

October 8, 2024

Los Angeles Police Department Chief Dominic Choi
100 West 1st Street, Stop 400
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Via Email:

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RE: Unlawful threats of arrest against journalist Lexis-Olivier Ray

Dear Chief Choi:

We write on behalf of Lexis-Olivier Ray, a journalist who has recently been subjected to a series of unlawful threats of arrest by Los Angeles Police Department officers when he was attempting to observe and document workers at unhoused encampment removal operations. Mr. Ray was not obstructing any city employees when he was threatened with arrest, and his presence at the encampment sites did not present any safety risk. The arrest threats therefore infringed on Mr. Ray's First Amendment rights to observe and document these operations, which are of immense public concern.¹ We write to urgently request that you immediately take action to ensure that LAPD officers refrain from violating Mr. Ray's constitutional rights during similar operations going forward.

LAPD officers obstructed Mr. Ray from documenting encampment clearance operations by the Los Angeles Sanitation & Environment department ("LASAN") on at least four occasions over approximately the past month. LAPD officers threatened to arrest him on each occasion without adequate justification:

- On August 28, Mr. Ray attempted to observe a sanitation sweep on Cotner Avenue between Santa Monica Blvd and Olympic Blvd. While Mr. Ray was initially able to walk around the site freely and take photos and videos, an LAPD officer approached him at

¹ Recently a coalition of more than 20 press rights and civil liberties organizations issued an open letter condemning the treatment of Mr. Ray and urging officials to adhere to First Amendment protections and commit to transparency. See <https://firstamendmentcoalition.org/2024/09/10/coalition-demands-california-officials-respect-role-of-press-at-homeless-encampment-sweeps-2/>

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approximately 8:37 am and told him he had to leave the “work zone.” At this time, there were still multiple people in the “work zone” and sanitation was not using heavy machinery. The officer was unable to cite any laws requiring Mr. Ray to leave the location, so he asked for a sergeant’s assistance. The sergeant and a LASAN employee both cited Los Angeles Municipal Code (LAMC) § 56.11, and the LASAN employee told Mr. Ray that he needed to leave because of safety concerns. At approximately 8:52 am, the LAPD sergeant gave Mr. Ray a “final warning” and threatened to arrest him if he stayed in the “work zone.” In fear of being arrested, Mr. Ray went on the other side of the tape, even though the sanitation cleaning had not started and nothing was happening that could jeopardize anyone’s safety. We understand that Brian van der Brug, a Pulitzer prize winning *Los Angeles Times* photographer, was also covering this incident and was also confronted by LAPD officers, who backed down when Mr. Van Der Brug suggested that he would consult with an *L.A. Times* attorney to vindicate his rights. We also understand that Mayor Bass visited these encampments a few minutes after Mr. Ray was almost arrested, and that the mayor’s photographer was granted access to the “work zone” even though they were not wearing any safety gear—no high visibility vest, mask, or helmet, for example. Mr. Ray never physically interfered with the encampment removal operation and never took any other action that would have made it more difficult for sanitation workers to do their job. The fact that others were allowed to move through the “work zone” when Mr. Ray was not suggests that the officers and LASAN were more concerned with controlling who provides journalistic oversight than with any purported safety concerns, or with any alleged obstruction of LASAN efforts.

- On August 29, Mr. Ray attempted to cover an encampment removal in Skid Row starting around 9:30 am. The encampment removal started on 6th Street between Stanford and Towne. Caution tape had been put up to block off the area, but Mr. Ray observed dozens of people passing through the area without any issue. Initially, he was able to access the “work zone” and document the operation without incident, standing more than 50 feet away from the crew. Eventually, a sanitation worker spoke to Mr. Ray and informed him the crew was about to power wash the sidewalk, but they did not order Mr. Ray to leave the area. Mr. Ray told them he would move to prevent any problems. But when the sanitation crew moved around the corner to 6th and Stanford, another sanitation worker and police officer ordered him to leave the entire taped area before the operation started. After some discussion, an officer issued a “final warning” and threatened him with arrest for delaying sanitation activities, so Mr. Ray went on the other side of the tape in fear of being arrested. During the course of the operation, numerous people walked through the taped area with little to no pushback. One LAPD officer explained to Mr. Ray that it was permissible for people to walk from one side of the “work zone” to the other but they could not stay in the area. However, when Mr. Ray attempted to do the same thing he had seen others do, he was told he was not permitted to do so. Even though others had been able to walk through the area, a sanitation worker informed Mr. Ray that he had to be out of the area for safety reasons and because they were using heavy machinery. However, the crew never used heavy machinery during the encampment removal (there was not much to clean, and very few tents), and only power washed the area. The same sanitation worker who told Mr. Ray he couldn’t be in the area because of the use of heavy machinery then told him that his exclusion was necessary because the power washing included bleach and posed a health hazard for Mr. Ray. The shifting justifications coupled with the fact that others were allowed to walk through the areas that Mr. Ray was

excluded from again suggest that his exclusion was based on hostility to his journalistic endeavor rather than genuine concern with safety or obstruction of LASAN's efforts. At no point during this incident did Mr. Ray physically interfere with the operation or do anything that prevented sanitation workers from power washing the sidewalks.

- On September 5, 2024, Mr. Ray attempted to observe another encampment removal at Cotner Avenue. He arrived at approximately 8:56 am, after the operation had already started, between Missouri and Nebraska avenues on Cotner Avenue. The moment Mr. Ray crossed the caution tape that had been put up he was surrounded by LAPD officers who informed him that he could not come into the area. Sanitation workers were hundreds of feet away from Mr. Ray at the time. Eventually, Mr. Ray went to the other side of the work zone, and tried entering again, but was again immediately confronted by police officers, who told him that he was in violation of LAMC § 56.11, and that he would be put in handcuffs and taken to the station if he crossed the tape. A supervisor informed Mr. Ray that the officers had seen his videos on social media. Mr. Ray stayed out of the work zone for fear of arrest. At no point did he ever prevent sanitation workers from doing their jobs. In fact, workers continued their work even when Mr. Ray crossed into the work area. Mr. Ray was never close enough to the sanitation workers for it to have been possible for him to obstruct their efforts. The supervisor's reference to Mr. Ray's social media posts indicates that officers were aware of, and concerned about, his journalistic efforts, which once again appear to have motivated their decision to prevent him from meaningfully documenting the operations.
- On September 18, Mr. Ray returned to Cotner Avenue at approximately 8:03 am. He was able to take photos and videos before the encampment removal started. There were police officers on the scene, and while they did not initially prevent Mr. Ray from documenting the scene, that changed when sanitation workers were ready to begin their operation. At around 10:27 am, Officer David Lira walked up to Mr. Ray and told Mr. Ray that he had to leave. When Mr. Ray told Officer Lira he was a journalist there to document, Mr. Lira said "I know exactly who you are" and ordered Mr. Ray to leave. There was no heavy equipment being used at this point. Officers then surrounded Mr. Ray and told him he had to leave, citing LAMC § 56.11. Mr. Ray then moved to another area, but officers followed him and once again surrounded him, making it difficult for him to move freely. Then they ushered Mr. Ray out of the "work zone" towards Missouri Avenue. One officer used their hand to firmly push Mr. Ray to the other side of the caution tape. When Mr. Ray asked the officer if he was being detained they told Mr. Ray that he was not, but they informed him that he had to be out of the work zone. Later, sanitation workers moved further down Cotner Avenue and briefly took down the caution tape. Mr. Ray stayed within the "work zone" to take photos, but he was then told by a sanitation worker that he had to leave that area too. The worker called for officers, who told Mr. Ray to leave the area or face arrest. Mr. Ray complied with that request, and then went to an area of the tape where he tried to observe the "clean up" efforts. He was able to take photos and videos of sanitation workers throwing out a pile of items, but a sanitation worker told him to move back. Then, the sanitation worker who appeared to be supervising the operations stood directly in front of Mr. Ray's camera, in an apparent effort to obstruct his view. Mr. Ray asked the worker if they had decided to just prevent him from filming the operations, and was told "yes." While the sanitation crew had apparently decided that Mr. Ray could not document their work, they decided to document him, taking photos or

videos of him. It is unclear whether this was an attempt to intimidate Mr. Ray, but it is difficult to imagine any other motivation for this behavior. After Mr. Ray had been threatened with arrest and forced out of the area, he observed service providers who work for non-profit organizations crossing the caution tape without any safety gear and walking through the work area without any issues. The free passage of these workers again suggests that Mr. Ray was not excluded from the site for any legitimate safety concerns or because he was obstructing sanitation workers.

On each of these occasions, LAPD officers' decisions to threaten Mr. Ray with arrest violated his First Amendment rights to observe and document "matters of public interest," including public officers "engaged in the exercise of their official duties in public places." *Askins v. U.S. Dep't of Homeland Sec.*, 889 F.3d 1035, 1044 (9th Cir. 2018). "The protections afforded by the First Amendment are nowhere stronger than in streets and parks, both categorized for First Amendment purposes as traditional public fora." *Berger v. City of Seattle*, 569 F.3d 1029, 1035–36 (9th Cir. 2009). Public ways, sidewalks, and streets "have developed as venues for the exchange of ideas," and "[s]uch areas occupy a 'special position in terms of First Amendment protection' because of their historic role as sites for discussion and debate." *McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (quoting *United States v. Grace*, 461 U.S. 171, 180 (1983)). The government's right to limit expressive activity in a public forum "is 'sharply circumscribed.'" *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1145 (9th Cir.), amended by, 160 F.3d 541 (9th Cir. 1998) (citing *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983)).

On this basis, Judge Drozd of the Eastern District of California recently enjoined the City of Fresno from the precise pattern and practice LAPD office have engaged in here—restricting access by public observers to sweeps of unhoused persons, in order to prevent journalists or advocates for the unhoused from observing police conduct. *See Order Granting Plaintiffs' Motion for a Preliminary Injunction*, Dkt. No. 25, *Martinez v. City of Fresno*, No. 1:22-cv-00307-DAD-SAB (E.D. Cal. May 24, 2022).² With facts similar to those described in this letter, the court in *Martinez* enjoined a law that prevented the public from entering "a restricted area [made] by erecting a barrier or cordon[ing] off an area of public or private property where an abatement is taking place." *Id.* at 7.

While the officers who have threatened Mr. Ray had no legitimate safety concerns for doing so, it is notable that the *Martinez* court rejected baseless safety rationales as a basis for preventing observation of encampment sweeps, stating:

It cannot be disputed that "[g]overnmental authorities have the duty and responsibility to keep their streets open and available for movement," *Cox v. Louisiana*, 379 U.S. 536, 554–55 (1965), and it is also true that "a State's interest in protecting the 'safety and convenience' of persons using a public forum is a valid governmental objective," *Heffron v. Int'l Soc'y for Krishna Consciousness Inc.*, 452 U.S. 640, 650 (1981). . . . [H]owever, here "the City . . . has identified no public health or safety incidents to justify the extreme measure of prohibiting the public from observing, monitoring, and reporting on city workers and contractors discharging their duties in public." *Id.* at 19.

² A copy of that order can be found at https://www.aclunc.org/sites/default/files/25_Court%20Order%20Granting%20MPI_05.24.2022.pdf.

Here, too, none of the LAPD officers who threatened Mr. Ray with arrest and prevented him from observing and documenting the “clean up” efforts were able to point to any legitimate public health or safety incidents that could “justify the extreme measure of prohibiting” Mr. Ray “from observing, monitoring, and reporting” on the sanitation workers’ efforts. To the extent that the officers were attempting to enforce LAMC § 56.11(10), it is imperative that they understand that they cannot interpret “resisting, delaying, or obstructing” in a way that impermissibly infringes on Mr. Ray’s constitutional rights.³ See *People of City of Los Angeles Who Are Un-Housed v. Garcetti*, No. LACV2106003DOCKES, 2023 WL 8166940, at *12 (C.D. Cal. Nov. 21, 2023) (noting that while LAMC § 56.11 may be presumptively valid on its face, improper enforcement could still violate the constitution).

Further, courts have made clear that expressive activity on its own cannot be penalized as “resisting, delaying, or obstructing” the work of government employees. A state law worded similarly to LAMC § 56.11—California Penal Code § 148(a)—makes it a crime to “willfully resis[t], dela[y], or obstruc[t] any public officer, peace officer, or an emergency medical technician...”⁴ Courts have encouraged great caution when applying this code to expressive activity. *People v. Quiroga*, 16 Cal. App. 4th 961, 968, 972 (1993) (noting that the code “must be applied with great caution to speech” and that it does not apply to expressive activity even when the activity “unquestionably served to resist, delay and obstruct the responsible peace officer in the discharge of his duties”); *In re Chase C.*, 243 Cal. App. 4th 107, 115 (2015) (noting that expressive activity is generally protected “even if it is intended to interfere with the performance of an officer’s duty, provided no physical interference results”) (internal citations omitted); *Mackinney v. Nielsen*, 69 F.3d 1002, 1007 (9th Cir. 1995) (finding that expressive activity, including verbal challenges to police, cannot support an arrest under § 148); *Reed v. Lieurance*, 863 F.3d 1196, 1211–12 (9th Cir. 2017) (holding that both observing and filming government operations is protected activity in challenge to “obstruction” citation). Accordingly, Mr. Ray’s expressive activities cannot be construed as “resisting, delaying, or obstructing” the City’s encampment operations.

“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 804 (2000). It is not enough that sanitation workers prefer to ban Mr. Ray from their designated “work zone” or that they find this to be most convenient method to remove encampments. See *McCullen v. Coakley*, 573 U.S. 464, 495 (2014) (“A painted line on the sidewalk is easy to enforce, but the prime objective of the First Amendment is not efficiency.”). As in *Martinez*, there are other less intrusive methods than banning Mr. Ray from large areas of sidewalk that would burden substantially less speech while still protecting the City’s stated goal of ensuring public safety. Further, “work zones” blocking off entire stretches of public sidewalk prevent Mr. Ray from meaningfully documenting the City’s actions at unsheltered encampments—failing to

³ LAMC § 56.11(10)(a) states, in relevant part, that “No Person shall willfully resist, delay, or obstruct a City employee from moving, removing, impounding, or discarding Personal Property Stored in a Public Area in violation of Subsections 3.(a)-(c) or (f)-(h)” of section 56.11.” This is presumably the subsection officers had in mind when informing Mr. Ray that he was violating section 56.11. As discussed, Mr. Ray never actually obstructed any City employee at any removal operation. Under the First Amendment and Liberty of Speech Clause of the California Constitution, LAPD officers are not free to equate obstruction and observation.

⁴ The California Legislature amended Penal Code § 148 in 2015 to add subsection “(g)” to clarify that the act of photographing or videotaping officers in a public place, absent other violations, did not constitute a violation of the statute nor was it proper grounds for placing individuals into custody.

leave “ample” alternatives to accomplish this goal. *Id.* at 20. This unconstitutionally restricts Mr. Ray from accessing the location relevant to their expressive activities. *See Galvin v. Hay*, 374 F.3d 739, 752 (9th Cir. 2004) (finding that a designated speech zone far from protesters’ intended audience was an unconstitutional restraint and noting the importance of the location of expressive activity).

Given the urgent nature of the civil rights issues outlined in this letter, we ask that you confirm, by Friday, October 25, that all LAPD officers will be instructed that they cannot obstruct access to public areas by Mr. Ray when he is seeking to observe the activities of City personnel conducting encampment operations without physically interfering, including by threatening him with arrest for crossing caution tape.

Sincerely,



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