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September 22, 2014

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Director of the Office of Community Oriented Policing Services

United States Department of Justice
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Washington, DC 20530

Re: Ferguson, Missouri investigations

Dear Sirs and Madam,

As members of the news media and organizations that protect the right to gather news, we write in response to the announcement that the Department of Justice has launched initiatives to investigate and address recent police conduct in Ferguson and St. Louis County, Missouri following the death of Michael Brown. We write with specific suggestions for the Civil Rights Division's inquiries and the plans of the Office of Community Oriented Policing Services ("COPS") to develop a collaborative reform initiative with county police.

We encourage the Department to include in these initiatives an examination of the manner in which police interact with and release information to the public and the press during such contentious events. An important element of protecting civil rights is allowing uninhibited news coverage of the sometimes scalding controversies that follow race, gender, and other issues relating to political equality around the nation. There is a proud and longstanding tradition of the U.S. news media reporting from public protests, demonstrations, and rallies as they erupt from time to time over the status of civil rights. During the 1960s, for example, reporters risked their lives to cover dangerous, volatile confrontations across the country, facing angry mobs of citizens as well as police. As veteran reporter Jack Nelson wrote, "News coverage of the civil rights movement helped galvanize public opinion and prod the government to enact and enforce laws to protect the rights of minorities and demolish the old system of segregation and white supremacy." By disseminating vivid evidence about what was taking place, news coverage of inflamed situations helped inform citizens and lead to meaningful reforms. At a time when our country still grapples with tensions

over race relations and civil rights, it is as imperative as ever that the media be allowed to cover these newsworthy events without fear of unwarranted detention or harassment.

Furthermore, in a year in which we celebrate the fiftieth anniversary of the landmark case *New York Times v. Sullivan*, 376 U.S. 254 (1964), it is prudent to remember that the initial cases that brought First Amendment defenses into the libel sphere arose directly out of the civil rights movement and defamation actions brought by local law enforcement to chill newsgathering in the South. *See also New York Times Co. v. Connor*, 365 F.2d 567 (5th Cir. 1966). The harassment and coercion experienced by journalists last month in Ferguson, while not at the level of danger or intensity of the 1960s, demonstrates that the work of protecting newsgathering is never done.

As to the Civil Rights Division's inquiries, we urge investigators to make the unlawful arrest and mistreatment of journalists a part of its formal probe. Because of the connection between the exercise of political freedoms and the freedom of the press, the Department's mandate to examine the civil rights record of local police in Ferguson, which naturally will be the focus of the investigation, will nonetheless be illuminated by looking at the breakdown in newsgathering protections that occurred last month. This media coalition, First Look Media, and the National Press Photographers Association wrote four separate and as yet unanswered letters in August to local and state officials insisting that Ferguson-area law enforcement agencies honor First Amendment guarantees. The letters followed several incidents of harassment and unnecessary arrests. Two journalists were detained while doing nothing more than charging their phones in a local McDonald's, several were arrested, and other journalists in Ferguson were intimidated, harassed, and threatened while covering matters of public concern. Two journalists were shot with rubber bullets, while others had guns pointed directly at them.

These incidents took place against a backdrop of constitutional law that recognizes the recording of police in public places by citizens and by the media as a clearly established right. The First Circuit has held that "a citizen's right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment." *Glik v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011). The court pointed to the brevity of other circuits' discussion of the nature of this right to show how clearly established and "self-evident" the right is. *Id.* In *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012), the Seventh Circuit also recognized the longstanding right of the public to record police activities.

The Department of Justice itself wrote in 2012, "The right to record police officers while performing duties in a public place, as well as the right to be protected from the warrantless seizure and destruction of those recordings, are not only required by the Constitution. They are consistent with our fundamental notions of liberty, promote the accountability of our governmental officers, and instill public confidence in the police officers who serve us daily." *See Statement of Interest of the United States in Sharp v. Baltimore City Police Dep't*, Civil No. 1:11-cv-02999-BEL (Jan. 10, 2012), http://www.justice.gov/crt/about/spl/documents/Sharp_SOI_1-10-12.pdf.

We therefore request that the investigations into potential civil rights violations include the incidents involving journalists in Ferguson. We further believe that unfortunate episodes such as these may be avoided in the future if journalists' First Amendment rights in gathering and reporting the news are regularly reinforced for local law enforcement. Such guidance could come from the COPS collaborative reform process.

The COPS office has issued guidance on relations between the police and media before. For example, a 2012 COPS report, "Building Productive Relationships with Media: Dealing with Current Media Culture During Crisis Situations," provides a short blueprint for local police on social media, attitudes toward the press, and addressing public relations problems. We believe that, in light of the breakdown in relations in Ferguson, more can be done to educate in this area, and we offer our assistance in developing such training programs. The Reporters Committee and several groups in this media coalition have worked with law enforcement on media relations in the past, including during national political conventions, and we can be the point of contact for the media coalition to provide such input in the future.

The undersigned media organizations call on the Department of Justice, in conducting its investigation of Ferguson and implementing reforms, to ensure that:

- the Civil Rights Division's criminal investigation and civil pattern and practice investigation include inquiries into the arrest and mistreatment of journalists in Ferguson;
- the civil investigation examines the history of police relations with the media in Ferguson; and
- the COPS collaborative reform process recognizes the need for more effective training for St. Louis County law enforcement on their interaction with the media and their respect for First Amendment rights, and involves members of the local news media and this coalition in implementing this training.

We look forward to working with the Department as needed to achieve these goals.

Sincerely,

The Reporters Committee for
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AOL-Huffington Post
The Associated Press
Association of Alternative Newsmedia
The Association of American
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The McClatchy Company
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The National Press Club
National Press Photographers Association
National Public Radio, Inc.
New England First Amendment Coalition

New England Newspaper and Press
Association, Inc.
The New Yorker
Newspaper Association of America
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North Jersey Media Group Inc.
Online News Association
Radio Television Digital News
Association
The Reporters Committee for Freedom of
the Press
Reporters Without Borders
Society of Professional Journalists
St. Louis Post-Dispatch
Student Press Law Center
Tully Center for Free Speech
The Washington Post

cc: Chief Jon Belmar, St. Louis County Police Department
Chief Thomas Jackson, Ferguson Police Department