

1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300
www.rcfp.org

Bruce D. Brown
Executive Director
bbrown@rcfp.org
(202) 795-9301

STEERING COMMITTEE

STEPHEN J. ADLER

Reuters

J. SCOTT APPLEWHITE

The Associated Press

WOLF BLITZER

CNN

DAVID BOARDMAN

Temple University

THEODORE J. BOUTROUS, JR.

Gibson, Dunn & Crutcher LLP

MASSIMO CALABRESI

Time Magazine

MANNY GARCIA

Pro Publica

EMILIO GARCIA-RUIZ

The Washington Post

JOSH GERSTEIN

POLITICO

ALEX GIBNEY

Jigsaw Productions

SUSAN GOLDBERG

National Geographic

JAMES GRIMALDI

The Wall Street Journal

LAURA HANDMAN

Davis Wright Tremaine

DIEGO IBARGÜEN

Hearst

KAREN KAISER

The Associated Press

DAVID LAUTER

Los Angeles Times

MARGARET LOW

WBUR

JANE MAYER

The New Yorker

COLLEEN MCCAIN NELSON

The McClatchy Company

MAGGIE MULVIHILL

Boston University

JAMES NEFF

The Philadelphia Inquirer

NORMAN PEARLSTINE

The Los Angeles Times

THOMAS C. RUBIN

Stanford Law School

CHARLIE SAVAGE

The New York Times

JENNIFER SONDAG

Bloomberg News

NABIHA SYED

The Markup

ADAM SYMSON

The E.W. Scripps Company

PIERRE THOMAS

ABC News

SAUNDRA TORRY

Freelance

VICKIE WALTON-JAMES

NPR

JUDY WOODRUFF

PBS/The NewsHour

HONORARY LEADERSHIP COUNCIL

CHIP BOK

Creators Syndicate

TONY MAURO

American Lawyer Media, ret.

DAHLIA LITHWICK

State

ANDREA MITCHELL

NBC News

CAROL ROSENBERG

The New York Times

PAUL STEIGER

ProPublica

*Affiliations appear only
for purposes of identification.*

By email

November 6, 2020

The Honorable Bill de Blasio
Mayor, City of New York
City Hall
New York, NY 10007

Commissioner Dermot F. Shea
New York City Police Department
1 Police Plaza
New York, NY 10038

Re: Arrest of journalist Chae Kihn

Dear Mayor de Blasio and Commissioner Shea:

The undersigned are members of state and local news media, national news organizations with properties in New York, wire services, and nonprofit groups that protect the rights of journalists to gather and report news. We write to ask that New York City take immediate steps to prevent another incident like the forcible arrest of Chae Kihn, an independent photographer, who was tackled by multiple NYPD officers, arrested, and charged with obstructing traffic in the lawful course of her reporting.

We urge that the charges against Ms. Kihn be dismissed. Further, the public interest would be served by an accounting from the Department explaining why she was arrested in the first place and why NYPD originally claimed that no “members of the press” had been detained. *See* Sydney Pereira & Gwynne Hogan, *Heavily Armored NYPD Officers Arrest 11 While Quashing Small Anti-Trump Protest in Manhattan*, Gothamist (Nov. 1, 2020), <https://perma.cc/9WPQ-B2BR>.

The right to document police activity in public is clearly established, and an officer who violates that First Amendment freedom—especially through the use of force—enjoys no legal immunity. *See, e.g., Higginbotham v. New York*, 105 F. Supp. 3d 369, 379-80 (S.D.N.Y. 2015); *cf. N.Y. Civ. Rights Law* § 79-P(3)(iv) (providing a cause of action for “unlawful interference with recording a law enforcement activity”). As the U.S. Department of Justice has explained, this right to record is “not only required by the Constitution” but also “consistent with our fundamental notions of liberty.” Statement of Interest of the United States, *Sharp v. Baltimore City Police Dep’t*, No. 1:11-cv-02888-BEL (D. Md. filed Jan. 10, 2012).

For just that reason, offenses such as “disturbing the peace” or “loitering” are rightly viewed “skeptically” when deployed against reporters. Statement of Interest of the United States, *Garcia v. Montgomery County*, No. 8:12-cv-03592-JFM (D. Md. filed March 4, 2013).

To the extent officers may order individuals who are exercising those First Amendment rights to move or disperse, such orders must be narrowly tailored to accommodate lawful reporting. *See Index Newspapers v. U.S. Marshals Service*, 2020 WL 5988501, at *9, – F.3d – (9th Cir. 2020). At the absolute minimum, the First Amendment requires that such orders be accompanied by fair warning and a reasonable opportunity to comply. *See Jones v. Parmley*, 465 F.3d 46, 60 (2d Cir. 2006) (Sotomayor, J.); *Dellums v. Powell*, 566 F.2d 167, 181 n.31 (D.C. Cir. 1977).

Based on press reports and video from the scene, it appears the Department’s arrest of Ms. Kihn violated these First Amendment rights. In [a recording](#) taken by Freedom News TV, Ms. Kihn appears to be moving to the sidewalk—complying with law enforcement instructions—when several officers race toward her and wrestle her to the ground. Kihn, consistent with the video, told reporters that she was “on the way” to the sidewalk when she was tackled; a journalist with *Gothamist* reported that Kihn was “chased.” Valentina Di Liscia, *Photographer Arrested by NYPD While Covering Anti-Trump Demonstration*, Hyperallergic (Nov. 2, 2020), <https://perma.cc/42NL-XQTL>.

Kihn was also clearly identifiable as a journalist: In a [separate video](#) of the incident, other demonstrators can be heard loudly shouting “She’s press” and “She’s a reporter” as the officers arrest her. The Department has nevertheless [claimed](#) that Kihn was not a “member[] of the press” because she was not “NYPD credentialed.” But “the newsgathering protections of the First Amendment cannot turn on professional credentials or status.” *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011). If an officer knows or has reason to know that an individual is engaged in newsgathering, and if that individual is compliant with reasonable law enforcement requests, First Amendment protections apply. *Cf. Index Newspapers LLC v. City of Portland*, No. 3:20-cv-1035, slip op. at 58, 2020 WL 4883017, – F. Supp. 3d – (D. Or. Aug. 20, 2020), *appeal docketed*, No. 20-35739 (9th Cir. Aug. 21, 2020) (enjoining law enforcement from “arresting, threatening to arrest, or using physical force directed against any person whom they know or reasonably should know is a Journalist”) (emphasis added).

Please find attached a letter from an earlier Reporters Committee coalition—sent to you and other officials this summer—laying out steps that law enforcement officials should take immediately to protect reporters engaged in lawful newsgathering. To support the strong public interest in coverage of police activity, we urge that the NYPD implement these steps in New York City.

Please do not hesitate to contact Bruce Brown, Executive Director of the Reporters Committee, with any questions at bbrown@rcfp.org.

Sincerely,

The Reporters Committee
for Freedom of the Press

Committee to Protect Journalists
Dow Jones & Company, Inc.
The E.W. Scripps Company
First Amendment Coalition
First Look Media Works, Inc.
Freedom of the Press Foundation
Fundamedios Inc.
Inter American Press Association
International Documentary Association
The Media Institute
National Association of Broadcasters
National Association of Black Journalists

The National Press Club
The National Press Club Journalism Institute
National Press Photographers Association
New York News Publishers Association
The NewsGuild-CWA
The NewsGuild of New York
News Leaders Association
News Media Alliance
Radio Television Digital News Association
Society of Professional Journalists
Tully Center for Free Speech
WNET

cc: The Honorable Andrew Cuomo
Governor, State of New York

The Honorable Letitia James
Attorney General, State of New York

The Honorable Cyrus R. Vance, Jr.
District Attorney of New York County, Borough of Manhattan

The Honorable Darcel D. Clark
District Attorney of Bronx County, Borough of the Bronx

The Honorable Eric Gonzalez
District Attorney of Kings County, Borough of Brooklyn

The Honorable Melinda Katz
District Attorney of Queens County, Borough of Queens

The Honorable Michael E. McMahon
District Attorney of Richmond County, Borough of Staten Island