

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSICA BLALOCK, et al.,

Plaintiffs,

v.

OAKLAND POLICE DEPARTMENT, et
al.,

Defendants.

Case No. [3:23-cv-01999-WHO](#)

**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 2

This case arises from a long-running dispute between unhoused individuals living at various encampments on Wood Street in Oakland, California, and the government authorities and agencies—here specifically, the City of Oakland—that are trying to move the residents and clear the land. *See, e.g., DeFigh v. City of Oakland*, No. 23-cv-02009-WHO (N.D. Cal., Apr. 27, 2023); *Janosko v. City of Oakland*, No. 23-cv-00035-WHO (N.D. Cal. Apr. 19, 2023); *Jones v. City of Oakland*, No. 23-cv-00166-WHO (Mar. 17, 2023); *Blain v. Cal. Dep’t of Transp.*, No. 22-cv-04178-WHO (Feb. 8, 2023); *Jones v. Newsom*, No. 22-cv-03996-WHO (N.D. Cal. Oct. 12, 2022). As the residents and public have known since at least June 2022, the closure of these encampments has been a long time coming, though I have entered and subsequently dissolved several temporary restraining orders that delayed the processes to ensure the protection of the residents’ legal and constitutional rights. *See, e.g., Blain v. Cal. Dep’t of Transp.*, 616 F. Supp. 3d 952, 954 (N.D. Cal. 2022), *order dissolved*, No. 3:22-CV-04178-WHO, 2022 WL 3702106 (N.D. Cal. Aug. 26, 2022). In those cases, I acknowledged the immense difficulties imposed upon the resident-plaintiffs by the closure of the encampments, exacerbated by poverty and often physical and mental health challenges, and I encouraged the government to work closely with the residents

1 to support them during and after the transitions. *See id.*

2 This case comes at a slightly different legal posture: the plaintiffs assert that their First
3 Amendment rights are being violated by the City of Oakland’s procedures limiting journalists’
4 access to the site of the final remaining section of the Wood Street encampment, which is actively
5 being cleaned and closed. The limitations were imposed in response to the residents’ and the
6 public’s resistance to the closure, which has included dangerous tactics and threats of violence.
7 For the following reasons, I find the plaintiffs have not shown a likelihood of success on the
8 merits because the limitations on speech are reasonable, content-neutral, and permissible under the
9 First Amendment. Accordingly, the motion for a temporary restraining order is denied.

10 BACKGROUND

11 The plaintiffs are two former residents of the homeless encampment at 1707 Wood Street
12 in Oakland, California (the “1707 Encampment”), as well as two journalists reporting on the
13 closure of the 1707 Encampment. *See* Complaint (“Compl.”) [Dkt. No. 1]. They moved for a
14 Temporary Restraining Order (“TRO”), seeking to restrain the defendants Oakland Police
15 Department (“OPD”), City of Oakland, and City Administrator LaTonda Simmons (collectively,
16 “the City”) from allegedly violating their First Amendment rights by blocking members of the
17 media from reporting on the eviction. (“Mot.”) [Dkt. No. 4].

18 The complaint alleges that plaintiffs Jessica Blalock and Lydia Blumberg are residents of
19 the 1707 Encampment and plaintiffs Lisa Gray-Garcia and Yesica Prado are journalists who have
20 been “reporting at the Wood Street encampment for months.” Compl. ¶¶ 9, 17. The plaintiffs
21 assert that the encampment residents scheduled a press conference inside the encampment for 8:00
22 a.m. on Monday, April 24, but when journalists—including Gray-Garcia and Prado—arrived to
23 attend the press conference, “no one was permitted to pass the gates guarded by Oakland Police
24 officers” and so the press conference was unable to go forward. *Id.* ¶¶ 9, 10, 17; *see also* Mot.
25 ¶ 13 (asserting that OPD “set fences around the compound” to block the press conference);
26 Declaration of Jessica Blalock (“Blalock Decl.”) [Dkt. No. 4] ¶ 4; Declaration of Yesica Prado
27 (“Prado Decl.”) [Dkt. No. 4] ¶ 10. They say that the City held a separate press conference down
28 the block instead. Declaration of Lydia Blumberg (“Blumberg Decl.”) ¶ 7.

1 The journalist-plaintiffs assert that they and other journalists were blocked from accessing
2 the encampment at various times. Mot. ¶¶ 4, 14(1),¹ 14(2), 15(2), 22. They say that they are now
3 required to be verified by a City official before entering the camp but that the process “is vague
4 and unclear” and that they have “spent hours” searching for the relevant official, who is often not
5 on site. *Id.* ¶ 15(1); Prado Decl. ¶¶ 3, 5-7, 12-13. Prado was directed to observe and report from a
6 park about 20 to 30 feet from the encampment. Prado Decl. ¶ 15. Prado also was permitted into
7 the encampment itself, though she says a nonparty reporter from the Oaklandside news outlet was
8 not. *Id.* ¶ 13. The plaintiffs say there is “no compelling safety reason” to restrict access to the
9 encampment. Compl. ¶ 16. The resident-plaintiffs say their First Amendment rights “to
10 communicate their living situation, struggle, and grievances” are being violated. Mot. ¶ 21.

11 In opposition, the City asserts that it allowed essentially unlimited access to the
12 encampment at the start of the closure, which began on April 10. Opposition (“Oppo.”) [Dkt. No.
13 16] Declaration of LaTonda Simmons (“Simmons Decl.”) ¶¶ 6-11. But the City almost
14 immediately began receiving threats of violence and dealing with “obstructionist” conduct that
15 prohibited officials from carrying out the cleanup and created difficulties maintaining the safety of
16 officials, residents, and members of the public around the heavy machinery and dangerous
17 materials on site. *Id.* ¶¶ 7-13. The City began limiting access to the site to individuals who were
18 packing their belongings and directed members of the media and public to view the site from
19 various locations outside the encampment’s fences. *Id.* ¶¶ 13-14. Additionally, the City
20 implemented “a media/press protocol” where journalists verify their credentials with a City
21 official and are allowed access to the site with a City escort. *Id.* ¶ 14. The visits are limited in
22 time but not scope or location within the site. *Id.* In supplemental declarations, the City further
23 elaborated that the “verification” process involves the City’s Public Information Officer (“PIO”)
24 asking for the journalist’s name and associations, if any, and having the journalist wear a reflective
25 safety vest, stay within sight of the escort and 15 feet from equipment, and not obstruct work
26 during the visit. Declaration of Jean Walsh (“Walsh Decl.”) [Dkt. No. 31] ¶¶ 23-26, 32.

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28 ¹ The TRO has three paragraphs numbered 14, which I cite at “14(1),” “14(2),” and “14(3).”
There are also two paragraphs numbered 15 which I cite in a similar fashion.

1 The plaintiffs filed supporting declarations, including many from nonparties. *See* Dkt.
2 Nos. 10-15, 20-28. Many of these declarations assert that general community members have been
3 restricted from accessing the site, *see, e.g.*, Dkt. Nos. 20, 22, and several declare that members of
4 the press have been restricted, *see, e.g.*, Dkt. Nos. 21, 23. For example, Jungho Kim says they
5 were given only 15 minutes to photograph what they saw.² [Dkt. No. 21].

6 On April 28, 2023, I held a hearing at which counsel for the City and for plaintiff Blalock
7 appeared. Pro se plaintiffs Blumberg and Prado also appeared. Pro se plaintiff Gray-Garcia did
8 not appear.

9 That same day, I issued a minute order to ameliorate some of the plaintiffs’ concerns—
10 including about the difficulties being verified by the PIO and the time constraints reporting on
11 site—without addressing the merits of the motion. [Dkt. No. 29]. I also noted the exigencies of
12 the situation required the City to respond to the TRO on a very short timeline and so ordered the
13 City to file supplemental information concerning the specifics of the press policy and its
14 enactment at the site, which it did. Walsh Decl.; Supplemental Declaration of LaTonda Simmons
15 (“Simmons Supp. Decl.”) [Dkt. No. 30].

16 LEGAL STANDARD

17 Federal Rule of Civil Procedure 65 governs TROs. The standard for issuing a TRO is the
18 same as that for issuing a preliminary injunction, which requires the plaintiff to establish: (1)
19 likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of
20 preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in
21 the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
22 “Injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing
23 that the plaintiff is entitled to such relief.” *Id.* at 22. The Ninth Circuit has held that “‘serious
24 questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff can
25 support issuance of an injunction, assuming the other two elements of the Winter test are also
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28 ² The City presented conflicting evidence, declaring that Kim “evad[ed] the press access point”
and was subsequently asked to wear a safety vest, which they did while remaining on site for
another hour. Walsh Decl. ¶ 28.

1 met.” *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

2 DISCUSSION

3 I. LIKELIHOOD OF SUCCESS ON THE MERITS

4 The First Amendment protects the right to photograph and record matters of public
5 interest. This includes the right to record law enforcement officers engaged in the exercise of their
6 official duties in public places. *Askins v. U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th
7 Cir. 2018) (citations omitted). In a public forum,³ “[c]ontent-based restrictions on speech are
8 subject to strict scrutiny and may only be upheld if they are ‘the least restrictive means available to
9 further a compelling government interest.’” *Id.* (quoting *Berger v. City of Seattle*, 569 F.3d 1029,
10 1050 (9th Cir. 2009) (en banc)). “Reasonable, content-neutral, time, place, or manner restrictions,
11 on the other hand, are subject to ‘an intermediate level of scrutiny’” and are permitted in public
12 fora so long as (1) “they are narrowly tailored to serve a significant governmental interest”; (2)
13 “leave open ample alternative channels for communication of the information”; and (3) “do not
14 delegate overly broad licensing discretion to a government official.” *Id.* (internal quotation marks
15 and citations omitted).

16 A. Content Neutral

17 The restrictions are content neutral time, place, and manner restrictions because they do
18 not “restrict expression because of its message, its ideas, its subject matter, or its content.” *Reed v.*
19 *Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (citation omitted). That they are content neutral
20 was not contested in the initial papers, and the plaintiffs provide evidence that journalists from
21 many outlets and members of the public alike were restricted from accessing the site once the City
22 enacted its new protocol. *See* Taaffee Decl. [Dkt. No. 10]; Blain Decl. [Dkt. No. 12] (asserting
23 OPD “turned away” members of the public intending to support the residents and “prevented” a
24 community member with a moving truck from entering); *see also* Oppo. 6:16-28 (“uniformly
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26 ³ The plaintiffs assert the encampment and surrounding streets are public fora, *see* TRO ¶ 11, and
27 the City assumes they are public fora, *see* Oppo. 5:17-20 (explaining the First Amendment test for
28 speech restriction in public fora), so I assume without deciding that the land at issue in this motion
here is a public forum. I note that in prior related litigation, the encampment was assumed to be a
nonpublic forum. *See Blain v. Cal. Dep’t of Transp.*, No. 22-cv-04178-WHO, Dkt. 148 at 13 &
n.6.

1 restricting access” to the encampment before designing its access protocol, and then granting
2 access to all categories of individuals “claiming to be the media” including those without any
3 credentials or affiliations).

4 At the hearing, counsel for plaintiff Blalock asserted that the restrictions are content based
5 because the “mainstream media” are permitted to enter but “independent” journalists who favor
6 the residents are not. But there is no evidence of this in the record, and indeed, the plaintiffs’ own
7 declarations indicate otherwise. *See* Prado Decl. ¶ 13 (Prado, who identifies as an independent
8 journalist favoring the residents, was allowed access while reporter from well-known local outlet
9 The Oaklandside was denied entry). Additionally, at the hearing Blalock’s counsel relied heavily
10 on *Martinez v. City of Fresno*, No. 122-CV-00307-DAD-SAB, 2022 WL 1645549 (E.D. Cal. May
11 24, 2022, as discussed further below. As relevant here, that court determined a city ordinance
12 prohibiting members of the public from entering sites of public nuisance abatement—namely, the
13 cleanup of encampments—was “content neutral.” *Id.* at *8.⁴

14 **B. Narrowly Tailored**

15 “For a content-neutral time, place, or manner regulation to be narrowly tailored, it must not
16 ‘burden substantially more speech than is necessary to further the government’s legitimate
17 interests.’” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (citation omitted). “[B]y demanding
18 a close fit between ends and means, the tailoring requirement prevents the government from too
19 readily sacrificing speech for efficiency.” *Id.* (citation, brackets, and quotation marks omitted).
20 However, the regulation “‘need not be the least restrictive or least intrusive means of’ serving the
21 government’s interest.” *Id.* (citation omitted).

22 The City’s interests are legitimate and substantial. First, the safety of City workers, current
23 and former encampment residents, and community members helping residents to move is

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26 ⁴ Additionally, the City’s supplemental declarations indicate that it had planned the site to be
27 closed on the morning of the plaintiffs’ press conference long before the press conference was
28 announced—indeed the City says it posted closure notices several days in advance and never
actually received notice of the press conference until the time it was supposed to happen.
Simmons Supp. Decl. ¶¶ 33-35; *Walsh Decl.* ¶ 20. This strongly indicates the closure of the entire
parcel was the reason that media could not enter for the press conference, rather than some
content-based rationale.

1 paramount, including in the right-of-way. *See Edwards v. City of Coeur d’Alene*, 262 F.3d 856,
 2 863 (9th Cir. 2001) (finding without “doubt” that cities “ha[ve] a substantial interest in public
 3 safety” (citations omitted)); *see also Ruffino v. City of Puyallup*, 377 F. Supp. 3d 1205, 1216
 4 (W.D. Wash. 2019) (“It has long been recognized that the government ‘has a *strong* interest in
 5 ensuring the public safety and order [and] in promoting the free flow of traffic on public streets
 6 and sidewalks.’” (collecting cases)). And as I have previously and repeatedly emphasized, the
 7 City and the public both have a significant and legitimate interest in this piece of land: as one
 8 element of addressing the pervasive issue of homelessness, the City is clearing the land to build a
 9 large affordable housing development, in part to provide stable housing for formerly unhoused
 10 individuals. *See* Simmons Supp. Decl. ¶ 40; *Janosko v. City of Oakland*, No. 3:23-CV-00035-
 11 WHO, 2023 WL 3029256, at *4-5 (N.D. Cal. Apr. 19, 2023). That is a legitimate, substantial, and
 12 *significant* interest.

13 Blalock’s counsel pointed to *Martinez*, 2022 WL 1645549, at *8, where the court reasoned
 14 that the City of Fresno’s interest in safety was not substantial where it “offered no examples of
 15 specific health or safety concerns placed at risk during abatement activities either currently or in
 16 the past” to justify an ordinance prohibiting members of the public (including journalists) from
 17 entering a homeless encampment during its cleaning and closure. Here, though, the City has
 18 pointed to threats of explosives during this specific abatement, Simmons Supp. Decl. ¶ 26, an
 19 assault on a police officer at the site, *id.* ¶ 25, as well as numerous activities that threaten the
 20 safety of the public and City workers—including walking and standing in front of heavy
 21 machinery and coming dangerously close to falling materials, *see id.* ¶¶ 14-15, 20, 23; Exs. C, D,
 22 E. Additionally, while the City of Fresno practiced “near-weekly” sweeps of encampments just to
 23 remove individuals from encampments (not to clear the land for a legitimate purpose) and the
 24 purpose the ordinance was to prohibit all members of the public from entering encampments
 25 during any cleanup, *id.* at *3-5, here the City of Oakland is specifically closing the 1707
 26 Encampment to carry out its planned affordable housing development on the site. That interest is
 27 far more substantial than the vague and general “interest” and goals expressed in *Martinez*.

28 The restrictions are also narrowly tailored and do not burden more speech than necessary

1 to further the City’s legitimate interests. *See McCullen*, 573 U.S. at 486. In the first week of the
2 closure, the site became chaotic and dangerous, with threats of explosives and other violence. *See*
3 *Simmons Decl.* ¶¶ 7, 10, 12. The City says community members “claiming to be the ‘media’”
4 engaged in “obstructionist conduct” like interfering with and delaying work crews, including by
5 laying in front of heavy machinery. *Oppo.* 6:4-12 (citing *Simmons Decl.* ¶¶ 10, 12, 17); *see also*
6 *Simmons Supp. Decl.* ¶¶ 20, 23; Exs. C, D, E. Though the City initially allowed entry to most
7 people, subsequent threats of violence created serious safety concerns for its workers and
8 encampment residents, and the obstructionist conduct interfered with the City’s ability to make
9 progress clearing the encampment, so the City implemented restrictions to access. Those
10 restrictions limit, but do not prohibit, access to the encampment and to residents. *Cf. Martinez*,
11 1645549, at *11 (finding that ordinance prohibited journalists from observing, reporting on, and
12 documenting the City’s actions where they could not enter the encampments). Verified members
13 of the media—who need not be associated with a news outlet—may enter the encampment with a
14 City escort, for a least half an hour. *Walsh Decl.* ¶¶ 22-24, 32; *see also Simmons Supp. Decl.* ¶ 37
15 (noting “all escorted visits” so far “have lasted longer” than 30 minutes). The City is required to
16 have sufficient escorts to permit all interested journalists at least 30 minutes daily, and the escorts
17 do not limit the geographic area inside the encampment where the journalists may go. *See Dkt.*
18 *No. 29.* Permitting a few journalists at a time to enter with an escort is narrowly crafted to fit the
19 City’s interests of maintaining safety and discouraging obstruction activities while still allowing
20 reporters to document the closure and residents to share their views. Though Blalock’s counsel
21 pointed to an apparent alternative approach to the City’s current procedure, the government’s
22 choice “need not be the least restrictive of least intrusive means’ of serving [its] interest.”
23 *McCullen*, 573 U.S. at 486.

24 Accordingly, the restrictions do not burden more speech than necessary to further the
25 government’s interests. *See id.*

26 C. Ample Alternative Channels

27 There appear to be ample alternative channels for the press, which plaintiffs did not contest
28 at the hearing. *See Askins*, 899 F.3d 1035, 1044. The City held a press conference several blocks

1 away, apparently as an alternative to the one that the plaintiffs say was canceled on April 24.
 2 There are no allegations that residents are prohibited from talking to journalists outside the
 3 encampment, including at the designated area provided to journalists to watch the closure. *See*
 4 *Oppo*, 6:12-14 (noting the City has not prevented residents from leaving the site or talking to
 5 journalists or the public “outside the fenced perimeter). And there are no allegations that residents
 6 are prohibited from talking to journalists during the journalists’ escorted visits into the camps,
 7 during which journalists can photograph and document the activities up close. Finally, journalists
 8 can photograph and witness the activities from “the fence line . . . inside the restricted area.”
 9 *Simmons Supp. Decl.* ¶ 28; *cf. Martinez*, 2022 WL 1645549, at *11 (explaining that journalists
 10 were restricted to a “buffer zone” “so large as to . . . completely prevent [journalists] from being
 11 able to meaningfully see or record the City’s actions”). These provide ample alternative channels
 12 for the journalists to record the activities and for the impacted individuals to share their stories.

13 **D. Delegation of Overly Broad Licensing Discretion**

14 The process of verifying the journalists was clarified at the hearing and does not delegate
 15 overly broad licensing discretion to the City. Though the City’s PIO asks interested journalists for
 16 their name and news outlet, the City does not limit entry to journalists associated with news
 17 outlets. *Walsh Decl.* ¶ 32. Indeed, the City’s only requirements are that the journalists share their
 18 name and outlet (if any), agree to wear a reflective safety vest, stay in sight of the escort and 15
 19 feet from equipment during the visit, and not obstruct the activities. *Id.* ¶¶ 23-26. This does not
 20 give any official broad licensing discretion.

21 The plaintiffs’ main contentions are that there is only one person to verify journalists’
 22 credentials and that she is not always at the camp, so they have trouble accessing the site, as well
 23 as that the visits inside the camp are time limited. *See Prado Decl.* ¶¶ 12-13. But after the hearing
 24 I required the City to have at least two PIOs on site to verify the journalists and to have sufficient
 25 escorts so that all interested journalists would be able to visit the site for at least 30 minutes. [Dkt.
 26 No. 29]. These requirements address the plaintiffs’ concerns about this element.

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28 Together, the plaintiffs are unlikely to succeed on the merits of their First Amendment

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claims.

II. IRREPARABLE HARM AND BALANCE OF THE EQUITIES

The remaining *Winter* factors favor the City. The likelihood of irreparable harm is low— though undoubtedly it is more time-consuming for journalists to access the site, interview residents, and report on the closure, they are clearly still able to do so, and residents are still able to share their stories. Journalists may enter and report on the site directly with an escort and indeed, plaintiff Prado says she was able to do so. *See* Prado Decl. ¶ 13; Walsh Decl. ¶ 21. The residents, former residents, and community members are wholly unrestricted from talking to the media during their visits into the site and outside the site itself. Accordingly, the public can and will be informed about what is happening during the closure. For those reasons, the plaintiffs have not shown irreparable harm.

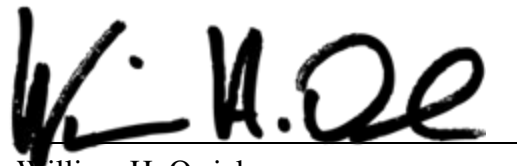
The balance of equities and public interest also tip toward the public. While free access to information is of critical importance to the public, as discussed here, there is low risk that the public’s access to information will be impeded. But the public also has a strong interest in the affordable housing planned for the site of the encampment, and its development risks serious delay without the reasonable restrictions imposed by the City. Accordingly, the balance of the equities tips toward the City and the public interest favors declining to enter the TRO.

CONCLUSION

For those reasons, the motion is DENIED.

IT IS SO ORDERED.

Dated: April 30, 2023


William H. Orrick
United States District Judge