over-alleged-abuses-at-protests>.

⁵ *Photojournalist struck with rubber bullet during protest clashes in L.A.*, U.S. PRESS FREEDOM TRACKER (Aug. 21, 2020), <https://pressfreedomtracker.us/all-incidents/photojournalist-struck-rubber-bullet-during-protest-clashes-l/>.

⁶ Letter from Chief Michel R. Moore, LAPD Chief of Police, and Captain Adrian Gonzalez, LAPD Rampart Patrol Division Commanding Officer, to Ringo Chiu (May 24, 2021).

⁷ James Queally & Kevin Rector, *A journalist accused the LAPD of assault. Then police tried to have him prosecuted*, LA TIMES (Mar. 18, 2021), <https://www.latimes.com/california/story/2021-03-18/journalist-accused-lapd-assault-police-tried-to-have-him-prosecuted>.

⁸ Teo Armus, *L.A. police arrest reporters and legal observers at protests over homeless encampment*, WASH. POST (Mar. 26, 2021), <https://www.washingtonpost.com/nation/2021/03/26/los-angeles-arrests-echo-park/>; Kevin Rector, *LAPD detains, then releases, Los Angeles Times reporter covering unrest in Echo Park*, LA TIMES (Mar. 25, 2021), <https://www.latimes.com/california/story/2021-03-25/lapd-detains-times-reporter-covering-unrest-in-echo-park>.

⁹ *4 journalists detained by LAPD while covering Echo Park protest released*, FOX 11 L.A. (Mar. 26, 2021), <https://www.foxla.com/news/4-journalists-detained-by-lapd-while-covering-echo-park-protest-released>.

the journalists identifying themselves as members of the press, LAPD officers detained and kettled at least five journalists for periods of up to two hours; detained and zip-tied two more journalists, ultimately releasing them later; and formally arrested, booked, and cited at least five more.

These individuals repeatedly announced to officers that they were members of the media. Despite this, officers detained them for an extended period and formally arrested some. This conduct is unacceptable, as the public interest requires that law enforcement agencies allow journalists to access and cover protests to the full extent of their First Amendment rights.

These incidents are even more troubling given LAPD's persistent, historical problems with the treatment of journalists at protests.¹⁰ For years, the Department faced lawsuits resulting in costly settlements and attempted to institute reforms to prevent future unlawful treatment of the press. Yet, these reforms fail to provide meaningful change, and their enforcement is lacking. For example, in August 2000, LAPD met journalists covering a protest outside of the Democratic National Convention at Staples Center with force, shooting them with rubber bullets and clubbing them with batons.¹¹ Consequently, seven reporters filed a lawsuit against the city in *Crespo v. Los Angeles*. The resulting settlement obligated LAPD to institute reforms, including in part recognizing journalists' right to cover public protests even if the Department declares an unlawful assembly and gives an order to disperse; designating a media area within viewing distance and audible range of the event; and changing or moving that media area as necessary to accommodate changing conditions. Importantly, *Crespo*'s standout provision concerning the creation of a media area did not *require* journalists to remain in the designated media area, but only provided that news media "may" assemble there.¹² Yet, *Crespo* is wielded by officers to inhibit journalists' access to newsworthy events.¹³

¹⁰ For example, in clearing MacArthur Park of protestors on May Day in 2007, LAPD pushed journalists to the ground, including those obviously holding press credentials and cameras, and struck them with batons and used shotguns to fire bean-bag munitions at them, ultimately resulting in lawsuits including an award of \$1.7 million to one reporter LAPD struck with batons. See *Jury awards \$1.7 million to Fox camera operator hurt by LAPD*, LA TIMES: L.A. NOW (July 2, 2010, 7:18 PM), <https://latimesblogs.latimes.com/lanow/2010/07/jury-awards-17-million-to-fox-camera-operator-hurt-by-lapd.html>; *Jury awards reporter \$1.5M in May Day melee case*, KPCC (July 2, 2010), <https://www.scpr.org/news/2010/07/02/16876/jury-awards-reporter-15m-may-day-melee-case/>; Frank Stoltze, *Trial starts for journalists' May Day melee lawsuit against LA*, KPCC (June 18, 2010), <https://www.scpr.org/news/2010/06/18/16330/macarthur-park-journalists-lawsuit-against-los-ang/>; *An Examination of May Day 2007*, LAPD report to Board of Commissioners (Oct. 9, 2007).

¹¹ Jill Leovy, *7 Reporters Settle Suit Over LAPD*, LA TIMES (Nov. 30, 2001), <https://www.latimes.com/archives/la-xpm-2001-nov-30-me-9832-story.html>.

¹² Settlement Agreement, *Crespo v. City of Los Angeles*, No. CV00-08869 (C.D. Cal. filed Aug. 21, 2000).

¹³ See, e.g., Kevin Rector, *LAPD detains, then releases, Los Angeles Times reporter covering unrest in Echo Park*, LA TIMES (Mar. 25, 2021), <https://www.latimes.com/california/story/2021-03-25/lapd-detains-times-reporter-covering-unrest-in-echo-park> (“They were questioning why I

Changes LAPD has made in accordance with *Crespo* and other settlements clearly have not been sufficient to protect journalists' access to protests, nor have they reflected the fact that loose adherence to settlement terms does not necessarily protect journalists' rights. LAPD's problematic treatment of journalists at protests is neither new nor an isolated failure, but rather a recurrent problem that the Department must address.

October 2020 Department Memo

On October 30, 2020, Deputy Chief of Staff Dominic H. Choi sent an internal memorandum to all department personnel, acknowledging that "media representatives have a legitimate interest in providing the public with information on [protests and demonstrations]." In the memo, Deputy Chief Choi also "remind[ed] supervisors and line personnel that the Department WILL recognize individuals who self-identify as media representatives and will NOT require specific media credentials" (emphasis in original).

The October 30 memo sets a policy that is appropriately protective of journalists and that recognizes the importance of journalists without formal media credentials. The recent events of March 25, however, suggest either that the Department has changed this policy or that line officers are neglecting to follow it. In fact, Los Angeles Times reporter James Queally confronted a sergeant about the change in behavior toward journalists but was told, "This is the policy tonight."¹⁴ Either way, we seek clarification of the Department's current policy, and we urge the department to resume the practices for dealing with the media described in the October 2020 memo.¹⁵

First Amendment Concerns

As we detailed in our prior letter to law enforcement agencies, restrictions on protest journalism trigger serious constitutional concerns by offending the First Amendment's unambiguous protection of newsgathering. The Supreme Court has repeatedly recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). Courts recognize that excluding media from public fora such as protests in our city streets has "particularly deleterious effects on the public interest, given journalists' role as surrogates for the public." *Index Newspapers LLC v. United States Marshals Service*, 977 F.3d 817, 830 (9th Cir. 2020) (citing *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555, 569 (1980); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 490-91 (1975)).

Journalists, like the public, have a robust right of access to document government activity free of interference from law enforcement. *See Leigh v. Salazar*, 677 F.3d 892, 898 (9th Cir. 2012); *Index Newspapers*, 977 F.3d at 829 (recognizing the "right to access the public forum where the

wasn't covering the protest from the media pen,' Queally [a journalist detained at Echo Park] said, 'which would have been . . . impossible by the rules of space and time.'")

¹⁴ See The Times Editorial Board, *Editorial: In arresting journalists, LAPD hasn't learned its lessons from 2020*, LA TIMES (Mar. 26, 2021), <https://www.latimes.com/opinion/story/2021-03-26/lapd-reporters-arrests-echo-park>.

¹⁵ Exhibit A is a true and correct copy of the department memo as produced to our office in response to a Public Records Act Request on April 22, 2021.

protests are staged”).¹⁶ In the context of widespread national protests against police brutality, numerous courts have ruled unequivocally that arresting, detaining, using force against, and harassing journalists for exercising their rights to “stay, observe, and document” police activity raises serious constitutional concerns. *Index Newspapers LLC v. City of Portland*, 480 F. Supp. 3d 1120, 1146 n.3 (D. Or. 2020) (expressly rejecting the government’s argument that “journalists have no right to stay, observe, and document when the government closes public streets”); *see also Tirado v. City of Minneapolis*, No. 20-1338, 2021 WL 679261, at *5, *10 (D. Minn. 2021) (holding that instances of retaliation against journalists who were “identifiable as press, separated from protestors and at a distance from police, and were not engaging in any threatening or unlawful conduct” to be a “troubling” and plausibly unconstitutional unofficial police custom of targeting journalists).

Law enforcement orders requiring journalists to disperse, even when the agency has declared an unlawful assembly, are likely to violate the right of access, especially when there has been a history of retaliation. *See Goyette v. City of Minneapolis*, --- F.R.D. ----, 2021 WL 1511888 (D. Minn. Apr. 16, 2021); *Index Newspapers*, 480 F. Supp. 3d at 1147-48 (aff’d *Index Newspapers*, 977 F.3d at 829). General dispersal orders prevent journalists from exercising their clearly protected First Amendment rights, further no legitimate law enforcement or public safety objective where those individuals are actively engaged in newsgathering and not participating in illegal activity, and leave them with no other opportunity to perform their “vitally important role in holding the government accountable.” *Index Newspapers*, 977 F.3d at 831; *Index Newspapers LLC v. City of Minneapolis*, 474 F. Supp. 3d 1113, 1123 (D. Or. July 23, 2020) (“Without journalists and legal observers, there is only the government’s side of the story to explain why a “riot” was declared and the public streets were “closed” and whether law enforcement acted properly in effectuating that order.”). Courts have increasingly expressed skepticism that general orders dispersing *everyone*, including journalists, are sufficiently narrowly tailored to satisfy the First Amendment, and have rejected government agencies’ assertions to the contrary. *Id.* at 834; *Index Newspapers*, 480 F. Supp. 3d at 1147; *Goyette*, 2021 WL 1511888, at *3.

Multiple recent cases explicitly enjoined police from “arresting, threatening to arrest, or using physical force directed against any person whom they know or reasonably should know is a Journalist,” and clarifying that journalists or legal observers “shall not be required to disperse following the issuance of an order to disperse.” *Index Newspapers LLC v. City of Portland*, No. 3:20-cv-1035-SI, 2020 WL3621179, at *4 (D. Or. July 2, 2020). These protections should apply to any individual present in a journalistic capacity, including those self-identifying as journalists. The Ninth Circuit has also provided guidance to law enforcement to look to “identifiers such as press passes, people standing off to the side of protests not engaging in protest activities, people not intermixed with protest activities, and people carrying professional-grade photographic equipment.” *Index Newspapers*, 977 F.3d 823.

LAPD must take concrete steps to address these concerns or risk continued violations of the First Amendment.¹⁷ We request a meeting in July with LAPD leadership and press liaisons to discuss

¹⁶ Letter from Leita Walker, Ballard Spahr LLP, to Minnesota state officials regarding the treatment of journalists by law enforcement officers, at 1-2 (April 17, 2021), *available at* <https://www.documentcloud.org/documents/20618268-mn>.

¹⁷ We note that taking care to ensure journalists have access to do their jobs despite dangers on a scene should not be new to LAPD. In fact, California Penal Code section 409.5(d) allows “duly

the Department's current policies with respect to journalists covering protests and how the Department should amend those policies. At a minimum, the Department should announce clearer policies (1) requiring officers to direct journalists in areas subject to dispersal orders to locations where they can meaningfully cover police action (such as sidewalks adjacent to the protest); (2) allowing journalists to self-identify without requiring credentials issued by any particular entity as articulated in Deputy Chief Choi's October 30, 2020 memorandum; and (3) barring the use of general dispersal orders to arrest journalists absent specific evidence of unlawful activity.

We appreciate your attention to this matter and look forward to your prompt response.

Sincerely,



Zoë McKinney
First Amendment and
Democracy Staff Attorney



Peter Bibring
Director of Police Practices



Sari Zureiqat
Legal Fellow, First Amendment
and Democracy

authorized representative[s] of any news service, newspaper, or radio or television station or network" to access disaster areas closed off due to public health or safety threats. Cal. Penal Code § 409.5(d).

ATTACHMENT B

April 21, 2021

Via Electronic Mail

Southern California Law Enforcement Agencies

RE: Journalists' Rights to Access and Cover Public Protests

To Southern California Law Enforcement Agencies:

Law enforcement practices at protests throughout Southern California exhibit a disturbing trend in treatment of journalists—detaining, arresting, harassing, and otherwise interfering with journalists' First Amendment rights to gather and disseminate information to the public. The public interest requires that law enforcement agencies allow journalists to access and cover protests to the full extent of their First Amendment rights. We strongly support the [demands made by a coalition of journalist groups](#) that routinely cover protests in Southern California.¹

Law enforcement's alarming treatment of journalists covering recent protests has been widespread and well-documented. Last May, LAPD shot KCRW reporter Cerise Castle with a rubber bullet as she held her press badge above her head.² In the same month, Long Beach Police officers sent KPCC/LAist reporter Adolfo Guzman-Lopez to the ER after firing less lethal munitions that struck him in the neck and knocked fillings out of his teeth.³ Last September, five LASD sheriff's deputies threw KPCC/LAist reporter Josie Huang to the ground and arrested her as she, wearing a press badge, repeatedly shouted the name of her news outlet.⁴ In October, LAPD tackled L.A. Taco reporter Lexis-Olivier Ray to the ground, attacking him with batons and damaging his equipment, all while he identified himself as press and wore his organization's

¹ *Journalism Coalition Issues Demand Letter on Police and Protest Coverage*, SPJLA (Apr. 20, 2021), <https://www.spjla.org/news/journalism-coalition-issues-demand-letter>.

² *LA journalists endure police violence during George Floyd protests*, KCRW: Press Play with Madeleine Brand (June 1, 2020), <https://www.kcrw.com/news/shows/press-play-with-madeleine-brand/protests-peaceful-violent-rights-race/journalists-violence-police>.

³ Aaron Mendelson, *An LAist Reporter Was Hit By A Police Projectile. LCPD Says The Incident Was Within Police Policy*, LAist (Dec. 9, 2020), <https://laist.com/2020/12/09/long-beach-police-adolfo-guzman-lopez-protest-shooting.php>.

⁴ Tasneem Nashrulla, *Sheriff's Deputies Falsely Said This Reporter Had Failed to ID Herself. A Prosecutor Has Now Dropped The Case Against Her.*, BuzzFeed News (Sept. 24, 2020), <https://www.buzzfeednews.com/article/tasneemnashrulla/josie-huang-reporter-arrest-los-angeles-sheriff>.

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*deceased

badge (and months later, threatened him with charges).⁵ In March 2021, LAPD detained or arrested several reporters covering protests at Echo Park Lake, including LA Times reporter James Queally, who wore LAPD-issued credentials around his neck and repeatedly mentioned his affiliation.⁶ And as we were writing this letter, Cerise Castle reported that she had just been detained reporting at a press conference hosted by the LA County Sheriff's Department while she was wearing her press pass.⁷ This conduct is unacceptable, and we strongly support journalists' demands for an immediate change in practice.

These practices offend the First Amendment's unambiguous protection of newsgathering. Indeed, the Supreme Court has repeatedly recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). Further, courts recognize that excluding media from public fora such as protests in our city streets has "particularly deleterious effects on the public interest, given journalists' role as surrogates for the public." *Index Newspapers LLC v. United States Marshals Service*, 977 F.3d 817, 830 (9th Cir. 2020) (citing *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555, 569 (1980); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 490-91 (1975)).

Journalists, like the public, have a robust right of access to document government activity free of interference from law enforcement. *See Leigh v. Salazar*, 677 F.3d 892, 898 (9th Cir. 2012); *Index Newspapers*, 977 F.3d at 829 (recognizing the "right to access the public forum where the protests are staged").⁸ In the context of widespread national protests against police brutality, numerous courts have ruled unequivocally that arresting, detaining, using force against, and harassing journalists for exercising their rights to "stay, observe, and document" police activity raises serious constitutional concerns. *Index Newspapers LLC v. City of Portland*, 480 F. Supp. 3d 1120, 1146 n.3 (D. Or. 2020) (expressly rejecting the government's argument that "journalists have no right to stay, observe, and document when the government closes public streets").

Law enforcement orders requiring journalists to disperse, even when the agency has declared an unlawful assembly, are likely to violate the right of access, especially when there has been a history of retaliation. *See Goyette v. City of Minneapolis*, --- F.R.D. ----, 2021 WL 1511888, at *8-*9 (D. Minn. Apr. 16 2021); *Index Newspapers*, 480 F. Supp. 3d at 1147-48 (aff'd *Index Newspapers*, 977 F.3d at 829). Applying general dispersal orders to journalists prevents them

⁵ James Queally & Kevin Rector, *A journalist accused the LAPD of assault. Then Police tried to have him prosecuted*, LA Times (March 18, 2021), <https://www.latimes.com/california/story/2021-03-18/journalist-accused-lapd-assault-police-tried-to-have-him-prosecuted>.

⁶ Teo Armus, *L.A. police arrest reporters and legal observers at protests over homeless encampment*, Wash. Post (March 26, 2021), <https://www.washingtonpost.com/nation/2021/03/26/los-angeles-arrests-echo-park/>; Kevin Rector, *LAPD detains, then releases, Los Angeles Times reporter covering unrest in Echo Park*, LA Times (March 25, 2021), <https://www.latimes.com/california/story/2021-03-25/lapd-detains-times-reporter-covering-unrest-in-echo-park>.

⁷ Cerise Castle (@cerisecastle), Twitter (Apr. 20, 2021, 2:33 PM), <https://twitter.com/cerisecastle/status/1384621148718080003>.

⁸ Letter from Leita Walker, Ballard Spahr LLP, to Minnesota state officials regarding the treatment of journalists by law enforcement officers, at 1-2 (April 17, 2021), available at <https://www.documentcloud.org/documents/20618268-mn>.

from exercising their clearly protected First Amendment rights, furthers no legitimate law enforcement or public safety objective where those individuals are actively engaged in newsgathering and not participating in illegal activity, and leaves them with no other opportunity to perform their “vitally important role in holding the government accountable.” *Index Newspapers*, 977 F.3d at 831; *Index Newspapers LLC v. City of Minneapolis*, 474 F. Supp. 3d 1113, 1123 (D. Or. July 23, 2020) (“Without journalists and legal observers, there is only the government’s side of the story to explain why a ‘riot’ was declared and the public streets were ‘closed’ and whether law enforcement acted properly in effectuating that order.”). Courts have increasingly expressed skepticism that general orders dispersing *everyone*, including journalists, are sufficiently narrowly tailored to satisfy the First Amendment, and have rejected government agencies’ assertions to the contrary. *Id.* at 834; *Index Newspapers*, 480 F. Supp. 3d at 1147; *Goyette*, 2021 WL 1511888, at *3.

Accordingly, we strongly urge law enforcement to heed the specific demands made by journalists themselves:

- “End the practice of detaining and arresting journalists who are covering events in areas where officers have issued a dispersal order or declared an unlawful assembly. Journalists must be able to witness and report on what happens during these important police actions.
- Agree to ensure media have “sight and sound” access to any major event.
- Ensure that media credentials are not required for news outlets, freelancers or student journalists to cover demonstrations.
- Impress upon frontline supervisors that individuals who self-identify as journalists while acting in a news gathering capacity must be afforded full access.
- Recognize that newsgathering is squarely protected by the First Amendment, with courts around the country finding that laws requiring journalists actively engaged in newsgathering to disperse raise serious constitutional concerns.”

These demands are supported by the multiple recent cases explicitly enjoining police from “arresting, threatening to arrest, or using physical force directed against any person whom they know or reasonably should know is a Journalist,” and clarifying that journalists or legal observers “shall not be required to disperse following the issuance of an order to disperse.” *Index Newspapers LLC v. City of Portland*, No. 3:20-cv-1035-SI, 2020 WL3621179, at *4 (D. Or. July 2, 2020); *Goyette*, 2021 WL 1511888, at *3. These protections should apply to any individual present in a journalistic capacity, including those self-identifying as journalists. The Ninth Circuit has also provided guidance to law enforcement to look to “identifiers such as press passes, people standing off to the side of protests not engaging in protest activities, people not intermixed with protest activities, and people carrying professional-grade photographic equipment.” *Index Newspapers*, 977 F.3d 823.

We will be closely monitoring how law enforcement treats journalists at protests throughout Southern California and are eager to see how your departments implement practices and policies to prevent interference with journalists doing their jobs. We welcome further conversation on these issues.

Sincerely,



Zoë McKinney
First Amendment and
Democracy Staff Attorney



Peter Eliasberg
Chief Counsel
Manheim Family Attorney for
First Amendment Rights



Peter Bibring
Director of Police Practices



Sari Zureiqat
Legal Fellow, First
Amendment and Democracy