



UC Irvine School of Law
Intellectual Property, Arts & Technology Clinic
Press Freedom and Transparency Team
Susan E. Seager, Adjunct Professor
sseager1.clinic@law.uci.edu

P.O. Box 5479
Irvine, CA 92616-5479
O: (949) 824-4234
C: (310) 890-8991

November 4, 2020

Via U.S. mail and email (sibmedia24hrs@lasd.org)

Sheriff Alex Villanueva
Los Angeles County Sheriff's Department
211 W. Temple St.,
Los Angeles, CA 90012

Re: Unlawful Arrest and Seizure of Journalist Pablo Unzueta's Camera and Cell Phone

Dear Sheriff Villanueva:

We represent journalist Pablo Unzueta, a staff member and video editor of the *Daily 49er* newspaper at California State University, Long Beach and a freelance journalist. On September 8, 2020, Mr. Unzueta was filming and reporting on a protest in South Los Angeles. He was wearing press credentials from his previous college, Mt. San Antonio College, and carrying a camera to document the protest.

Despite identifying himself as a photojournalist, Mr. Unzueta was arrested by Los Angeles County Sheriff's Department (LASD) deputies for allegedly failing to disperse after the deputies declared the protest an unlawful assembly. Mr. Unzueta's cell phone and camera were confiscated by your deputies. Through counsel, Mr. Unzueta repeatedly requested that his camera and cell phone be returned to him. Deputies eventually returned his camera, but neither his cell phone nor his camera's memory card have been returned to him. He also has repeatedly requested a copy of his arrest/incident report without success.

Your department's arrest of Mr. Unzueta, seizure of his cell phone and camera, and continued failure of your department to return Mr. Unzueta's cell phone and camera memory card violates Mr. Unzueta's rights under the First Amendment, Fourth Amendment, the Reporter's Shield Law as codified in Evidence Code section 1070 and article 1, section 2(b) of

the California Constitution, and the federal Privacy Protection Act of 1980. To vindicate his rights, Mr. Unzueta requests the following:

- The immediate return of his cell phone and camera memory card;
- Assurance by the LASD that it will not present the case to the Los Angeles District Attorney's Office for prosecution;
- Providing a copy of his arrest report/incident report;
- An apology from LASD for its unlawful actions; and
- An investigation into deputies' apparent use of personal cell phones to photograph Mr. Unzueta and other arrestees and deletion of any such photographs.

The Arrest of Mr. Unzueta Was Unlawful

Sheriff's deputies had no basis to arrest Mr. Unzueta. At the time of his arrest, the protest had ended, and Mr. Unzueta was on his way to his car. He was not behind the deputy skirmish line. A truck full of deputies passed by, and a deputy pointed at Mr. Unzueta and said, "Get him." Mr. Unzueta repeatedly identified himself as a member of the press and as a student journalist, displaying his student press badge, but the deputy who arrested him ignored him.

Mr. Unzueta was subjected to excessive force in violation of the Fourth Amendment. The deputies latched his handcuffs so tightly that his hands became numb. The deputies tossed him into the back of a truck covered with pepper balls, which ruptured upon impact, causing pepper spray to go into his face, eyes, and mouth, and called him a homophobic slur.

When deputies transported Mr. Unzueta and others to the Twin Towers jail facility in downtown Los Angeles for booking, the deputies cranked up the van's heater, causing Mr. Unzueta to sweat profusely and the pepper spray on his skin to reactivate.

Deputies also appeared to use their cell phones to photograph Mr. Unzueta and others in the back of the truck. It is not clear why the photographs were taken, but it is possible that they were taken as trophy photographs for the deputies' personal use. Mr. Unzueta demands an investigation into these photographs and deletion of any such photographs.

As you know, earlier this year, the widow of NBA star Kobe Bryant sued your Department, alleging that your deputies used their personal phones to snap pictures of the bodies at the scene of the helicopter crash that killed Bryant, his daughter, and others.

At the time of his arrest, Mr. Unzueta was exercising his First Amendment right to gather news. *See Contra Costa Newspapers, Inc. v. Superior Court*, 61 Cal. App. 4th 862, 866 (1998) ("[N]ews gathering is an activity protected by the First Amendment . . .") (citing *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)). Videotaping and photographing police activity are protected by the First Amendment. *See Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (acknowledging a First Amendment right to "film matters of public interest" in the context of a journalist videotaping a protest); *Adkins v. Limtiaco*, 537 F. App'x. 721, 722 (9th Cir. 2013) (holding plaintiff adequately pled First and Fourth Amendment violations where police officers seized his cell phone, which he used to photograph police activity).

Even after LASD declared the protest an unlawful assembly, Mr. Unzueta still had the right to continue reporting on the protest. In fact, he was complying with LASD orders and had begun leaving the area when deputies arrested him. LASD's arrest of him was therefore unlawful.

We note that on October 30, 2020, Los Angeles Police Department Deputy Chief Dominic Choi issued an internal memo (attached), stating that reporters are permitted to report on protests even after officers order the crowd to disperse, and that reporters are permitted to remain behind police skirmish lines in an apparent recognition that the First Amendment protects the right of reporters to remain in place even after police have declared an unlawful assembly.

Mr. Unzueta denies that he disobeyed any order to disperse and has not been charged by the Los Angeles District Attorney's Office. We note that prosecutors recently refused to file criminal charges against KPCC radio reporter Josie Huang after LASD deputies wrongfully and brutally arrested her while she was lawfully filming an arrest and attempting to back away from the arrest after deputies instructed her to do so. We believe the District Attorney's Office would decline to file charges against Mr. Unzueta as well. We request that LASD announce that it will not present Mr. Unzueta's case to the District Attorney's Office.

The Seizure of Mr. Unzueta's Camera and Cell Phone Was Unlawful

In addition to unlawfully arresting Mr. Unzueta, LASD illegally seized Mr. Unzueta's camera and cell phone and continues to hold his camera's memory card and cell phone. The fact that the camera was returned does not mitigate the harm; the seizure of the camera was illegal in the first place. The continued seizure of the camera's memory card and cell phone is also illegal. The deputies claim that the camera contained no memory card. This is incorrect. Mr. Unzueta was actively photographing and videotaping the protest with his camera. His camera would have notified him if the card was missing when he was filming. It is extremely unlikely that the memory card would have fallen out of his camera during his arrest, given the numerous steps it takes to remove the memory card from the camera. Mr. Unzueta's camera memory card and his cell phone contain two years' worth of photographs and videos and the loss of that work has caused great harm to Mr. Unzueta.

There was no legal basis to seize or withhold Mr. Unzueta's cell phone, camera, or memory card. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV; *see* CAL. CONST. art. 1, § 13 (containing virtually identical language). As a member of the press, the search and seizure of Mr. Unzueta's items warrant even greater scrutiny under the Fourth Amendment. *See Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) ("Where the materials sought to be seized may be protected by the First Amendment, the requirements of the Fourth Amendment must be applied with 'scrupulous exactitude.'") (quoting *Stanford v. Texas*, 379 U.S. 476, 485 (1965)). The Supreme Court in *Riley v. California*, 573 U.S. 373, 403 (2014), applied the Fourth Amendment to the search of a cell phone incident to an arrest, holding: "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant."

California law, however, forbids search warrants for reporters' unpublished materials with only a few exceptions that do not apply here. California Penal Code section 1524(g) plainly states "[n]o warrant shall issue for *any item or items* described in Section 1070 of the Evidence Code." Cal. Pen. Code § 1524(g) (emphasis added). California's Reporter Shield Law, codified in California Evidence Code section 1070 and later enshrined in article 1, section 2(b) of the California Constitution, protects reporters from being held in contempt of court if they refuse to reveal "unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public." Cal. Evid. Code § 1070; CAL. CONST. art. 1, § 2(b).

Mr. Unzueta is a reporter who is protected by California Penal Code section 1524(g) and the California Shield Law. The state's shield law protects a "reporter or other person connected with or employed upon a newspaper, magazine or other periodical publication." Cal. Evid. Code § 1070(a). Mr. Unzueta falls within the definition of a journalist because he works as a staff member and video editor on his school newspaper, which is a periodical publication. Courts have held that this broad language protects a wide variety of journalists, including freelancers, bloggers, and student journalists. *See, e.g., People v. Von Villas*, 10 Cal. App. 4th 201, 231-32 (1992) (holding that freelancers for *Hustler Magazine* were protected by California's shield law); *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1461-66 (2006) (same for website bloggers who wrote exclusively about Apple products); *California v. Chavez*, No. 99M11384 (Cal. Super. Ct. Sacramento Cnty. Apr. 7, 2000) (same for California State University, Sacramento editor for student newspaper). The definition of "unpublished information" under section 1070 is broad and "includes, but is not limited to, all notes, outtakes, *photographs, tapes or other data of whatever sort* not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated." Evid. § 1070(c) (emphasis added). Mr. Unzueta was gathering information to be used in a news report, thus the information contained in his cell phone and memory card is "unpublished information" under section 1070. Penal Code section 1524(g) thus prohibits LASD from obtaining a search warrant for the content of Mr. Unzueta's devices.

The seizure of Mr. Unzueta's devices also violates the federal Privacy Protection Act of 1980 ("PPA"), 42 U.S.C. § 2000aa. The PPA makes it illegal for a government officer or employee "to search for or seize any work product materials" or documentary materials, related to the prosecution or investigation of a criminal offense, "possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, . . . broadcast, or other similar form of public communication." 42 U.S.C. § 2000aa(a), (b).

The seizure of Mr. Unzueta's cell phone and camera as he was reporting on a protest is a clear violation of the statute. *See* 42 U.S.C. § 2000aa-7(a) ("Documentary materials' . . . includes, but is not limited to, written or printed materials, *photographs. . . .*") (emphasis added). None of the exceptions listed under the PPA are applicable to Mr. Unzueta. There is no reason to believe the seizure of his items was necessary to prevent death or serious bodily injury. Nor was there reason to believe that notice of a subpoena for his devices would result in their destruction.

LASD's withholding of the devices in violation of the law is an affront to the very law it purports to uphold. *See Riley*, 573 U.S. at 401 ("[T]he warrant requirement is an important

working part of our machinery of government, not merely an inconvenience to be somehow weighed against the claims of police efficiency.”) (internal quotations omitted). We request Mr. Unzueta’s cell phone and memory card be returned immediately. LASD had no justification for seizing his devices at the time of his arrest and has no justification for retaining them now.

In a similar case in San Francisco, the San Francisco Police Department unlawfully seized freelance journalist Bryan Carmody’s electronic devices during the execution of several search warrants. Mr. Carmody filed a claim against SFPD, resulting in the search warrants being nullified and San Francisco paying a \$369,000 settlement to Carmody for his damages. *San Francisco to Pay \$369,000 to Journalist for Police Raids*, L.A. TIMES (Mar. 3, 2020), <https://www.latimes.com/world-nation/story/2020-03-03/san-francisco-to-pay-369k-to-journalist-for-police-raids>.

Thank you for your attention to this request. We look forward to your prompt return of Mr. Unzueta’s cell phone, camera memory card and arrest/incident report, assurance that your office will not seek criminal charges against Mr. Unzueta, an apology to Mr. Unzueta, and investigation into the use of the deputies’ personal cell phones to photograph Mr. Unzueta and other arrestees. We are available to discuss this further.

Sincerely,



UC Irvine School of Law
Jack Lerner, *Esq.* (CA Bar #220661)
Susan E. Seager, *Esq.* (CA Bar #204824)
Hedyeh Tirgardoony, *certified law student*
Paniz Arab, *certified law student*
Benjamin Whittle, *certified law student*

cc: LASD Inspector General Max Huntsman
(via U.S. mail and email (mhuntsman@oig.lacounty.gov))