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By email

April 29, 2021

The Honorable Merrick B. Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: Policing and the First Amendment rights of journalists

Dear Attorney General Garland:

As members of the news media and organizations that protect the right to gather the news, we write in response to the announcement that the Department of Justice has launched investigations of the Minneapolis and Louisville Metro Police Departments. We urge you to make the treatment of the press an essential part of those and any future inquiries the Department may pursue.

In 2014, the Reporters Committee similarly asked the Department to incorporate press freedom concerns into its examination of policing and protests in Ferguson, Missouri. *See Reporters Committee, News Organizations Urge Justice Department to Include Press Issues in Ferguson Investigations*, Reporters Comm. for Freedom of the Press (Sept. 22, 2014), <https://perma.cc/QZ78-HVSN>. For all of the reasons we identified at the time, protecting the legal rights of journalists is essential to the discharge of the civil rights laws and the preservation of democratic self-rule. We hope that the Department pursues this line of investigation in the investigations announced so far and any still to come.

As your Department has stressed, such inquiries play a critical role in safeguarding the right of reporters to document police activity. *See* U.S. Dep't of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994–Present*, at 6 (2017), <https://perma.cc/JS29-LRXW>. Those efforts recognize that the project of realizing equal justice under the law has always gone hand in hand with transparency's role in ensuring that government policy "is carried out 'fairly to all concerned.'" *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 831 (9th Cir. 2020) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980)). As the Ninth Circuit emphasized in upholding the right of journalists to cover protests without threat of violence or arrest, "the public became aware of the circumstances surrounding George Floyd's death" in the first instance "because citizens standing on a sidewalk exercised their First Amendment rights." *Id.*

As a series of letters sent by the Reporters Committee to jurisdictions across the country documented last year, working journalists have confronted grievous threats to their physical safety when reporting from the scene of demonstrations.¹ The U.S. Press Freedom Tracker verified a staggering 137 arrests of members of the news media in 2020. In many of these cases, contemporaneous recording of the arrest shows that the journalist was indisputably engaged in lawful newsgathering, was compliant with police orders, and was identifiable as a member of the press. *See* U.S. Press Freedom Tracker, Arrest/Criminal Charge, <https://perma.cc/6NLB-VMH6> (last visited April 28, 2021). Dozens more reporters were struck by less-lethal weapons, exposed to chemical munitions, or otherwise subjected to unwarranted force. *See id.*

Journalists working in the jurisdictions under investigation have faced the same dangers. In Minneapolis, as Ballard Spahr’s Leita Walker described in a letter on behalf of more than two dozen media organizations, including the Reporters Committee, members of the press were arrested, assaulted, and targeted with chemical agents just this month while covering demonstrations prompted by the death of Daunte Wright. *See* Letter from Leita Walker and 26 Media Organizations to Gov. Tim Walz (Apr. 17, 2021), <https://perma.cc/BS72-3427>. Some of those clear press freedom violations came after the federal district court for the District of Minnesota had already issued a temporary restraining order against the Minnesota State Patrol and Minnesota Department of Public Safety, finding that those agencies likely violated the First Amendment by dispersing journalists engaged in lawful newsgathering. *See Goyette v. City of Minneapolis*, No. 20-cv-1302, 2021 WL 1511888, at *3–6 (D. Minn. Apr. 16, 2021).

In Louisville, meanwhile, last year saw the arrest of two *Daily Caller* reporters covering demonstrations in the city, *see* Mary Ramsey, *Daily Caller Reporters Arrested Covering Louisville Protests After Breonna Taylor Indictment*, *Louisville Courier Journal* (Sept. 24, 2020), <https://perma.cc/FC7M-WEPR>, as well as the use of chemical munitions against journalists who were appearing live on air for WAVE 3, *see* Billy Kobin, *Louisville Police Officer Who Fired Pepper Balls at WAVE 3 News Crew Has Been Reassigned*, *Louisville Courier Journal* (June 1, 2020), <https://perma.cc/LLN4-FGLW>.

Each unwarranted attack on efforts to document policing in public undermines a clearly established constitutional right, the exercise of which, your Department has explained, “is consistent with our fundamental notions of liberty, promote[s] the accountability of our governmental officers, and instill[s] public confidence in the police

¹ *Letter to California Governor Denounces Police Attacks on Journalists*, Reporters Comm. for Freedom of the Press (July 8, 2020); <https://perma.cc/EYQ5-CUS6>; *Reporters Committee Letter Calls on Denver Officials to End Police Attacks on Journalists at Protests*, Reporters Comm. for Freedom of the Press (June 16, 2020), <https://perma.cc/2YSK-XA3T>; *In Letter to New York Officials, Reporters Committee Denounces Police Attacks Journalists*, Reporters Comm. for Freedom of the Press (June 7, 2020), <https://perma.cc/3ZJF-4NY5>; *Reporters Committee Letter to Minnesota Officials Denounces Polices Attacks on Journalists*, Reporters Comm. for Freedom of the Press (June 2, 2020), <https://perma.cc/CF4Q-9K2K>.

officers who serve us daily.” Statement of Interest of the United States, *Sharp v. Baltimore City Police Dep’t*, No. 1:11-cv-02999 (D. Md. Jan. 10, 2012), <https://perma.cc/L4XA-4LG5>. We therefore urge that probes in these and any other jurisdictions examine whether force, arrests, or threat of prosecution have been misused to chill legitimate journalistic work. See Statement of Interest of the United States, *Garcia v. Montgomery Cty.* No. 8:12-cv-03592 (D. Md. Mar. 3, 2013), <https://perma.cc/V4CC-G8BB>.

The Department has a leadership role to play, too, in instructing state and local authorities that crowd-control tactics at a protest must be narrowly tailored to accommodate lawful reporting. See *Index Newspapers*, 977 F.3d at 831; Brief of Amici Curiae Reporters Committee for Freedom of the Press and 60 News Media Organizations in Support of Plaintiffs Appellees, *Index Newspapers*, 977 F.3d 817, <https://perma.cc/Z2VP-RKQK>. By insisting on these principles in the Minneapolis and Louisville inquiries, we are confident the Department can, as it has in the past, “help set a standard for reform” for law enforcement across the nation in their interactions with the news media. U.S. Dep’t of Justice, The Civil Rights Division’s Pattern and Practice Work, *supra*, at 6.

Please do not hesitate to contact Bruce Brown, Executive Director of the Reporters Committee, with any questions.

Sincerely,

The Reporters Committee
for Freedom of the Press

Advance Publications, Inc.
American Broadcasting Companies, Inc.
The Associated Press
The Atlantic Monthly Group LLC
Bloomberg News
Boston Globe Media Partners, LLC
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Cable News Network, Inc.
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on behalf of CBS News
The Center for Investigative Reporting
(d/b/a Reveal)
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The News Leaders Association
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Sinclair Broadcast Group, Inc.
Society of Environmental Journalists
Society of Professional Journalists
Society of Professional Journalists –
New England
South Carolina Press Association
South Dakota Newspaper Association
Student Press Law Center
TEGNA Inc.
Texas Press Association
TIME USA, LLC
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Tully Center for Free Speech
Twin Cities Black Journalists
Univision Communications Inc.
Utah Press Association
Vice Media Group
Vox Media, LLC
The Washington Post
WNET

cc: Anthony Coley
Matt Klapper