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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOS ANGELES PRESS CLUB,
STATUS COUP,

PLAINTIFFS,

v.

CITY OF LOS ANGELES, a
municipal entity, JIM McDONNELL,
LAPD CHIEF, sued in his official
capacity;

DEFENDANTS.

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Case No. 25-cv-05423 HDV-E

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF OSC RE:
PRELIMINARY INJUNCTION**

Hon. Hernán D. Vera

Date: August 11, 2025

Time: 9 a.m.

Ctrm: 5B

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INTRODUCTION

On July 11, this Court granted Plaintiffs’ application and issued a Temporary Restraining Order, Dkt. No. 44 (“TRO”), recognizing that Plaintiffs are likely to prevail on their claims that the Los Angeles Police Department (“LAPD”) is violating their First Amendment rights and causing irreparable injury. At the preliminary injunction stage, the Court applies the same legal standard and should reach the same conclusion: the substantial evidence of repeated, egregious violations establishes a strong likelihood Plaintiffs will succeed on their claims under the both the constitutional protections of the First Amendment and Art. I, § 2 of the California Constitution and the specific statutory protections enacted for journalists covering protests in Penal Code section 409.7 and for the public during protests in Penal Code section 13652.

As the Court recognized in granting the TRO, injunctive relief is necessary to prevent irreparable harm. The immigration raids that sparked the protests at issue here and community opposition to them continue. Both are matters of great public interest that journalists will inevitably cover. LAPD’s history demonstrates the repeated violation of the rights of reporters covering protests in Los Angeles, no matter what the issue. Plaintiffs’ Proposed Preliminary Injunction is tailored to the harms shown by the evidence and unlikely to impose any hardship on defendants since it tracks existing requirements under the Constitution, California statutes, and existing injunctions.

FACTUAL BACKGROUND

The same facts that justified this Court’s issuance of the TRO support issuance of a preliminary injunction.

A. Evidence Shows LAPD Deliberately Targets Journalists with Force.

In just the first week of protests, Plaintiffs’ evidence documents fourteen instances in which LAPD officers shot reporters with rubber bullets, charged them with horses, and shoved them in situations where the journalists were away from protesters, posed no threat and were near no apparent threat, and were plainly identifiable as journalists. LAPD targeted them nonetheless, suggesting they used force against them *because* they were

1 journalists, or at best in reckless disregard of their constitutional and statutory rights to
2 gather news free from assault by police.

3 On June 8, an LAPD officer brazenly shot television reporter Lauren Tomasi of
4 9News Australia from behind while she was on air, speaking to her camera. The footage
5 shows a line of officers behind Tomasi while she stands near other journalists and people
6 filming and talks to the camera. One of the officers turns towards Tomasi, deliberately
7 raises his LLM rifle, and fires at her without any apparent justification. Declaration of
8 Declaration of Adam Rose, Dkt. No. 19, ¶ 26; 8 Exh. 30-31.¹

9 On June 8, journalist Sean Beckner-Carmitchel videorecorded LAPD officers
10 repeatedly shoving a photographer who has two large cameras and holding up what
11 appeared to be identification on a lanyard, before a mounted LAPD officer rams the
12 photographer with a horse. Declaration of Sean Beckner-Carmitchel Dec., Dkt. No. 20,
13 ¶ 6. There was no threat posed by the photographer and he appeared to be complying with
14 LAPD orders. *Id.*; Rose Dec ¶ 30. In the same incident, another LAPD officer appeared to
15 take potshots at a photographer in a yellow helmet holding a professional camera and
16 identification on a lanyard. Beckner-Carmitchel Dec. ¶ 7, 8 Exh. 38.

17 On June 9, an LAPD officer shot Capital & Main reporter Jeremy Lindenfeld with
18 a 40mm foam baton round from about 25 feet away. Lindenfeld was wearing a helmet
19 with “PRESS” written in large letters across the front and a press ID with the word
20 “PRESS” in large letters on a lanyard around his neck. Rose Dec. ¶ 36, 8 Exh. 46-47.

21 On June 9, CNN Anchor Erin Burnett was reporting from protests and was shoved
22 by an advancing line of LAPD officers while filming in front of the camera on live
23 television. As she noted in the broadcast, “They knew we’re media. They’re just as happy
24 to push me as to push anybody else.” Rose Dec. ¶ 38.

25 On June 9, officers shot LLMs at award-winning freelance photojournalist Michael
26 Nigro while he stood practically alone on a pedestrian overpass above the protests.

27
28 ¹ Plaintiffs’ citations to exhibits in the eight volumes previously submitted in support of
their application for a TRO, Dkt. Nos. 30-37, follow the format “[Vol. No.] Exh. [Exh.
No.],” so that “8 Exh. 30-31” refers to Volume 8 (Dkt. No. 37), Exhibits 30 and 31.

1 Initially, the LLM struck a pole near his head. Declaration of Michael Nigro, Dkt. No. 26,
2 ¶¶ 5–9, 8 Exh. 48. At the time, Nigro carried two large DSLR cameras and wore: (1) a
3 helmet with “PRESS” written in large white capital letters against a black background on
4 both sides of his head, (2) a vest with “PRESS” in large white capital letters against a
5 black background both on his chest and back, and (3) a press ID with the word “PRESS”
6 in large letters on a lanyard around his neck. *Id.* ¶¶ 14–16. Two hours later, he was
7 documenting the protests at street level when a line of LAPD officers suddenly and
8 without warning or justification yelled “move” and began shoving and shooting LLMs
9 indiscriminately at the crowd. *Id.* ¶¶ 10–12, 19. Nigro still wore his helmet, vest, and press
10 ID with “PRESS” in large letters visible from a distance on all sides. *Id.* ¶ 16. Nonetheless,
11 an LAPD officer shot and struck Nigro in the head with an LLM, leaving a white mark
12 from its impact visible on his helmet at his temple. *Id.* ¶¶ 10, 14–15; Rose Dec. ¶ 37.

13 On June 11, freelance photographer Montez Harris was documenting protests at
14 Grand Park downtown, carrying two large, professional cameras and a visible press ID.
15 Declaration of Montez Harris, Dkt. No 27, ¶ 5, 8 Exh. 45. When a dispersal order issued,
16 he turned to leave. A mounted officer (whom Harris believes he had just told he was a
17 journalist) tried to grab him, and another mounted officer rode up and pinned him between
18 the horses. The officer threatened to hit Harris with batons, told him he wasn’t leaving fast
19 enough, hit him with horses, and shot him in the back of his leg with an LLM. Harris Dec.
20 ¶¶ 5-7. Video of the incident shows that Mr. Harris posed no threat, was complying with
21 the dispersal order, walking away from the officers. *Id.*; Rose Dec ¶ 45.

22 On June 14, ABC’s chief national correspondent, Matt Gutman, was filming live
23 for ABC news when an LAPD officer came behind him, grabbed him, and shoved him.
24 Another officer then came up to Gutman and screamed at him that he had touched an
25 officer. Gutman calmly said he had not, that they were on TV and that the video would
26 show what happened. Rose Dec ¶ 51, 8 Exh. 68.

27 On July 14, photojournalist Héctor Adolfo Quintanar Perez was covering the
28 protests in downtown Los Angeles on assignment from Zuma Press, an independent press

1 agency. He carried two professional cameras, a large camera bag, and a large press badge
2 issued by Zuma and worn visibly on a lanyard around his neck. Perez Dec., Dkt. No. 23,
3 ¶ 2, 3 Exh. 10 & 13. At about 5 p.m., when he was close to 300 Los Angeles Street, without
4 any apparent provocation, LAPD officers began using force on protestors and firing
5 LLMs. *Id.* ¶¶ 4-6. Perez was taking pictures when he saw an officer aiming an LLM in his
6 direction from “very close,” so that the officer must have known he was press given his
7 press ID and cameras. The officer fired an LLM that hit both his knees, opening a wound
8 in his left knee that left Perez walking with a cane and possibly in need of surgery. *Id.* ¶¶ 7-
9 8, 11; Rose Dec. ¶ 54 & n. 35.

10 On June 14, an LAPD mounted officer charged 82-year-old photographer David
11 Healy, knocking Healy to the ground and breaking one of his ribs. Healy carried a large
12 professional Canon camera with large lens, was shooting on film, and had business cards
13 with him identifying him as a photographer. Rose Dec. ¶ 55, 8 Exh. 72.

14 On June 14, LAPD officers shot an Agence France-Presse photographer in the face
15 and leg. The photographer told France24, “I was covering the protest ... 90 feet away from
16 the police when I received the impact of a rubber bullet in my face and another one in my
17 right arm... I [had] two cameras, a helmet with AFP stickers on it and ... a big patch on
18 my chest that said ‘Press.’” Rose Dec. ¶ 56, 8 Exh. 73-74.

19 On June 14, Kayjel J. Mairena, a student journalist with the Santa Monica College
20 Corsair, was tear gassed twice in downtown Los Angeles while standing with other press
21 off to the side. Rose Dec. ¶ 58. An AP video livestream shows an LAPD officer aim and
22 fire without any evident justification at the unnamed videographer, who ducks behind an
23 obstacle at the last minute as a foam baton round lands near him. Rose Dec. ¶ 35.

24 **B. Evidence Shows LAPD Subjected Journalists to Unlawful and Reckless**
25 **Use of LLMs Fired Indiscriminately on Crowds.**

26 In addition to evidence of LAPD deliberately targeting journalists, there are many
27 incidents where LAPD hit journalists after firing LLMs indiscriminately into crowds that
28 posed no imminent threat of harm to the officers or anyone else and where journalists
(plainly marked as such) were present. This evidence shows at best a reckless disregard of

1 the risks of hitting journalists and others in the area who pose no imminent threat of serious
2 harm.

3 While journalist Jeremy Cuenca was on assignment for the Collegian, the student
4 newspaper for Los Angeles Community College, on June 8, LAPD shot into a crowd that
5 did not present isolatable individuals who presented a threat of imminent serious harm to
6 the officers or others, hitting Cuenca twice with rubber bullets, hitting his hand and nearly
7 severing his finger which took hours of surgery to reattach. Rose Dec ¶ 27, 8 Exh. 32.

8 On June 14, photographer Marshal Woodruff was documenting protests near City
9 Hall, when an LAPD officer began firing LLMs in the crowd. One LLM hit Woodruff in
10 the face, fracturing his cheek and slicing open his right eye, requiring five hours of surgery,
11 with no certainty of how much vision he will regain. Woodruff told local news, “They
12 came in with horses and people almost got trampled. They were firing like 40 bullets in
13 the span of like five seconds. ... [I]t sounded more like fireworks being rapidly shot off.”
14 Rose Dec. ¶ 53, 8 Exh. 70.

15 On June 14, photographer Tod Seelie was shoved by LAPD, shot in the leg with a
16 LLM, and tear gassed multiple times. He was wearing a helmet with a press badge and
17 had a media credential. Rose Dec. ¶ 57, 8 Exh. 75.

18 On June 14, LAPD released tear gas and LLMs on a crowd that included Constanza
19 Eliana Chinae, a California Local News Fellow and founder of the independent media
20 platform Malcriá Media, without warning or a dispersal order and without evidence of
21 violent acts. Constanza Eliana Chinae Dec., Dkt. No. 22, ¶¶ 25–28; 8 Exh. 78. Chinae
22 wore a press-identification badge and carried a professional camera and microphone. *Id.*
23 ¶ 24. Chinae suffered burning and discomfort in her sinuses and eyes. *Id.* ¶ 27.

24 During the first weekend of the protests, LAPD shot Gabriel Ovalle of Channel 5
25 (unrelated to television station KTLA) with a “less lethal” munition while he was filming
26 protestors carrying a banner through the street. Rose Dec. ¶ 59, 8 Exh. 76.

27 On June 11, LAPD shot Sangjin Kim, a staff photographer for Korea Daily, in the
28 back with an LLM resulting in a bloody welt. Kim carried professional camera equipment

1 and wore a visible press ID. Rose Dec. ¶ 46, 8 Exh. 60.

2 Also on June 11, Univision’s national correspondent Romi De Frias was reporting
3 on the protest with a camera rolling when an LAPD mounted officer shoved her with a
4 horse. Rose Dec. ¶ 50, 8 Exh. 66. Although the crowd was moving in the direction
5 indicated by the LAPD. One mounted officer repeatedly hit a protestor next to De Frias
6 with a baton. *Id.*

7 LAPD shot journalists numerous times with LLMs after firing into crowds of
8 protesters who did not appear to pose any imminent threat of serious harm to the officers
9 or others, hitting journalists. Rose Dec. ¶ 32 (CalMatters journalist Sergio Olmos hit with
10 foam round in chest while filming police and protestors); ¶ 28 & 8 Exh. 40 (New York
11 Times reporter shot in ribs with foam baton); ¶ 44 & 8 Exh. 57-58 (Lauren Day of ABC
12 News camera operator tear-gassed and her camera person shot in the chest with a “less
13 lethal” round on June 10); ¶ 49 & 8 Exh. 65 (photojournalist Ted Soqui shot in his back
14 with LLMs three times by LAPD on June 11); ¶ 52 (LAPD shot acclaimed war
15 photographer Ron Haviv in the arm with an LLM on June 14).

16 **C. Evidence Shows LAPD Ordering Journalists to Leave Public Areas.**

17 LAPD has repeatedly and purposely ordered journalists to leave public streets and
18 other public places that had been closed by police or where police had set up police lines
19 during protests — including after the filing of the TRO.

20 On June 8, journalist Beckner-Carmitchel was huddling with other journalists, all
21 carrying large cameras and professional equipment, in an entrance to a closed underground
22 parking garage at the Clara Shortridge Foltz courthouse to stay out of the way of LAPD.
23 Beckner-Carmitchel Dec. ¶ 5 & 8 Exh. 36. LAPD fired tear gas directly at them and
24 entered the parking garage ramp and ordered the journalists to leave. *Id.*

25 On June 9, the LAPD detained CNN reporter Jason Carroll and his crew while Carroll
26 was reporting live on air. In violation of Penal Code Sec. 409.7, the CNN crew were forced
27 to get behind yellow police caution tape. As depicted on the video, LAPD officers told
28 Carroll he had to leave and would be arrested if he came back, ordered him to place his

1 hands behind his back, and walked him backwards out of the protest area. LAPD told
2 Carroll, “we’re letting you go, but you can’t come back.” Rose Dec. ¶ 39, 8 Exh. 50.

3 On June 10, journalist Tina-Desiree Berg was reporting for Plaintiff Status Coup
4 News on the protests, wearing her press ID and accompanied by a photojournalist. She
5 was on the pedestrian plaza over Los Angeles Street with a direct line of sight to the
6 protestors and LAPD about 100 feet away. LAPD had members of the press kettled, and
7 an LAPD officer accosted Berg and repeatedly ordered her to leave, saying, “I gave you a
8 direct order to leave,” despite Berg asking why she had to move. Berg repeated that she
9 was a journalist, citing to Penal Code § 409.7, and stating that the LAPD officer was
10 breaking the law by ordering her to move. Tina Berg Dec., Dkt. No. 28 ¶¶ 2-4; 8 Exh. 53.

11 On June 8, LAPD officers ordered a group of approximately 20 to 30 journalists
12 away from protesters and a police line and held them in a “press area” about 150 feet away
13 from protestors under threat of arrest, making reporting on the line impossible. Chinae
14 Dec. ¶ 13; Rose Dec. ¶ 34; 8 Exh. 43.

15 On June 8, journalist Beckner-Carmitchel videorecorded an LAPD officer clear the
16 area near Alameda and Aliso and specifically order press to disperse as well, shouting
17 “Media, go!” Beckner-Carmitchel Dec. ¶ 8; Rose Dec ¶ 33; 8 Exh. 42.

18 Also on June 8, photojournalist Montez Harris was kettled with a group of
19 protestors. He carried two large professional cameras, a press ID, and business cards
20 identifying him as press. Harris Dec ¶¶ 4, 8. LAPD officers would not allow Harris to
21 leave even though he repeatedly informed them he was a member of the press. *Id.* ¶ 8.
22 Harris eventually scaled a small wall, despite an officer threatening to shoot him. *Id.*

23 On June 10, LAPD officers at the corner of 4th and Olive Streets chased and shoved
24 multiple people wearing helmets plainly marked with “PRESS,” with IDs on lanyards, and
25 carrying large cameras. The officers shout, “Leave the area!” repeatedly, although video
26 shows no protestors in the immediate area, and the only people being shoved by LAPD
27 officers all appear to be journalists. Rose Dec. ¶ 44.

28 On June 11, LAPD officers kettled a group of journalists in front of Los Angeles

1 City Hall. The journalists repeatedly pointed out many were credentialed media and asked
2 if they were allowed to leave and were told, “no.” Rose Dec. ¶ 48, 8 Exh. 61.

3 On June 19, independent journalist Anthony Orendorff was at the Plaza Pacoima
4 shopping complex when an ICE raid happened there. Anthony Orendorff Dec., Dkt. No.
5 21 ¶¶ 2, 3. He was documenting the operation when he was seized by LAPD. Despite
6 public outcry and appeals to Mayor and Chief of Police he was held in jail from Thursday
7 until Monday, when he was released without charges. *Id.* ¶¶ 4-6.

8 On July 4, the day *after* Plaintiffs filed their application for a TRO, LAPD officers
9 kettled journalists and blocked them from accessing the police response to a protest in
10 downtown Los Angeles, despite them repeatedly identifying themselves as journalists. *See*
11 Beckner-Carmitchel Supp. Dec., Dkt. 43-1; and Rose Supp. Dec., Dkt. 43-2.

12 In numerous other instances, LAPD officers ordered the press to move or physically
13 shoved them to force them to move. *See* Rose Dec. ¶ 38 & 8 Exh. 48 (LAPD officers
14 shoved CNN anchor Erin Burnett while she talked to the camera on live TV); ¶ 41 (an
15 LAPD officer told Los Angeles Times reporter James Queally to move, then when Queally
16 reminded the officer he had a legal right to be there the officer shoved him); ¶ 42 & 8 Exh.
17 55 (on June 10, an LAPD officer at a police line tells CNN crew live on air that some
18 could pass while others in the same crew could not).

19 **D. LAPD’s History of Targeting Press.**

20 For decades, LAPD’s policing of protests has been marked by widespread
21 constitutional violations, including “restricting or retaliating against the press for
22 attempting to gather news on police activity, [and] detaining members of the press without
23 probable cause” — a description this Court recently recognized was “not mere hyperbole.”
24 *Peltz v. City of Los Angeles*, No. 2:22-CV-03106-HDV(AGRX), 2025 WL 1412479, at
25 *10 (C.D. Cal. Feb. 20, 2025). In 2001, after the LAPD was sued for intentionally
26 brutalizing reporters and photojournalists covering the 2000 Democratic National
27 Convention in downtown Los Angeles, the City entered into a settlement agreement,
28 which stated that “[t]he Los Angeles Police Department recognizes that the news media

1 has the right, without interfering with police operations, to cover events that may result in
2 the declaration of an unlawful assembly and order to disperse. To the extent reasonably
3 possible under the circumstances, LAPD will make efforts to accommodate this reporting
4 obligation." Ex. 81 p. 3. Yet for the past 25 years, the LAPD has continued to violently
5 violate the First Amendment rights of journalists covering protests and other public events
6 on the City's street. Indeed, LAPD's treatment of the press in the protests over the killing
7 of George Floyd in 2020 helped spark state legislation to address "the blatant disregard
8 for the safety of journalists engaged in constitutionally protected activities by law
9 enforcement during protest activities" and to limit the use of crowd control weapons,
10 codified at Penal Code §§ 409.7 and 13652, respectively.²

11 LAPD's constitutional violations in its use of less-lethal munitions in 2020 also
12 resulted in a preliminary injunction setting limits on LAPD's use of 40mm and 37mm
13 launchers. *See Black Lives Matter Los Angeles v. City of Los Angeles*, No. CV 20-5027
14 CBM (ASX), 2021 WL 3162706, at *4 (C.D. Cal. Apr. 19, 2021). Based on evidence of
15 injuries submitted in that case, the *Black Lives Matter* Injunction restricted use of several
16 kinetic impact projectiles as direct impact weapons targeted at the head and torso even
17 before the Legislature's passage of similar force restrictions in Penal Code § 13652.³

18 LAPD's policing has resulted in widespread violations of the rights of the press and
19 the public including at other protests, including in response to the overturning of *Roe v.*
20 *Wade* in 2022, the City's clearing of a homeless encampment at Echo Park Lake in 2021,
21 the 2020 killing of George Floyd, the 2020 Trump reelection campaign the election of
22 Donald Trump in 2016, the 2014 police killing of Michael Brown in Ferguson; immigrant

23
24 ² See Sen. Pub. Safety Comm. Analysis, Sen. Bill 98, 2021-2022 Reg. Sess. (noting that
25 bill came "in response to the use of force against journalists covering protests" and citing
26 "one protest in Los Angeles where police allegedly used force against at least four
journalists in separate instances").

27 ³ In the BLM case arising from the 2020 George Floyd protest, the City argued the
28 circumstances necessitated deployment of KIPs to respond to the large number of
protestors. LAPD policy is unequivocal: "There are no exceptions to the Department's
Use of Force Policy for crowd control situations." Use of Force - Tactics Directives,
1 Ex.1, at 5.

rights May Day protests in MacArthur Park in 2007, protests over the imminent invasion of Iraq in 2003 and protests at the Democratic National Convention in 2000, among others, sparking lawsuits, settlements, and after-action reports. *See generally* Sobel Dec. ¶¶ 3-28 (listing incidents, lawsuits and after-action reports); *Peltz*, 2025 WL 1412479, at *10 (concluding that assertion that “genuine issues of material fact exist as to whether LAPD’s alleged practice of arresting journalists was so persistent and widespread that it amounted to deliberate indifference”); *Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles*, 246 F.R.D. 621, 627 (C.D. Cal. 2007) (recounting LAPD’s history of “unlawful dispersal orders and excessive force orders against demonstrators” going back to 1991 and the Gulf war).

What is certain from this history is that, as sure as the sun rises in the East every morning, spontaneous protests will occur and recur in Los Angeles in response to unanticipated societal “sparks” and LAPD will likely respond as it has repeatedly done.

LEGAL STANDARD

To obtain a preliminary injunction a plaintiff must demonstrate that “(1) he is likely to succeed on the merits of his claim, (2) he is likely to suffer irreparable harm absent the preliminary injunction, (3) the balance of equities tips in his favor, and (4) a preliminary injunction is in the public interest.” *Meinecke v. City of Seattle*, 99 F.4th 514, 521 (9th Cir. 2024) (quoting *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).⁴ When the government opposes an injunction, the third and fourth factors merge. *Meinecke*, 99 F.4th at 521. The Court must follow “a unique likelihood-of-success standard in First Amendment cases,” under which

⁴ Federal courts apply the same standard when issuing preliminary injunctions pursuant to pendent state law claims. *Farrant v. Friend*, No. CV 18-3425-GW(FFMX), 2018 WL 6133685, at *2 (C.D. Cal. Apr. 27, 2018) (directing plaintiff to brief entitlement to preliminary injunctive relief “by way of reference to *federal* procedure and standards for such relief (other than with respect to the likelihood of prevailing on the merits, which must be adjudged according to California law in connection with these California claims)”); *Sullivan By & Through Sullivan v. Vallejo City Unified Sch. Dist.*, 731 F. Supp. 947, 956–57 (E.D. Cal. 1990) (applying federal standard for preliminary injunction to state law claims).

1 “the moving party bears the initial burden of making a colorable claim that its First
2 Amendment rights have been infringed, or are threatened with infringement, at which
3 point the burden shifts to the government to justify the restriction on speech.” *Meinecke*,
4 99 F.4th 514.⁵

5 **ARGUMENT**

6 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.**

7 Consistent with its decades-long history of violating the rights of the press, LAPD
8 continues to attack and unlawfully interfere with reporters. Therefore, Plaintiffs are likely
9 to prevail on the merits, s “the most important factor” in deciding whether to grant a
10 preliminary injunction, and “even more so when a constitutional injury is alleged.”
11 *Matsumoto v. Labrador*, 122 F.4th 787, 804 (9th Cir. 2024).

12 **A. Federal Constitutional Claims**

13 **1. *Interference with First Amendment Right to Record and Cover Protests*** 14 ***and Police***

15 The protests and press coverage at issue took place in the traditional public forum
16 of streets, sidewalks, and parks. *Snyder v. Phelps*, 562 U.S. 443, 456 (2011). The First
17 Amendment protects the right to photograph and record matters of public interest in a
18 quintessential public forum, including but not limited to protests and the actions of law
19 enforcement officers. *Askins v. U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th
20 Cir. 2018); *Fordyce v. City of Seattle*, 55 F.3d 436, 438–39 (9th Cir. 1995).

21 The Court also recognized that newsgathering is protected by the First Amendment.
22 *Leigh v. Salazar*, 677 F.3d 892, 897, 900 (9th Cir. 2012); *United States v. Sherman*, 581
23 F.2d 1358, 1361 (9th Cir. 1978). “Just as streets and sidewalks historically have been

24
25 ⁵ Plaintiffs anticipate Defendants will again argue that Plaintiffs delayed in filing for
26 injunctive relief, undermining a claim of irreparable harm. As discussed in Plaintiffs’ Ex
27 Parte Application reply, Dkt. No.43, at 4, “delay by itself is not a determinative factor in
28 whether the grant of interim relief is just and proper. ... [I]ndeed, courts are loath to
withhold relief *solely on that ground*.” *Cuviello v. City of Vallejo*, 944 F.3d 816, 833
(9th Cir. 2019) (quotation and citation omitted, emphasis in original).

1 recognized as being open to the public, the press has long been understood to play a vitally
2 important role in holding the government accountable.” *Index Newspapers LLC v. United*
3 *States Marshals Serv.*, 977 F.3d 817, 831 (9th Cir. 2020).

4 Under the First Amendment, the Ninth Circuit in *Index Newspapers* upheld an
5 injunction which provided that “journalists and legal observers” covering ongoing protests
6 “shall not be subject to arrest for not dispersing following the issuance of an order to
7 disperse,” provided they do “not impede, block, or otherwise physically interfere with the
8 lawful activities” of law enforcement officers. *Id.* at 823, 831. The injunction listed indicia
9 to help identify journalists and legal observers, “such as press passes, people standing off
10 to the side of protests not engaging in protest activities, people not intermixed with protest
11 activities, and people carrying professional-grade photographic equipment.” *Id.*

12 As the Ninth Circuit acknowledged, dispersing the press is not “essential or
13 narrowly tailored to serve the government’s interests,” where “trained and experienced
14 law enforcement personnel are able to protect public safety without dispersing journalists
15 and legal observers and can differentiate press from protesters, even in the heat of crowd
16 control.”⁶ *Id.* at 832–33. Therefore, “journalists” and “members of the public” who are
17 merely observing or reporting on a protest “cannot be punished for the violent acts of
18 others,” and the “proper response to potential and actual violence is for the government to
19 ensure an adequate police presence, . . . and to arrest those who actually engage in such
20 conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic
21 measure.” *Id.* at 834 (cleaned up).

22 Here, as in *Index Newspapers*, there is a “mountain of evidence” that LAPD violated
23 these settled principles of First Amendment law by repeatedly attacking or targeting
24 journalists who were easily identifiable by well-recognized indicia. *Id.* at 831. *See, e.g.*
25 *supra*, Factual Background section A; 3 Exh. 11 (Harris trampled and shot while carrying

26 ⁶ California law has long provided statutory protection for members of the press covering
27 natural disasters, avalanches, and more recently, protests. Penal Code §§ 409.5, 409.6,
28 409.7. The fact that California law enforcement agencies are subject to pre-existing
statutory obligations to identify journalists further shows they are capable of doing so
and there is no harm from requiring them to do so.

1 with two large professional cameras and press badge); 3 Exh. 13 (Perez shot in knee while
2 carrying a large camera bag and press badge); 8 Exh. 46 (Lindenfeld shot while displaying
3 a press badge and helmet); 3 Exh. 17 (Nigro hit while carrying two large DSLR cameras
4 and wearing “PRESS” helmet and badge); 8 Exh. 60 (reporter shot in back). Like the
5 reporters in *Index Newspapers*, the journalists harmed or detained by LAPD were covering
6 the news and doing nothing to justify shooting them, shoving them, forcing them to move,
7 or detaining them. *See e.g.* 8 Exh. 30, 9 News Australia TV reporter shot; Vol 3 Exh. 9,
8 photographer with badge shoved; 8 Exh. 53, Status Coup reporter Berg removed despite
9 citing 409.7, 8 Exh. 50, CNN reporter Carroll detained. The First Amendment prohibits
10 LAPD from abusing the rights of journalists to cover events of public concern in a public
11 forum.

12 **2. Retaliation Against Press’s Protected First Amendment Activity**

13 The TRO correctly recognized that Plaintiffs are likely to prevail on their retaliation
14 claim. The First Amendment prohibits government officials from retaliating against
15 individuals for engaging in protected activity. *Hartman v. Moore*, 547 U.S. 250, 256
16 (2006). A plaintiff alleging First Amendment retaliation must show (1) he or she was
17 engaged in a constitutionally protected activity; (2) the officers’ actions would chill a
18 person of ordinary firmness from continuing to engage in that activity; and (3) the
19 protected activity was a substantial or motivating factor in the officers’ conduct.
20 *Mendocino Env’t Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300–01 (9th Cir. 1999).

21 As the Court noted in the TRO, the first two elements are not meaningfully disputed.
22 Reporters covering protests are protected by the First Amendment, and actions such as
23 “being shot with less-lethal munitions like pepper balls, tear gas, and paint-marking
24 munitions, being pepper sprayed at close range, or being shoved by a law enforcement
25 officer would chill a person of ordinary firmness from continuing to exercise their First
26 Amendment rights.” *Index Newspapers*, 977 F.3d at 827 n.4. Although called “less lethal,”
27 the impact weapons LAPD uses can cause serious injury, disability, and death. Declaration
28 of Dr. Rohini Haar ¶¶ 17-21 and generally (describing risks of LLMs); *see also generally*

1 Rose Dec.; Jordon Chariton Dec., Dkt. No. 25 ¶ 9; 8 Exh. 70 (photojournalist shot in eye
2 requiring surgery); 8 Exh. 35 (N.Y. Times Livia Albeck-Ripka treated at the hospital after
3 being shot); 3 Exh. 10 (Perez shot in knee and hospitalized); 8 Exh. 65 (photojournalist
4 Ted Soqui shot multiple times causing bloody swollen arm); 8 Exh. 33 (portion of
5 Cuenca’s finger partially severed from LLM requiring surgery).

6 The third element is met as well. The record contains “exceptionally strong
7 evidentiary support [that Defendants] were motivated to target journalists in retaliation for
8 plaintiffs’ exercise of their First Amendment rights.” TRO at 10:25–26 (quoting *Index*
9 *Newspapers LLC*, 977 F.3d at 829). Defendants repeatedly and deliberately targeted
10 Plaintiffs with 40mm munitions, striking them in the head, face, and upper body, all
11 prohibited target areas because of the increased likelihood of serious physical harm from
12 striking vital organs and the brain. Several plaintiffs were shot in the back, where there
13 cannot be any credible argument that these Plaintiffs posed a threat of imminent harm to
14 the officers or anyone else.

15 Moreover, if Defendants’ intention was to get Plaintiffs to move, shooting 40mm
16 KIPs at Plaintiffs would not further that goal. As the Ninth Circuit recently held, the 40mm
17 munition is not intended to cause the target to disperse; it is intended to “incapacitate.”
18 *Sanderlin v. Dwyer*, 116 F.4th 905, 913 (9th Cir. 2024). Like the federal defendants in
19 *Index Newspapers*, LAPD committed numerous, repeated, and unprovoked attacks on
20 journalists. This evidence establishes that Plaintiffs are likely to prevail on their claim that
21 LAPD retaliated against them in violation of the First Amendment.

22 **B. California Law Claims**

23 LAPD’s actions also violate the California Constitution and statutory protections
24 for journalists and the public at protests enacted by the California Legislature.

25 The Court should address Plaintiffs’ entitlement to a preliminary injunction under
26 California law for several reasons. First, “[i]t is well-established that [a federal] court
27 should avoid adjudication of federal constitutional claims when alternative state grounds
28 are available ... even when the alternative ground is one of state constitutional law.”

1 *Cuviello v. City of Vallejo*, 944 F.3d 816, 826 (9th Cir. 2019). Second, state law provides
2 an adequate and independent ground for the relief requested under the California statutes.⁷
3 *Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

4 Finally, Plaintiffs’ entitlement to the requested relief on state claims is clear and
5 beyond dispute. As set forth in more detail below, Penal Code sections 409.7 and 13652
6 provide specific, detailed protections for journalists in protests that Plaintiffs have closely
7 tracked in their requested relief. Grounding the requested relief in state statutory
8 provisions therefore helps provide assurance that the injunction is appropriately “tailored
9 to remedy the specific harm alleged.” *Flathead-Lolo-Bitterroot Citizen Task Force v.*
10 *Montana*, 98 F.4th 1180, 1195 (9th Cir. 2024).

11 **1. LAPD’s Conduct Violates California Statutory Protections**

12 In the wake of abuses committed by law enforcement during protests against the
13 killing of George Floyd in 2020, the California Legislature adopted two statutes aimed at
14 specifically protecting journalists at public protests from police interference — Penal
15 Code §§ 409.7 and 13652, enacted by AB 48 and SB 98, respectively. Both statutes codify
16 explicit protections for journalists that stand independent from federal law and that LAPD
17 repeatedly violated.

18 Penal Code § 409.7 applies when peace officers “close the immediate area
19 surrounding any emergency field command post or any other command post, or establish
20 a police line, or rolling closure at a demonstration, march, protest, or rally where
21 individuals are engaged in activity that is protected pursuant to the First Amendment or
22 Article I of the California Constitution.” In those circumstances, the statute codifies
23 specific protections for journalists and the news media:

24
25 ⁷ For example, the protections of the First Amendment apply regardless of whether
26 officers “establish a police line, or rolling closure at a demonstration, march, protest, or
27 rally,” and they apply regardless of whether one is a “duly authorized representative of
28 any news service, online news service, newspaper, or radio or television station or
network.” Penal Code § 409.7(a)(1). The statute applies in those circumstances
regardless of whether the First Amendment independently guarantees the specific rights
enumerated in the statute.

1 (1) A duly authorized representative of any news service, online news service,
2 newspaper, or radio or television station or network may enter the closed areas
described in this section.

3 (2) A peace officer or other law enforcement officer shall not intentionally
4 assault, interfere with, or obstruct the duly authorized representative of any
5 news service, online news service, newspaper, or radio or television station or
6 network who is gathering, receiving, or processing information for
communication to the public.

7 (3) A duly authorized representative of any news service, online news service,
8 newspaper, or radio or television station or network that is in a closed area
9 described in this section shall not be cited for the failure to disperse, a violation
10 of a curfew, or [obstruction of a peace officer] ... for gathering, receiving, or
11 processing information. If the duly authorized representative is detained by a
12 peace officer or other law enforcement officer, that representative shall be
permitted to contact a supervisory officer immediately for the purpose of
challenging the detention, unless circumstances make it impossible to do so.

13 Cal. Penal Code § 409.7(a).⁸

14 Penal Code § 13652 prohibits law enforcement from using “kinetic energy
15 projectiles” or “chemical agents” to “disperse any assembly, protest, or demonstration”
16 except as specifically provided in the statute.⁹ Penal Code § 13652(a). For example,
17

18 ⁸ The term “‘duly authorized’ refers to the news station, newspaper, or radio or television
19 station or network,” (or for Penal Code § 409.7, the “online news service”) “having ‘duly
20 authorized’ the individual to be its representative”; it does not refer to “someone
21 authorized to be in the area by the law enforcement officer.” 67 Cal. Op. Att’y Gen. 535,
22 539 (1984) (discussing similar language in Penal Code § 409.5). Whatever the outer limits
23 of a “duly authorized” journalist in the digital age, LAPD’s actions unquestionably
impacted reporters who fit within the Attorney General’s definition, which carries great
weight, especially since the Legislature was aware of it in enacting section 409.7.
California Assn. of Psychology Providers v. Rank, 51 Cal. 3d 1, 17 (1990).

24 ⁹ The statute defines “kinetic energy projectiles” as “any type of device designed as less
25 lethal, to be launched from any device as a projectile that may cause bodily injury through
26 the transfer of kinetic energy and blunt force trauma” including “rubber bullets, plastic
27 bullets, beanbag rounds, and foam tipped plastic rounds.” Penal Code § 13652(d)(1). It
28 defines “chemical agents” to mean “any chemical that can rapidly produce sensory
irritation or disabling physical effects in humans, which disappear within a short time
following termination of exposure” including tear gas, CS gas, “pepper balls, pepper
spray, or oleoresin capsicum.” *Id.* § 13652(d)(2).

1 kinetic energy projectiles and chemical agents “shall only be deployed by a peace officer
2 that has received training on their proper use by the Commission on Peace Officer
3 Standards and Training for crowd control” and their use must be “objectively reasonable
4 to defend against a threat to life or serious bodily injury to any individual, including any
5 peace officer, or to bring an objectively dangerous and unlawful situation safely and
6 effectively under control.” *Id.* § 13652(b).

7 The statute contains other limitations, including but not limited to the following
8 that are especially relevant in light of LAPD’s conduct:

- 9 ● “An objectively reasonable effort has been made to identify persons engaged
10 in violent acts and those who are not, and kinetic energy projectiles or
11 chemical agents are targeted toward those individuals engaged in violent acts.
12 Projectiles shall not be aimed indiscriminately into a crowd or group of
13 persons.” Penal Code § 13652(b)(4).
- 14 ● “Officers shall minimize the possible incidental impact of their use of kinetic
15 energy projectiles and chemical agents on bystanders, medical personnel,
16 *journalists*, or other unintended targets.” Penal Code § 13652(b)(6) (emphasis
17 added).
- 18 ● “Kinetic energy projectiles shall not be aimed at the head, neck, or any other
19 vital organs.” Penal Code § 13652(b)(9).
- 20 ● “Repeated, audible announcements are made declaring the intent to use
21 kinetic energy projectiles and chemical agents and the type to be used, when
22 objectively reasonable to do so,” and people “are given an objectively
23 reasonable opportunity to disperse and leave the scene.” Penal Code
24 § 13652(b)(2, 3).

25 The evidence easily establishes Plaintiffs are likely to succeed in showing LAPD
26 repeatedly violated the requirements of Penal Code sections 490.7 and 13652.

27 ***Intentionally assaulting journalists.*** As set forth in Part A of the Factual
28 Background, *supra*, Plaintiffs have submitted evidence of more than a dozen incidents in
which LAPD officers deliberately assaulted members of the press after closing a public
area or setting up a police line during a public protest, despite obvious identification as
press, in clear violation of the probation on assaulting journalists in Penal Code
§ 409.7(a)(2).

LAPD officers shot obviously identifiable reporters with LLMs in situations that strongly indicate they did so intentionally, including Australian TV reporter Tomasi from behind while she was on air, Rose Dec. ¶ 26, 8 Exh. 30; Capital & Main reporter Lindenfeld while he wore a helmet marked “PRESS” and press ID, Rose Dec. ¶ 36, 8 Exh. 46-7; photojournalist Nigro twice on June 9 when he was plainly marked as press and carried large cameras, Nigro Dec. ¶¶ 5-9, 8 Exh. 48; photojournalist Perez from “very close,” while he carried two professional cameras, a large camera bag, and a large press badge on a lanyard around his neck, leaving an open wound on his knee that may require surgery. Perez Dec., Rose Dec. ¶ 54 & n. 35, 3 Exh 10 & 13; photographer Harris in the back of his leg while he was complying with a dispersal order, walking away from the officers, and posed no threat. Harris Dec. ¶¶ 5-7 & Rose Dec. ¶ 45, 8 Exh. 59; an Agence France-Presse photographer, shot in the face and leg, despite having two cameras and a large patch labeling them as press, Rose Dec. ¶ 56 8 Exh. 73; an unidentified photographer holding a professional camera and identification, Beckner-Carmitchel Dec. ¶ 7; and an AP videographer, Rose Dec. ¶ 35, 8 Exh. 45.

These incidents also violate Penal Code § 13652’s requirements that LLMs be used only when “objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control,” and that officer minimize impact on bystanders and journalists, avoid shooting at the head, and issue warnings and allow time for compliance, among other requirements. *See id.* § 13652(b).

LAPD also repeatedly rammed journalists with horses. *See* Beckner-Carmitchel Dec. ¶ 6, Exh. 38 (photographer who was already moving in direction LAPD indicated with no other people nearby); Harris Dec. ¶ 5 & Rose Dec. ¶ 45, Vol 8 Exh. 59 (using horses to pin journalist with two larger cameras who was walking away and posed no threat); Rose Dec. ¶ 55, Vol 8 Exh. 72 (mounted officer charged 82-year-old photographer David Healy, knocking him to the ground and breaking one of his ribs).

LAPD also repeatedly shoved journalists. Rose Dec. ¶ 38, 8 Exh. 49 (shoving CNN

1 Anchor Erin Burnett on live TV, to which she noted “They knew we’re media. They’re
2 just as happy to push me as to push anybody else.”); Beckner-Carmitchel Dec. ¶ 6, 8 Exh.
3 38 (shoving photographer already moving in direction indicated, with no other people
4 around); Rose Dec ¶ 51, 8 Exh. 33 (shoving ABC’s chief national correspondent, Matt
5 Gutman, from behind on live TV); *id.* ¶ 41 (shoving Los Angeles Times reporter James
6 Queally after Queally responded to the officer’s order to move by saying he had a legal
7 right to be there); *id.* ¶ 57, 8 Exh. 75 (photographer Tod Seelie shoved by LAPD while
8 wearing a helmet with a press badge and media credential).

9 LAPD’s conduct in targeting journalists with LLMs, ramming them with horses,
10 and shoving them are all “intentional assaults” in violation of Penal Code § 409.7(a)(2).

11 ***Indiscriminate use of force against crowds containing journalists.*** Part B of the
12 Factual Background sets forth a dozen incidents in which LAPD officers fired LLMs and
13 tear gas indiscriminately into crowds containing journalists obviously marked as press,
14 despite the absence of any imminent threat of serious harm, striking journalists, in some
15 cases with horrific consequences — nearly severing the finger of one journalist with a
16 rubber bullet, and slicing open the eye of another and possibly blinding him permanently.
17 Rose Dec. ¶¶ 27, 53, 8 Exh. 32, 70. While evidence may ultimately show LAPD targeted
18 some of these journalists intentionally as well, they at least showed reckless disregard not
19 only of their First Amendment rights, but their statutory rights as journalists to remain in
20 areas subject to rolling closures and their right to be free from intentional assault,
21 interference or obstruction while gathering news in protest areas, Penal Code
22 § 409.7(a)(1), (a)(2); and to be free from police use of KIPs and chemical agents other
23 than as “objectively reasonable to defend against a threat to life or serious bodily injury to
24 any individual, including any peace officer, or to bring an objectively dangerous and
25 unlawful situation safely and effectively under control,” Penal Code § 13652(b), to be free
26 from “[p]rojectiles ... aimed indiscriminately into a crowd,” *id.* § 13652(b)(4), and to have
27 officers “minimize the possible incidental impact of their use of kinetic energy projectiles
28 and chemical agents on bystanders..., ***journalists***, or other unintended targets,” *id.*

1 §13652(b)(6) (emphasis added).

2 In several instances, LAPD targeted reporters with LLMs in ways that violated their
3 right under Penal Code § 13652(b)(9) to be free from impact LLMs aimed “at the head,
4 neck, or any other vital organs.” LAPD hit at least three journalists in the head or face.
5 *See* Rose Dec. ¶ 53, 8 Exh. 70 (Marshall Woodruff hit in face by LAPD rubber bullet,
6 slicing open his eye); ¶ 37, 8 Exh. 48 (Nigro hit in head with LLM); ¶ 56, 8 Exh. 73 (LAPD
7 shot Agence France-Presse photographer in face with LLM). They hit many more in the
8 body or back.

9 ***Exclusion of journalists from closed areas and interference of newsgathering.***

10 The evidence shows that LAPD repeatedly and deliberately excluded “duly authorized
11 representatives” of the press from closed areas and interfered with newsgathering even if
12 the area was not closed, in obvious violation of Penal Code § 409.7(a)(1) and (2). The
13 June 10 incident involving Berg provides one clear example — she was on assignment,
14 wearing her press identification and accompanied by a photojournalist, and on a public
15 plaza when an LAPD officer accosted her and repeatedly ordered her to leave, saying, “I
16 gave you a direct order to leave,” despite Berg repeating that she was a journalist, citing
17 to Penal Code § 409.7, and stating that the LAPD officer was breaking the law by ordering
18 her to move. Berg Dec. ¶¶ 2-4, 8 Exh. 53. But there are many others. *See supra*, Factual
19 Background, part C; Beckner-Carmitchel Dec. ¶ 5 & 8 Exh. 36 (ordering a group of
20 journalists huddled the entrance to a garage to leave); Rose Dec. ¶ 39 & 8 Exh. 50
21 (detaining CNN reporter Carroll live on air, placing his hands behind his back, escorting
22 him out of protest area, and telling him he would be arrested if he came back); Chinae
23 Dec. ¶ 13; Rose Dec. ¶ 34 & 8 Exh. 43 (LAPD officers ordered 20 to 30 journalists into a
24 “press area” about 150 feet away from protestors under threat of arrest, making reporting
25 on the line impossible);¹⁰ Beckner-Carmitchel Dec. ¶ 8; Rose Dec ¶ 33 & 8 Exh. 42 (on

26
27 ¹⁰ In enacting PC § 409.7, the Legislature expressly stated its intent to “achieve parity in
28 the access and protections for journalists and news media as those established” for access
to areas closed due to “a calamity including a flood, storm, fire, earthquake, explosion,
accident, or other disaster” under an earlier provision, Penal Code § 409.5. *See* SB 98, § 1,

June 8, LAPD specifically ordered press to disperse, shouting “Media, go!”); Harris Dec. ¶¶ 4, 8, 8 Exh. 59 (kettling journalist with two large professional cameras, a press identification, and business cards, and not allowing him to leave, even though he repeatedly informed them he was a member of the press); Rose Dec. ¶ 44, 8 Exh. 53 (LAPD officers chased and shoved multiple people wearing helmets plainly marked with “PRESS,” with IDs on lanyards, and carrying large cameras, shouting, “Leave the area!” repeatedly, with only press and no protesters visible in the immediate area); Rose Dec. ¶ 48, 8 Exh. 61 (kettling group of journalists and refusing to allow them to leave despite repeated requests); Orendorff Dec. ¶¶ 2-6 (seizing journalist documenting ICE raid and keeping him in custody from Thursday to Monday); Beckner-Carmitchel Supp. Dec., Dkt. 43-1, and Rose Supp. Dec., Dkt. 43-2 (on July 4, LAPD officers kettled journalists and blocked them from accessing the police response to a protest downtown); Rose Dec. ¶ 3, 8 Exh. 49 (LAPD officers shoved CNN anchor Erin Burnett on live TV); ¶ 41 (LAPD officer told reporter to move and, when reporter said he had a right to be there, shoved him); ¶ 42, 8 Exh. 55 (LAPD officer let some members of CNN crew pass while others could not).¹¹

In several of these incidents, LAPD officers detained journalists without contacting a supervisor, in violation of Penal Code § 409.7(a)(3). Harris Dec. ¶ 4-8; & Rose Dec. ¶ 48, 8 Exh. 61; Ordenoff Dec. ¶¶ 2-6.

2. LAPD’s Targeting of Journalists Violates the California Constitution.

The California Constitution’s protections for speech in a public forum, as set out in at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB98; Penal Code § 409.5(a). Any attempt to confine journalists to a “designated press area” does not comply “with a statute which specifically authorizes representatives of the press to enter closed areas.” *Leiserson v. City of San Diego*, 184 Cal. App. 3d 41, 50 (Cal. Ct. App. 1986).

¹¹ None of these incidents involve exclusion from “the scene of a possible crime” or “an area in which the commission of a crime is being investigated,” such as a vehicle collision or homicide, where it is necessary to limit access for purposes of forensic examination or evidence collection. *Leiserson*, 184 Cal. App. 3d at 52. Such a “crime scene” exception only applies when an area is temporarily closed to preserve evidence for forensic purposes, which is not at issue here.

Article I, section 2, are at least as extensive as those of the First Amendment. *Cuviello*, 944 F.3d at 827. For the same reasons that LAPD’s conduct violates the First Amendment, it violates Art. I, § 2 of the California Constitution.

3. *LAPD Interfered with Plaintiffs’ State Constitutional and Statutory Rights in Violation of the Bane Act*

The Bane Act, Civil Code § 52.1, provides a private right of action for injunctive relief and other “appropriate equitable relief” against any person or entity that “interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured” by federal or state law and the United States or California constitutions. Civ. Code § 52.1(a), (b). “The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., ‘threats, intimidation or coercion’), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.” *Murchison v. Cnty. of Tehama*, 69 Cal. App. 5th 867, 896 (2021) (quotation omitted).

Plaintiffs have shown interference with two types of rights: First, LAPD interfered with their rights to access, cover, and report on protests under the First Amendment, Cal. Const. art. I, § 2, and as journalists under Penal Code § 409.7(a)(1). LAPD interfered with these rights by intentionally targeting Plaintiffs with force when they posed no threat and were obviously marked as journalists, by using force indiscriminately on crowds containing journalists, physically detaining journalists, and threatening to arrest journalists who approached or remained in areas they were allowed under law to be. These acts clearly constitute coercion independent of Plaintiffs’ right to cover the protests on public streets under the First Amendment and Art. I, § 2, and to remain in closed areas under § 409.7(a)(1), and so satisfy the second element of the Bane Act. *Cuviello v. City & Cnty. of San Francisco*, 940 F. Supp. 2d 1071, 1103 (N.D. Cal. 2013) (recognizing “First Amendment rights do not inherently involve freedom from coercion,” and that police threats to arrest protestors if they protested outside the ‘free speech’ area and tearing down their banner satisfied threats, intimidation, or coercion element of Bane Act claim); *accord Reese v. Cnty. of Sacramento*, 888 F.3d 1030, 1042 (9th Cir. 2018)

(recognizing there is coercion “inherent in the use of force”); *Bender v. Cnty. of Los Angeles*, 217 Cal. App. 4th 968, 978 (2013) (police use of force not inherent in underlying violation satisfies Bane Act); *Peltz*, No. 2:22-CV-03106-HDV(AGRX), 2025 WL 1412479, at *12 (finding baseless or retaliatory arrests satisfy Bane Act standard); *Moreno v. Town of Los Gatos*, 267 F. App’x 665, 666 (9th Cir. 2008) (threat, intimidation, or coercion requirement satisfied for a Bane Act claim by “officers’ threat to arrest some of the plaintiffs and actual arrest of others”).¹²

Second, LAPD violated Plaintiffs’ right to be free from assault as journalists covering protests under Penal Code § 409.7(a)(2) and from misuse of less-lethal munitions in violation of Penal Code § 13652. Here, LAPD’s conduct in using force constitutes the coercion and the violation of the right at issue. The Bane Act does not require the “threat, intimidation or coercion” element of the claim to be transactionally independent from the constitutional violation alleged, *Reese*, 888 F.3d at 1043, but where the coercion is inherent in the violation of the right, a plaintiff must satisfy the egregiousness required by the Bane Act by demonstrating that “a specific intent to violate” the right at issue, a showing that does not require that they “understood they were acting unlawfully,” but only a showing of “reckless disregard of the right at issue.” *Cornell v. City & Cnty. of San Francisco*, 17 Cal. App. 5th 766, 804 (2017); accord *Reese*, 888 F.3d at 1045 (“[I]t is not necessary for the defendants to have been thinking in constitutional or legal terms at the time of the incidents, because a reckless disregard for a person’s constitutional rights is evidence of a specific intent to deprive that person of those rights.” (quotation omitted)). LAPD’s repeated attacks on journalists and

¹² LAPD’s interference with Plaintiffs’ statutory right of access and constitutional speech rights with uses of force that were independent of those rights would support a Bane Act claim even on a showing that Defendants acted only negligently toward those rights. *Sandoval v. Cnty. of Sonoma*, 912 F.3d 509, 519 (9th Cir. 2018) (noting “independent coercion rule only applies when the plaintiff shows that the defendant negligently violated the plaintiff’s ... rights”). But here, for the same “exceptionally strong evidentiary support [that Defendants] were motivated to target journalists in retaliation for plaintiffs’ exercise of their First Amendment rights,” TRO at 10:25–26, establishes not just negligence but specific intent to interfere with Plaintiff’s speech rights, and repeated reckless disregard of those rights.

1 indiscriminate use of KIPs on crowds where journalists were present,¹³ unquestionably
2 constitutes reckless disregard of Plaintiffs’ state statutory rights to be free from assault
3 while gathering news at protests and right to be free from misuse of LLMs. *E.g.*
4 *Chinaryan v. City of Los Angeles*, 113 F.4th 888, 908 (9th Cir. 2024) (refusal to use less
5 intrusive measures when warranted would support a finding of reckless disregard).
6 Defendants’ disregard here is only underscored by the fact that the LAPD’s actions
7 violated not only the law but the Department’s own policies and training, which officers
8 would have been aware of. Declaration of Roger Clark ¶¶ 12-31. Plaintiffs are likely to
9 prevail on their Bane Act claim for injunctive relief on both their state and federal law
10 rights.

11 **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM WITHOUT THE**
12 **COURT’S INTERVENTION.**

13 The “chill on [Plaintiffs’] free speech rights—even if it results from a threat of
14 enforcement rather than actual enforcement—constitutes irreparable harm.” *Cuviello*,
15 944 F.3d at 832–33 (citation omitted). The Court correctly recognized this principle in the
16 TRO. As long as LAPD is free to use less lethal munitions against nonviolent journalists,
17 Plaintiffs’ exercise of their First Amendment rights will “surely [be] chilled.” *Black Lives*
18 *Matter Seattle-King Cnty. v. City of Seattle, Seattle Police Dep’t*, 466 F. Supp. 3d 1206
(W.D. Wash. 2020).

19 Similarly, the guarantees of press access protected by Penal Code sections 409.7
20 and 13652 cannot be adequately remedied by damages. Because these statutes protect and
21 enable Plaintiffs’ rights to cover protests, LAPD’s abridgment of those statutes by using
22 force against journalists and preventing them from reporting constitutes irreparable harm.
23 The threat is both real and ongoing. *See* Supplemental Declaration of Beckner-Carmitchel,
24 Dkt. No. 43-1; Supplemental Declaration of Rose, Dkt. No. 43-2.

25 **III. THE PUBLIC’S INTEREST AND BALANCE OF EQUITIES WEIGH**
26 **STRONGLY IN FAVOR OF PLAINTIFFS.**

27 As the Court recognized in issuing the TRO, the balance of equities tilts sharply in
28 Plaintiffs’ favor. TRO at 11:17–21. The balance of equities and public interest always

¹³ See Factual Background section A & B, *supra*, at 3-9.

1 favor “prevent[ing] the violation of a party’s constitutional rights.” *Melendres v. Arpaio*,
2 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted). The public interest
3 also favors protecting the rights of journalists, because the public depends on the press for
4 reporting necessary to hold government accountable. *Cox Broad. Corp. v. Cohn*, 420 U.S.
5 469, 491 (1975); *People for the Ethical Treatment of Animals, Inc. v. N. Carolina Farm*
6 *Bureau Fed’n, Inc.*, 60 F.4th 815, 829 (4th Cir. 2023); *Leigh*, 677 F.3d at 900. Plaintiffs’
7 proposed relief would not impose hardship on Defendants because it largely tracks
8 existing constitutional and statutory requirements. It is also consistent with LAPD’s own
9 policies and other injunctions governing its conduct. *See* Sobel Dec., Exh. 79 (Deputy
10 Chief Dominic Choi memo dated Oct. 30, 2020); Sobel Dec. ¶ 18; Clark Dec. ¶¶ 10-31;
11 *Black Lives Matter Los Angeles*, 2021 WL 3162706, at *4.

12 CONCLUSION

13 For the foregoing reasons, Plaintiffs respectfully request that the Court grant the
14 preliminary injunction.

15 Dated: July 22, 2025

Respectfully submitted,

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18 First Amendment Coalition
19 Law Office Of Peter Bibring
20 Schonbrun, Seplow, Harris,
Hoffman & Zeldes
Law Office Of Susan Seager

21 By: /s/ Peter Bibring
22 Peter Bibring
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOS ANGELES PRESS CLUB,
STATUS COUP,

PLAINTIFFS,

v.

CITY OF LOS ANGELES, a
municipal entity, JIM McDONNELL,
LAPD CHIEF, sued in his official
capacity;

DEFENDANTS.

Case No. 25-cv-05423 HDV-E

Exhibit 81

Hon. Hernán D. Vera

Date: August 11, 2025

Time: 9 a.m.

Ctrm: 5B



ROCKARD J. DELGADILLO
CITY ATTORNEY

Office of the City Attorney
Los Angeles, California

January 15, 2002

FAX TRANSMITTAL SHEET

To: SHARON E. JACKSON, ESQ.
MILBANK, TWEED, HADLEY & McCLOY LLP
FAX NO.: 213 629-5063

From: James Axtell
Deputy City Attorney
Fax Number 213-485-8898

Re: *Settlement Agreement on Crespo v. City*

Number of Pages: 13 (including this coversheet)

SETTLEMENT AGREEMENT
(Crespo v. City of Los Angeles CV00-08869)

This Settlement Agreement and Release ("Agreement") is made by and between the following parties: (1) plaintiffs Al Crespo, David Horowitz, Greg Rothschild, Kevin Graf, Jeffrey Kleinman, Rebeka Rodriguez, and Ronald Deveau, and (2) defendants City of Los Angeles, Chief Bernard C. Parks, Deputy Chief Maurice Moore, Deputy Chief (Ret.) Martin Pomeroy, and Commander Thomas Lorenzen.

BACKGROUND:

A. On September 7, 2000, plaintiffs filed their first amended complaint in case number CV00-08869 alleging violations of their rights under the First and Fourth Amendments to the United States Constitution and under Article I, sections 2 and 13 of the California Constitution. (An allegation of violation of the Fourteenth Amendment right to due process was voluntarily withdrawn before defendants answered.) Plaintiffs sought damages, declaratory relief, and an injunction directing defendants to develop policies protecting members of the media from interference by the Los Angeles Police Department during major demonstrations.

B. Each plaintiff alleged that he or she was in the vicinity of the Staples Center in Los Angeles during the Democratic National Convention on August 14, 2000 when the Police Department declared an unlawful assembly in the public assembly area immediately adjacent to the Staples Center. As a result of the unlawful assembly, the Department issued a dispersal order that was ultimately followed by a dispersal operation in which police caused persons to leave the demonstration area and to disperse. Plaintiffs alleged that while they were engaged in their business of recording the events, for no apparent cause they were pushed, kicked, knocked down, struck with batons, hit with less lethal munitions, or subjected to some combination of these actions. Plaintiffs further alleged that they suffered personal injury, and in some cases property damage or loss, as a result of the actions of the police.

C. On November 20, 2000, defendants filed their answer denying all of plaintiffs' allegations and setting forth a number of affirmative defenses. Defendants continue to deny all of plaintiffs' allegations and continue to assert that all of the policies of the Los Angeles Police Department are in all respects lawful and consistent with both the United States Constitution and the California Constitution. Nothing in this Agreement constitutes an admission of liability by defendants.

D. Nevertheless, at this time the parties desire to resolve this matter without further litigation and therefore intend with this Settlement Agreement to resolve all issues pertaining to case number CV00-08869, and the allegations contained therein, upon the terms and conditions set forth in this Agreement.

THEREFORE, in consideration for the recitals, promises, representations, covenants, terms, conditions, and releases contained in this Agreement, the parties agree as follows:

E. Department Policy. Defendants agree to amend the policies of the Los Angeles Police Department as follows:

Preamble

Under the rights guaranteed by the First Amendment to the United States Constitution, it is not uncommon for large numbers of people to assemble for the purpose of demonstrating their opinions. At such demonstrations, it is the Police Department's obligation to protect individuals' First Amendment rights, maintain order, and protect lives and property. Occasionally, demonstrations become unlawful. In such circumstances, pursuant to California Penal Code sections 407 and 409, an assembly may be declared unlawful, and all persons present, including members of the news media, may be lawfully ordered to disperse. The law provides that police officers may use reasonable force to disperse an unlawful assembly and to effect the arrest of violators. The Department's Use of Force Policy applies to such actions. The Department's policies concerning interaction with the news media are described in the relevant provisions in Volume 1 of the Department Manual, the Department's Emergency Operations Guide, and the Department's Media Guide.

1. The Los Angeles Police Department recognizes that the news media has the right, without interfering with police operations, to cover events that may result in the declaration of an unlawful assembly and order to disperse. To the extent reasonably possible under the circumstances, LAPD will make efforts to accommodate this reporting obligation. However, such efforts will be made consistent with LAPD's primary obligation to maintain public safety and order.

2. With the exception of spontaneously occurring events, whenever LAPD develops an operations plan for an event that the Department understands will involve a public assembly, the Department will where practicable designate an area outside of the anticipated impacted area, but within reasonable viewing distance and audible range of the event, in which members of the news media may assemble. To the extent reasonably possible under the circumstances, the Department will try to prevent the news media viewing area from becoming part of any area impacted by an unlawful assembly declaration and order to disperse. However, the decision to assume the risk of danger involved in covering a public event remains with the individual news reporter making such decision, provided that any such decision does not constitute a waiver by a reporter of any constitutional or other legal rights.

3. The selection of the news media viewing area will take into consideration public and officer safety, police tactics, input provided by the news media, if any, and the ability of LAPD to prevent the location from becoming part of the impacted area. The final selection of the viewing area location will be made by the Incident Commander (IC) in charge of the event.

4. To the extent reasonably possible without compromising public or officer safety or police tactics, the IC will relocate the news media viewing area if, due to changing conditions, the initial area no longer affords the news media a reasonable view of the event or becomes a tactical concern for the IC.

5. Pursuant to Volume 2 of the LAPD Emergency Operations Guide, the LAPD IC will designate an Information Officer as part of the incident command system in order to facilitate interaction with the news media. The Information Officer will be clearly identified at the scene.

6. Pursuant to Volume 5 of the Emergency Operations Guide, after declaring an unlawful assembly, LAPD will designate a dispersal route for all persons present, including the news media, to use when evacuating the area.

7. LAPD will amend its Emergency Operations Guide to reflect the procedures outlined in paragraphs 1, 2, 3, and 4 above.

8. LAPD Media Relations Section will provide members of the news media with a written pamphlet explaining the procedures outlined in paragraphs 1, 2, 3, and 4 above, as well as the Department's policies concerning interaction with the news media, including at unlawful assemblies, crime scenes, command posts, and disaster scenes, at the time that they apply for a new or renewal LAPD Press Pass.

9. LAPD will issue a Training Bulletin to all Department personnel which explains the procedures outlined in paragraphs 1, 2, 3, and 4 above.

F. Monetary Payment. Within 30 days after this Agreement is executed by all parties, defendant City of Los Angeles will pay plaintiffs damages, attorneys fees, and costs in the amount of \$60,000. Plaintiffs accept this amount as full payment for any and all monetary amounts owed in connection with case number CV00-08869, and the allegations contained therein, and on behalf of themselves, their agents, and their assigns, hereby release all defendants, as well as all other employees and entities of the City of Los Angeles, from any further obligations to pay any further amounts.

G. Dismissal of Complaint. Within 30 days after this Agreement is executed by all parties, plaintiffs will dismiss with prejudice the action titled Al Crespo, et al. v. City of Los Angeles, et al., California Central District Federal Court Case No. CV00-08869.

H. Mutual Releases. Except as provided for in this Agreement, plaintiffs, on behalf of themselves and their agents, assigns, successors, heirs, attorneys, and representatives, hereby release defendants and their agents, assigns, successors, heirs, attorneys, and representatives, including any employees and entities of the City of Los Angeles, from any and all claims, liabilities, and obligations of any nature, whether known or unknown and whether suspected or unsuspected, concerning any acts, circumstances, facts, events, or transactions occurring prior to the date on

which this Agreement is signed by all parties.

In turn, except as provided for in this Agreement, defendants, on behalf of themselves and their agents, assigns, successors, heirs, attorneys, and representatives, including any employees and entities of the City of Los Angeles, hereby release plaintiffs and their agents, assigns, successors, heirs, attorneys, and representatives, from any and all claims, liabilities, and obligations of any nature, whether known or unknown and whether suspected or unsuspected, concerning any acts, circumstances, facts, events, or transactions occurring prior to the date on which this Agreement is signed by all parties.

I. Unknown Claims. It is the intention of the parties that this Agreement constitute a full and final accord and satisfaction and mutual release of all claims, liabilities, and obligations, whether known or unknown and whether suspected or unsuspected, that the parties may have against each other concerning any acts, circumstances, facts, events, or transactions occurring prior to the date on which this Agreement is signed by all parties. The parties acknowledge that they are familiar with and expressly waive the protection of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In connection with such waiver and agreement, each of the parties acknowledges awareness that he, she, they, or their attorneys may at some time in the future discover claims, facts, or legal theories in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement, but it is the parties' intention with this Agreement to fully, finally, and forever settle and release all of the matters known or unknown and suspected or unsuspected which do not now exist, which may exist, or which may have existed previously between the parties concerning any acts, circumstances, facts, events, or transactions occurring prior to the date on which this Agreement is signed by all parties.

J. Entire Agreement. This Agreement contains the complete agreement and understanding of the parties with respect to the subject matter described in the Agreement and supersedes all previous discussions, negotiations, commitments, and undertakings concerning such subject matter.

K. Waiver, Modification, and Amendment. None of the provisions in this Agreement may be modified, amended, or waived except by written agreement signed by both plaintiffs and defendants. Waiver of any one provision in this Agreement will not be deemed a waiver of any other provision.

L. Construction and Jurisdiction. Interpretation of the provisions of this Agreement will be pursuant to the laws of the State of California. Jurisdiction over any dispute arising concerning the terms of this Agreement will remain exclusively with the United States District Court for the Central District of California.

M. Counterparts and Facsimile. This Agreement may be executed in counterparts and by facsimile. Each executed counterpart will be deemed an original, and all executed counterparts, when taken together, shall constitute one and the same document.

N. Authorization. Each undersigned warrants that it has the authority to execute this agreement on behalf of its respective parties and that it has read and understood and agrees to all of the terms and conditions of this Agreement.

AL CRESPO

Dated: 11/10, 2001

By: 
Al Crespo

DAVID HOROWITZ

Dated: _____, 2001

By: _____

GREG ROTHSCILD

Dated: _____, 2001

By: _____

KEVIN GRAF

Dated: _____, 2001

By: _____

JEFFREY KLEINMAN

Dated: _____, 2001

By: _____

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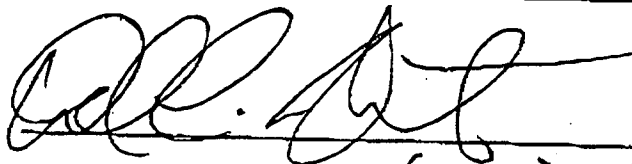
AL CRESPO

Dated: _____, 2001

By: _____

DAVID HOROWITZ

Dated: 11/28, 2001



By: David C. Horowitz

GREG ROTHSCILD

Dated: _____, 2001

By: _____

KEVIN GRAF

Dated: _____, 2001

By: _____

JEFFREY KLEINMAN

Dated: _____, 2001

By: _____

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Dated: _____, 2001

By: _____

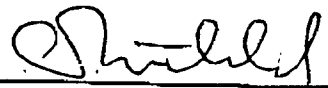
DAVID HOROWITZ

Dated: _____, 2001

By: _____

GREG ROTHCHILD

Dated: 11/8, 2001


By: GREG ROTHCHILD

KEVIN GRAF

Dated: _____, 2001

By: _____

JEFFREY KLEINMAN

Dated: _____, 2001

By: _____

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AL CRESPO

Dated: _____, 2001

By: _____

DAVID HOROWITZ

Dated: _____, 2001

By: _____

GREG ROTHCHILD

Dated: _____, 2001

By: _____

KEVIN GRAF

Dated: 11/9, 2001

By: Kevin Graf

JEFFREY KLEINMAN

Dated: _____, 2001

By: _____

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AL CRESPO

Dated: _____, 2001

By: _____

DAVID HOROWITZ

Dated: _____, 2001

By: _____

GREG ROTHCHILD

Dated: _____, 2001

By: _____

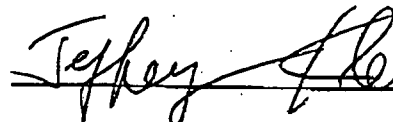
KEVIN GRAF

Dated: _____, 2001

By: _____


JEFFREY KLEINMAN

Dated: 11/13, 2001


By: JEFFREY KLEINMAN

REBEKA RODRIGUEZ

Dated: 11/20, 2001


By: _____

RONALD DEVEAUX

Dated: _____, 2001

By: _____

**CITY OF LOS ANGELES
CHIEF BERNARD C. PARKS
DEPUTY CHIEF MAURICE MOORE
DEPUTY CHIEF (RET.) MARTIN POMEROY
COMMANDER THOMAS LORENZEN**

Dated: _____, 2001

By: _____

148576
October 18, 2001

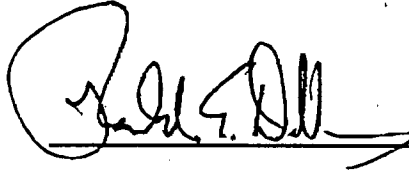
REBEKA RODRIGUEZ

Dated: _____, 2001

By: _____

RONALD DEVEAUX

Dated: Nov 10, 2001



By: _____

**CITY OF LOS ANGELES
CHIEF BERNARD C. PARKS
DEPUTY CHIEF MAURICE MOORE
DEPUTY CHIEF (RET.) MARTIN POMEROY
COMMANDER THOMAS LORENZEN**

Dated: _____, 2001

By: _____

148576
October 18, 2001

REBEKA RODRIGUEZ

Dated: _____, 2001

By: _____


RONALD DEVEAUX

Dated: _____, 2001

By: _____

**CITY OF LOS ANGELES
CHIEF BERNARD C. PARKS
DEPUTY CHIEF MAURICE MOORE
DEPUTY CHIEF (RET.) MARTIN POMEROY
COMMANDER THOMAS LORENZEN**

Dated: 1/8, 2002


By: James Axtell, Deputy City Attorney

148576
October 18, 2001

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

LOS ANGELES PRESS CLUB, STATUS
COUP,

Plaintiffs,

v.

CITY OF LOS ANGELES, A
MUNICIPAL ENTITY, JIM McDONNELL,
LAPD CHIEF, SUED IN HIS OFFICIAL
CAPACITY;

Defendants.

DECLARATION OF ROGER
CLARK

DECLARATION OF ROGER CLARK

1 I, Roger Clark, declare as follows:

2 1. I am a police practices expert specializing in the procedures used by
3 the police and proper police tactics. I have appeared as a police practices expert in
4 over 1,000 cases throughout the United States in both federal and state courts.

5 2. I have been retained by counsel for Plaintiffs. I am making this
6 declaration in support of Plaintiffs' Application for a Temporary Restraining Order
7 and for a Preliminary Injunction. The facts and opinions set forth in this
8 Declaration are true and of my own personal knowledge or are based on
9 information typically relied upon by police experts. If called as a witness I could
10 and would testify competently under oath as to the facts and opinions set forth
11 herein.

12 3. My opinions are based in part on my training, professional experience
13 and education. I am a twenty-seven-year veteran of the Los Angeles County
14 Sheriff's Department (LASD). I was hired on December 1, 1965, and I retired from
15 active service on March 31, 1993. My career included six years at the rank of
16 Deputy Sheriff, six years as a Sergeant, and fifteen years as a Lieutenant. I retired
17 holding a California Peace Officer Standards and Training (POST) Advanced
18 Certificate, and I am a graduate of the POST Command College (class #5,
19 1988). The POST Command College was a Masters-level two-year course of study
20 requiring a thesis, in Police Administration, with the diploma awarded by the
21 California Department of Justice (and not the California University system). POST
22 was established by the Legislature in 1959 to set minimum selection and training
23 standards for California law enforcement.

24 4. During my career, I was trained as a line officer regarding crowd and
25 riot tactics and used that training when I was deployed as a line officer during the
26 August 1970 riot in East Los Angeles and subsequent smaller disturbances that
27 followed - both as a Deputy and as a Sergeant. As a Sergeant, I was assigned as
28 one of four Sergeants to staff the newly created Los Angeles County Sheriff's

1 (LASD) Emergency Operations Bureau (EOB). This was a four-year assignment
2 from February 1, 1974 to April 1, 1978. The EOB was tasked by state law to
3 develop and train all necessary procedures regarding natural disasters and civil
4 disorders that might occur in Los Angeles County. Accordingly, I wrote and
5 trained on personnel planning for such events and was tasked with training
6 department personnel (including command staff) on procedures to manage such
7 events. This included the development and staffing of the newly established LASD
8 Emergency Operations Center (EOC) and Field Command Post (FCP). I used this
9 expertise during significant events that included my command responsibilities
10 during the Rose Parades, and as a commander of a platoon during the Rodney King
11 Riots of April and May of 1992. During the 1984 Olympics held in Los Angeles, I
12 was assigned and served as the Department's Intelligence Officer at the Los
13 Angeles Olympics Emergency Operations.

14 5. During my assignment as the Administrative Lieutenant of the
15 Department's Reserve Forces Bureau, from 1984 to 1987, I supervised the training
16 of cadets at our Reserve Training Academy. They were taught, *inter alia*, proper
17 apprehension procedures. Among other topics, I lectured the Reserve Academy on
18 the POST syllabus: "The Legal and Moral Use of Force and Firearms."

19 6. During the last five and one half years of my career, I commanded a
20 specialized unit known as the North Regional Surveillance and Apprehension
21 Team (N.O.R.S.A.T.), which was created to investigate, locate, observe and arrest
22 major (career) criminals. I held this position until my retirement from the
23 Department on March 31, 1993.

24 7. During the first three months of my command of N.O.R.S.A.T., the
25 unit had three justifiable shooting incidents. From that time, and over the next five
26 years of my command, N.O.R.S.A.T. established a remarkable record of more than
27 two thousand arrests of career criminals without a single shot fired – either by my
28 officers or by the suspects whom we arrested. Many of these suspects were armed

1 and considered to be very dangerous. Some were apprehended during the course of
2 their crimes and were very prone to use firearms to escape apprehension. This
3 record of excellence was accomplished through the use of proper tactics,
4 management and supervision of personnel, training in correct apprehension
5 methods, and adherence to the moral and ethical standards endorsed by California
6 POST and my Department. These methods and principles are also embraced by
7 every state training commission of which I am aware, as well as the national
8 standards established by the U.S. Department of Justice.

9 8. As a result of my position and record as the commanding officer of
10 N.O.R.S.A.T., I was assigned to author Field Operations Directive 89-3, "Tactical
11 Operations Involving Detective Personnel." This order remained in force 20 years
12 and included the basic standards and considerations with which investigative
13 officers must comply in the event of a tactical deployment such as the entry into a
14 building for the purpose of an arrest and/or seizure of evidence.

15 9. Additionally, since my retirement, I have provided reports and given
16 testimony regarding a number of civil disturbances, including alleged riots in Los
17 Angeles, Long Beach, San Diego and Davis, California. Some relevant Ninth
18 Circuit cases in which my expert testimony was admitted include *Nelson v. City of*
19 *Davis*, 685 F.3d 867 (9th Cir. 2012) (involving pepperball projectiles at a mass
20 gathering); and *Young v. Cty. of Los Angeles*, 655 F.3d 1156 (9th Cir. 2011)
21 (involving baton strikes and pepper spray). My declaration was part of the
22 evidence supporting a temporary restraining order against the LAPD concerning its
23 response to the George Floyd protests in 2020, in *Black Lives Matter Los Angeles*
24 *et al v. City of Los Angeles et al.*, Case No. 2:20-cv-05027 (Dkt. 71).

25 10. The LAPD is one of the largest local police forces in the country.
26 There is no legitimate operational – or any other – reason that I am aware of that
27 LAPD officers could not abide by an order that they do not target journalists who
28 pose no threat of imminent harm, and that the LAPD not indiscriminately fire

1 kinetic impact projectiles upon them. The LAPD – and indeed any law
2 enforcement agency and its employees– should be amply capable of protecting
3 civilians, themselves and property without deliberately firing crowd control
4 weapons and kinetic impact projectiles at members of the press who pose no threat
5 of imminent harm, and without firing such weapons on such persons
6 indiscriminately. There is no legitimate need for such uses of force.

7 11. Likewise, the LAPD should be able to abide by an order that requires
8 that officers do not prohibit journalists from entering or remaining in closed areas
9 where individuals are engaged in an activity protected by the First Amendment;
10 that officers refrain from intentionally assaulting, interfering with, or obstructing
11 journalists; that they refrain from citing or detaining journalists for failing to
12 disperse, curfew violations, or obstruction of a law enforcement officer; and that if
13 the LAPD detains or arrests a journalist that person be permitted to promptly
14 contact a supervisory officer where possible. In my opinion and based on my
15 experience, the LAPD should be able to do these things without sacrificing its
16 mission of protecting the persons and property in its jurisdiction, including LAPD
17 officers themselves. Police officers are able to distinguish journalists from
18 protestors, even in the crowd control context and as protests evolve. Indeed, police
19 officers are expected to make such distinctions and constantly reevaluate evolving
20 crowds and are trained to do so.

21 12. Officers are able to – and are expected to by any reasonable police
22 department – distinguish legitimate targets from illegitimate ones, and to evaluate
23 any situation as it evolves. The LAPD's own Directive No. 11.2 (Crowd
24 Management, Intervention, and Control), attached hereto as Exhibit A, underscores
25 that police officers and supervisors must understand the importance of
26 differentiating between violent members of the crowd from peaceful ones.
27 Officers are trained in POST that a subject's resistance/actions to an arrest, coupled
28 with the totality of circumstances will determine the type of force used by peace

1 officers - even during crowd control incidents. The following chart illustrates how
2 a subject's resistance/actions can correlate to the force applied by an officer.
3 (Listed as Subject's Actions, Description of Resistance and Possible Force
4 Option):

5 *Cooperative* - Subject offers no resistance:

- 6 • Mere professional appearance
- 7 • Nonverbal actions
- 8 • Verbal requests and commands

9 *Passive non-compliance* - Does not respond to verbal commands but also
10 offers no physical form of resistance:

- 11 • Verbal requests and commands.
- 12 • Officers' strength to take physical control, including lifting/crying.
- 13 • Control holds and techniques to direct movement or immobilize a
14 subject.

15 *Active resistance* - Physically evasive movements to defeat an officer's
16 attempt at control, including bracing, tensing, running away, or verbally signaling
17 an intention to avoid or prevent being taken into or retained in custody:

- 18 • Control holds and techniques to control the subject and situation
- 19 • Use of personal weapons in self-defense and to gain advantage
20 over the subject
- 21 • Use of devices to secure compliance and ultimately gain control of
22 the situation.

23 *Assaultive* - Aggressive or combative; attempting or threatening to assault
24 the officer or another person:

- 25 • Use of devices and/or techniques to secure compliance and
26 ultimately gain control of the situation
- 27 • Use of personal body weapons in self-defense and to gain
28 advantage over the subject

1 Peace officers are also informed that they have a requirement for constant
2 revaluation and that Peace officers must use the force option appropriate for the
3 situation as conditions may change rapidly. Officers must continually reevaluate
4 the subject's action and must be prepared to transition as needed to the appropriate
5 force options. (Learning Domain 20, Chapter 2 – POST)

6 13. The actions that Plaintiffs seek to have enjoined closely reflects what
7 the law –and specifically Penal Code Sections 409.7 and 13652 – already prohibits.
8 As a practical matter LAPD officers should be able to comply with what these laws
9 already require of them.

10 14. Further evidence of this is the fact that the LAPD's own internal
11 policies – were officers required to follow them – prohibit the same things that I
12 understand the requested injunction would prohibit. As addressed below, the
13 LAPD itself has already issued written directives and policies prohibiting the same
14 conduct. More, POST teaches similar requirements and prohibitions, which
15 further reflects the fact that peace officers in this state can meet (and are expected
16 to meet) what the requested order would require of them. Indiscriminate or
17 targeted use of force and the conduct against journalists which Plaintiffs seek to
18 enjoin, is moreover, unlawful and contrary to basic state and nationwide training.
19 Any reasonable police force should be able to abide by an order enjoining this
20 conduct while protecting persons (including themselves) and property.

21 15. It is unlawful according to officers' training to fire kinetic impact
22 projectile weapons on persons who pose no threat. Firing a 40 mm less lethal
23 launcher at sensitive areas like a person's head, neck, spine, groin or kidneys risks
24 serious and potentially lethal bodily harm and it is contrary to basic training and
25 lawful conduct as trained to police officers.

26 16. It appears that the LAPD has in its written policies acknowledged that
27 officers must not engage in the conduct that Plaintiffs seek to enjoin.
28 Notwithstanding this, the scale and nature of the incidents complained of in this

1 lawsuit in my experience indicates that the LAPD and its officers do not actually
2 take these requirements seriously and if the matter is left to this written policy, the
3 incidents that the Plaintiffs' lawsuit addresses may continue. If officers believed
4 that the policies and requirements referred to herein would be enforced, I do not
5 believe they would have acted as so many appear to have towards members of the
6 press in the incidents at issue in this case.

7 17. The LAPD has several policies that themselves further underscore that
8 it is feasible and reasonable for officers to refrain from the conduct the Plaintiffs
9 seek to enjoin. The LAPD's Policy Manual entry for the use of force (556.10),
10 attached hereto as Exhibit B, states the following:

11 The Department's guiding principle when using force shall be reverence for
12 human life. Officers shall attempt to control an incident by using time, distance,
13 communications, and available resources in an effort to de-escalate the situation,
14 whenever it is safe, feasible, and reasonable to do so....

15 **Use of De-Escalation Techniques.** It is the policy of this Department that,
16 whenever feasible, officers shall use techniques and tools consistent with
17 department de-escalation training to reduce the intensity of any encounter with a
18 suspect and enable an officer to have additional options to mitigate the need to use
19 a higher level of force while maintaining control of the situation.

20 **Verbal Warnings.** Where feasible, a peace officer shall, prior to the use of
21 any force, make reasonable efforts to identify themselves as a peace officer and to
22 warn that force may be used, unless the officer has objectively reasonable grounds
23 to believe that the person is aware of those facts.

24 **Proportionality.** Officers may only use a level of force that they reasonably
25 believe is proportional to the seriousness of the suspected offense or the reasonably
26 perceived level of actual or threatened resistance.
27
28

1 18. The LAPD's Use of Force Tactics Directive No. 11.2 further clarifies:
2 "There are no exceptions to the Department's Use of Force policy for crowd
3 control situations."

4 19. The LAPD's Use of Force Directive No. 3 (September 2023) (40mm
5 Less-Lethal Launcher) attached hereto as Exhibit C, requires the following of
6 those using 40mm Less-Lethal Launchers:

7 Officers may only use a level of force that they reasonably believe is
8 proportional to the seriousness of the suspected offense or the reasonably perceived
9 level of actual or threatened resistance.

10 Use of an intermediate force option, including the 40mm LLL, is an
11 appropriate force option when an officer reasonably believes either of the
12 following:

- 13 • There is an immediate threat to the safety of the officers or others; or,
- 14 • If the threat is not immediately addressed, there is an articulable risk the
15 incident could escalate to the use of deadly force."

16 Intermediate force options should not be used on a suspect or subject who is
17 believed to be unarmed, and, is passively resisting or merely failing to comply with
18 commands. Verbal threats of violence alone do not justify the use of an
19 intermediate force option.

20 Additionally, the Directive states that the minimum range for deployment of
21 the 40 mm is five feet.

22 1. Use of Force ("UOF") Directive No. 3 also states that "Officers shall
23 not target the head, neck, spine, groin, or kidneys – unless lethal force is
24 authorized."

25 2. The LAPD's Directive No. 17.1, attached hereto as Exhibit D, also
26 states:

27 "The department's guiding principle when using force shall be reverence for
28 human life. Officers shall attempt to control an incident by using time, distance,

1 communication, and available resources in an effort to de-escalate the situation,
2 whenever it is safe, feasible and reasonable to do so. . . .

3 Less-Lethal force options shall not be used on a suspect or subject
4 who is passively resisting or merely failing to comply with commands. Verbal
5 threats of violence or mere non-compliance alone do not justify the use of less-
6 lethal force. An officer's decision to draw, exhibit, or use the 40 mm LLL should
7 be based on the tactical situation and/or the subject's actions."

8 3. Additionally, UOF Directive No. 3 clarifies that "An officer shall,
9 when feasible, give a verbal warning prior to using the 40mm LLL to control an
10 individual."

11 4. LAPD's Directive 17.1 states that "An officer shall, when feasible,
12 give a verbal warning prior to using the 40mm LLL to control an individual. The
13 warning is not required when an officer is attacked and must respond to the
14 suspect's actions.... The verbal warning should include a command and a warning
15 of potential consequences of the use of force. The command should be similar to
16 'drop the weapon' or 'stop what you are doing' followed by a warning similar to
17 'or we may use the 40mm, and that may cause you injury.'"

18 5. Furthermore, the LAPD's UOF Directive No. 1 (September 2023)
19 attached hereto as Exhibit E notes, "Where feasible, a police officer shall, prior to
20 the use of *any* force, make reasonable efforts to . . . warn that force may be used,
21 unless the officer has objectively reasonable grounds to believe that the person is
22 aware of those facts. "

23 6. The LAPD's UOF Directive No. 12 (November 2024) attached hereto
24 as Exhibit F states that the 37 mm less lethal launcher may only be deployed
25 during a crowd control situation with the incident commander's approval and
26 under the following circumstances:

27 To defend against a reasonably perceived threat to life or serious bodily
28 injury to any individual, including a peace officer; or, To bring a reasonably

1 perceived dangerous and unlawful situation safely and effectively under control;
2 and, only in accordance with the following requirements:

- 3 1) De-escalation techniques or other alternatives to force have been
4 attempted when objectively reasonable, and have failed;
- 5 2) Repeated audible announcements have been made stating the intent to use
6 kinetic energy projectiles, when objectively reasonable to do so (in multiple
7 languages and from various locations, if appropriate);
- 8 3) Persons have been given an objectively reasonable opportunity to disperse
9 and leave the scene;
- 10 4) An objectively reasonable effort has been made to identify persons
11 engaged in violent acts as opposed to those who are not. Kinetic energy
12 projectiles and chemical agents shall not be used indiscriminately on a
13 crowd or group of persons, and shall instead be targeted toward those
14 individuals reasonably believed to have engaged in violent acts;
- 15 5) Kinetic energy projectiles and chemical agents shall only be used when
16 objectively reasonable, and only with the frequency, intensity and in a
17 manner that is proportional to the threat;
- 18 6) Officers shall attempt to minimize the possible incidental use of kinetic
19 energy projectiles and chemical agents on bystanders, medical personnel,
20 journalists, or other unintended targets;
- 21 7) An objectively reasonable effort has been made to extract individuals in
22 distress;
- 23 8) Medical assistance is promptly requested and, if properly trained
24 personnel are present, to provide such assistance to injured persons, when it
25 is reasonable and safe to do so; and,
- 26 9) Kinetic energy projectiles shall not be aimed at the head, neck, or other
27 vital organs.

1 The directive also states that the non-direct impact, multi-foam baton rounds
2 of 37 mm launchers are skip fired on the ground in front of individuals targeted,
3 with the approved range being 10 to 50 feet from of the targeted individual, with
4 the point of aim 5-10 feet on the ground in front of the targeted individuals. The
5 directive also states that only Department-certified officers may deploy a 37mm
6 Launcher.

7 1. The LAPD's Directive No. 11.2 states that the "use of any Department
8 approved chemical agent during a crowd control incident requires the approval of a
9 commander or above. Chemical agents includes CS gas, CN gas, OC [oleoresin
10 capsicum], and all tear gas canisters."

11 2. California POST – the basic, introductory training for recruits –states
12 in Learning Domain 24, Chapter 4 (Crowd Dynamics) attached hereto as Exhibit G
13 that even if the actions of a group pass from lawful activities to unlawful ones:

14 "The goal should be to protect lawful activity while identifying and
15 addressing unlawful behavior." The domain also states that peace officers have
16 the role "to protect the rights of the group while enforcing the law," and that
17 "[e]ach peace officer must be aware of and comply with established rules of
18 conduct as they apply to members of the media who may be covering the
19 event."

20 3. Learning Domain 24, Chapter 5 also underscores to officers that Penal
21 Code Section 409.7 requires that if:

22 "peace officers close the immediate area surrounding any emergency field
23 command post or any other command post, or establish a police line, or rolling
24 closure at a demonstration, march, protest, or rally where individuals are engaged
25 in activity that is protected by the First Amendment. A duly authorized
26 representative of any news service, online news service, newspaper, or radio or
27 television station or network may enter the closed areas described in this section.
28

1 Peace officers shall not intentionally assault, interfere with, or obstruct the duly
2 authorized representative.”

3 4. POST’s Guidelines for Crowd Management Intervention and Control
4 (2022) attached hereto as Exhibit H state that:

5 Having an effective media relationship is important to law enforcement
6 when addressing crowd management incidents. The more that law enforcement
7 interacts with the media in a spirit of cooperation and transparency, the more
8 accurate the reporting.

9 Pursuant to Penal Code section 409.7, peace officers shall not deny access to
10 a duly authorized representative of any news service, online news service,
11 newspaper, radio, television station or network to a closed area immediately
12 surrounding any emergency field command post or any other command post. If
13 peace officers establish a police line or rolling closure at a demonstration, march,
14 protest or rally where individuals are engaged in activity that is protected pursuant
15 to the First Amendment to the United States Constitution or Article I of the
16 California Constitution, certain requirements shall apply.

17 Nor shall a peace officer intentionally assault, interfere with or obstruct a
18 duly authorized media representative who is gathering, receiving or processing
19 information for communication to the public. Such individuals should not be cited
20 for failure to disperse, for violation of curfew or a violation of PC 148(a)(1). If the
21 media representative is detained by a peace officer, that representative shall be
22 permitted to contact a supervisory officer immediately for the purpose of
23 challenging the detention, unless circumstances make it impossible to do so.

24 5. An LAPD media relations guide attached hereto as Exhibit I also
25 states:

26 As per **California Senate Bill 98**, if officers close the immediate area
27 surrounding any emergency field command post or other area, police line, skirmish
28 line, or other rolling closure at any demonstration, march, protest, rally, or where

1 individuals are primarily engaged in any activity that is protected by the First
2 Amendment to the United States Constitution or Article I of the California
3 Constitution, the following requirements shall apply:

4 • A duly authorized representative of the media shall include any member of
5 a news service, online news service, newspaper, radio, television station or
6 network, and those persons may enter the closed area;

7 • Officers shall not intentionally assault, interfere with, or obstruct the duly
8 authorized representative of the media who is gathering, receiving, or processing
9 information for communication to the public;

10 **Note:** The Department may restrict access to a command post (i.e., the area
11 where incident-specific information is being shared by public safety personnel,
12 strategic decisions are being made, or deliberations are ongoing), or crime scenes
13 for the purpose of the preservation of evidence, but MAY NOT restrict access to
14 the area surrounding the command post. Members of the media have access to
15 areas the public has access to.

16 • A duly authorized representative of the media who is in a closed area
17 described above shall not be cited for failure to disperse, a violation of curfew, or
18 other violation of paragraph (1) of subdivision (a) of California Penal Code
19 Section 148, for gathering, receiving, or processing information; and,

20 • If a duly authorized representative of the media is detained, that member of
21 the media shall be permitted to contact a Department supervisor immediately to
22 challenge the detention, unless circumstances make it impossible to do so.

23 6. The same guide also states:

24 “News media identification cards are simply a tool to easily recognize
25 members of the media. The Department currently issues news media identification
26 cards to assist with identification of duly authorized members of the media. The
27 Department will honor media identification cards issued by another law
28 enforcement agency. Freelance and independent media representatives without a

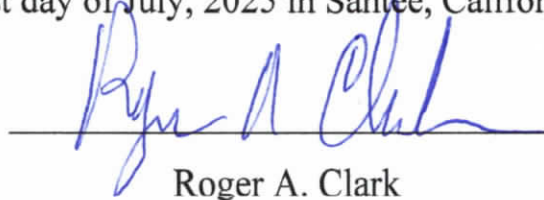
1 news media identification card may lawfully cover an event that is open to the
2 public.

3 If confronted with a situation where a person within the crowd identifies as a
4 member of the media, officers should request a supervisor if they are unable to
5 immediately identify the individual as an actual media representative. Department
6 personnel should make every effort to determine whether the person has any
7 evidence that they are gathering information for news, such as possessing a media
8 station identification or business card. If a determination cannot be made, a PIO
9 should be requested to assist...

10 If, during a large-scale detention or mass arrest event, an officer, supervisor,
11 or PIO determines that an individual detained is a duly authorized member of the
12 media that was not engaged in unlawful activity, other than failing to disperse after
13 a dispersal order has been given, the individual should be immediately released and
14 directed to a media staging location designated by the IC."

15 I declare under penalty of perjury of the laws of the United States that the
16 foregoing is true and correct.

17
18 Executed this 1st day of July, 2025 in Santee, California.

19
20
21 
22 Roger A. Clark
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26
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28

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOS ANGELES PRESS CLUB,
STATUS COUP,

PLAINTIFFS,

v.

CITY OF LOS ANGELES, a
municipal entity, JIM McDONNELL,
LAPD CHIEF, sued in his official
capacity;

DEFENDANTS.

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John Washington, SBN 315991
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Case No. 25-cv-05423 HDV-E

6WSB[a` aX6dDaZ] [: Ssd

Hon. Hernán D. Vera

Date: August 11, 2025

Time: 9 a.m.

Ctrm: 5B

DECLARATION OF DR. ROHINI HAAR

I, Rohini J. Haar, hereby declare:

1. I am a licensed physician specializing in Emergency Medicine, and a professor and researcher with a focus on the impacts of the uses and abuses of crowd control weapons (“CCWs”).

2. I have been retained by counsel for Plaintiffs. I am making this declaration in support of Plaintiffs’ Application for a Temporary Restraining Order and for a Preliminary Injunction. The facts and opinions set forth in this Declaration are true and of my own personal knowledge or are based on information typically relied upon by experts in my area. If called as a witness, I could and would testify competently under oath as to the facts and opinions set forth herein.

Background and Qualifications

3. I am a licensed physician in the state of California, currently working as an Attending Physician for the Department of Emergency Medicine at Kaiser Hospital in Oakland, CA. I am fully trained, and board certified in Emergency Medicine where my scope of practice includes both medical and mental health services in adults and children.

4. I am also an adjunct professor at the University of California, Berkeley School of Public Health where I teach and conduct research on public health, human rights and ethics. I lead research on the impacts of violence and human rights violations on health, both in the USA and globally.

5. I am a graduate of the University of Chicago, Pritzker School of Medicine in Chicago, Illinois. I received my clinical training at New York University/Bellevue Medical Center in New York, NY in Emergency Medicine. I also earned a Masters degree in public health at Columbia University, Mailman School of Public Health in New York, NY.

6. I am medical advisor for Physicians for Human Rights, a national

1 organization that brings the expertise of science and medicine to the protection and
2 promotion of human rights. I have received specialized training and attended
3 seminars by Physicians for Human Rights in the evaluation and medical
4 documentation of victims of torture and other human rights abuses.

5 7. I am an expert on forensic examinations of torture survivors. I serve
6 as a member of the International Forensic Experts Group (IFEG) and was a
7 primary drafter of the 2022 edition of the Istanbul Protocol, “The manual on the
8 effective investigation and documentation of Torture and Other Cruel, Inhuman
9 and Degrading Treatment or Punishment.” I also teach seminars on documentation
10 of torture with Physicians of Human Rights and at UC Berkeley. Since 2014, I have
11 focused one facet of my research on the use and abuse of crowd control weapons,
12 such as tear gas, kinetic impact projectiles, water cannons and acoustic weapons. I
13 have worked closely with academics at the University of California, Berkeley, the
14 University of California, San Francisco, Physicians for Human Rights (“PHR”),
15 Amnesty International, and legal experts at the International Network of Civil
16 Liberties Organizations (INCLO) which includes the ACLU and 13 other civil
17 rights organizations around the globe, in conducting interviews, quantitative
18 research and policy analysis on this topic.

19 8. I was the first author of a landmark report *Lethal in Disguise: The*
20 *health consequences of crowd control weapons* in 2016 as well as peer-reviewed
21 systematic reviews on the health impacts of kinetic impact projectiles, “Death,
22 injury and disability from kinetic impact projectiles in crowd-control settings: a
23 systematic review,” in the peer reviewed medical journal BMJ Open, and on tear
24 gas, *Health impacts of chemical irritants used for crowd control: a systematic*
25 *review of the injuries and deaths caused by tear gas and pepper spray*, in the peer
26 reviewed BMC Public Health Journal, both published in 2017. I also co-authored a
27 PHR report on the use of scatter shot crowd control weapons in Kashmir, India
28 titled, *Blind to Justice: Excessive Use of Force and Attacks on Health Care in*

1 *Jammu and Kashmir, India*, in 2017. I was the lead researcher and first author on a
2 study on the health impacts of chronic exposure to tear gas in a refugee camp in
3 Palestine titled *No Safe Space: Health Consequences of Tear Gas Exposure Among*
4 *Palestine Refugees*, in 2018 at the Human Rights Center at UC Berkeley. In 2019, I
5 was the first author and principal investigator on an investigation of excessive use
6 of tear gas, rubber bullets and other weapons in the Sudanese revolution, entitled
7 *Intimidation and Persecution: Sudan's Attacks on Peaceful Protesters and*
8 *Physicians*, and co-author on a second report, *Chaos and Fire: An Analysis of*
9 *Sudan's June 3, 2019 Khartoum Massacre*. I have consulted with the UN Human
10 Rights Council on the development of the 2020 UN Guidance on Less Lethal
11 Weapons and with the California State legislature on State Bill 48 (AB48)
12 requiring additional reporting and restrictions on the use of less lethal munitions. I
13 have also presented on the health impacts of tear gas at national and international
14 meetings, including the Consortium of Universities on Global Health (CUGH) and
15 the American Public Health Association (APHA) and at the United Nations Human
16 Rights Council.

17 9. On March 22, 2023, I was the lead author on a second edition of
18 "*Lethal in Disguise: the health consequences of crowd control weapons*" (available
19 online at www.lethalindisguise.org). I am the lead author on this 180-page
20 comprehensive report as well as other related materials. This report has been
21 widely covered by mainstream media as well as medical journals, including The
22 Lancet.

23 10. This declaration is based on my expertise on crowd control weapons
24 and their health impacts and my clinical experience. See also my CV, attached as
25 Exhibit A, and list of publications in my CV and here:
26 <https://scholar.google.com/citations?user=I4swQKcAAAAJ&hl=en>.

27 **Materials Reviewed**

28 11. The opinions I present in this declaration are based on my experience

1 and research in settings of civil unrest and demonstrations across the globe, and on
2 the information in Plaintiffs' Complaint.

3 12. The research I cite in this Declaration is primarily from the following
4 papers and reports I have authored:

5 13. McEvoy M, Corney N, Haar RJ. Crowd Control Techniques:
6 Perspectives on the Type and Use of Weapons by Police Around the World.
7 InForensic and Legal Medicine (pp. 815-830). CRC Press.

8 14. International Network of Civil Liberties Organizations and Physicians
9 for Human Rights. "Lethal in Disguise: How Crowd-Control Weapons Impact
10 Health and Human Rights." 2022. <https://www.lethalindisguise.org/>

11 15. Haar RJ, Iacopino V, Ranadive N, Weiser SD, Dandu M. Health
12 impacts of chemical irritants used for crowd control: a systematic review of the
13 injuries and deaths caused by tear gas and pepper spray. BMC public health. 2017
14 Dec;17:1-4.

15 16. Haar RJ, Iacopino V, Ranadive N, Dandu M, Weiser SD. Death,
16 injury and disability from kinetic impact projectiles in crowd-control settings: a
17 systematic review. BMJ open. 2017 Dec 1;7(12):e018154.

18 **Summary of Opinions**

19 My primary opinions, based on my research and experience, can be summarized as
20 follows:

21 17. Despite common perceptions that crowd-control weapons are
22 harmless, each of these weapons—including, and especially, chemical irritants and
23 projectiles—can cause significant and long-lasting health harms. In spite of design
24 efforts to reduce lethality, kinetic impact projectiles or ("KIPs") such as LAPD's
25 40mm sponge grenade launcher and 37mm foam batons can cause *serious injury*,
26 *permanent disability and death* if they impact critical parts of the body with
27 significant force.

28 18. Specific law enforcement practices significantly increase the risk and

1 severity of injuries from crowd control weapons. Research consistently shows that
2 misuse of force and crowd-control weapons—including firing projectiles directly
3 at individuals, targeting peaceful demonstrators, deploying chemical agents in
4 confined spaces, using excessive quantities, and deploying such weapons in the
5 presence of vulnerable individuals, can dramatically escalate both the frequency
6 and severity of harm. For example, our research showed that direct trauma from
7 canisters and grenades is the number one cause of death from chemical irritants.

8 19. Data also demonstrate that severe injuries are more likely when KIPs,
9 including foam batons and various types of rubber pellets, are fired at close range;
10 some types of KIPs have the same ability to penetrate the skin as conventional live
11 ammunition and can be just as lethal. When launched or fired from afar, these
12 weapons are inaccurate and strike vulnerable body parts, as well as cause
13 unintended injuries to bystanders. There are significant doubts that these weapons
14 can be used in a manner that is simultaneously safe and effective.

15 20. Other weapons are commonly used in crowd control. Among these
16 weapons, batons are particularly harmful when misused and applied with
17 significant force. They can cause serious blunt force trauma, including fractures,
18 internal bleeding, and potentially permanent disability to various body parts and
19 death from bleeding, skull fractures or other severe injuries.

20 21. Even when used as recommended, the long-term health and
21 environmental threats posed by repeated tear gas exposure are not fully known.
22 Studies have linked tear gas to lasting physical symptoms, such as allergic
23 reactions, respiratory damage, mental distress, anxiety and post-traumatic stress
24 disorder beyond the direct physical injuries and permanent disabilities caused. In
25 2020 the American Thoracic Society called for a moratorium on the use of tear gas
26 and other chemical agents against protestors, citing “the lack of crucial research,
27 the escalation of tear gas use by law enforcement, and the likelihood of
28 compromising lung health and promoting the spread of COVID-19.” To the extent

1 that teargas is deployed, it should be used exceedingly sparingly and cautiously.

2 **Effects of Kinetic Impact Projectiles and Baton Strikes**

3 22. Kinetic Impact Projectiles, or “KIPs” refers to a range of projectiles
4 used in crowd control settings that are made from combinations of rubber, plastic,
5 PVC, various metals including lead and steel, wood, hard foam, and wax, which
6 are often generically referred to as “rubber bullets.” These include the 40mm
7 sponge grenades and 37mm foam batons that I understand LAPD uses. A
8 projectile weapon works by transferring kinetic energy (i.e., energy from
9 movement) from an object in flight to a person. While lethal projectiles are
10 constructed to maximize the likelihood of death by penetrating the skin to
11 compromise vital organs, KIPs are ostensibly constructed to minimize penetration
12 while delivering sufficient kinetic energy to produce significant pain and/or
13 incapacitate an individual. In spite of design efforts to reduce lethality, KIPs can
14 cause serious injury, permanent disability and death if they impact critical parts of
15 the body with significant force.

16 23. KIP injuries, like all trauma and specifically firearm injuries, can be
17 non-penetrating, where the pellet does not enter the skin or tissue (such as blunt
18 force trauma), or penetrating, where the pellet does enter (and, in the case of
19 perforating injuries, also exits the tissue). Both types of injury exist with KIPs, and
20 both can cause devastating injuries. The severity of injury from bullets is
21 dependent on the missile energy on impact (related to projectile mass, distance and
22 muzzle velocity), the missile design (including calibre and shape) and the
23 characteristics of the target tissue. The findings of a systematic review of medical
24 literature that I led indicate that KIPs cause serious injury, disability and death. Our
25 study identified 2,190 people with injuries from KIPs; at least 12 of these
26 individuals died from their injuries, and 941 suffered permanent disabilities.
27 Ocular injuries, which made up 1,568 of the injuries reported (72%), were notably
28 higher than in the previous report (16%).

1 24. The data demonstrates that severe injuries are more likely when KIPs
2 are fired at close range or when multi-projectile KIPs are used. From close range,
3 some types of KIPs have the same ability to penetrate the skin as conventional live
4 ammunition, and can be just as lethal. When launched or fired from afar, these
5 weapons are inaccurate and strike vulnerable body parts, as well as causing
6 unintended injuries to bystanders – especially when there are multiple projectiles
7 scattering from one canister. Therefore, there are significant doubts that these
8 weapons can be used in a manner that is simultaneously safe and effective in any
9 crowd-control setting.

10 25. “Rubber pellets,” also known as rubber ball rounds, may be fired
11 individually or as several hard rubber or plastic balls deployed simultaneously
12 from one plastic case or cartridge (sometimes known as scatter shot). Rubber
13 pellets entail a risk of serious injury if fired at close-range or aimed at sensitive
14 parts of the body. At longer ranges, they have unpredictable trajectories and
15 become more inaccurate. Small projectiles increase the risk of eye injuries and
16 penetration of the skin. Firing multiple rounds at once, known as scatter shot, is
17 notoriously inaccurate, indiscriminate & arbitrary and may hit peaceful protestors
18 and bystanders. Multiple round projectiles are also more likely to strike the head,
19 face or other sensitive body parts, as well as strike more than one place, causing
20 more significant injuries. In one study, the use of scatter-shot lead to a higher
21 incidence of significant injury, likely because of their indiscriminate nature and
22 inability to target them. There are numerous case reports of significant injuries
23 from all kinds of scatter shot across the globe. Amnesty International, INCLO and
24 PHR all call for, as a very first step, the prohibition of all types of cluster
25 munitions and scatter shot, especially in crowd control.

26 26. Law enforcement agencies increasingly use combination weapons
27 that merge the force of projectiles with the effects of chemical irritants. One of the
28 most well-known brands, *PepperBall*, has become a generic term for this category.

1 These devices typically consist of hard plastic frangible spheres—or, in some
2 cases, round-tipped cylinders—designed to burst upon impact and release a
3 powdered form of OC (oleoresin capsicum) or PAVA, the active ingredients in
4 pepper spray. There are dozens of different models available, varying by shape,
5 chemical concentration, and fill type, with different options offered by a range of
6 manufacturers. These weapons carry the combined injury profile of both kinetic
7 impact projectiles and chemical irritants, compounding the risks they pose to
8 human health. Upon impact, the projectile can cause blunt force trauma such as
9 bruising, fractures, or internal injuries, while the chemical release can lead to the
10 acute respiratory, ocular, and dermal effects commonly associated with tear gas
11 and pepper spray. Additional risks arise when these chemical agents come into
12 direct contact with vulnerable areas such as the eyes, ears, or open wounds. In such
13 cases, the irritants can become embedded in tissue, leading to deeper
14 contamination and prolonged exposure that is difficult to mitigate. The limited
15 clinical and toxicological data on these weapons further heightens concern about
16 their widespread and often indiscriminate use, particularly in crowd-control
17 settings. Their dual-action nature increases the likelihood of both immediate injury
18 and longer-term health consequences, underscoring the urgent need for stricter use
19 protocols and more rigorous health impact assessments. The findings of a recent
20 systematic review of medical literature that I authored in the journal BMJ Open
21 indicates that KIPs cause serious injury, disability, and death. Our study identified
22 1,925 people with injuries from KIPs; 53 of these individuals died from their
23 injuries and 294 suffered permanent disabilities. Of all people with injuries, 70%
24 were considered severe (required professional medical treatment). Disaggregated
25 data shows that scatter shot and metal composite bullets had the highest rates of
26 injuries.

27 27. *Potential Health Impacts:* KIPs can cause blunt or penetrative trauma.
28 Blunt trauma directly damages tissue by crushing but can also lead to potentially

1 life-threatening injuries from organ rupture, bone fracture, and internal
2 hemorrhage. Blunt impacts to the head pose a very high risk of traumatic brain
3 injury. Tissue damage from penetrating and perforating wounds can cause
4 laceration of skin and solid organs, stretching of tissue in the track of the projectile
5 and shockwaves of pressure in the tissue. Penetrating trauma to the brain causes
6 traumatic brain injury, such as skull fractures and intracranial hemorrhage and is
7 often instantly fatal. Piercing the heart or lungs directly compromises the
8 circulation system and the body's oxygen exchange system, which can result in
9 death within minutes. Severed arteries can also lead to rapid death through
10 exsanguination (bleeding out). Spinal cord or nerve injuries can be permanently
11 debilitating, causing motor and/or sensory deficits. Injuries to other organs may
12 require rapid emergency surgery to avoid fatality, given the risks of internal
13 bleeding, organ damage, and secondary infection (particularly from bowel
14 perforation). Furthermore, the risk of permanent disfigurement or disability is high
15 from both blunt and penetrating trauma, either through compromise of non-vital
16 organs (such as the eyes) or damage to the skin or musculoskeletal system.
17 Weapons that shoot multiple bullets, such as scatter shot rubber pellets, can
18 disperse and are not discriminate, causing injuries to peaceful demonstrators and
19 bystanders. The use of riot control face gear, such as gas masks and face shields,
20 make targeting these weapons even more difficult.

21 28. A summary of health impacts of KIPs by body system includes:

22 A. *Eyes*: Direct trauma to the eye from KIPs nearly always causes
23 either total blindness in that eye, due to ruptured globe (eyeball). KIPs
24 have also entered the brain through the eye socket and caused
25 extensive and irreversible damage.

26 B. *Brain*: Blunt trauma to the brain from KIPs can cause
27 concussions and bruising inside the brain (contusions) as well as
28 internal bleeding and skull fractures.

1 C. *Head and Neck*: The delicate structures of the face and neck are
2 particularly vulnerable to traumatic injury. The bones of the face and
3 skull, the spinal cord, and the blood vessels in the neck are all close to
4 the skin surface. Trauma to that area has caused bleeding, irreversible
5 damage, and death.

6 D. *Cardiorespiratory System*: When aimed at the chest, KIPs have
7 bruised the lungs or heart, and caused serious and fatal injuries such
8 as bleeding and deflation of the lungs

9 E. *Musculoskeletal System*: Injuries to the muscles and bones from
10 KIPs have caused contusions and fractures. Deeper injuries have
11 caused permanent damage to the neurovascular structures, leading to
12 tissue death and sometimes necessitating amputations.

13 F. *Abdomen*: Blunt injuries to the abdomen area from KIPs have
14 caused internal bleeding and damage in the solid organs such as the
15 liver, kidneys, and spleen. Penetrative injuries have also caused
16 bleeding, perforations, and infections.

17 G. *Skin and Soft Tissue*: KIPs can cause bruising and contusions of
18 the skin and soft tissue, as well as superficial and deep lacerations,
19 some of which may cause muscle or nerve damage as well as
20 bleeding.

21 H. *Cumulative Impacts*: When KIPs are fired at close range, the
22 risk for more severe injury is increased. At close range, the speed at
23 which KIPs, including foam batons and various types of rubber
24 pellets, travel can be comparable to live ammunition and, can
25 penetrate the body, causing injuries, disabilities and death, especially
26 when they strike the head or face. When launched or fired from afar,
27 these weapons are inaccurate and can strike vulnerable body parts, as
28 well as cause unintended injuries to bystanders and peaceful

1 demonstrators. Therefore, there are significant doubts that these
2 weapons can be used in a manner that is simultaneously safe and
3 effective.

4 **Description and Brief History of Chemical Irritants**

5 29. Chemical irritants are a group of crowd control weapons (CCWs) that
6 include a variety of chemical compounds intended to produce sensory irritation.
7 Conventionally referred to as “tear gas,” chemical irritants come in a variety of
8 formulations, sizes, concentrations, and delivery mechanisms, depending on the
9 manufacturer and the context for which they are intended.

10 30. Historically categorized as non-lethal or less lethal, the general
11 perception is that the weapon does not cause permanent injury or death, but instead
12 has mostly short-term effects such as transient lacrimation (flowing of tears),
13 ocular irritation and pain, blepharospasm (eyelid spasm), dermal pain, respiratory
14 distress, and the psychological effect of disorientation and agitation. This
15 perception is now being challenged, with more evidence of associated moderate
16 and permanent injuries.

17 31. Chemical irritants include a wide range of agents that have been
18 developed and deployed for many decades in addition to ones that are currently
19 under development, but there are four chemical compounds that are most
20 frequently cited in reports: chlorobenzalmalononitrile (agent CS),
21 chloroacetophenone (agent CN), oleoresin capsicum (agent OC, known as pepper
22 spray), and OC’s synthetic form, PAVA. Of these four, the two most commonly
23 used by law enforcement agencies in recent years are agents CS and OC.

24 32. Agent CS was developed in the 1920s in the United States and was
25 introduced as a weapon by the U.S. military to replace CN in the 1950s. It then
26 became a frequently used weapon in the second half of the twentieth century and
27 was famously deployed in the Vietnam War by the U.S. military. Now it is widely
28 used by law enforcement agencies in many countries – often as the first weapon of

1 choice in the context of protest. The United States used to be the main
2 manufacturer of CS, but recently other countries have been producing and
3 exporting the weapon. Despite the United States remaining the biggest producer of
4 CS, the U.S. Environmental Protection Agency (EPA) has not set a minimum
5 threshold of concentration at which the general population could experience
6 “notable discomfort, irritation, or certain asymptomatic, non-sensory but transient
7 effects,” because even the lowest concentrations cause these symptoms. The
8 volume of chemical in each spray and gas varies considerably among
9 manufacturers and countries and is unregulated and inconsistent.

10 33. Agent OC, the second most-commonly cited agent, is essentially a
11 highly concentrated form of hot pepper. Agent OC and its synthetic form, PAVA,
12 have recently increased in popularity as potent and effective crowd-control agents.
13 The potency of the weapon is not just contingent on the concentration of OC
14 within the solvent, but particularly on the strength of the “capsicum” – the active
15 chemical that makes pepper spicy.

16 34. Also developed by the United States and originally used as a deterrent
17 against wild animals (and by the U.S. Postal Service against dogs), OC became a
18 law enforcement weapon in the late 1980s. It is now available both as a spray and
19 in gas form, with lower concentrations being available as a self-defense “pepper
20 spray” for the public, while variants that are more potent are developed for military
21 and law enforcement agencies. These more potent variants are also increasingly
22 becoming a weapon of choice for crowd control.

23 35. While several countries have limitations on the possession and use of
24 OC, in either spray or gas form, it is unregulated in most countries.

25 36. It is worth noting that OC and CS compositions may include toxic
26 chemicals, such as alcohol, halogenated hydrocarbons, and propellants such as
27 Freon that are not well-studied but could result in health harms.

28 **Mechanisms of Action**

1 37. Chemical irritants are highly potent substances that produce sensory
2 irritation and pain in the eyes, skin and upper respiratory tract. These properties are
3 often utilized to deter individuals from violence, disperse crowds or otherwise gain
4 compliance with police orders through the infliction of pain.

5 38. The chemicals most commonly used is the irritant agent
6 chlorobenzalmalononitrile (CS) and its derivatives and similar compounds (CS1,
7 CS2) – often called tear gas, though the active agent is actually distributed as a fine
8 powder – and the inflammatory agents Oleoresin capsicum (OC) or its synthetic
9 version, N-Vanillylnonamide (pseudocapsaicin) (PAVA) – often called pepper
10 spray. A number of other irritant agents, such as 1-chloroacetophenone (CN) and
11 dibenzoxazepine (CR), are marketed and held by States, but are not commonly
12 encountered (see Organisation for the Prohibition of Chemical Weapons 2019,
13 Annex 4).

14 39. Chemical irritants are delivered via a wide range of methods and
15 means. These include handheld aerosol sprays, weapon fired spray, shoulder-worn
16 and backpack sprayers, handheld or vehicle mounted smoke generators or foggers,
17 hand-thrown grenades, weapon-launched projectiles and grenades, as well as via
18 water cannon and more recently via unmanned air or ground vehicles (drones) and
19 inside projectiles (stingballs or pepperballs). Handheld aerosol sprays range in size
20 from 25ml to 500ml, sometimes more, while shoulder-worn and backpack-style
21 sprayers and smoke generators generally have a much larger capacity and can
22 cover a wider area often in a very short time. Hand-thrown and weapon-launched
23 projectiles/grenades and water cannons can be used from greater ranges and can be
24 used to contaminate a wide area.

25 40. A particular issue with the majority of chemical irritant sprayers /
26 foggers is that they have no dose control or cut-off trigger mechanism to control
27 the amount dispersed. Under international laws of law enforcement, only the
28 minimum amount of force should be used (and only when strictly necessary and

1 proportionate to the threat) and force must cease when the threat from the
2 individual ceases. In operational practice, law enforcement officials are expected to
3 use the minimum ‘effective dose’, i.e. one very short burst of spray, and then re-
4 assess the threat. However, law enforcement frequently continually discharges
5 sprays at individuals or groups, dispersing large quantities of chemical irritant of
6 unknown concentration.

7 41. The amount of active irritant agent in products available to law
8 enforcement officials varies widely, and manufacturers frequently offer a range of
9 percentages for any given product, or offer custom fills for customers. This results
10 in those using, affected or treating the affected not knowing what amount of
11 chemical irritant has been delivered, or can lead to speculation and confusion as to
12 the type of irritant being used, and may also result in unusual medical effects being
13 encountered. For example, PepperBall, a commonly used compressed gas launcher
14 system, which delivers chemical irritant via 0.68 calibre plastic encapsulated
15 projectiles, advertises a range of projectiles with a wide range of percentage of
16 irritant: “VXR LIVE-X a more concentrated formula, containing approximately
17 10x the PAVA of the VXR LIVE projectile” (Pepperball, 2023).

18 42. Chemical irritants are indiscriminate in nature, and the UN Special
19 Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has
20 warned that they fail to differentiate “between demonstrators and non-
21 demonstrators, healthy people and people with health conditions” (Kiai, 2012,
22 para. 35). Even the use of small, handheld sprays risks affecting innocent
23 bystanders in a public gathering, particularly in windy conditions or where people
24 are moving about. It is difficult, if not impossible, to limit the exposure to
25 individuals or small group without affecting bystanders and peaceful
26 demonstrators.

27 43. The Chemical Weapons Convention bans the use of chemical irritants,
28 which it refers to as “riot control agents” (RCAs), as a method of warfare

(Organisation for the Prohibition of Chemical Weapons, 1993, Art. I.5). The same instrument permits the use of RCAs for “law enforcement including domestic riot control purposes”, provided they are used in “types and quantities” consistent with such purposes (Organisation for the Prohibition of Chemical Weapons, 1993, Arts. II.9 and II.1.a).

Health Concerns from Chemical Irritants

44. A range of factors can determine the effects of chemical irritants, including the type of chemical agent and means of delivery used, the location and environmental conditions in which they are used (heat, humidity), and the concentration and quantity of irritant.

45. Chemical irritants primarily affect the skin and mucous membranes. When a person comes into contact with a chemical irritant, it mixes with moisture on the skin, or in the eyes and respiratory and oral tracts, and activates the TRPA and TRPV1 pain receptors located in the peripheral nervous system. Their use is most frequently linked to sudden onset and severe burning sensations and tearing in the eyes, pain on exposed skin, vomiting, coughing and restricted breathing

46. In the eyes, severe redness, intense pain and tearing will occur, resulting in blepharospasm (eyelid spasm characterized by frequently blinking) and sometimes, temporary blindness.

47. Within seconds, exposed skin will feel a painful burning sensation. Depending on the dose, redness may appear on the skin and in cases of allergy or hypersensitivity blistering lesions may occur either immediately or in a delayed fashion (hours or days later).

48. As the chemical is breathed in, it will irritate the oropharyngeal and lung linings, causing pain, coughing and sensations of respiratory distress.

49. The most dangerous effects include laryngeal inflammation obstructing the upper airway, inflammation in the tracheobronchial tree inducing tracheobronchitis or bronchospasm of varying intensity that hinders normal

1 breathing.

2 50. Many people also experience anxiety and panic reactions.

3 51. In addition to the above, chemical irritant projectiles and grenades can
4 cause significant trauma when they strike a person directly or when they explode in
5 close proximity to a person. Because launched cartridges are large and dense, when
6 the cartridge itself strikes an individual, it can cause trauma ranging from bruising
7 to facial and limb fractures to internal bleeding to brain injury and death. The
8 canisters also can cause severe burns when they directly hit individuals as the
9 canisters themselves function by explosive (see A.M.B. Zekri, W.W.K. King, R.
10 Yeung, W.R.J. Taylor, Acute mass burns caused by o-chlorobenzylidene
11 malononitrile (CS) tear gas. Burns, Volume 21, Issue 8, 1995, Pages 586-589,
12 ISSN 0305-4179, [https://doi.org/10.1016/0305-4179\(95\)00063-H](https://doi.org/10.1016/0305-4179(95)00063-H)
13 (<https://www.sciencedirect.com/science/article/pii/030541799500063H>).

14 52. Direct trauma from canisters and grenades is the number one cause of
15 death from chemical irritants, per our research. These canisters are hot, large and
16 fired at high speeds, resulting in severe trauma when they strike individuals. For
17 this reason, as far as I am aware, every manufacturer of tear gas instructs that its
18 products should not be fired directly into crowds and or used to target individuals
19 with canisters or grenades as projectiles.

20 53. A summary of health impacts by body system includes:

21 54. *Eyes:* Irritation of the conjunctiva and cornea produces blurry vision,
22 tearing, uncontrollable eyelid spasms, redness, and pain. Spasms can cause the lids
23 to close tightly and produce temporary blindness. Direct impact may lead to
24 corneal burns, abrasions, lacerations, and blindness.

25 55. *Respiratory System:* CIs cause inflammation of the airways and pain.
26 Coughing, difficulty breathing, and excess production of sputum are common.
27 Individuals with preexisting lung disease, such as asthma or chronic obstructive
28 pulmonary disease, may be more sensitive to these agents, even at low

1 concentrations. Exposure may precipitate attacks of respiratory distress resulting in
2 hypoxia, respiratory arrest, and death. Exposure also increases susceptibility to
3 acute respiratory infections, which is likely to include COVID-19.

4 56. *Skin*: CIs cause a burning sensation to the skin as well as redness,
5 itching, or allergic reactions. Erythema (redness of the skin) usually begins several
6 minutes after contact and can last for minutes or days after the injury. Blistering
7 and burns may also occur. In addition, repeated exposure to some CS gases can
8 result in hypersensitivity reactions, with allergic responses worsening with each
9 exposure.

10 57. *Psychological*: The physical symptoms of CIs often result in
11 disorientation and agitation, which can lead to a state of fear, anxiety, and panic. In
12 some instances of prolonged and repeated exposure to CIs in protest settings,
13 symptoms of post-traumatic stress disorder have been documented.

14 58. *Cardiovascular*: CIs can cause increases in heart rate and blood
15 pressure. Preexisting heart conditions, in combination with those physiological
16 responses and the low oxygen from the impact on the lungs, may result in heart
17 attack and possibly death.

18 59. *Internal surfaces of the nose, throat, and gastrointestinal system*:
19 Irritation of the nose produces a burning sensation, inflammation, runny nose, and
20 sneezing. In the mouth and gastrointestinal tract, exposure to CIs can cause pain,
21 excessive salivation, nausea, and vomiting. Excessive coughing, vomiting, and the
22 toxicity of the agent can cause blood vessels to rupture and persistent pain.

23 60. *Physical Trauma*: Direct impact by the canisters and grenades
24 carrying chemical irritants can cause significant blunt trauma and death. Injuries to
25 the head and neck are most common, causing loss of vision, bruises, abrasions, and
26 lacerations. When canisters and grenades are fired at close range, bone fractures
27 and serious internal injuries are possible.

28 **Exacerbating Factors for Chemical Irritants**

61. There are circumstances that may increase the risk of complications, such as the use of these substances in enclosed spaces that make ventilation difficult.

62. Certain groups are particularly susceptible to the effects of chemical irritants, including older people, children, people who are pregnant, or people with respiratory problems such as asthma or chronic obstructive pulmonary disease. Airway obstruction or inflammation in vulnerable people could lead to cardiorespiratory arrest and death. According to the American Academy of Pediatrics, “children are uniquely vulnerable to physiological effects of chemical agents. A child’s smaller size, more frequent number of breaths per minute and limited cardiovascular stress response compared to adults magnifies the harm of agents such as tear gas.”

63. The half-life of most chemical irritants is short and the symptoms are transient, lasting less than an hour after exposure for most people, although for some people the effects can be more severe, long-lasting and cause ongoing health impacts (Centers for Disease Control and Prevention, 2018).

64. The dose exposure will increase when chemical irritants are used in enclosed spaces (where the irritant cannot disperse) or in cases of prolonged and/or repeated exposure (when people cannot escape the effects), resulting in exacerbated harm.

Safety Analysis for Chemical Irritants

65. Despite being widely available and used for nearly a century, there are very few studies establishing the safety of chemical irritants, and none on newer compositions. Of the reports and studies on chemical irritants that have been conducted, almost all note the need for more research.

66. The use of chemical irritants during the COVID-19 pandemic highlighted the risk of law enforcement contributing to the spread and impact of respiratory viruses, due to their effect on breathing and the lungs, and the risk of

infection through induced coughing or sneezing (Omega Research Foundation, 2020). In 2020 the American Thoracic Society called for a moratorium on the use of tear gas and other chemical agents deployed by law enforcement against protestors participating in demonstrations, citing “the lack of crucial research, the escalation of tear gas use by law enforcement, and the likelihood of compromising lung health and promoting the spread of COVID-19” (American Thoracic Society, 2020).

67. An area of increasing importance, but where no clinical studies have yet been published, is the growing awareness of the effects of chemical irritants on reproductive health. Reports have suggested that there may be a relationship between the use of tear gas and miscarriage (Physicians for Human Rights, 2012). Following the widespread use of large quantities of chemical irritants during Black Lives Matter and other protests in the US in summer 2020, media reports emerged of physiological effects for people who menstruate (see, for example, Slisco, 2020; Stunson, 2020; Nowell, 2020). Stress may also play a role. One peer-reviewed study based on a web-based survey of 2257 adults reporting recent exposure to tear gas in Portland, Oregon (U.S.), found that 54.5% of 1650 respondents who potentially menstruate reported menstrual changes. The most reported issues were increased menstrual cramping, unusual spotting, increased bleeding, and more days of bleeding (Torgrimson-Ojerio et al, 2021).

Management of the Health Impacts of Chemical Irritants

68. Care for those affected by chemical irritants should include decontamination, to prevent the penetration of more toxic substances into the body once exposure has ended, in order to avoid further damage. To do this, objects that have been impregnated by the toxin and are in contact with the skin or mucous membranes should be removed, such as contaminated clothing and contact lenses.

69. In addition, the skin and eyes should be thoroughly irrigated with fresh water or saline solution for at least 20 minutes. Health professionals should

1 warn the patient that initially, the stinging sensation and pain in the skin or mucous
2 membranes may worsen.

3 70. While there are anecdotal reports of a variety of substances helping
4 with symptoms, there is little evidence to support their use. In the case of eye pain,
5 anesthetic eye drops may be prescribed. For individuals with respiratory
6 symptoms, inhalers with bronchodilators and/or corticoids can be used for
7 bronchospasm, and oxygen administration may also be necessary. In some cases,
8 hospitalization and even critical care may be necessary to treat exposed patients.

9 **Misuse can exacerbate injuries**

10 71. Misuse of crowd control weapons can result in increased injury
11 severity and greater frequency if injuries. Research conducted by my research team
12 documented five critical misuse categories of crowd control weapons, each
13 contributing to increased morbidity and mortality and violating international
14 standards. These include directly firing canisters at individuals or dense crowds,
15 which can cause severe injury or death. The inappropriate use of crowd control
16 weapons against peaceful demonstrators violates the principle of necessity and can
17 expose greater numbers of people to crowd control weapons. Deployment in
18 confined spaces exacerbates harmful effects by concentrating the chemical. Using
19 excessive quantities constitutes a disproportionate use of force, increasing
20 exposure and injuries. Finally, using crowd control weapons in the presence of
21 vulnerable individuals, such as children and the elderly amplifies harm due to the
22 weapon's indiscriminate nature and these individuals' greater injury risk. These

23 ///

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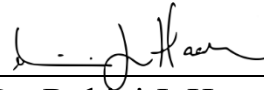
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1 categories provide a crucial framework for understanding the severe consequences
2 of improper crowd control weapons use.

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4 I declare under penalty of perjury of the laws of the State of California and
5 the United States that the foregoing is true and correct. Executed this 1st day of
6 July, 2025, in Berkeley, California.

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9 Dr. Rohini J. Haar
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