

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410-JAR
)	
County of Saint Louis, Missouri, et al,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

I. INTRODUCTION

In this case, Plaintiff challenges Defendants' policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement. The interference has taken many forms, including threatened arrest for standing in public places and recording, actually arresting journalists, prohibiting media members from standing at public places, ordering them not to record, shoving them, and firing teargas at them. In the United States, such interference is prohibited by the First Amendment, as Defendants acknowledged by entering into an agreement at the beginning of this case. Unfortunately, the policy and custom of interference continues, so Plaintiff must ask this Court for prospective relief.

II. FACTUAL BACKGROUND

On August 9, 2014, Michael Brown was shot and killed by a Ferguson, Missouri, police officer. *Abdullah v. Cnty. of St. Louis, Mo.*, No. 4:14CV1436 CDP, 2014 WL 4979314, at *1 (E.D. Mo. Oct. 6, 2014). In the aftermath of Brown's death, people gathered together in locations throughout Ferguson. *Id.* They came for various reasons, including to protest, pray, bear witness, and provide food and water to those who were protesting. *Id.*

The St. Louis County Police Department and the Missouri Highway Patrol are among the police departments that were called upon to assist the Ferguson Police Department with crowd control. *Id.* at *2. The protests, and the response of police to protesters, gained wide attention in the media. As a result, both traditional and non-traditional media outlets arrived, and continue to arrive, in Ferguson to document and report on what is happening there.

Among those reporting on the events in Ferguson is Plaintiff. In order to document what is occurring on the public streets and sidewalks of Ferguson, Plaintiff went to Ferguson beginning on August 13, 2014. Ex. A (Hussein Decl.) at ¶ 4. That evening he witnessed police officers ordering him and others to stop recording. Hussein Decl. at ¶¶ 5-6. Upon hearing the order, Plaintiff was required to choose between surrendering his First Amendment right to record the newsworthy events unfolding on the street before him or risking arrest or serious bodily injury by law enforcement officials if he continued recording and exercising his First Amendment rights. He chose to continue recording, putting his liberty and physical safety at serious risk. Hussein Decl. at ¶ 9. Plaintiff and others continued experiencing interference by law enforcement, including the use of force and threats of arrest if they continued to photograph and record the actions of police officers (Ex. B (Carson Decl.) at ¶ 6, 7; Ex. C (Flores Decl.) at ¶ 10; Ex. D (Campbell Decl.) at ¶ 9; Ex. E (Osterreicher Decl.) at ¶ 22; Hussein Decl. at ¶ 10, 13), denial of entry to the public protest areas (Hussein Decl. at ¶ 13; Flores Decl. at ¶ 8; Campbell

Decl. at ¶ 7), and the arbitrary use of force (Carson Decl. at ¶ 7, 10; Flores Decl. at ¶ 10; Ex. F (Loeb Decl.) at ¶ 6; Ex. G (Files Decl.) at ¶ 7). This created a climate of fear amongst reporters in Ferguson. Carson Decl. at ¶ 8; Hussein Decl. at ¶ 16; Campbell Decl. at ¶ 12.

This case was filed on August 15, 2014. (Doc. # 1). Plaintiff withdrew his motion for a temporary restraining order after the parties entered into a written agreement “that the media and members of the public have a right to record public events without abridgement unless it obstructs the activity or threatens the safety of others, or physically interferes with the ability of law enforcement officials to perform their duties.” (Doc. # 7, 8).

Despite the written agreement, the policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement persists. Media members were ordered to stop recording and leave the West Florissant Avenue area. Ex. H (Yingst Decl.) at ¶ 8. While standing on a curb or in areas understood to be designated for media and recording police officers attempting to disperse protesters on West Florissant Avenue, they were knocked to the ground and had guns pointed at them by SWAT officers. Yingst Decl. at ¶ 11; Files Decl. at ¶ 7. They were forced into a pen located on the parking lot of the Ferguson Market, effectively preventing them from accurately documenting the protest scene. Carson Decl. at ¶ 9; Yingst Decl. at ¶ 9. Some journalists experienced arrest and violence at the hands of law enforcement. Loeb Decl. at ¶ 6; Osterreicher Decl. at ¶¶ 15, 20. Others feared being abused by the police because they saw colleagues and other media members being ordered to stop recording, arrested while recording, and tear-gassed by law enforcement. Carson Decl. at ¶ 10; Yingst Decl. at ¶ 12. The result was the impression on many members of the media that they were being intentionally

targeted by the police with threats of arrest and violence so that they would stop recording and documenting the events as they unfolded.¹ Files Decl. at ¶ 11.

These were not isolated incidents. On October 27, 2014, PEN America released a report, *Press Freedom Under Fire in Ferguson*, which documents fifty-two alleged violations of press freedoms during protests in Ferguson.² Ex. I (Bass Decl.) at ¶ 4. The report concludes that the police interfered with the media's ability to do their job in multiple and various ways, making it impossible to dismiss the incidents as isolated. Bass Decl. at ¶ 6.

In light of this unprecedented (at least in America) interference with the recording and photographing of public events, general counsel for the National Press Photographer Association attempted to advocate on behalf of its members with law enforcement officials.³ Osterreicher Decl. In response to numerous calls from NPPA members who were covering the protests stating that they had been interfered with by authorities and threatened with arrest while lawfully photographing and recording these events, NPPA's general counsel traveled to Ferguson with the goal of attempting to help facilitate press freedoms, as he had in other cities. Osterreicher Decl. at ¶¶ 15, 20, 22-23, 24. Instead, law enforcement officials asked him to convey to the media the importance of obeying orders and to remain in the designated media area. Osterreicher Decl. at ¶

¹ A reporter from the National Journal stated, "I had previously never witnessed police treat journalists in the above-described manner. I had worked as a crime reporter in South Florida for four years and my time in Ferguson was the first time I had ever felt afraid of a police officer. I felt far more afraid of the police officers in Ferguson than I did any of the protesters." Campbell Decl. at ¶ 12.

² PEN American Center is the U.S. branch of the world's leading international literary and human rights organization. International PEN was founded in 1921 in direct response to the ethnic and national divisions that contributed to the First World War.

³ The National Press Photographers Association (NPPA) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing, and distribution. NPPA's approximately 7,000 members include television and still photographers, editors, students, and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted and defended the rights of photographers and journalists, including freedom of the press in all its forms, especially as it relates to visual journalism. Osterreicher Decl. at ¶¶ 2-4.

27. Mr. Osterreicher's explanation to law enforcement that the press is allowed to cover matters of public interest from traditionally public fora, such as a sidewalk or a park, and do not have to remain inside of an area specifically designated for them, was met with surprise and disappointment. Osterreicher Decl. at ¶¶ 28-29. It was apparent to Mr. Osterreicher that law enforcement officials lacked any understanding regarding the First Amendment rights of either the press or the public. Osterreicher Decl. at ¶ 30. Mr. Osterreicher wrote letters to each of the Defendant agencies and requested an investigation into abuses of members of the media by law enforcement in the area. Osterreicher Decl. at ¶¶ 15, 18, 35, 40. He also offered to assist with training, as NPPA has elsewhere, so that police officers might understand the First Amendment rights at issue. Osterreicher Decl. at ¶ 48. Defendants failed to provide Mr. Osterreicher with any substantive response. Osterreicher Decl. at ¶ 50, 51.

Under these circumstances, Plaintiff reasonably believes and fears that he will continue to be subjected to Defendants' unlawful policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement.

III. ARGUMENT

A. Standard for a Preliminary Injunction

In considering a motion for preliminary injunction, this Court must determine whether: (a) Plaintiff is likely to prevail on the merits; (b) there exists a threat of irreparable harm to Plaintiff absent the injunction; (c) the harm to Plaintiff outweighs the injury that granting the injunction would inflict upon Defendants; and (d) the preliminary injunction is in the public interest. *See Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc); *accord Abdullah*, 2014 WL 4979314, at *5. "When a plaintiff has shown a likely violation

of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied.” *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (internal quotation marks and citation omitted). “In a First Amendment case, ... the likelihood of success on the merits is often the determining factor in whether a preliminary injunction should issue.” *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012) (en banc).

B. Plaintiff is likely to prevail on the merits

Because Defendants’ policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement was not enacted pursuant to “reasoned democratic processes,” Plaintiff need show only a “fair chance of prevailing” to satisfy *Dataphase*’s first prong. See *Planned Parenthood v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (en banc). Under this standard, Plaintiff is not required to show “a greater than fifty percent likelihood that he will prevail,” *PCTV Gold, Inc. v. SpeedNet, LLC*, 508 F.3d 1137, 1143 (8th Cir. 2007) (quoting *Dataphase Sys., Inc.*, 640 F.2d at 113); he only needs to show that his claims provide “fair ground for litigation.” *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003).

Plaintiff has a First Amendment right to photograph and record at public places without interference from the police. Defendants’ policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement violates Plaintiff’s First Amendment rights. Moreover, the policy or custom is vague and arbitrarily enforced, violating Plaintiff’s due process rights.

1. Plaintiff has a clearly established First Amendment right to record public events, and the actions of public officials, on public property.

It is clearly established that “the First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” *Smith v. Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000); *see, e.g., Glik*, 655 F.3d at 83 (holding that an individual’s right to record officers’ performance of their duties in public was clearly established); *Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995) (holding there is a “First Amendment right to film matters of public interest”); *Robinson v. Fetterman*, 378 F. Supp. 2d 534, 542 (E.D. Pa. 2005) (recognizing that there was “no doubt that the free speech clause of the Constitution protected” individuals who videotaped law enforcement officers because “[v]ideotaping is a legitimate means of gathering information for public dissemination and can often provide cogent evidence”); *Ramos v. Flowers*, 429 N.J. Super. 13, 56 A.3d 869 (App. Div. 2012) (ruling that an independent filmmaker had a right to film police in the course of making a documentary film); *Am. Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583 (7th Cir. 2012), *cert. denied*, 133 S. Ct. 651 (2012); *Demarest v. Athol/Orange Cmty. Television, Inc.*, 188 F. Supp. 2d 82, 94-95 (D. Mass. 2002) (finding it “highly probable” that filming of a public official on street outside his home by contributors to public access cable show was protected by the First Amendment, and noting that, “[a]t base, plaintiffs had a constitutionally protected right to record matters of public interest”); *Channel 10, Inc. v. Gunnarson*, 337 F. Supp. 634, 638 (D.Minn.1972) (holding that police interference with television newsman’s filming of crime scene and seizure of video camera constituted unlawful prior restraint under First Amendment). Simply put, “a citizen’s right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.” *Glik*, 655 F.3d at

82; *see also Cumming*, 212 F.3d at 1333 (holding that individual citizens have a First Amendment right, subject to reasonable time, manner, and place restrictions, to photograph or videotape police conduct); *Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012) (recognizing that audio recording of police activity is entitled to some degree of First Amendment protection and “the act of *making* an audio or audiovisual recording is necessarily included within the First Amendment’s guarantee of speech and press rights”).

Plaintiff records public events and the actions of public officials performing their official duties, specifically law enforcement officers, from public places such as streets and sidewalks. He has been engaged in lawful and constitutionally protected activity when confronted by Defendants’ policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement. Moreover, because Plaintiff is documenting political demonstrations, capturing interactions between police and protesters, and is motivated by a desire to share his recordings with the world in order to achieve changes in police conduct, his activity is also political speech, which is guaranteed the highest level of protection under the First Amendment. *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186-87 (1999). The Supreme Court has directed courts to “err on the side of protecting political speech rather than suppressing it.” *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 457 (2007). Reporters and photographers, including Plaintiff, have a First Amendment right to the speech that Defendants’ policy or custom is intended to curtail and, in fact, does curtail.

2. The policy or custom of interfering with individuals who are lawfully photographing or recording at public places acts as a prior restraint.

“[A]dministrative ... orders *forbidding* certain communications when issued in advance of the time that such communications are to occur” are a prior restraint on First Amendment

activity. *Alexander v. United States*, 509 U.S. 544, 550 (1993) (quoting M. Nimmer, Nimmer on Freedom of Speech § 4.03, p. 4–14 (1984)). A prior restraint of expression should be weighed by the court “bearing a heavy presumption against its constitutional validity.” *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)). In this case, Plaintiff, as well as other journalists and photographers, have been ordered to stop recording. Hussein Decl. at ¶ 6; Carson Decl. at ¶¶ 6, 7; Campbell Decl. at ¶ 9. They have also been ordered to register and stay within a designated area. Carson Decl. at ¶ 9; Osterreicher Decl. at ¶¶ 27, 28; Yingst Decl. at ¶ 9. If they left the designated media area, reporters were threatened with arrest. Carson Decl. at ¶ 9; Yingst Decl. at ¶ 9. At times, law enforcement officials completely prevented reporters from reaching the West Florissant Avenue protest area, attempting to limit the media’s exposure to the demonstrations and the police response. Campbell Decl. at ¶¶ 6, 7; Flores Decl. at ¶¶ 7, 8. These actions had the effect of forbidding communication and reporting by Plaintiff and others. Under the present circumstances, orders given by police officers, under color of law, and threat of arrest for non-compliance, are a prior restraint.

3. Defendants cannot meet their burden to justify their policy or custom of interfering with individuals who are lawfully photographing or recording at public places.

“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 816 (2000); accord *Pursley v. City of Fayetteville, Ark.*, 820 F.2d 951, 956 (8th Cir. 1987) (“[T]he clear rule in this circuit is that in response to a First Amendment challenge, the proponent of the regulation must demonstrate that the government’s objectives will not be served sufficiently by means less restrictive of first amendment freedoms.” (internal quotation marks and citation omitted)). To meet its burden, the government must show that the regulation is content-neutral,

narrowly tailored, and leaves open ample alternative channels for communication of information. *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014). Defendants cannot meet that burden.

The policy or custom is not content neutral. There is no evidence that it has ever been enforced other than against those photographing and recording at public places in Ferguson in the aftermath of the killing of Michael Brown. Moreover, the interference comes when there is the opportunity to record potential police misconduct; tellingly, there has been no effort to prevent the recording of police officers receiving praise or engaged in mundane tasks. Finally, the custom or policy is enforced against Plaintiff and other members of the media and public only. The police themselves record events while interfering with Plaintiff's ability to record the same events.

There is no legitimate government interest that is advanced by a policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement. Indeed, the custom or policy is contrary to our nation's founding principles. Any speech restriction must, at a minimum further a government interest that is legitimate. *See Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989). Government interference with the media at public places is always a suspect tactic, but here it comes when there is no obstruction or threat to the safety of others and in the absence of physical interference with law enforcement. The custom or policy is to interfere with individuals photographing and recording at public places just because the police have decided it is best.⁴ That is an insufficient interest as well as an arbitrary practice.

⁴ Defendants' policy or custom is being enforced against journalists, including Plaintiff, who are not interfering in any way with law enforcement officials. Hussein Decl. at ¶ 7 ("I did not act unlawfully while I was recording the newsworthy events as they unfolded"); Carson Decl. at ¶¶ 6-8 ("I stood approximately 20 yards away from the protesters and 50 yards from the police and took photographs"); Yingst Decl. at ¶ 5-6, 10-11 ("While recording, I was standing on the sidewalk and the officers were standing on the street"); Files Decl. at ¶ 7 ("Despite standing ... in an area I understood to be specifically

“[T]he First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*.” *United States v. Stevens*, 559 U.S. 460, 480 (2010).

Even assuming, *arguendo*, the policy or custom is content neutral and serves a significant government interest, it nevertheless “is not narrowly tailored” and “burdens substantially more speech than necessary to achieve the state’s asserted interests.” *McCullen*, 134 S. Ct. at 2537.

This case involves police interference with expressive activity at public places.⁵ When First Amendment activities occur in traditional public fora like streets and sidewalks, the government has the highest burden to justify limitations on speech, *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983), and “the right of the state to limit the exercise of First Amendment activity is ‘sharply circumscribed.’” *Glik*, 655 F.3d at 84 (quoting *Perry Educ. Ass’n*, 460 U.S. at 45). Undoubtedly, many police officers appear not to care for the scrutiny of the camera while in Ferguson. Nevertheless, the custom or policy at issue is not one that restricts only press activity that somehow physically interferes with police activity; it is one that arbitrarily restricts press activity that in public areas that does not interfere with any police activities.

designated for media, we were pushed down by State Patrol Officers”). Osterreicher Decl. at ¶ 27 (“Rick Eckert specifically asked me if I would convey to the media the importance of their abiding by orders to remain in the ‘media area’”). These journalists have not spoken to law enforcement officials unless they are interviewing them, at a press conference, or are being threatened by the police, in which case they are forced to yell “PRESS” or “MEDIA” in order to halt officers’ advances. Carson Decl. at ¶ 7 (“After being told to leave, I again told the officers that I was a photographer from the St. Louis Post-Dispatch and that I was only there to photograph”); Yingst Decl. at ¶ 7 (“I did not speak to officers while I was recording them”); Hussein Decl. at ¶ 7 (“Unless I was interviewing an officer or asking questions during a press conference, I did not speak to officers while I was recording them and my only interactions with officers was to inform them that I was a member of the press and to inquire as to why I was being ordered not to record their actions”).

⁵ See Yingst Decl. at ¶ 11 (“I was positioned on the curb of the street”); Loeb Decl. at 5 (“I spent the evening ... observing both protesters and the police on West Florissant Avenue.”); Carson Decl. at ¶ 7 (“I observed and photographed a stand-off ... at the intersection of Lang and West Florissant”); Campbell Decl. at ¶ 6 (“I attempted to walk down the sidewalk”); Flores Decl. at ¶ (“I encountered police officers at the intersection of Canfield and Florissant”).

4. The policy or custom of interfering with individuals who are lawfully photographing or recording at public places is vague and arbitrarily enforced.

Defendants’ policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement violates the Due Process Clause.

“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). A law is unconstitutionally vague where it “does not provide people with fair notice of when their actions are likely to become unlawful,” *Stahl v. City of St. Louis, Mo.*, 687 F.3d 1038, 1041 (8th Cir. 2012), and when it “necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat.” *See Kolender v. Lawson*, 461 U.S. 352, 360 (1983) (brackets and quotation marks omitted).

Because Defendants’ policy or custom of interfering with individuals who are photographing or recording at public places but who are not obstructing or threatening the safety of others or physically interfering with law enforcement directly implicates the First Amendment, the custom or policy must have a “greater degree of specificity” than normally required. *Smith v. Goguen*, 415 U.S. 566, 573 (1974) (“Where a statute’s literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the [void-for-vagueness] doctrine demands a greater degree of specificity than in other contexts.”); *see also Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 872 (1997) (imposing higher standards for vagueness on criminal laws). Here, the policy or custom has *ad hoc*, unascertainable parameters. The public provides insufficient, if any, notice of what is permissible—what is or is not allowed is not based on any written law or policy and is often entirely dependent upon the decisions of each individual officer. Take, for example, the

requirement that members of the media remain in designated areas. There is no law that authorizes the police to impose such a restriction, but it is nevertheless imposed and those who disobey such an order and they are then subject to arrest.

In addition to the rules being unclear, they are inconsistently applied. Hussein Decl. at ¶ 18 (noting that the “practice of ordering members of the media and public to stop recording and documenting their actions has been inconsistent”); Carson Decl. at ¶ 7 (noting that one night he was photographing the protests and even exchanging pleasantries with police officers and then, less than an hour later, he was told that he would have to cease photographing and go home or else he would be arrested); Flores Decl. at ¶¶ 6-7 (noting that on her first day in Ferguson she was not “threatened with arrest for attending the rally on West Florissant Avenue, but one day later, she was threatened with arrest for filming). Enforcement is also arbitrary. Flores Decl. at ¶ 10 (“Other photographers were there documenting the scene and I asked the officer ‘why they can be here and [I] can’t?’ The officer responded that I would have to keep moving and ... they would put me under arrest if I didn’t leave the area.”).

The arbitrary nature of the restrictions is especially problematic where First Amendment freedoms are involved. *See Stahl*, 687 F.3d at 1041-42. As the Supreme Court has observed, “[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.” *NAACP v. Button*, 371 U.S. 415, 433 (1963). Thus, “[w]hen speech is involved, rigorous adherence to [due process] requirements is necessary to ensure that ambiguity does not chill protected speech.” *F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). That has been the effect of the challenged custom or policy. Citizens and journalists, including Plaintiff, have been deterred from returning to the protest area, as well as recording and photographing while there, for fear of arbitrary arrest. Files Decl. at ¶ 9

(“I left Ferguson the next day because my life had been threatened by police officers and I feared I would be injured, killed, or arrested by police officers if I remained”); Flores Decl. at ¶ 10 (“Since I did not want to be arrested, I left Ferguson and did not return that evening”); Carson Decl. at ¶¶ 7, 8. Loeb Decl. at ¶ 8; Hussein Decl. at ¶ 16. Even if the state were to assert an interest in safety and public order, the state’s interest in “curbing criminal activity ... cannot justify legislation that would otherwise fail to meet constitutional standards for definiteness and clarity.” *Kolender v. Lawson*, 461 U.S. 352, 361 (1983). Defendants’ policy was formulated by the police and allows law enforcement officials to arbitrarily enforce it, thereby “impermissibly delegat[ing] basic policy matters to policemen” in violation of the due process clause. *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972).

C. Remaining *Dataphase* factors weigh in favor of a preliminary injunction.

Although for violations of First Amendment rights a showing that the plaintiff is likely to prevail is sufficient for the issuance of a preliminary injunction, *Swanson*, 692 F.3d at 870, in this case, the other *Dataphase* factors also weigh heavily in favor of a preliminary injunction.

Permitting continued enforcement of the policy or custom will cause irreparable harm to Plaintiff. It is settled law that a “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality).

And, any injury to Defendants from not being able to enforce a likely unconstitutional policy or custom is minimal and cannot outweigh the substantial harm incurred by Plaintiff. “The balance of equities ... generally favors the constitutionally-protected freedom of expression.” *Nixon*, 545 F.3d at 690.

Finally, “[i]t is always in the public interest to protect constitutional rights.” *Id.* at 689; see *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996,

1004 (8th Cir. 2012) (noting that a likely First Amendment violation favors the issuance of an injunction); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999) (finding that the “public interest favors protecting core First Amendment freedoms”). The public interest is served by allowing access to information about what is occurring on the streets and sidewalks of Ferguson. A policy or custom aimed at limiting photographing and videotaping in public areas limits the public’s access to important information about matters of public concern. Video and photographs of spontaneous events have historically provided “uniquely valuable” information. *Whiteland Woods, L.P. v. Twp. of W. Whiteland*, 193 F.3d 177, 183 (3d Cir. 1999). If Defendants’ policy or custom had been in place in Selma, Alabama in 1965, for example, the world would never have seen film footage from the Bloody Sunday attack that “touched a nerve deeper than anything that had come before” and the broad dissemination of which was “a turning point in the civil rights movement.” *Demarest v. Athol/Orange Cmty. Television, Inc.*, 188 F. Supp. 2d 82, 97-98 (D. Mass. 2002) (citing John Lewis & Michael D’Orso, *Walking With the Wind: A Memoir of the Movement*, 344 (1998)). This is an important moment for Ferguson— and our Nation—allowing documentation of what occurs is in the public interest.

IV. CONCLUSION

For the forgoing reasons, this Court should enter a preliminary injunction.

Respectfully submitted,

/s/ Anthony E. Rothert

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy was made available electronically to all electronic filing participants.

/s/ Anthony E. Rothert

**IN THE UNITED STATES DISTRICT COURT
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DECLARATION OF MUSTAFA HUSSEIN

I, Mustafa Hussein, declare as follows:

1. I am the plaintiff in the above-entitled action. I am over the age of 18. I offer this declaration in support of my motion for a preliminary injunction. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am the Founder of Argus Media Group, LLC. Argus Media Group is a multimedia publisher located in Saint Louis, Missouri. Argus Media Group, LLC is also the parent company for KARG Argus Radio. I am responsible for not only the video and news content on our website, I also do the editing, web development, and administrative tasks that are needed to make Argus Media Group, LLC operate.

3. After the shooting and death of Michael Brown on August 9, 2014, large numbers of demonstrators, protestors, observers, and members of the media took to the public streets and sidewalks of Ferguson, Missouri. Many came to protest, others to observe and document the events as they unfolded.

4. I first went to Ferguson on Wednesday, August 13, 2014, to observe and record the protests so that I could share what I documented with the world. I observed and recorded the events that were unfolding from public areas, including streets, sidewalks and locations of public protests, throughout Ferguson and the surrounding municipalities.

5. In addition to observing the events as they unfolded, I recorded them and live-streamed what I was seeing in order to share it with the public in real time. A recording that I made on August 13, 2014, is available at:

http://www.slate.com/blogs/the_slatest/2014/08/13/scenes_from_ferguson_missouri_on_Wednesday_might.html. The recording originally appeared and remains on Livestream at:

<http://new.livestream.com/accounts/9035483/events/3271930/videos/59166924>. The August 13, 2014 recording on Livestream has also been previously submitted to this Court in CD form.

6. As I was making the recording on August 13, 2014, I was ordered, by a command from a loud speaker, to stop recording law enforcement officers acting in their official capacities. The officers who ordered all those recording their actions to stop were heavily armed. I felt threatened, intimidated, and discouraged from recording the police officers. There were others around me who were also recording the actions of law enforcement officers and everyone was ordered to stop.

7. I was a safe distance from officers while I was recording. While recording, I was standing in a public area and I was recording officers performing their official duties. Unless I was interviewing an officer or asking questions during a press conference, I did not speak to officers while I was recording them and my only interactions with officers was to inform them that I was a member of the press and to inquire as to why I was being ordered not to record their

actions. I did not act unlawfully while I was recording the newsworthy events as they unfolded in Ferguson, Saint Louis, and surrounding municipalities.

8. After ordering me, and others, to stop recording, the officers did not offer a less-intrusive location from which I could continue to observe and video record the police activity. I was simply ordered to stop recording the officers.

9. Although I was ordered to stop recording by law enforcement officers on multiple occasions, I continued to record because I believed, and still believe, that I have a First Amendment right as a citizen and as a journalist to record the actions of public officials, including law enforcement officers, acting in their official capacities in public.

10. Because I continued to record the police after being ordered to stop I put myself at risk of being arrested or harmed by law enforcement. I feared arrest. I had observed officers arresting others for similar activities and I observed officers using force while carrying out those arrests.

11. I have also observed many incidents where members of the media and public, who were not engaged in any unlawful activity, being ordered by law enforcement to stop recording, being fired upon with teargas, having their recording equipment taken, and being arrested.

12. I continued my observations and documentation of the events in Ferguson after August 13, 2014. However, I did so at the risk of arrest or serious bodily injury because I was forced to choose between exercising my First Amendment rights or face arrest.

13. During the late hours of August 18, 2014, and early morning hours of August 19, 2014, I attempted to go to an area so that I could document what was occurring after I noticed several police officers heading in the same direction. Without any explanation, I was told by the

police that I was not allowed to go into the area to observe their actions toward the protestors there. Because I feared being arrested, I left the area and was therefore unable to record the events as they unfolded. At no time did I interfere with the police activity; I remained a safe distance from them; and I did not violate any laws while attempting to record their actions.

14. I have returned to Ferguson and the surrounding municipalities nearly every day between August 13, 2014, and today's date. I plan to return to Ferguson and the surrounding municipalities in the future in order to observe, record, and report on the events as they continue to unfold.

15. On each occasion that I have visited Ferguson and the surrounding municipalities, I have not committed or encouraged others to commit any acts of violence, as Argus Media Group, LLC, and its members conduct ourselves as professional journalists at all times, nor do I intend to do so in the future. My overall purpose in going to Ferguson and the surrounding municipalities has been, and continues to be, to observe and record the events and to share what I observe and document with the world through our news websites www.argusnewsnow.com and www.argusradio.com.

16. I have continuously felt threatened with arrest or serious bodily injury at the hands of the police while I've been in Ferguson. This fear is based on my experience and observations of how police have treated myself and others, individuals who have lawfully been recording police actions. Despite this fear, I recorded and live-streamed what I was observing in Ferguson. All of the recordings that I live-streamed can be found at:
<http://new.livestream.com/accounts/9035483/events/3271930/videos/64205421>.

17. I have observed the police in Ferguson continue the practice of ordering members of the media and public to stop recording and I have also observed the police using force against

members of the media and public thereby causing them to stop recording and taking photographs. I have not observed any member of the media acting unlawfully at the times when I observed them being arrested and forced to stop recording.

18. The police practice of ordering members of the media and public to stop recording and documenting their actions has been inconsistent. Because of the inconsistencies in enforcement, it is impossible to know when I or others will be ordered to stop recording or threatened with arrest while we are recording and documenting police activities without interfering with their actions.

19. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 13th day of November, 2014.

By: _____

Mustafa Hussein

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF DAVID CARSON

I, David Carson, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am a staff photographer for the St. Louis Post Dispatch. I have been a staff photographer for the St. Louis Post Dispatch for 14 years. I have been named the National Press Photographers Association Region 7 Photographer of the Year three times.

3. After the shooting and death of Michael Brown on August 9, 2014, large numbers of demonstrators, protesters, observers, and members of the media took to the public streets and sidewalks of Ferguson, Missouri. Many came to protest, others to observe and document the events as they unfolded.

4. I first went to Ferguson on Monday, August 09, 2014, to observe and record the protests so that I could share what I documented with the world. I observed and recorded the events that were unfolding from public areas, including streets, sidewalks and locations of public protests, throughout the city.

5. In addition to observing the events as they unfolded, I photographed them for publication in the St. Louis Post Dispatch. My purpose in photographing the events was to document the events in Ferguson, gather images of the events, and share my photographs with the public.

6. On August 10, 2014 I was photographing the police clear protesters off of West Florissant Avenue near the QuikTrip burning. I was not interfering with police or their actions. While I was working I did have several positive interactions and conversations with police officers from local departments and St. Louis County police. I was wearing appropriate safety gear like a bullet proof vest, ballistic helmet, and I had a gas mask on as well. After a while a St. Louis County Police Lt. asked me who I was and what I was doing there. I identified myself as a St. Louis Post-Dispatch photographer and showed him my press credential. He told me I had to leave the scene for my safety. I told him I appreciated his concern for my safety but that I wanted to stay. I pointed out to the Lt. that from a safety perspective, with my ballistic helmet and gas mask, I was actually better prepared than a majority of the officers on scene. He then ordered another officer to walk me out of the scene. I was walked from the QuikTrip up to the area near the McDonalds on West Florissant and then was taken by police car to the Jennings Police department where police left me and another Post-Dispatch photographer picked me up and took me back to St. Louis Post-Dispatch headquarters.

7. On August 11, 2014, I observed and photographed a stand-off between the Missouri State Police tactical team and protesters at the intersection of Lange and West Florissant. During this stand-off, police officers fired tear-gas at protesters and protesters and police took turns verbally telling each other to "go home." As this was happening, I stood approximately 20 yards away from the protesters and 50 yards from the police and took

photographs. Within thirty minutes the situation had calmed down and a face to face verbal discussion between police officers and protesters took place. Some of the protesters asked police to let them pass the police line so they could get home. Police were listening to the protesters requests. At this time, I approached a State police tactical team sergeant, introduced myself as a photographer from the St. Louis Post-Dispatch, showed him my press credentials, and told him that I would be standing off to the side photographing the scene. I then went off to the side, away from both the protesters and police, to photograph the scene. Approximately thirty minutes after my conversation with the member of the State police tactical team, officers told everyone in the area to disperse and go home. They specifically shined a light on me and told me to go home or I would be arrested. After being told to leave, I again told the officers that I was a photographer from the St. Louis Post-Dispatch and that I was only there to photograph. I also showed them my media credentials. Officers again told me to leave or else I would be arrested. I did not want to be arrested, as my editor had told me not to get arrested, so I left the scene and was prevented from continuing to document the stand off between police and protesters at that scene.

8. While photographing, I never engaged in any unlawful activity. I never came within 25 yards of the police when they were interacting with the protesters and used a telephoto lens to document the scene from a distance. I felt afraid that I would be arrested if I kept photographing the scene and did not comply with their order to leave.

9. On August 17, 2014, I returned to Ferguson to photograph the public demonstrations. Upon arriving in Ferguson, I was required to register as a member of the media. When I registered, I was told that after curfew I could only photograph from a designated press area and if I were to leave the press area to photograph I would be arrested. The press area was set up on the parking lot of the Ferguson Market. While I was in the press area, I saw multiple

other members of the media threatened with arrest for leaving the media area to photograph law enforcement officials and the scene on West Florissant. My editor informed me that I should actively try to not get arrested. I feared that if I left the media area to photograph law enforcement officials or the demonstrations in Ferguson I would be arrested. Therefore, I stayed within the boundaries of the media area and was effectively prevented from properly documenting the scene.

10. I have also observed many incidents where members of the media and public, who were not engaged in any unlawful activity, were ordered by law enforcement to stop recording the scene and keep moving. I also observed incident where members of the media and public were fired upon with teargas and arrested while recording.

11. I have returned to Ferguson numerous times between August 17, 2014, and today's date. I anticipate returning to Ferguson in the future in order to observe, photograph, and report on the events as they continue to unfold.

12. On each occasion that I have visited Ferguson, I have not committed or encouraged others to commit any acts of violence, nor do I intend to do so in the future. My overall objective in going to Ferguson has been, and continues to be, to observe and record the events and to share what I observe and document with the world.

13. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 6th day of November, 2014.

By: 

David Carson

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF REENA FLORES

I, Reena Flores, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am a video producer for the National Journal. The National Journal is a United States magazine that was first published in 1969 and is currently a multimedia company. Previously, I have worked for CNN and NPR's San Francisco affiliate KQED Radio News.

3. After the shooting and death of Michael Brown on August 9, 2014, large numbers of demonstrators, protesters, observers, and members of the media took to the public streets and sidewalks of Ferguson, Missouri. Many came to protest, others to observe and document the events as they unfolded.

4. I first went to Ferguson on Monday, August 12, 2014, to observe and record the protests so that I could share what I documented with the world. I attempted to observe and record the events that were unfolding from public areas, including streets, sidewalks and locations of public protests, throughout the city.

5. In addition to observing the events as they unfolded, I recorded them for publication by the National Journal. My purpose in recording the events was to document the events in Ferguson, gather images of the events, and share my recordings with the public.

6. On August 12, 2014, I attended the vigil for Michael Brown held in St. Marks Family Church and the following march and rally on West Florissant. I recorded the demonstrations and rally for the National Journal. I encountered law enforcement officers throughout the evening on August 12, none of whom told me I could not record or threatened me with arrest for recording the scene. I was not prevented from entering the West Florissant area by the police on August 12 or threatened with arrest for attending the rally on West Florissant. The rally occurred on the streets and sidewalks of West Florissant between Chambers and Lucas-Hunt Road.

7. On August 13, 2014, I attempted to observe the protests in Ferguson, in order to record them for the National Journal. I arrived in Ferguson around 8pm with my colleague Alexia Fernandez Campbell. When I arrived, I attempted to reach the West Florissant protest area so that I could record the demonstrations there. I attempted to reach the protests by car, but was turned away multiple times by law enforcement officials and tear gas. My colleague, Alexia Fernandez Campbell, and I went to the staging area at the corner of Lucas-Hunt Road and West Florissant as we had been denied entry to the West Florissant protest area at the other entry points that we knew of. At the staging area, we encountered police officers who informed us that we were not allowed to walk down West Florissant to the site of the demonstrations. On another occasion, I attempted to reach the protests through one of the neighborhoods off of West Florissant, only to be turned away by clouds of tear gas.

8. After attempting to reach the protest area on West Florissant by car and being denied, I left my vehicle and attempted to reach the protest area on foot. Specifically, I encountered police officers at the intersection of Canfield and Florissant who told me, after I had identified myself as a video producer for the National Journal, I could not pass them and enter the protest zone. I asked the officers “what would happen if we walked down the street?” The officer replied, “You’re not going to walk down the street. If you insist on going down here, and you want to disobey the orders of the police that have been given to you, thoroughly and fairly, you’ll most likely be placed under arrest.” I proceeded to ask the officer “on what charges” I would be arrested, to which he responded that I would be arrested for “disobeying the directions of a police officer,” a “county ordinance.”

9. Although I was ordered to not walk to the protest area by law enforcement officers, and threatened with arrest if I walked to the protest area, I walked around the police and through the neighborhoods in Ferguson to reach the protest area because I believed, and still believe, that I have a First Amendment right to record the protests in Ferguson.

10. By the time I reached the protest area on August 13, 2014, it was approximately midnight. At this point in the night, almost all of the demonstrators had been dispersed by the police. The police, however, were still arresting a few individual protesters. I began recording the arrest of one of the protesters. While I was recording the arrest of the protester, I was standing on the sidewalk. The arrest was taking place across the street from where I was standing when I was recording, approximately 15 feet away. As I was recording the protester’s arrest, I was approached by a member of the SWAT team who told me that I would have to leave or I would be arrested. I identified myself as a member of the media, but she insisted that I would have to leave or I would be arrested. Other photographers were there documenting the scene and I asked

the officer “why they can be here and [I] can’t?” The officer simply responded that I would have to keep moving and another officer came over and told me that they would put me under arrest if I didn’t leave the area. Since I did not want to be arrested, I left Ferguson and did not return that evening.

11. Law enforcement officers prevented me from viewing the protests on West Florissant for approximately four hours on the night of August 13, 2014. By the time I was able to reach the protest area, the protesters had been dispersed. I feel as though the police in Ferguson prevented me from doing my job as a reporter.

12. At no point during the above described night did I intermix myself amongst the protesters. While reporting, I never engaged in any unlawful activity. I never came within 15 feet of the police while they were interacting with or arresting protesters.

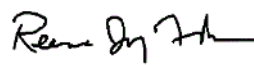
13. While I was in Ferguson, the interactions I had with law enforcement officials were threatening and intimidating.

14. On each occasion that I have visited Ferguson, I have not committed or encouraged others to commit any acts of violence, nor do I intend to do so in the future. My overall objective in going to Ferguson has been to observe and record the events and to share what I observe and document with the world.

15. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 14 day of November, 2014.

By: _____
Reena Fl

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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
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Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF ALEXIA FERNANDEZ CAMPBELL

I, Alexia Fernandez Campbell, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a staff correspondent for the National Journal. The National Journal is a United States magazine that was first published in 1969. Previously, I have worked as a reporter for the South Florida Sun-Sentinel. My work has appeared in the Washington Post, the Los Angeles Times, and the Chicago Tribune. I have worked as a news correspondent for over 10 years.
3. After the shooting and death of Michael Brown on August 9, 2014, large numbers of demonstrators, protesters, observers, and members of the media took to the public streets and sidewalks of Ferguson, Missouri. Many came to protest, others to observe and document the events as they unfolded.
4. I first went to Ferguson on Monday, August 12, 2014, to observe and record the protests so that I could share what I documented with the world. I observed and recorded the

events that were unfolding from public areas, including streets, sidewalks and locations of public protests, throughout the city.

5. In addition to observing the events as they unfolded, I recorded them for publication by the National Journal. My purpose in recording the events was to document the events in Ferguson, gather images of the events, and share my recordings with the public.

6. On August 13, 2014, I attempted to observe the protests in Ferguson, in order to report on them for the National Journal. I arrived in Ferguson around 8pm. When I arrived, I attempted to walk down the sidewalk to the area where protests were happening on West Florissant. However, I was blocked from getting to the protest area by the police. Multiple police officers informed me that I was not allowed to go closer to the protests and that it wasn't safe in the protest area. When I was told that I could not get closer to the protests, I was so far away from the protests that I could not hear or see the protests. I identified myself as a member of the press and was still not allowed to get to the protest area on West Florissant.

7. I then went to another section of West Florissant and attempted to walk to the protest area. Once again, police were blocking access to the street and I was again told that I could not walk down the sidewalk to the protest area. I asked the officer who prevented me from walking down the sidewalk what would happen if I walked down the street. The officer responded, "You're not going to walk down the street. If you insist on going down here, and you want to disobey the orders of the police that have been given to you, thoroughly and fairly, you'll most likely be placed under arrest." I asked him on what charges he would arrest me and he responded, "disobeying the directions of a police officer." Overall, I was prevented from going to the protest area three times that evening.

8. Although I was ordered to not walk to the protest area by law enforcement officers, and threatened with arrest if I walked to the protest area, I walked around the police and through the neighborhoods in Ferguson to reach the protest area because I believed, and still believe, that I have a First Amendment right to report on the protests in Ferguson.

9. By the time I reached the protest area on August 13, 2014, it was approximately 11:30pm. At this point in the night, almost all of the demonstrators had been dispersed by the police. The police, however, were still arresting a few individual protesters. My colleague, Reena Flores, and I began recording the arrest of one of the protesters. While we were recording the arrest of the protester, we were standing on the sidewalk. The arrest was taking place across the street from where we were standing when we were recording, approximately 15 feet away. As we were recording the protester's arrest, we were approached by a police officers wearing riot gear who told us that we would have to leave or we would be arrested. We identified ourselves as members of the media, but he insisted that we would have to leave or we would be arrested. Since we did not want to be arrested, we left Ferguson and did not return that evening.

10. Law enforcement officers prevented me from viewing the protests on West Florissant for approximately three and a half hours on the night of August 13, 2014. By the time I was able to reach the protest area, the protesters had been dispersed. I feel as though the police in Ferguson prevented me from doing my job as a reporter.

11. At no point during the above described night did I intermix myself amongst the protesters. While reporting, I never engaged in any unlawful activity. I never came within 15 feet of the police while they were interacting with or arresting protesters.

12. While I was in Ferguson, the interactions I had with law enforcement officials were threatening and intimidating. I had never previously witnessed police treat journalists in the

above-described manner. I had worked as a crime reporter in South Florida for four years and my time in Ferguson was the first time I had ever felt afraid of a police officer. I felt far more afraid of the police officers in Ferguson than I did any of the protesters.

13. I have also observed many incidents where members of the media and public, who were not engaged in any unlawful activity, were ordered by law enforcement to stop recording.

14. On each occasion that I have visited Ferguson, I have not committed or encouraged others to commit any acts of violence, nor do I intend to do so in the future. My overall objection in going to Ferguson has been to observe and record the events and to share what I observe and document with the world.

15. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 13 day of November, 2014.

By: Alexia Fernandez Campbell
Alexia Fernandez Campbell

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF MICKEY H. OSTERREICHER

I, Mickey H. Osterreicher, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am the general counsel for the National Press Photographers Association (NPPA), a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution.

3. NPPA's approximately 7,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry.

4. Since its founding in 1946, the NPPA has vigorously promoted and defended the rights of photographers and journalists, including freedom of the press in all its forms, especially as it relates to visual journalism.

5. I have also been a photojournalist in both print and broadcast for more than 40 years, having covered many news stories including protests from those against the Vietnam War to Occupy Wall Street.

6. My work has appeared in such publications as the New York Times, Time, Newsweek and USA Today as well as on ABC World News Tonight, Nightline, Good Morning America, NBC Nightly News and ESPN.

7. I am also a uniformed reserve deputy sheriff with the Erie County Sheriff's Office, having served in that capacity since 1976 and am certified as having been trained under the National Incident Management System (NIMS).

8. I am a member of the International Law Enforcement Educators and Trainers Association (ILEETA), as well as being a member of the *Public Recording of Police* Advisory Committee of the International Association of Chiefs of Police (IACP).

9. I have been an adjunct lecturer in Photojournalism at SUNY at Buffalo and an adjunct law professor in media and the law at the University at Buffalo Law School.

10. I have provided training regarding First and Fourth Amendment issues to law enforcement agencies and associations throughout the United States and have moderated and participated on panels nationwide, speaking about the right to photograph and record in public – most recently in Dallas, Texas for over 130 law enforcement officers; Purdue University in Indiana; the California Western School of Law in San Diego; in Los Angeles with the LAPD and LA County Sheriff's Department; and in Chicago at the ILEETA Conference.

11. I have also presented workshops and provided model guidelines regarding the right to photograph and record in public at the Legal Officers Section of the IACP, the National Sheriffs Association, the Georgia Chiefs of Police, the New York State Sheriffs Association, the International Bar Association, the Broward County ACLU, the Washington, DC Metro Police Department and the National Press Club in Washington.

12. I have also written about and been quoted extensively on this topic in such publications as the National Sheriffs Association and the International Business Times.

13. In 2012 I provided training regarding First and Fourth Amendment issues to the Chicago, Tampa and Charlotte-Mecklenburg Police Departments in preparations for the NATO Summit and the Republican and Democratic National Conventions, respectively.

14. I then returned to each of those cities during the event to monitor and work with those agencies to avoid journalists being interfered with and or arrested for doing nothing more than their jobs.

15. On Thursday, August 14, 2014 I sent a letter via facsimile to Ferguson Police Department Chief Thomas Jackson expressing the NPPA's strong objections to the actions of Ferguson police officers for the unwarranted arrest and detention of journalists Ryan Reilly and Wesley Lowery who had been reporting on protests taking place in and around Ferguson, Missouri, in the aftermath of the shooting death of Michael Brown on August 9, 2014.

16. I also noted his department's complete lack of understanding and respect for the First Amendment as it applies to newsgathering, stating that "In any free country the balance between providing police protection with integrity and over-zealous enforcement is delicate. It is one thing for officers to act when there is reasonable suspicion; it is quite another to abuse that discretion by chilling free speech and creating a climate of fear and distrust under the pretext of safety and security."

17. I also offered NPPA's assistance in working with his department "to help develop reasonable and workable policies, practices and especially training in order to alleviate these situations and foster better relations between the police, the public and the press."

18. On August 15, 2014, I joined in a letter by the Reporters Committee for Freedom of the Press on behalf of NPPA along with more than 40 other media organizations expressing deep concerns over the unwarranted detention of those two journalists.

19. That letter was addressed to Chief Thomas Jackson, of the Ferguson Police Department; Chief Jon Belmar of the St. Louis County Police Department and Colonel Ronald K. Replogle of the Missouri State Highway Patrol.

20. On Monday, August 18, 2014, I received a telephone call from another photographer, Joshua Lott, informing me that Scott Olson, an NPPA member working as a photographer for Getty Images, had been arrested while covering those protests.

21. I contacted attorneys for Getty Images to inform them of this fact and see if there was anything else that I could do.

22. I also received numerous calls from other NPPA members who were covering the protests telling me that they had been interfered with by authorities and threatened with arrest while lawfully photographing and recording these events.

23. The NPPA president then directed me to fly to Ferguson, Missouri to see if I might be able to help avoid these incidents as I had done in Chicago, Tampa and Charlotte in 2012.

24. I arrived in Ferguson, Missouri on the morning of August 19, 2014 and went to the police command center where I introduced myself to the National Guard units guarding the perimeter and asked to speak to someone in charge of the operation.

25. I was led into the command compound and met briefly with Al Nothum of the Missouri Highway Patrol and Rick Eckert of the St. Louis Police Department.

26. I provided them with hard copies of my letter of August 14, 2014 to Chief Jackson and also asked them how I could be of service in de-escalating the tensions between the police and the press.

27. In response, Rick Eckert specifically asked me if I would convey to the media the importance of their abiding by orders to remain in the “media area.”

28. I did my best to explain that while we appreciated the police establishing a media area for the convenience of the press it was absurd to think that was the only area where the press could be. I went on to state that while the press may not have a greater right of access to cover these events than the public; that they had not less right either and that the press was allowed to cover matters of public interest from traditionally public forums such as a sidewalk or a park and did not have to remain inside of an area specifically designated for them.

29. From my perspective in dealing with law enforcement on many previous occasions, this explanation was met with surprise and disappointment by these police officials.

30. It was apparent to me that they lacked any understanding regarding the First Amendment rights of either the press or the public.

31. I spent my time in Ferguson speaking with NPPA members and other photographers about the situations they were encountering and providing my contact information in case any of them were interfered with or arrested.

32. I also spent much time on West Florissant during the protest marches observing the media and the police as well as the protestors.

33. On the evening of August 19, 2014 I was contacted by NPPA member Raffae Lazarian who was covering the Ferguson story.

34. Mr. Lazarian told me that in response to his asking the simple question – “which way do I need to go in order to get to the media area?” – an officer drew his weapon and pointed it at Mr. Lazarian in a threatening manner and then used it to gesture in the direction he wanted him to go.

35. On August 20, 2014 I sent a letter of protest via email along with a request for a formal investigation into that incident to Chief Thomas Jackson, of the Ferguson Police Department; Chief Jon Belmar of the St. Louis County Police Department and Colonel Ronald K. Replogle of the Missouri State Highway Patrol, with copies to the Hon. Eric Holder, Jr., United States Attorney General, the Hon. Jay Nixon, Missouri Governor and the Hon. James Knowles, City of Ferguson Mayor.

36. I also noted our objections to police officers ordering members of the media into a press area while the general public was free to walk the street and protest.

37. I also stated that “such actions must be addressed and corrected immediately before someone is seriously injured or worse.”

38. The letter also noted the “widespread uniformity by officers of obscuring their names and badge numbers and refusing to identify themselves when asked or responding with expletives.” Something which I had personally observed.

39. I concluded the letter by once again offering NPPA “assistance to help develop reasonable and workable policies, practices and especially training in order to alleviate these situations and foster better relations between the police, the public and the press.”

40. I departed Ferguson on August 21, 2014.

41. Not having received a response to either of my letters, on September 24, 2014, I sent an email to Sgt. Brian Schellman, Public Information Coordinator, Office of the Chief of

Police, St. Louis Police Department, to inquire about the unanswered letters. I also noted that despite the NPPA offer of assistance the media were reporting (<http://www.nydailynews.com/news/national/ferguson-police-pr-lesson-article-1.1947980>) that local police agencies in Ferguson were planning to offer a continuing education session called “Officer-involved shooting - You can win with the media.”

42. With training subtopics such as “Meet the 900-pound Gorilla” and “Feeding the Animals,” it left me wondering how authorities would believe that a workshop by a public relations firm could substitute for very specific legal training regarding journalists’ civil rights.

43. Sgt. Schellman responded on October 6, 2104, requesting that I send my emails with letters to St. Louis Police Deputy Chief Ken Cox and their Executive Director Bill Howe, which I did that same day but to this date have yet to receive an acknowledgement or reply from either of them.

44. On October 16, 2014 I received an email from Sergeant Colby Dolly, Chief’s Aide, Office of the Chief of Police, St. Louis County Police Department informing me that she had reviewed my letter to Chief Jon Belmar requesting a formal investigation into the exchange between photojournalist Raffae Lazarian and an unnamed officer.

45. She also acknowledged my offer to work with their department in developing policies and training to foster better relations with the media.

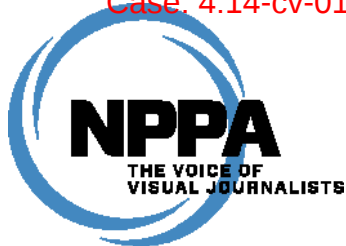
46. She then advised me that Mr. Lazarian would have to be the one to submit a complaint to their Bureau of Professional Standards, by either calling that office or filing an online complaint.

47. She requested that in order to better evaluate my offer of training, that I submit a formal proposal with a course outline to their continuing education coordinator.

48. On October 18, 2014 I forwarded Sgt. Dolly's email to Mr. Lazarian.
49. On October 19, 2014 I sent a formal training proposal via email to Ms. Becky Murphy, Continuing Education Coordinator, St. Louis County & Municipal Police Academy.
50. On October 20, 2014 I received an email from Ms. Murphy thanking me for my email and stating she would "be in touch."
51. I sent follow-up emails to Sgt. Dolly on 10/24/14 and 11/3/14 and have yet to receive a reply.
52. I sent a follow-up email to Ms. Murphy on 11/6/14 and have yet to receive a reply.
53. Attached are true and correct copies of the above-referenced letters.
54. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 13th day of November, 2014.

By: *Mickey H. Osterreicher*
Mickey H. Osterreicher, Esq.



National Press Photographers Association

1100 M&T Center • 3 Fountain Plaza • Buffalo, NY 14203
Phone: 716.566.1484 • Fax: 716.608.1509
lawyer@nppa.org

VIA FACSIMILE 314-524-5290

August 14, 2014

Chief Thomas Jackson
Ferguson Police Department
222 S. Florissant Road
Ferguson, MO 63135

Re: Police-Press Relations

Dear Chief Jackson:

As general counsel for the National Press Photographers Association (NPPA) I write to express our strong objections to the actions of your police officers for the unwarranted arrest and detention of Ryan Reilly and Wesley Lowery, as well as your department's complete lack of understanding and respect for the First Amendment as it applies to newsgathering.

In any free country the balance between providing police protection with integrity and over-zealous enforcement is delicate. It is one thing for officers to act when there is reasonable suspicion; it is quite another to abuse that discretion by chilling free speech and creating a climate of fear and distrust under the pretext of safety and security.

In a time of technology and terrorism, citizens and visual journalists throughout the world have risked and in some cases given their lives to provide visual proof of governmental activities. Sadly, what is viewed as heroic abroad is often considered as suspect at home. It is therefore incumbent upon you as the Chief of the Ferguson Police Department to lead by example regarding the rights of the press and the public and I encourage you to affirmatively acknowledge those rights immediately.

While it is understandable that your officers may have a heightened sense of awareness during these encounters that is still no excuse for them to not recognize a person's (citizen or journalist) right to photograph or record an event occurring in a public place. Law enforcement agencies are established to uphold and enforce existing laws not to create pretexts in order to abridge the free speech/press rights of others.

As we have done throughout the country, NPPA offers its assistance in working with your department to help develop reasonable and workable policies, practices and especially training in order to alleviate these situations and foster better relations between the police, the public and the press.

I am attaching an article I wrote for the National Sheriff's Association on this issue.

Thank you for your attention in this matter. I look forward to your response.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

EXHIBIT E

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1101 Wilson Blvd., Suite 1100
Arlington, Va. 22209-2211
(703) 807-2100
www.rcfp.org

Bruce D. Brown
Executive Director
bbrown@rcfp.org
(703) 807-2101

STEERING COMMITTEE

SCOTT APPLEWHITE
The Associated Press

WOLF BLITZER
CNN

DAVID BOARDMAN
Temple University

CHIP BOK
Creators Syndicate

JAN CRAWFORD
CBS News

MICHAEL DUFFY
Time

RICHARD S. DUNHAM
Tsinghua University, Beijing

ASHLEA EBELING
Forbes Magazine

SUSAN GOLDBERG
National Geographic

FRED GRAHAM
Founding Member

JOHN C. HENRY
Freelance

NAT HENTOFF
United Media Newspaper Syndicate

JEFF LEEN
The Washington Post

DAHLIA LITHWICK
Slate

TONY MAURO
National Law Journal

JANE MAYER
The New Yorker

DAVID McCUMBER
Hearst Newspapers

JOHN McKINNON
The Wall Street Journal

DOYLE MCMANUS
Los Angeles Times

ANDREA MITCHELL
NBC News

MAGGIE MULVIHILL
Boston University

BILL NICHOLS
Politico

JEFFREY ROSEN
The New Republic

CAROL ROSENBERG
The Miami Herald

THOMAS C. RUBIN
Microsoft Corp.

ERIC SCHMITT
The New York Times

ALICIA SHEPARD
Freelance

MARGARET LOW SMITH
NPR

JENNIFER SONDAG
Bloomberg News

PAUL STEIGER
Pro Publica

PIERRE THOMAS
ABC News

SAUNDRA TORRY
USA Today

JUDY WOODRUFF
PBS/The NewsHour

*Affiliations appear only
for purposes of identification.*

August 15, 2014

Chief Thomas Jackson
Ferguson Police Department
222 S. Florissant Road
Ferguson, MO 63135

Chief Jon Belmar
St. Louis County Police Department
7900 Forsyth Boulevard
St. Louis, MO 63105

Colonel Ronald K. Replogle
Missouri State Highway Patrol
General Headquarters
1510 East Elm Street
Jefferson City, MO 65101

Re: Police detention of journalists in Ferguson, Missouri, and
public access to information

Dear Sirs,

As organizations that cover news and defend the rights of journalists to gather the news, we write to express our deep concern over the unwarranted detention of two journalists on Wednesday and with other reports of police intimidation and harassment of journalists in Ferguson. It is also extremely troubling that the police have not been more timely in releasing the records surrounding these incidents and the shooting of Michael Brown.

While we understand the responsibilities of your three law enforcement agencies differ substantially in these events, we write to all of you in the hope of assuring that these issues going forward are handled in a manner that protects the First Amendment interests of the press and the public in accurate news reports out of Ferguson.

First-hand accounts indicate that Wesley Lowery of *The Washington Post* and Ryan Reilly of *The Huffington Post* were doing nothing more than sitting in a McDonald's recharging their phones when they were questioned by police and detained. (Their respective news organizations are both signatories to this letter.) Their statements indicate they were physically mistreated, harassed, handcuffed, and denied answers to their repeated requests for information as to why they were taken into custody. In addition, Lowery was told to stop recording police in violation of his First Amendment rights.

EXHIBIT E

This type of behavior is anathema to the First Amendment and to journalists everywhere. It must not continue and answers as to why it was allowed to happen in the first place must be forthcoming.

As United States Attorney General Eric Holder, Jr. said in a statement yesterday, “Journalists must not be harassed or prevented from covering a story that needs to be told.” Not only are the police in Ferguson violating the rights of journalists, but they are actively suppressing the flow of information to which the public is entitled – an issue of grave importance to many Americans across the country.

Officers on the ground must understand that gathering news and recording police activities are not crimes. The actions in Ferguson demonstrate a lack of training among local law enforcement in the protections required by the First Amendment as well as the absence of respect for the role of newsgatherers. We implore police leadership to rectify this failing to ensure that these incidents do not occur again.

As the United States Department of Justice wrote in 2012, “The right to record police officers while performing duties in a public place, as well as the right to be protected from the warrantless seizure and destruction of those recordings, are not only required by the Constitution. They are consistent with our fundamental notions of liberty, promote the accountability of our governmental officers, and instill public confidence in the police officers who serve us daily.” *See* Statement of Interest of the United States in *Sharp v. Baltimore City Police Dep’t*, Civil No. 1:11-cv-02888-BEL (Jan. 10, 2012), http://www.justice.gov/crt/about/spl/documents/Sharp_SOI_1-10-12.pdf.

This principle – that not just journalists, but members of the public generally – are free to observe and gather news about police actions has been repeatedly upheld in federal courts. The First Circuit ruled in *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011), that the public’s right to record police in the performance of their public duties is a “basic, vital, and well-established liberty safeguarded by the First Amendment.” The Seventh Circuit in *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012), likewise recognized the longstanding right of the public to record police activities.

Also of concern to media organizations is the lack of information available about the original shooting and the arrests of the journalists. Officials took nearly a week to release the name of the officer involved in the shooting, and Lowery wrote that when he asked to see an incident report on his own arrest, he was told there was not one and that one might be available in a week or two. This lack of access to basic information on a timely basis reasonably stokes suspicions in the public mind that the police have something to hide. Managing any public emergency requires openness and accountability, and withholding the officer’s name and the incident reports compromises the community’s trust in their police.

The undersigned media organizations call on the Missouri State Highway Patrol and the police departments of the City of Ferguson and St. Louis County at a minimum to ensure that:

- police officers do not intimidate, harass, or impede journalists covering the news;

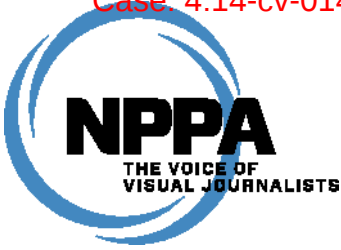
- state, county, and local officials are properly educated to understand the rights of journalists and the public to record police officers in the course of performing their duties;
- information about officers involved in future incidents, and about any investigations of these recent incidents, is promptly made available to the public; and,
- if other journalists are stopped or arrested – which is always an extraordinary step in any jurisdiction and must never be motivated by a desire to suppress news – all records of their arrests or detentions are promptly made public to evaluate the legitimacy of police actions.

Sincerely,

The Reporters Committee for Freedom of
the Press
ABC, Inc.
ALM Media, LLC
American Society of News Editors
The Associated Press
Association of Alternative Newsmedia
The Association of American Publishers,
Inc.
Bloomberg L.P.
Cable News Network, Inc.
CBS Broadcasting Inc.
Courthouse News Service
The Daily Beast Company LLC
The E.W. Scripps Company
First Amendment Coalition
First Look Media
Fox News Network LLC
Freedom of the Press Foundation
Hearst Corporation
The Huffington Post
Inter American Press Association
Investigative Reporting Workshop at
American University
Journal Communications, Inc.
The Kansas City Star
LIN Media

The McClatchy Company
Media Consortium
Media Law Resource Center
MediaNews Group, Inc., d/b/a Digital
First Media
National Geographic
The National Press Club
National Press Photographers Association
National Public Radio, Inc.
NBCUniversal Media, LLC
The New Yorker
Newspaper Association of America
The Newspaper Guild - CWA
North Jersey Media Group Inc.
Online News Association
Radio Television Digital News
Association
Reporters Without Borders
The Seattle Times Company
Society of Professional Journalists
Student Press Law Center
Time Inc.
Tribune Publishing Company
Tully Center for Free Speech
VICE Media
The Washington Post

cc: United States Attorney General Eric Holder, Jr.
Missouri Governor Jay Nixon
Ferguson Mayor James Knowles



National Press Photographers Association

1100 M&T Center • 3 Fountain Plaza • Buffalo, NY 14203
Phone: 716.566.1484 • Fax: 716.608.1509
lawyer@nppa.org

VIA FACSIMILE & EMAIL

August 20, 2014

Colonel Ronald K. Replogle
Missouri State Highway Patrol
General Headquarters
1510 East Elm Street
Jefferson City, MO 65101

Chief Thomas Jackson
Ferguson Police Department
222 S. Florissant Road
Ferguson, MO 63135

Chief Jon Belmar
St. Louis County Police Department
7900 Forsyth Boulevard
St. Louis, MO 63105

Re: Formal Complaint

Dear Colonel Replogle, Chief Jackson and Chief Belmar:

As general counsel for the National Press Photographers Association (NPPA) I write to request a formal investigation into the unlawful and unprofessional activities of one of your officers who threatened one of our members last night with his service weapon. This dangerous action was in response to photojournalist Raffae Lazarian, asking the simple question – “which way do I need to go in order to get to the media area?” In contravention of all known and accepted firearms policies the officer drew his weapon and pointed it at Mr. Lazarian in a threatening manner and then used it to gesture in the direction he wanted him to go.

With the Reporters Committee for Freedom of the Press along with 47 other news organizations, the NPPA has previously objected to the manner in which the officers from various departments under your unified command have continued to violate First Amendment rights of the public and the press. Unfortunately you have failed to address those concerns and incidents such as these continue to occur, including one reported by the Media Relations Officer of the St. Louis County Police Department, involving a St. Ann Police Officer who pointed a semi-automatic assault rifle at a peaceful protestor after a verbal exchange.

The NPPA is also extremely troubled by these incidents perpetrated by those officers who believe they may order members of the press into a press area while the general public is free to walk the street and protest. As a matter of fact another one of our members, Scott Olson was arrested on August 18, 2014 while a few feet outside of the press area. I have been in Ferguson for the past few days and have observed some of this egregious behavior firsthand.

EXHIBIT E

Such actions must be addressed and corrected immediately before someone is seriously injured or worse. As we noted, in any free country the balance between providing police protection and over-zealous enforcement is delicate. It is one thing for officers to act when there is reasonable suspicion; it is quite another to abuse that discretion by chilling free speech and creating a climate of fear and distrust under the pretext of safety and security.

While it is understandable that your officers may have a heightened sense of awareness during these encounters that is still no excuse for them to act in this manner. What is also extremely troubling is that there is widespread uniformity by officers of obscuring their names and badge numbers and refusing to identify themselves when asked or responding with expletives.

As we have done throughout the country, NPPA offers its assistance in working with your department to help develop reasonable and workable policies, practices and especially training in order to alleviate these situations and foster better relations between the police, the public and the press.

Thank you for your attention in this matter. We look forward to a timely response and the commencement of an investigation.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

cc: Hon. Eric Holder, Jr., United States Attorney General
Hon. Jay Nixon, Missouri Governor
Hon. James Knowles, City of Ferguson Mayor

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF COULTER LOEB

I, Coulter Loeb, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am a journalism student at the University of Cincinnati and work as a photojournalist. I traveled to Ferguson, Missouri, after the fatal shooting of Michael Brown, as a photojournalist credentialed by the Cincinnati Herald in order to observe and document the ongoing protests in the area.
3. On August 14, 2014, before I traveled to Ferguson, the Missouri State Patrol had taken over control of security, although there were law enforcement officers from multiple jurisdictions patrolling the area under the direction of the State Patrol.
4. I traveled to the Ferguson area between August 18 and 21, 2014, and again for a short period of time in mid-October to document the "Ferguson October" movement.
5. While in Ferguson, I spent the evening of August 19th observing both protesters and the police on West Florissant Avenue. On this evening, I observed the police form a line and begin moving toward myself and the protesters in an effort completely clear the area. As I walked and took photographs, I remained at all times a few feet in front of the moving police

line. I was very careful not to interfere with what the police were doing and always stayed a few feet away from them as I took photographs.

6. Although I was always walking and never interfered with the police as they moved the line forward, the officer closest to me shoved me with his baton and ordered me to “keep moving.” At first, I did not react to this use of force and continued moving forward and taking photographs without interfering with the police, as I had been doing the entire time the line was moving in the direction of myself and the protesters. The same officer, however, shoved me at least two more times with his baton. I asked the officer not to assault me. The officer responded by asking me if I wanted to go to jail. I responded that I did not. I was then handcuffed and placed in the back of a police vehicle. A Canadian broadcast journalist was also arrested and sat alongside me in the police vehicle.


7. After my arrest, I was taken to the St. Louis County Jail where I was processed and held overnight. I was released the following morning, on August 20, 2014. To the best of my knowledge, no charges were filed against me. I was never served with charging documents at any time during the arrest or while I was held in jail.

8. Although I was never acting unlawfully, because I was shoved, arrested, and held overnight in jail, I was forced to stop taking photographs and documenting the protests. I left the area shortly after being released from jail and returned to Ohio. I feared I would be injured, killed, or arrested by police officers. Despite my experiences with police, and the fear of arrest or injury, I returned to the Ferguson area in mid-October to take photographs of the protests near the Ferguson Police Station during the “Ferguson October” movement. On this second visit, I did not return to the area around West Florissant Avenue where I was arrested in August.

9. The purpose of my visits to Ferguson was to observe and take photographs of the protests and other events as they unfolded. I did not act unlawfully and I did not encourage others to act unlawfully. While taking photographs, I never interfered with the actions of the police.

10. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 7 day of November, 2014.

By: 
Coulter Loeb

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF CALEB-MICHAEL FILES

I, Caleb-Michael Files, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am a freelance journalist and social media producer. I traveled to Ferguson, Missouri, after the fatal shooting of Michael Brown, to report on the aftermath of the shooting and to observe and document the ongoing protests in the area. During my time in Ferguson, I was recording the events for Youngist, a media group working to get stories out to the public that we believe are not disseminated by mainstream media.

3. I traveled to Ferguson on August 18, 2014, and stayed in the area for approximately three days.

4. On August 14, 2014, before I traveled to Ferguson, the Missouri State Patrol had taken over control of security, although there were law enforcement officers from multiple jurisdictions patrolling the area under the direction of the State Patrol.

5. On the nights of August 18 and 19, 2014, while I was observing and documenting protestors, I experienced, firsthand, police officers abusing their authority.

6. On August 18, 2014, while walking alongside a group of protestors on West Florissant Avenue, I observed someone who I believed to be an alderman telling the police who in the crowd should be arrested. After the protestors were pointed out to the police officers, they were forcefully targeted, dragged out of the crowd, and placed under arrest. I did not observe anyone in the crowd acting unlawfully prior to their arrests.

7. While the protest and arrests were occurring on August 18, 2014, I was standing with some of my colleagues and other journalists in a public area that we understood to be a designated place for media to stand and document the protests. Despite standing on public streets and sidewalks, in an area that I understood to be specifically designated specifically for media, we were pushed down by State Patrol Officers while we attempted to record the protests. After the officers knocked us on the ground, they stood over us with their guns drawn and ordered us to leave. We informed them that we could not leave because they had knocked us to the ground and were standing over us with guns drawn. During this entire incident I did not believe I could continue recording the actions of the police or protestors and I feared arrest as well as for my own personal safety.

8. The next night I was in Ferguson, August 19, 2014, I again experienced and witnessed a police officer abusing his authority. On this night, I was walking alongside protestors and other journalists. I observed police using teargas against protestors and members of the media who did not act unlawfully prior to being tear-gassed. One officer pointed an assault weapon at a group of protestors and members of the media—a group of which I was a part—and threatened to kill us. No one in the group had acted unlawfully. When the officer who threatened to kill us was asked to identify

himself, he responded by saying: "Go fuck yourself." During this incident, although I was able to record the police officer who threatened us, I feared for my safety and I feared being arrested.

9. I left Ferguson the next day because my life had been threatened by police officers and I feared I would be injured, killed, or arrested by police officers if I remained.

10. I did not act unlawfully while I was in Ferguson, nor did I encourage others to act unlawfully. My purpose in Ferguson was to observe the events, to document what was happening, and to distribute that information to the public using social media platforms. I recorded the events from public streets and sidewalks, including attempting to stay in an area that I understood to be designated for media.

11. Based on my observations, the police I encountered targeted journalists in order to stop them from recording the events as they unfolded. It appeared to me that, as soon as the police saw we were recording the events, we were treated differently than others around us. I felt that I was being intentionally targeted with threats of violence and arrest so that I would stop recording and documenting the events as they unfolded.

12. While I was in Ferguson, although I still attempted to film certain events, I was always very cautious and afraid of what might happen to me if I recorded because of the officers' threats of arrest and acts of violence to me and other members of the media.

13. I have not yet returned to Ferguson after my time there in August because of my own experiences and those of others who reported that they had experienced similar acts of violence against them by the police. If not for the threats of violence from the police, I would have returned and would return in the future.

14. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 2nd day of November, 2014.

By: *Caleb-Michael Files*
Caleb-Michael Files

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF TREY YINGST

I, Trey Yingst, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.
2. I am the co-founder of News2share.com and an independent journalist based out of Washington, D.C. As an independent journalist, I have contributed to NBC, The Washington Post, and local FOX, NBC, and ABC affiliates. News2share.com is a multimedia publisher located in Washington, D.C., producing its own media reports as well as working with independent journalists to publish their work.
3. After the shooting and death of Michael Brown on August 9, 2014, large numbers of demonstrators, protesters, observers, and members of the media took to the public streets and sidewalks of Ferguson, Missouri. Many came to protest, others to observe and document the events as they unfolded.
4. I first went to Ferguson on August 16, 2014, to observe and record the protests so that I could share what I documented with the world. I observed and recorded the events that

were unfolding from public areas, including streets, sidewalks and locations of public protests, throughout the city.

5. In addition to observing the events as they unfolded, I recorded them in order to share them with the public. A recording that I made on August 17, 2014, is available at:

[https://www.youtube.com/watch?v=ju6AJkzpdro&index=74&list=UUbBm6SZ235HfxwVKC7](https://www.youtube.com/watch?v=ju6AJkzpdro&index=74&list=UUbBm6SZ235HfxwVKC7Po5IA)

[Po5IA](#). In the recording, I am attempting to capture on video a demonstrator's arrest that is taking place outside of the McDonald's on West Florissant.

6. As I was making the recording on August 17, 2014, I was ordered, by a St. Louis County Police Officer, to "go" away from an area where an arrest was taking place. The officer told me to move to an area where my view of the arrest taking place was obstructed by a group of St. Louis County Police Officers. I took a few steps back, in compliance with the officer's instructions. The officer then ordered me to move even farther away from the arrest that was taking place. When I did not move right away, the St. Louis County Police officer pushed me back.

7. I was approximately seven feet from the officers who were making the arrest while I was recording on August 17, 2014. While recording, I was standing on the sidewalk and the officers were standing on the street. I did not speak to officers while I was recording them and my only interactions with officers was when they informed me I would have to move away from them. While recording, I never took an action which violated the law. I felt threatened, intimidated, and discouraged from recording the police officers.

8. After ordering me, and others, to move away from the arrest, the officers did not offer a less-intrusive location from which I could continue to observe and video record the police activity. I was simply ordered to "go" and to "go that way."

9. I returned to Ferguson on August 18, 2014 to record the demonstrations that were taking place on West Florissant St. Upon arriving in Ferguson, I was required to register as a member of the media. When I registered, I was told that I could only photograph from a designated press area and if I were to leave the press area to photograph I would be arrested. The press area was set up on the lawn of Ferguson appliance. The press area was set up so far away from the protests that covering them and giving the public an accurate representation of what was happening on the ground in Ferguson was impossible.

10. As nightfall came on August 18, 2014, I could not view the protests along West Florissant or the interactions between the protesters and the police. Therefore, I ventured out of the press area to record what was happening on West Florissant. One of my recordings can be found at: <https://www.youtube.com/watch?v=IltOl8XH-CY&list=UUbBm6SZ235HFxwVKC7Po5IA>.

11. On the night of August 18, 2014, I was recording the demonstrations on West Florissant Avenue and the police response to those protests. The SWAT team had set up a line and protesters were standing up against the line. I was positioned on the curb of the street, recording the interactions between the SWAT team members and the demonstrators. While I was recording these interactions, a group of SWAT team members approached me from behind, knocked me to the ground, and pointed their weapons at me. They told me to “get down.” Myself, and two other reporters who were next to me filming, told the officers that we were members of the press. The officers continued to point their weapons at us. They told us to “go home.” Eventually, they allowed us to return to our feet and drew down their weapons.

12. During my time in Ferguson, I have also observed many incidents where members of the media and public, who were not engaged in any unlawful activity, being ordered

by law enforcement to stop recording, being fired upon with teargas, having their recording equipment taken, and being arrested.

13. I continued my observations and documentation of the events in Ferguson after August 18, 2014. However, I did so at the risk of arrest or serious bodily injury because I was forced to choose between exercising my First Amendment rights or facing arrest and use of force.

14. On each occasion that I have visited Ferguson, I have not committed or encouraged others to commit any acts of violence, nor do I intend to do so in the future. My overall objective in going to Ferguson has been, and continues to be, to observe and record the events and to share what I observe and document with the world.

15. I have continuously felt threatened with arrest or serious bodily injury at the hands of the police while I've been in Ferguson. This fear is based on my experience and observations of how police have treated myself and other journalists, individuals who have lawfully been recording police actions. Despite this fear, I continued to record the events in Ferguson.

16. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 3rd day of November, 2014.

By: 
Trey Yingst

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Mustafa Hussein,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-cv-1410 JAR
)	
County of Saint Louis, Missouri, et al.,)	
)	
Defendants.)	

DECLARATION OF KATHERINE GLENN BASS

I, Katherine Glenn Bass, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to those facts if called as a witness.

2. I am Deputy Director of Free Expression Programs at PEN American Center. My work at PEN focuses primarily on free expression issues in the United States. Prior to working at PEN America, I was the Director of Clinical Programming at NYU Law's Center for Constitutional Transitions. I have also taught in the Walter Leitner International Human Rights Clinic at Fordham Law School.

3. PEN American Center is a 501(c)3 corporation dedicated to promoting friendship and intellectual cooperation among writers everywhere; emphasizing the role of literature in the development of mutual understanding and world culture; fighting for freedom of expression; and acting as a powerful voice on behalf of writers harassed, imprisoned, and sometimes killed for their views. PEN American Center is a United States branch of PEN International, the world's leading international literary and human rights organization. International PEN was founded in 1921 in response to the ethnic and national divisions that contributed to the First World War.

4. On October 27, 2014, PEN America released a report that I co-authored entitled: *Press Freedom Under Fire in Ferguson*. The report catalogued and analyzed 52 alleged violations of press freedoms during the protests in Ferguson, Missouri that followed Michael Brown's death on August 9, 2014. A true and correct copy is attached hereto.

5. On October 27, 2014, PEN America sent a letter that I authored to United States Attorney General Eric Holder on behalf of PEN American Center's 3,500 members. The letter called the Attorney General's attention to our report *Press Freedom Under Fire in Ferguson*. A true and correct copy is attached hereto.

6. In both the letter and report, I note that the number of reported abuses collected for the report strongly suggests that some police officers were deliberately trying to prevent the media from documenting the protests and the police response.

7. In the letter PEN called upon the Justice Department to open an investigation into violations of press freedom in Ferguson. This call to action was based on the findings in our report.

8. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 14th day of November, 2014.

A handwritten signature in black ink, appearing to read "Katy Glenn Bass", with a long, sweeping horizontal line extending to the right.

By:

Katy Glenn Bass.



Press Freedom Under Fire in Ferguson

Press Freedom Under Fire in Ferguson

A PEN AMERICAN CENTER REPORT

October 27, 2014

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Introduction

ON AUGUST 9, 2014, Ferguson Police Department Officer Darren Wilson shot Michael Brown six times, killing him. Brown's killing touched off protests in Ferguson that grew into several weeks of demonstrations. The aggressive law enforcement response to the protests drew national attention. As the protests continued, reports of police interference with the media, including arrests, physical assault, threats, and obstructing the media's access to the scene, became increasingly frequent. This report compiles 52 alleged violations of freedom of the press during the Ferguson protests. These infringements contravene a right that is protected under both the U.S. Constitution and international human rights law. The majority of reported incidents included here occurred between August 12 and 20, 2014; however, some protests have been mounted into October, and reports of infringements on press rights continue to emerge.

On the basis of these findings, PEN American Center calls upon the U.S. Department of Justice to carry out investigations into violations of press freedom that took place in the context of the Ferguson protests. Such investigations would shed essential light on the factors that drove law enforcement officers in Ferguson to infringe on media freedoms, and on the necessary steps to ensure that in an era of instantaneous transmission, cell phone cameras and citizen journalists, the rights of members of the press and of the public at large are upheld in the context of protests and public assemblies.

The most serious human rights violations in Ferguson affected both protestors and the press, and were fueled by the police's aggressive, militarized response to largely peaceful public protests. Police wielded assault rifles and pointed them at people who were behaving in a lawful and orderly manner. The use of tear gas, pepper spray, attack dogs, rubber bullets, snipers, flash-bang grenades, and sound cannons (long-range acoustic devices) against protestors was seen by many observers as a disproportionately violent response to mostly peaceful assemblies of protestors.¹ The many infringements of the right to freedom of assembly seen in Ferguson deserve thorough investigation, and those responsible for human rights abuses should be held accountable.

ROLE OF THE PRESS IN THE FERGUSON PROTESTS

The issue of press freedom in Ferguson deserves attention not at the expense of, but in addition to, much-needed investigations into civil rights violations by local police in the St. Louis area. The media play a valuable role in documenting abuses and disseminating information about them to the public, thereby supporting citizens' efforts to demand accountability for violations of constitutional and human rights. Photographs, video footage, and journalists' reports from the scene in Ferguson played a crucial part in sparking a nationwide debate over the police response to the protests. In addition, the media's presence at a public protest may act to deter law enforcement officers from violating protestors' rights. Put another way, as shocking as the police response to the Ferguson protests was, it might have been even worse if the media had not been present. Several of the journalists interviewed for this report recounted protestors asking them to stay with the crowd, and expressing fear of what the police would do if the media left.

Journalists on the ground in Ferguson also helped expose the deeper human rights issues driving the protests. Media interviews with protestors and investigations into the local political context quickly made clear that protestors were concerned not only with the killing of Michael Brown, but also with years of tense relations between the community and law enforcement, underrepresentation of minorities in local government and on police forces, the aggressive and arbitrary enforcement of traffic laws and fines, and ongoing economic malaise affecting local communities.²

The press also played a critical role in catalyzing government responses to the Ferguson protests. Together with the protestors' persistent calls for action, media coverage of the police response to the protests and the allegations of long-term police misconduct prompted several members of the United States Congress and President Barack Obama to call for reconsideration of federal programs that provide military-grade equipment to local police forces. Such coverage also influenced the Justice Department's decision to initiate investigations into the killing of Michael Brown and civil rights abuses by local police.³ The Justice Department



also sent agents from its Community Oriented Police Services (COPS) program to help local authorities “conduct crowd control and maintain public safety without relying on unnecessarily extreme displays of force.”⁴ The Reporters Committee for Freedom of the Press and 44 news organizations sent a letter to the Justice Department in September, urging them to include “police interaction with and release of information to the press and public” in their investigations in Ferguson, and to work with local police on developing more effective training for police on their interactions with the media.⁵

THE POLICE AND THE PRESS IN FERGUSON

This report is not a blanket condemnation of the law enforcement officers who policed the Ferguson protests. Many of the officers no doubt acted in good faith and were trying to protect the safety of their fellow officers and those present at the protests under difficult circumstances. At some points during the protests, individuals present in the crowds were armed and fired weapons. Several of the journalists interviewed for this report acknowledged that some police officers allowed them to do their jobs without interference, and that the police attitude towards the press varied depending on who was on duty and was generally more hostile at night than during the day. Captain Ron Johnson of the Missouri State Highway Patrol was specifically praised by many interviewees for his willingness to engage in dialogue, answer questions, and interact with protestors and the press.

However, the number of reported abuses collected here strongly suggests that some police officers were deliberately trying to

prevent the media from documenting the protests and the police response. The many and varied ways in which police interfered with the media’s ability to do their job makes it difficult to dismiss these as isolated mistakes. At best, they reflect a failure to adequately train the law enforcement officers present in Ferguson on the rights of the press protected by the First Amendment and international human rights law.

UPHOLDING PRESS FREEDOM IN AN EVOLVING MEDIA LANDSCAPE

The need for better training for police is heightened by the changing nature of journalism in the digital age. New technologies allow everyone to engage in acts of journalism: Citizen journalists can begin recording incidents of police abuse on a camera phone instantly, well before professional media arrive on the scene.⁶ Those with a Twitter account can live-tweet their observations of a protest or any police conduct undertaken in public. Citizen journalists play an increasingly important role in the flow of news to the public: A Pew Research Center study found that the story of Michael Brown’s killing and the resulting protests “emerged on Twitter before cable”, and social media played a crucial role in documenting the continuing protests.⁷ The National Press Photographers’ Association called citizen journalists “an integral part of the information network” on Ferguson.⁸

St. Louis Alderman Antonio French is an example of the important contributions made by citizen journalists. Prior to being elected to office, French published a website, PubDef (Public Defender), that used new media and social networking tools to “report the stories that get overlooked by local and national mainstream media”, including local politics in St. Louis.⁹ Alderman French began documenting police activity in Ferguson shortly after Michael Brown’s killing through live tweeting, Instagram posts, and short videos posted to Vine. He was described by local paper The St. Louis American as “the go-to citizen journalist using the digital-age approach to capture every waking moment of the aftershock following Brown’s killing.”¹⁰ French was also among the 21 journalists arrested in Ferguson.¹¹

The emergence of citizen journalists presents new challenges for police departments seeking to uphold press freedoms. Many journalists interviewed for this report noted that it was sometimes difficult to distinguish members of the press from protestors in Ferguson, and that this may have made it more difficult for

police officers to act in a way that respected press freedoms.¹² At the same time, many of the incidents of police aggression against journalists documented in this report are constitutional and human rights violations regardless of whether the police recognized the individual concerned as a member of the press. Both the public and the press have the right to photograph and/or film police officers in the course of their duties.¹³ It is as impermissible to threaten to shoot a member of the public for attempting to film the police as it is to threaten a journalist.

COVERING PROTESTS: THE WIDER CONTEXT

The treatment of journalists in Ferguson did not occur in isolation. Journalists' ability to report on public protests in the U.S. has been jeopardized on many occasions in recent years, an indication that a nationwide reform effort is required to ensure that police departments fully respect the media's right to access and document protests. There were numerous reports from the last several Democratic and Republican National Conventions of journalists being arrested or assaulted by police, or police obstructing press access to public protest locations.¹⁴ During the 2008 Republican National Convention in St. Paul, Minnesota, police arrested or detained at least 42 journalists, including Democracy Now! host Amy Goodman and two of the show's producers. Other journalists were pepper-sprayed or held at gunpoint by police.¹⁵ Goodman said of her arrest, "It's so much bigger than us. When the press is shut down, it's closing the eyes and ears of a critical watchdog in a democratic society."¹⁶

During the Occupy Wall Street movement, police arrested at least 90 journalists covering the protests in 12 U.S. cities between September 2011 and September 2012, including journalists with major news outlets, photojournalists, freelancers, livestreamers (journalists holding cameras that feed directly to an online site, providing continuous, live coverage of an event), and citizen journalists.¹⁷ On numerous occasions, police in New York City acted to obstruct journalists' access to the Occupy protests and physically assaulted journalists. These attacks on press freedoms continued even after New York City Police Commissioner Ray Kelly issued a directive to officers instructing them to "respect the public's right to know about these events and the media's right of access to report."¹⁸

The frequency of arrests of journalists covering major U.S. public demonstrations, and of incidents of police obstructing journalists' access to protests or assaulting journalists who are covering a protest, point to a need for greater emphasis in police departments on the rights of the press to access and document public protests. Furthermore, as new technologies redefine how we understand journalism and major news publications and citizen journalists make increasing use of digital media, conventional approaches to upholding press freedom must adapt, and new training is required to assist police in understanding the rights of all individuals who engage in acts of journalism.¹⁹

OBAMA ADMINISTRATION RESPONSES TO ALLEGED PRESS FREEDOM INFRINGEMENTS

Both President Barack Obama and Attorney General Eric Holder have publicly criticized the treatment of journalists in Ferguson. Attorney General Holder stated on August 14 that "journalists must not be harassed or prevented from covering a story that needs to be told."²⁰ On the same day, President Obama said, "In the United States of America, police should not be bullying or arresting journalists who are just trying to do their jobs and report to the American people on what they see on the ground."²¹

President Obama's remarks were criticized as hypocritical by some journalists and press freedom advocates who point to his administration's pursuit of national security leaks, and in particular to the government's ongoing effort to force New York Times reporter James Risen to identify a confidential source, as serious threats to freedom of the press in the U.S.²² The remarks of U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor Tom Malinowski were overly dismissive of the infringements on press freedom witnessed in Ferguson. Assistant Secretary Malinowski, writing about Ferguson for the State Department's official blog DipNote on September 9, 2014, said:

"We also uphold the freedom of expression, including for members of the press. Though footage of the events in Ferguson has, at times, been disturbing, it has not been suppressed. When a handful of journalists were detained or arrested during the course of the protests, these actions were instantly reported to the public and widely condemned."²³

The 52 alleged incidents of infringements on press freedoms collected in this report demonstrate that some police officers made vigorous efforts to prevent the press from collecting footage of the events in Ferguson, and that far more than a “handful” of journalists were detained or arrested. As of October 14, the number stood at 21 journalists.

KEY RECOMMENDATION

PEN therefore calls upon the Department of Justice to open an investigation into reported incidents of infringements on press freedoms during public protests in Ferguson, drawing on relevant information about similar infringements elsewhere in the country. This investigation should culminate in the formulation of new guidelines for U.S. police departments on respect for media freedoms during public demonstrations. The guidelines should include an explanation of what constitutes an “act of journalism” and the constitutional protections afforded to anyone engaging in such an act. These guidelines should serve as the basis for police departments to develop new policies on respect for First Amendment freedoms during public demonstrations, trainings on those policies for all officers, and the implementation of disciplinary proceedings for officers who violate the policies.

Report Framework and Methodology

THE REPORT BEGINS with a brief overview of press freedoms under U.S. law and international human rights law, outlining the obligations of U.S. public officials. The report then presents selected incidents as examples of the ways in which freedom of the press was obstructed in Ferguson. The report also includes an Appendix listing 52 alleged violations of press freedom collected by PEN researchers and the sources for those allegations.

This report is based on reviews of news reports filed by journalists present during the protests, pictures and video recordings of the protests, the Twitter feeds of journalists, and telephone interviews and email conversations with journalists and media law experts.

Some of the journalists interviewed requested to speak on background so that their comments would not interfere with their ability to continue reporting on Ferguson. The report compiles various allegations of violations of press freedom and includes the sources for each allegation in the hope that this will aid authorities in Missouri and at the Department of Justice in their investigation of violations of First Amendment rights in Ferguson.

The Ferguson Police Department, Missouri State Highway Patrol, and Missouri Department of Public Safety did not respond to repeated requests for comment. The responses of the St. Louis County Police Department are incorporated in this report.

Legal Framework

FREEDOM OF THE PRESS GENERALLY

FREEDOM OF THE PRESS is protected both by the U.S. Constitution and under international law. Freedom of the press is enshrined in the First Amendment, which provides:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”²⁴

The Supreme Court has defined “press” in the context of this amendment as “every sort of publication which affords a vehicle of information and opinion.”²⁵

Under international law, the right to freedom of expression, including the right to freedom of the press, is protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a state party.²⁶ Freedom of expression as defined by Article 19 includes the “freedom to seek, receive and impart information and ideas of all kinds.”²⁷ The United Nations Human Rights Committee, the body that provides authoritative interpretations of the ICCPR’s provisions, has recognized that journalism may be engaged in not only by professional full-time reporters, but also “bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.”²⁸

NEWSGATHERING AND THE MEDIA’S RIGHT OF ACCESS

The media’s right to engage in the process of newsgathering is also protected under the U.S. Constitution and international law. The Supreme Court first protected newsgathering in *Branzburg v. Hayes*, a 1972 Supreme Court decision in which Justice Byron White wrote for the majority:

“We do not question the significance of free speech, press, or assembly to the country’s welfare. Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for



seeking out the news, freedom of the press could be eviscerated.”²⁹

Justice Potter Stewart underscored this principle in his dissent:

“News must not be unnecessarily cut off at its source, for without freedom to acquire information the right to publish would be impermissibly compromised. Accordingly, a right to gather news, of some dimension, must exist.”³⁰

The United Nations Human Rights Committee has affirmed that the right to freedom of expression protects both the dissemination of news and the process of newsgathering.³¹

Although generally applicable laws cannot be considered unconstitutional simply because they affect newsgathering activities,³² restrictions on the times, places and ways in which reporters may gather news must not discriminate based on the content or the opinions expressed by the journalist or news outlet, must be defined as narrowly as possible and must serve a significant government interest, and must leave open alternative channels for expression and communication.³³ In general, the public and the press have the right to access public spaces, including parks, streets and sidewalks, as well as other spaces that have been made available for public use by the government.³⁴ Several states, including Alaska, California, Ohio, and Virginia, have enacted laws that specifically protect journalists’ access to disaster and emergency scenes.³⁵

At least one tactic used by police in Ferguson has already been declared unconstitutional by a federal court. The so-called “Five Second Rule,” whereby protestors and the press were required to walk continuously, standing still for no longer than five seconds, has been enjoined from future use in the Ferguson protests by Chief U.S. District Judge Catherine Perry of the Eastern District of Missouri. Chief Judge Perry held that, “[a]s it was applied in this case, the practice of requiring peaceful demonstrators and others to walk, rather than stand still, violates the constitution.”³⁶ Several other lawsuits alleging violations of the First Amendment rights to freedom of assembly, speech and the press have been filed.³⁷

Under international law

Under most circumstances, deliberate interference with news-gathering violates international law. The UN Human Rights Committee has stated that restrictions on the movement of journalists are rarely justified, specifically noting that journalists’ access to “conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses” should not be restricted.³⁸ Attacks against journalists or others involved in monitoring potential abuses of human rights, including arbitrary arrests, threats and intimidation, should be “vigorously investigated” and the perpetrators should be prosecuted.³⁹

Freedom of expression, including freedom of the press, may be subject to certain restrictions under international law, but these are strictly limited.⁴⁰ Limitations on press freedom implemented in the name of protecting public order must satisfy certain conditions, as the Human Rights Committee has explained:

“It is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression... When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁴¹

THE RIGHT TO FILM THE POLICE

Filming the police in the course of their duties allows citizens to hold police officers accountable for abuses of power, and may also act as a deterrent to such abuses.⁴² A plurality of U.S. appellate courts have explicitly recognized citizens’ First Amendment right to film the police subject to varying reasonable limitations,⁴³ stated most clearly by the 1st Circuit:

“[A] citizen’s right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.”⁴⁴

Notably, the U.S. Department of Justice has strongly supported this position, stating:

“It is now settled law that the First Amendment protects individuals who photograph or otherwise record officers engaging in police activity in a public place...The reach of the First Amendment’s protection extends beyond the right to gather information critical of public officials – it also prohibits government officials from ‘punish[ing] the dissemination of information relating to alleged governmental misconduct.’”⁴⁵

Violations of Press Freedoms in Ferguson

JOURNALISTS HAVE ALLEGED A WIDE RANGE OF VIOLATIONS of their right to report on the Ferguson protests, including arrests of media workers, threatening conduct and physical aggression from police officers, and obstruction of media access to the protest areas. The journalists involved include accredited journalists from leading news outlets, freelancers, photographers, livestreamers, and citizen journalists.

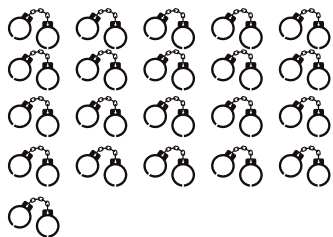
The Ferguson and Missouri state authorities' decision to respond to the protests with a large, heavily militarized police contingent set the stage for massive, widespread violations of assembly and press rights. Almost every journalist interviewed for this report commented on the militarized police response and the negative impact it had on the situation in Ferguson. The decision to respond to largely peaceful protests with an overwhelming show of force immediately created an atmosphere of tension and fear, provoking anger from protestors who felt the response was unjustified. As Jamilah Lemieux of Ebony described it, "The police were mobilized and militarized as if they were in a war with the citizens of Ferguson."⁴⁶

Another journalist explained, "When the wholly peaceful protest was going on, all of a sudden they'd pull out armored trucks and riot gear, and the tone would sort of shift. People in the crowd would get angry, 'why are you doing this, we're not doing anything wrong, this is our community.' There might be, but wasn't always, a plastic bottle thrown [by protestors]. Once that happened, it was guns drawn, gas, and not giving a fuck about the press."⁴⁷ At many points during the protests, interviewees said, police refused to allow anyone to approach their lines, making it essentially impossible for journalists (or anyone else present) to approach the police to ask questions, engage in dialogue, or identify themselves as press, or to determine which police officers belonged to which departments or see their identification badges.⁴⁸

The problem was apparently compounded by the fact that police from multiple departments were involved in the response, and particularly in the early days of the protests, the chain of command appeared unclear to many present. Mickey Osterreicher, general counsel for the National Press Photographers' Association, described one of the major problems in Ferguson as "the

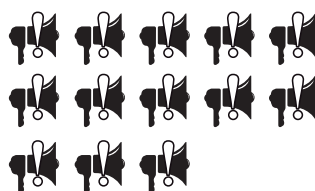
#Ferguson

52 Reported incidents of press freedom violations by police*



21

journalists arrested



13

incidents of journalists threatened with guns, other weapons, or bodily harm



11

incidents of obstructing the media
(blocking their access, ordering them to leave, etc.)



7

incidents of journalists tear gassed, hit with rubber bullets/bean bag rounds, or pushed by police

PEN free expression.
AMERICA literature.

* based on PEN data

absolute lack of a unified command and the lack of understanding about what First Amendment rights journalists have... Police agencies were operating, from what I could see, in whatever manner they felt like operating. It didn't appear that there was anyone giving everybody the same orders."⁴⁹

Many of the violations of press freedoms catalogued in this report likely could have been avoided if the police had responded to the protests in a manner that allowed for dialogue and interaction between those present at the protests and law enforcement officers. A more measured response may also have prevented many of the violations of protestors' First Amendment rights that occurred.

A compilation of alleged violations of press freedoms collected by PEN, along with brief descriptions of each incident and the sources from which the description is drawn, is included in this report as an Appendix. This section of the report presents a select number of incidents as illustrations of the infringements experienced by media in Ferguson. The circumstances vary widely from one incident to another, as does the nature of each interaction between members of the media and police. Several of the alleged incidents involved threats or harm to multiple journalists. All of these incidents deserve a thorough investigation by local police forces and the Department of Justice. The St. Louis County Police Department has confirmed that it is currently investigating several complaints made by members of the press to its Bureau of Professional Standards.⁵⁰

Where possible, officers have been identified by police department. However, as several journalists interviewed for this report noted, it was often difficult to determine which department an officer belonged to. There were multiple local police forces involved in the response to the Ferguson protests, and at times police would not allow anyone to approach them closely enough to identify them by their uniforms or badges. Identification of police officers' departments was further complicated by the fact that some officers were wearing riot gear or camouflage uniforms, and that some officers had covered or removed their identification badges.⁵¹

Finally, it should be noted that those participating in the Ferguson protests who were not members of the media experienced similar human rights violations, often on a much larger and more violent scale, and those violations of assembly rights must also be thoroughly investigated and those responsible held accountable.

Many of the journalists who commented on their experiences in Ferguson emphasized that their treatment by police paled in comparison to what the largely black residents of Ferguson endured during the protests. Ryan Reilly, the Huffington Post reporter arrested on August 13, commented on Facebook: "I'm fine. But if this is the way these officers treat a white reporter working on a laptop who moved a little too slowly for their liking, I can't imagine how horribly they treat others."⁵²

Jamilah Lemieux of Ebony reflected on the experience as follows:

"I've long since been highly aware of the contentious relationship between black people and law enforcement. It's something with which I'm intimately familiar. However, I never thought that I would bear witness to anything like that in the United States...We, members of the media, at times were safer than the citizens of that community, but that feeling of tension was palpable. I can't speak to how someone who's not black reacted to being down there and seeing those things, but I would imagine that for some of those, particularly younger white journalists, they were given a taste of what black people in this country see and feel and experience every day."⁵³

ARRESTS OF JOURNALISTS

Since August 12, at least 21 journalists have been arrested in the course of reporting from Ferguson.⁵⁴ Many of the arrested journalists were released after police verified that they were press, or after a short period of detention. This could be interpreted as an effort by police to respect press freedoms, but Mickey Osterreicher, lawyer for the National Press Photographers' Association, sees a different motive: "The police don't care about making charges that stick. They just want to stop the journalists from doing the job, which creates a chilling effect." Osterreicher describes the practice of briefly detaining journalists as "catch and release."⁵⁵

*Wesley Lowery and Ryan Reilly*⁵⁶

On Wednesday, **August 13**, reporters Wesley Lowery of the Washington Post and Ryan Reilly of the Huffington Post sat in the McDonald's restaurant on West Florissant Avenue, near the most concentrated protest activity. The restaurant was one of few areas providing internet access and power to journalists. Armed officers (most likely from the Ferguson Police Depart-

ment) first entered the McDonald's asking for press credentials, then returned moments later telling all present that they needed to leave. At that point, Lowery began recording video on his cell phone.⁵⁷

According to the video footage, the armed officer tells Lowery to stop recording video. He tells Lowery and others to get moving, but it is not made clear why they are being asked to do so. Lowery continues to record the officer, who then corrals him to where his computer was set up. The recording ends. In his firsthand account, Lowery describes his attempt to exit the restaurant:

"As I made my way toward the door, the officers gave me conflicting information. One instructed me to exit to my left. As I turned left, another officer emerged, blocking my path. 'Go another way,' he said. As I turned, my backpack, which was slung over one shoulder, began to slip. I said, 'Officers, let me just gather my bag.' As I did, one of them said, 'Okay, let's take him.'⁵⁸

As Lowery dropped what he held in his hands, the officers yelled at him to "stop resisting." The same officers then "slammed [him] into a soda machine".⁵⁹ The same group of officers arrested Reilly. In Reilly's account, "A Saint Louis County police officer in full riot gear, who refused to identify himself despite my repeated requests, purposefully banged my head against the window on the way out and sarcastically apologized."⁶⁰

Police led the pair out the door in plastic cuffs, where they waited fifteen minutes for a police car to arrive.⁶¹ The car took the pair to the police station, where they were briefly placed in a holding cell before a processing officer came in asking, "Who's media?" The officer informed them that they were free to go, at which point they requested to speak to a commanding officer, as well as an arrest report and the names of all officers involved. The police did not provide any of the requested information.⁶² Ferguson Police Chief Thomas Jackson reportedly ordered the release of Reilly and Lowery as soon as he was informed by the L.A. Times that they had been arrested.⁶³

*Bilgin Şaşmaz*⁶⁴

Bilgin Şaşmaz, a Turkish reporter and photographer, was documenting a clash between police and protestors in Ferguson on **August 19**.⁶⁵ Şaşmaz told his news outlet, the Anadolu Agency, that his life was threatened while he was photographing a St. Louis County police officer who was about to fire rub-

ber bullets. "The policeman told me: 'If you direct your flash toward me once again, I will kill you,'" Şaşmaz recounted. He was forced to the ground for his refusal to stop filming, while shouting that he was press, before he was handcuffed and taken to jail. He was released after five hours, and the officer implicated in the incident was later suspended.⁶⁶ The official arrest report from the St. Louis County Police, obtained in a Freedom of Information Act request by transparency advocacy website MuckRock, cites Şaşmaz for a "Civil Disturbance."⁶⁷

*Ryan Devereaux & Lukas Hermsmeier*⁶⁸

In the early morning hours of **August 19**, reporters Ryan Devereaux of The Intercept and Lukas Hermsmeier of the German newspaper Bild were driving near the area of the protests, making their way towards a "command center" that had been set up for journalists. Crossing W. Florissant Ave., they heard police megaphones tell protestors that it was their "final warning."⁶⁹ The pair stopped the car and got out to see what was happening. While talking to a group of peaceful protestors, police fired tear gas in their direction. The interviewees left, and the two reporters returned to W. Florissant to document what munitions the police were using.

At this point, the police were patrolling W. Florissant in armored vehicles and intermittently firing tear gas canisters. The two reporters needed to cross W. Florissant to return to their car, and intended to walk along a street running parallel to W. Florissant until they could cross the avenue in an area not filled with tear gas. Devereaux described the ensuing situation:

"At one point the police vehicle takes a left into the neighborhood we're in. If they take another left they'll be on the street we're on. We decided we should identify ourselves as press as they're coming into neighborhood, to make sure they know we're journalists. We come out from the shadows with our hands up. I have a press ID card in my hand, yelling, 'Press! Press! Press! We're journalists! Media! Media! Media!'"⁷⁰

Police in one vehicle shone a light on the pair and directed them forward. They advanced, still shouting "Press!" and were directed towards another armored vehicle. As they were approaching that vehicle, the group of officers in the vehicle that had initially directed them to move forward began to fire rubber bullets at them. Devereaux was struck once in the back and Hermsmeier was shot twice.⁷¹ According to Devereaux, the police had "made no verbal commands that we had heard" before beginning to shoot.⁷²



The reporters dove behind a car to get out of the line of fire, at which point police swarmed around them. They repeatedly told police that they were press just trying to get to their car. Police arrested them using plastic flex cuffs and put them in the back of an armored car. Devereaux stated, "They didn't tell us we were under arrest, and didn't tell us why. They asked us why we were out, and I said the same reason you are- we're working, we're journalists. They said they were getting a bad reputation for their handling of the protests."⁷³ The two were taken to jail in nearby Clayton and held until the morning. Only then did they find out the grounds on which they were detained—failure to disperse.⁷⁴ Devereaux added that later "I was able to speak to Missouri Highway Patrol Captain Ron Johnson about being detained. He was respectful and apologetic for what happened, and willing to have a fairly reasonable conversation about it, and I appreciated that."⁷⁵

THREATENING CONDUCT BY POLICE OFFICERS

Many journalists in Ferguson reported that police officers engaged in intimidating or threatening conduct towards them. An alarming number of these reports involve police officers allegedly pointing their weapons at journalists after the journalists had asked them a question or engaged in newsgathering activities like photographing or filming. PEN has documented numerous reports of threatening conduct by officers towards the media (see full list in the Appendix). Among these incidents:

- On the night of **August 13**, Chris King of the St. Louis American tweeted that the publication's web editor addressed an officer, saying "Excuse me." The officer responded by pointing a rifle at her.⁷⁶
- Alice Speri of VICE reported in an **August 13** tweet, "Officer literally just asked me if I want to get shot (for taking a photo of all things...)." ⁷⁷
- As police advanced towards a group of protestors on **August 17**, some members of the media trailed behind the moving line of police. Unable to see over the police equipment, MSNBC's Chris Hayes inched forward among the group of officers and media. On video, an officer begins shouting, "Hey! Media! Do not pass us. Next time you pass us you're getting maced."⁷⁸
- As Argus Radio live-streamed the events of **August 17**, officers were disturbed by a light coming from their video camera. In an incident captured on video, an officer approaches streamer Mustafa Hussein, shouting, "Get the fuck out of here and get that light off or you're getting shelled with this."⁷⁹
- Outside of Ferguson city limits, Al Jazeera America Producer Aaron Ernst and his team were stopped by police on the night of **August 14**. Police officers from the neighboring town of Kinloch instructed them to leave the town immediately. As they drove away, the local police followed their car, a cab driven by a local columnist whom they were interviewing at the time.⁸⁰ When the crew stopped to film a shot of a road sign, the officers pulled up beside them. The officers instructed them to get out of Kinloch, adding, when they refused, a number of instructions and threats:
 - "This is not an area where you are supposed to be right now."
 - "I'm not saying you did anything wrong, I'm saying that I don't want you here at this time of night."
 - "Film it! I don't give a shit. Because you'll go, and I'll sure confiscate your film for evidence."
 - "Go now or you get locked up!"
 - [Grabbing Ernst's arm] "Don't resist. I'll bust your ass. I'll bust your head right here."⁸¹

- On **August 19**, in an incident of considerable notoriety that was captured on video, a heavily equipped police officer is seen pointing an assault rifle at a man who is holding a video camera to live-stream the events. The livestreamer notes that the officer, at a distance of about ten feet, has the gun pointed directly at him.⁸² He tells the officer that his hands are up, and that there is no need to point the gun. The officer responds, saying “I will fucking kill you.” The livestreamer then asks for the officer’s name, which prompts the uniformed man to respond, “Go fuck yourself.”⁸³ More media arrive to film the officer, when a St. Louis County officer approaches the first and pushes his gun downward, so that it is no longer pointing at the livestreamer and the group of people standing with him.⁸⁴ Another journalist present at the scene said, “I was standing right there when that happened, we all had badges that say press, and that was in the media area!”⁸⁵ The ACLU of Missouri wrote to the Missouri State Highway Patrol to ask them to identify the officer and remove him from duty. The officer, Ray Albers, was then removed from duty and later resigned after being presented with the choice of either resigning or being fired.⁸⁶

Through a spokesman, the St. Louis County Police Department said, “We have not been made aware that any of our officers on our department pointed weapons at journalists, and if our officers did so, they would have been removed from the detail and placed under investigation.”⁸⁷

TEAR GAS: AL JAZEERA AMERICA AND KSDK-TV⁸⁸

In a widely publicized incident, police in Ferguson allegedly fired tear gas directly at an Al Jazeera news crew. On the night of **August 13**, Al Jazeera America’s crew was filming a developing protest. Police had been firing tear gas and rubber bullets at protestors. As caught on video by a crew for KSDK, a St. Louis-based news station, the Al Jazeera crew did not appear to be near any protestors, or anyone else, when police launched a tear gas canister that landed among the camera equipment. The crew was forced to flee, leaving their equipment set up.⁸⁹ The crew also reported that the police fired rubber bullets in their direction, even after the crew repeatedly shouted, “Press.”⁹⁰ Police from the St. Charles County Sheriff’s Department then took down the crew’s lighting equipment, which it later stated was an effort

to aid the crew in its retreat and to remove the lights because they were making it difficult for officers to see. A St. Charles police spokesman said that their department had not fired the tear gas and did not know who had, but that he did not think the Al Jazeera crew had been targeted: “I’m sure that when they did deploy that, they were unaware that there were media there.”⁹¹

However, Ash-har Quraishi, a member of the news team, said after the incident, “We had been in contact with police officers who were just feet away from us. I had spoken to police officers who knew we were there. We had had discussions with them. We understood this was as far as we could get in terms of where the protest was going on, about a mile up the road. So, we didn’t think there would be any problems here so we were very surprised.”⁹² In addition, Rembert Browne, a reporter from the online sports and culture publication Grantland, came across the Al Jazeera news crew shortly before this incident while looking for a place to recharge his phone. He reported that the Al Jazeera team was clearly identifiable as a news crew: “The reason I stopped with them is that they looked like a news crew. They had a car there, I assumed someone had a charger or something like that...I have no idea whether the police were telling the truth, but I know as soon as I saw them, I saw a big spotlight, microphones, it looked like they were setting up a live TV shot...it was very clear to me that they were members of the press, they had all the setup.”⁹³

Shortly after this incident, the KSDK crew that caught the tear gassing on video reported that a SWAT team approached their SUV with guns drawn. KSDK reporter Elizabeth Matthews said that she and a photojournalist were in the SUV with their hands up. The third member of their crew got down on his knees in front of the SUV and raised his hands, telling police he was with the press.⁹⁴ One of the crew’s photojournalists also reported that a beanbag round (a form of less-lethal ammunition used by police) was fired at his camera equipment shortly before the tear gas incident, and the precise moment was caught on camera by another photographer.⁹⁵

OBSTRUCTION OF PRESS ACTIVITY

Journalists reported numerous instances in which the police obstructed their ability to work, either by attempting to bar them from entering an area, ordering them to leave an area, or restricting them to a designated area. One reporter described the general police attitude towards the media as “Get the hell out of here, we don’t owe you an explanation, that kind of stuff.

You hesitate to make that representative of the entire force, but it happened enough that you were like, these guys, they were told to shut down the set, clean up this block, they don't really give a damn if you have a press badge or not.”⁹⁶

Another journalist expressed concern regarding police orders that media leave an area, saying, “The idea that in order to do their job, the police needed the media to leave—why? There were a bunch of kids saying ‘media, don’t leave us, they’re going to kill us, you don’t know what they’ll do if you leave.’”⁹⁷

Police orders directed at the media were sometimes confusing and contradictory. On the night of **August 19**, police had a “five-second rule” in place—protestors could not stand in one place, and had to be continuously moving. At one point, the police ordered the media to go to the press area and ordered protestors to leave. One journalist present at the scene reported, “We walked out and were told we need to go to the press area, the police blocked me and said go the other way, and then another cop tried to turn us back to go the other way. I just tried to clarify which direction they wanted us to go, and a cop drew his gun, pointed it at me, and said, ‘you need to go that way or everyone’s going to be arrested,’ motioning at me with his gun. I had credentials and three cameras hanging around my neck. The whole thing was absurd.”⁹⁸ The journalist commented, “That group of cops on that night [August 19]—that was the worst batch. Those guys, I thought I was going to get shot.”⁹⁹

The “five-second rule” has since been declared unconstitutional by a federal judge.¹⁰⁰ As Mickey Osterreicher of the National Press Photographers’ Association explained, “A police officer can’t order you to do or not do something unless it’s based on a law. You can’t just make it up...It would just be silly if it weren’t so problematic.”¹⁰¹

The following are allegations of police conduct that interfered with the media’s ability to gather news and/or to access the site of the protests.

- On the afternoon of **August 18**, a CNN newscast cut to reporter Don Lemon’s live broadcast from a sidewalk in Ferguson.¹⁰² As recorded on video, a police officer yells at Lemon to move out of the way.¹⁰³ The same officer is seen moments later physically forcing Lemon back into the crowd of protestors. Lemon explains that the media were

initially instructed to stand exactly where the conflict arose, as were the protestors. Only later in the day did the police take objection to their position, which Lemon described as “changing the rules.”¹⁰⁴

- Trey Yingst, a livestreamer for online news site News2Share, was filming the daytime arrest of a protestor on **August 18** when he was pushed back by an officer.¹⁰⁵ His livestream recording shows an officer shouting, “Step back.” As a man is taken into custody, an officer corrals Yingst and blocks his view, telling him, “Just give us a minute here, okay?” When the police move the arrested man to a squad car, the officer insists that Yingst move further back, repeating, “Go that way. Go that way. Go that way. Go. Go now. Go that way, sir.” As the officer physically pushes him back and turns his camera, a second officer can be heard instructing people to “keep moving.” Yingst commented on the incident, asserting that “[t]he police did not want these arrests to be filmed. I was pushed multiple times by officers and was threatened with arrest.”¹⁰⁶
- Alexia Fernandez-Campbell and Reena Flores of the National Journal reported that on **August 13** they were delayed for 4½ hours attempting to access the protests by officers who threatened them with arrest and obstruction. Police told the pair that protests were over, when in fact they were ongoing.¹⁰⁷ Police alternated between asking that they consider their own safety before entering and informing them that they would face arrest if they insisted on entering the protest area. Fernandez-Campbell and Flores described police efforts as trying to create a “media blackout,” and quote St. Louis County police officers as saying: “I want you to get out of here...‘You’re not going to walk down the street. If you insist on going down here, and you want to disobey the orders of the police that have been given to you, thoroughly and fairly, you’ll most likely be placed under arrest.’” After Fernandez-Campbell and Flores made it to the scene of the protests, a different group of officers who saw them filming approached and said, “We’re gonna put you under arrest if you don’t leave the area. This is your final warning...We don’t want to have to take you to jail but we definitely will, OK?”¹⁰⁸
- On **August 18**, Ryan Devereaux of The Intercept reported that police were pointing their guns at people with cameras,

in an apparent attempt to shine the flashlights attached to the guns into the cameras and cameraphones of people trying to film or photograph them.¹⁰⁹



DESIGNATED MEDIA AREAS/PRESS PENS

On certain nights of the protest, police set up a designated media area for members of the press. Many of the journalists interviewed reported that they were pressured or directly ordered by police to stay in the media area. One commented, “They weren’t physically holding us there [in the media area], but if you left, there’s a chance a cop will decide you need to go to jail.”¹¹⁰ Another said, “Every time I tried, they would let me leave [the press area], but to go home, not to go back to the action. I couldn’t go back to where the protests were taking place. They didn’t really give a reason, it was like martial law down there.”¹¹¹ St. Louis County Police Department spokesman Officer Brian Schellman commented, “We set up media staging areas that the press could utilize to be close enough to the incident as possible, with their safety in mind. However we never stated that they were required to stay in that place, only made it available should they want to use it.”¹¹²

On the afternoon of **August 18**, Scott Olson, a Getty photographer responsible for some of the most widely circulated images of the Ferguson protests, was arrested within sight of the designated media area.¹¹³ Video shows Olson with his camera around his neck, being led to a police van while stating, “I’m being arrested because they said the media is required to be in a certain area.”¹¹⁴ A fellow journalist commented that Olson was arrested for “not getting out of the way fast enough.”¹¹⁵ Upon his release from jail a few hours later, Olson stated, “I want to be able to do my job as a member of the media and not be arrested for just doing my job.”¹¹⁶

While offering an area for press to use at their discretion during coverage of a major public event is permissible, designating one area that press are allowed to be in, with the implicit or explicit statement that they are not free to move into other areas, is generally a violation of press freedoms. The press have the same rights as the general public to access public spaces. Law enforcement’s decision to set up a designated media area is further called into question by the observations of several journalists that the media area was intended to prevent them from being able to see what was happening between police and protestors. One interviewee noted, “In the evenings, they were constantly pressing

us back, wanting us to stay in the pens... They were saying it was for safety, but it felt really wrong to push us away from watching the action, watching what took place between the protestors and police. It seemed less about safety and more about control. There’s always a suspicion that they’re asking you to move to the pens to prevent you from covering the real action. Especially in a situation like this, where law enforcement is being highly analyzed and covered.”¹¹⁷

According to interviewees, at least one of the locations chosen for the designated media area was too far away from the site of the protests to allow them to continue reporting. As one journalist commented about a media area that had been set up near a local convenience store, “If you stayed in there, you were half a mile, three-quarters of a mile away from the protests, so you could see it in the distance, smoke and gas, could hear pops, but you couldn’t see anything.” On a later date, the press pen was moved to an area closer to the location of the protests.¹¹⁸ Another interviewee recalled, “If you were in the media zone on the more heated evenings, you couldn’t see what was happening. I forget what night this was, but some reporters who weren’t in the media zone got tear gassed, and the reporters in the media zone were told there was no tear gas, it was only smoke. Those of us getting tear gassed knew that wasn’t true, but if you were in the zone you wouldn’t be able to see it.”¹¹⁹

Curfews

When a curfew is in place restricting public access to an area, the press generally have no special right to access the area.¹²⁰ However, the curfew order must conform to constitutional requirements to be valid. On August 17 and 18, Missouri Governor Jay Nixon

declared a state of emergency in Ferguson and instituted a curfew from 12:00 A.M. to 5:00 A.M.¹²¹ It is beyond this report's scope to evaluate the legality of this curfew declaration. However, the ACLU, the Lawyers' Committee for Civil Rights Under Law, and the NAACP Legal Defense Fund issued a joint statement strongly criticizing the curfew order and arguing that the order's lack of clarity regarding where and when it would be enforced rendered it unconstitutional. The civil rights groups particularly condemned the fact "that the media were kept away from the Saturday night's [early morning on August 17] interactions between law enforcement and protestors. As a result, there are divergent stories about the seven arrests and one shooting that occurred, despite a mass of media two blocks away that could have created an objective record. The actions of law enforcement are viewed with great skepticism nationally and internationally. It is, therefore, imperative that the media have access to the events on the ground."¹²²

OBSTRUCTING ACCESS TO INFORMATION

Many reporters interviewed stressed the difficulty they had obtaining information from the police. Several journalists noted that they saw police officers who were either not wearing their identification badges, or had covered them so their identifying information was not visible—one journalist said, "It's little things like that that make everyone more paranoid about how the police are acting."¹²³ As the Department of Justice noted in two letters sent to the Ferguson Police Department, "The practice of not wearing, or obscuring, name plates violates your own department's policies."¹²⁴ St. Louis County Police Department spokesman Officer Brian Schellman commented, "As far as removing name badges, the policy is now in place that officers will always wear name tags and badges. Many officers have had death threats directed at them or their families and this was viewed as a safety concern, coupled with the fact that each of the tags worn on a police uniform has pins that could injure an officer or a civilian if placed in a riot situation. Again, policy has been put in place however, that officers will always wear these items regardless."¹²⁵

Particularly in the early days of the protests, journalists had difficulty establishing the police chain of command and points of contact for their inquiries. As one explained, "It was really hard to establish who was in charge at any given point—if you were trying

to find a commander so you could ask him a question, you'd just get pushed back, you couldn't even get close to them, they'd just turn you away."¹²⁶ Several journalists also noted that they had difficulty getting anyone from the various police departments to return their calls or emails: "The public information officers were cagey, we weren't getting responses to calls or emails. This sort of stuff undergirds strong reporting and they weren't really good at that."¹²⁷

The apparent lack of police willingness to provide information to the public may also have fueled the protests. Writing for *The New Yorker*, Jelani Cobb noted that for six days after Michael Brown's death, the Ferguson Police Department refused to release the name of the officer who killed him. Cobb wrote:

"During the past few days, when I've asked people in the city what steps they wanted the police department to take, most shared an answer: release the name of the officer... what is happening in Ferguson has been an object lesson about the importance of accountability and transparency... Information might have dispersed more crowds than armored vehicles did. The arrests and tear-gassing of journalists on Wednesday night only highlighted a theme that's been on display in every aspect of this case since it began: a feeble sense of public accountability on the part of local law enforcement."¹²⁸

Over two months after the start of the protests, Ferguson officials continue to obstruct access to information by charging journalists astronomical fees to process their records requests, including asking VICE News for a \$2,000 deposit to begin processing a request for documents related to Michael Brown's death.¹²⁹ The difficulties that reporters and the public have encountered in obtaining information are particularly concerning in light of the steady stream of information that has been leaked to the press regarding the grand jury's investigation into Michael Brown's death.¹³⁰

Conclusion and Recommendations

RESPECT FOR FREEDOM OF THE PRESS is inextricably linked to respect for all other constitutional and human rights. The press plays an essential role in documenting human rights abuses, disseminating information about those abuses to the public, and generating evidence that can be used to press for accountability and reform measures. Interference with press freedoms in Ferguson is troubling both because it suggests a lack of respect on the part of the police for the role of the media, and because it restricts the flow of information about police conduct in Ferguson to the general public, hindering democratic debate about the range of policy and social issues at stake in the Ferguson demonstrations. In addition, journalists' right to report on public protests has been infringed on numerous occasions in recent years, indicating that press freedoms at public protests is a recurring issue in need of broader investigation and steps toward reform.

Furthermore, the underlying cause of most of the violations of press freedom documented in this report was the decision by local and state authorities to deploy a heavily militarized police response in Ferguson. This apparently created a mentality among some police officers that they were patrolling a war zone, rather than a predominantly peaceful protest attended by citizens exercising their First Amendment rights, and members of the press who also possess those rights. Lines of communication between police and those present at the protests were strained at best, and often nonexistent, which eliminated the possibility of de-escalating any conflicts that did arise through dialogue and negotiation.¹³¹ One of the chief lessons demonstrated by the allegations contained in this report is that militarized policing is not an appropriate or useful response to a public demonstration. Indeed, the events that transpired in Ferguson strongly suggest that the militarization of U.S. domestic police forces runs an unacceptable risk of violations of individuals' constitutional and international human rights.¹³²

Furthermore, the number of alleged incidents recorded in this report indicates that St. Louis-area police were not adequately trained on how to respect media freedoms during public protests. Some of the police conduct observed suggests a lack of training on a far more basic level. As Gregg Leslie of the Reporters' Committee for Freedom of the Press noted, "It's embarrassing to have to recommend to a police department that you need to tell your officers not to point a gun at someone in the casual way we were hearing about."¹³³ Leslie also recommended that in addition to new training, "We find it's more helpful that we have a dialogue with [the police]... every time we talk to the police they have plenty of things they want to say to the media," including police concerns over the increasing difficulty of determining who is a member of the media.¹³⁴ According to St. Louis County Police Department spokesman Officer Brian Schellman, that department has already taken steps to improve officer training, to their credit: "Our officers have recently undergone training that included an extensive review of the 1st, 4th, and 14th Amendments. Each officer will have a laminated card on them at all times with rights of the press."¹³⁵

PEN makes the following recommendations:

To the Department of Justice:

- Include a full inquiry into alleged violations of freedom of the press in your ongoing investigations into civil rights violations in Ferguson;
- Open an investigation into reported incidents of infringements on press freedoms during public protests in Ferguson and in the many other U.S. cities where such reports have emerged;
- Issue new guidelines for U.S. police departments on respect for media freedoms during public demonstrations, including the rights accorded to citizen journalists.

To Ferguson, St. Louis County, and other municipal police departments involved in the response to the Ferguson protests, and the Missouri State Highway Patrol:

- Immediately and thoroughly investigate all alleged incidents of violations of press freedoms, and implement appropriate disciplinary measures against any officer found to be responsible for violations;
- Establish a clear policy for the policing of public protests that emphasizes respect for the rights to assembly and freedom of the press, in consultation with local journalists and press outlets and media rights organizations;
- Train officers on that policy, and clearly communicate the disciplinary consequences of failing to comply with the policy.

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24 The Fourteenth Amendment's due process clause extends constitutional protection of press freedom to actions taken by state and local governments. *Near v. Minn.*, 283 U.S. 697, 51 S.Ct. 625 (1931).

25 *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938).

26 International Covenant on Civil and Political Rights art. 19, Dec. 19, 1966 [hereinafter Art. 19]; see also Construction and Application of International Covenant on Civil and Political Rights, 11 A.L.R. Fed. 2d 751 (detailing ICCPR's limited implementation in the United States).

27 ICCPR Art. 19 (2).

28 U.N. Human Rights Comm., *General Comment No. 34, Article 19: Freedoms of Opinion and Expression* ¶ 44, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter *General Comment No. 34*], available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> (noting, in addition, that any accreditation schemes to enable privileged access must be applied in a non-discriminatory manner, based on objective criteria, and "taking into account that journalism is a function shared by a wide range of actors."); see also SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, FOURTH REP. ON THE SITUATION OF HUMAN RIGHTS DEFENDERS ¶ 122, U.N. Doc. A/HRC/19/55 (December 21, 2011), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf (stating that the "protection of journalists and media workers active on human rights issues should not be limited to those formally recognized

as such, but should include other relevant actors, such as community media workers, bloggers and those monitoring demonstrations.”).

29 *Branzburg v. Hayes*, 408 U.S. 665 (1972), 681.

30 *Id.* at 707. The Supreme Court reaffirmed this right in *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980), 576-78 (“It is not crucial whether we describe this right to attend criminal trials to hear, see, and communicate observations concerning them as a ‘right of access,’ or a ‘right to gather information,’...The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily.”).

31 *See General Comment No. 34* at ¶¶ 11-14.

32 *Id.* at 728.

33 *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

34 Lee Levine, Robert C. Lind, Seth D. Berlin & C. Thomas Dienes, *Newsgathering and the Law*, §9.03 (4th Ed. Matthew Bender & Company 2011).

35 Alaska Stat. § 26.23.200(1)(2004); Cal. Penal Code § 409.5(a),(d)(2004); Ohio Rev. Code Ann. § 2917.13(B)(2004); Va. Code Ann. § 15.2-1714 (2014).

36 Julie Bosman, *Judge Blocks Rule for Ferguson Protestors*, N.Y. TIMES, Oct. 6, 2014; *Abdullah v. County of St. Louis*, 2014 U.S. Dist. LEXIS 141744 at 2 (E.D. Mo. Oct. 6, 2014).

37 *See, e.g., Lawsuit Claims Police Brutality at Ferguson Protests*, THE ASSOCIATED PRESS, Aug. 28, 2014, available at http://www.huffingtonpost.com/2014/08/28/police-brutality-lawsuit-ferguson_n_5732760.html; Patrick Clark, *ACLU Lawsuit Wants “Freedom of the Press” Defined After Ferguson Demonstrations*, FOX 2 NEWS, <http://fox2now.com/2014/08/14/aclu-lawsuit-wants-freedom-of-the-press-defined-after-ferguson-demonstrations/> (detailing two lawsuits filed by the ACLU).

38 *General Comment No. 34* at ¶ 45.

39 *Id.* at ¶ 23.

40 ICCPR art. 19 at ¶ 3 (restrictions on freedom of expression are limited to situations which implicate the rights of others or for the protection of national security, public order, public health, or morals).

41 *General Comment No. 34* at ¶¶ 27-35. *See also* SUPPRESSING PROTEST at p. 56, note 361.

42 STEVEN A. LAUTT, *SUNLIGHT IS STILL THE BEST DISINFECTANT: THE CASE FOR A FIRST AMENDMENT RIGHT TO RECORD THE POLICE*, 51 *Washburn L.J.* 349, 372 (2012) (“[T]hose who record police activity perform much the same service as the pamphleteers who brought to light abuses of power during the years preceding the founding of the United States”).

43 *Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995); *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000); *Gericke v. Begin*, 753 F.3d 1 (1st Cir. 2014); *ACLU v. Alvarez*, 679 F.3d 583, 595–96 (7th Cir. 2012) (“Restricting the use of an audio or audiovisual recording device suppresses speech just as effectively as restricting the dissemination of the resulting recording”).

44 *Glik v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011).

45 Statement of Interest of the United States, *Garcia v. Montgomery County*, U.S. Dist. LEXIS 120659 (2013) No. 8:12-cv-03592-JFM, available at http://www.rcfp.org/sites/default/files/docs/20130307_135451_garcia.pdf, *see also* Statement of Interest of the United States, *Sharp v. City of Baltimore*, No. 1:11-cv-02888-CCB (D. Md.).

46 Journalist Interview 13 with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Sept. 9, 2014).

47 Journalist Interview 5 with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Aug. 29, 2014).

48 Journalist Interview 12 with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Sept. 8, 2014).

- 49 Mickey Osterreicher, General Counsel, National Press Photographers Association, Telephone Interview with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Sept. 26, 2014).
- 50 E-mail from Officer Brian Schellman, spokesman, St. Louis Co. Police Dept., to author (Oct. 23, 2014, 12:53 PM EST)(on file with author).
- 51 See *infra*, Section IV (f), Obstructing Access to Information.
- 52 Ryan J. Reilly, Post to Facebook (Aug. 14, 2014), <https://m.facebook.com/photo.php?fbid=973486019263&id=21202821&set=a.503493942153.2017867.21202821>.
- 53 Journalist Interview 13.
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- 55 Sherry Ricchiardi, *Ferguson Police Bullied the Media*, NEW PHOTOGRAPHER MAGAZINE, National Press Photographers Association 58 (September 2014).
- 56 Table entry 1.
- 57 Wesley Lowery, *In Ferguson, Washington Post Reporter Wesley Lowery Gives Account of His Arrest*, WASH. POST, August 14, 2014, http://www.washingtonpost.com/politics/in-ferguson-washington-post-reporter-wesley-lowery-gives-account-of-his-arrest/2014/08/13/0fe25c0e-2359-11e4-86ca-6f03cbd15c1a_story.html; *Post's Lowery Detained in Ferguson*, WASH. POST – POST TV (Aug. 13, 2014) http://www.washingtonpost.com/posttv/national/post-reporter-detained-in-ferguson/2014/08/13/b0fc5720-2354-11e4-8b10-7db129976abb_video.html.
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- 59 *Id.*
- 60 Ryan J. Reilly, Post to Facebook (Aug. 14, 2014), <https://m.facebook.com/photo.php?fbid=973486019263&id=21202821&set=a.503493942153.2017867.21202821>.
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- 62 *Id.*
- 63 Matt Pearce, *Two Reporters Briefly Detained Near Protest in Ferguson, Mo.*, L.A. TIMES, Aug. 13, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-ferguson-reporter-arrests-20140813-story.html>.
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- 66 AA *Journalist's Life Threatened by Police in Ferguson*, ANADOLU AGENCY, Aug. 21, 2014, <http://www.aa.com.tr/en/headline/376388-us-aa-journalists-life-threatened-by-police-in-ferguson>; *Ferguson Police 'Detain, Beat, Threaten' Anadolu Agency Correspondent*, HURRIYET DAILY NEWS, Aug. 20, 2014, <http://www.hurriyetdailynews.com/ferguson-police-detain-beat-threaten-anadolu-agency-correspondent.aspx?PageID=238&NID=70696&NewsCatID=358>. The Anadolu and Hurriyet articles differ slightly in their quotes of what the officer who threatened Şaşmaz said to him, possibly because of variations in translation from Turkish to English.
- 67 *Ferguson Arrest Record for Journalist Bilgin Sasmaz*, MUCKROCK, <https://www.muckrock.com/foi/st-louis-county-8838/ferguson-arrest-record-for-journalist-bilgin-sasmaz-13085/-1291012-14-45038>.
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133 Gregg Leslie, Telephone Interview with Katy Glenn Bass, Deputy Director of Free Expression Programs, PEN American Center (Oct. 9, 2014).

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Appendix: Table of Alleged Violations of Press Freedoms by Police

This table is a compilation of alleged violations of press freedoms by St. Louis-area police, compiled by PEN researchers. The allegations are drawn from interviews and reviews of news reports, photographs and video recordings posted online, and the social media accounts of journalists and protest participants.

This is not an exhaustive list of allegations. These allegations are presented to demonstrate the need for a more thorough investigation into police treatment of the media in Ferguson, and for better police training on respect for press freedoms. Some of the incidents included here involved violations of the rights of multiple journalists; for example, a police officer pointing a gun at a group of several journalists is counted as one incident.

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
Arrests of journalists						
1	Arrests (2) 8/13/2014	Wesley Lowery; Ryan Reilly	Washington Post; Huffington Post	Armed officers came into McDonald's where Lowery and Reilly were working and told them to leave. Lowery began taking video, and as he was gathering his belongings he was arrested. He was thrown against a soda dispenser machine and cuffed with plastic ties. He was told he was arrested for "trespassing in a McDonald's." Reilly repeatedly asked his arresting officer to identify himself, which he refused to do. On the way out the officer, "purposefully banged [Reilly's] head against the window on the way out and sarcastically apologized."	News report	Post's Lowery Detained in Ferguson, Wash. Post – Post TV (Aug. 13, 2014) http://www.washingtonpost.com/posttv/national/post-reporter-detained-in-ferguson/2014/08/13/b0fc5720-2354-11e4-8b10-7db129976abb_video.html . Wesley Lowery, In Ferguson, Washington Post Reporter Wesley Lowery Gives Account of His Arrest, Wash. Post, August 14, 2014, http://www.washingtonpost.com/politics/in-ferguson-washington-post-reporter-wesley-lowery-gives-account-of-his-arrest/2014/08/13/0fe25c0e-2359-11e4-86ca-6f03cbd15c1a_story.html . Ryan J. Reilly, Post to Facebook (Aug. 14, 2014), https://m.facebook.com/photo.php?fbid=973486019263&id=21202821&set=a.503493942153.2017867.21202821 . Amanda Terkel, St. Louis Politician Arrested Amid Ferguson Protests, The Huffington Post, Aug. 13, 2014, http://www.huffingtonpost.com/2014/08/14/antonio-french_n_567157.html Antonio French Speaks Following Jail Release, KSDK, http://www.ksdk.com/videos/news/local/2014/08/14/048253/ .
2	Arrest 8/13/2014	Antonio French	Citizen journalist, St. Louis alderman	Went to car to avoid what he thought was tear gas. Ordered out of his car, then dragged out by police. Charged with unlawful assembly and held overnight.	News report	
3	Arrest 8/14/2014 (early morning hours)	Umar Lee	St. Louis Evening Whirl	Lee, a columnist for the St. Louis Evening Whirl, was arrested outside the police department. "We weren't doing anything wrong. We weren't even part of the protest. We were just taking pictures, filming. The protest was over, and we were walking toward our guys. You have guys pointing automatic weapons at us, tactical teams surrounding us and putting the cuffs on us. It's a really scary experience." Lee was detained and later released on \$300 bail, with an Oct. 9 court date.	News report	Ryan J. Reilly & Amanda Terkel, Ferguson Protesters Deal With Fallout After Arrests, The Huffington Post, Aug. 13, 2014, http://www.huffingtonpost.com/2014/09/09/ferguson-arrests_n_5791136.html .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
4 Arrest; pointed weapon; ordered to leave area	8/13/2014	Ryan Frank	Freelance filmmaker	"Frank says he was documenting a group of about 100 people who were protesting outside the Ferguson Police Department Wednesday night. He called the protesters 'spirited,' but not unruly. According to Frank, the SWAT team rolled up during the protest and placed barricades in the streets. 'They pointed guns at us,' said Frank. He says the officers outnumbered the protesters, and they yelled at everyone to leave. He says most people did leave, but he felt it was his right to observe the events because he wasn't breaking the law. Frank says he sat down on the sidewalk to observe the scene, saying he felt it was his right to do so because he wasn't breaking any laws. He says he was getting up to leave when officers took him into custody."	News report; video	Brandie Piper, Filmmaker Arrested: My Rights Were Violated, KSDK, Aug. 14, 2014, http://www.ksdk.com/story/news/local/2014/08/14/ryan-frank-filmmaker-arrested-rights-violated/14046441/ .
5 Arrest; pointed weapon	8/17/2014	Matthew Giles	NYU journalism student	"Just got out of jail after arrest as media in #Ferguson. Camera and phone taken from me at gunpoint."	Tweet; arrest record	Matthew Giles, Twitter (Aug. 18, 2014, 7:02 AM EST), https://twitter.com/MalcontentMatty/status/501323360820027392 . Ferguson Arrest Record for Journalism Student Matthew Giles, MuckRock, Aug. 19, 2014, https://www.muckrock.com/foi/st-louis-county-8838/ferguson-arrest-record-for-journalism-student-matthew-giles-13082/ .
6 Arrests (2)	8/17/2014	Robert Klemko; Neil Munshi	Sports Illustrated; Financial Times	Captain Johnson cuffed and held them for 2 minutes as they attempted to go back to the "command center."	Video and news report	Neil Munshi, Vine (Aug. 17, 2014), https://vine.co/v/M36JY9b5hgU . Kristen Hare, More Journalists Arrested, Maced in Ferguson, Poynter, Aug. 17, 2014, http://www.poynter.org/latest-news/mediawire/263931/more-journalists-arrested-in-ferguson/ . Gabrielle Bluestone, Cops in Ferguson Threaten to Shoot Reporter, Mace Chris Hayes, Gawker, Aug. 17, 2014, http://gawker.com/ferguson-police-threaten-to-shoot-reporter-and-mace-chris-1623125660?utm_campaign=socialflow_gawker_twitter&utm_source=gawker_twitter&utm_medium=socialflow . Abby Phillip, Police in Ferguson Arrest and Threaten More Journalists, Wash. Post, Aug. 18, 2014, http://www.washingtonpost.com/news/post-nation/wp/2014/08/18/police-in-ferguson-arrest-and-threaten-more-journalists/ .
7 Arrest; Pointed weapon	8/17/2014 (early morning hours)	Pearl Gabel	NY Daily News	Walking toward the police on Florissant Ave with hands in the air, when an officer pointed a rifle at her face. Cuffed for curfew violation. Police took her equipment and cell phone, released her after inspecting her press credentials, saying, "Welcome to St. Louis."	News report	Pearl Gabel, Daily News Journalist Handcuffed by Police While Covering Protests in Ferguson, Mo., NY Daily News, Aug. 17, 2014, http://www.nydailynews.com/news/national/daily-news-photographer-detained-ferguson-mo-article-1.1906335?cid=bitly .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
8 Arrest: Pointed weapon	8/17/2014	Rob Crilly	The Telegraph	Officers pointed gun at him. Captain Johnson, described as "very jumpy," cuffed him and walked him away from area. Released shortly thereafter. [This is connected to Klenko & Munshi incident, but distinguished by the gun.]	News report and tweet	Abby Phillip, Police in Ferguson Arrest and Threaten More Journalists, Wash. Post, Aug. 18, 2014, http://www.washingtonpost.com/news/post-nation/wp/2014/08/18/police-in-ferguson-arrest-and-threaten-more-journalists/ . Kristen Hare, More Journalists Arrested, Maced in Ferguson, Poynter, Aug. 17, 2014, http://www.poynter.org/latest-news/mediawire/263951/more-journalists-arrested-in-ferguson/ . Rob Crilly, Twitter (Aug. 17, 2014, 10:49 PM EST), https://twitter.com/robcrilly/status/501199226005512192
9 Arrest	8/18/2014	Scott Olson	Getty Images	Police arrested Olson, reportedly, for being outside the designated media area. Reporter Rob Crilly commented that Olson was arrested for "not getting out of the way fast enough."	Video, news report, and photographs	Matt Wilstein, Police Arrest Getty Photographer in Ferguson for Taking Pictures of Protest, Mediaite, Aug. 18, 2014, http://www.mediaite.com/online/police-arrest-getty-photographer-in-ferguson-for-taking-pictures-of-protest/ . Melanie Eversley, Getty Photographer Arrested in Ferguson, Mo., Unrest, USA Today, Aug. 19, 2014, http://www.usatoday.com/story/news/nation/2014/08/18/getty-photographer-arrested-scott-olson/14265155/ . Statement from Pancho Bernasconi, Vice President for News, on the Arrest of Getty Images' Scott Olson in Ferguson (Aug. 18, 2014), http://press.gettyimages.com/statement-from-pancho-bernasconi-vp-news-on-the-arrest-of-getty-images-staff-photographer-scott-olson-in-ferguson/ . Ryan J. Reilly, Twitter (Aug. 18, 2014, 7:45 PM EST), https://twitter.com/ryanreilly/status/501515140349853697/photo/1 . Amy Nelson, Instagram (Aug. 18, 2014), http://instagram.com/p/r20Wfwsp8/?utm_source=partner&utm_medium=embed&utm_campaign=video&modal=true .
10 Arrest	8/18/2014	Kerry Pickett	Breitbart	Told to walk to media area through a detour that did not exist for pedestrians. She attempted to walk to the media area, and was cuffed and told to get on her knees. Arrested by a Missouri State Trooper and released several hours later with an apology and police explanation that the incident was a result of miscommunication among officers.	News report	Jonathan Strong, Breitbart Reporter Arrested in Ferguson, Breitbart News, Aug. 19, 2014, http://www.breitbart.com/Big-Government/2014/08/19/Breitbart-News-Reporter-Arrested-In-Ferguson .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
11 Arrests (2)	8/18/2014	Frank Hermann; Ansgar Graw	Der Standard; Die Welt	The pair allegedly failed to follow police instructions to vacate an empty street. They insist that they followed all police orders.	News report	Frank Hermann, Frank Herrmann über Seine Festnahme: "Hände auf den Rücken, das Plastikband Festgezurt" [Frank Herrmann on His Arrest: "Hands Behind My Back, Cuffed in Plastic Bands"], Der Standard, Aug. 19, 2014, http://derstandard.at/2000004503090/Frank-Herrmann-ueber-seine-Festnahme-Haende-auf-den-Ruecken-das (Austria) . D.C.-Based Journalist Among Latest Arrests in Ferguson, Mo., Associated Press, Aug. 19, 2014, http://www.wjla.com/articles/2014/08/d-c-based-journalist-among-latest-arrests-in-ferguson-mo--106253.html .
12 Arrest	8/19/2014	Tom Walters	CTV News	Walters and other media were ordered away from protestors. Walters approached Capt. Ron Johnson of the Missouri Highway Patrol to ask why he had ordered the media to leave, when he was promptly arrested. Walters's arrest was captured on video camera by CTV News cameraman Liam Hyland. Held for several hours.	News report	CTV's Tom Walters Among Journalists Arrested in Ferguson, CTV News, Aug. 21, 2014, http://www.ctvnews.ca/world/ctv-s-tom-walters-among-journalists-arrested-in-ferguson-1.1968102?hootPostID=698f22be7ec02feb2c856cb54631c80 .
13 Arrests (2); Shot with rubber bullets; Pointed weapon	8/19/2014 (early morning hours)	Ryan Devereaux; Lukas Hermsmeier	The Intercept; Die Bild	After being stranded away from their car, the pair walked with hands up yelling "Press! Journalists! We're medial!" while officers trained rifles on them. Devereaux and Hermsmeier were both shot with rubber bullets and arrested while attempting to return to their car after a night of reporting. When they were shot at, they had their hands raised in the air and were shouting, "Press! Press! Press!" Held overnight for failure to disperse.	News report; PEN interview	John Cook, Intercept Reporter Detained Covering Ferguson Protests, The Intercept, Aug. 19, 2014, https://firstlook.org/theintercept/2014/08/19/intercept-reporter-detained-covering-ferguson-protests/ . Polizei Nimmt BILD-Reporter in Ferguson Fest [Police Arrest BILD Reporter in Ferguson], Der Bild, Aug. 19, 2014, http://www.bild.de/news/ausland/journalist/ferguson-bild-reporter-festgenom-men-37306698.bild.html . Ryan Devereaux, A Night in Ferguson: Rubber Bullets, Tear Gas, and a Jail Cell, The Intercept, Aug. 19, 2014, https://firstlook.org/theintercept/2014/08/19/ferguson/ .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
14 Arrest; Threat to kill	8/19/2014	Bilgin Sasmaz	Anadolu Agency	Sasmaz was arrested and forced to the ground while trying to record an incident between police and protesters on West Florissant Ave. "I was threatened by the police officer. The policeman told me: 'if you direct your flash toward me once again, I will kill you,'" according to Sasmaz. Detained by the police for five hours.	Video and news report	AA Muhabiri Bilgin Şaşmaz in Gözaltına [Proof of the Detained Journalist], Anadolu Agency, Aug. 21, 2014, http://www.msn.com/tr-tr/video/izle/aa-muhabiri-bilgin-%C5%9Fa%C5%9Fmaz%C4%B1n-g%C3%B6zalt%C4%B1na-al%C4%B1nma-an%C4%B1/vi-4ae19f59-7372-0b32-0302-ed4f3cd0bb8 (Turk.). AA Journalist's Life Threatened by Police in Ferguson, Anadolu Agency, Aug. 21, 2014, http://www.aa.com.tr/en/headline/376388--us-aa-journalists-life-threatened-by-police-in-ferguson . Ferguson Police 'Detain, Beat, Threaten' Anadolu Agency Correspondent, Hurriyet Daily News, Aug. 20, 2014, http://www.hurriyet-dailynews.com/ferguson-police-detain-beat-threaten-anadolu-agency-correspondent.aspx?PageID=238&NID=70696&NewsCatID=358 . Ferguson Arrest Record for Journalist Bilgin Sasmaz, Muckrock, https://www.muckrock.com/foi/st-louis-county-8838/ferguson-arrest-record-for-journalist-bilgin-sasmaz-13085/#1291012-14-45038 . Cincinnati Herald, Twitter (Aug. 20, 2014, 10:34 P.M. EST), https://twitter.com/CinHerald/status/502101398730076160 . Jesse Folk, University of Cincinnati Student Photojournalist Returns Home After Arrest in Ferguson, News Net 5 Cleveland, Aug. 21, 2014, http://www.newsnet5.com/news/state/university-of-cincinnati-student-photojournalist-arrested-in-ferguson . Robert Samuels, Ferguson Police Arrest Protesters, Freelance Journalist, Wash. Post, Oct. 3, 2014, http://www.washingtonpost.com/politics/ferguson-police-arrest-protesters-freelance-journalist/2014/10/03/d77f589e-4aba-11e4-b72e-d60a92929cc10_story.html .
15 Arrest; Pushed by officer	8/20/2014 (early morning hours)	Coulter Loeb	Freelance, Cincinnati Herald	"Standing at a police line when an officer started shoving him and he was loaded into a police van." Arrested Wednesday at 12:30 a.m. CST and released at 6 a.m. without charge.	News report and tweet	
16 Arrest	10/2/2014	Mary Moore	Freelance	"Get them," an officer in a brown uniform told others. They arrested the group quickly, pulling apart those who linked arms, yelling charges to them such as 'inciting violence' and 'failure to obey.' In the mix was Moore, the journalist, who was recording the action. "What a remarkable display of making your own rules as you go," said Patricia Byner, a Democratic committeewoman of Ferguson Township. "They took the journalist who was doing her job and wasn't involved."	News report	
17 Arrest	10/13/2014	Unknown journalist	St. Louis Post Dispatch	"St. Louis County Police held a Post-Dispatch reporter in plastic handcuffs as she covered a Ferguson demonstration Monday evening." "Police held the reporter in handcuffs for 90 minutes before releasing her without charges." The handcuffs were allegedly so tight that they caused injury to the journalist, who still could not form a firm grip three days after the incident.	Tweet; independently corroborated by PEN	E-mail from Michael Sorkin, journalist, St. Louis Post-Dispatch, to author (Oct. 22, 2014, 4:01 PM EST)(on file with author); Michael Sorkin, Twitter (Oct. 14, 2014, 8:01PM EST), https://twitter.com/ByMichaelSorkin/status/522175556300566528 . Michael Sorkin, Twitter (Oct. 14, 2014, 8:03PM EST), https://twitter.com/ByMichaelSorkin/status/522175799651090432 .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
21 arrests as of October 13						
Threatened by guns or other weapons/threat of bodily harm						
18	8/13/2014	Elon James White	VALID Magazine; TWIB Nation	"I'm not even sure we can get back in to #Ferguson. I asked a cop about road access and had a Sniper rifle pointed at my chest..."	Tweet	Elon James White, Twitter (Aug. 13, 9:45 PM EST), https://twitter.com/elonjames/status/499778700330561537 . Elon James White, Twitter (Aug. 13, 7:13 PM EST), https://twitter.com/elonjames/status/499740581128454146 .
19	8/13/2014	Kenya Vaughn	St. Louis American	"All our web editor [identified on website as Kenya Vaughn] did was say "Excuse me?" to a cop. He pointed a rifle at her. Now known as Saying Excuse Me While Black."	Tweet; independently corroborated by PEN	Chris King, Twitter (Aug. 14, 2014, 12:14 AM EST), https://twitter.com/chriskingst/status/499770939022667776 .
20	8/13/2014	Rembert Browne	Grantland	"I'd never had an assault rifle pointed at me before. I'd never locked eyes with a man holding an assault rifle atop a tank. But this was reality in Ferguson."	News report	Rembert Browne, The Front Lines of Ferguson, Grantland, Aug. 15, 2014, http://grantland.com/features/ferguson-missouri-protest-michael-brown-murder-police/
21	8/13/2014	Alice Speri	VICE	"Officer literally just asked me if I want to get shot (for taking a photo of all things...) No thanks for asking. I'll pass."	Tweet; independently corroborated by PEN	Alice Speri, Twitter (Aug. 13, 2014, 11:33 PM EST), https://twitter.com/alicesperi/status/499760650726289408 .
22	8/17/2014	Marc Lamont Hill	BET News; HuffPost Live	"Cop pulled gun on @marclamonthill until he screamed medial"	Tweet	Roland Martin, Twitter (Aug. 18, 2014, 12:14 AM EST), https://twitter.com/rolandmartin/status/501220519627485185 .
23	8/17/2014	Chris Hayes	MSNBC	Filming when police told him, "Media do not pass us, you're getting maced next time you pass us."	Video and news report	All In: Police Tell Chris Hayes, Media They Could Get Maced, NBC News, Aug. 18, 2014, http://www.nbcnews.com/video/all-in-/55890620#55890620 . Ezra Klein, Why MSNBC's Chris Hayes Almost Got Maced in Ferguson, Vox, August 18, 2014, http://www.vox.com/michael-brown-shooting-ferguson-mo/2014/8/18/6032891/chris-hayes-ferguson-interview .
24	8/17/2014	Mustafa Hussein	Argus Radio	"Get the fuck out of here and get that light off or you're getting shelled with this."	Video and news report	Gabrielle Bluestone, Cops in Ferguson Threaten to Shoot Reporter, Mace Chris Hayes, Gawker, Aug. 17, 2014, http://gawker.com/ferguson-police-threaten-to-shoot-reporter-and-mace-chris-hayes-1623125660?utm_campaign=socialflow-gawker_twitter&utm_source=gawker_twitter&utm_medium=socialflow . Andrea Peterson, Officer Appears to Threaten Cameraman Covering Chaos in Ferguson, Wash. Post, Aug. 18, 2014, http://www.washingtonpost.com/blogs/the-switch/wp/2014/08/18/officer-appears-to-threaten-cameraman-covering-chaos-ferguson/ .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
25 Threat to shoot	8/17/2014	Joel Anderson	Buzzfeed	While moving away from the scene of protests after officers began deploying tear gas and rubber bullets three hours before the start of the declared curfew, "The officers who were stationed at a nearby convenience store were yelling at us. "Stop running or we will shoot you!" They pointed their guns. I slowed down and raised my arms. 'I'm with the media!' I yelled. 'What do you want us to do?'"	News report	Joel Anderson, What It Was Like in The Streets on Ferguson's Worst Night, BuzzFeed, Aug. 18, 2014, http://www.buzzfeed.com/joel-anderson/what-it-was-like-in-the-streets-on-fergusons-worst-night#2n-hp4ur .
26 Threat to assault	8/14/2014	Aaron Ernst (producer), Jung Park, Joie Chen, Umar Lee	Al Jazeera America	Officers from the city of Kinloch (close to Ferguson) followed the Al Jazeera crew's taxi and stopped them when the crew got out to film a shot of a road sign, ordering them to leave town. "We were on a public street. It was not blocked off, and other cars occasionally passed. No curfew was in effect... The officer grabbed my wrist. 'Don't resist. I'll bust your ass. I'll bust your head right here.'"	News report	Aaron Ernst, Police to Al Jazeera Journalist Near Ferguson: 'I'll Bust Your Head', Al Jazeera Am., Aug. 19, 2014, http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/8/18/police-to-al-jazeerajournalistinfergusonillbustyourass.html . Umar Lee, Twitter (Aug. 15, 2014, 12:21 AM EST), https://twitter.com/STLAbuBadu/status/500135247510380544 .
27 Pointed weapon; Threat to kill	8/19/2014	Caleb-Michael Files; multiple journalists	Freelance/live-streamer; Channel 4 News; The Youngist	Officer points gun at person holding camera and other journalists present, says, "I will fucking kill you." When the officer is asked to provide his name, he responds, "Go fuck yourself."	Multiple video recordings	Joe Coscarelli, Officer 'Go F*ck Yourself' Out of a Job After Pointing Gun at Ferguson Protesters, N.Y. Magazine, Aug. 29, 2014, http://nymag.com/daily/intelligencer/2014/08/2-cops-fired-over-ferguson-protests.html . Caleb-Michael Files, Twitter (Aug. 20, 2014, 2:40 AM EST), https://twitter.com/crmichaelfiles/status/50198204565361920 . LeakSourceinfo, #OfficerGoFuckYourself Threatens to Kill Ferguson Livestreamers, Youtube, Aug. 20, 2014, https://www.youtube.com/watch?v=8zbR824FKpU . Dylan Scott, ACLU Demands Removal of Officer Who Told Protester: 'I Will Kill You', Talking Points Memo, Aug. 20, 2014, http://talkingpointsmemo.com/livewire/ferguson-police-officer-i-will-kill-you-video . Ahiza Garcia, Officer Who Told Protesters 'I Will Fucking Kill You' Forced to Resign, Talking Points Memo, Aug. 29, 2014, http://talkingpointsmemo.com/livewire/ferguson-michael-brown-police-resignation .
28 Pointed weapon	8/19/2014	Raffe Lazarian	Freelance	"Cop pulled a gun on me tonight for asking a question."	Tweet; independently corroborated by PEN	Raffe Lazarian, Twitter (Aug. 20, 2014, 1:56 AM EST), https://twitter.com/raffephoto/status/501971056828358656 .

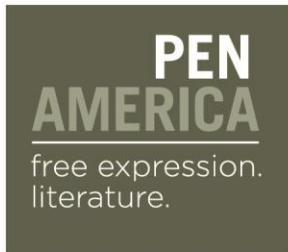
Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
29	8/20/2014 (early morning hours)	Wesley Lowery; Eli Rosenberg; multiple journalists	Washington Post; KMBC 9 News	"With weapons pointed at media, officers storm INTO media area to arrest a teen who was walking through it."	News report; tweets	Wesley Lowery, Twitter (Aug. 20, 2014, 1:19 AM EST), https://twitter.com/WesleyLowery/status/501961637801525248 . Eli Rosenberg, Twitter (Aug. 20, 2014, 1:22 AM EST), https://twitter.com/EliKMBC/status/501962437038735360 . Lindsay Bever, Peaceful Protests in Ferguson Turn into Midnight Scuffle with Police, Wash. Post, Aug. 20, 2014, http://www.washingtonpost.com/news/morning-mix/wp/2014/08/20/peaceful-protests-in-ferguson-turn-into-midnight-scuffle-with-police/ Sherry Ricciardi, Ferguson: How the St. Louis Post-Dispatch Photo Staff Responded to an Explosive Story, New Photographer Magazine, National Press Photographers Association 46, 49 (September 2014).
30	Week of August 13	J.B. Forbes	St. Louis Post Dispatch	"Forbes spotted a police sniper on top of a truck with a high-powered rifle aimed directly at him...He took a couple steps to the right. The rifle barrel clearly followed him." Forbes posits that the officer might have been trying to read his press pass through the rifle's scope, but also described the police presence as "extremely intimidating. I was far more worried about them than the protesters."	News report	
13 incidents of threats against journalists						
Physical incidents: Hit by tear gas, rubber bullets, bean bag rounds, pushed by police						
31	8/11/2014	Whitney Curtis	Freelance photographer	"When I was hit by the projectile (it could have been a rubber bullet or something similar to a bean bag or pepper ball round) I don't believe there were any protesters within 25' of me. The closest person to me was my husband, Jeff Roberson, an Associated Press staff photographer. My cameras were clearly visible and I was wearing a press badge. I don't want to say that I was targeted because there is no way of verifying that."	Photograph, tweets, firsthand account	E-mail from Whitney Curtis, photojournalist, to author (Oct. 24, 2014, 5:14 PM EST) (on file with author). David Gonzalez, Photographing on Ferguson's Streets, New York Times Lens Blog, Aug. 14, 2014, http://lens.blogs.nytimes.com/2014/08/14/photographing-on-fergusons-streets/ . David Carson, Twitter (Aug. 12, 2014, 7:22 PM EST), https://twitter.com/PDPJ/status/499335039298322432 . David Carson, Twitter (Aug. 12, 2014, 7:31 PM EST), https://twitter.com/PDPJ/status/499337383146700800 .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
32 Tear gas; Obstructing media	8/13/2014	Al Jazeera America news crew	Al Jazeera America	Tear gas fired at Al Jazeera crew; no one else visible in area; police disassembled their gear after they ran away from the gas.	Video, news report, and tweets	Al Jazeera America, Twitter (Aug. 13, 2014, 11:22 PM EST), https://twitter.com/ajam/status/49939038238081025 Tim Molloy, Police: Tear Gas Not Fired at Al Jazeera News Crew Intentionally, The Wrap, Aug. 14, 2014, http://www.thewrap.com/pollce-tear-gas-not-fired-at-al-jazeera-news-crew-intentionally-video/ . Lisa de Moraes, Update: President Obama Warns Police in Ferguson, MO Not To Bully or Arrest Journalists Covering Protests There, Deadline, Aug. 14, 2014, http://deadline.com/2014/08/al-jazeera-america-demands-investigation-after-crew-shot-at-tear-gassed-while-recording-violence-in-ferguson-mo-819394/ Max Fisher, Al Jazeera Journalists Teargassed by Security Forces — in Ferguson, Missouri, USA, Vox, Aug. 13, 2014, http://www.vox.com/2014/8/13/6001193/al-jazeera-journalists-teargassed-by-security-forces-in-ferguson . Cassidy Moody, Twitter (Aug. 14, 2014, 2:10 AM EST), https://twitter.com/CassFM/status/499800133174063104/photo/1 .
33 Beanbag rounds; pointed weapon	8/13/2014	KSDK-TV crew	KSDK-TV	Shortly after filming the Al Jazeera news crew being tear gassed, the KSDK crew says police [a SWAT team] approached them with "guns drawn." "Matthews says she and one photojournalist were in the SUV with their hands up and the third member of their crew got down on his knees in front of the SUV and raised his hands — telling police he was with the press." A photojournalist with the crew also reported that a beanbag round (a form of less-lethal ammunition used by police) was fired at his camera equipment shortly before the tear gas incident, and the precise moment was caught on camera by another photographer.	News report, photo, tweet	Casey Nolen, TV crews hit by bean bags, tear gas, KSDK, Aug. 14, 2014, http://www.ksdk.com/story/news/local/2014/08/14/crews-hit-with-bean-bags-tear-gas/14042747/ Tim Molloy, Police: Tear Gas Not Fired at Al Jazeera News Crew Intentionally, The Wrap, Aug. 14, 2014, http://www.thewrap.com/pollce-tear-gas-not-fired-at-al-jazeera-news-crew-intentionally-video/ . Cassidy Moody, Twitter (Aug. 14, 2014, 1:44 AM EST), https://twitter.com/CassFM/status/499793568547213313 .
34 Pushed by police officer; Obstructing media	8/18/2014	Don Lemon	CNN	Incident on live broadcast. Pushed back from position on sidewalk; no resistance. Alleged attempt to block live CNN broadcast.	Video and news report	Ferguson Solidarity, Twitter (Aug. 18, 2014, 6:29 PM EST), https://twitter.com/FergusonUnity/status/501496028705472512 . Matt Wilstein, Cops Physically Push CNN's Don Lemon During Tense Ferguson Protest, Mediaite, Aug. 18, 2014, http://www.mediaite.com/tv/watch-cops-physically-push-cnns-don-lemon-during-tense-ferguson-protest/ .
35 Pushed by police officer; Obstructing media	8/18/2014	Trey Yingst	News2share	Pushed and blocked from filming arrests of protestors.	Video	News2Share, Peaceful Protestors Arrested, News2share Journalist Pushed Back by Police in Ferguson, Youtube, Aug. 18, 2014, https://www.youtube.com/watch?v=ju6AJkzpdro . Peaceful Protestors Arrested, News2share Journalist Pushed Back By Police in Ferguson, Liveleak, Aug. 18, 2014, http://www.liveleak.com/view?i=2e3_1408391586 .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
36 Tear gas; Ordering media out of area	8/19/2014 (early morning hours)	Jacqueline Lee; others	Belleville News- Democrat	"Police just shot at least three tear gas canisters at me. One hit my leg, one my backpack. #Ferguson" "They're saying 'Go home' I literally have nowhere to go. I'm hiding. A @bellevillenewsd photog, other journo with me. #Ferguson" "We held up media credentials. They drove into parking lot of private apartment complex and shot tear gas in circle, 10ft from us. #Ferguson"	Tweets	Jacqueline Lee, Twitter (Aug. 19, 2014, 2:07 AM EST), https://twitter.com/BNDJLee/status/501611423420923904 ; Jacqueline Lee, Twitter (Aug. 19, 2014, 2:10 AM EST), https://twitter.com/BNDJLee/status/501612049127194624 ; Jacqueline Lee, Twitter (Aug. 19, 2014, 2:12 AM EST), https://twitter.com/BNDJLee/status/501612533347004416 ;
37 Pushed by police officer	8/20/2014 (early morning hours)	Unknown reporter	Unknown	As reported by Wesley Lowery, an officer shoved an unknown reporter saying "Get that camera out of my face." Reporter asks for his name; "Go fuck yourself," officer responds.	Tweet	Wesley Lowery, Twitter (Aug. 20, 2014, 1:22 AM EST), https://twitter.com/WesleyLowery/status/501962449994940416
7 incidents of journalists being tear gassed, hit with rubber bullets/other weapons, pushed by police						
Obstruction of media						
38 Obstructing media	8/13/2014	Tymaine Lee	MSNBC	"Police in Ferguson currently no allowing our reporter @trymainelee to go to the camera position for our report."	Tweet	Christopher Hayes, Twitter (Aug. 13, 2014, 7:56 PM EST), https://twitter.com/chrislhayes/status/499706103719276545 . Nicole Flatow, The Most Outrageous Police Tactics In Ferguson, ThinkProgress, Aug. 14, 2014, http://thinkprogress.org/jus-tice/2014/08/14/3471088/the-most-outrageous-police-tactics-in-ferguson/ .
39 Order to leave area; pointed weapon	8/14/2014 (early morning hours)	Bridges O'Neil; other journalists	St. Louis American	O'Neil was covering protests outside the Ferguson Police Department after Antonio French's arrest; police tank drove towards protestors and sniper on top of tank pointed gun at crowd, including O'Neil and other journalists present. O'Neil tweeted, "We were told to leave or we would be arrested. #Ferguson #MikeBrown I have never had a gun pointed at me. Let alone from a police officer."	Tweet; independently corroborated by PEN	Bridges O'Neil, Twitter (Aug. 14, 2014 3:44 AM EST), https://twitter.com/BridgesONeil/status/499823797932154880 .

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
40 Hit by rubber bullet; ordering media to designated area; obstruction of media	8/18/2014	Tim Pool; VICE team	VICE	<p>From livestream feeds: "11 p.m. CDT, Vice: Police begin deploying smoke, tear gas, and flash bang grenades. Vice reporter Tim Pool, who is filming the feed, says he was hit in the leg by a rubber bullet.</p> <p>11:52 p.m. CDT, Argus: Police officers appear to arrest several protesters. One officer tells the Argus reporter that all media needs to go up 2.5 miles back to the press area near the Target store, apologizing for the inconvenience. "We don't get told much," the officer says.</p> <p>11:53 p.m. CDT, Vice: Vice's Tim Pool trying to get into press area but can't find his credential. Officer: "Credentials." Pool: "I lost it when I was getting shot at." Officer: "Well you're not getting through." (Officer rips off "PRESS" decal on Pool's vest) "This doesn't mean shit."</p>	Video and news report	AJ Vicens, Tasneem Raja, & Jaeah Lee, Here's What We Saw on the Ferguson Livestreams Last Night, Mother Jones, Aug. 18, 2014, http://www.motherjones.com/politics/2014/08/watch-livestream-ferguson .
41 Ordering media to leave area	8/11/2014	Casey Nolen, David Carson	KDSK, St. Louis Post-Dispatch	<p>"Being ordered to leave scene threatened with arrest #Ferguson"</p> <p>"Police telling News Crews to leave saying we are putting their officers in jeopardy. We are backing up now."</p> <p>St. Louis County Police later said that media were not ordered to leave, only to move back.</p>	Tweets; news report	<p>David Carson, Twitter (Aug. 11, 2014, 10:39 PM EST), https://twitter.com/PDPJ/status/499022406485544961.</p> <p>Casey Nolen, Twitter (Aug. 11, 2014, 10:12 PM EST), https://twitter.com/CaseyNolen/status/499015586123620353.</p> <p>Kristen Hare, RTDNA to Ferguson's chief of police: Journalists need "full and fair access," Poynter, Aug. 13, 2014, http://www.poynter.org/latest-news/mediawire/263179/rtdna-to-fergusons-chief-of-police-journalists-need-full-and-fair-access/.</p>
42 Ordering media to leave area	8/18/2014 (into early hours of 8/19/2014)	Mustafa Hussein	Argus Radio	"12:15 a.m. CDT, Argus: "Something is happening in the neighborhood and they're keeping media completely away from it," Hussein says. "Every time we get to the street that officers told us to go to, we're being told to go to another area."	Video; news report	<p>AJ Vicens, Tasneem Raja, & Jaeah Lee, Here's What We Saw on the Ferguson Livestreams Last Night, Mother Jones, Aug. 18, 2014, http://www.motherjones.com/politics/2014/08/watch-livestream-ferguson.</p> <p>Mustafa Hussein, More Threats Against Media in Ferguson, Argus Radio Livestream, Aug. 18, 2014, http://new.livestream.com/accounts/9035483/events/3271930/videos/59711752.</p>

Incident	Date	Journalists involved	Affiliation	Details	Source type	Source(s)
43	8/18/2014 (into early hours of 8/19/2014)	Yamiche Alcindor	USA Today	"Police just asked reporters to "separate" themselves from protesters." "Protesters are being arrested and police are telling media to leave and go more than a mile away to command post"	Tweets, photo, and video.	Yamiche Alcindor, Twitter (Aug. 18, 2014, 11:44 PM EST), https://twitter.com/Yamiche/status/501575454751719427 . Yamiche Alcindor, Twitter (Aug. 19, 2014, 12:51 AM EST), https://twitter.com/Yamiche/status/501592156826771456 . Yamiche Alcindor, Vine (Aug. 19, 2014), https://vine.co/v/M3FA10lrUnL .
44	8/13/2014	Alexia Fernandez Campbell; Reena Flores	National Journal	Threatened with arrest for attempting to walk down street. Access to protest area repeatedly blocked by officers.	News report	Alexia Fernandez-Campbell & Reena Flores, How Police Are Keeping Journalists from Doing Their Jobs in Ferguson, Nat'l J., Aug. 14, 2014, http://www.nationaljournal.com/domesticpolicy/how-police-are-keeping-journalists-from-doing-their-jobs-in-ferguson-20140814 .
45	8/18/2014	Ryan Devereaux	The Intercept	"Some police officers here are pointing their guns at people in order to direct their flashlights at their cameras/camera phones."	Tweet; PEN interview	Ryan Devereaux, Twitter (Aug. 18, 2014, 11:20PM EST), https://twitter.com/rdevro/status/501569443194224640
46	8/18-19/2014 (late night / early morning hours)	Jelani Cobb	The New Yorker	"Just arrived. Being blocked from #Ferguson by national guard. Every entrance here is sewn shut." "Was turned back again. Impossible to get into #Ferguson right now. Seeing lots of police cars and ambulances."	Tweets	Jelani Cobb, Twitter (Aug. 18, 2014, 11:55 PM EST), https://twitter.com/jelani9/status/501578292210958336 . Jelani Cobb, Twitter (Aug. 19, 2014, 12:32 AM EST), https://twitter.com/jelani9/status/501587424674607104 .
47	8/20/2014 (early morning hours)	Wesley Lowery; other journalists	Washington Post	"All credentialed media need to get back to the designated media area immediately. Do it now." Journalists pushed back to credentialed media area.	Tweet	Lindsay Bever, Peaceful Protests in Ferguson Turn into Midnight Scuffle with Police, Wash. Post, Aug. 20, 2014, http://www.washingtonpost.com/news/morning-mix/wp/2014/08/20/peaceful-protests-in-ferguson-turn-into-midnight-scuffle-with-police/ . Wesley Lowery, Twitter (Aug. 20, 2014, 12:59AM EST), https://twitter.com/WesleyLowery/status/501956764586086400 .
48	8/20/2014 (early morning hours)	Matt Pearce	LA Times	"Police line starts strobing me as I take this picture."	Tweet	Matt Pearce, Twitter (Aug. 20, 2014, 1:13 AM EST), https://twitter.com/mattdpearce/status/501960282696974336 .
11 incidents of obstruction of media						
52 total alleged incidents of violations of media freedom						



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Attorney General Eric H. Holder, Jr.
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

October 27, 2014

Dear Attorney General Holder,

On behalf of PEN American Center's 3500 members, including many of the United States' leading journalists, academics and authors, we write to request that the Department of Justice open an investigation into violations of freedom of the press in Ferguson, Missouri, during the protests this summer associated with the killing of Michael Brown.

Today, PEN is releasing a report, *Press Freedom Under Fire in Ferguson*, documenting 52 alleged violations of press freedom during the protests in Ferguson. The number and nature of reported abuses strongly suggests that some police officers were deliberately trying to prevent the media from documenting the protests and the police response. The many and varied ways in which police interfered with the media's ability to do their job makes it impossible to dismiss these as isolated acts. At best, they reflect a failure to adequately train the law enforcement officers present in Ferguson on the rights of the press protected by the First Amendment and international human rights law.

On the basis of this report's findings, PEN calls upon the Justice Department to open an investigation into violations of press freedom in Ferguson. Such an investigation would shed essential light on the factors that drove law enforcement officers in Ferguson to infringe on media freedoms, and on the necessary steps to ensure that in an era of instantaneous transmission, cell phone cameras and citizen journalists, the rights of members of the press and of the public at large are upheld in the context of protests and public assemblies.

The treatment of journalists in Ferguson did not occur in isolation. As detailed in PEN's report, journalists' ability to report on public protests in the U.S. has been jeopardized on numerous occasions in recent years, an indication that a nationwide reform effort is required to ensure that police departments fully respect the media's right to access and document protests. Therefore, the Justice Department's investigation should draw upon information and insights gleaned from challenges to media freedom in the context of other major public demonstrations, including protests associated with the Democratic and Republican National Conventions and the Occupy Wall Street movement.



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The need for better training for police is heightened by the changing nature of journalism in the digital age. New technologies allow everyone to engage in acts of journalism: Citizen journalists can begin recording incidents of police abuse on a camera phone instantly, well before professional media arrive on the scene. Citizen journalists play an increasingly important role in the flow of news to the public, but the emergence of citizen journalists presents new challenges for police departments seeking to uphold press freedoms. New guidelines issued by the Justice Department would assist local police forces in understanding the rights of credentialed journalists and citizen journalists alike.

The issue of press freedom in Ferguson deserves attention not at the expense of, but in addition to, much-needed investigations already underway into civil rights violations by local police in the St. Louis area. The media play a valuable role in documenting abuses and disseminating information about them to the public, thereby supporting citizens' efforts to demand accountability for violations of constitutional and human rights. Photographs, video footage, and journalists' reports from the scene in Ferguson played a crucial part in sparking a nationwide debate over the police response to the protests. In addition, the media's presence at a public protest may act to deter law enforcement officers from violating protestors' rights.

We have included our report for your review. We look forward to your response.

Sincerely,

Suzanne Nossel
Executive Director
PEN American Center

Peter Godwin
President
PEN American Center

CC:

Vanita Gupta, Acting Assistant Attorney General, Civil Rights Division
U.S. Attorney's Office for the Eastern District of Missouri
Missouri Attorney General's Office