

United States Senate

WASHINGTON, DC 20510

September 23, 2021

The Honorable Merrick Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Garland:

We write to express our serious concern that the Department of Justice is failing to protect the First Amendment rights of journalists and legal observers in their observation and documentation of our government's activities, especially at protests. It is our strong belief that explicit protections for journalists and legal observers must be incorporated into the Department of Justice (DOJ)'s Law Enforcement Guidelines for First Amendment Protected Events in order to ensure the safety and protection of those engaged in constitutionally-protected activities. Further, we respectfully request that the DOJ withdraw its appeal of the United States District Court for the District of Oregon's preliminary injunction, as the DOJ's appeal harms the rights of journalists nationwide.

It is distressing that the DOJ is seeking to deprive journalists and legal observers of the strongest protections offered by the First Amendment by appealing the preliminary injunction granted by the United States District Court for the District of Oregon, and upheld by the Court of Appeals for the Ninth Circuit. The injunction prevents any federal law enforcement officer from using or threatening to use physical force against, or arresting or detaining or threatening to arrest or detain, any journalist or legal observer. It also states that journalists and legal observers are not required to disperse upon such an order during a protest or First Amendment activity. These rights of journalists and legal observers were established by the First Amendment and protected through subsequent well-settled law. The DOJ's opposition and injunction appeal may be interpreted as the DOJ's opposition to the free press performing its duty of upholding democracy.

In 2020, protestors nationwide raised their voices in support of Black lives and in opposition to abuse and brutalization of Black people by law enforcement. In Portland, Oregon, federal law enforcement was deployed to protect the federal courthouse from structural damage. However, as protests continued, federal law enforcement officials left federal property and used force against clearly identified legal observers, reporters and journalists. Those engaging in protected First Amendment activities by recording, observing and reporting on the protests were tear-gassed, clubbed, detained and arrested. Numerous people were shot with munitions like pepper balls, paint markers and impact munitions (commonly known as "bean bag rounds"). By interfering in the ability of these Americans to observe and report on the protests and law enforcement's response in a lawful manner, federal law enforcement officials significantly chilled their ability

to exercise their First Amendment rights. Now, by appealing the injunction, the DOJ is compounding that harm. We take significant issue with the DOJ's position and respectfully call for the DOJ to reconsider its appeal.

Finally, we request that the DOJ incorporate the protections established by the District Court for Oregon and affirmed by the Ninth Circuit in the preliminary injunction into its departmental Law Enforcement Guidelines for First Amendment-Protected Activities. This document provides guidance to Federal, State and local law enforcement officials regarding law enforcement activities at protests. It is immensely important to confirm the rights of journalists and legal observers in such a document. Unfortunately, at present, the document only once mentions law enforcement interaction with the media, and it does not mention the protected status of reporters or journalists when they are participating in First Amendment-protected activities. This document may detract from the safety of reporters and journalists if the DOJ does not confirm the protected status of journalists at protests.

Protecting the rights established by the First Amendment is crucial to our democracy's functioning. The federal government must reaffirm its commitment to the First Amendment, not combat or weaken such protections. Please know that we will continue to encourage the DOJ to protect journalists and legal observers in accordance with settled law.

Sincerely,



Ron Wyden
United States Senator



Jeffrey A. Merkley
United States Senator



Cory A. Booker
United States Senator



Jon Ossoff
United States Senator



Chris Van Hollen
United States Senator