

10/24/2024

Gary M. Pasqua  
District Attorney  
St. Lawrence County  
48 Court Street  
Canton, New York 13617  
gpasqua@stlawco.org

Dear Mr. Pasqua:

We are writing to you on behalf of the undersigned organizations, all of which are dedicated to defending press freedom and First Amendment rights. We urge you to drop all charges against Indian Time reporter Isaac White arising from his May 21, 2024 arrest,<sup>1</sup> particularly in light of recent guidance from the federal Department of Justice making clear that the charges against him violate his constitutional rights.<sup>2</sup>

White and seven demonstrators were arrested on trespassing and conspiracy charges during a demonstration on Barnhart Island opposing a proposed settlement of the Saint Regis Mohawk Tribe's claims to that land. White had no involvement in planning or organizing the protest. He arrived in his capacity as a journalist after receiving a news tip.

The guidance issued by the DOJ earlier this month resulted from a convening of police leaders and journalists spearheaded by the Police Executive Research Forum and the Reporters Committee for Freedom of the Press. It explains that, even in circumstances where officers may be entitled to disperse protesters who break the law, they may not also disperse journalists or arrest them for not following orders to disperse.

The report states as follows:

In the case of mass demonstrations, there may be situations—such as dispersal orders or curfews—where the police may reasonably limit public access. In these circumstances, to ensure that these limitations are narrowly tailored, the police may need to exempt reporters from these restrictions ... it is recommended that police err on the side of inclusiveness, defining as “media” both credentialed press from established media outlets and noncredentialed individuals who are acting as reporters in their function and behavior.

The DOJ explained its reasoning in a 2023 report on its investigation of the Minneapolis Police Department for its handling of Black Lives Matter protests, which is cited in the new guidance: “Blanket enforcement of dispersal orders and curfews against press violate [First Amendment]

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<sup>1</sup> U.S. Press Freedom Tracker, [Reporter arrested at land claim demonstration in Northern New York](#), May 21, 2024.

<sup>2</sup> U.S. Department of Justice, Office of Community Oriented Policing Services, [Police-Media Interactions during Mass Demonstrations](#), Oct. 4, 2024.

principle[s] because they foreclose the press from reporting about what happens after the dispersal or curfew is issued, including how police enforce those orders.”<sup>3</sup>

Especially given the amount of unrest in the country over the past few years, police responses to demonstrations are important – and highly newsworthy – matters of public concern. Dispersing journalists attempting to cover this news deprives the public of the information it needs to hold its government accountable.

It’s not just the DOJ – appellate courts agree that dispersing journalists from demonstrations is constitutionally problematic.<sup>4</sup> New York, where the right to record police is protected by statute, is no different.<sup>5</sup> New York courts and the Second Circuit Court of Appeals have repeatedly recognized the rights of journalists to record and document police conduct, including during protests.<sup>6</sup> The New York Police Department recently enacted a policy that exempts credentialed journalists from dispersal orders, as part of a settlement of claims against it relating to its response to Black Lives Matter protests in 2020.<sup>7</sup>

Credentialing is less relevant in light of the DOJ’s guidances but, to the extent that it matters, White was carrying press credentials at the time of his arrest. Officers told him they didn’t care.

The First Amendment requires that any restrictions on when, where, and how reporters gather information “leave open ample alternative channels” for gathering the news.<sup>8</sup> Law enforcement did not communicate a specific dispersal point for White or the others arrested that day, let alone one in a location from which White could effectively report. Although he was not obligated to do so, White moved away from the other arrestees. He was arrested anyway.

Violation of journalists’ rights can lead to significant civil liability both under the First Amendment and New York law.<sup>9</sup> That’s likely why the NYPD agreed to the aforementioned settlement, which included a monetary component in addition to the department’s commitment to reforms.

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<sup>3</sup> United States Department of Justice Civil Rights Division and United States Attorney’s Office District of Minnesota Civil Division, [Investigation of the City of Minneapolis and the Minneapolis Police Department](#), June 16, 2023.

<sup>4</sup> See, e.g., [Index Newspapers v. U.S. Marshals Serv.](#), 977 F.3d 817 (9th Cir. 2020).

<sup>5</sup> [N.Y. Civ. Rights Law § 79-P – Recording certain activities](#)

<sup>6</sup> Reporters Committee for Freedom of the Press, [Letter to Honorable Bill de Blasio re: Law Enforcement Targeting Journalists at Protests](#), June 6, 2020 (citing numerous authorities).

<sup>7</sup> Davis Wright Tremaine, [Press Photographers Achieve Historic Settlement with New York City Police Department](#), Sept. 5, 2023.

<sup>8</sup> Free Speech Center at Middle Tennessee State University, [Time, Place and Manner Restrictions](#), July 30, 2023 (last updated on July 9, 2024).

<sup>9</sup> Reporters Committee for Freedom of the Press, [Public radio journalist Josie Huang reaches \\$700,000 settlement with LA County Sheriff’s Department](#), Nov. 7, 2023; The News Guild, [Journalists win \\$1 million settlement after attacks from police at George Floyd protests](#), Feb. 8, 2024.

Additionally, a Supreme Court case decided in June, *Gonzalez v. Trevino*,<sup>10</sup> made it easier for journalists to sue government officials when they retaliate against them for their First Amendment-protected activity. Just last week, the Supreme Court revived a previously dismissed lawsuit by a journalist who was unlawfully arrested.<sup>11</sup>

Now is the time to mitigate those risks – and do the right thing — by dropping the charges against White. Hopefully your office can then forge a path forward in which police and the press are both able to do their jobs during future protests.

Please contact us to schedule a time to further discuss these important concerns.

Sincerely,

Freedom of the Press Foundation  
Association of Health Care Journalists  
Common Cause NY  
Courage Foundation  
Defending Rights & Dissent  
First Amendment Coalition  
First Amendment Foundation  
Foundation for Individual Rights and Expression  
Indigenous Journalists Association  
National Press Photographers Association  
News/Media Alliance  
New York News Publishers Association  
NYCLU  
Radio Television Digital News Association  
Reinvent Albany  
Reporters Without Borders (RSF)  
RootsAction.org  
Society of Environmental Journalists  
Society of Professional Journalists  
Surveillance Technology Oversight Project - S.T.O.P.  
The Authors Guild

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<sup>10</sup> 144 S. Ct. 1663 (2024). See also Jimena Pinzon and Seth Stern, [Supreme Court ruling bodes well for unjustly convicted Asheville journalists](#), Asheville Citizen Times, July 7, 2024.

<sup>11</sup> Foundation for Individual Rights and Expression (FIRE), [Supreme Court revives lawsuit of citizen journalist arrested for asking a question](#), Oct. 15, 2024.