



Northern
California

January 26, 2023

VIA ELECTRONIC MAIL

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RE: Letter of Support Concerning Cindy Chavez and Rights of Victims of State Violence

To San Jose Mayor and City Councilmembers:

The American Civil Liberties Union of Northern California (“ACLU”) writes in support of San Jose resident Cindy Chavez who is the mother of Jacob Dominguez. Jacob is a father of three who was killed by your police department officers in 2017 while unarmed. A federal excessive force trial began in 2022 against offending officer Sergeant Michael Pina which ultimately found Pina liable for excessive force against Jacob.

American Civil Liberties Union Foundation of Northern California

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Despite the deep loss and violence Ms. Chavez and her family have already experienced, the City sought and obtained a restraining order against Ms. Chavez based on her having made social media posts referencing her pain and the loss of a loved one not returning home.

As a City resident and victim of police violence, Cindy has the right to free speech including the right to name her son's killer. The City has shown lack of moral character in using the restraining order to label Ms. Chavez - a grieving mother and victim of violence - as a threat to the very officer who violently killed her son and who is an officer tasked with public safety and protection using public dollars. This sends a chilling message to victims of state violence and to their families that they may be labeled and treated as threats for using their voice, the legal system, and other platforms in furtherance of holding law enforcement and public officials accountable.

We join and amplify the community's December 2022 petition for the City of San Jose to drop the restraining order on Cindy, to stop the practice of further traumatizing families who lost loved ones to police violence, and to provide transparency from the City as to how the decision to file the restraining order was made, who authorized that decision, and cost to taxpayers, and the funding source of this civil action.

Furthermore, the restraining order violates Ms. Chavez's constitutional and civil rights. The City alleged that her social media posts along with evidence of incidents involving people *other* than Ms. Chavez were sufficient to create a credible threat against Sergeant Pina. The City alleged that their concern that Ms. Chavez will identify Sergeant Pina in photos to others who want to harm Pina is "heightened" since she knows what Pina looks like from the excessive force case.

First, comments relating to Ms. Chavez's pain from police violence and holding officers accountable are part of protected speech on matters of public concerns. Code of Civil Procedure Section 527.8, subdivision (c) precludes a court from issuing a restraining order that prohibits speech or other activities "that are constitutionally protected." As held in *Snyder v. Phelps* (2011) 562 U.S. 443, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to *special protection*," even if it is "inappropriate or controversial," "disagreeable or offensive," "insulting and even outrageous," "misguided, or even hurtful." *Id.* at pp. 452, 458 [emphasis added] The First Amendment affords "special protection" for speech on public concern. While matters of "public concern" is not precisely defined, "[s]peech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' or when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.'" *Snyder*, 562 U.S. at 453 (citations omitted) This certainly applies to speech about local law enforcement killing and/or using excessive force against members of the public and the consequences to the public.

The Supreme Court has repeatedly held that legal claims based on disagreement with speech must give way to “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include *vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials...*” (*New York Times v. Sullivan* (1964) 376 U.S. 254, 269-270[emphasis added]; see *Snyder*, 562 U.S. at p. 452.) “That is because ‘speech concerning public affairs is more than self-expression; it is the essence of self-government.’” *Snyder*, 562 U.S. at p. 452 (quoting *Garrison v. Louisiana* (1964) 379 U.S. 64, 74-75. Indeed, Courts have continuously reaffirmed the centrality of freedom of speech on public issues to the function of government and democracy itself. Ms. Chavez’s speech is about her son’s death by a public employee and resulting pain, litigation, and other consequences. Various coalitions, residents, and organizations have rallied around Ms. Chavez and called for accountability of Sergeant Pina and SJPD in general. The Justice for Jacob Dominguez Coalition was formed to monitor and publicize the litigation against Sergeant Pina and to garner community support for Ms. Chavez’s family.¹ Community-based coalitions have created legal assistance funds for Ms. Chavez and circulated a petition related to the current restraining order. Her speech is on topics of public concern.

Furthermore, Ms. Chavez’s social media comments cannot be construed to meet the high standards required to restrain her speech. A “credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose. CCP § 527.8(2). Note that under section 527.8, California case law interpreted the “credible threat” element to be coextensive with “true threats.” A true threat requires “ ‘a serious expression of an intent to commit an act of unlawful violence.’ ” *People v. Lowery* (2011) 52 Cal.4th 419, 427 (quoting *Virginia v. Black* (2003) 538 U.S. 343, 359.) The restraint must be narrowly tailored to the unprotected conduct or may be stricken as overbroad or vague. Prior restraints are disfavored to liberty and “it must appear with reasonable certainty that the wrongful acts will be continued or repeated” for a court to issue an injunction. *Id.* (quoting *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332-333). Cindy’s speech serves legitimate purposes of expressing her own pain and distress at losing her son to state violence. Any mother’s emotions for their slain son are legitimate when grieving the loss and re-living it while subjected to a public trial concerning the level of force used to kill your child. Furthermore, attested statements that Ms. Chavez “might try to photograph Officer Pina” does not meet the standard for prior restraint. The City should be repairing the trust between its law enforcement and victims of its violence; not prolonging the process and violating their rights further.

We again call on the City of San Jose to drop the restraining order against Ms. Chavez, to stop practices like this which further traumatizes families who lost loved ones to police violence, and to provide transparency from the City as to how the decision to file the restraining order was

¹Official Website: <https://www.justiceforjacobdominguez.org/>

made, who authorized that decision, and cost to taxpayers, and the funding source of this civil action.

Sincerely,



Allyssa Victory, Esq.

Staff Attorney
ACLU of Northern California