



May 7, 2024

Michael Thompson
Chief of Police
Arizona State University Police Department
P.O. Box 871812
Tempe, Arizona 85287-1812

URGENT

Sent via U.S. Mail and Electronic Mail (michael.l.thompson@asu.edu)

Dear Chief Thompson:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by video footage of you slapping a phone out of an individual's hands while he filmed you cutting protesters' tents at Arizona State University.² Although FIRE appreciates that ASU is one of the few institutions in the country whose policies earn a "green light" rating from FIRE, we remain concerned about this unconstitutional response to an individual's lawful filming of police work in a public space. Your assault on the recording individual in response to his protected expressive activity infringed on his First Amendment rights. As chief of police, we strongly urge you to ensure that you and officers in your department adequately understand the constitutional limits of your authority and refrain from exceeding those limits.

The law is clear: **Individuals have an established First Amendment right to record law enforcement officers performing their official duties in public spaces—a right your actions violated.**³ An Arizona federal court recently affirmed this principle, invalidating on First Amendment grounds an Arizona law restricting nonconsensual video recording within

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's university campuses. You can learn more about our expanded mission and activities at thefire.org.

² ABC15 Arizona, *Pro-Palestinian protests on ASU campus lead to arrests*, YOUTUBE (Apr. 27, 2024), <https://www.youtube.com/watch?v=aQ6zmbKW9ao>. This letter reflects our understanding of the pertinent facts based on public information. We recognize that you may have additional information and invite you to share it with us.

³ *Askins v. Dep't of Homeland Sec.*, 899 F.3d 1035, 1044 (9th Cir. 2018); cf. *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203–04 (9th Cir. 2018) (holding that the First Amendment protects the right to photograph and record matters of public interest).

eight feet of police activity.⁴ “Every Circuit Court of Appeals to address this issue ... has held that there is a First Amendment right to record police activity in public.”⁵ The First Amendment protects the “act of making an audio or audiovisual recording” as a necessary “corollary of the right to disseminate the resulting recording.”⁶ This includes nonconsensual recordings.⁷

Because the right to record police is clearly established and the individual filming your actions was lawfully in a public place, your attempt to impede continued recording by knocking his phone out of his hands violated his First Amendment rights. Furthermore, your physical intervention to prevent him from doing so demonstrates particularly “reckless or callous indifference to the federally protected rights of others”⁸ that may subject you personally to legal liability.⁹

We request a substantive response to this letter no later than close of business May 21, confirming you will seek adequate training for yourself and your department to ensure understanding of your constitutional obligations and will abstain from interfering with the constitutional right to record police activity in the public areas of ASU’s campus in the future.

Sincerely,



Jessie Appleby
Program Officer, Campus Rights Advocacy

⁴ *Ariz. Broads. Ass’n. v. Brnovich*, 626 F.Supp.3d 1102, 1105–06 (D. Ariz. 2022). Open, outdoor spaces on ASU’s campus are—by dint of state law—just as much public forums for speech and expression as were the public areas in which recording could not be restricted in *Arizona Broadcasters Association*. See Ariz. Rev. Stat. § 15-1861(3) (defining as a traditional public forum “any open, outdoor area on the campus of a university or community”).

⁵ *Fields v. City of Philadelphia*, 862 F.3d 353, 355 (3d Cir. 2017); see also, e.g., *Sharpe v. Winterville Police Dep’t*, 59 F.4th 674, 680–81 (4th Cir. 2023); *Turner v. Lieutenant Driver*, 848 F.3d 678, 688 (5th Cir. 2017); *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 597 (7th Cir. 2012); *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000). As of May 2024, no federal appellate court has held the First Amendment does *not* protect the right to record police activity in public, and only the 2d, 6th, 8th, and D.C. Circuits have yet to affirmatively recognize a right to record police.

⁶ *Alvarez*, 679 F.3d at 595–96 (emphasis removed).

⁷ *Id.* at 605–06 (holding that officers have no legitimate privacy interests when “performing their duties in public places and speaking at a volume audible to bystanders”); *Project Veritas Action Fund v. Rollins*, 982 F.3d 813, 832 (1st Cir. 2020).

⁸ *Smith v. Wade*, 461 U.S. 30, 56 (1983).

⁹ See *Adkins v. Limtiaco*, 537 F. App’x 721, 722 (9th Cir. 2013) (affirming denial of qualified immunity because “Adkins’ First Amendment rights [to be free from arrest for taking photos of police officers] were clearly established at the time of his arrest”); *Ariz. Broads. Ass’n.*, 626 F.Supp.3d at 1105 (noting that “the Ninth Circuit has recognized that there is a ‘clearly established’ right to ‘record law enforcement officers engaged in the exercise of their official duties in public places’ under the First Amendment”) (quoting *Askins*, 899 F.3d at 1044); *Baca v. Anderson*, No. 22-cv-02461-WHO, 2022 WL 7094267, at *5 (N.D. Cal. Oct. 12, 2022) (“[S]ince *Fordyce* [*v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995)] came down, district courts in this circuit have continuously recognized a clearly established right to peacefully film police officers carrying out their duties in public.”).

Cc: Michael M. Crow, President
Lisa S. Loo, Senior Vice President & General Counsel
Kimberly Demarchi, Vice President for Legal Affairs and Deputy General Counsel