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David Yepsen, Des Moines

July 14, 2020

John Sarcone, County Attorney
Polk County Justice Center
222 5th Ave.
Des Moines, Iowa 50309

VIA EMAIL, ctyatty@polkcountyiowa.gov

Re: State of Iowa v. Andrea M. Sahouri, SMAC 388817

Dear Mr. Sarcone:

As members of the news media and organizations that advocate for the right of journalists to gather and report news, the undersigned write to protest your office’s decision to move forward with the prosecution of Andrea M. Sahouri in the above-referenced criminal case. We ask that you take immediate action to dismiss these charges with prejudice.

We acknowledge the challenges law enforcement officers face during times of protests and civil unrest. We recognize officers must make split-second decisions. But one of the fundamental freedoms contained within the First Amendment to the United States Constitution is the ability of a free and independent press to cover news without journalists being subjected to arrest or criminal prosecution by government. This right needs to be zealously protected all the more during times of crisis.

Journalists like Ms. Sahouri are at the scene of these events in a peaceful capacity to report on the actions of demonstrators and law officers alike. And, so long as they comply with reasonable requests from law enforcement, they have a right to be present at and report on these events. Minnesota Governor Tim Walz acknowledged this special role for the news media when he said during demonstrations in Minneapolis after the death of George Floyd on May 25, “We have got to ensure that there is a safe spot for journalism to tell this story.”

But that did not occur when Ms. Sahouri was covering the protests near Merle Hay Mall on May 31.

She was pepper-sprayed in the face by a police officer

while she was moving away from the scene of the demonstration — and she was moving away in response to officers' orders for people to disperse. She was charged with interfering with the officers' actions during the incident, even though she was dispersing, as directed. She was not present as a member of any protest group, but was there as a working journalist who was reporting on the events as they occurred.

She repeatedly identified herself to police officers as a reporter for *The Des Moines Register* before, and after, she was detained by police officers and during the approximately three hours she was confined at the Polk County Jail following her arrest.

Even if officers believed in the heat of the moment that Ms. Sahouri was a protestor, as soon as it was established by her identifying herself as a working *Des Moines Register* reporter, and after KCCI-TV journalists and another *Des Moines Register* reporter at the scene confirmed to officers that she was, indeed, a working journalist, there was no justification for her continued detention. After Ms. Sahouri's supervisors verified to police, Polk County Jail administrators, and prosecutors that she was assigned by the newspaper to be near Merle Hay Mall to cover the demonstrations on May 31, there was no legitimate reason for the Polk County Attorney's Office to proceed with these criminal charges.

When an officer or government official knows a person is a journalist, an arrest and prosecution based on lawful newsgathering activity is a profound and clear violation of the First Amendment.

Further, your continued prosecution of Ms. Sahouri stands in sharp contrast with the way journalists have been treated elsewhere around the United States in recent weeks. Once it was verified during those protests that a person was a working journalist, the person was released from custody without being arrested or charged. Although there have been several dozen reports of police arresting journalists, we are unaware of only a handful of cases, including this one, where charges are still pending.

Simply being at a protest scene is not a crime for working journalists. That is especially true when they are complying with reasonable instructions from law enforcement officers. This is a right that is protected by the Constitution — and that the courts have consistently affirmed. *See, e.g., Woodstock et al. v. City of Portland et al.*, Case No. 3:20-cv-1035 (D. Ore. July 2, 2020) (issuing a temporary restraining order enjoining the police from arresting, threatening to arrest, or using physical force directed against any person whom they know or reasonably should know is a journalist, including for failure to follow an order to disperse).¹

Indeed, the right of the news media to report on government activity has long been

¹ <https://www.oregonlive.com/crime/2020/07/federal-judge-issues-14-day-order-exempting-journalists-with-passes-legal-observers-from-police-orders-to-disperse-during-unlawful-assemblies-riots.html>

protected by the First Amendment. *See, e.g., Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979) (“[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.”); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978) (“[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”).

News reporting on police conduct serves the crucial First Amendment interest in promoting the “free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

The right to record police activity, by the press and public, has been held repeatedly to be “clearly established” by many courts around the country. Therefore, a police officer or official who violates that right, especially through the use of force, cannot claim legal immunity. *See Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); *see also Glik v. Cunniffe*, 655 F.3d 78, 83 (1st Cir. 2011) (citing cases); *Toole v. Atlanta*, 798 Fed. Appx. 381, 388 (11th Cir. 2019) (finding right to record police at protest clearly established); *see also American Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2012) (finding eavesdropping statute barring recording of police activity in public violated First Amendment); *Iacobucci v. Boulter*, 193 F.3d 14, 25 (1st Cir. 1999) (“[B]ecause Iacobucci’s activities were peaceful, not performed in derogation of any law, and done in the exercise of his First Amendment rights, [police] lacked the authority to stop them.”).

The Department of Justice has taken the position that this right to record law enforcement is a crucial First Amendment protection that should apply across the country. *See* Statement of Interest of the United States, *Sharp v. Baltimore City Police Dep’t*, No. 1:11-cv-02888-BEL (D. Md. filed Jan. 10, 2012) (“[The right to record is] not only required by the Constitution ... [it is] consistent with our fundamental notions of liberty, promote[s] the accountability of our governmental officers, and instill[s] public confidence in the police officers who serve us daily.”); *see also* Statement of Interest of the United States, *Garcia v. Montgomery County*, No. 8:12-cv-03592-JFM (D. Md. filed March 4, 2013) (arguing that discretionary charges like disorderly conduct or disturbing the peace should be viewed skeptically when based on recording police activity).

In summary, the weight of the law around the country strongly suggests that faced with these facts — a working journalist who is assaulted, detained after her identity has been confirmed, and then charged, all for doing her job — any court in Iowa would be hard pressed not to find a violation of a journalist’s clearly established rights. *See Z.J. v. Kansas City Board of Police Commissioners*, 931 F.3d 672, 684, n.5 (8th Cir. 2019) (“[Plaintiff may show right to be clearly established] by pointing to a consensus of cases of persuasive authority — including cases from other jurisdictions.”) (quotation marks and citation omitted).

Ms. Sahouri was in a place where she had every right to be, doing a job that she has a

constitutional right to do. She complied with police orders to disperse, and officers pepper-sprayed her while she did so. Even after she clearly established her status as a reporter who was on assignment, she was held in custody. Despite this, your office continues to move ahead with prosecution of this journalist for what amounts to lawful newsgathering.

The undersigned ask that you take the steps to immediately dismiss with prejudice the criminal charges against Andrea M. Sahouri.

Respectfully,



Randy Evans
Executive Director

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Ackley World Journal
Akron Hometown
Alabama Press Association
Altoona Herald Index
America's Newspapers
American Civil Liberties Union of Iowa
Ames Tribune
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Columbus Dispatch
Committee to Protect Journalists
Guy Cook, Esq., Des Moines
Coon Rapids Enterprise
Daily Iowan, Iowa City
Dallas County News, Adel
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Delaware County Leader, Hopkinton
Des Moines Branch, NAACP
Des Moines Business Publications Corp.
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Iowa Falls Times Citizen
Iowa Newspaper Association
Iowa State Daily, Ames
Iowa-Nebraska NAACP State Area Conference
Samuel E. Jones, Esq., Cedar Rapids
Kalona News
Kansas Press Association
KCRG-TV, Cedar Rapids
Mark Kende, Drake University Constitutional
Law Center *

Kentucky Press Association
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KWQC-TV, Davenport
KYOU-TV, Ottumwa
La Porte City Progress Review
Dayne Logan, professor, Grand View
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Louisiana Press Association
Louisville Courier-Journal
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Perry Chief
Radio Television Digital News Association
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Reporters Committee for Freedom of the Press
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Reuters News & Media Inc.
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Rochester (N.Y.) Democrat & Chronicle
Sac (City) Sun & Sac County Reminder
Sheldon Mail Sun
Sidney Argus-Herald
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