

June 13, 2025

**VIA EMAIL**

General Eric Smith  
Commandant of the Marine Corps

General Steven Nordhaus  
Chief of the National Guard Bureau

Dear Generals Smith and Nordhaus:

We are press freedom organizations writing to offer you our assistance in understanding the First Amendment rights of journalists covering protests, given the recent deployment of Marines and Guard troops to the Los Angeles area and the possibility that they will be further deployed in Texas and elsewhere in the country to respond to protests.

We recognize that Marines and Guard troops may not receive much training on this issue. There is no reason why they should. It is extremely rare for Marines to respond to constitutionally protected demonstrations, and the Guard's involvement in responding to protests is supposed to be limited to serious emergencies where the Guard acts at the request of the states and in coordination with state officials. We are sympathetic to the position the Marines and National Guard now find themselves in through no fault of their own, and we want to help. We have a shared commitment to defending the constitutional rights of Americans.

**First Amendment protections for gathering news**

The press plays an essential role in our democracy as the public's eyes and ears. The timely reporting of breaking news is necessary to provide the public with complete information, especially about controversial events. It is for this reason that we all must ensure the rights of members of the media are not infringed, not because journalists deserve special treatment, but because the democratic society we all strive to uphold depends on their ability to do their jobs.

The First Amendment therefore protects the vital role journalism plays in keeping powerful institutions accountable to the public. *New York Times Co. v. United States* (Pentagon Papers), 403 U.S. 713, 714 (1971) (per curiam); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). The constitution does not only protect the reporting of news. "[E]ntrenched in Supreme Court case law is the principle that the First Amendment's protections for free speech include a constitutionally protected right to gather news." *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 279 (S.D.N.Y. 2019).

That constitutional protection extends to "the right to photograph and record matters of public interest," including "law enforcement officers engaged in the exercise of their official duties in public places." *Askins v. Dep't of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018).

**First Amendment law regarding protests**

Importantly, that protection includes journalists' right to document protests, and the government's response to them, **even after demonstrators have been dispersed**. Journalists

who are merely reporting on events of the utmost public concern and not interfering with federal operations cannot be subject to general dispersal orders and “cannot be punished for the violent acts of others.” The “proper response” to any unlawful conduct is “to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure.” *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 834 (9th Cir. 2020) (citation omitted).

It is important to note that even temporary detainments chill press freedom. These so-called “catch and release” detainments both discourage other journalists from exercising their constitutional rights and take the journalists who are detained off the scene of news and render them unable to do their jobs.

The First Amendment thus requires that any government response to unlawful or violent conduct by some persons at a protest must be narrowly tailored to addressing the specific conduct of those individuals. To the extent that force may lawfully be used against certain individuals who commit illegal acts, or to the extent that arrests are made, those responses must be limited to responding to the conduct of those individuals, not used indiscriminately. Nor may officers target members of the press or public who are observing or reporting the news or otherwise exercising First Amendment rights. The Police Executive Research Forum [recently provided](#) specific recommendations to protect constitutional rights in similar circumstances.

#### **Fourth Amendment**

Journalists (and everyone else) are also protected by the Fourth Amendment against unlawful and unreasonable search and seizure of their person and their belongings.

The [Privacy Protection Act](#) of 1980 (PPA) supplements Fourth Amendment protections by prohibiting issuance of warrants to search and seize journalists’ notes or equipment unless the journalist is suspected of a crime unrelated to their journalism. The statutory text makes clear that characterizing newsgathering itself as criminal, for example by accusing reporters of trespassing, does not allow authorities to circumvent the PPA.

Warrantless searches are strictly limited, as is intentionally damaging reporters’ equipment, demanding they delete footage, or requiring them to unlock phones or devices through passcodes, fingerprints or facial recognition technology. Further, police may not stop and frisk journalists without an objective, reasonable belief that the journalist is armed and dangerous.

Exceptions to the warrant requirement for searches incident to arrest do not apply to a search of a journalist’s notes or electronic devices, like their phones or recording equipment, which, again, are [prohibited](#) even with a warrant by the PPA.

#### **Offer of further assistance**

Like Marines and Guard troops, journalists are being sent to do a job. They have a lot in common in this respect. In the case of journalists, the job is to report back to the community. If they cannot do that without the threat or use of violence or arrest, the public will be deprived of information about this unprecedented moment in American history. Transparency, accountability and public trust, which are fundamental to a healthy society, will be diminished.

It is critical to our democracy and values that, to the extent the Marines or National Guard are involved in responses to domestic protests, they do everything in their power to keep the press

safe. Local law enforcement officers on the scene are likely to follow the examples of Marines and Guard troops — you therefore have a unique opportunity to demonstrate best practices and safeguard the First Amendment. Unfortunately, the reverse is also true – any transgression by Marines or Guard troops might be taken as an endorsement of similar conduct by local officers. That could have catastrophic consequences for the press and public.

We ask you to please do everything possible at this late hour to ensure that any Marines, Guard troops or other personnel under their direction understand the foregoing rights afforded to journalists covering protests, and know that it is imperative that they uphold those rights.

If you would like to discuss this matter further please contact Seth Stern at Freedom of the Press Foundation ([seth@freedom.press](mailto:seth@freedom.press)), Ginny LaRoe at the California-based First Amendment Coalition ([glaroe@firstamendmentcoalition.org](mailto:glaroe@firstamendmentcoalition.org)) or Adam Rose at the Los Angeles Press Club ([pressrights@lapressclub.org](mailto:pressrights@lapressclub.org)).

We also note that the National Press Photographers Association has for years provided training to law enforcement agencies around the country regarding journalists' rights. We encourage you to reach out to Mickey H. Osterreicher, general counsel to the NPPA, to arrange for a training session. His email address is [lawyer@nppa.org](mailto:lawyer@nppa.org).

Sincerely,

Association of Health Care Journalists (AHCJ)  
Association of Foreign Press Correspondents USA  
Committee to Protect Journalists  
Defending Rights & Dissent  
First Amendment Coalition  
First Amendment Foundation  
Free Press  
Freedom of the Press Foundation  
Los Angeles Press Club  
National Association of Black Journalists (NABJ)  
National Press Photographers Association  
PEN America  
Radio Television Digital News Association  
Reporters Without Borders (RSF)  
Society of Professional Journalists

CC:

General Christopher J. Mahoney  
Major General Scott Sherman  
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Major General Matthew P. Beevers  
Major General Timothy L. Rieger  
Major General David J. Bligh  
Major General Bobby L. Christine  
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