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*Affiliations appear only
for purposes of identification.*

By email

July 13, 2020

Christopher J. Gramiccioni
Prosecutor, Office of the Monmouth County Prosecutor
132 Jerseyville Avenue
Freehold, New Jersey 07728

Re: Use of Reporters Committee material in investigative findings
regarding arrest of journalist Gustavo Martínez Contreras.

Dear Mr. Gramiccioni:

We write in response to the July 8, 2020, posting on your website titled “Investigative Findings: Asbury Park Officers Reasonably Believed Reporter Was a Protester Failing to Disperse,” by Charles Webster, linked here: <https://perma.cc/NDB2-FMB3> (the “Investigative Findings”).

In your investigative conclusions, you cite a Reporters Committee guide offering practical recommendations and legal background for reporters covering protests,¹ and a Reporters Committee protest reporting tip-sheet,² in support of your ultimate finding that officers reasonably believed Gustavo Martínez Contreras, a reporter assigned by the *Asbury Park Press* to cover a protest in Asbury Park, was not a journalist when officers tackled and arrested him on June 1, 2020.

The guide and tip-sheet do not support that conclusion, and we respectfully ask that you clarify your Investigative Findings accordingly.

Legally, when an officer has reason to know that a reporter is a reporter, and that reporter is compliant with reasonable law enforcement requests, any interference with newsgathering would be a First Amendment violation. *Cf. Woodstock v. City of Portland*, No. 3:20-cv-1035, slip op. at 4 (D. Or. July 2, 2020) (temporary restraining order) (enjoining officers from

¹ See *Police, Protesters and the Press*, Reporters Committee for Freedom of the Press, <https://www.rcfp.org/resources/police-protesters-and-the-press/> (last visited July 11, 2020).

² See *Reporters Committee Tips for Covering Protests*, Reporters Committee for Freedom of the Press (June 5, 2020), <https://www.rcfp.org/tips-for-covering-protests/>.

arresting, threatening to arrest, or assaulting anyone they “know or *reasonably should know*” is a journalist) (emphasis added).³

The Reporters Committee guidance cited in the Investigative Findings is not a recitation of the legal standard governing when officers have reason to know that a journalist is a journalist. Rather, the specific language cited in the Investigative Findings offers *practical* safety tips for reporters covering protests that mitigate the risk of arrest or assault by police. These include identifying oneself as a journalist, recording police activity from a safe distance “if possible,” engaging with police before the protest, and complying with a dispersal order while displaying press credentials. See Investigative Findings, *supra* (“Investigative Conclusions”).

Indeed, in this case, Mr. Martínez Contreras’s account of the incident and your Investigative Findings show that both Martínez Contreras and the *Asbury Park Press* acted consistent with this advice. See Gustavo Martínez Contreras, ‘F--- Him! He’s the Problem!’ APP Reporter Tells About His Arrest at George Floyd Protests, *Asbury Park Press* (June 3, 2020), <https://bit.ly/3h05F5f>.

For instance, the *Press* confirmed with the Asbury Park police chief that its reporters would be covering the protests past curfew and was assured that reporters would be exempt. *Id.* Martínez Contreras identified himself as a reporter for the *Press* to numerous officers throughout the evening. *Id.*; Investigative Findings, *supra*, ex. 6. Additionally, the photographs and footage attached as exhibits 3 through 7 in the Investigative Findings confirm that he was prominently wearing his press badge on a lanyard around his neck.⁴ Investigative Findings, *supra*, exs. 3-7.

As the Investigative Findings and the body camera footage confirm, Martínez Contreras was walking backwards in compliance with an order to move back (but while

³ Importantly, Martínez Contreras was arrested while documenting police activity. Martínez Contreras “continued backing away from the officers making the arrests, while continuing to face them to record. It is at this point that Martínez is arrested” Investigative Findings, *supra* (“The Events Leading Up to the Arrest of Martínez”). It is clearly established in this jurisdiction that “the act of photographing, filming, or otherwise recording police officers conducting their official duties in public” is protected by the First Amendment. *Fields v. City of Philadelphia*, 862 F.3d 353, 355 (3d Cir. 2017). Accordingly, individual officers who violate this right are not entitled to legal immunity under 42 U.S.C. § 1983.

⁴ The Investigative Findings appear to rely on a claim that the badge was flipped around to its blank side, but that fact would not be determinative of whether an officer had reason to know that an individual was a journalist. For instance, there is no indication in the Investigative Findings that *protesters* were wearing badges on lanyards. At a minimum, a reasonable officer would have asked Martínez Contreras about the badge, which Martínez Contreras states did happen before he was transported to Belmar Police Headquarters. See ‘F---Him! He’s the Problem’, *supra*.

recording a violent arrest of two teenagers, which he had a First Amendment right to do), when he was tackled from the side by an apparent Asbury Park Police officer.⁵ *Id.* ex.7.

Further, Martínez Contreras can be heard saying “I’m a . . .” at least twice before an officer says, “shut your mouth.” *Id.* Martínez Contreras states that he identified himself as a reporter while being handcuffed and when he was asked by another officer, who was told to take him to a prisoner transport van, about the badge hanging around his neck. See ‘*F---Him! He’s the Problem*’, *supra* (“He asked what was hanging from my neck and I told him it was my press badge and that I was a reporter with the Asbury Park Press. He asked me to not give him any trouble and said he would be ‘cool’ with me.”).⁶

The Investigative Findings mainly rely on Mr. Martínez Contreras’s clothing to support the conclusion that he was not reasonably identifiable as a journalist: “In this case, Martínez was not recognizable to officers at the protest as a reporter due, in large part to his attire and the absence of clearly identifiable press credentials. This is especially apparent when compared to the other journalists seen on BWC footage that night wearing bright neon vests clearly identifying them as reporters.” Investigative Findings, *supra* (“Investigative Conclusions”).

The Investigative Findings then quote from and cite the Reporters Committee’s practical advice in the protest guide and tip-sheet in support. Again, as a legal matter, the Reporters Committee’s guide and tip-sheet do not support that finding.

Legally, the relevant question is whether an officer knows or *has reason to know* that a person is a journalist. In the *Woodstock* temporary restraining order, for instance, the court noted that while carrying a press pass or badge or wearing distinctive clothing serve as indicia that would identify a person as a member of the press, these indicia are not exclusive, and “a person need not exhibit every indicium to be considered a Journalist under this Order.” See *Woodstock*, *supra*, at 9.

In sum, the Reporters Committee’s protest guide and tip-sheet cannot be used to support the conclusion reached by your office that Mr. Martínez Contreras’s attire would make it reasonable for an officer to believe he was a protester. At a minimum, as soon as officers *asked* Martínez Contreras about his press badge, which Martínez Contreras

⁵ The bulk of the body camera footage in exhibit 7 shows the phrase “n03wwhit,” which is then pixelated shortly before the arrest occurs. The footage also includes the phrase “Asbury Park PD” below “n03wwhit” and the timestamp.

⁶ Your findings appear to dispute that this interaction occurred. Investigative Findings, *supra* (“Martínez had contact with three officers in the course of being transported to Belmar, but did not indicate to any of them he was a reporter.”). Your finding on this point, however, appears in the section on “Review of BWC Footage of the Arrest.” If this is an indication that there is body-worn camera footage disproving Mr. Martínez Contreras’s account, it should be released publicly. If there is no such footage, your office should explain on what basis it disputes Mr. Martínez Contreras’s account.

reported occurred immediately after the arrest and your Investigative Findings confirm did occur once he was processed at Belmar Police Headquarters, the encounter should have ended and Martínez Contreras released.

The arrest of a reporter lawfully engaged in newsgathering is a particularly egregious violation of the First Amendment because, as here, it does not just chill reporting, it shuts it down entirely. Martínez Contreras was tackled and arrested as he was live streaming the violent arrest of two teenagers and, as both his Periscope footage and the body camera recordings show, an officer slapped the phone out of his hand. The public has thus been deprived of particularly newsworthy information—that is, documentation of whether officers used excessive force while enforcing the curfew.

We acknowledge the challenges officers face while policing protests. But those challenges must not supersede any of the freedoms protected by the First Amendment. Indeed, those rights must be respected all the more in times of crisis.

Accordingly, we ask that your office issue a statement clarifying that the Reporters Committee guide and tip-sheet do not support your finding that a reasonable officer could have believed Martínez Contreras was a protester. We intend to ask the Attorney General's Office of Public Integrity and Accountability, which we understand reviewed and agreed with your conclusions, for a similar public statement.

Sincerely,

Bruce D. Brown
Executive Director

Gabe Rottman
Director of the Technology and Press Freedom Project

cc: The Honorable Robert Menendez
Senator, U.S. Senate

The Honorable Cory Booker
Senator, U.S. Senate

The Honorable Chris Smith
Representative, U.S. House of Representatives

The Honorable Frank Pallone
Representative, U.S. House of Representatives

The Honorable Phil Murphy
Governor, State of New Jersey

The Honorable Gurbir S. Grewal
Attorney General, State of New Jersey

The Honorable John Moor
Mayor, City of Asbury Park

Chief David Kelso
Chief of Police, City of Asbury Park

The Honorable Mark Walsifer
Mayor, City of Belmar

Chief Tina Scott
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