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Letter of Support

January 8, 2016

To: Santa Cruz County Superior Court

Re: People of the State of California v. Alex Darocy (Case Number M84620)

The American Civil Liberties Union of Northern California, Santa Cruz County Chapter (ACLUNC SC) respectfully submits this Letter of Support on behalf of local photojournalist Alex Darocy regarding the pending court action in the above-referenced case.

The District Attorney has charged Mr. Darocy with violation of Vehicle Code section 2800(a), failing or refusing to comply with a lawful order of a peace officer (a misdemeanor), and violation of Vehicle Code section 21718(a), stopping on a freeway (an infraction). For the reasons set forth herein below, we wish to express our grave concern about the chilling effect this prosecution may have on constitutionally guaranteed freedom of the press as applied to Mr. Darocy individually and on members of a free and open press as a whole.

It is our understanding that in March of this year there was a protest on Highway 1 involving six UCSC students who blocked the freeway. As a result, CHP and Caltrans were on scene directing traffic around the students. Mr. Darocy drove out to the scene in his capacity as a journalist to take photographs of the protest. As shown in the video of this incident, (which we have reviewed) Mr. Darocy's vehicle paused briefly as he photographically recorded the scene. A Caltrans employee, not a peace officer, is seen gesturing toward Mr. Darocy during this time.

It is further our understanding that Mr. Darocy is a professional photographer and photo journalist who maintains a website for purposes of sharing his reportage (www.alexdarocy.com). He holds a Bachelor of Arts degree in History of Art and Visual Culture from UC Santa Cruz and his college senior thesis concerned social documentary photography. Mr. Darocy began documenting various local protests in 2010, publishing photographs and videos to various websites including IndyBay, which is an independent media company focused on covering social and political events. He has photographed and documented numerous social protest events, including the Occupy movements in Oakland, Monterey, and Santa Cruz. Mr. Darocy's numerous photographs and articles can be found at the IndyBay website and at the Santa Cruz Wiki website (<http://www.scruzwiki.org/>) where he has made over 16,000 total contributions and edited approximately 4,000 different pages regarding his coverage of local news, events and features. We are, therefore, satisfied as to Mr. Darocy's standing as a member of the press corps and believe that defending his right to contribute to a fair, open and balanced press falls within our mission to protect and maintain the civil liberties guaranteed by the Constitution of the United States.

As applied to the instant case, “Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action.” Lovell v. Griffin, 303 U.S. 444, 450 (1938). Both of these protections apply to a broad range of people, topics, and activities. “Freedom of the press is a fundamental personal right which is not confined to newspapers and periodicals.... The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.” Branzburg v. Hayes, 408 U.S. 665, 704 (1972) (citation omitted). Thus, the constitutional protections for the press extend beyond the institutional press to anyone who would gather information about matters of public interest and disseminate it to the public. Moreover, the Supreme Court has “consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers. With the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to comment on political and social issues becomes far more blurred.” Citizens United v. Federal Election Com'n, 130 S.Ct. 876, 905-06 (2010); see Gilk v. Cunniffe, 655 F.3d 78, 82–84 (1st Cir. 2011) (holding First Amendment right to gather news was violated and noting that “[i]t is of no significance that the present case ... involves a private individual, and not a reporter, gathering information about public officials”). Indeed, what constitutes “news” is not limited to “simple accounts of public proceedings and abstract commentary on well-known events.” Shulman v. Group W Productions, Inc., 18 Cal.4th 200, 208 (1998) (lead opn. of Werdegar, J.). To the contrary, “a publication is newsworthy if some reasonable members of the community could entertain a legitimate interest in it.” *Id.* at 225.

The ACLUNC SC believes that without the presence of journalists like Mr. Darocy gathering and reporting news and taking photographs directly from the scene, the public would be prevented from knowing important information and facts about protestors’ actions as well as the government’s response. In our view, criminalizing Mr. Darocy’s brief stop on the freeway to take a few photographs of the protestors and the police strikes the wrong balance between the free flow of traffic and the free flow of ideas, does harm to a free and open society, and violates his First Amendment rights to freedom of the press and free speech.

Peter Gelblum
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