

1 BRETT A. SHUMATE
Assistant Attorney General
2 Civil Division
3 ERIC J. HAMILTON
Deputy Assistant Attorney General
4 ELIZABETH HEDGES
5 SEAN SKEDZIELEWSKI
Counsel to the Assistant Attorney
6 General
Civil Division
7 ALEXANDER K. HAAS
8 ANDREW I. WARDEN
KATHLEEN C. JACOBS
9 Civil Division, Federal Programs Branch

BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Def. Litig. Section
PAUL (BART) GREEN (SBN 300847)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-0805
Facsimile: (213) 894-7819
Email: Paul.Green@usdoj.gov

10 Attorneys for Defendants

11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 LOS ANGELES PRESS CLUB; *et al.*,
17 Plaintiffs,
18 v.
19 KRISTI NOEM, in her official capacity
20 as Secretary of Homeland Security; *et*
al.,
21 Defendants.

No. 2:25-cv-05563

**DEFENDANTS' OPPOSITION TO *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

[Supporting declarations filed concurrently]

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1 **I. INTRODUCTION**

2 Plaintiffs seek the extraordinary remedy of a temporary restraining order and
3 preliminary injunction that would hinder the ability of federal law enforcement officers
4 to protect federal property that has been repeatedly damaged after weeks of violence and
5 unrest in Los Angeles—violence and unrest that, just yesterday, a Ninth Circuit panel
6 unanimously held likely justified federalizing the California National Guard. *Newsom v.*
7 *Trump*, No. 25-3727, slip op., at 28-30 (9th Cir. June 19, 2025). Plaintiffs base their
8 request for emergency injunctive relief on alleged violations of their First, Fourth, and
9 Fifth Amendment rights. Their request fails for several reasons.

10 First, Plaintiffs lack standing to seek emergency relief. It is well-established that a
11 plaintiff lacks standing to obtain prospective injunctive relief for alleged future injuries
12 based on allegations of prior harm. *See City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).
13 Undeterred by the law or their lack of evidence, they seek an emergency injunction
14 based on alleged past encounters involving federal law enforcement officers but have not
15 demonstrated that similar incidents will take place in the future, much less that *these*
16 *particular* plaintiffs will again experience the same alleged conduct by federal law
17 enforcement officers. Because Plaintiffs cannot demonstrate a certainly impending
18 injury, they lack standing to seek injunctive relief. For many of these same reasons,
19 Plaintiffs also cannot show a likelihood of irreparable harm, a prerequisite for granting
20 emergency injunctive relief.

21 Second, Plaintiffs have not established a likelihood of success on the merits
22 because they have not shown that any protected First Amendment interest was violated,
23 on either their right-to-access or retaliation theory. And they similarly have not shown
24 that Department of Homeland Security (DHS) officers used excessive force, as required
25 for Plaintiffs to show a likelihood of success on their Fourth and Fifth Amendment
26 claims.

27 Third, the relief that Plaintiffs seek is entirely improper. Plaintiffs seek a sweeping
28 injunction that would be unworkable and dangerous in light of the split-second

1 judgments that federal law enforcement officers have to make while protecting federal
2 property, the public, and themselves during dynamic, chaotic situations. By granting
3 immunity to journalists and observers from lawful orders to disperse, the injunction
4 would effectively grant those individuals immunity from otherwise applicable legal
5 requirements and would improperly bind the hands of law enforcement, including by
6 preventing them from taking appropriate action when individuals are engaging in
7 criminal conduct. The proposed injunction is also unworkable from a practical
8 standpoint. It would remove agent discretion by requiring law enforcement officers
9 responding to a violent situation threatening public safety to seek permission from a
10 superior before taking necessary action—whether or not a superior is at hand to grant
11 such permission.

12 Fourth, and finally, the balance of the equities and the public interest counsel
13 against granting Plaintiffs’ request. Freedom of the press is not being threatened by the
14 actions of the federal defendants in protecting federal property, nor are journalists being
15 targeted. Furthermore, journalists are not entitled to any special treatment that would
16 entitle them to remain in place despite a lawful dispersal order, much less entitle them to
17 serve as human shields for rioters or preclude federal agents from using appropriate
18 levels of force against violent members of a crowd. Equally important is the societal
19 interest in public safety, including protecting federal property, as well as protecting
20 officers and the general public against imminent threats of serious bodily injury. Simply
21 put, the federal government has not only the right but also the obligation to protect
22 federal property and federal officers. And the public has a compelling interest in that
23 protection. The press is free to observe and report on the destruction of property, but it is
24 not entitled to special access to that property in the face of a lawful order to disperse.

25 **II. FACTUAL BACKGROUND**

26 **A. Recent Destruction of Federal Property and Assaults on Federal**
27 **Officers in Los Angeles.**

28 Beginning June 6, 2025, large-scale protests began in Los Angeles in response to

1 DHS’s lawful immigration enforcement operations. *See generally*, Decl. of Ernesto
2 Santacruz Jr. (“Santacruz Decl.”), Ex. 1, Att.1. Soon after, the protests became violent.
3 *Id.* ¶ 9. These violent acts included protestors throwing concrete chunks, bottles of
4 liquid, and other objects at the FPS officers trying to defend federal buildings. *Id.* ¶¶ 9-
5 12. Fearing for the safety of federal employees and officers, the ICE Field Office
6 Director of Los Angeles activated all available ERO and HSI agents to protect the
7 federal buildings and property that had been targets of these attacks. *Id.* ¶ 13. These
8 federal officers were subject to violent assaults and threats, including having rocks,
9 molotov cocktails, and fireworks thrown and shot at them; the violence continued for
10 several days. *Id.* ¶¶ 14-28. The federal buildings in the area experienced significant
11 damage. *Id.* Federal offices were forced to close, causing disruption to many federal
12 agencies. *Id.* ¶ 29.

13 In another instance of violence against federal agents and property, at a DHS
14 office in Paramount, California, a large crowd gathered blocking traffic and violently
15 attacked ERO and CBP officers and agents. *Id.* ¶¶ 18-21. During the seven-hour
16 exchange, officers were targeted with mortar-style fireworks with multiple explosions, as
17 well as rocks and other objects. *Id.* One ERO officer was trapped inside her vehicle
18 while the violent crowd surrounded it, began shaking it, and pummeled it with stones. *Id.*
19 A CBP officer’s wrist was shattered by an object thrown by a rioter. *Id.* The crowd lit a
20 vehicle on fire and cut into the perimeter fence of the DHS office damaging multiple
21 government vehicles and the property. *Id.*

22 The LAPD has reported that since Saturday, June 7, 2025, 575 arrests related to
23 protest activity have been made with the majority of the arrests occurring prior or
24 incident to the arrival of the California National Guard and the United States Marine
25 Corps.¹ *See* “LAPD Releases Information Related to Recent Protests” (June 16, 2025)
26 LAPD website: <https://www.lapdonline.org/newsroom/lapd-releases-information->
27

28 ¹ Since June 9, the number of arrests related to protest activity has dwindled with
no such arrests since June 14.

1 [related-to-recent-protests-nr25119ma/](#) A curfew was finally imposed on June 10.

2 **B. DHS Deploys Officers to Protect Federal Personnel and Property.**

3 Due to the ongoing violent riots on June 6, 2025, DHS was forced to engage its
4 officers and agents to assist FPS to secure federal property to prevent damage and ensure
5 the safety of federal employees and other building occupants. *See* Santacruz Decl. Ex 1,
6 Att. 1, ¶¶ 5, 13. DHS requested that all available ERO officers and HSI agents report to
7 the federal building to hold the line against the violent protestors. *Id.* At that time, FPS
8 faced significant logistical and operational safety issues as a group of approximately 100
9 individuals defaced federal property around the vehicle entrance to the Federal Building.
10 *See generally* Decl. of Mario A. Canton, (“Canton Decl.”) Ex. 2. Throughout the
11 onslaught of violence, individuals launched rocks, chunks of concrete, water bottles with
12 unknown liquids as well as many other riotous and illegal acts. *Id.* ¶ 5. The following
13 morning, 110 CBP officers arrived to assist in the protection of federal personnel and
14 property. Santacruz Decl. Ex. 1 ¶ 18. This barrage of violence against property and
15 individuals continued until the National Guard troops were deployed throughout Los
16 Angeles. *Id.* ¶ 23. CBP agents and officers were attacked with thrown objects such as
17 rocks, concrete, and frozen water bottles during the Paramount riot on June 7, 2025. *See*
18 *generally* Decl. of Gregory K. Bovino (“Bovino Decl.”) Ex. 3.

19 **C. Surge of Federal Resources Has Reduced Violence.**

20 Since the deployment of additional federal resources to Los Angeles, the violence
21 at protests has greatly diminished, allowing for federal buildings and courthouses to
22 resume normal operations and federal officers to enforce federal laws. *See* Santacruz
23 Decl. ¶ 5; Canton Decl. ¶¶ 8-9; Bovino Decl. ¶ 9. The presence of California National
24 guardsmen and United States Marines has been a critical deterrent for criminal activity
25 on Federal property. Canton Decl. ¶ 8; *see* Santacruz Decl., Ex. 1, Att. 2 ¶¶ 7-12. The
26 influx of federal officers and resources caused a significant change in the character of the
27 protests over the past week. While large protests have continued to organize at federal
28 facilities, the demeanor of the protesters has been more civil and peaceful, thereby

1 curtailing the need for crowd intervention. Canton Decl. ¶ 9. The number of federal
2 arrests related to protest activity has dwindled over the past week. Further, on June 17,
3 2025, the Mayor of Los Angeles lifted the curfew that had been in place for the
4 downtown area in recognition of “successful crime prevention and suppression efforts.”
5 See <https://mayor.lacity.gov/news/mayor-bass-lifts-curfew-within-downtown-la> (noting
6 more than 30,000 people peacefully demonstrated last Saturday at 15 different
7 locations).

8 **D. Plaintiffs’ Evidence Focuses Exclusively on Past Events that Occurred**
9 **Two Weeks Ago.**

10 Plaintiffs’ declarations focus entirely on events that occurred at a small number of
11 discrete locations between June 6 and 9, 2025. See, e.g., Xu Decl. (ECF No. 6-8) (June 7
12 incident near DHS office in Paramount); Ray Decl. (ECF No. 6-17) & Soqui Decl. (ECF
13 No. 6-23) (June 7-8 incidents near federal building in downtown Los Angeles); Olmeda
14 Decl. (ECF No. 6-4) (June 9 incident near the federal building in Santa Ana). Notably,
15 Plaintiffs have not submitted any evidence of more recent alleged incidents. Indeed, the
16 Press Rights Chair of the Los Angeles Press Club, whose job is to “track and document
17 incidents of press rights abuses throughout California,” does not identify a single use-of-
18 force incident after June 8. See Rose Decl. ¶¶ 7, 29 (ECF No. 6-5). Similarly, the
19 President of the News Guild-Communications Workers of America, an organization with
20 more than 800 journalists and media workers in California, focuses on the same discrete
21 alleged incidents as the individual declarants that occurred between June 6 and 9, with
22 no evidence that anyone has been harmed since then. See Schleuss Dec. (ECF No. 6-16).
23 And each of the individual declarants who describe alleged use-of-force incidents
24 confine their testimony solely to past incidents that occurred between June 6 and 9. See
25 ECF Nos. 6-4, 6-6 to 6-8, 6-10 to 6-11, 6-13 to 6-25. The declarations do not identify
26 any specific ongoing or future protest at which they fear the use of force will be used
27 against them.

1 **III. STANDARD OF REVIEW**

2 The standard for issuing a TRO and a preliminary injunction are substantially
3 identical. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7
4 (9th Cir. 2001). Either is “an extraordinary remedy that may only be awarded upon a
5 clear showing that the Petitioner is entitled to such relief.” *Winter v. Nat. Res. Def.*
6 *Council, Inc.*, 555 U.S. 7, 24 (2008). For a TRO to issue, the moving party must
7 demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer
8 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in
9 his favor, and (4) a TRO is in the public interest. *See id.* at 20.

10 Plaintiffs must meet an even higher standard in this case because they seek a
11 mandatory injunction that would alter the status quo and impose affirmative
12 requirements on law enforcement officers as they carry out their duties. *See Garcia v.*
13 *Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (mandatory injunctions are “particularly
14 disfavored” and the “district court should deny such relief unless the facts and law
15 clearly favor the moving party.”) (internal quotations omitted). As explained below,
16 Plaintiffs cannot meet this demanding standard.

17 **IV. ARGUMENT**

18 **A. Plaintiffs Fail to Establish Entitlement to *Ex Parte* Relief.**

19 *Ex parte* applications are rarely justified. *Mission Power Engineering Co. v.*
20 *Continental Cas. Co.*, 883 F. Supp. 488, 490 (C.D. Cal. 1995). To justify *ex parte* relief,
21 the movant must demonstrate it “is without fault in creating the crisis that requires *ex*
22 *parte* relief, or that the crisis occurred as a result of excusable neglect.” *See id.* at 492.

23 Plaintiffs fail to satisfy (or even address) the *Mission Power* standard for seeking
24 emergency relief by *ex parte* application, as opposed to proceeding by a noticed motion.
25 *Mission Power* warned of how *ex partes* “pose a threat to the administration of justice,”
26 calling out situations where “the moving party’s papers reflect days, even weeks, of
27 investigation and preparation; the opposing party has perhaps a day or two... The goal
28 often appears to be to surprise opposing counsel or at least to force him or her to drop all

1 other work to respond on short notice.” *Mission Power*, 883 F. Supp. at 490.

2 That is precisely what happened here. As early as June 10, 2025, Plaintiffs’
3 counsel began working on this case, setting up a website soliciting clients. *See* Dkt. 8,
4 Green Decl. ¶¶ 12-13. Instead of seeking relief sooner, Plaintiffs employed at least 17
5 lawyers to draft 24 separate factual declarations, as evidenced by Plaintiffs’ own
6 application. *See generally* Dkt. 6-2 to 6-25. On June 18, Plaintiffs waited until after close
7 of business on the East Coast, when federal agencies were closed, to provide notice by
8 phone. *See* Dkt. 6-2, Eliasberg Decl., ¶ 4. Even then, Plaintiffs waited nine more hours,
9 to the next day, a federal holiday, to serve the TRO application and a huge package of
10 declarations. Dkt. 8. Green Decl. ¶ 9.² During this process, Plaintiffs’ counsel confirmed
11 that they were at fault in creating the crisis. On June 18, defense counsel pointed out the
12 ACLU’s June 10 advertising to Plaintiffs’ counsel and then later stated that Plaintiffs’
13 counsel had “provided no explanation as to why the ACLU waited over a week to seek
14 relief from the Court, a clear sign that there is no emergency here.” *See* Dkt. 8-1, Ex. A
15 (emails from AUSA Green). Plaintiffs’ counsel responded to both emails but were silent
16 on these points. *See id.* Such delay has alone warranted denial of *ex parte* relief by the
17 Court: “The Court expected to find a detailed explanation as to why Plaintiffs delayed
18 filing their application until a regularly-noticed motion was not an option. Plaintiffs
19 provided nothing; not a single sentence explains why, having had knowledge of [the
20 upcoming protests], they waited until [a federal holiday] to file their Application.”
21 *Ubiquity Press Inc. v. Baran*, 2020 WL 8172983, at *2 (C.D. Cal. Dec. 10, 2020).

22 Moreover, Plaintiffs have not shown any prejudice they would suffer from
23 proceeding with a normal 28-day noticed motion for a preliminary injunction. *See*
24 *Mission Power*, 883 F. Supp. at 491 (“The rules contemplate that regular noticed
25

26 ² Faced with this situation, Defendants filed an *ex parte* application for an
27 extension, and after it was filed, contacted the Clerk of Court pursuant to L.R. 77-1. *See*
28 Dkt. 8. The undersigned was informed that the on-duty district judge had declined to rule
on Defendants’ application, therefore necessitating the filing of this opposition within 24
hours.

1 motions are most likely to produce a just result.”). The allegations in the complaint (Dkt.
2 1) and in the declarations attached to the TRO application challenge events that took
3 place on June 6-9. Plaintiffs assert that the TRO is needed before this weekend, June 21-
4 22, but aside from sheer speculation, offer no evidence that any of the complained of
5 events will occur again, let alone this weekend. Dkt. 6-1 at 1. Because there is no
6 emergency for the requested relief here, the Application fails to establish that Plaintiffs
7 are entitled to *ex parte* relief.

8 **B. Plaintiffs Lack Standing to Obtain a Prospective Injunction.**

9 To establish standing, plaintiffs must show, as “the irreducible constitutional
10 minimum,” that: (1) they have suffered an “injury in fact – an invasion of a legally
11 protected interest which is (a) concrete and particularized and (b) actual or imminent, not
12 conjectural or hypothetical....” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).
13 Where, as here, a party seeks prospective equitable relief, the complaint must contain
14 “allegations of future injury [that are] particular and concrete.” *Steel Co. v. Citizens for a*
15 *Better Env’t*, 523 U.S. 83, 109 (1998). It is therefore well-established that a plaintiff
16 lacks standing to obtain prospective injunctive relief for alleged future injuries based on
17 allegations of prior harm. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983).

18 Here, Plaintiffs do not meet the Article III requirement of standing for injunctive
19 relief because even assuming they were subject to past law enforcement practices, they
20 can only speculate as to whether those practices would recur. Plaintiffs’ declarations
21 address events that occurred between June 6-9, 2025, but present no evidence of more
22 recent incidents. *See supra*. Plaintiffs do not identify any specific ongoing or future
23 protest at which they fear the use of force will be used against them.

24 While Plaintiffs argue that DHS is engaged in alleged “systemic attempts” to chill
25 reporting by the press, all the supporting evidence cited by Plaintiffs goes to what
26 occurred in the past. *See* Dkt. 6-1 at 5-8. Federal courts have repeatedly held that a
27 chilling effect based on a plaintiff’s fear of future injury is too speculative to confer
28 standing for injunctive relief. *See Munns v. Kerry*, 782 F.3d 402, 410 (9th Cir. 2015);

1 *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) (plaintiffs “cannot manufacture
2 standing merely by inflicting harm on themselves based on their fears of hypothetical
3 future harm that is not certainly impending”). As such, the Court should deny the TRO
4 Application due to lack of standing.

5 **C. Plaintiffs Are Not Likely to Succeed on the Merits of Their First**
6 **Amendment Claims.**

7 Plaintiffs have not shown that the Defendants violated their First Amendment
8 right of access to any public proceeding. They also have not shown that Defendants
9 targeted them based on the exercise of First Amendment rights.

10 The First Amendment does not bar the government from prohibiting the public
11 from entering or remaining on its property outside ordinary hours of operation, or from
12 threatening its property at any time. *United States v. Christopher*, 700 F.2d 1253, 1259-
13 61 (9th Cir. 1983). This principle applies even if the property functions as a public forum
14 for lawful activities when it is open. *Clark v. Community for Creative Non-Violence*, 468
15 U.S. 288, 299 (1984). And when federal officers are forced to respond to “a violent
16 subset of protesters who disrupt civic order,” such officers indisputably have power to
17 enforce dispersal orders against the general public. *Menotti v. Seattle*, 409 F.3d 1113,
18 1155-56 (9th Cir. 2005).

19 These principles apply to journalists, legal observers, and protesters just like they
20 apply to everyone else. The Supreme Court and the Ninth Circuit have repeatedly held
21 that the press lacks a “constitutional right of special access to information not available
22 to the public generally.” *California First Amendment Coal. v. Calderon*, 150 F.3d 976,
23 981 (9th Cir. 1998) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 684 (1972) and
24 discussing other cases). In short, the First Amendment does not give “self-proclaimed
25 journalists and ‘legal observers’” the right to disobey lawful dispersal orders issued to
26 control a violent protest. *Index Newspapers*, 977 F.3d at 839 (O’Scannlain, J.,
27 dissenting).

1 Additionally, federal law permits law-enforcement officers to take appropriate
2 measures to protect federal property and personnel before violent protesters have moved
3 onto federal property. There is no reasonable dispute that DHS officers have authority to
4 issue dispersal orders on federal property. *See, e.g.*, 41 C.F.R. § 102-74.375 (authority to
5 restrict access to federal property); *id.* § 102-74.385 (authority to require the public to
6 comply with access restrictions). This authority extends to “areas outside the property to
7 the extent necessary to protect the property and persons on the property.” 40 U.S.C.
8 § 1315(b)(1). Thus, DHS officers can “enforce Federal laws and regulations for the
9 protection of persons and property.” *Id.* § 1315(b)(2)(A).

10 To prove their First Amendment right-of-access claim against this backdrop,
11 Plaintiffs face a high hurdle. They must show, first, that “the place and process” to which
12 they sought access “have historically been open to the press and general public”; second,
13 the Court must ask “whether public access plays a significant positive role in the
14 functioning of the particular process in question.” *Press-Enter. Co. v. Super. Ct. of Cal.*
15 *for Riverside Cnty.*, 478 U.S. 1, 8 (1986). And even if they make both of those showings,
16 Plaintiffs cannot succeed if the government demonstrates “an overriding interest based
17 on findings that closure is essential to preserve higher values and is narrowly tailored to
18 serve that interest.” *Id.* at 9.

19 Plaintiffs have not shown they are likely to succeed in establishing that their
20 access to any “process” or “proceeding” plays a “significant positive role.” Indeed, they
21 make little effort to do so, relying heavily instead on quotes from *Index Newspapers LLC*
22 *v. United States Marshals Serv.*, 977 F.3d 817 (9th Cir. 2020)—a case about different
23 protests that occurred five years ago in a different city and a different context. Some of
24 the Plaintiffs allege that they are journalists who were covering various scenes around
25 Los Angeles when they encountered DHS officers or agents. Others allege that they were
26 present to protest or to observe. Those allegations, however, do not establish that their
27 presence in the particular place where they allege they were targeted by DHS played a
28 “significant positive role” in any process or proceeding. Indeed, several of the Plaintiffs

1 are vague or silent about why they were protesting in the particular place they chose.
2 *E.g.*, Olmeda Decl. ¶ 4 (alleging that Olmeda attended a protest at a federal building).
3 They do not describe any particular proceeding or event—other than the protest itself—
4 that they were seeking to access.

5 Plaintiffs allege that they were peaceful participants or observers at the protests.
6 Even assuming that is true, it does not give them a First Amendment claim. “[O]nce a
7 pattern of chaotic violence ha[s] been established”—such as that which pervaded Los
8 Angeles in the days surrounding Plaintiffs’ alleged encounters with DHS—“it [i]s
9 unrealistic to expect police to be able to distinguish, minute by minute, those protestors
10 with benign intentions and those with violent intentions.” *Menotti*, 409 F.3d at 1134. In
11 circumstances where “law-breaking and law-abiding protestors [are] often
12 indistinguishable, and where those abiding the law might [be] interfer[ing] indirectly
13 with enforcement against violent protestors,” dispersing everyone from the scene of a
14 riot is narrowly tailored to serve a significant government interest. *Id.* at 1135. Officers
15 need not tailor their orders to exclude peaceful protesters or innocent bystanders, *see id.*
16 at 1126-28, whose lawful activities are being disrupted by “a small group of violent
17 protestors . . . determined to cause chaos,” *id.* at 1134. It follows that officers need not
18 tailor their orders to exclude journalists or “legal observers” as well.

19 *Index Newspapers* does not support Plaintiffs’ claim for relief here. First, in the
20 days surrounding Plaintiffs’ alleged DHS encounters, the violence, unrest, damage to
21 federal property, and injuries to federal personnel were so severe that a Ninth Circuit
22 panel has unanimously held that the President “likely acted within his authority in
23 federalizing the National Guard.” *Newsom*, slip op., at 30. In *Index Newspapers*, no
24 backdrop of unrest severe enough to warrant National Guard involvement informed the
25 panel’s analysis.

26 The injunction Plaintiffs want also goes beyond anything *Index Newspapers*
27 authorized. There, the injunction provided “that if a journalist or legal observer is
28 incidentally exposed to crowd-control devices after remaining in the area where such

1 devices are deployed to enforce a lawful dispersal order, the Federal Defendants will not
2 be liable for violating the injunction.” 977 F.3d at 823. But here, Plaintiffs assert a right
3 to prevent Defendants from “[f]iring kinetic impact projectiles or flashbangs at *identified*
4 *wrongdoers*, if doing so *could result* in injury to a person who is not posing a threat to
5 law enforcement.” Proposed Order ¶ 3 (emphasis added). That is an exceptionally broad
6 restriction not approved by Ninth Circuit. The same is true of paragraphs 4 and 5 of the
7 proposed TRO, which would place granular strictures on exactly how DHS officers
8 engage with protesters. Requiring “express[] approv[al] by an on-scene supervisor in
9 response to specific acts of violence that the supervisor personally witnessed” before *any*
10 use of “kinetic impact projectiles containing chemical irritant” defies the realities of
11 crowd control by officers Plaintiffs themselves agree are “highly-trained.” App. 15; *see*
12 Santacruz Decl. ¶ 17. In sum, Plaintiffs are not likely to succeed on their right-of-access
13 claim.

14 Plaintiffs’ retaliation claim fails as well. To prevail, they must demonstrate that
15 their First Amendment activity was a “substantial or motivating factor” in the conduct of
16 DHS. *See Mendocino Env’tl Ctr. v. Mendocino County*, 192 F.3d 1283, 1300-01 (9th
17 Cir. 1999) (quotation marks omitted). But Defendants prohibit retaliation against
18 anyone—protesters, journalists, and legal observers alike—for exercising First
19 Amendment rights. Moreover, officers must undergo training in permissible uses of
20 force. *See Bovino Decl.* ¶ 13. To prove that officers deviated from agency policy,
21 Plaintiffs must show that officers’ split-second decisions, made in the midst of chaotic
22 circumstances, were intended not to help control a quickly evolving situation but to
23 retaliate against Plaintiffs. They have not done so. Plaintiffs provide no plausible
24 evidence other than supposition of a retaliatory motive. Nor do their citations to social-
25 media posts by government officials connect any statement to anything that allegedly
26 occurred in their encounters with DHS.

27 Moreover, Plaintiffs’ allegations of misconduct by individual officers occurred in
28 the context of many interactions between federal officers and crowds in the first two

1 weeks of June. Their allegations thus do not supply sufficient evidence of retaliatory
2 intent on the part of Defendants. As the Ninth Circuit has made clear in the related
3 context of § 1983 claims against municipalities, “[l]iability for improper custom may not
4 be predicated on isolated or sporadic incidents.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th
5 Cir. 1996). Plaintiffs must instead identify “practices of sufficient duration, frequency[,]
6 and consistency that the conduct has become a traditional method of carrying out
7 policy.” *Id.* Plaintiffs have not made the requisite showing here. That failure precludes
8 Plaintiffs from obtaining injunctive relief against the entirety of DHS—from front line-
9 level officers all the way up to top leadership—on the basis of the purported misconduct
10 of a small number of agency employees. *Cf. Lewis v. Casey*, 518 U.S. 343, 359 (1996)
11 (holding that proof of isolated instances of misconduct was “a patently inadequate basis
12 for a conclusion of systemwide violation and imposition of systemwide relief”).

13 Even if Plaintiffs were likely to prevail on their First Amendment claims, they
14 cannot support the broad order that they seek. The requested TRO would not bar officers
15 from singling out journalists, legal observers, and protesters for retaliatory treatment.
16 Instead, it would require the government to single them out for *preferential* treatment, in
17 order to exempt them from lawful orders that are properly issued to all other persons
18 present. Those requirements are far “broader . . . than necessary to redress” the
19 government’s alleged intentional targeting of journalists and legal observers. *See*
20 *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018). They are instead designed to
21 vindicate plaintiffs’ right-of-access claim—a separate claim and one that lacks merit, for
22 the reasons explained above. Even if Plaintiffs had established a likelihood of success on
23 that claim, moreover, the relief they seek is far broader than necessary to protect it.
24 Moreover, it is unworkable. The attached declarations of Ernesto Santacruz and Mario
25 Canton explain in detail why Plaintiffs’ requested relief is impracticable to implement
26 from a real-life, law-enforcement perspective. *See* Santacruz Decl. ¶¶ 13-17; Canton
27 Decl. ¶¶ 12-15; *cf. Index Newspapers*, 977 F.3d at 839 (O’Scannlain, J., dissenting)
28 (decrying injunction that made “a significant and unwarranted departure from the

1 traditional, qualified ‘right of public access’ to criminal judicial proceedings that has
2 been carefully delineated by the Supreme Court”). Especially against the backdrop of a
3 network of regulations and precedent that allows the federal government to protect its
4 own property, Plaintiffs’ argument that this Court should grant sweeping relief on the
5 basis of alleged assembly and speech interests they wish to exercise on or near that
6 property is meritless.

7 **D. Plaintiffs Are Not Likely to Succeed on the Merits of Their Fourth and**
8 **Fifth Amendment Claims.**

9 Plaintiffs have not shown that the particular incidents they alleged violated the
10 Fourth or Fifth Amendment through excessive force—much less that they are entitled to
11 an injunction against speculative future such incidents. To demonstrate excessive force,
12 Plaintiffs must show that “police use of force” was “objectively unreasonable under the
13 circumstances.” *Felarca v. Birgeneau*, 891 F.3d 809, 816 (9th Cir. 2018). That showing
14 requires “balancing ‘the nature and quality of the intrusion on the individual’s Fourth
15 Amendment interests against the countervailing governmental interests at stake.’” *Id.*
16 (quoting *Graham v. Connor*, 490 U.S. 386, 388 (1989)). The reasonableness of police
17 use of force must be “judged from the perspective of a reasonable officer on the scene,
18 rather than with the 20/20 vision of hindsight,” and the analysis “must embody
19 allowance for the fact that police officers are often forced to make split-second
20 judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the
21 amount of force that is necessary in a particular situation.” *Wilkinson v. Torres*, 610 F.3d
22 546, 550 (9th Cir. 2010) (quoting *Graham*, 490 U.S. at 396–97).

23 Plaintiffs have not made that showing. They allege that they were subjected to
24 what they believe to be unreasonable force, but they have not established facts to show
25 that the force was in fact unreasonable from the perspective of a “reasonable officer” (or
26 even, in all cases, that it was directed specifically at them, rather than at others nearby).
27 What is more, courts have generally found the use of many of crowd-control methods
28 similar to those at issue here to be constitutionally permissible. For example, when

1 police were dismantling an illegal tent city set up by protesters on the University of
2 California at Berkeley campus, the Ninth Circuit rejected an excessive-force claim
3 (there, for damages under Section 1983) brought by protesters who had been struck with
4 batons and knocked over by hand while trying to block officers from dismantling the
5 tents. *Felarca*, 891 F.3d at 818. The officers were reasonable in using force because the
6 government was not required to permit “organized lawlessness,” and the protesters
7 “substantially outnumbered” officers, “refused to obey the officers’ commands to
8 disperse,” “shouted at the officers,” and “engaged the officers in verbal and physical
9 altercations.” *Id.* (quoting *Jackson*, 268 F.3d at 652). The same is true here: After the
10 peaceful daytime protests have transformed into the lawless nighttime rioting (as the
11 attached declarations show that they often did for a period of time), officers have been
12 faced with protecting federal property from riotous mobs. That is the context in which
13 the Court must view Plaintiffs’ claim. And it does not support Fourth and Fifth
14 Amendment violations. *See also, e.g., Bayer v. City of Simi Valley*, 43 F. App’x 36, 38
15 (9th Cir. 2002) (holding use of tear gas was reasonable against armed unstable individual
16 who refused to surrender); *Forrester v. City of San Diego*, 25 F.3d 804, 805-07 (9th Cir.
17 1994) (holding pain compliance techniques on passive protesters not unreasonable to
18 remove them); *Jackson*, 268 F.3d at 652 (holding threat and use of chemical irritant to
19 disperse unruly crowd, where they were interfering with arrest, was not unreasonable);
20 *United Steelworkers of Am. v. Milstead*, 705 F. Supp. 1426, 1430, 1437 (D. Ariz. 1988)
21 (holding use of tear gas “for outdoor use only” on crowd gathered inside that had been
22 throwing objects was not excessive force, even though innocent people were also inside).
23 Even assuming that Plaintiffs’ application showed a likelihood that Plaintiffs would
24 succeed in proving past violations, they cannot show an entitlement to injunctive relief
25 by relying on those past violations.

26 **E. Plaintiffs Have Not Demonstrated Irreparable Harm.**

27 Plaintiffs insist that by pleading a colorable First Amendment claim they have
28 suffered irreparable injury. Dkt. 6-1 at 19. First, Plaintiffs have not pled a colorable First

1 Amendment claim. *See supra* at 10-14. That failure is fatal here. *Nickler v. Cnty. of*
2 *Clark*, 648 F. App’x 601, 605 (9th Cir. 2016) (“Because [Plaintiffs] failed to show a
3 likelihood of success on the merits, [they] also could not show that irreparable harm
4 would likely result from failure to grant the injunction”).

5 Even if Plaintiffs had pled a colorable First Amendment claim, that does not
6 demonstrate likelihood of irreparable injury because “no presumption of irreparable
7 harm arises in a First Amendment retaliation claim.” *Rendish v. City of Tacoma*, 123
8 F.3d 1216, 1226 (9th Cir. 1997).

9 Instead, “plaintiffs may not obtain a preliminary injunction unless they can show
10 that irreparable harm is likely to result in the absence of the injunction.” *All. For The*
11 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). To establish a likelihood
12 of irreparable harm, Plaintiff “must do more than merely allege imminent harm sufficient
13 to establish standing; [they] must *demonstrate* immediate threatened injury.” *Boardman*
14 *v. Pacific Seafood Group*, 822 F.3d 1011, 1022 (9th Cir. 2016) (emphasis in original).
15 Where “there is no showing of any real or immediate threat that the plaintiff will be
16 wronged again,” there is no irreparable injury supporting equitable relief. *City of Los*
17 *Angeles v. Lyons*, 461 U.S. 95, 111 (1983); see *Olagues v. Russoniello*, 770 F.2d 791,
18 797 (9th Cir. 1985). Despite Plaintiff’s attempts to conjure future misconduct, they have
19 presented no evidence to suggest such misconduct will occur.

20 Plaintiffs’ future injuries are not only speculative and, therefore, insufficient to
21 demonstrate the likelihood of irreparable injury (*see Park Vill. Apartment Tenants Ass’n*
22 *v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011) (“[a]n injunction will not
23 issue” based on “a mere possibility of some remote future injury”) (cleaned up)), they
24 are premised on misstatements and outdated facts that no longer reflect reality. *Supra* at
25 5. The Los Angeles Police Department had the principal public safety role during recent
26 unrest as some of the same Plaintiffs here conceded by filing their complaint against the
27 Los Angeles County Sheriff’s Department. *See Los Angeles Press Club, et al. v. County*
28 *of Los Angeles*, 2:25-cv-05541-HDV-E (June 18, 2025) Dkt. 1. And since the events that

1 Plaintiffs complain of occurred, the National Guard and U.S. Marines are now assisting
2 FPS in guarding federal property in Los Angeles. *Supra* at 5. Plaintiff’s request for relief,
3 therefore, is directed at the wrong entity and based on a state of affairs that no longer
4 exists.

5 Plaintiffs’ theory that the mere presence of federal officers shows a likelihood of
6 irreparable harm is implausible. Mere speculation that individual officers may someday
7 commit sporadic violations of people’s rights at future protests—specifically targeting
8 one of the Plaintiffs—cannot establish irreparable harm. Indeed, the Supreme Court
9 expressly rejected the idea that an individual citizen faces a likelihood of irreparable
10 harm just because there is a generalized risk that law enforcement officers may one day
11 act unconstitutionally. *Lyons*, 461 U.S. at 111 (“[A] federal court may not entertain a
12 claim by any or all citizens who no more than assert that certain practices of law
13 enforcement officers are unconstitutional.”). Plaintiffs, therefore, have failed to
14 demonstrate that, absent relief, they will suffer irreparable harm.

15 **F. The Balance of Equities and Public Interest Weigh Against Granting**
16 **An Injunction.**

17 Contrary to Plaintiffs’ assertions, the balance of the equities and public interest tips
18 sharply in favor of Defendants. The Court “must balance the competing claims of injury
19 and must consider the effect on each party of the granting or withholding of the
20 requested relief.” *Winter*, 555 U.S. at 24. “The federal government’s interest in
21 preventing” attacks on federal officers and damage to federal buildings “is significant.”
22 *Newsom*, slip op., at 36. Both interests would be thwarted were the Court to grant the
23 injunction requested here. Similarly, the public has an interest in the maintenance of
24 order and public safety. Plaintiffs’ extrapolations from weeks’ old, cherry-picked events
25 and imagined Constitutional violations to come, cannot outweigh the concrete harm to
26 the federal government and the public were this Court to grant Plaintiffs’ request.

27 There is a pointed public interest when disorder threatens the integrity of public
28 property. *See United States v. Griefen*, 200 F.3d 1256, 1260 (9th Cir. 2000) (health,

1 safety, and protection of property “are compelling reasons” and “represent significant
2 government interests.”); *see also Index Newspapers*, 977 F.3d at 838 (finding that
3 government has an “uncontested interest in protecting federal agents and property”).
4 Additionally, Congress has recognized such interests, including by making the
5 destruction of federal property and assault of federal officers felonies. 18 U.S.C. §§ 111,
6 1361. Moreover, the federal government has an interest in “preserv[ing] the property
7 under its control for the use to which it is lawfully dedicated[;]” for government
8 buildings, those uses are public uses that are in the public interest. *Int’l Soc. for Krishna*
9 *Consciousness, Inc. v. Lee*, 505 U.S. 672, 679-680 (1992).

10 The public interest is advanced when federal officers disperse violent opportunists
11 near federal buildings. *See, e.g., Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972)
12 (“[W]here demonstrations turn violent, they lose their protected quality as expression
13 under the First Amendment”); *Griefen*, 200 F.3d at 1260 (9th Cir. 2000) (upholding the
14 relocation of protesters who “had already shown by their destructive conduct that they
15 presented a clear and present danger to the safe completion of the construction project”);
16 *Bell v. Keating*, 697 F.3d 445, 457-58 (7th Cir. 2012) (“[O]therwise protected speech
17 may be curtailed when an assembly stokes—or is threatened by—imminent physical or
18 property damage.”). Plaintiffs have not—indeed, cannot—contest the federal
19 government’s right and obligation to restore order and protect federal property.

20 Plaintiffs’ argument that the public interest tips in their favor relies on pure
21 *pathos*. But rhetoric about the “search for truth” (Pls.’ Mem. At 21 (citing *Janus v. Am.*
22 *Fed’n of State, Cty., & Mun. Emps., Council 31* 138 S. Ct. 2448, 2464 (2018)) and
23 participation in “our republican system of self-government” (*id.* (quoting *Globe*
24 *Newspaper*, 457 U.S. at 604)) is unavailing when the facts are replete with violent
25 attacks on law enforcement. Even if the protests at issue had not become violent riots,
26 the courts have already thoroughly weighed the interest of public access to a free press
27 and found it no greater than that of the public generally. *See, e.g., Branzburg v. Hayes*,
28 408 U.S. 665, 684–85 (1972) (“Newsmen have no constitutional right of access to the

1 scenes of crime or disaster when the general public is excluded”); *California First*
2 *Amendment Coal. v. Calderon*, 150 F.3d 976, 981(9th Cir. 1998).

3 Regardless of Plaintiffs’ interests, attempting to impose arbitrary new policing
4 rules fashioned by Plaintiffs’ attorneys—not law enforcement—is impractical. Plus,
5 Plaintiffs request a scope and timeline that would create chaos and make it impossible to
6 conduct law enforcement operations when protests become unlawful. There are four
7 principal reasons Plaintiffs’ requested relief is unwarranted and unworkable.

8 *First*, Plaintiffs have not limited their request for relief to any specific region.
9 Presumably (though it’s unclear), they seek a nationwide injunction. Courts have
10 rejected awarding nationwide relief where nationwide evidence was lacking. *See Flores*
11 *v. Huppenthal*, 789 F.3d 994, 1005–06 (9th Cir. 2015) (“[O]nly if there has been a
12 systemwide impact may there be a systemwide remedy.”) (alteration in original); *see*
13 *also Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 647 (9th Cir. 2021).
14 Plaintiffs have failed to muster sufficient evidence to support their capacious request for
15 relief.

16 *Second*, Plaintiffs’ request sweeps far beyond the relief afforded in *Index*
17 *Newspapers*. 480 F. Supp. 3d 1120, 1155-57 (D. Or. 2020). There, the district court
18 granted an injunction that exempted journalists from orders to disperse but absolved
19 federal law enforcement from liability if journalists were “incidentally exposed to
20 crowd-control devices after remaining in the area . . . after the issuance of an otherwise
21 lawful dispersal order.” *Id.* at 1157. Here, by contrast, Plaintiffs seek a blanket
22 prohibition from “[d]ispersing . . . the press[.]” Dkt. 6-26 at 4. This effectively gives the
23 press a veto over every lawful crowd-dispersal order issued by federal law enforcement
24 authorities.

25 *Third*, the preliminary injunction issued in *Index Newspapers* makes no mention
26 of prohibiting the use of crowd control weapons. *See* 480 F.Supp. at 1155-57. But here,
27 Plaintiffs seek blanket prohibitions on the use of “crowd control weapons . . . on people
28 who are not posing a threat to law enforcement[;]” and “[f]iring kinetic impact projectiles

1 or flashbangs at identified wrongdoers, if doing so could result in injury to a person who
2 is not posing a threat to law enforcement” Dkt. 6-26 at 4. This requested relief is not
3 limited to the press and therefore extends far beyond the scope of Plaintiffs’ retaliation
4 arguments. The requested relief also imposes a rule on federal enforcement agents that
5 allows no room for incidental error.

6 *Fourth*, Plaintiffs’ request that federal law enforcement be required to obtain
7 “express[] approval by an on-scene supervisor” before deployment of tear gas and
8 similar chemical irritants, *id.* at 5, effectively tying the hands of every agent who, in the
9 chaos of dynamic situations, cannot locate a supervisor to seek permission. *See Bovino*
10 *Decl.* ¶ 16. These restraints on federal law enforcement combine to frustrate the
11 government’s comprehensive interest in maintaining public order on public property.
12 *Feiner v. New York*, 340 U.S. 315, 320 (1951) (“This Court respects, as it must, the
13 interest of the community in maintaining peace and order on its streets.”).

14 Courts are properly reluctant to micromanage law enforcement officers
15 responding to unpredictable and violent demonstrations in defense of public property.
16 *Ryburn v. Huff*, 565 U.S. 469, 477 (2012) (“judges should be cautious about second-
17 guessing a police officer’s assessment, made on the scene, of the danger presented by a
18 particular situation[.]”).

19 The requested relief would incapacitate federal law enforcement’s ability to
20 handle lawless crowds and respond to imminent threats, thereby making enforcing
21 federal law an impossibility in those circumstances. By contrast, Plaintiff reporters are
22 free to cover whatever events they wish to, now or in the coming days. Accordingly,
23 both the public interest and the balance of the equities weigh in favor of denying the
24 injunction.

25 **V. CONCLUSION**

26 Defendants respectfully request that the Court deny the TRO application.
27
28

1 Dated: June 19, 2025

Respectfully submitted,

2 BRETT A. SHUMATE
Assistant Attorney General
3 Civil Division

4 ERIC J. HAMILTON
Deputy Assistant Attorney General

5 ELIZABETH HEDGES
6 SEAN SKEDZIELEWSKI
Counsel to the Assistant Attorney General
7 Civil Division

8 ALEXANDER K. HAAS
ANDREW I. WARDEN
9 KATHLEEN C. JACOBS
Civil Division, Federal Programs Branch

10 BILAL A. ESSAYLI
United States Attorney
11 DAVID M. HARRIS
Assistant United States Attorney
12 Chief, Civil Division
13 JOANNE S. OSINOFF
Assistant United States Attorney
14 Chief, Complex and Defensive Litigation Section

15
16 /s/ Paul (Bart) Green
PAUL (BART) GREEN
17 Assistant United States Attorney

18 Attorneys for Defendants

19
20 L.R. 11-6.2 Certificate of Compliance

21 The undersigned counsel of record certifies that this memorandum contains 6,996
22 words, which complies with the word limit set by L.R. 11-6.1.
23

24 Dated: June 19, 2025

/s/ Paul (Bart) Green
25 PAUL (BART) GREEN
26
27
28