

Balancing the Line: Los Angeles Press Club v. Noem and Constitutional Limits on Protest Crowd Control

Description

The United States Court of Appeals for the Ninth Circuit recently released a ruling in *Los Angeles Press Club v. Noem*, a case that arose from protests in Southern California. The Ninth Circuit largely upheld protections for journalists, protesters, and legal observers in their decision. However, the Court ordered the trial court to narrow an existing injunction that was found to be too broad in its scope.

Summary of Facts

During the summer of 2025, protests erupted in Southern California in response to federal immigration raids. Protesters, legal observers, and journalists alleged that officers of the Department of Homeland Security (DHS), including agents from Immigration and Customs Enforcement, the Federal Protective Services, and Customs and Border Protection, used crowd control weapons indiscriminately against them. The Plaintiffs alleged that tear gas, rubber bullets, pepper balls, and other crowd control weapons were used against them. Multiple individuals, including members of the press and protesters, suffered significant physical injuries during these events, even when they were complying with police orders or were not near disruptive protest activity.

Procedural History

Several individual journalists, legal observers, protesters, and two press organizations filed suit against DHS and Secretary Kristi Noem in the federal district court. They alleged violations of their First Amendment rights, specifically the right to be free from retaliation for engaging in protected activities and the right of public access to protests and sought injunctive relief.

The district court found that the Plaintiffs faced ongoing risk of future harm and that the Defendants' conduct chilled First Amendment activity. Accordingly, the court issued a preliminary injunction to protect the rights of protesters, journalists, and legal observers, barring DHS and Secretary Noem from using excessive force against them.

The government appealed against the injunction, arguing that the Plaintiffs could not show a likelihood of future injury and were unlikely to prevail on the merits of their First Amendment claims. The Court of Appeals for the Ninth Circuit reviewed the district court's decision.

Ninth Circuit Opinion

On April 1, 2026, the Ninth Circuit issued an opinion, affirming in part the district court's findings but vacating the injunction as overbroad and remanding with instructions to narrow it.

The Ninth Circuit first reviewed whether the district court's granting of a preliminary injunction was proper. The Court explained that the framework governing the standard for preliminary injunction is laid out by the Supreme Court's ruling in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008). Under *Winter*, a plaintiff seeking a preliminary injunction must establish: (1) likelihood of success on the

merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the plaintiff's favor, and (4) an injunction is in the public interest.

The government claimed that the Plaintiffs did not have standing to seek prospective injunctive relief and that even if they did, they would not prevail on their First Amendment claims. Accordingly, the Court started by looking at whether the plaintiffs had standing. The Ninth Circuit cited the Supreme Court's decision that held standing "consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

The Court emphasized that plaintiffs who are looking for prospective injunctive relief can establish standing by showing they have continued to suffer ongoing, concrete harm. *Villa v. Maricopa County*, 865 F.3d 1224, 1229 (9th Cir. 2017). Under past Supreme Court precedent, "a chilling of the exercise of First Amendment rights is, itself, a constitutionally sufficient injury." *Libertarian Party of L.A. Cnty. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013). In other words, changes to First Amendment activities show ongoing, concrete harm when the changes were adopted from fear of government punishment.

Here, multiple plaintiffs were injured due to the government's conduct. Further, several plaintiffs swore under oath that their injuries have caused them to either wear restrictive gear for protection or stand further away from future protests. In doing so, the journalists and reporters would not be able to cover the news as well, and it would be detrimental to their First Amendment activities. Therefore, the Court found that the Plaintiffs had standing.

The Ninth Circuit also cited a past decision that held, "In a suit with multiple plaintiffs, generally only one plaintiff need have standing for the suit to proceed." *Mecinas v. Hobbs*, 30 F.4th 890, 897 (9th Cir. 2022). Since at least one of their members would have standing to sue individually, the Court also found that both organizations had standing to sue on behalf of their members. Further, both organizations were seeking to protect their First Amendment rights, which are germane to their purpose as organizations for news and the press.

Turning to whether the Plaintiffs were likely to prevail on their First Amendment claims, the Court examined whether there was evidence supporting the claims that "DHS intentionally targeted plaintiffs for their First Amendment activity." Since there is rarely direct evidence available, the Plaintiffs could rely on circumstantial evidence.

Here, the record showed evidence that the defendants deployed crowd control weapons into crowds that were either already breaking up or attempting to comply with orders to break up. Moreover, the record reflected multiple instances where the Defendants were targeting journalists and legal, peaceful observers who stood further away from the protesters and bad actors.

Therefore, the Court agreed with the district court that the record supported the Plaintiffs' First Amendment retaliation claims, concluding that the district court did not abuse its discretion in finding that the Plaintiffs were likely to succeed on the merits.

The Court then looked at whether there was irreparable harm. Here, some Plaintiffs sustained physical injuries due to the government's actions with some happening in multiple instances at different protests. As such, the Court found that this had a chilling effect on some of their ability to exercise their First Amendment Rights. In accordance with *Klein v. City of San Clemente*, 584 F.3d 1196 (9th Cir. 2009),

the Court concluded that this constituted irreparable injury, which was sufficient to grant injunctive relief.

The Court also found that the last two *Winter* factors weighed in favor of the Plaintiffs. The Court found that the challenged tactics threatened the core of First Amendment principles of reporting on, observing, and participating in protests that concern government conduct. Therefore, the Ninth Circuit agreed with the district court that the balance of equities and the public interest favored injunctive relief.

Although the Court upheld the district court's analysis under the *Winter* test, it concluded that the scope of the injunction was overly broad. A preliminary injunction cannot be broader than necessary to afford "complete relief to the plaintiffs before the court." *Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025). Here, the court found that several provisions of the injunction applied to non-parties of the case and were broader than necessary. Therefore, the Ninth Circuit vacated the district court's preliminary injunction and remanded it to district court for further proceedings that were consistent with their opinion.

Takeaways

Los Angeles Press Club v. Noem emphasizes that indiscriminate crowd-control tactics that hit clearly identified journalists, legal observers, and peaceful protesters risk violating the First Amendment and can lead to court orders that limit law enforcement operations. Officers must give clear, audible orders for dispersal, provide time to comply, and base any use of force on individualized threat assessments rather than the fact that someone is recording or reporting. Agencies should reinforce training and documentation so they can later demonstrate that any limits placed on protesters or the press were focused solely on actual safety threats and carried out in a way that respects constitutional protections.

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