

No. 25-5975

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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LOS ANGELES PRESS CLUB, et al.,

Plaintiffs-Appellees,

v.

KRISTI NOEM, et al.,

Defendants-Appellants,

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On Appeal from the United States District Court for the  
Central District of California  
Case No. 2:25-cv-05563-HDV-E (Honorable Hernán D. Vera)

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**BRIEF OF AMICI CURIAE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS AND 44 NEWS AND MEDIA  
ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES**

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[Caption continued on next page]

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Vox Media, LLC has no parent corporation. NBCUniversal Media, LLC, a publicly held corporation, owns at least 10% of Vox's stock.

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## **STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

Amici curiae are the Reporters Committee for Freedom of the Press (the “Reporters Committee”), and the following 44 news and media organizations: Advance Publications, Inc., American Broadcasting Companies, Inc. (ABC News), The Associated Press, The Atlantic Monthly Group LLC, CalMatters, CBS Broadcasting Inc. (CBS News), Cityside, The Center for Investigative Reporting, Inc., Courthouse News Service, Dow Jones & Company, Inc. (The Wall Street Journal), Eugene Weekly, Inter American Press Association, The Intercept Media, Inc., International Documentary Association, KQED, The LA Local, Los Angeles Times Communications LLC, The McClatchy Company, LLC, Media Guild of the West, The NewsGuild-CWA Local 39213, The Media Institute, National Freedom of Information Coalition, National Newspaper Association, The National Press Club, National Public Radio, Inc. (NPR), NBCUniversal Media, LLC (NBC News), New England First Amendment Coalition, New England Newspaper and Press Association, Inc., The New York Times Company, News/Media Alliance, Newsday LLC, Online News Association, Informed Californian Foundation d/b/a Open Vallejo, Oregon Public Broadcasting, Pro Publica, Inc., Reuters News & Media, The Seattle Times Company, Slate, Society of Environmental Journalists, Society of Professional Journalists, Southern California Public Radio d/b/a LAist,

Student Press Law Center, Tully Center for Free Speech, USA Today Co., Inc. (formerly Gannett Co., Inc.), and Vox Media. (collectively, “amici”).

As news entities and organizations representing the interests of journalists and media outlets actively engaged in newsgathering and reporting on protests throughout the country, amici have an interest in ensuring the news media’s ability to safely and accurately report on what occurs during those demonstrations. Accordingly, amici have a strong interest in the affirmance of the district court’s preliminary injunction, an order that safeguards journalists from physical harm.

Amici write to explain why crowd-control tactics must be tailored to preserve the crucial role played by the news media in this context, where the public interest in accurate information about the actions of the government and protestors is at its apex. Rigorous protection for the newsgathering rights of journalists covering protests is not only compelled by the First Amendment, it is essential if the press is to fulfill its constitutional obligation to ensure the government is accountable to the people.

For the reasons herein, amici respectfully urge the Court to affirm the preliminary injunction.

## **SOURCE OF AUTHORITY TO FILE**

Counsel for Plaintiffs-Appellees and Defendants-Appellants have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

## **FED. R. APP. P. 29(A)(4)(E) STATEMENT**

Amici declare that:

1. no party's counsel authored the brief in whole or in part;
2. no party or party's counsel contributed money intended to fund preparing or submitting the brief; and
3. no person, other than amici, their members or their counsel, contributed money intended to fund preparing or submitting the brief.

## INTRODUCTION

Firsthand observation is “the quintessential function of a reporter;” for many stories, there is no substitute for the journalist themselves seeing events unfold and describing what took place. *Garcia v. Cnty. of Alameda*, 150 F.4th 1224, 1230 (9th Cir. 2025) (internal citation omitted); *see also People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed’n, Inc.*, 60 F.4th 815, 829 (4th Cir. 2023) (same). The Constitution squarely protects that newsgathering, *see Garcia*, 150 F.4th at 1231; *Leigh v. Salazar*, 677 F.3d 892, 897 (9th Cir. 2012), even where some third-parties on the scene of a newsworthy event might be engaged in criminal activity, *see Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 834 (9th Cir. 2020) (“The many peaceful protesters, journalists, and members of the general public cannot be punished for the violent acts of others.”).

When the government “unleash[es] crowd control weapons indiscriminately” during a public demonstration, *see Los Angeles Press Club v. Noem*, No. 2:25-CV-05563-HDV-E, 2025 WL 2658327, at \*1 (C.D. Cal. Sept. 10, 2025), such tactics have an extraordinary chilling effect on constitutionally protected newsgathering and, consequently, on the public’s access to thorough and objective reporting on matters of public concern. The indiscriminate use of such crowd-control tactics on journalists engaged in lawful newsgathering violates the

First Amendment under any plausibly relevant framework—whether viewed through the lens of retaliation, the press and public’s right of access, or the limits on the government’s power to restrict speech and newsgathering in a classic public forum. On each rationale, to protect the press’s ability to serve as the “powerful antidote to any abuses of power by governmental officials” that the Constitution envisions, *Mills v. Alabama*, 384 U.S. 214, 219 (1966), this Court should affirm.

## ARGUMENT

### **I. The indiscriminate use of crowd-control tactics chills reporting on matters of public concern and undermines the public’s right to know.**

The predictable result of the use of indiscriminate crowd-control techniques is to prevent journalists from providing fulsome coverage of newsworthy events: Journalists cannot do their jobs when they cannot open their eyes because they have been exposed to tear gas, *see, e.g.*, Compl. ¶¶ 78–79, 111, when they must take cover from projectiles, *id.* ¶¶ 140–44, 161–62, or when they must leave the scene to seek treatment for injuries inflicted by law enforcement, *id.* ¶¶ 80, 112–114, 178. Well beyond the facts of this particular case, crowd-control tactics—and the use of tear gas cannisters and non-lethal munitions in particular—have long exposed journalists to the risk of severe and lasting physical harm. In 1970, Ruben Salazar, a long-time *Los Angeles Times* journalist and then-news director for KMEZ, died after being struck with a tear gas canister fired by police while

covering a protest against the Vietnam War in East Los Angeles. Raul A. Reyes, *Prominent Latino Journalist Ruben Salazar, Killed 50 Years Ago, Tackled Racism, Identity*, NBC News (Aug. 28, 2020), <https://perma.cc/V3VP-AHAJ>. In 2020, journalist Linda Tirado lost sight in one of her eyes after being shot in the head with a non-lethal munition while covering a Black Lives Matter protest in Minneapolis. Linda Tirado, *I Came to the Minneapolis Protests to Cover Police Aggression. Then I Became the Victim of it*, NBC News (June 1, 2020), <https://perma.cc/B7KE-FHPB>. And numerous other journalists have suffered injuries ranging from concussions to broken bones from the use of crowd-control techniques while covering protest events. *See, e.g.*, Reporters Comm. for Freedom of the Press, *Press Freedoms in the United States 2020*, at 8 (2021), <https://perma.cc/9JPW-V558> (tallying hundreds of physical attacks on reporters in 2020, most at the hands of law enforcement officers during public assemblies).

When those harms force journalists from the scene of newsworthy protests, the government's indiscriminate use of crowd-control techniques has an "immediate and irreversible" impact on the right to gather and report the news, much like any classic prior restraint. *Cf. Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). Indeed, many journalists might reasonably elect to avoid going to

scenes altogether to avoid physical harm—exactly the sort of chilling effect against which the First Amendment guards. *See Index Newspapers*, 977 F.3d at 826.

But beyond the severe injuries inflicted on reporters themselves—which would be First Amendment harm enough—preventing journalists from covering newsworthy events deprives the public of valuable information. “[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491 (1975). Protests—and the government’s responses to them—are matters of paramount public concern. The Framers considered the “right of peaceable assembly . . . to lie at the foundation of a government based upon the consent of an informed citizenry.” *Bates v. City of Little Rock*, 361 U.S. 516, 522–23 (1960). Accordingly, from the Boston Tea Party to the Civil Rights Movement to modern protest movements like Black Lives Matter, Occupy Wall Street, and the Dakota Access Pipeline protests, assembly and demonstration have become “deeply embedded in the American political process.” *See Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.*, 454 U.S. 290, 294 (1981). And without reporters on the scene of these newsworthy events, the public’s understanding of those events would necessarily be incomplete.

The concern is hardly a new one. The Kerner Commission, empaneled by President Lyndon B. Johnson to study civil unrest in the 1960s, closely examined news coverage of riots during that era and its shortcomings. The study observed that the government’s control over information about the reality of the riots had contributed in part to a misleading public sense of the extent of violence, noting that reporting on official estimates of property damage had left “an indelible impression of damage up to more than 10 times greater than actually occurred.” *See* Report of the Nat’l Advisory Comm’n on Civil Disorders, 202 (1968), <https://perma.cc/D3J2-SFGQ>. In one incident, journalists able to reach a scene themselves realized that what government officials had characterized as “nests of snipers” were, in fact, “the constituted authorities shooting at each other.” *Id.* at 205. Across the board, where reporters were forced to rely on “police and city officials [as] their main—and sometimes only—source of information,” coverage was skewed in favor of those sources. *Id.* at 207. “But more first-hand reporting in the diffuse and fragmented riot area,” the Commission concluded, could have “temper[ed] easy reliance on police information and announcements.” *Id.*

A similar dynamic was present in the wake of the protests that erupted in the summer of 2020 following the murder of George Floyd. In keeping with their function as “surrogates for the public,” *see Richmond Newspapers, Inc. v. Virginia*,

448 U.S. 555, 573 (1980) (plurality opinion), journalists provided extensive first-hand coverage of those protests, *see, e.g., The 2021 Pulitzer Prize Winner in Breaking News Reporting: Staff of the Star Tribune, Minneapolis, Minn., Pulitzer Prizes*, <http://bit.ly/4olAKCP> (last visited Oct. 17, 2025) (collecting coverage); *The 2021 Pulitzer Prize Winner in Breaking News Reporting, Finalist: Staff of The Courier-Journal, Louisville, Ky.*, <http://bit.ly/4olF84L> (last visited Oct. 17, 2025) (collecting coverage). And often, that reporting provided a sharp contrast to official government accounts. *See, e.g., Alex Horton, In Violent Protest Incidents, a Theme Emerges: Videos Contradict Police Accounts*, Wash. Post (June 6, 2020), <https://perma.cc/UTU8-5VX7> (collecting “inaccurate or outright misleading” official statements later undermined by the press or public’s first-hand videos).

The events giving rise to this very litigation illustrate the same dynamic, with local and federal officials making wildly different claims about the scope of protest activity in Los Angeles and the appropriate response. *See, e.g., Bill Hutchinson, Trump Says LA is Under Siege, but the Mayor and Governor Paint a Different Picture*, ABC News (June 10, 2025), <https://bit.ly/4p6wyHN>. And the same dichotomy has played out in jurisdiction after jurisdiction this year. In Chicago, for instance, a federal court recently found that federal officials—justifying their response to widespread demonstrations—repeatedly made false

claims that were “ultimately disproved” by direct video evidence. Bill Kirkos, et al., *Federal Judge Says Border Patrol Chief Admitted He Lied, in Ruling Limiting Agents’ Use of Force in Chicago*, CNN (Nov. 7, 2025), <https://perma.cc/S6DW-NBAR>. In Portland, President Trump himself highlighted his disagreement with state officials about the state of protest activity, asserting the situation there was “just so crazy. And then you talk to the governor and she acts like everything is totally normal, there’s nothing wrong.” Claire Rush & Melissa Goldin, *FACT FOCUS: Trump Paints a Grim Portrait of Portland. The Story on the Ground is Much Less Extreme*, Associated Press (Oct. 9, 2025), <https://perma.cc/U5C9-BNYA>. But thankfully, the public need not take any particular official or agency’s word, because the press has provided and continues to provide first-hand accounts of protest activity and federal agents’ response. *See, e.g.*, Rachel Uranga, et. al, *ICE Raids Across L.A. Spark Backlash; Trump Officials Vow to Continue Operations*, L.A. Times (June 6, 2025), <https://perma.cc/DY3F-H2JE>; *ICE in Chicago: Scenes From the Streets*, Reuters (Oct. 30, 2025), <https://perma.cc/BTE6-4U3L>; Zane Sparling, et al., *How Protests Outside Portland ICE Unfolded Before Trump’s Troop Announcement*, The Oregonian (Sept. 27, 2025), <https://perma.cc/K5W7-MB2F>.

As each example illustrates, the press serves a critical function when covering protest activity in keeping with the “special and constitutionally recognized role of that institution in informing and educating the public.” *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 781 (1978). Without reporters on the scene, the public’s understanding of important events of obvious public concern would be impoverished. And the press’s ability to serve that constitutional function is jeopardized when public officials unleash indiscriminate force against journalists—a result that the District Court’s injunction rightfully guards against.

**II. Under any framework, the indiscriminate use of crowd-control tactics against journalists covering protests violates the First Amendment.**

The severe harm that Appellants’ tactics have inflicted on the press—and as a result on the public’s right to know—violates the First Amendment under any plausibly relevant doctrinal lens. To start with the clearest basis for relief, the First Amendment prohibits government officials from intentionally retaliating against individuals for their newsgathering through the use of crowd-control techniques. *See Index Newspapers*, 977 F.3d at 827–28 & n.4 (retaliatory use of “pepper balls, tear gas, and paint-marking munitions” against journalists violates the First Amendment); *Quraishi v. St. Charles Cnty., Mo.*, 986 F.3d 831, 838–39 (8th Cir. 2021) (“deploying a tear-gas canister at law-abiding reporters” in retaliation for their reporting obviously violates the First Amendment). But even crowd-control

tactics not driven by an invidious motive must be “narrowly tailored” to whatever legitimate goal the government claims, *Index Newspapers*, 977 F.3d at 30, and that much is true whether the burden on newsgathering is viewed through the lens of the press and public’s right of access, *see id.*, or as a time, place, and manner restriction on the use of a public forum, *see id.* at 849 n.8 (O’Scannlain, J., dissenting). Either way, the demands of narrow tailoring do not permit the government to unleash indiscriminate violence against peaceful, non-obstructive newsgathering at a protest, regardless of whether some strangers may be involved in unlawful conduct down the street. Because the District Court’s injunction results from a straightforward application of those principles, it should be affirmed.

**A. The indiscriminate use of crowd-control tactics to retaliate against journalists for their newsgathering violates the First Amendment.**

Perhaps most obviously, the First Amendment flatly prohibits government officials from retaliating against individuals for engaging in First Amendment activity, *Hartman v. Moore*, 547 U.S. 250, 256 (2006), and the government may not intentionally burden newsgathering by exploiting even otherwise-lawful crowd-control tactics “as a means of suppressing speech.” *See Lozman v. City of Riviera Beach*, 585 U.S. 87, 99 (2018); *see also Quraishi*, 986 F.3d at 838–39 (finding the law clearly established that arresting or “deploying a tear-gas canister

at law-abiding reporters” in retaliation for reporting violates the First Amendment); *Black Lives Matter D.C. v. Trump*, 544 F. Supp. 3d 15, 47 (D.D.C. 2021).

Here, the District Court rightly found that Plaintiffs were likely to succeed on their retaliation claim because “Defendants’ excessive and indiscriminate response evinces strong and persuasive evidence of retaliatory intent,” and “the extensive record evidence that federal officers repeatedly targeted journalists and peaceful legal observers far from any protestors or bad actors.” *Los Angeles Press Club*, 2025 WL 2658327, at \*17. In arguing otherwise, Appellants insist that a journalist must come forward with “direct evidence” of ill motive, *see* Appellants’ Br. at 22–23, but it is black-letter law that a plaintiff may demonstrate retaliatory animus with “either direct or circumstantial evidence,” *Index Newspapers*, 977 F.3d at 827; *accord Ulrich v. City & Cnty. of San Francisco*, 308 F.3d 968, 979 (9th Cir. 2002) (“As with proof of motive in other contexts, this element of a First Amendment retaliation suit may be met with either direct or circumstantial evidence.”). And this Court and others have consistently made clear that the fact that clearly identifiable journalists were struck by crowd-control munitions, absent any apparent justification, itself provides powerful evidence they were targeted.

In *Index Newspapers*, for instance, this Court held that sufficient evidence may include facts showing that journalists were struck despite wearing clothing

identifying themselves as “PRESS,” despite “standing nowhere near protesters,” and despite using conspicuous professional equipment as they documented federal agents’ conflict with protesters, *see* 997 F.3d at 827–29, all factors present in the District Court’s thorough analysis of the record here, *see Los Angeles Press Club*, 2025 WL 2658327, at \*3–10, \*17. Defendants take the remarkable position that the published decision in *Index Newspapers* is a nullity, but this Court has repeatedly relied on the decision as precedent—and even as clearly established law. *See, e.g., Sanderlin v. Dwyer*, 116 F.4th 905, 911 (9th Cir. 2024) (relying on *Index Newspapers* in denying qualified immunity to law enforcement officer for First Amendment retaliation). And regardless, even writing on a blank slate, those facts matter for good reason: Where there is “no legitimate justification for” a government official’s action, a fact finder may “reasonably infer that those actions were motivated by retaliatory animus.” *Sanderlin*, 116 F.4th at 911. And where crowd-control tactics are used 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,” *Tirado v. City of Minneapolis*, 521 F. Supp. 3d 833, 841 (D. Minn. 2021)—where reporters were, in other words, “not doing anything wrong,” *Quraishi*, 986 F.3d at 841—the most plausible inference to draw

is that a retaliatory motive, not legitimate law enforcement goals, precipitated the use of force. A raft of other courts have reached the same common-sense result.<sup>1</sup>

Against that backdrop, Appellants’ insistence on the “alternative explanation” that the injuries inflicted on journalists alike were merely the “incidental effects of law enforcements’ efforts to restore order,” Appellants’ Br. at 23, strains credulity. As this Court has often underlined, even where some third parties on the scene of a demonstration have engaged in unlawful conduct, “the proper response to potential and actual violence is for the government to ensure an adequate police presence . . . and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure.” *Collins v. Jordan*, 110 F.3d 1363, 1373 (9th Cir. 1996) (internal citations omitted). That Appellants’ “surprising savagery” instead struck law-abiding journalists again and again provides strong evidence that their use of

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<sup>1</sup> See, e.g., *Burdett v. Reynoso*, No. C-06-00720 JCS, 2007 WL 2429426, at \*28 (N.D. Cal. Aug. 23, 2007) (where plaintiff “was wearing a press pass around his neck,” officers’ “awareness that Plaintiff was a reporter” provided evidence of retaliatory motive); *Landers v. City of New York*, No. 16CV5176PKCCLP, 2019 WL 1317382, at \*8 (E.D.N.Y. Mar. 22, 2019) (expressing skepticism that officers could confuse “a reporter who bears a visible press credential” with a “participant” in an allegedly unlawful assembly); *Goyette v. City of Minneapolis*, No. 20-CV-1302 (WMW/DTS), 2021 WL 5003065, at \*13 (D. Minn. Oct. 28, 2021), *superseded sub nom.*, 2022 WL 370161 (D. Minn. Feb. 8, 2022) (“Generally, members of the press are in proximity to a protest to observe, record, and report about the protest, not to *participate* in the assembly.”).

force was deliberate. *Los Angeles Press Club*, 2025 WL 2658327, at \*1. The District Court’s carefully considered holding to that effect should be affirmed.

**B. Retaliatory or not, crowd-control tactics must account for the press and public’s right of access to governmental operations.**

Even if Appellants’ tactics were simply excessive rather than retaliatory, this Court’s precedent makes clear that the press and public have a right of access to “public protests and law enforcement’s response to them” that occur on public streets and sidewalks, *Index Newspapers*, 977 F.3d at 830, and therefore that crowd-control tactics burdening that right must be narrowly tailored to a compelling interest. By no stretch of the imagination is the injury and dispersal of law-abiding reporters narrowly tailored to a legitimate interest when “Defendants adduce[d] no evidence that any journalist or legal observer interfered with law enforcement operation.” *Los Angeles Press Club*, 2025 WL 2658327, at \*20.

Tellingly, Appellants’ principal defense in this case is that no degree of tailoring was required—that officers “need not refrain from issuing dispersal orders or deploying crowd-control devices against rioters simply because peaceful protestors or innocent bystanders may also be in the crowd.” Appellants’ Br. at 29. That position transparently seeks to relitigate this Court’s holding on substantially identical facts in *Index Newspapers*, but the effort would be unpersuasive on its own terms even if on-point precedent did not foreclose it.

Applying the Supreme Court’s decision in *Press-Enterprise Co. v. Superior Court of Ca.*, 478 U.S. 1 (1986) (“*Press-Enterprise II*”), this Court has recognized “a qualified right of access for the press and public to observe government activities,” one that reaches “a wide range of civil and administrative government activities,” *Leigh*, 677 F.3d at 899—including government operations unfolding in public spaces, *see id.* (applying the *Press-Enterprise* framework to a horse round-up on public land). The analysis, in each case, asks “whether the place and process has historically been open to the press and general public” and “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise II*, 478 U.S. at 8. Here, it should go without saying that the public streets and parks in which protests typically unfold have “immemorially been held in trust for use by the public” since “time out of mind.” *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939). And for all of the reasons already discussed above, the press—in documenting law enforcement’s response to a public demonstration—“play[s] a vitally important role in holding the government accountable.” *Index Newspapers*, 977 F.3d at 830–31; *see also Leigh*, 677 F.3d at 900 (“When wrongdoing is underway, officials have great incentive to blindfold the watchful eyes of the Fourth Estate.”).

A qualified right of public access therefore attaches to the scene of a public protest, and the government can only overcome that right by showing “an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Index Newspapers*, 977 F.3d at 829. But crowd-control tactics cannot be said to be narrowly tailored when they effectively punish journalists—whose own conduct poses none of the risks the government claims a right to prevent—for the unlawful conduct of unrelated third parties. In case after case, the Supreme Court has made clear that the Constitution prevents the government from restricting one person’s rights because a stranger wants to break the law nearby. A demonstrator, for instance, may not be held liable for violence she did not authorize or incite, *see N.A.A.C.P v. Claiborne Hardware*, 458 U.S. 886, 927 (1982); members of an association with lawful aims may not be prosecuted for *unlawful* ones they lack the intent to further, *see Scales v. United States*, 367 U.S. 203, 222 (1961); and a speaker may not be charged the bill for a heckler’s reaction, *see Forsyth Cnty v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992). Even where some degree of violence has unlocked law enforcement’s ability to respond, then, “the proper response to potential and actual violence is for the government to ensure an adequate police presence . . . and to arrest those who actually engage in such conduct, rather than to suppress legitimate

First Amendment conduct as a prophylactic measure.” *Collins*, 110 F.3d at 1373 (internal citations omitted).

*Menotti v. City of Seattle*, on which the government heavily relies, is not to the contrary. In that case, this Court upheld a mayoral order restricting access to the World Trade Organization conference site following violent protest activity. *See* 409 F.3d 1113, 1142–43 (9th Cir. 2005). To be sure, *Menotti* justified the exclusion order, in part, on the basis that “it was unrealistic to expect police to be able to distinguish . . . protestors with benign intentions and those with violent intentions.” *Menotti*, 409 F.3d at 1134. But that was a judgment of fact about Seattle in 1999, not a universal statement of constitutional law—an application of narrow tailoring, not a repudiation of it. *Id.* Importantly, the plaintiffs in that case did not dispute that “[t]he impeding or ‘buffer’ effect of peaceful protestors” had prevented law enforcement from arresting those who were in fact committing acts of violence. *Id.* at 1132 n.36. No one disputes that parties who could be arrested because their own intentional conduct poses an imminent risk to safety, *see Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969), may also, as an alternative, be asked to disperse.

But cases in which lawful reporting poses such a risk will be the very rare exception, not the rule. *Cf. Leigh*, 677 F.3d at 900 (“[A] court cannot rubber-stamp

an access restriction simply because the government says it is necessary.”).

Indeed, the exclusion order in *Menotti* itself exempted “members of the press.”

*Menotti*, 409 F.3d at 1125 n.16. And the record in this case does not bear out any concern that journalists’ presence posed a threat to any legitimate government interest during the protests at issue here—as the District Court noted, “Defendants adduce[d] no evidence that any journalist or legal observer interfered with law enforcement operation.” *Los Angeles Press Club*, 2025 WL 2658327, at \*20; *see also, e.g., Garcia*, 150 F.4th at 1224 (ban on observing a sideshow within 200 feet unconstitutional where the government produced no evidence that observers—as opposed to participants and supporters—posed a distinctive risk to public safety).

At bottom, the injunction at issue simply prohibits the government from punishing reporters for the conduct of unrelated third parties. *See Index Newspapers*, 977 F.3d at 831 (“[T]he district court did not grant a special exemption to the press; it found that dispersing the press was not essential to the government’s interests.”). Even under the District Court’s order, reporters—like anyone else—can be dispersed if they are “posing a threat of imminent harm to a law enforcement officer or another person,” or if “such force is necessary to stop an imminent and serious threat of physical harm to a person.” *Id.* at \*24–25. But the government’s insistence that it be allowed to ignore the burden its tactics

impose on lawful newsgathering entirely—that its actions “cannot be tailored in any way,” *Index Newspapers*, 977 F.3d 831—flouts the First Amendment.

Because the Constitution guarantees a qualified right of public access to the scene of public protests, and because Appellants all but concede that they did not tailor their crowd-control measures, the District Court’s injunction should be affirmed.

**C. Retaliatory or not, crowd-control tactics that burden newsgathering in a public forum must be narrowly tailored.**

Even if Appellants were right to ignore *Index Newspapers*’ holding that the right-of-access framework applies here, the objection is semantic because the same result would follow from a conventional application of public-forum doctrine. Under that framework, crowd-control tactics at a protest, like any other restriction on newsgathering in a public forum, must be narrowly tailored and must leave open ample alternative channels to gather the news. *See Menotti*, 409 F.3d at 1130–42 (evaluating whether curfew order was narrowly tailored and left ample alternative channels of communication); *Garcia*, 150 F.4th at 1233 (applying First Amendment scrutiny to restriction on remaining within 200 feet of a sideshow for purposes of observing the event). Or to put the point differently, regardless of whether crowd-control tactics shutter a public forum entirely, *see Index Newspapers*, 977 F.3d at 830, or operate as time, place, and manner restrictions on its continued use, *see id.* at 849 n.8 (O’Scannlain, J., dissenting), law enforcement

officers are never entitled to simply *ignore* the burden that their actions impose on lawful reporting. Either way, the First Amendment always measures the fit between the government’s asserted interest and the government’s preferred means.

For just that reason, courts have routinely held law enforcement officers to the burden of demonstrating that even content-neutral crowd-control tactics meet the demands of narrow tailoring. *See, e.g., Menotti*, 409 F.3d at 1130–42; *Marcavage v. City of Chicago*, 659 F.3d 626, 631 (7th Cir. 2011) (evaluating whether “officers’ directives to keep moving” were narrowly tailored); *Sabel v. Stynchcombe*, 746 F.2d 728, 731 (11th Cir. 1984) (evaluating whether arresting and prosecuting demonstrators was narrowly tailored); *Edrei v. City of New York*, 254 F. Supp. 3d 565, 578 (S.D.N.Y. 2017), *aff’d sub nom. Edrei v. Maguire*, 892 F.3d 525 (2d Cir. 2018) (evaluating whether use of less-lethal weapon was narrowly tailored); *Goyette v. City of Minneapolis*, 338 F.R.D. 109, 116–17 (D. Minn. 2021) (evaluating whether “general dispersal orders” were narrowly tailored). And as already discussed above, that fit is plainly missing here.

The public-forum framework also makes clear that Appellants are mistaken to object that requiring narrow tailoring amounts to “special treatment” for journalists. Appellants’ Br. at 26. A government action must leave open alternative channels for *each* First Amendment activity affected, including

“alternative observation opportunities” in particular. *Reed v. Lieurance*, 863 F.3d 1196, 1212 (9th Cir. 2017). Protestors may well be able to move elsewhere to share their message in the face of dispersal orders or crowd-control tactics, *see Menotti*, 409 F.3d at 1138 (noting “the protestors were able to demonstrate and express their views immediately outside the restricted zone”), but for those attempting to document rather than demonstrate, there is no substitute for first-hand observation of the government’s response, *see Garcia*, 150 F.4th at 1230; *People for the Ethical Treatment of Animals*, 60 F.4th at 829. After all, recordings of newsworthy events “are uniquely reliable and powerful methods of preserving and disseminating news and information about events that occur in public” for which it is “highly unlikely that other methods could be considered reasonably adequate substitutes,” *Am. C.L. Union of Il. v. Alvarez*, 679 F.3d 583, 607 (7th Cir. 2012), but they cannot be captured anywhere other than where the news is.

Far from affording journalists “a special right of access not shared by the general public,” *Index Newspapers*, 977 F.3d at 830, then, the ample-alternatives requirement simply recognizes that the same restriction may have different consequences for different First Amendment activities, *see McCullen v. Coakley*, 573 U.S. 464, 489 (2014) (that buffer-zone left open alternative channels for protest “misses the point” where plaintiffs “are not protestors” and could not

engage in their chosen First Amendment activity at a distance). Crowd control tactics that impose only a partial burden on protest or speech may operate as a total ban on newsgathering. And when they do so, those law-enforcement measures—like any other state action “that foreclose[s] an entire medium of expression”—will virtually always violate the First Amendment, whether or not such tactics discriminate on the basis of content or viewpoint and regardless of the interest the government claims in burdening lawful journalism. *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994); *see also Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1064 (9th Cir. 2010) (observing “[a] long line of Supreme Court cases indicates that such laws are almost *never* reasonable ‘time, place, or manner’ restrictions”).

Were it otherwise, reporters could not workably play their role as “surrogates for the public” in holding up to the light the operations of government. *Leigh*, 677 F.3d at 900 (quoting *Richmond Newspapers*, 448 U.S. at 573 (1980) (plurality opinion)). The Department of Justice itself has affirmed as much, instructing other law enforcement agencies “that restrictions on when, where, and how reporters gather information must leave open ample alternative channels for gathering the news,” and that “[b]lanket enforcement of dispersal orders, curfews, or other public order measures can violate this principle because they prevent reporters from reporting what happens after those orders or measures are

implemented.” Dep’t of Just. Off. Community Oriented Policing Servs., Police-Media Interactions During Mass Demonstrations: Practical, Actionable Recommendations at 5 (2024), <https://perma.cc/3SQS-9HQX> (cleaned up). For the same reason, state and local governments routinely exempt newsgathering from otherwise-applicable emergency regulations, including curfew orders, *see Reporters Committee Tracks Curfew Orders in Wake of Nationwide Protests*, Reporters Comm. for Freedom of the Press (June 1, 2020), <https://perma.cc/S6ZZ-G3HY>; natural disaster restrictions, *see, e.g.*, Cal. Penal Code § 409.5(d); and, indeed, dispersal orders, *see, e.g.*, Ark. Code § 5-71-206; Cal. Penal Code § 409.7.

Against that weight of authority, Appellants effectively insist that they should be entitled to deploy crowd-control tactics so indiscriminate that they make it impossible for journalists to remain on the scene of a public protest—no matter the harm done to the public’s right to know. But the First Amendment insists otherwise, and just as “[t]he free press is the guardian of the public interest,” so too is “the independent judiciary . . . the guardian of the free press.” *Leigh*, 677 F.3d at 900. The District Court’s injunction faithfully applies this Court’s precedent to safeguard journalists against physical harm and protect the public’s access to information about issues of paramount public concern. This Court should affirm.

## CONCLUSION

For the foregoing reasons, amici respectfully urge the Court to affirm the preliminary injunction.

Dated: November 25, 2025

Respectfully submitted,

/s/ Grayson Clary

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FOR THE NINTH CIRCUIT**

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## **ADDENDUM: STATEMENTS OF INTEREST OF AMICI CURIAE**

Advance Publications, Inc. is a diversified privately-held company that operates and invests in a broad range of media, communications and technology businesses. Its operating businesses include Conde Nast's global magazine and digital brand portfolio, including titles such as Vogue, Vanity Fair, The New Yorker, Wired, and GQ, local news media companies producing newspapers and digital properties in 10 different metro areas and states, and American City Business Journals, publisher of business journals in over 40 cities.

American Broadcasting Companies, Inc. is a broad-based communications company. Alone or through its subsidiaries, it owns ABC News, abcnews.com, and local broadcast television stations that regularly gather and report news to the public. ABC News produces the television programs World News with David Muir, Good Morning America, Nightline, 20/20, and This Week, among others.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

The Atlantic Monthly Group LLC is the publisher of The Atlantic and TheAtlantic.com. Founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others, The Atlantic continues its 160-year tradition of publishing award-winning journalism that challenges assumptions and pursues truth, covering national and international affairs, politics and public policy, business, culture, technology and related areas.

CalMatters is a nonpartisan, nonprofit journalism organization based in Sacramento, California. It covers state policy and politics, helping Californians to better understand how their government works while serving the traditional journalistic mission of bringing accountability and transparency to the state's Capitol. The work of its veteran journalists is shared, at no cost, with more than 180 media partners throughout the state.

CBS Broadcasting Inc. produces and broadcasts news, public affairs and entertainment programming. Its CBS News Division produces morning, evening and weekend news programming, as well as news and public affairs newsmagazine programs, such as “60 Minutes” and “48 Hours.” CBS Broadcasting Inc. also directly owns and operates television stations across the country, including WCBS-TV in New York City, which produces daily news programming.

The Center for Investigative Reporting, Inc. is the nation's oldest nonprofit investigative newsroom in the country that runs the brands Mother Jones, Reveal, and CIR Studios. Mother Jones is a reader-supported news magazine and website known for ground-breaking investigative and in-depth journalism on issues of national and global significance. Reveal produces investigative journalism for the Reveal national public radio show and podcast, and CIR Studios produces feature length documentaries distributed on Netflix, Hulu and other streaming channels. Reveal often works in collaboration with other newsrooms across the country.

Cityside is a nonpartisan, nonprofit media organization committed to building community through local journalism. Cityside publishes Berkeleyside and The Oaklandside, two of the leading independent, online news sites in the country.

Courthouse News Service is a California-based legal news service that publishes a daily news website with a focus on politics and law. The news service also publishes daily reports on new civil actions and appellate rulings in both state and federal courts throughout the nation. Subscribers to the daily reports include law firms, universities, corporations, governmental institutions, and a wide range of media including newspapers, television stations and cable news services.

Dow Jones & Company is the world's leading provider of news and business information. Through The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

Eugene Weekly, locally owned since 1982, is an alternative news weekly covering news, arts and entertainment in Lane County, Oregon. EW focuses on investigative and solutions journalism that affect the community and the state.

The Inter American Press Association (IAPA) is a not-for-profit organization dedicated to the defense and promotion of freedom of the press and of expression in the Americas. It is made up of more than 1,300 publications from throughout the Western Hemisphere and is based in Miami, Florida.

The Intercept Media, Inc. is a non-profit digital media venture committed to rigorous, adversarial journalism in the public interest.

The International Documentary Association (“IDA”) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs,

the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

KQED is a nonprofit public benefit corporation organized under the laws of California and engaged in dissemination of news and information since its founding as a public broadcasting station in 1953. At all times relevant to this proceeding, KQED's core mission has been the pursuit and publication/broadcast of information in the public's interest. KQED has advanced this purpose not only through its consistent San Francisco Bay Area and statewide news reporting, which relies heavily on the use of the California Public Records Act, but also as a champion of public access to some of the most serious information maintained by government: law enforcement use of deadly force, police misconduct and the broader operations of our state's criminal justice system.

The LA Local is a nonprofit news organization focused on hyper-local newsgathering and reporting that will ensure all communities in Los Angeles can access news about where they live.

Los Angeles Times Communications LLC is one of the largest daily newspapers in the United States. Its popular news and information website, [www.latimes.com](http://www.latimes.com), attracts audiences throughout California and across the nation.

The McClatchy Company, LLC is a publisher of iconic brands such as the Miami Herald, The Kansas City Star, The Sacramento Bee, The Charlotte Observer, The (Raleigh) News & Observer, and the Fort Worth Star-Telegram. McClatchy operates media companies in 30 U.S. markets in 16 states, providing each of its communities with high-quality news and advertising services in a wide array of digital and print formats. McClatchy is headquartered in Sacramento, California.

Media Guild of the West, NewsGuild-CWA Local 39213, was founded in 2019 by newly unionized journalists at the Los Angeles Times. The local now represents hundreds of unionized journalists and media workers in newsrooms throughout Southern California, Arizona and Texas. On July 8, 2020, Media Guild of the West members voted 94% to 6% to support advocacy for open-records access, improvements to the California Public Records Act and other transparency laws, and First Amendment issues that affect the work of journalists and serve the public interests of transparency and accountability.

The Media Institute is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all

sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia. Through its programs and services and national member network, NFOIC promotes press freedom, litigation and legislative and administrative reforms that ensure open, transparent and accessible state and local governments and public institutions.

National Newspaper Association is a 2,000 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, FL.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

National Public Radio, Inc. ("NPR") is a non-profit multimedia organization and the leading provider of non-commercial news, information, and entertainment programming to the American public. NPR's fact-based, independent journalism

helps the public stay on top of breaking news, follow the most critical stories of the day, and track complex issues over the long term. NPR reaches approximately 60 million people each week on broadcast radio, podcasts, NPR apps, NPR.org, and YouTube video content. NPR distributes its radio broadcasts through more than 1,000 non-commercial, independently operated radio stations, licensed to more than 260 NPR members and numerous other NPR-affiliated entities.

NBCUniversal Media, LLC is one of the world's leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience. Among other businesses, NBCUniversal Media, LLC owns and operates the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks, including MSNBC and CNBC, and a television-stations group consisting of owned-and-operated television stations that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the "Today" show, "NBC Nightly News with Lester Holt," "Dateline NBC" and "Meet the Press."

New England First Amendment Coalition is a non-profit organization working in the six New England states to defend, promote and expand public access to government and the work it does. The coalition is a broad-based

organization of people who believe in the power of transparency in a democratic society. Its members include lawyers, journalists, historians and academicians, as well as private citizens and organizations whose core beliefs include the principles of the First Amendment. The coalition aspires to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know in our region. In collaboration with other like-minded advocacy organizations, NEFAC also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world.

New England Newspaper and Press Association, Inc. ("NENPA") is the regional association for newspapers in the six New England States (including Massachusetts). NENPA's corporate office is in Dedham, Massachusetts. Its purpose is to promote the common interests of newspapers published in New England. Consistent with its purposes, NENPA is committed to preserving and ensuring the open and free publication of news and events in an open society.

The New York Times Company is the publisher of The New York Times and operates the news website [nytimes.com](https://www.nytimes.com).

The News/Media Alliance represents over 2,200 diverse publishers in the U.S. and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed

news since before the Constitutional Convention. Its membership creates quality journalistic content that accounts for nearly 90 percent of daily newspaper circulation in the U.S., over 500 individual magazine brands, and dozens of digital-only properties. The Alliance diligently advocates for newspapers, magazine, and digital publishers, on issues that affect them today.

Newsday LLC (“Newsday”) is the publisher of the daily newspaper, Newsday, and related news websites. Newsday is one of the nation’s largest daily newspapers, serving Long Island through its portfolio of print and digital products. Newsday has received 19 Pulitzer Prizes and other esteemed awards for outstanding journalism.

The Online News Association is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

Open Vallejo is an award-winning, independent, non-partisan, nonprofit newsroom serving the public interest. Open Vallejo seeks to illuminate a small city long burdened by police violence, corruption, and neglect. As the first project

of the Informed California Foundation, Open Vallejo is also a permanent design laboratory for open source, high-impact, broadly-accessible frameworks for ensuring local transparency, accountability, and information justice.

Oregon Public Broadcasting (“OPB”) is a nationally-recognized leader in public media, reaching 1.5 million people across Oregon and southwest Washington each week through its network of television and radio stations, and robust online programming. With award-winning journalists and original series, OPB's mission is to illuminate the people, places, and issues of the region and put stories into context.

Pro Publica, Inc. (“ProPublica”) is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, most recently a 2020 prize for national reporting, the 2019 prize for feature writing, and the 2017 gold medal for public service. ProPublica is supported almost entirely by philanthropy and offers its articles for republication, both through its website, [propublica.org](http://propublica.org), and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, including ProPublica Illinois, which began publishing in late 2017 and was honored (along with the Chicago Tribune) as a finalist for the 2018 Pulitzer

Prize for Local Reporting, an initiative with the Texas Tribune, which launched in March 2020, and a series of Local Reporting Network partnerships.

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Reuters, the news and media division of Thomson Reuters, is the world's largest multimedia news provider. Founded in 1851, it is committed to the Trust Principles of independence, integrity and freedom from bias. With unmatched coverage in over 16 languages, and reaching billions of people worldwide every day, Reuters provides trusted intelligence that powers humans and machines to make smart decisions. It supplies business, financial, national and international news to professionals via desktop terminals, the world's media organizations, industry events and directly to consumers.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper The Seattle Times, together with the Yakima Herald-Republic and Walla Walla Union-Bulletin, all in Washington state.

The Slate Group publishes Slate, a daily online magazine. Slate features articles and podcasts analyzing news, politics and contemporary culture.

The Society of Environmental Journalists is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

Society of Professional Journalists (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

Southern California Public Radio (d/b/a LAist) is a non-profit, public media organization. SCPR operates L.A.’s largest NPR station, KPCC/LAist. Its signal stretches north to Santa Barbara County, south to Orange County and east to the Inland Empire. It operates LAist.com, a local news site. Its mission is to

strengthen the civic and cultural bonds that unite Southern California's diverse communities by providing the highest quality news and information service.

Student Press Law Center (“SPLC”) is a nonprofit, nonpartisan organization which, since 1974, has been the nation’s only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment to the Constitution of the United States. SPLC provides free legal assistance, information and educational materials for student journalists on a variety of legal topics.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

USA Today Co., Inc., formerly Gannett, is the largest local newspaper company in the United States. Its more than 200 local daily brands in 43 states— together with the iconic USA TODAY—reach an estimated digital audience of 180 million each month.

Vox Media, LLC owns New York Magazine and several web sites, including Vox, The Verge, The Cut, Vulture, SB Nation, and Eater, with 170 million unique monthly visitors.