EXHIBIT 31

(Declaration of Katherine Fallow)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CABLE NEWS NETWORK, INC., MS NOW CABLE, LLC, POLITICO LLC, ET AL., *Plaintiffs*, *v.* DONALD J. TRUMP, ET AL., *Defendants*.	Case No. 1:26-cv-03287-TJK

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Nearly three weeks ago, President Donald J. Trump announced that he was banning journalists with three news organizations—CNN, MS NOW, and POLITICO—from the White House because, in his view, their reporting about him and his administration is too "negative." At every turn since, Defendants have sought to justify the President's "ban on the free press" with a series of shifting rationales, lurching from unarticulated standards of professionalism to nebulous and pretextual concerns about protecting national security. But all the while, the President himself has continued telling anyone who will listen precisely what this ban is really about, most recently complaining at length in an interview with Time magazine that he banned Plaintiffs because he feels that he should not "be forced to bear" what he considers "constantly bad stories," as he "won the election" and has "done great things." Boutrous Supp. Decl., Ex. N at 6–7. The President's viewpoint-driven ban is a blatantly unconstitutional attack on a free and independent press.

This Court should convert the temporary restraining order into a preliminary injunction under the Due Process Clause. Defendants submit no additional evidence and do little more than preserve their arguments that the D.C. Circuit took a wrong turn in *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977), half a century ago and again when reaffirming *Sherrill* decades later in *Karem v. Trump*, 960 F.3d 656 (D.C. Cir. 2020). Defendants make no serious attempt to square the ban with this well-established precedent and the demands of due process: advance notice of prohibited conduct based on clear standards, fair notice of the potential sanction, and an opportunity to be heard before a sanction is imposed.

This Court also should hold that Plaintiffs are likely to prevail under the First Amendment. Even while the President has been consistent and candid about his true motivations, Defendants have tried to manufacture a show of post-deprivation process for purposes of this lawsuit, claiming that routine reporting violated standards of professionalism and threatened national security. No

amount of process could produce a ban that complies with the First Amendment because the ban retaliates against Plaintiffs for protected speech and unconstitutionally restricts their access to a nonpublic forum through unreasonable means to achieve viewpoint-discriminatory ends. Reaching those claims would forestall further attempts by Defendants to circumvent this Court's ruling with sham process and made-for-litigation pretextual rationales.

Defendants otherwise say nothing new—and submit no new evidence—that should change this Court's conclusions that the ban will irreparably injure Plaintiffs and that the public interest favors immediate relief. Violations of constitutional rights are still irreparable. The ban still would substantially interfere with Plaintiffs' ability to cover the President and his administration—and thus their ability to fulfill their constitutionally protected role in our democracy. The public interest still favors stopping constitutional violations. And Defendants' post hoc national-security justification is still unsupported, pretextual, and undercut by the President's own public statements. The Court should preliminarily enjoin Defendants before the temporary restraining order expires.

ARGUMENT

I. Plaintiffs are likely to establish that the ban is unconstitutional.

A. The ban violates the Due Process Clause.

This Court correctly concluded that Plaintiffs are likely to succeed on their due process claim for three independent reasons: Defendants failed to provide (1) fair notice of the standards they would use to justify Plaintiffs' ban from the White House, (2) fair notice of the magnitude of the sanction they imposed, and (3) notice and an opportunity to be heard *before* revocation of Plaintiffs' access. ECF No. 24 at 2–3. Defendants make little effort to engage with this Court's reasons for issuing a temporary restraining order. Instead, they criticize binding D.C. Circuit precedent. They offer up vague and meaningless standards of conduct with no serious attempt to argue that those standards were articulated to Plaintiffs in advance. They fail to dispute (and thus

concede) that they provided no notice of the magnitude of the sanction for violating those supposed standards. And they barely attempt to justify the conceded lack of pre-deprivation process.

As a preliminary matter, Defendants once again insist (at 15–16) that the D.C. Circuit was wrong to hold in *Sherrill* and again in *Karem* that the Due Process Clause protects a journalist's interest in White House access. But this Court recognized in granting the temporary restraining order that "this Court is bound by D.C. Circuit precedent, full stop." ECF No. 24 at 3.

In challenging *Sherrill*, Defendants also misunderstand basic principles of due process. They repeat (at 1) their mantra that "access to the White House is a privilege—not a right." Yet the question posed by the Due Process Clause "cannot be answered by an argument" that "benefits are a 'privilege' and not a 'right.'" *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (some quotation marks omitted). Whether or not the Constitution by its own force creates a right to access the White House, the Supreme Court has made clear that, "[h]aving chosen to extend" such a right "to people of [Plaintiffs'] class generally," the government "may not withdraw that right" without providing "fundamentally fair procedures." *Goss v. Lopez*, 419 U.S. 565, 574 (1975). The D.C. Circuit correctly recognized the important First Amendment liberty interests implicated by arbitrarily depriving journalists of access to the White House to cover newsworthy events like press conferences, bill signings, and meetings with world leaders. *Sherrill*, 569 F.2d at 129–31; *see id.* at 131 n.22 (suggesting that reporters also have a property interest in press credentials). Even if this Court were not bound by those decisions, there would be no reason to question *Sherrill* and *Karem*, which make clear that the President's "ban on the free press" deprived Plaintiffs of due process for the following three independent reasons.

First, Defendants offer no reason to question this Court's determination that "the record is bereft of any relevant 'formally articulated standards' in place *before* any of the conduct for which

Defendants revoked their hard passes." ECF No. 24 at 3 (quoting *Karem*, 960 F.3d at 665). In opposing Plaintiffs' motion for a temporary restraining order, Defendants suggested that they had provided notice of the governing standards in post-litigation letters to Plaintiffs. ECF No. 16 at 13. But they now concede (at 16) that *Karem* establishes that due process requires advance "knowledge of the substantive standards and the consequences of violation before a person engages in conduct for which they are punished." The latest post hoc justifications that Defendants surface in litigation—the President's longstanding practice of disparaging press coverage he dislikes as "fake news" and statutory prohibitions on government employees' disclosure of classified information—come nowhere near satisfying the Due Process Clause's command that "explicit and meaningful standard[s]" be "formally articulated" in advance. *Karem*, 960 F.3d at 666 (quoting *Sherrill*, 569 F.2d at 130–31).

To begin with, Defendants suggest (at 16) that the President's public criticism of "Plaintiffs as fake news" put them on notice of his "expectations of the press." But the President's personal view that reporting is "fake"—because, as he has explained, it is overly "negative" towards him or "one-sided," ECF No. 32-4 at 26:47–28:00—"fails to provide a person of ordinary intelligence fair notice of what is prohibited" and is "so standardless that it authorizes or encourages seriously discriminatory enforcement." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (quotation marks omitted). That empty standard also facially discriminates based on the content and perceived editorial viewpoint of Plaintiffs' reporting. Because "content-based criteria for press pass issuance are prohibited under the First Amendment," they cannot satisfy the Due Process Clause's requirement of "meaningful standard[s]." *Sherrill*, 569 F.2d at 129–31.

Defendants also assert (at 16–17) that Plaintiffs were on notice that the President has criticized "'[l]eaking classified information'" and that 18 U.S.C. § 798 prohibits "'publish[ing]

. . . classified information.'" But there is no "precedent for applying [such] laws to reporters." ECF No. 24 at 4 n.2. The First Amendment protects news organizations that publish stories on important matters affecting national security. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam). Because "[o]nly a free and unrestrained press can effectively expose deception in government," it has always been lawful and expected for journalists to seek out and publish non-public information about the government. *Id.* at 717 (Black, J., concurring).

Defendants also have no evidence that Plaintiffs threatened the national security. In granting the temporary restraining order, this Court correctly noted that the specific stories Defendants identified as purported national-security risks are "routine" and that Defendants had provided no "factual support . . . explaining how any of the reporting [Defendants] identified in their letters to Plaintiffs damaged the national security" or supporting "Defendants' contention that the revocation of Plaintiffs' hard passes will in fact protect national security." ECF No. 24 at 4, 6–7. Defendants had an opportunity to supplement the record in opposing Plaintiffs' motion for a preliminary injunction. They submitted *no* additional factual support whatsoever—because none exists. Now, Defendants even disavow (at 22) any attempt to "show that [Plaintiffs] actually published classified information."

In any event, the statute Defendants invoke, § 798, plainly would not reach Plaintiffs' conduct in this case. Defendants have never suggested that any of Plaintiffs' journalists "leaked" classified information—*i.e.*, that they violated the terms of a security clearance by disclosing classified information. Even worse, Defendants neglect to mention that § 798 prohibits publishing only four specific categories of information relating to cryptography and communication intelligence: a government "code, cipher, or cryptographic system"; the design, use, repair, etc. of such a system; information concerning "communication intelligence activities"; and information

knowingly "obtained by the processes of communication intelligence." 18 U.S.C. § 798(a). Statutory standards that prohibit government employees from disclosing specific categories of classified information could not have possibly put Plaintiffs on notice that Defendants would ban them for conduct that no one even argues involves classified information, much less the categories enumerated in § 798. *See Karem*, 960 F.3d at 665. Even if the First Amendment permitted sanctioning reporters for the content of their reporting, Defendants' attempt to justify the President's "ban on the free press" under § 798 transgresses the Due Process Clause because the statute's text gives "no reason even to suspect that conduct clearly outside [its] scope" would be covered. *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964).

Second, Defendants do not address this Court's conclusion that "nothing put Plaintiffs on notice of the magnitude of the sanction Defendants imposed." ECF No. 24 at 3. The D.C. Circuit held in *Karem* that the plaintiff lacked fair notice that a month-long suspension—"an eon in today's news business"—could be imposed for his alleged violation of the White House's purported professionalism expectations. 960 F.3d at 665 (citing *BMW of N. Am. v. Gore*, 517 U.S. 559, 574 (1996)). Here, Plaintiffs likewise lacked fair notice that Defendants might impose a total and indefinite ban from the White House on all journalists working for a news outlet—a far more serious sanction—for Plaintiffs' supposed transgressions. Because Defendants never argue that Plaintiffs had fair notice of the magnitude of the potential sanction, this Court "may treat the unaddressed arguments as conceded." *Wannall v. Honeywell, Inc.*, 775 F.3d 425, 428 (D.C. Cir. 2014). The undisputed lack of "notice of 'the magnitude of the sanction'" alone supports a preliminary injunction. *Karem*, 960 F.3d at 665.

Third, Defendants provide no reason for this Court to deviate from its earlier conclusion that due process guaranteed Plaintiffs an opportunity to be heard *before* Defendants implemented

the ban. ECF No. 24 at 3–4. Defendants cite (at 17) *Zevallos v. Obama*, 793 F.3d 106 (D.C. Cir. 2015), for the proposition that due process tolerates post-deprivation process in certain circumstances. But *Zevallos* contemplates "extraordinary" cases where the government "must act quickly, or where it would be impractical to provide predeprivation process"—like a seizure aimed at property that could be destroyed or concealed. *Id.* at 116 (quotation marks omitted). Although Defendants assert (at 17) that "[p]rotecting sensitive information" justifies an extraordinary departure from the typical requirements of due process, they never explain why pre-deprivation process would be impracticable here. This Court already held that "nothing in the record suggests the need for such urgency here," particularly when (as this Court observed and Defendants do not dispute) Defendants' post hoc letters targeted "routine" reporting. ECF No. 24 at 4. Defendants did not even attempt to supplement the record to demonstrate otherwise now. With good reason: Defendants, among other things, renewed hard passes for Betsy Klein and Jake Traylor *after* they published supposedly offending articles. Mot. 25–26.

Defendants try to salvage all these failures by insisting (at 17) that "Plaintiffs declined to submit any response" to their post-deprivation letters. That is not true: Plaintiffs responded to those letters in correspondence to Defendants' counsel on September 25, which Plaintiffs attached as an exhibit to their motion for a preliminary injunction. ECF No. 32-11. Regardless, manufacturing an after-the-fact process does not cure the violation of due process, *Karem*, 960 F.3d at 666–67, or eliminate the irreparable harm, *id.* at 667–68. Plaintiffs had no obligation to dignify the sham process by defending their articles against pretextual accusations when every public statement confirms the President's "'unalterably closed mind'" on banning Plaintiffs until he receives coverage he deems sufficiently positive. *Air Transp. Ass'n of Am., Inc. v. Nat'l Mediation Bd.*, 663 F.3d 476, 487 (D.C. Cir. 2011). After all, the Due Process Clause "preserves

both the appearance and *reality* of fairness." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (emphasis added).

This Court's conclusion that the ban violates the Due Process Clause was correct. Defendants offered no new evidence or argument that calls this Court's conclusion into question. The Court should convert the temporary restraining order into a preliminary injunction.

B. The ban retaliates against Plaintiffs for newsgathering and reporting protected by the First Amendment.

This Court should go beyond due process and enjoin the ban as textbook First Amendment retaliation. The record leaves no doubt that Plaintiffs are likely to establish all three elements of their claim: (1) Plaintiffs engaged in protected speech; (2) the ban is a severe sanction that chills speech; and (3) the ban was, in the President's words, the "result of" Plaintiffs' speech. ECF No. 32-3; *see Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016). Defendants do not dispute that Plaintiffs engaged in protected speech—after all, Plaintiffs' reporting on the President and his administration's activities "in the conduct of 'governmental affairs'" is "entitled to the strongest form of First Amendment protection." *United States v. Trump*, 88 F.4th 990, 1022 (D.C. Cir. 2023). Instead, Defendants argue that the ban is too trivial to count as an adverse action and that the President had an independent motive for banning Plaintiffs from the White House. Neither contention has any support in precedent or the record.

First, Defendants argue (at 13–14) that the ban is not a sufficiently adverse action to support a retaliation claim. But the President himself expressed hope that his extraordinary and unprecedented ban (which ousted 78 credentialed journalists and three major news organizations from the White House) will force journalists to conform the content of their news coverage to his liking—to "straighten themselves out." ECF No. 32-4 at 53:38–53:58. And he threatened to ban other news outlets in a transparent attempt to alter their reporting, too. *Id.* at 26:06–26:28, 55:35–

55:46; *see* ECF No. 32-3. The fact that the President intended the ban to chill speech is powerful evidence that it does. If "'even an act of retaliation as trivial as failing to hold a birthday party for a public employee'" can support a First Amendment retaliation claim, *Tao v. Freeh*, 27 F.3d 635, 639 (D.C. Cir. 1994), the much more offensive act of banning Plaintiffs from the White House certainly is "sufficient to deter a person of ordinary firmness in plaintiff's position" from engaging in speech the government disfavors, *Aref*, 833 F.3d at 258; *see Nat'l Pub. Radio, Inc. v. Trump*, 827 F. Supp. 3d 48, 87–88 (D.D.C. 2026) (executive order barring two media organizations from receiving federal funding "in retaliation for saying things that [the President] does not like" violated the First Amendment and was "particularly perilous because the targeted speakers are members of the press, which receives special solicitude under the First Amendment").

Defendants also have not contested Plaintiffs' evidence of how serious the loss of White House access is for journalists whose job is to cover the President—journalists who would miss newsworthy events, be unable to ask questions at press conferences and during other interactions with White House officials, and accordingly would face "serious impediments to doing their jobs and producing valuable reporting as members of the press as a result of the ban." Compl. ¶ 55; *see, e.g.*, Gardner Decl. ¶¶ 4–5, 7–8; Klein Decl. ¶¶ 5, 8, 9; Reddy Decl. ¶¶ 36, 38. Plaintiffs' declarations confirm that, "without access to the [White House]," reporters "effectively cannot perform the duties of a White House correspondent because [they] lack[ ] the ability to observe events firsthand and to ask questions of White House officials." *Karem v. Trump*, 404 F. Supp. 3d 203, 216 (D.D.C. 2019). An indefinite ban would objectively deter a reporter and her organization when the loss of White House access for just a month is already an "eon in today's news business." *Karem*, 960 F.3d at 665. These "special burdens on [Plaintiffs'] newsgathering activities" amply support a retaliation claim. *Media Matters for Am. v. Paxton*, 138 F.4th 563, 581

(D.C. Cir. 2025).

Defendants cannot defeat Plaintiffs' retaliation claim by observing (at 14) that Plaintiffs have not changed their coverage to meet the President's demands. The applicable standard is an objective one that protects speakers who do not bow to pressure by looking to the natural consequences of the retaliatory act. *See, e.g.*, *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) (rejecting "a subjective standard [that] would expose public officials to liability in some cases, but not in others, for the very same conduct, depending upon the plaintiff's will to fight"); *Am. Acad. of Pediatrics v. HHS*, 816 F. Supp. 3d 27, 53 (D.D.C. 2026) (explaining that a subjective standard would "strip constitutional rights away from the most principled speakers"). What matters is that the ban would deter journalists of "ordinary firmness"—just as the President expressly said he intended. *Aref*, 833 F.3d at 258.

Historical practice underscores that banning news organizations from the White House is a materially adverse action. For at least half a century, the White House grounds generally have been "open to all bona fide Washington-based journalists." *Sherrill*, 569 F.2d at 129. Individual reporters and their organizations have relied on that tradition of access to report on Presidents of both parties—building careers and businesses while providing invaluable information to the American public. *See, e.g.*, Gardner Decl. ¶¶ 2–5, 7–8; Vigilante Decl. ¶¶ 5–7, 9–12, 15. Given that reliance, interfering with journalists' and news outlets' reasonable expectations of continued access to the White House and their ability to do their jobs is a far greater deterrent than, for example, declining to invite a reporter to one private, off-the-record conversation, as Defendants say (at 3) President Theodore Roosevelt did. As the Reporters Committee for Freedom of the Press and 77 media organizations explain, banning Plaintiffs has an even more severe chilling effect on the press when viewed against the backdrop of a long history of viewpoint-neutral access

to the White House. ECF No. 40-1 at 2–7.

Defendants' reliance (at 13–14) on *Baltimore Sun Co. v. Ehrlich*, 437 F.3d 410 (4th Cir. 2006), is misplaced. There, the Fourth Circuit held that a reporter of ordinary firmness would not be "chilled by a politician's refusal to comment or answer questions on account of the reporter's previous reporting." *Id.* at 418–19. Defendants claim (at 14) that the cold shoulder is "stronger medicine" than the White House ban at issue here. But declining to speak to a particular reporter is "pervasive, mundane, and universal in government operations" and does not create a chilling effect "any different from or greater than that experienced by . . . all reporters in their everyday journalistic activities." 437 F.3d at 416. Here, by contrast, the uncontroverted record evidence is that journalists "effectively cannot perform the duties of a White House correspondent" because of the ban. *Karem*, 404 F. Supp. 3d at 216; *see supra*, at 9. Refusing to call on a particular reporter at a press conference pales in comparison to barring not just that reporter but every member of an entire news organization from their workplace—preventing them from attending press conferences at all and fundamentally impairing their ability to do their jobs. A government official may share his views "freely and criticize particular beliefs," but may not "use the power of the State to punish or suppress disfavored expression." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 188 (2024).

Second, Defendants cannot credibly argue (at 14) that the but-for cause of the ban was that "the President determined that Plaintiffs have failed to maintain minimum professional journalistic standards by publishing classified and national security information." Defendants have not come forward with a shred of evidence supporting that defense. Defendants' post hoc litigation-driven justifications do not overcome what the President himself has repeatedly said both before and after the ban. The President said he was banning Plaintiffs "as a result of their . . . reporting" because, in his view, it is "one-sided" and "purposely negative." ECF Nos. 32-3, 32-4 at 26:47–28:00,

38:25–38:51; *see* ECF No. 24 at 6. And the President has continued to admit that he imposed the ban based on the content and perceived viewpoints of Plaintiffs' coverage, *without even mentioning national security as a justification*. *E.g.*, ECF Nos. 32-12 to 32-14. As recently as September 28, the President told Time magazine that he restricted Plaintiffs' White House access because CNN and "MSDNC" are "fake news"—*i.e.*, he "ha[dn't] had a good story on CNN for years." Ex. N at 6. The President's words prove that the purported "negativ[ity]" of Plaintiffs' reporting caused the ban.

Defendants cannot connect the dots between the President's ban and the stories singled out by the White House Press Office's letters. As this Court correctly concluded in issuing the temporary restraining order, "nothing in the record that predates this suit suggests that the revocation of Plaintiffs' hard passes was motivated by national security concerns." ECF No. 24 at 6. This Court observed that "Defendants offer no declarations or other support—classified or unclassified—explaining how any of the reporting they identified in their letters to Plaintiffs damaged the national security." *Id.* at 6–7. They still do not. Defendants stick with the same two declarations from "senior officials in the Department of Defense who have no direct knowledge of how reporters operate in the White House, or about any of the facts at issue here." *Id.* at 7; *see* Opp. 21–22. They offer no evidence showing how the ban could possibly advance their purported interests when "the reporters who authored the stories Defendants identify in their letters *did not even hold hard passes*." ECF No. 24 at 7. And they still fail to explain why, if Plaintiffs' reporting supposedly damaged national security, the White House renewed the hard passes of Betsy Klein and Jake Traylor *after* they published supposedly damaging articles. Mot. 25–26.

Since the hearing on the temporary restraining order, Defendants have only reinforced that the reason for the ban was Plaintiffs' viewpoint, not national security. They filed the President's

September 23 Truth Social post attacking an MS NOW story reporting on discussions about the possibility of adding the President's name to Ford's Theater, ECF No. 23-1, arguing that this routine article "support[ed] Defendants' conclusions that Plaintiffs have exhibited behavior in violation of the standards of professionalism and decorum expected of those given access to the White House Complex," ECF No. 23 at 1. They did not even suggest that the article had any connection to national security. And President Trump offered public explanations of his ban that omit any mention of national security and focus only on his disdain for the content of Plaintiffs' news coverage. ECF Nos. 32-12 to 32-14; Ex. N. This Court need not "exhibit a naiveté from which ordinary citizens are free." *Trump v. Cook*, 609 U.S. 528, 547 (2026) (quoting *Dep't of Commerce v. New York*, 588 U.S. 752, 785 (2019)).

Unable to defeat causation, Defendants retreat to suggesting (at 14) that Plaintiffs bear the burden of "showing that the Government would not have taken adverse action against them, but-for their protected speech." But in a First Amendment retaliation case, plaintiffs need show only that their protected speech was a "substantial or motivating factor in prompting the retaliation." *LeFande v. District of Columbia*, 841 F.3d 485, 494 (D.C. Cir. 2016). Defendants do not—and could not, given the President's extensive public comments to the contrary—contest that Plaintiffs' protected speech was a substantial or motivating factor behind the ban. *See supra*, at 11–12. Because Defendants rely on *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977), Defendants are the ones with the burden to "show[ ] by a preponderance of the evidence that it would have reached the same decision . . . even in the absence of the protected conduct." *Id.* at 287; *accord LeFande*, 841 F.3d at 494 (a retaliation plaintiff will prevail if "the government" is "unable to show that it would have reached the same decision absent the protected speech").

Defendants also mischaracterize (at 14) the *Mt. Healthy* defense as something like a rational-basis standard, arguing that, so long as there is "an adequate, alternative ground to support the actions here," then Plaintiffs' retaliation claim fails. *Mt. Healthy* and its progeny do not insulate the government from a retaliation claim so long as some other, non-speech-related justification *could have* justified its action. To the contrary, *Mt. Healthy* requires the government to prove "by a preponderance of the evidence" that it in fact "*would* have reached the same decision" absent the protected conduct. 429 U.S. at 287 (emphasis added). In other words, Defendants must come forward with evidence that proves that their so-called professional and national-security justifications—not the President's dislike of Plaintiffs' journalism—caused the ban. "Government justifications for interfering with First Amendment rights must be genuine, not hypothesized or invented post hoc in response to litigation." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022) (quotation marks and brackets omitted).

Defendants' invocation (at 14) of *TikTok Inc. v. Garland*, 604 U.S. 56 (2025), does not unsettle this fundamental First Amendment principle. In *TikTok*, the plaintiffs challenged *an Act of Congress* that could have been justified based on either content-neutral or content-based grounds. *Id.* at 78–79. Applying *Mt. Healthy* to Congress would make no sense because the Supreme Court has rejected the "fictional premise" that Congress, as a collective decisionmaker, has a "unified" intention with respect to the laws that it enacts. *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 608 U.S. 608, 621 (2026) (citing Kenneth Shepsle, *Congress Is a "They," Not an "It,"* 12 Int'l Rev. L. & Econ. 239, 241–44 (1992)). *TikTok* does not affect the standard that applies when an individual government official retaliates against someone for speech.

In any case, even if this Court were to credit the explanation for the ban that Defendants manufactured in response to this litigation, Plaintiffs are still likely to prevail on their retaliation

claim. National security, no matter how weighty an interest, does not create a "talismanic immunity from constitutional limitations." *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). The First Amendment fully protects speech about matters of national security and other newsworthy activities of the President and his administration. *See New York Times Co. v. United States*, 403 U.S. at 714. As a result, punishing Plaintiffs because of their supposed failure to meet the President's bespoke "standards of professional conduct" for journalists and their publication of what Defendants view as "misinformation . . . relating to national security" is simply retaliation for protected speech by another name. Mot. 31–32. It would be just as unconstitutional as punishing Plaintiffs because the President views their reporting as too negative.

C. The ban unconstitutionally restricts access to a nonpublic forum.

Viewpoint discrimination is "'poison'" that is "uniquely harmful to a free and democratic society." *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1141 (D.C. Cir. 2023) (first quote); *Vullo*, 602 U.S. at 187 (second quote). Defendants do not dispute that they engaged in viewpoint discrimination in banning Plaintiffs from the White House. Nor could they: The record leaves no doubt that President Trump expressly targeted Plaintiffs based on "particular views" expressed in their reporting. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995); *see* Mot. 33–34. Neither do Defendants dispute that the President has claimed "standardless discretion" to deny access to the White House—a per se unreasonable restriction on access to a nonpublic forum. *Mahoney v. U.S. Capitol Police Bd.*, — F.4th —, 2026 WL 2836881, at *6 (D.C. Cir. Sept. 22, 2026). Defendants instead argue that (1) the D.C. Circuit erred in holding that the White House is a nonpublic forum where viewpoint discrimination is impermissible and (2) upholding professionalism and safeguarding national security are "compelling" reasons that can justify viewpoint discrimination. Both arguments are meritless.

First, Defendants make no headway by arguing (at 8) that the D.C. Circuit "wrongly

decided" that the White House press facilities are a nonpublic forum that must be free from viewpoint discrimination. D.C. Circuit precedent is binding—and correct. A nonpublic forum is public property that the government opens to speech for some. *Ateba v. Leavitt*, 133 F.4th 114, 121–22 (D.C. Cir. 2025) (citing *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 679 (1998)). That perfectly describes the White House press areas, which allow "'selective access for individual speakers.'" *Id.* at 122. And when the government grants some speakers access to a nonpublic forum or other programs, it may not deny access to others based on viewpoint. *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l*, 570 U.S. 205, 213–14 (2013); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 586–87 (1998). That is why the D.C. Circuit had "no trouble" concluding that the White House press areas are a nonpublic forum where viewpoint discrimination is impermissible. *Ateba*, 133 F.4th at 123. That decision controls here.

It is mystifying that Defendants attempt (at 8–10) to undercut *Ateba* with the nonprecedential stay decision in *Associated Press v. Budowich*, 2025 WL 1649265 (D.C. Cir. June 6, 2025). The stay ruling in *AP* reaffirmed that *Ateba* stands "for the proposition that White House spaces generally open to the press are nonpublic fora" and that, "[w]hen the White House opens its facilities to the press generally," the government "cannot exclude journalists based on viewpoint." *Id.* at *6 (Rao, J., concurring). Last month, Judge Rao—this time writing for a *precedential* majority—repeated that "it would be unreasonable to control access to White House press facilities through standardless discretion." *Mahoney*, 2026 WL 2836881, at *6 (citing *Ateba*, 133 F.4th at 125). Defendants may see (at 10) "no principled way of easily distinguishing between rooms that are a nonpublic forum and those that are no forum at all." But both the principle that the First Amendment forbids viewpoint discrimination once the government opens public property to speakers and the precedent applying that principle to the White House are firmly established.

Defendants also miss the point in contending (at 7–8) that the press has no freestanding First Amendment right to access the White House. They rely on an inapposite dictum in *Zemel v. Rusk*, 381 U.S. 1 (1965), that citizens have no First Amendment right of "unrestrained" access to the White House. *Id.* at 17. But as cases that have repeated the *Zemel* dictum make clear, there can be "no discrimination in terms of content" once the government opens up a public facility to some speakers. *Pell v. Procunier*, 417 U.S. 817, 826 (1974); *see Houchins v. KQED, Inc.*, 438 U.S. 1, 16 (1978) (Stewart, J., concurring) (explaining that the Constitution "assure[s] the public and the press equal access once government has opened its doors"). No case says that the First Amendment tolerates viewpoint discrimination when the government invites the press into a public building. Regardless of whether the government must "open such spaces for any speech at all, the government creates a 'nonpublic forum' when it provides selective access for individual speakers." *Ateba*, 133 F.4th at 122 (some quotation marks omitted).

Second, Defendants press (at 10–11) the fallback argument that they have compelling reasons for withholding access to the White House based on viewpoint. But a "finding of viewpoint bias end[s] the matter" and establishes a per se First Amendment violation. *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019). As the Supreme Court has explained, "[c]ontrol over access to a nonpublic forum" can be appropriate only when the restrictions "are reasonable in light of the purpose served by the forum and are viewpoint neutral." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985); *see Minn. Voters All. v. Mansky*, 585 U.S. 1, 12 (2018) (speech restrictions in a nonpublic forum must not be "an effort to suppress expression merely because public officials oppose the speaker's view"). No reason—compelling or not—can justify viewpoint discrimination. Here, Plaintiffs are likely to prevail because, as Defendants do not even contest, the ban discriminates based on viewpoint and unreasonably wields "standardless

discretion" to deny access. *Mahoney*, 2026 WL 2836881, at *6; *see* Mot. 33–37.

Even if compelling reasons could justify viewpoint discrimination, Defendants' offering (at 11) of "minimum standards of professionalism" falls far short. "[U]narticulated standards of professionalism" do not even provide fair notice, *Karem*, 960 F.3d at 666, much less a compelling interest. As the Supreme Court has made clear, an interest must be "sufficiently coherent" and capable of "measure[ment]" to count as compelling. *Students for Fair Admission, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 214 (2023). Unbridled discretion in the hands of the President and his staff to determine what is and is not "professional" on the part of a journalist or news outlet is hardly a "sensible basis for distinguishing what may come in from what must stay out." *Mansky*, 585 U.S. at 16. And to the extent that Defendants' "standards of professionalism" (Opp. 20) have any discernible content, the record shows that the President's yardstick is that journalists should avoid "negative" coverage that does not sufficiently praise his administration's accomplishments. Ex. N at 6–8. Defendants' effort to police editorial viewpoint under the guise of upholding professionalism is not compelling—it is an affront to the First Amendment.

Nor does "national security," which Defendants now relegate (at 12–13) to second billing, justify their viewpoint discrimination. The First Amendment protects reporting on national security. *See supra*, at 5. The ban also is not narrowly tailored to any supposed risk to national security because Defendants seek to exclude all reporters at CNN, MS NOW, and POLITICO based on letters singling out articles that have no apparent connection to national security and were written by journalists without White House hard passes. ECF No. 24 at 6–7; *see Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 804 (2011). As this Court recognized when granting the temporary restraining order, "nothing in the record" suggests that Defendants' national-security concerns are genuine—or that banning Plaintiffs advanced an interest in protecting national

security at all. ECF No. 24 at 6. And developments, including the President's own repeated statements, have left no doubt that the purported national-security justification was "invented post hoc in response to litigation." *Kennedy*, 597 U.S. at 543 n.8. Defendants' reliance on national security is a charade.

II. Plaintiffs will suffer irreparable injury absent a preliminary injunction.

Defendants' response on the second *Winter* factor—irreparable injury—is incomplete and unpersuasive. They ignore the basis for the temporary restraining order. They discount the serious harms that Plaintiffs suffered before entry of that order and would suffer again without a preliminary injunction. And they misunderstand bedrock principles of due process in arguing that the White House Press Office's after-the-fact letters remedied Plaintiffs' harms.

To start, Defendants refuse to confront the basis for this Court's finding of irreparable harm in its order granting the temporary restraining order. This Court correctly held that, "[i]n the D.C. Circuit, it 'has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" ECF No. 24 at 5 (quoting *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009)). That rule applies to likely violations of both the First Amendment, *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025), and the Due Process Clause, *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). And those decisions compel the same conclusion here: "[B]ecause Plaintiffs have shown a likelihood of success on at least one of their constitutional claims, they have also met the irreparable harm requirement." ECF No. 24 at 5; *accord Taylor v. Trump*, 823 F. Supp. 3d 17, 40 (D.D.C. 2026).

Defendants argue (at 18) that the ban does not interfere with Plaintiffs' ability to report on the President and his administration. That response is a non sequitur because the violation of Plaintiffs' constitutional rights is itself an irreparable harm. In any case, there is no record support for Defendants' blithe prediction that banning Plaintiffs from the White House will not hamper

their reporting. The uncontroverted record shows that "a hard pass is an essential requirement to work as a White House journalist for a national news organization," and that without the access that accompanies those credentials, journalists "are severely hampered from doing their jobs." Reddy Decl. ¶ 9; *see* Vigilante Decl. ¶ 5 ("a journalist cannot enter the complex on short notice and, as a practical matter, cannot cover the White House on a regular basis"); Marsh Decl. ¶ 16 (the ability "to attend press briefings or other events open to credentialed journalists," as well as "the reporting that depends on it, cannot be replicated from outside the White House"). Material gathered at briefings, gaggles, and one-on-one exchanges "is available only to a reporter who is physically present." Klein Decl. ¶ 9. Defendants point (at 18) to the availability of pool footage but ignore the fact that their targeting of Plaintiffs has severely disrupted the pool's ability to cover the White House. Vigilante Decl. ¶¶ 13–14, 27. In any event, pool footage is an inadequate substitute for access. Klein Decl. ¶ 9. Those harms cement the showing of irreparable injury.

Defendants also insist (at 19) that they remedied any irreparable harm from the deprivation of due process by sending letters that advanced post hoc justifications for the ban. But that after-the-fact process did nothing to eliminate the violation. *See supra*, at 7–8. In fact, the sham process exacerbates the harm because the letters declared Plaintiffs' reporting on the ongoing Iran War, the President's plans to build a new White House ballroom, and the "vibes" at the Republican midterm convention in Dallas to be threats to "national security" and violations of the President's personal "standards of professionalism and decorum" for journalists. ECF Nos. 16-1 to 16-3. Forcing Plaintiffs to defend "routine" reporting on highly newsworthy topics, ECF No. 24 at 4, on a story-by-story basis against ludicrous accusations would only add insult to (irreparable) injury.

III. The balance of equities and public interest favor a preliminary injunction.

This Court already correctly determined that the balance of equities and public interest favored a temporary restraining order against the enforcement of the ban. Defendants offer nothing

that would justify a different conclusion now. They cannot dispute that "enforcement of an unconstitutional law is always contrary to the public interest." ECF No. 24 at 5 (quoting *Karem*, 960 F.3d at 668). Nor can they dispute that "Plaintiffs—and the public—have an abiding interest in maintaining the status quo ante given the importance of the free press, which 'stands as one of the great interpreters between the government and the people.'" *Id.* (quoting *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936)). Like last time, Defendants argue (at 19) only that "public interests in protecting classified and sensitive national security information strongly outweigh any countervailing interests Plaintiffs can identify." But Defendants' pretextual national-security justification for the ban is no more persuasive for the public-interest factor than for the likelihood-of-success factor.

First, this Court should adhere to its conclusion that the ban serves no legitimate interest in protecting national security. "[N]othing in the record that predates this suit suggests that the revocation of Plaintiffs' hard passes was motivated by national security concerns." ECF No. 24 at 6. Defendants say (at 20) that a "judgment" involving national security "was made by the President himself." But they have submitted no new evidence at the preliminary-injunction stage, let alone evidence to support the notion that the President's true motivation was to protect national security. President Trump's recent statements further reinforce that he imposed the ban because of an "alleged lack of truthfulness and negativity of Plaintiffs' reporting." ECF No. 24 at 6; *see* ECF Nos. 32-12 to 32-14; Ex. N at 6–7. The public interest strongly disfavors Defendants' attempt to insulate their unconstitutional actions on pretextual grounds.

Second, Defendants admit that this case does not concern classified information. The First Amendment protects the publication of classified information. *See supra*, at 5. But this case does not even implicate that protection because Defendants disclaim (at 22) any need "to show that the

reporters or outlets actually published classified information" and instead complain that stories *about* national security "diverted 'White House resources and those of the national security team in particular.'" The public interest does not support that fundamentally un-American view of the government's relationship to the press and the public. As the Society for the Rule of Law explains, the colonists fought the Revolution in part to escape "the British government's 'persistent effort' to 'prevent or abridge the free expression of any opinion which seemed to criticize or exhibit in an unfavorable light, however truly, the agencies and operations of the government.'" ECF No. 37-1 at 14 (quoting *Grosjean*, 297 U.S. at 245). And as the ACLU recounts, the lowest points for the First Amendment since the Founding—including the Alien and Sedition Act and the crackdown on speech during World War I—stemmed from the same impulse that the Executive Branch could not bear to be "diverted" from its task at hand by unfavorable or critical speech. Opp. 22; *see* ECF No. 33-2 at 4–7. That reasoning has been discredited by the "court of history," as well as the Supreme Court. *Sullivan*, 376 U.S. at 276. Simply put, "[t]he First Amendment interest in informed popular debate does not simply vanish at the invocation of the words 'national security'" because "[n]ational security is public security, not government security from informed criticism." *United States v. Morison*, 844 F.2d 1057, 1081 (4th Cir. 1988) (Wilkinson, J., concurring).

Third, the government badly misstates (at 20) the non-precedential stay ruling in *New York Times Co. v. Department of Defense*, 2026 WL 1179440 (D.C. Cir. Apr. 27, 2026). That decision granted "very limited relief" that did not disturb an injunction prohibiting enforcement of an unconstitutional Department policy that "restrict[ed] Pentagon access" for credentialed journalists on the basis of their perceived editorial viewpoint. *Id.* at *2. The majority partially stayed a compliance order solely as to one aspect of an "interim" Department policy that required credentialed journalists to be accompanied by an official escort while in the Pentagon. *Id.* at *3.

And the majority reached that ruling not based on the public interest—which the majority concluded did "not strongly favor either party"—but instead on its conclusion that the escort requirement likely fell outside the scope of the district court's original injunction. *Id.* The district court later found that the declarations that the Department had filed for the first time in the D.C. Circuit in support of its stay motion did not support the Department's post hoc reliance on national security. *New York Times Co. v. Dep't of Def.*, No. 26-cv-1690 (D.D.C. June 30, 2026), ECF No. 17 at 26–29 (finding the Department's "suspicious[ly]" "tim[ed]" invocation of national-security concerns "facially dubious" and "refuted" by contrary evidence).

Fourth, Defendants are wrong to argue (at 23) that a preliminary injunction "would raise serious separation of powers concerns." Plaintiffs have not requested an injunction against President Trump. Mot. 40–41. In fact, the President was apparently not even aware for days after entry of the temporary restraining order that this Court had granted Plaintiffs access to "the premises of the White House." Ex. N at 7. Relief against the President's subordinates is the everyday way that federal courts enforce constitutional restrictions against presidential administrations. *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (plurality opinion); *see, e.g.*, *Biden v. Nebraska*, 600 U.S. 477, 488–89 (2023); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584 (1952); *Karem*, 960 F.3d at 668. The public interest does not support allowing the President's officials to carry out an unconstitutional ban while this case proceeds.

IV. Defendants' arguments for limiting the scope of relief are premature and flawed.

Defendants do not meaningfully contest that, if Plaintiffs have satisfied the *Winter* factors, the Court should at least convert its temporary restraining order into a preliminary injunction that prevents Defendants from interfering with "the White House 'hard pass' press credentials held by employees of CNN, MS NOW, and POLITICO." ECF No. 24 at 8. The Court should also clarify that *Sherrill* protects Plaintiffs' access to "press facilities [that] are perceived as being open to all

bona fide Washington-based journalists," not only the physical hard passes. 569 F.2d at 129.

Defendants argue (at 23–24) that this Court should expressly exclude the Oval Office and Air Force One from any injunction. But Defendants get ahead of themselves. To resolve Plaintiffs' motion, this Court need address only the constitutionality of the President's total ban of Plaintiffs from the White House—the same course the Court took in resolving Plaintiffs' motion for a temporary restraining order. Defendants have not announced nor provided notice of any formal policy of restricting Plaintiffs' access to any particular area. And the factual record has continued to evolve, even since Plaintiffs' filing of their motion for a preliminary injunction, because Defendants have persisted in unpredictably targeting Plaintiffs, including by recently excluding both CNN and POLITICO from Air Force One without explanation. Marsh Supp. Decl. ¶ 2; Reddy Supp. Decl. ¶ 3; Vigilante Supp. Decl. ¶ 3. Plaintiffs reserve all rights to seek further relief if and when appropriate.

Defendants' reliance (at 15) on the nonprecedential stay decision in *Associated Press* is also mistaken. For one thing, the merits panel in *Associated Press* has not yet ruled. Judge McFadden's conclusions—that the Oval Office is a nonpublic forum that must be free from viewpoint discrimination during pool events and that retaliatory exclusion independently violates the First Amendment—are firmly rooted in Supreme Court and D.C. Circuit precedent. *Associated Press v. Budowich*, 780 F. Supp. 3d 32, 49–54, 56–58 (D.D.C. 2025); *see Associated Press v. Budowich*, 2025 WL 2047025, at *2 (D.C. Cir. July 22, 2025) (Walker, J., concurring in denial of rehearing en banc). For another, if Plaintiffs seek relief against their exclusion from the Oval Office and Air Force One, they will be in a materially different position from the Associated Press. CNN, for example, has invested substantial financial and other resources to perform its responsibilities as one of five members of the primary television network pool and has a right to

fair notice before the government interferes with those liberty and property interests. Vigilante Decl. ¶ 15. Those investments, combined with the "physical space limitations" that make such "pool coverage" a "necessity," amplify the chilling effect of the President's retaliation. *Id.* ¶ 11. And since the *Associated Press* stay decision, it has become even clearer that the Oval Office and Air Force One are this administration's go-to forum for press briefings. The President may not use Air Force One as a flying press briefing room and then claim standardless discretion to exclude news organizations based on the content of their reporting or their perceived editorial viewpoint.

In short, this Court should convert its temporary restraining order into a preliminary injunction and permit Plaintiffs as needed to demonstrate on a complete factual record that any further access restrictions Defendants might seek to impose on Plaintiffs violate the Constitution.

V. This Court should deny Defendants' request for a stay pending appeal.

Defendants conclude with a cursory request for a stay. They argue that, "[f]or the same reasons Plaintiffs' motion fails, Defendants also satisfy the *Nken* standard for a stay pending appeal." Opp. 24 (citation omitted). That request is incoherent. This Court reaches the stay issue once it determines that Plaintiffs *have* satisfied the requirements for a preliminary injunction. So for the same reasons that Plaintiffs' motion warrants relief, Defendants necessarily do *not* satisfy the *Nken* standard for a stay pending appeal. Defendants also offer no independent reason why this Court should stay the injunction if Plaintiffs are likely to prevail on the merits and to be irreparably harmed by the ban. This Court should continue to "preserve the last uncontested status quo while the litigation proceeds." ECF No. 24 at 7.

CONCLUSION

This Court should preliminarily enjoin Defendants (save the President) and those acting in concert with them from taking any action to enforce the White House ban against Plaintiffs. The Court also should dispense with any bond, which Defendants do not even request.

Dated: October 5, 2026

Respectfully submitted,

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EXHIBIT 32

(Declaration of Katherine Fallow)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CABLE NEWS NETWORK, INC., MS NOW CABLE, LLC, POLITICO LLC, ET AL., *Plaintiffs*, *v.* DONALD J. TRUMP, ET AL., *Defendants*.	Case No. 1:26-cv-03287-TJK

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

On September 18, 2026, President Donald J. Trump announced that "effective immediately" he was "banning" journalists with three news organizations from the White House for being "FAKE NEWS"—an epithet the President invokes to describe journalism he dislikes. Ex. A.[1] The President explained his action later that same day, complaining (without identifying any supposedly false story) that reporting about him and his administration by CNN, MS NOW, and POLITICO "over the last two years" has been "one-sided" and "never good," and has "diminish[ed]" his accomplishments in office. Ex. B at 26:47-28:00.[2] He explained that "[t]here's something wrong with a country that can allow people to write purposely negative stories" and referred to his own unprecedented act as "the ban on the free press." *Id.* at 38:25-38:51, 53:38-53:58. He threatened that bans on other "Fake News" outlets would "follow." Ex. A; Ex. B at 55:35-55:46.

The administration moved swiftly to implement the President's unprecedented and blatantly unconstitutional ban through the White House Press Office and Secret Service: deactivating reporters' "hard pass" credentials overnight, confiscating hard passes of White House correspondents when they showed up to work the following morning, and precluding CNN from fulfilling its role as designated television network pooler on behalf of the entire press corps. After receiving notice that Plaintiffs would be filing this lawsuit and seeking emergency relief from the President's unlawful ban, the White House got to work backfilling contrived justifications for it, sending letters to CNN, MS NOW, and POLITICO that declared routine reporting on highly

[1] All citations are to exhibits attached to the declaration of Theodore J. Boutrous, Jr.

[2] The video of the President's remarks is available at https://www.whitehouse.gov/videos/president-trump-makes-an-announcement-on-healthcare-sep-18-2026/.

newsworthy topics (including the ongoing Iran War, the President's plans to build a new White House ballroom, and "the 'vibes' at" the Republican midterm convention in Dallas) to be threats to "national security" and violations of the President's personal "standards of professionalism and decorum" for journalists. ECF Nos. 16-1 to 16-3. But the President, all the while, has continued to criticize Plaintiffs on social media and in public for their purportedly "negative" coverage, confirming the original (and true) rationale for the ban. Exs. J–L; Boutrous Decl. ¶ 17.

On September 24, this Court entered an order temporarily prohibiting enforcement of the President's ban, correctly holding that the administration's post hoc letters were too little, too late, to satisfy the Due Process Clause under binding Supreme Court and D.C. Circuit precedent. Despite this Court's clear direction that the hard passes of CNN, MS NOW, and POLITICO reporters be "immediately return[ed], reinstat[ed], and restore[d]," ECF No. 24 at 8, the administration continued to confiscate passes and deny access to journalists who came to work at the White House on September 24, before finally coming into compliance roughly 11 hours after this Court's order. And the White House has persisted in unpredictably and inconsistently implementing its ban, including by barring CNN from fulfilling its role as designated television network pooler on September 26—to the detriment of CNN, its fellow pool members and, ultimately, the American public. The White House's words and actions leave little doubt that it will immediately reinstitute a complete ban of CNN, MS NOW, and POLITICO if allowed the opportunity. Because the ban is an unlawful assault on the most fundamental First Amendment freedoms and will inflict irreparable harm on Plaintiffs and the public if not restrained, this Court should preliminarily enjoin its enforcement pending the resolution of this case.

The President's "ban on the free press" is a stark departure from our constitutional tradition. As the Court already correctly determined, Plaintiffs are likely to prevail on their due-process

claim. ECF No. 24 at 2–4. The D.C. Circuit has held that "'the interest of a bona fide Washington correspondent in obtaining'" a press credential "is not only 'protected by the first amendment' but also 'undoubtedly qualifies as a liberty interest which may not be denied without due process of law under the fifth amendment.'" *Karem v. Trump*, 960 F.3d 656, 660 (D.C. Cir. 2020) (quoting *Sherrill v. Knight*, 569 F.2d 124, 130–31 (D.C. Cir. 1977)) (brackets omitted). The ban deprives CNN, MS NOW, POLITICO, and their journalists of liberty and property interests without anything remotely close to the bare minimum requirements of due process: fair notice of the standard that prohibited their conduct and the magnitude of the sanction, an opportunity to be heard before the deprivation, and meaningful standards that prevent arbitrary enforcement and standardless discretion. Defendants provided no notice that news organizations would be banned from the White House grounds as a result of their reporting. The after-the-fact letters sent to Plaintiffs are no substitute for the pre-conduct notice and pre-deprivation opportunity for hearing that the Constitution requires. And the administration's pretextual, post hoc "professionalism" standards and purported "national security" concerns—of which this Court had good reason to be "skeptical," ECF No. 24 at 4—are in any event far too vague under *Sherrill* and *Karem* to ensure adequate notice. They are ready weapons for the arbitrary and discriminatory enforcement that due process forbids.

The ban also retaliates against protected newsgathering and speech in violation of the First Amendment. The President has made no attempt to hide the fact that he decided to ban CNN, MS NOW, and POLITICO for their "cumulative" coverage of him and his administration over the past two years—coverage that he claims is "purposely . . . negative," "one-sided," and "never good," and "diminish[es]" his administration. Ex. B at 26:47-28:00. His statements also make clear he implemented the ban to coerce more favorable coverage from CNN, MS NOW, and POLITICO,

and to deter other journalists and news organizations from newsgathering and reporting that the President might view as negative. And his administration has continued to retaliate against Plaintiffs even after the temporary restraining order, only underscoring that Defendants' motive is to punish and chill journalism they dislike.

Moreover, the ban independently violates the First Amendment by restricting access to and use of a nonpublic forum on viewpoint-discriminatory and unreasonable terms. The government "creates a 'nonpublic forum' when it provides 'selective access for individual speakers.'" *Ateba v. Leavitt*, 133 F.4th 114, 122 (D.C. Cir. 2025), *cert. denied*, 146 S. Ct. 822 (2025). Under binding D.C. Circuit precedent, the White House's press areas are a nonpublic forum subject to the First Amendment's commands. *Id.* at 124–25. The First Amendment requires that any restrictions on access to such areas be both viewpoint neutral and "'reasonable in light of the purpose served by the forum.'" *Minn. Voters All. v. Mansky*, 585 U.S. 1, 11–12 (2018). The ban satisfies neither requirement. It is a brazen "'effort to suppress expression merely because public officials oppose the speaker's view,'" *id.* at 12—in this case, independent, fact-based journalism that the President dislikes. And the ban lacks any "objective, workable standards" and serves no permissible objective in view of the purpose of the forum—areas designated for journalists to gather and report newsworthy information for the benefit of the American public. *Id.* at 21–22. Because Defendants have claimed "'unbridled discretion'" to deny access to the White House, the ban is patently unreasonable and thus unconstitutional. *Mahoney v. U.S. Capitol Police Bd.*, — F.4th —, 2026 WL 2836881, at *6 (D.C. Cir. Sept. 22, 2026).

The administration's complete lack of objective standards counsels in favor of this Court addressing the First Amendment in addition to the Due Process Clause. As supposed support for the ban, Defendants have not only highlighted stories with no conceivable effect on national

security but also overlooked that the First Amendment protects reporting on matters affecting national security. *See New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam). The Framers understood the First Amendment to give the press the protection necessary for it "to fulfill its essential role in our democracy" as "'one of the great bulwarks of liberty.'" *Id.* at 716–17 (Black, J., concurring) (quoting Madison's version of the speech and press clauses, introduced in the House of Representatives on June 8, 1789). The First Amendment "ordains an unruly contest between the press, whose office is freedom of information and whose ambition is joined to that office, and government, whose need is often the privacy of decision-making and whose servants are ambitious to satisfy that need." Alexander Bickel, *The Morality of Consent* 87 (1975). The President's "ban on the free press" is a direct assault on that "constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve." *Mills v. Alabama*, 384 U.S. 214, 219 (1966). Because no amount of manufactured process could ever allow a "ban on the free press" under the First Amendment, entering a preliminary injunction on First Amendment grounds prevents further "shenanigans," as Plaintiffs' counsel warned at the hearing on the temporary restraining order. Ex. H.

This Court also already correctly determined that the other equitable factors support relief. Without a preliminary injunction, Plaintiffs—and the public that relies on them for reporting about the President and his administration—will irreparably suffer. Violations of the Due Process Clause and "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitute[ ] irreparable injury." *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (quoting *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion))). Every day, critically important news is breaking at the White House, and the ban will substantially interfere with Plaintiffs' ability to cover it. The

ban also inflicts an injury on all news media organizations—which now risk a similar fate if they engage in fact-based, independent reporting the President deems insufficiently favorable. And the balance of the equities and public interest merge and favor immediate injunctive relief because enjoining unconstitutional action is always in the public interest. The motion should be granted.

BACKGROUND

A. Journalists and news organizations have long covered the President and his administration from White House grounds.

Almost 125 years ago, President Theodore Roosevelt set aside a room in the new West Wing for the press.[3] The press has been in the White House ever since. Today, the White House press facilities include the James S. Brady Press Briefing Room, where the Press Secretary holds briefings; the North Lawn and West Wing driveway, from which the networks report live; and the South Lawn, where Marine One arrives and departs. Klein Decl. ¶ 8; Vigilante Decl. ¶¶ 7, 16; Gardner Decl. ¶ 7; Reddy Decl. ¶ 6. The President also regularly opens up the Oval Office for "press pool availabilities" that "involve a gaggle of reporters, all vying for space and information," who may ask questions. *Associated Press v. Budowich*, 780 F. Supp. 3d 32, 53 (D.D.C. 2025), *stayed in part pending appeal*, 2025 WL 1649265 (D.C. Cir. June 6, 2025). Indeed, because President Trump rarely holds press conferences in the Brady Briefing Room, press briefings in the Oval Office and on Air Force One are frequently the only times when journalists may ask the President about his administration's policies and actions. Klein Decl. ¶¶ 10, 21.

"For over fifty years, the White House Press Secretary has provided journalists on the White House beat with 'hard passes'—special press credentials that allow on-demand access to

[3] James A. Jacobs, *The President, the Press, and Proximity: The Creation of the White House Press Center*, White House Hist. Ass'n (Mar. 1, 2015), https://www.whitehousehistory.org/the-president-the-press-and-proximity.

the White House complex." *Karem*, 960 F.3d at 659. A hard pass is available to journalists who regularly cover the White House, reside in the Washington area, are accredited by a press gallery of the Supreme Court, the U.S. Senate, or the U.S. House of Representatives, and clear a background check by the United States Secret Service. 31 C.F.R. § 409.1; Reddy Decl. ¶ 7; *see also* Klein Decl. ¶ 4; Vigilante Decl. ¶ 4. The Secret Service's role in that process is narrowly defined by regulation. In deciding whether to approve an applicant during a background check, Secret Service officials must "be guided solely by the principle of whether the applicant presents a potential source of physical danger to the President and/or the family of the President so serious as to justify his or her exclusion from White House press privileges." 31 C.F.R. § 409.1. The regulation prescribes the process that must precede any denial: written notice of the factual basis for the proposed denial, an opportunity for the applicant to respond in writing and to be heard, and a final written decision. *Id.* § 409.2. Nothing in the regulation permits a pass to be denied, suspended, or revoked because of the content of a journalist's reporting.

A hard pass is essential to a White House correspondent because it provides immediate, unescorted access to the areas of the White House complex designated for the press. Klein Decl. ¶ 5; Gardner Decl. ¶¶ 4–5; Haslett Decl. ¶ 2. Every Secret Service officer on the complex recognizes the credential on sight. Klein Decl. ¶ 5; Gardner Decl. ¶ 4. For White House correspondents, the White House—or wherever the President happens to be—is the workplace. Klein Decl. ¶ 8; Gardner Decl. ¶ 7. Much of what happens at the White House happens with little or no notice: A briefing is called, often no more than half an hour in advance; the President briefs the press and takes questions at an event, in the Oval Office, or aboard Air Force One; a visiting head of state arrives; a statement is issued and reporters are summoned to the Briefing Room. Klein Decl. ¶¶ 5, 9; Gardner Decl. ¶ 8. A reporter who is not there when that happens simply

misses it, and an event a reporter could not attend cannot be covered after the fact. Klein Decl. ¶ 9; Gardner Decl. ¶ 8. CNN's Betsy Klein, MS NOW's Akayla Gardner, and POLITICO's Cheyenne Haslett report, write, and broadcast from the White House grounds themselves. Klein Decl. ¶ 8; Gardner Decl. ¶ 7; Haslett Decl. ¶ 2.

A hard pass is also a practical necessity for participation in the print and television network press pool, which includes a rotating group of the credentialed journalists in the White House press corps who accompany the President and share reporting, video, audio, and photographs with the rest of the press corps and, through them, with the American public and the world. Vigilante Decl. ¶ 9; Reddy Decl. ¶ 10. Each day the pool includes representatives of television, print, radio, and digital outlets. Vigilante Decl. ¶ 9; Reddy Decl. ¶ 11. The television component of the pool consists of primary and secondary slots. Vigilante Decl. ¶ 10; Reddy Decl. ¶ 11. The primary slot rotates among five networks—ABC, CBS, CNN, Fox News, and NBC—each of which absorbs 20% of the operating costs. Vigilante Decl. ¶¶ 10, 15; Reddy Decl. ¶ 11. When on duty, CNN supplies video and audio of the President's events to the other four networks; more than 1,000 local affiliate television stations across the United States receive the pool feed through CNN. Vigilante Decl. ¶ 10. When CNN serves as the designated television network pooler, it does not engage in unilateral newsgathering but rather acts as a proxy for all media. *Id.* ¶ 11. The secondary slot rotates among a larger group of outlets that includes MS NOW. Reddy Decl. ¶ 11. POLITICO is also a member of the print component of the pool. Marsh Decl. ¶ 3.

B. CNN, MS NOW, and POLITICO are among the prominent news outlets that report from the White House.

CNN launched in 1980 as the first 24-hour cable news network and has covered every President since Jimmy Carter from inside the White House complex. Vigilante Decl. ¶ 3. CNN's correspondents attend the daily press briefing, cover events in the Oval Office and the East Room,

and elsewhere on the grounds, report live from CNN's standing broadcast position on the North Lawn, and cover the President's arrivals and departures on the South Lawn; CNN maintains a booth adjoining the Briefing Room, together with broadcast and transmission equipment installed on the grounds. *Id.* ¶¶ 7, 13, 16; Klein Decl. ¶¶ 7–8. As of September 18, 2026, 40 CNN journalists, including Ms. Klein, held valid White House hard passes. Vigilante Decl. ¶ 5; Klein Decl. ¶ 4. CNN journalists have held White House hard passes continuously since 1980, and CNN has been part of the White House television pool for 45 years. Vigilante Decl. ¶ 6.

Before September 18, 2026, no President had barred CNN as an organization from the White House. Vigilante Decl. ¶ 6. The only prior attempt to strip a CNN journalist of his hard pass because of his reporting did not survive judicial review. In November 2018, hours after President Trump told CNN's then-chief White House correspondent, Jim Acosta, that he was "a rude, terrible person" who "shouldn't be working for CNN," the Secret Service took Mr. Acosta's hard pass at the White House gate. Compl. ¶¶ 35, 41, *Cable News Network, Inc. v. Trump*, No. 1:18-cv-02610 (D.D.C. Nov. 13, 2018), ECF No. 1. CNN and Mr. Acosta sued in this Court, which entered a temporary restraining order requiring the White House to restore the pass, finding that it likely had been revoked without the process the Fifth Amendment requires. Hr'g Tr., *Cable News Network*, No. 1:18-cv-02610, 2018 WL 9436958, at *3–5 (D.D.C. Nov. 16, 2018); *see also Karem*, 960 F.3d at 661 (describing incident and litigation). The White House restored the pass that same day.

MS NOW operates a cable news network and a digital news service. It launched in 1996 as MSNBC and adopted the name MS NOW in November 2025 in connection with its separation from NBCUniversal as part of Comcast's spin-off of Versant Media Group. Reddy Decl. ¶ 3. MS NOW has covered every Presidency since the Clinton administration and assigns approximately

ten journalists full time to the White House, and approximately fifteen MS NOW journalists regularly cover it. *Id.* ¶ 5. As of September 18, 2026, 22 MS NOW journalists held valid White House hard passes. *Id.* ¶ 8. MS NOW participates in the secondary slot of the television pool and served in the pool approximately ten times in the eight months preceding the ban, and MS NOW journalists were on the White House grounds on September 18, when the President announced the ban. *Id.* ¶¶ 11, 13, 17. Before that date, to the knowledge of Sudeep Reddy, MS NOW's Washington Bureau Chief, no President had barred MS NOW, or any of its reporters, from the White House. *Id.* ¶ 8.

Since its launch in 2007, POLITICO has covered the White House from inside the White House complex. Marsh Decl. ¶ 2. POLITICO publishes news at politico.com and in newsletters, including West Wing Playbook, a daily newsletter devoted to coverage of the White House, and provides policy news and analysis to subscribers through POLITICO Pro. *Id.* POLITICO assigns approximately 16 journalists to cover the White House, and as of September 18, 2026, all 16 held White House hard passes. *Id.* ¶ 3. To the knowledge of Julia Marsh, POLITICO's Executive Editor, Washington, no POLITICO journalist had ever had a hard pass denied, suspended, or revoked before September 19. *Id.*

President Trump has long attacked CNN, MS NOW, and POLITICO, along with other news outlets, for the content of their coverage. Weeks into his first term, for example, he posted that "[t]he FAKE NEWS media (failing @nytimes, @NBCNews, @ABC, @CBS, @CNN) is not my enemy, it is the enemy of the American People!"[4] (MS NOW, then MSNBC, was part of the NBC News group.) The attacks intensified after he returned to office in January 2025. Two days

[4] @realDonaldTrump, X (Feb. 17, 2017), https://x.com/realDonaldTrump/status/832708293516632065.

after his second inauguration, he posted that MS NOW was "even worse than CNN" and that "[t]hey shouldn't even have a right to broadcast—Only in America!"[5] Two days after that: "MSNBC IS CLOSE TO DEATH. CNN HAS REACHED THE BOTTOM. This is a good thing. They are the Enemy of the people."[6] He has since warned that MS NOW (which he frequently calls "MSDNC"), CNN, and "all other Mainstream Media Liars, are ON NOTICE that the days of them being allowed to deceive the American People are OVER."[7] And in October 2025, he declared that "Politico has gone bad" and has "been so wrong about everything."[8]

C. The President bans CNN, MS NOW, and POLITICO from the White House because of their coverage.

At 3:04 p.m. on Friday, September 18, 2026, the President announced on Truth Social that he was barring Plaintiffs' reporters from the White House, effective immediately, because of the content of their reporting:

[5] @realDonaldTrump, Truth Social (Jan. 22, 2025), https://truthsocial.com/@realDonaldTrump/posts/113874735766176608.

[6] @realDonaldTrump, Truth Social (Jan. 24, 2025), https://truthsocial.com/@realDonaldTrump/posts/113887487731381945.

[7] @realDonaldTrump, Truth Social (July 22, 2025), https://truthsocial.com/@realDonaldTrump/posts/114898229237459086.

[8] Remarks by President Trump (Oct. 12, 2025), https://www.govinfo.gov/content/pkg/DCPD-202501004/pdf/DCPD-202501004.pdf.



Donald J. Trump
@realDonaldTrump

I am proud to announce that, effective immediately, I am banning Fake News CNN, MSNOW (who recently changed their name from MSNBC due to lack of viewership and credibility!), and Politico (The recipients of an illegal and ridiculous $8 Million Dollar subscription, an All Time Record, directly from the United States Government, under Crooked Joe Biden, in order to keep them "alive." Seems like corruption to me!), from the White House as a result of their constant "reporting" FAKE NEWS! Media Outlets shouldn't be able to constantly write or report FICTION and LIES when they're covering the President of the United States, the Trump Administration, or the United States of America. Other Fake News Media Outlets to follow. Thank you for your attention to this matter! President DONALD J. TRUMP

13.4k ReTruths **54.6k** Likes Sep 18, 2026, 3:04 PM

Ex. A.

About an hour later, the President took questions from reporters at an Oval Office event. Asked whether there was "a particular reason" for the ban, he answered: "No, just because—no, no, it's—it's really just cumulative stories over the last two years. . . . [T]hey purposely write negative news. And they do that because they want to try and diminish the Republicans and a Republican administration." Ex. B at 27:17-28:00. He explained that "[t]here's something wrong with a country that can allow people to write purposely negative stories," and that "if they want to write them, that's fine, but I don't have to let them into my—into the people's house." *Id.* at 38:25-38:51. Asked whether he was trying to intimidate the press, the President answered: "No, no, no, no, I dislike dishonest press like you. I think you're terrible. But I dislike dishonest—I like to see honest press." *Id.* at 35:14-35:27. He added that the ban could be lifted if the banned outlets "could straighten themselves out," and that "[i]f they could straighten themselves out, I'd love it." *Id.* at 53:38-53:58. He referred to his action as "the ban on the free press." *Id.*

Asked whether he thought the ban would "survive a court challenge," and reminded that a court had blocked a similar effort against CNN in 2018, the President answered: "Well, we'll see. . . . I think it's good to point it out, whether it survives or doesn't. I mean, I don't think the court should allow—it depends on the judge you get, to be honest with you." Ex. B at 35:27-35:55. Asked about the logistics of the ban—whether he was taking away the outlets' press badges and whether he was removing them from the pool—the President said he would take the ban "as far as you can." *Id.* at 53:35-53:58.

The President also made clear that other news organizations face the same treatment if he dislikes their coverage. His Truth Social post announcing the ban promised "Other Fake News Media Outlets to follow," *see supra*, at 12, and in the Oval Office he said that "there may be others to join them," specifically naming The New York Times and The Washington Post, Ex. B at 55:35-55:46; *see id.* at 45:37-46:09.

Neither the post nor the President's remarks that followed it identified any standard by which the three news organizations' coverage had been judged or would be judged in the future, any official responsible for applying that standard, any procedure by which Plaintiffs could contest the ban, or any date on which the ban would end. Vigilante Decl. ¶¶ 17–18; Reddy Decl. ¶¶ 15, 20; *see also* Marsh Decl. ¶ 6. White House staff—including members of the White House Press Office—were themselves given no advance notice of the President's post and were left scrambling to learn how the ban would be carried out. Klein Decl. ¶ 12; *see also* Reddy Decl. ¶ 17.

The White House nevertheless worked swiftly to implement the President's directive at the instruction and under the supervision of Assistant to the President for Communications Steven Cheung, Director of the Secret Service Sean M. Curran, and White House Chief of Staff Susan Wiles. Journalists' hard passes were deactivated overnight following the President's

announcement. And the following morning, Secret Service officers refused to admit Plaintiffs' reporters. At approximately 8:00 a.m. on Saturday, September 19, Ms. Gardner attempted to enter the White House as usual to work for MS NOW but was informed that her hard pass had "been disabled." Gardner Decl. ¶ 10; Reddy Decl. ¶ 18. An MS NOW photographer who arrived earlier that morning was likewise turned away and his hard pass taken, while the MS NOW producer who accompanied Ms. Gardner scanned her pass and was admitted. Gardner Decl. ¶ 10; Reddy Decl. ¶ 18. At approximately 9:30 a.m., Ms. Klein, a CNN reporter who has covered the White House since 2015 and has held a hard pass continuously since February 2018, also went to the White House to work, as she does whenever she is assigned to cover it. Klein Decl. ¶¶ 2, 4, 13. When she submitted her hard pass, a Secret Service officer told her it had been deactivated and kept it; he provided no further information and referred her to the White House Press Office. *Id.* ¶ 13. POLITICO's Cheyenne Haslett was likewise denied entry at the gate that morning, and the Secret Service officer took her hard pass without giving her a reason. Haslett Decl. ¶ 4; Marsh Decl. ¶ 5.

Plaintiffs received no advance written notice of the ban from the President, the White House Press Office, the Office of Communications, the Secret Service, or any other White House official. Before the ban went into effect, no one advised them of the scope or duration of the ban or of any process by which they could respond to or contest it. Vigilante Decl. ¶¶ 17–18; Reddy Decl. ¶¶ 15–17; Marsh Decl. ¶¶ 4, 6; *see also* Klein Decl. ¶ 14; Gardner Decl. ¶ 12; Haslett Decl. ¶ 3. MS NOW journalists had remained on the White House grounds through the evening of September 18, but no White House official contacted MS NOW that night to say whether, when, or how the ban would be enforced, and MS NOW was even included that evening in a White House press call previewing the President's schedule for the coming week. Reddy Decl. ¶ 17.

D. After Plaintiffs file suit, the White House Press Office notifies Plaintiffs that their hard passes had been revoked.

On the morning of Monday, September 21, after CNN, MS NOW, and POLITICO gave notice and provided copies of their pleadings to the government and released a public statement about their impending lawsuit to challenge the unconstitutional ban, the President responded on Truth Social. He reiterated that the ban's target was, in his view, the "corrupt, purposeful, pervasive, fully coordinated, and totally out of control" "FAKE NEWS." Ex. C. He also declared for the first time that the ban was intended to "stop[ ]" a "threat to our National Security." *Id.*

Plaintiffs filed suit later that morning and moved for a temporary restraining order. ECF Nos. 1, 2. The President again posted on Truth Social, this time to complain about the lawsuit and denigrate Plaintiffs as "Third Rate Clowns, who purposefully distort, twist, and degrade with everything they write or publish." Ex. D. He criticized Plaintiffs' reporting about him, which he labeled "negative, wrong and, in many cases, DANGEROUS." *Id.* And he again accused Plaintiffs of "violat[ing] our National Security." *Id.*

This Court requested a response to the motion for a temporary restraining order by September 22. Less than two hours before Defendants filed their response, the White House Press Office sent letters to journalists who work for Plaintiffs, selecting those journalists seemingly at random, and notifying them for the first time that the White House hard passes held by journalists at their news organizations had been revoked. Vigilante Decl. ¶ 21; Reddy Decl. ¶ 22; Marsh Decl. ¶ 8. The letters accused Plaintiffs of violating previously unstated "standards of professionalism and decorum expected of those given access to the White House Complex, including by trafficking in verifiable falsehoods about national security and other issues, and publishing sensitive or classified information." ECF No. 16-1 at 1; ECF No. 16-2 at 1; ECF No. 16-3 at 1. Each letter identified certain pieces of Plaintiffs' reporting between April 2025 and September 2026 that the

White House claimed "threatened national security and/or spread falsehoods." ECF No. 16-1 at 1; ECF No. 16-2 at 1; ECF No. 16-3 at 1. Each letter requested that Plaintiffs "submit a written response" to "contest [the] initial decision or the factual basis set forth" in the letters. ECF Nos. 16-1, 16-2, 16-3.

With respect to CNN, the letter identified four articles, including a January 19, 2026 article by Ms. Klein about plans to rebuild the bunker beneath the White House East Wing, two articles from the summer of 2026 about the depletion of munitions, and an article from the day of the ban's announcement about a United Nations report on a United States strike on a school in Iran. Vigilante Decl. ¶ 22. Only one of those articles—the January article by Ms. Klein—was written by a journalist with a hard pass. *Id.* ¶¶ 23–24. The White House had renewed Ms. Klein's hard pass after she wrote that article. Klein Decl. ¶¶ 4, 15; Vigilante Decl. ¶ 23.

With respect to MS NOW, the letter identified three articles, including a June 11, 2026 article by Jake Traylor that the White House Press Office described as "claim[ing] a source said that President Trump 'underestimated the willingness of Iran to resume conflict,'" an article about depleted munitions from the Iran conflict, and an article about an FBI leak investigation. Reddy Decl. ¶ 23. Only one of those three articles—the June article by Mr. Traylor—was written by a journalist with a hard pass. *Id.* ¶¶ 24–25. The White House had renewed Mr. Traylor's hard pass after that story was published. *Id.* ¶ 24.

With respect to POLITICO, the letter identified six articles, including a June 12, 2026 article co-authored by Ms. Haslett about the administration's negotiations with the government of Iran and a September 9, 2026 article reporting on bad "vibes" at the Republican midterm convention. Marsh Decl. ¶¶ 9, 11. Of the six articles identified in the letter, only those two were written by journalists with a hard pass at the time of the reporting. *Id.* ¶¶ 11–12. The June article,

which the letter asserted "threatened national security and/or spread falsehoods," was based on an authorized press call that the White House organized that had included journalists from a number of news organizations, including POLITICO. *Id.* ¶ 13. During that call, reporters were instructed by the White House to attribute quotes to an anonymous "senior administration official." *Id.*

On the evening of September 23, Defendants filed a declaration citing an MS NOW article as further support for their position that Plaintiffs had violated White House standards of professionalism and decorum. ECF No. 23 ¶ 3. The article reported that Trump administration officials had discussed adding the President's name to Ford's Theatre. ECF No. 23-2. Defendants also submitted a Truth Social post in which the President characterized the article as "FAKE NEWS" and a "Hoax." ECF No. 23-1.

E. This Court enters a temporary restraining order to restore Plaintiffs' access to the White House.

After a hearing, this Court entered a temporary restraining order shortly before 1:00 a.m. on September 24, 2026. ECF No. 24. The Court explained that D.C. Circuit precedent established that a "duly issued hard pass may not be suspended without due process." *Id.* at 2 (quoting *Karem*, 960 F.3d at 665). Applying that binding precedent, the Court concluded that Plaintiffs were likely to establish that the ban violated the Fifth Amendment's Due Process Clause. *Id.* The Court rejected Defendants' reliance on their September 22 letters, explaining that the standard articulated in the letters was "so vague it hardly does the trick." *Id.* at 3. It also noted that the fact that Defendants had "renewed Plaintiff Betsy Klein's hard pass several months *after* she published some of the identified reporting" undermined "any argument that she or her employer . . . had the requisite notice that the conduct at issue violated a relevant standard." *Id.* And the Court rejected Defendants' generalized invocation of "national security" to justify the ban because the "reporting identified by Defendants" was "routine." *Id.* at 4. Indeed, the Court was "skeptical" that

"Defendants' interest in safeguarding national security is the actual motivation for, or is even advanced by, the revocation of Plaintiffs' hard passes." *Id.*

The Court determined that the remaining factors supported the temporary restraining order. The Court found that Plaintiffs would suffer irreparable harm because, "[w]hen constitutional harm is the basis for irreparable harm, the likelihood of success on the merits overlaps heavily with the irreparable harm inquiry." ECF No. 24 at 5. As to the balance of the equities and the public interest, the Court concluded that Plaintiffs and the public "have an abiding interest in maintaining the status quo ante given the importance of the free press." *Id.* Because Defendants "offer[ed] little to back up their asserted national security interest," that interest did not "tilt [the] factors in their favor." *Id.* at 6. The Court thus ordered that Defendants "immediately return, reinstate, and restore" Plaintiffs' hard passes. *Id.* at 8.

Defendants did not comply at first with the Court's order. When Plaintiffs' reporters went to work at the White House on the morning of September 24, they were turned away, and the hard passes of a CNN photojournalist, two MS NOW journalists, and a POLITICO journalist were confiscated. Waldman Decl. ¶ 5; Klein Decl. ¶¶ 17–18; Vigilante Decl. ¶ 25; Reddy Decl. ¶¶ 28–30; Marsh Decl. ¶ 15. MS NOW reporter Laura Barrón-López was turned away and had her hard pass confiscated at approximately 8:19 a.m., and she was turned away again at approximately 11:20 a.m.—after Plaintiffs had filed a notice of Defendants' noncompliance and after the Court had ordered Defendants to respond to it. Reddy Decl. ¶¶ 29–30. The White House did not begin returning hard passes until around noon, approximately 11 hours after the Court issued the temporary restraining order. Waldman Decl. ¶¶ 6–7; Klein Decl. ¶ 19; Vigilante Decl. ¶ 25; Reddy Decl. ¶¶ 32–33. For more than five days, before the Court's order was implemented, Plaintiffs' reporters were unable to enter the White House complex to attend briefings or events, report from

their broadcast positions, or speak in person with White House officials and staff. Klein Decl. ¶ 20; Gardner Decl. ¶ 19; Haslett Decl. ¶ 5; Vigilante Decl. ¶ 29; Reddy Decl. ¶¶ 32, 36; Marsh Decl. ¶ 7. Plaintiffs' broadcast positions, cameras, and transmission equipment remained inside the White House complex during that time. Vigilante Decl. ¶ 20; Reddy Decl. ¶ 21.

Defendants have continued to impose restrictions on Plaintiffs' access without explanation. On September 23, CNN timely requested credentials for reporters, producers, and camera crew to cover President Xi Jinping's arrival for the state dinner the following day. Vigilante Decl. ¶ 26. About an hour before President Xi's arrival, the White House informed CNN that only a photojournalist and audio technician would be admitted. *Id.* Unlike other television networks, CNN was not permitted to have an editorial team present. *Id.* MS NOW had timely submitted the name of its reporter, Laura Barrón-López, but she was denied entry approximately 25 minutes before the event began; when she asked why, a White House staffer told her to "talk to Steven," apparently referring to Defendant Cheung. Reddy Decl. ¶ 35. On the evening of September 25, CNN learned that it would not be permitted to travel aboard Air Force One as the designated television network pooler for the President's September 26 trip to Knoxville, Tennessee. Vigilante Decl. ¶ 27. CNN received no official communication from the White House explaining its exclusion. *Id.* Because CNN was excluded and no replacement designated, no primary television network pooler accompanied the President on the trip. *Id.* CNN is presently scheduled to serve as the designated television network pooler on October 1. *Id.* ¶ 28.

The administration has continued to admit that Plaintiffs' reporting is the true motive for the ban. The President publicly discussed Plaintiffs and the ban again on September 26. In three Truth Social posts, he questioned why CNN and MS NOW should be permitted access to the White House given what he characterized as overwhelmingly negative coverage and asserted that news

organizations he viewed as dishonest should be excluded from the White House. Exs. J–L. And when asked by MS NOW's Akayla Gardner whether he wanted only supportive outlets in the press pool, the President said he wanted "real news, not fake news—like you." Gardner Decl. ¶ 18. He criticized CNN and MS NOW, stating: "what I don't want is fake news. . . . In two years, I doubt they did one good story. And I won the election in a landslide." *Id.* The President's recent statements have made no mention of national security. On September 27, Attorney General Todd Blanche echoed the President, explaining that after "years and years and years of one-sided media coverage of the president from certain outlets, the president finally said it's not fair to the American people that this is happening and did something about it." Ex. M. Attorney General Blanche described "complete misinformation," "inaccuracy," and "one-sided news" as a "national security issue." *Id.*

This Court's temporary restraining order will expire on October 8. Absent preliminary injunctive relief, the irreparable harm Plaintiffs have already suffered from the ban will quickly compound. Defendants will not be restrained from once again deactivating and confiscating Plaintiffs' hard-pass credentials or denying Plaintiffs' journalists access to the White House to gather and report newsworthy information. Defendants' conduct subsequent to the entry of the Court's order, including Plaintiffs' exclusion from the state dinner and their scheduled pool rotation, underlines Defendants' intention to, in the President's words, take the ban "as far as [they] can." Ex. B at 53:38-53:58.

The losses Plaintiffs will suffer cannot be repaired after the fact. A press briefing Plaintiffs cannot attend is a briefing at which they cannot ask a question; an event they cannot cover is an event they cannot report to their audiences. Vigilante Decl. ¶¶ 29, 31; Reddy Decl. ¶ 36; Marsh Decl. ¶ 16. If not preliminarily enjoined, the ban will deprive Plaintiffs of the ability to gather

news firsthand at the seat of the Executive Branch. Vigilante Decl. ¶ 32; *see also* Reddy Decl. ¶ 38; Marsh Decl. ¶ 16; Waldman Decl. ¶ 8. The President has stated that there will be "Other Fake News Media Outlets to follow," *see supra*, at 12, leaving other news organizations covering the White House to face the prospect that their access may likewise depend on the President's view of their coverage. And each day the ban remains in effect, the public loses access to essential reporting on the President and his administration. Vigilante Decl. ¶¶ 11–12, 31–32; Reddy Decl. ¶ 37; Marsh Decl. ¶ 16.

LEGAL STANDARD

A plaintiff seeking a preliminary injunction must demonstrate: (1) a likelihood of success on the merits; (2) that the plaintiff is likely to suffer irreparable injury in the absence of such relief; and (3) that the balance of the equities and (4) the public interest favor an injunction. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, all four elements are readily satisfied: Defendants' conduct is blatantly unconstitutional; Plaintiffs will suffer irreparable injury through the loss of their constitutional freedoms if the President's ban goes back into effect; and the balance of equities and public interest overwhelmingly favor Plaintiffs.

ARGUMENT

I. Plaintiffs are likely to establish that the ban is unconstitutional.

The "first and most important factor" is "likelihood of success on the merits." *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014). Plaintiffs are likely to succeed on the merits because the ban blatantly denies them due process, retaliates against their protected newsgathering and speech, and imposes viewpoint-discriminatory and unreasonable restrictions on their access to a forum designed to facilitate activity protected by the First Amendment.

A. The ban violates the Due Process Clause.

This Court correctly held that the ban likely violates the Fifth Amendment's Due Process Clause and should extend its ruling from a temporary restraining order to a preliminary injunction. ECF No. 24 at 2–4. The Fifth Amendment forbids the government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V. Clear-cut precedent establishes that "the interest of a bona fide Washington correspondent" in obtaining and retaining a hard-pass press credential "undoubtedly qualifies as [a] liberty [interest] which may not be denied without due process of law under the fifth amendment." *Sherrill*, 569 F.2d at 130–31; *see also id.* at 131 n.22 (suggesting that a press credential is also a protected property interest). When the government "has voluntarily decided to establish press facilities for correspondents who need to report therefrom," important First Amendment rights are implicated, and access cannot be denied "arbitrarily or for less than compelling reasons." *Id.* at 129–30; *see Karem*, 960 F.3d at 660. For three reasons, Plaintiffs are likely to prevail on their claim that Defendants' sudden, unprompted, and total ban of Plaintiffs from the White House—including their revocation and confiscation of Plaintiffs' hard passes—violates the Due Process Clause.

First, due process requires "fair notice" of both the "conduct that would subject" someone to punishment *and* the "magnitude of the sanction that the White House might impose." *Karem*, 960 F.3d at 665 (quotation marks and alterations omitted). Revocation of a "duly issued hard pass" requires "fair notice" ahead of time "of conduct that is forbidden or required." *Id.* at 664–65 (quoting *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012)). The government must provide such fair notice of the forbidden conduct and the potential sanction *before* the conduct being sanctioned because "regulated parties should know what is required of them *so they may act accordingly*." *Fox*, 567 U.S. at 253 (emphasis added). Plaintiffs received advance notice of neither the prohibited conduct nor the potential sanction.

For one thing, no standard was "formally articulated or published" that would have put Plaintiffs on notice that the content of their reporting could "subject [them] to punishment." *Karem*, 960 F.3d at 665–66. Plaintiffs certainly had no advance notice that access to the White House could be revoked if they published stories the President perceives as "negative" or "diminish[ing]" his administration or his political party. Ex. B at 27:41-28:00. Even if one could suspend disbelief and take the White House's post hoc letters at face value, those letters make no attempt to show that the so-called standards they announce—*e.g.*, policing "standards of professionalism and decorum" and prohibiting publication of "sensitive security information and misinformation"—were formally articulated before Plaintiffs published the articles identified in the letters. ECF No. 16-1 at 1; ECF No. 16-2 at 1; ECF No. 16-3 at 1. As this Court observed, "the record is bereft of any relevant 'formally articulated standards' in place *before* any of the conduct for which Defendants revoked their hard passes." ECF No. 24 at 3; *see also Karem*, 960 F.3d at 666 ("the White House may not rely on unarticulated standards of professionalism" to justify suspension of hard passes). Allowing Defendants to deny access based on standards they make up after the fact would deny Plaintiffs any semblance of fair notice and allow arbitrary and discriminatory enforcement.

For another thing, Plaintiffs did not have notice of the "magnitude of the sanction that the White House might impose." *Karem*, 960 F.3d at 665 (quoting *BMW of N. Am. v. Gore*, 517 U.S. 559, 574 (1996)) (brackets omitted). *Karem* held that exclusion from the White House violated the Due Process Clause when the government did not provide advance notice that one journalist's hard pass could be suspended for a month based on the journalist's "purportedly unprofessional conduct." *Id.* at 665–66. Here, as the Court explained, "nothing put Plaintiffs on notice of the

magnitude of the sanction Defendants imposed"—the dramatically more severe sanction of a complete and indefinite ban for every journalist in three media organizations. ECF No. 24 at 3.

Second, Defendants "do not dispute" that Plaintiffs were given no "opportunity to be heard" before Defendants implemented the ban. ECF No. 24 at 3. The Due Process Clause requires "an opportunity to present [one's] objections" to the deprivation of liberty. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Here, Plaintiffs had no "avenue for a response" before losing access to the White House. *Trump v. Cook*, 609 U.S. 528, 557 (2026). The administration immediately implemented the ban by deactivating hard passes for Plaintiffs' reporters overnight, barring their entry to the White House grounds, and seizing physical hard passes the following morning. *See supra*, at 13–14. As the Supreme Court held earlier this year in response to another of the President's posts on Truth Social, "[t]hat will not do" when a person has a right to be heard *before* a final decision. *Cook*, 609 U.S. at 557.

The letters that Defendants sent *after* they banned Plaintiffs and litigation commenced—mere hours before they filed their response to Plaintiffs' motion for a temporary restraining order—do not cure the violation. The "root requirement" of due process is an "opportunity for a hearing *before* [one] is deprived" of liberty or property. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Post-deprivation process satisfies due process only in "extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). As this Court found, Defendants' vague references to "national security" in their post-deprivation letters do not establish extraordinary circumstances warranting an exception from the general rule requiring pre-deprivation notice. ECF No. 24 at 3–4.

The Court has correctly seen these after-the-fact justifications for what they are. "The sorts of stories Defendants identify" as purported national-security risks are "routine"—and protected by the First Amendment. ECF No. 24 at 4; *see New York Times Co. v. United States*, 403 U.S. at 714. Even after the White House Press Office letters and Defendants' opposition brief invoked national security, President Trump has continued to justify the ban on the ground that he dislikes Plaintiffs' coverage of him and his administration without even mentioning national security. Exs. J–L. And Attorney General Blanche even sought to recharacterize purportedly "one-sided news out of certain organizations" as reporting that threatened "national security." Ex. M. Defendants' "national security" concerns are transparently pretextual and certainly provide no legitimate basis for dispensing with the ordinary requirement of pre-deprivation process.

Even taken on their own terms, Defendants' "national security" concerns also are not credible. Defendants' letter to CNN criticized a story written by Betsy Klein in January 2026, but the White House later renewed her press pass. ECF No. 24 at 3; *see* Klein Decl. ¶¶ 4, 15; ECF No. 16-1 at 1. Defendants' letter to MS NOW criticized a piece by Jake Traylor that likewise was written before his hard pass was renewed. Reddy Decl. ¶¶ 23–24. As the Court noted in its temporary restraining order, "in most cases, the reporters who authored the stories Defendants identify in their letters *did not even hold hard passes*." ECF No. 24 at 7. And at least some of those stories bear no relationship to national security at all. *See, e.g.*, ECF No. 16-3 at 2 n.6 (citing POLITICO article about the Republican midterm convention entitled "'The vibes are very bad' in Texas"). Remarkably, the letter to POLITICO asserted that an article "threatened national security and/or spread falsehoods" because it cited an anonymous source, ECF No. 16-3 at 1–2, even though it was the White House *itself* that organized a press briefing call during which reporters at a number of news organizations were expressly instructed to quote only an anonymous "senior

administration official." Marsh Decl. ¶ 13. Even setting aside that such reporting is protected by the First Amendment, Defendants made no attempt whatsoever to explain how any of these stories supposedly compromised national security. ECF No. 24 at 6–7.

Third, no matter how much notice or process Defendants purport to provide, Plaintiffs are likely to prevail because the so-called standards Defendants applied here are patently unconstitutional. Due process requires "an explicit and meaningful standard governing" press passes, including denials or revocations "for security reasons," and it affords additional procedural protections—namely, notice of the factual bases for denial, an opportunity for the applicant to respond, and a final written statement of the reasons for denial—to those denied passes. *Sherrill*, 569 F.2d at 131–32. "[A]rbitrary or content-based criteria" necessarily flunk this test—with "content-based criteria for press pass issuance" also violating "the First Amendment." *Id.* at 129. Because the suspension of a hard pass "implicates important first amendment rights," this Court analyzes standards for denying access "under a particularly stringent vagueness and fair-notice test." *Karem*, 960 F.3d at 665 (brackets and quotation marks omitted). Such "precision and guidance are necessary" so that government officials cannot "act in an arbitrary or discriminatory way." *Fox*, 567 U.S. at 253.

The real reason Defendants imposed the ban—expressed contemporaneously and repeatedly since then—is that the President dislikes Plaintiffs' supposedly "negative" reporting. Ex. B at 37:02-38:51; *see* Exs. J–L. That standard is (at risk of understatement) completely impermissible. Again, any standard for regulating access to the White House must be "explicit and meaningful." *Karem*, 960 F.3d at 666 (quoting *Sherrill*, 569 F.2d at 130–31). Due process does not tolerate justifications that are "so standardless that [they] authorize[ ] or encourage[ ] seriously discriminatory enforcement." *Fox*, 567 U.S. at 253 (quotation marks omitted). The

President's "standardless" prohibition on coverage he perceives to be too negative is unconstitutionally vague and allows "seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008); *accord New York Times Co. v. Dep't of Defense*, 824 F. Supp. 3d 27, 46 (D.D.C. 2026). Indeed, discrimination is the entire point, as the President's own statements about the ban have repeatedly made clear.

Moreover, even if one were to credit the post hoc justifications in Defendants' letters, the standards set forth there are similarly vague, arbitrary, and content-based. Requiring adherence to "standards of professionalism and decorum," as this Court recognized, "is so vague it hardly does the trick." ECF No. 24 at 3; *see Karem*, 960 F.3d at 666. The letters also discuss "trustworthiness" and "falsehoods," but those requirements likewise grant Defendants impermissible, arbitrary discretion. Under *Sherrill*, "vague" notions of "security" cannot justify the ban, either. 569 F.2d at 130; *see also United States v. U.S. Dist. Ct. for E. Dist. of Mich.*, 407 U.S. 297, 314 (1972) (noting that the "danger" to the exercise of First Amendment rights "is acute where the [g]overnment attempts to act under so vague a concept as the power to protect 'domestic security'"). And a standard that would revoke hard passes of journalists who publish whatever the government deemed "misinformation" is plainly based on content and viewpoint in violation of *Sherrill*. 569 F.2d at 129. At base, the empty, malleable supposed standards cited by the White House do nothing but authorize Defendants to punish reporting they dislike in violation of the Due Process Clause and First Amendment.

Each of these infirmities alone—the lack of advance notice of the prohibited conduct and the sanction's severity, the denial of a pre-deprivation opportunity to be heard, and the unconstitutionally vague and content-based standards—establishes a violation of the Due Process Clause. Together, they reflect a fundamental rupture in the process for regulating access to the

White House grounds for purposes of reporting on the President and his administration. This Court should again hold that Plaintiffs are likely to prove that the ban violates the Due Process Clause.

B. The ban retaliates against Plaintiffs for newsgathering and reporting protected by the First Amendment.

Plaintiffs are also likely to prevail on the ground that the ban retaliates against them for engaging in speech, publication, and newsgathering activities that the First Amendment protects but the administration disfavors. The First Amendment "guarantees all Americans the rights to speak, worship, publish, assemble, and petition their government freely." *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 184 (2026). To safeguard those rights, the First Amendment "prohibits government officials from subjecting individuals to 'retaliatory actions' after the fact for having engaged in protected speech." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022). Government officials have their own right to speak and may "do so forcefully," but they may not "use the power of the State to punish or suppress disfavored expression." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 188 (2024). If the rule were otherwise, the government, through retaliation for protected speech, could achieve the "'self-censorship' of speech that could not be proscribed." *Counterman v. Colorado*, 600 U.S. 66, 75 (2023).

Retaliation is particularly pernicious when directed against the press. "Without an unfettered press, citizens would be far less able to make informed political, social, and economic choices"; "the press' function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired." *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981). "It should alarm all Americans when the Government retaliates against individuals or organizations for engaging in constitutionally protected public debate," and "that alarm should ring even louder when the Government retaliates against those engaged in newsgathering and reporting." *Media*

Matters for Am. v. FTC, 805 F. Supp. 3d 105, 111 (D.D.C. 2025), *stay denied*, 2025 WL 2988966 (D.C. Cir. Oct. 23, 2025).

To demonstrate that unlawful retaliation has occurred, a plaintiff must show that "'(1) [it] engaged in conduct protected under the First Amendment; (2) the defendant took some retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again; and (3) a causal link between the exercise of a constitutional right and the adverse action.'" *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016). Plaintiffs are likely to prove each element.

First, Plaintiffs "are obviously engaged in conduct protected under the First Amendment" when covering the President and his administration, including Plaintiffs' newsgathering and reporting. *Media Matters for Am. v. Paxton*, 138 F.4th 563, 584 (D.C. Cir. 2025); *see also Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) ("[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated."). "The Framers designed the Free Speech Clause of the First Amendment to protect the 'freedom to think as you will and to speak as you think.'" *303 Creative LLC v. Elenis*, 600 U.S. 570, 584 (2023) (quoting *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660–61 (2000)). And the Press Clause of the First Amendment serves as "an acknowledgment of the critical role played by the press in American society." *Houchins v. KQED, Inc.*, 438 U.S. 1, 17 (1978) (Stewart, J., concurring); *see also Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716–19 (1931) (noting that the Continental Congress dubbed "freedom of the press" as one of the "five great rights"). "Suppression" of the press "muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free." *Mills*, 384 U.S. at 219. All told, speech about official action "is an essential mechanism of democracy" that "hold[s] officials accountable to the people." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010). Plaintiffs' reporting—even (or especially) their reporting on

matters touching political controversies and issues of national security—is protected by the First Amendment.

Second, banning Plaintiffs from the White House grounds is precisely the type of adverse action that would deter journalists and news organizations of ordinary firmness from continuing to provide fact-based, independent coverage of the administration that the President dislikes. Indeed, that is the entire point of the ban: The President said that he would "love" it if the ban forced Plaintiffs to "straighten themselves out." Ex. B at 53:38-53:58. As the President well knows, access to the White House is critically important for journalists and news organizations that cover the President and his administration. Even a one-month suspension from the White House grounds is "an eon in today's news business." *Karem*, 960 F.3d at 665. An indefinite ban has an even greater chilling effect on future coverage. And the President's threat of "Other Fake News Media Outlets to follow" only exacerbates the chilling effect of the ban for all journalists and news organizations. *See supra*, at 13. The ban undeniably "discourage[s] the 'uninhibited, robust, and wide-open debate that the First Amendment is intended to protect.'" *Counterman*, 600 U.S. at 78 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

Third, President Trump has made explicit the causal link between the ban and Plaintiffs' coverage of him and his administration. The President's Truth Social post announcing the ban declares that he has barred Plaintiffs from the White House grounds "*as a result* of their constant 'reporting' FAKE NEWS!"—meaning coverage that, regardless of its accuracy, the President dislikes. *See supra*, at 12 (emphasis added). The President attributed the ban to "cumulative stories over the last two years," and his belief that Plaintiffs "purposely write negative news." Ex. B at 27:22-28:00. He even referred to his own unprecedented act as "the ban on the free press." *Id.* at 53:38-53:58. And since announcing the ban and even since this Court entered a temporary

restraining order, the President has continued to single out Plaintiffs for their coverage. Exs. J–L. As Attorney General Blanche has since explained, the President "did something" about "one-sided media coverage" by banning "certain outlets" from the White House. Ex. M.

Defendants cannot credibly attribute their decisions to anything other than a bare desire to retaliate against Plaintiffs for their journalism. Although the administration attempted to invent new justifications other than the facially retaliatory motive that the President announced (and has since reiterated), its litigation-focused letters do not break the causal chain from the President. Not once did the President mention "national security" or "classified information" before he instituted the ban—or before Plaintiffs gave notice of their intent to file this lawsuit. And since the administration's short-lived effort to attribute the ban to new rationales, the President has repeatedly made clear that his disapproval of the content of Plaintiffs' reporting motivated the ban. Exs. J–L. "Government 'justification[s]' for interfering with First Amendment rights 'must be genuine, not hypothesized or invented post hoc in response to litigation.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). When it comes to the administration's motives, the Court is not "required to exhibit a naiveté from which ordinary citizens are free." *Cook*, 609 U.S. at 547 (quoting *Dep't of Commerce v. New York*, 588 U.S. 752, 785 (2019)). The administration's new "national security" mantra is patently pretextual.

In any event, the letters bolster Plaintiffs' evidence of retaliation. The letters state that the ban is punishment for Plaintiffs' supposed failure to meet "standards of professional conduct" for journalists and their publication of what Defendants label "misinformation . . . relating to national security." ECF No. 16-1 at 1–2. That is just another way of saying that Defendants dislike or disagree with Plaintiffs' speech. And as this Court recognized, Defendants' own letters "purport

to identify reporting that 'threatened national security and/*or spread falsehoods*,' leaving open the possibility that all the stories fall into the latter bucket, rather than the former." ECF No. 24 at 6 (quoting ECF No. 16-1) (emphasis added). Banning Plaintiffs because Defendants dislike Plaintiffs' reporting echoes the President's original stated rationale for the ban and is, of course, straightforward retaliation for the content and perceived viewpoints of Plaintiffs' speech.

Defendants have proclaimed that access to spaces where the President delivers press briefings and takes questions from the press "is a privilege—not a right." ECF No. 16 at 2. But that is wholly irrelevant for purposes of a claim of retaliation. The law is settled that Defendants may not "deny a benefit to a person because of his constitutionally protected speech or associations" because "his exercise of those freedoms would in effect be penalized and inhibited" by such retaliation. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *see Board of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996) (government may not condition access to benefit on grounds that violate the First Amendment "even if [a person] has no entitlement to that benefit"). And Defendants' continued unpredictable and unexplained adverse treatment of Plaintiffs since this Court's entry of a temporary restraining order—including denying access to Thursday's state dinner and interfering with CNN's assigned pool duties on Saturday, *see supra*, at 19—only exacerbates the chilling effect on protected speech.

In short, the President's own words leave no doubt that banning Plaintiffs from the White House and denying them the access they had as of September 18 is retaliation for their protected newsgathering and speech—adverse action intended to cow them into conforming the content of their reporting to the President's preferences and to threaten other journalists lest they suffer the same fate. That is a paradigmatic First Amendment violation.

C. The ban unconstitutionally restricts access to a nonpublic forum.

Even setting aside the unconstitutional retaliation, the ban also violates the First Amendment because the President's ban of three disfavored news outlets is an unreasonable and viewpoint-discriminatory restriction on access to a nonpublic forum.

A "nonpublic forum" is "government property" that the government has opened to speech for selected speakers. *Ateba*, 133 F.4th at 121–22; *see, e.g.*, *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 679 (1998); *Mahoney*, 2026 WL 2836881, at *3–4. The D.C. Circuit has held that the "White House Press Area"—including "the briefing room, the press offices, and certain other locations in and around the White House"—"is a nonpublic forum," because the government "provides selective access for individual speakers." *Ateba*, 133 F.4th at 117, 122 (quotation marks omitted). And "[e]ven when the government may regulate speech, it must avoid 'unfair or inconsistent enforcement.'" *Mahoney*, 2026 WL 2836881, at *6 (quoting *Mansky*, 585 U.S. at 22). The First Amendment thus requires that any restrictions on access to those areas be both viewpoint neutral and "reasonable in light of the purpose served by the forum." *Mansky*, 585 U.S. at 13; *see also Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985) (the "government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject"). The ban meets neither requirement. It is expressly viewpoint discriminatory and patently unreasonable in light of the purpose of the forum.

Viewpoint discrimination is anathema to the First Amendment. As a unanimous Supreme Court held in 2024, the "recognition that viewpoint discrimination is uniquely harmful to a free and democratic society" resides at "the heart of the First Amendment's Free Speech Clause." *Vullo*, 602 U.S. at 187; *see also Reed v. Town of Gilbert*, 576 U.S. 155, 168 (2015) (viewpoint discrimination is a "'more blatant' and 'egregious form of content discrimination'" (quoting

Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995))). In the words of the D.C. Circuit, "viewpoint discrimination is poison." *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1141 (D.C. Cir. 2023) (quotation marks omitted). That does not change when the government claims to discriminate in an attempt to make speech more "fair" or "balanced": "[I]t is no job for government to decide what counts as the right balance of private expression—to 'un-bias' what it thinks biased, rather than to leave such judgments to speakers and their audiences." *Moody v. NetChoice, LLC*, 603 U.S. 707, 719 (2024).

The First Amendment's prohibition of viewpoint discrimination "limits the restrictions that the government may impose on speech, including speech on government property." *Ateba*, 133 F.4th at 119. Here, President Trump has expressly targeted Plaintiffs based on their perceived editorial viewpoints—targeting the "particular views taken by speakers on a subject." *Rosenberger*, 515 U.S. at 829. The President has left no doubt that he has banned Plaintiffs from the White House because, in his view, their coverage is not "fair" and "honest." Ex. B at 26:47-27:08. The President explained that he was banning Plaintiffs because he believes they "write negative news" and "want to try and diminish the Republicans and a Republican administration." *Id.* at 27:41-28:00. While Plaintiffs contest the President's characterizations of their journalism, the President indisputably has targeted Plaintiffs based on what he perceives to be their "motivating ideology or the opinion or perspective" and thus engaged in paradigmatic viewpoint discrimination. *Rosenberger*, 515 U.S. at 829; *accord Nat'l Pub. Radio, Inc. v. Trump*, 827 F. Supp. 3d 48, 88 (D.D.C. 2026) ("It is difficult to conceive of clearer evidence that a government action is targeted at viewpoints that the President does not like and seeks to squelch."). This clear viewpoint discrimination means that the ban is flatly unconstitutional.

The Nation's history of press access to governmental institutions reinforces the conclusion that the President's viewpoint-discriminatory ban violates the First Amendment. *Mahoney*, 2026 WL 2836881, at *7 (applying "relatively probing review" based on historical practice). The First Congress debated this very question when Representative Aedanus Burke proposed censuring newspaper publishers that had reported on House debates based on special access to the floor of the chamber. 1 Annals of Cong. 952 (1789). He accused publishers of "misrepresent[ing] these debates in the most glaring deviations from truth." *Id.* Others understood the resolution as an attempt to "driv[e] the gentlemen who were at the foot of the Speaker's chair [meaning, the publishers] to the gallery," which was generally open to the public. *Id.* at 954. That proposal drew wide condemnation as "an attack upon the liberty of the press," *id.* (Rep. Hartley), and (according to the man who drafted the First Amendment) as an "improper" effort "to throw impediments in the way of such information as the House had hitherto permitted," *id.* at 955 (Rep. Madison). Representative Burke withdrew his resolution, and the controversy had the effect of spurring a more formal practice in which the House set aside space on the tightly controlled floor of the House for reporters without discriminating based on viewpoint. Elizabeth Gregory McPherson, *Reporting the Debates of Congress*, 28 Q.J. Speech 141, 142 (1942). Because then-Representative James Madison and many others in the First Congress were also Framers, their actions are given special weight in interpreting the First Amendment. *Town of Greece v. Galloway*, 572 U.S. 565, 575–76 (2014). The administration's new slogan that "access to the White House is a privilege—not a right," ECF No. 16 at 2—thus misses the point. The Framers understood the First Amendment to prohibit viewpoint-based restrictions on press access to government spaces otherwise open to journalists.

Banning Plaintiffs from the White House also is unconstitutional because it is not reasonable in light of the purpose served by the White House press areas. The White House press facilities are "made publicly available as a source of information for newsmen" and serve the interests of "the public at large" in receiving information "gathered out of a multitude of tongues." *Sherrill*, 569 F.2d at 129–30 (quotation marks omitted); *see Cable News Network, Inc. v. Am. Broad. Cos.*, 518 F. Supp. 1238, 1244 (N.D. Ga. 1981) (describing the "'enduring and vital tradition of public entree' (through the press as agents) to the presidential activities covered by press pools"). Barring Plaintiffs, among the most prominent news organizations in the country, from these locations based on their perceived editorial viewpoints and the President's personal dislike of their journalism undermines the purpose of a forum designed to facilitate newsgathering and reporting by a variety of news organizations.

Moreover, the administration's purported criteria for excluding Plaintiffs—"professionalism" and "national security," *e.g.*, ECF No. 16-1 at 1—cannot count as a "sensible basis for distinguishing what may come in from what must stay out" and are thus unreasonable. *Mansky*, 585 U.S. at 16. The Supreme Court has held that the First Amendment does not tolerate standards that "plac[e] unbridled discretion" to regulate speech "in the hands of a government official." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). And the D.C. Circuit reiterated last week that "it would be unreasonable to control access to White House press facilities through standardless discretion." *Mahoney*, 2026 WL 2836881, at *6 (citing *Ateba*, 133 F.4th at 125). As the categorical ban and the White House's actions since this Court's temporary restraining order show, gauzy standards of professionalism and national security leave "officials 'too much discretion'" to act in unpredictable ways "and may therefore be 'enforced selectively against those who hold unpopular points of view.'" *Id.* at *7. Such "arbitrary control over who

may speak invites the suppression of disfavored viewpoints and undermines the First Amendment's core protections." *Id.* at *6; *see id.* at *7 (citing precedent concerning access to "press conferences" held within governmental buildings).

Defendants' bald invocations of national security do not insulate the ban from First Amendment scrutiny. National security is not why the President banned Plaintiffs from the White House. *See supra*, at 31–32. Regardless, the First Amendment does not permit banning Plaintiffs from the White House based on the content of their reporting. Labels like "national security" do not create a "talismanic immunity from constitutional limitations." *Sullivan*, 376 U.S. at 269. Hard-pass holders have always reported on important news concerning national security. *New York Times Co. v. United States*, 403 U.S. at 717 (Black, J., concurring) ("The press was protected so that it could bare the secrets of government and inform the people.").

In sum, the ban violates the First Amendment for the independent reason that it excludes Plaintiffs from a nonpublic forum based on their perceived editorial viewpoints and through unreasonable means that give standardless discretion to the President and his administration.

II. Plaintiffs will suffer irreparable injury absent a preliminary injunction.

This Court correctly determined that Plaintiffs are "likely to suffer irreparable harm absent a temporary restraining order." ECF No. 24 at 5. That same analysis applies to the preliminary injunctive relief Plaintiffs now seek.

If not preliminarily enjoined, the ban will inflict irreparable harm to Plaintiffs' constitutional rights. "It has long been established that the loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod*, 427 U.S. at 373). That principle has special force for "[t]he loss of First Amendment freedoms." *Mahmoud*, 606 U.S. at 569 (quoting *Roman Cath. Diocese*, 592 U.S. at 19); *see Turner v. U.S. Agency for Glob. Media*, 502

F. Supp. 3d 333, 385 (D.D.C. 2020) (explaining that "chilling of First Amendment expression" is "irreparable harm"). The denial of access to the White House without due process of law likewise is an irreparable injury. *Karem*, 960 F.3d at 667–68; *see Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (due-process violations generally cause irreparable harm). And "there is a presumed availability of federal equitable relief against threatened invasions of constitutional interests." *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998) (cleaned up). So plaintiffs who "have shown that they are likely to succeed on their constitutional claim" also successfully show "that they are likely to suffer irreparable harm without preliminary injunctive relief." *Taylor v. Trump*, 823 F. Supp. 3d 17, 40 (D.D.C. 2026) (emphasis omitted). Without a preliminary injunction, Plaintiffs will suffer severe impairment to their ability to gather and report news from the White House.

If not preliminarily enjoined, the ban also will cause "certain," "great," and "irreparable" harm, *Taylor*, 823 F. Supp. 3d at 39, to CNN's, MS NOW's, and POLITICO's ability to carry out their journalistic missions. An organization suffers irreparable harm if (1) the actions taken by the defendant "perceptibly impair[ ] the organization's programs," and (2) the defendant's actions "directly conflict with the organization's mission." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (brackets and quotation marks omitted). That standard is easily met here. As a court in this District has recognized, "without access to" the White House, reporters "lack[ ] the ability to observe events firsthand and to ask questions of White House officials." *Karem v. Trump*, 404 F. Supp. 3d 203, 216–17 (D.D.C. 2019). CNN, MS NOW, and POLITICO are organizations whose purpose is to report national news, for which they depend on individual reporters to gather information firsthand at the White House. The ban causes further irreparable harm downstream by disrupting CNN's ability to fulfill its primary television network pool duties,

in which it "function[s]" not only "as [a] surrogate[ ] for the public," *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality opinion), but as a surrogate for the press who depend on pool coverage.

Critically important newsworthy events occur every day. The loss of this access for even a short period of time may constitute "an eon in today's news business." *Karem*, 960 F.3d at 665 (describing "a month-long loss" of White House access). And once Plaintiffs miss out on the opportunity to report on a story, that opportunity is gone forever. Their newsgathering, speech, and the journalistic mission they serve will suffer irreparable harm absent a preliminary injunction.

III. The balance of hardships and public interest favor a preliminary injunction.

As this Court has concluded, the last two factors support Plaintiffs, too. ECF No. 24 at 5–7. The "balance of equities" and "public interest" factors "'merge'" because Defendants are governmental officials. *Karem*, 960 F.3d at 668 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, these factors weigh decisively in favor of a preliminary injunction against the flagrantly unconstitutional ban.

There is "'always a strong public interest in the exercise of free speech rights otherwise abridged by an unconstitutional' government action." *Media Matters for Am. v. Paxton*, 138 F.4th at 585. The public interest also favors access because a "public awareness and understanding of the President's behavior facilitates his effectiveness as President" and permits "a determination by the public of the adequacy of the President's performance." *Cable News Network v. Am. Broad. Cos.*, 518 F. Supp. at 1244; *see New York Times v. Dep't of Defense*, 824 F. Supp. 3d at 53 (observing that the "constitutional interests at stake" in access to the government for reporting "are hard to overstate").

On the other side of the ledger, Defendants have no legitimate interest in enforcing the ban because "enforcement of an unconstitutional law is always contrary to the public interest." *Karem*,

960 F.3d at 668 (quoting *Gordon*, 721 F.3d at 653); *see Taylor*, 823 F. Supp. 3d at 41. Defendants have offered "little to back up" their claimed "national security interest" since "nothing in the record that predates this suit suggests" that their actions were "motivated by national security concerns." ECF No. 24 at 6. And the administration has not "explain[ed] how any of the reporting they identified in their letters to Plaintiffs damaged the national security" or how denying access to CNN, MS NOW, and POLITICO advances the administration's post hoc justifications when, "in most cases, the reporters who authored the stories Defendants identify in their letters *did not even hold hard passes*." *Id.* at 6–7.

IV. The Court should waive any bond requirement.

The Court should exercise its discretion "to dispense with any security requirement whatsoever." *Associated Press*, 780 F. Supp. 3d at 60 (quoting *Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 759 (D.C. Cir. 1980)). The Court has "wide discretion" not to require a bond. *Am. First Legal Found. v. Becerra*, 2024 WL 3741402, at *16 n.11 (D.D.C. Aug. 9, 2024). No security requirement is necessary because there is no risk that a preliminary injunction will cause "material damage." *Associated Press*, 780 F. Supp. 3d at 60. And requiring Plaintiffs to post a bond to regain equal access to report on the President and his administration would be at odds with the country's tradition of free speech and a free press. Forcing Plaintiffs to bear a financial cost simply to stand on the same footing as their journalistic peers who were not the target of government retaliation and viewpoint discrimination would compound Plaintiffs' First Amendment injury. This Court should dispense with a bond or again require a nominal bond. ECF No. 24 at 8.

CONCLUSION

This Court should issue a preliminary injunction enjoining Defendants (save the President) and those acting in concert with them from taking any action to enforce the White House ban

against Plaintiffs, and ordering that Defendants afford Plaintiffs the same access to the White House and the President that they had before September 18, 2026, including the restoration of all hard passes revoked on or about that date.

Dated: September 28, 2026

Respectfully submitted,

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EXHIBIT 33

(Declaration of Katherine Fallow)

Trump kicks reporter from The Independent off Air Force One after Oval Office meltdown

Alex Woodward

President Donald Trump's communications staff has removed *The Independent*'s White House correspondent from the traveling press pool that was scheduled to cover his trip to Iowa for a campaign rally on Thursday.

Correspondent Andrew Feinberg was notified by the White House Press Office on Wednesday evening that he will "not be the print pooler on tomorrow's trip" despite his scheduled shift in the rotation, which was confirmed days earlier.

"Thank you for your understanding," the sparse message read.

The notice arrived one day after the president berated Feinberg inside the Oval Office, where Trump told him to "be careful" after trying to ask questions he didn't like. He also labeled him a "sick person," adding, "I actually think there's something wrong with you."

An official White House rapid response account on X also called him a "Mongoloid Moron" while Vice President JD Vance used his official government X account to call him an "imbecile."



President Donald Trump on Wednesday abruptly removed The Independent's White House reporter off his planned coverage rotation on Air Force One for the trip to an Iowa midterms rally on October 22 (Getty Images)

The White House Correspondents' Association "strongly objects to the decision to restrict a journalist's coverage simply because the president didn't care for their questioning," President Jacqui Heinrich said in a statement Wednesday evening.

"That is retaliation," Heinrich, who works for Fox News, said. "The American public's right to an independent press depends on reporters being able to do their jobs without fear that challenging the president will cut off their access."

The Independent is at least the third outlet to be removed from Air Force One in recent weeks following the president's growing threats to media access and a high-profile lawsuit seeking a court's intervention to reverse what the president has called a "ban" on three other outlets.

A federal judge has ordered the administration to restore press passes that belonged to several journalists from CNN, *Politico* and MS NOW, which the president said he was "banning" from the White House, likely in violation of the First and Fifth Amendments.

But reporters from CNN and *Politico* continue to be barred from Air Force One on days their outlets have been assigned to provide out-of-town print or television coverage of the president's travel.

Administration officials have sought to distinguish the removal of individual outlets and reporters from the White House, which a judge has rejected, to pool coverage on Air Force One.

In a recent interview with *TIME,* Trump denied that he was violating the court's order. White House communications director Steven Cheung also said restoring press passes is "different than allowing the pool into the events in the Oval Office or on Air Force One."

The White House previously told *The Independent* that traveling on Air Force One is a "privilege not a right" and defended Trump as "the most accessible President in American history" who "will continue to grant an unprecedented level of access to the press."





Within the last month, at least three outlets have been barred from Air Force One on days they are assigned to provide out-of-town print or television coverage (AFP/Getty)

On Wednesday, before traveling to a campaign rally in South Carolina, the president again lashed out at members of the press who asked him questions outside the White House

He called CNN's Kaitlain Collins a "low IQ person" and a "dummy" and called a reporter for ABC News a "stupid person."

"You don't know what you're talking about," he told Collins as he waved her off. "You're a low-IQ person, you're a dummy, and you work for CNN."

Last week, Trump-appointed District Judge Timothy Kelly determined that the president likely violated the law by revoking press passes for CNN, MSNOW and *Politico* journalists. Less than 24 hours later, the administration appealed the order, launching a legal battle that will likely play out in courts for months while reporters fight for access to the president.

The Department of Justice has argued that the outlets were banned for national security reasons, though the president has not made any such argument. The White House Press Office only raised those concerns in letters to the outlets after a lawsuit was filed to reverse the ban.

In his order, Judge Kelly wrote that the president's public statements justifying the "ban" clearly show that he targeted the outlets for their coverage, not national security concerns.

"Simply put, that is unlawful viewpoint discrimination," he wrote.

Trump is scheduled to appear at a campaign rally in Sioux City, Iowa on Thursday to support U.S. Senate candidate Ashley Hinson, gubernatorial candidate Zach Lahn and other Republicans on the ballot.

EXHIBIT 34

(Declaration of Katherine Fallow)

Trump lost control and ordered me to be ‘quiet’ in the Oval Office. Then it got personal

Andrew Feinberg

Who could have guessed that Trump would get so spun up over a law that’s been on the books since Abraham Lincoln was president?

I certainly didn’t when I arrived at the White House this morning.

I was there as part of what the Trump administration has dubbed the “secondary print” element of the White House press pool, part of the rotating group of news outlets that it brings into the Oval Office for events. Normally, I am the designated “print pool” reporter approximately once a month, where I file short reports detailing what goes on in the Oval Office or any other event the president attends.

This time, my only function was to ask questions. I had a list that I discussed with my colleagues in New York, but I decided to call an audible when a reporter posted that Trump and Vice President JD Vance planned to unveil a new program and “tip line” to award so-called “whistleblowers” bounties of up to $30,000 for exposing what the administration believes to be “fraud.”

Then I became the focus of Trump’s attacks.



President Donald Trump turned a White House event on its head unleashing his anger on me and The Independent for asking questions (Reuters)

For doing my job, I became the target of Trump and his team. Soon after, Trump lectured and unleashed at me his White House rapid response, who called me a "Mongoloid Moron" – which is a slur for someone with development disabilities, a phrase I would never use – and the Vice President on his official government account labeled me an 'imbecile.'

All for an event that started off pretty normal. White House officials were going to hand out a reward to Nick Shirley, the right-wing YouTuber whose viral videos jump-started the administration's crusade against day-care and home health care businesses in Minnesota run or owned by Somali-Americans. For their part, Trump, Vance and even Shirley acted like the idea of rewarding whistleblowers was new and unique to this administration, with the YouTube personality claiming there has "never been an incentive for anyone to ever expose fraud" in the country's entire history.

Because I've spent most of my professional life covering the federal government, I know there's already a mechanism to reward whistleblowers on the books, I knew Shirley — and the rest — were dead wrong about that.

Since 1863, a law called the False Claims Act has allowed whistleblowers to sue on behalf of the federal government to recover funds that have been defrauded from federal programs. That law pays people more than Trump suggested through his program.

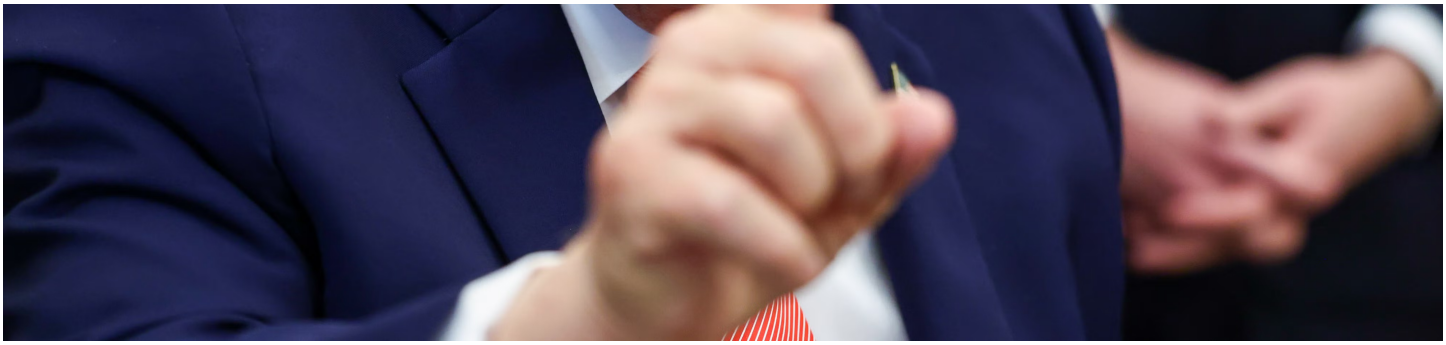
These lawsuits, called *qui tam* cases, often involve the exact types of Medicare and Medicaid fraud on which the administration claims to be cracking down. And unlike the relatively paltry 1 percent which Trump claimed whistleblowers can be awarded, the False Claims Act allows someone who blows the whistle and brings a *qui tam* case to receive as much as a quarter of whatever the government recovers.

The process is complex, onerous, and requires legal assistance, but the payout at the end can be significant. The new program Trump and Vance were touting appeared far less lucrative — and left Trump, not a federal judge, as the arbiter of who would be worthy of any rewards.

So why would anyone use the administration's "tip line" when they could get far more cash for using the tried-and-true process that's been around since the days of Abraham Lincoln?

I asked the president that exact question. His response? "Because it's a lot of money."





Trump was asked about his plan to pay people to snitch on government fraud, he then focused on me for the rest of the event. Trump called me a 'sick person' and questioned who I was – then his team took it to another level (Bloomberg via Getty)

"At 1 percent, people will make millions and millions of dollars for turning in what actually is a somewhat routine crime of, you know, of millions of millions. But we're talking about we're talking about billions and actually probably trillions of dollars," said Trump, who may not have understood the question or was unable to fathom that ten to 25 percent is far more than one percent.

Trump may not have understood the query, but Vance did — and he was eager to mix it up. Months earlier, we tangled in the briefing room when I asked him about the president's stock trading. And it appeared that the Veep was unsatisfied with Trump's response, so he chimed in to call the question "dishonest" and suggest there are certain frauds that fall outside the False Claims Act's remit, which is not true.

Sensing that he had been emasculated by the VP, Trump asked me who I was, which was odd because he had definitely recognized me earlier when he winked at me as Vance delivered remarks earlier in the event.

I've been around him in the Oval, aboard Air Force One and elsewhere countless times over the decade I've covered him, and we've even spoken on the phone on a number of occasions.

But Vance's interjection compelled Trump to ask: "Who are you?"

I answered him and said I'm Andrew Feinberg and I work for *The Independent*.

Trump ended his press conference after losing control and telling me to be 'quiet.' But, I'll be back at the White House tomorrow (AP Photo/Jacquelyn Martin)

As the press gaggle went on, I attempted to ask more questions from the list I'd prepared — including one on his plans to renovate a popular D.C. golf course. But kept finding myself at the end of Trump's fury.

Trump appeared to point to me more than once, but on each occasion he had apparently intended to call on the Agence France-Presse reporter directly behind me. Because from my vantage point he was pointing directly at my face, I started to speak up.

He didn't like that.

"I don't know who the hell you are, but you better be careful," he said, an odd remark considering I'd identified myself not 10 minutes earlier.

When the same thing happened minutes later, he lost it completely, calling me a "sick person."

He added: “I actually think there’s something wrong with you.”

For the record, I had an annual physical earlier this month, and I can report I’m in perfect health.

I was doing my job, and I’ll be right back at it tomorrow.

EXHIBIT 35

(Declaration of Katherine Fallow)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CABLE NEWS NETWORK, INC., et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Civil Action No. 1:26-cv-3287

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

The White House is the home and workplace for the Nation's Commander-in-Chief. Plaintiffs CNN, MSNOW, and Politico have long been granted privileged access to White House grounds. But the President concluded that they have failed to maintain basic minimum "standards of professionalism and decorum expected of those given access to the White House Complex, including" by "publishing sensitive or classified information." ECF No. 16-1 Letter to CNN; ECF No. 16-2 Letter to MSNOW; ECF No. 16-3 Letter to Politico ("Letters"). In response, the President preliminarily revoked their continued access to White House grounds and provided Plaintiffs the opportunity to respond by end of business Friday, September 25, 2026. Letters at 1. Plaintiffs declined to submit any response, request any extension, or otherwise defend their conduct. Accordingly, at 5:00pm last Friday, the President's preliminary decision to revoke Plaintiffs' continued access to the White House, though temporarily enjoined from continuing in effect, became final. After all, access to the White House is a privilege—not a right.

Following this Court's issuance of a temporary restraining order, Plaintiffs now ask this Court to preliminarily enjoin the President to provide them further and expanded access to the White House complex, contrary to his personal judgment. But Plaintiffs are unlikely to succeed on the merits of all three theories they advance.

First, the President's actions are lawful under the First Amendment. While the D.C. Circuit has held that some areas of the White House grounds constitute a nonpublic forum, *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977), that decision is wrong and should be overruled. But even under *Sherrill*, the President's actions must be sustained because the President has "compelling governmental interest[s]" in enforcing minimum standards for bona fide journalists and safeguarding national security information.

At the very least, the Government may control reporters' access to restricted presidential areas, such as the Oval Office, even for viewpoint-discriminatory reasons. *Associated Press v. Budowich*, No. 25-5109, 2025 WL 1649265 (D.C. Cir. June 6, 2025) ("*AP*"). That distinction is particularly relevant, because here—unlike in their temporary restraining order papers—Plaintiffs seek more than just their hard-passes: they demand full access to all areas of the White House, including those that under *AP* the D.C. Circuit has held that the President may consider viewpoint in addressing. There is no basis for an expansion of this Court's previous order, particularly one that would conflict with an on-point D.C. Circuit panel decision.

Second, the President's actions were not retaliatory because the mere denial of special access is not an adverse action that would objectively chill a reasonable reporter, as the Fourth Circuit has squarely held, *Balt. Sun Co. v. Ehrlich*, 437 F.3d 410 (4th Cir. 2006), and because the Government would have taken the same action anyway, notwithstanding Plaintiffs' speech criticizing the President. Indeed, the President has not revoked access to other outlets that have equally criticized the President.

Third, Plaintiffs are unlikely to prevail on their due process claims because, even if they have a constitutional right to access the White House, they have received adequate notice of the relevant conduct before-hand and have now had the opportunity of post-deprivation process, including the chance to contest the President's factual findings. They have declined to participate in that process and forfeit any argument that they need additional time to justify their conduct. On the remaining factors, Plaintiffs cannot make the requisite showing of irreparable harm and both the public interest and balance of the equities favor the Government.

The Court should therefore deny Plaintiffs' motion for a preliminary injunction.

BACKGROUND

The White House is the official residence and workplace of the President. 3 U.S.C. § 102. Presidents have had a relationship with the press since the beginning. They have long decided which journalists should receive privileged access, which has varied substantially from administration to administration. For example, President Washington hand-picked which reporters would print his Farewell Address based on political considerations. *See* Harold Holzer, *The Presidents vs. The Press: The Endless Battle Between the White House and the Media—from the Founding Fathers to Fake News* 16 (2020) (explaining that President Washington selected a paper "never stained with the ribaldry and violence of party recriminations" (quotation marks omitted)). President Jefferson "encouraged the establishment of a new gazette ... that would remain reliably favorable to his administration"; its "reward would be first access to official news." *Id*. at 39.

In the early Twentieth Century, President Theodore Roosevelt began a practice of regularly inviting reporters into the Oval Office for off-the-record press conferences while he received his "regular midday shave." *Id.* at 93. He "picked and chose those he would allow to attend these sessions; he used the conference as an occasion for reward and punishment, screening out the reporters who were the least likely to be sympathetic to his policies." Blaire Atherton French, *The Presidential Press Conference: Its History and Role in the American Political System* 3 (1982). Indeed, President Roosevelt warned reporters that if they were to "violate a confidence or publish news that the President thought ought not to be published," then "he should be punished by having legitimate news withheld from him." Holzer, *supra*, at 100 (quotation marks omitted). As another historian recounts, "He expected confidential interviews to remain secret," and "[r]eporters who betrayed his trust were banished by the President to the Ananias Club, named after the biblical liar." Kathleen Dalton, *Theodore Roosevelt: A Strenuous Life* 212 (2002). "Once consigned to the

Ananias Club a reporter could no longer obtain White House news in person." *Id.* To take another example, "when Jesse Carmichael of the *Boston Herald* printed a story about the Roosevelt children chasing a Thanksgiving turkey all over the White House lawn and grabbing its feathers," President Roosevelt "banned the reporter and his newspaper from the White House." *Id.*

Decades later, President Kennedy sought to "court star correspondents" and thus gave certain reporters "special access" and "advance notice of administration announcements." Holzer, *supra*, at 213. President Johnson "tried to use personal interviews as a means of reward and punishment." Blaire Atherton French, *The Presidential Press Conference: Its History and Role in the American Political System* 18 (1982). Courts in this district have elsewhere summarized the comparatively recent history of press access, including hard passes, in notable cases: *AP*, 2025 WL 1649265, at *1-*3; *Ateba v. Leavitt*, 133 F.4th 114, 117-119 (D.C. Cir. 2025); *Karem v. Trump*, 960 F.3d 656, 660-61 (D.C. Cir. 2020); *Sherrill*, 569 F.2d at 126-27. A "hard pass" is "a special press credential" that the "White House issues" to certain reporters. *Ateba*, 133 F.4th at 116. It "allows its bearer to use an expedited security line and to enter the Press Area without an escort." *Id.* at 117. This is distinct from a "day pass," which the White House has historically provided to other journalists, who "must wait for an escort to take them from the White House gate to the Press Area[.]" *Id.*

Against this background, on Friday, September 18, the President issued a statement:

> I am proud to announce that, effective immediately, I am banning Fake News CNN, MSNOW (who recently changed their name from MSNBC due to lack of viewership and credibility!), and Politico (The recipients of an illegal and ridiculous $8 Million Dollar subscription, an All Time Record, directly from the United States Government, under Crooked Joe Biden, in order to keep them "alive." Seems like corruption to me!), from the White House as a result of their constant "reporting" FAKE NEWS! Media Outlets shouldn't be able to constantly write or report FICTION and LIES when they're covering the President of the United States, the Trump Administration, or the United States of America. Other Fake News Media

> Outlets to follow. Thank you for your attention to this matter! President DONALD J. TRUMP

Compl. ¶ 37. On Monday, September 21, 2026, the President further explained that:

> The White House is not instituting an assault on the Free Press, something which I cherish. It is instituting an assault on the FAKE NEWS, something that has grown like Cancer in our beloved United States of America. It is corrupt, purposeful, pervasive, fully coordinated, and totally out of control. It is a threat to our National Security, and must be stopped, NOW! Thank you for your attention to this matter. President DONALD J. TRUMP

ECF No. 15-1 at 2. Later that day, Plaintiffs filed suit. Compl. In response, the President released another statement explaining, in part:

> Fake News people and publications that only write negatively, and who violate our National Security by writing false and defamatory stories with unknown "sources," shouldn't be allowed access to the most important Office anywhere in the World. It is called the Oval Office, and it should be treated with Decorum, Respect, and Dignity, not defiled by Third Rate Clowns, who purposefully distort, twist, and degrade with everything they write or publish. Virtually every story about me, or anything having to do with me, is negative, wrong and, in many cases, DANGEROUS for our Country!

ECF No. 15-2 at 2. On September 22, 2026, the White House issued letters to Plaintiffs providing "notice that the President has made the determination to revoke hard passes for members of your organization." Letters at 1. These letters explained that Plaintiffs "exhibited behavior in violation of the standards of professionalism and decorum expected of those given access to the White House Complex, including by trafficking in verifiable falsehoods about national security and other issues, and publishing sensitive or classified information." Letters at 1. Yet "[h]ard pass credentials are reserved for those who abide by standards of professional conduct, demonstrate a level of trustworthiness commensurate with the privilege of unfettered access to the White House Complex, and perform their duties in a way that does not interfere with the White House's daily operations." Letters at 1.

The letters also set out the factual basis for this preliminary decision. Each letter identified with specificity a "non-exhaustive list of reporting incidents, including those that have threatened national security and spread falsehoods." Letters at 1. For example, "CNN disclosed 'top-secret' construction details related to the East Wing bunker[.]" ECF No. 16-1 at 1; Wilson Decl. ¶ 22. "MS NOW reported on an alleged leak investigation," which, "if it existed, would be nonpublic sensitive law enforcement information." ECF No. 16-2 at 1; Wilson Decl. ¶ 24. "Politico published a document detailing funding for the White House ballroom containing intricate descriptions of how the Secret Service would invest in security improvements." ECF No. 16-3 at 1; Wilson Decl. ¶ 23. The letters elaborated that the "[p]ublication of sensitive security information, and misinformation about national security information, diverts White House resources and those of the national security team in particular, which must evaluate whether the leaked information is classified, the source of any leak, and the security implications of any such disclosure." Letters at 1-2. In the President's view, "[t]he spread of misinformation, especially relating to national security, is a threat that undermines the President's ability to safeguard the national security." Letters at 1-2.

The President gave each Plaintiff the opportunity "to contest this initial decision or the factual basis set forth" in each letter. Letters at 2. Plaintiffs could submit any response by 5:00 pm on Friday, September 25, 2026. Letters at 2. Otherwise, "this initial decision will be final." Letters at 2. The White House indicated it would "consider that response and any other materials you would like to submit." Letters at 2.

On September 24, 2026, this Court entered a temporary restraining order, directing the restoration of Plaintiffs' hard passes. ECF No. 24. Defendants complied with the Court's order. ECF No. 28.

At 5:00pm on September 25, 2026, Plaintiffs' deadline to respond to the White House letters lapsed. No Plaintiff chose to respond. Accordingly, the President's decision became final. The President continues to engage the press, including Plaintiffs,[1] but believes they should not have access to White House grounds in light of his national security concerns.

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiffs must "*by a clear showing*" establish that (1) they have a substantial likelihood of success on the merits; (2) they will suffer irreparable harm without an injunction; (3) the balance of equities tips in their favor; and (4) preliminary relief serves the public interest. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted). The government's interest and the public interest "merge" when the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Plaintiffs Are Unlikely To Succeed On The Merits Of Their Claims

Plaintiffs raise a First Amendment viewpoint discrimination claim, a First Amendment retaliation claim, and a Due Process claim. All are unlikely to succeed, because all flow from the mistaken conclusion that there is a special property or legal interest in access to the White House. There is not.

A. Plaintiffs Are Unlikely To Succeed On Their Viewpoint Discrimination Claim

The Supreme Court has explained that no one has a right to gain "unauthorized entry into the White House." *Zemel v. Rusk*, 381 U.S. 1, 17 (1965). Nor does "the First Amendment … mandat[e] a right of access to government information or sources of information within the

[1] *See, e.g.*, Brian Stelter, X (Sept. 22, 2026, 10:00 AM) https://perma.cc/EEZ8-Z9EB

government's control." *Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978). Indeed, the D.C. Circuit just recently explained that the First Amendment does not apply to certain restricted presidential spaces, including the Oval Office and Air Force One. *AP*, 2025 WL 1649265, at *1 (staying preliminary injunction). Other areas of the White House have recently been treated as "a nonpublic forum." *Ateba*, 133 F.4th at 122. The White House may restrict press access to these areas "'as long as the restrictions are' viewpoint neutral and reasonable." *Id.* at 123 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)).

Several of these cases trace in part back to *Sherrill v. Knight*, which stated that because "White House press facilities hav[e] been made publicly available as a source of information for newsmen, the protection afforded newsgathering under the first amendment guarantee of freedom of the press, requires that this access not be denied arbitrarily or for less than compelling reasons." 569 F.2d at 129 (citations omitted). While Defendants acknowledge the D.C. Circuit's decision in *Sherrill*, that case was wrongly decided, and Defendants expressly reserve their right to argue so on appeal.

That is so because access to the White House is a privilege, not a right. In *Sherrill*, the D.C. Circuit emphasized that "[t]hese press facilities [were] perceived as being open to all bona fide Washington-based journalists[.]" *Id.* The reality is much better described by the D.C. Circuit's more recent decision in *AP*. 2025 WL 1649265. There, the court acknowledged that there are more journalists who wish to interview the President than he can accommodate; "[i]n deciding which journalists to speak with, the President may of course take into account their viewpoint." *Id.* at *6; *accord Ehrlich*, 437 F.3d at 413 (upholding State Governor's press directive that "no one in the Executive Department or Agencies" should speak with two named reporters because the "Governor's Press Office feels that currently both are failing to objectively report on any issue

dealing with" that administration). As a result, the court concluded that at least for certain spaces, "the White House may consider journalists' viewpoints when deciding whether to grant access." *AP,* 2025 WL 1649265 at *4. The same logic and standard should apply to access to White House grounds more generally. "Opening" the "White House" to some journalists should not "transform these spaces into nonpublic fora to which access must be granted on a viewpoint neutral basis." *Id.* at *10. Indeed, there is finite space, and so the White House briefing room and West Wing facilities can accommodate only a limited number of reporters. Under the *AP* decision, this counsels against the conclusion that the White House is a nonpublic forum. *See id.* at *9 ("These spaces should not be classified as nonpublic fora because access to them is tightly controlled and highly selective…. When access to government property is very limited, considerations of viewpoint may be permissible.").

Indeed, it is not even clear that the White House press complex is best understood as a "forum" at all. As the D.C. Circuit noted, "[s]ince Roman times, a forum has been emblematic of a space for citizens to participate in public discussion and dialogue, to exchange ideas, and to engage in political debate." *Id.* at *8. But a press conference is not comparable to the Roman Forum; the White House has no obligation to call on reporters, *id.* at *6, or to "engage in political debate." *See id.* at *8. "When a small number of press observe presidential events, they are not using the Oval Office as the location or means of communication"; "when the White House opens events in the Oval Office to a select group of journalists for observational newsgathering, the journalists generally are not speaking with the President or other officials, nor are they engaged in dialogue with each other." *Id.*

For similar reasons, Plaintiffs' reliance on *Mahoney v. U.S. Capitol Police Bd.* is misplaced. No. 24-5207, 2026 WL 2836881 (D.C. Cir. Sept. 22, 2026). There, the D.C. Circuit

recognized that "[s]ome government property is not a forum at all, because it serves purposes incompatible with private communicative activity." *Id.* at *3 n.2. The White House is such a place. *Cf. AP,* 2025 WL 1649265 at *8. At the White House, it is the United States "speaking on its own behalf," and as such, "the First Amendment strictures that attend the various types of government-established forums do not apply." *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 215 (2015). The fact that Plaintiffs witness or "take part in" the "propagation" of the White House's messaging does not "transform the government's role into that of a mere forum-provider." *Id.* at 217. In contrast, in *Mahoney*, the Eastern Steps of the Capitol were used to organize and sponsor protests with the public. 2026 WL 2836881 at *2. Here the White House is not creating a forum for any speaker: it is the only speaker.

In short, there is no principled way of easily distinguishing between rooms that are a nonpublic forum and those that are no forum at all. This is particularly so where, as here, the White House is not obligated to respond to any questions from reporters in the first place. *See id.* at *8 ("The AP's reporting on presidential events through electronic dissemination of news to editors or the public outside the White House is the only communicative activity at issue. But this activity could occur anywhere and therefore lacks the essential connection to the government space required to create even a nonpublic forum."). The reasoning of *AP* should properly control as to all parts of the White House complex. At the very least, *AP* directly controls for the areas at issue there, such as the Oval Office, and thus squarely forecloses Plaintiffs' attempt to expand their requested relief beyond restoration of their hard passes.

Yet even under *Sherrill*, Defendants' decision to deny Plaintiffs continued access to White House grounds complies with the First Amendment because they have at least two "compelling

reasons[,]" 569 F.2d at 129, namely, enforcing minimum standards of professionalism for journalists and protecting classified information. Letters at 1.

1. The Government has a compelling interest in awarding hard passes to journalists satisfying minimum standards of professionalism

First, Defendants may lawfully deny access to Plaintiffs because the President has concluded they fail to satisfy the minimum requirements of professionalism. Indeed, the D.C. Circuit has acknowledged that the White House can set standards governing qualifications for journalistic access. *Ateba*, 133 F.4th at 127. Nothing about *Sherrill* is inconsistent with the President's judgment that reporters who publish classified and sensitive information fail to meet the *Sherrill* standard. Nor does *Sherrill* prevent the President from concluding that bona fide journalists would identify sources instead of relying on anonymous sources, commit to factual accuracy, and provide the White House an opportunity to comment, rather than "perform their duties in a way that … interfere[s] with the White House's daily operations." Letters at 1; *cf. Sherrill*, 569 F.2d at 128-130 (five times limiting ruling to "bona fide" journalists"). At a bare minimum, it is a significant violation of decorum to publish classified and sensitive national security information

To be sure, the D.C. Circuit in *Sherrill* and *Karem* has held that advanced notice of prohibited conduct and of the consequences of noncompliance are required before a hard pass can be revoked. 960 F.3d at 667. Defendants submit those holdings should be overruled, but in any event, the White House has satisfied those requirements by providing an explanation of the relevant standards, both generally and with respect to Plaintiffs conduct specifically. Here, the President's letters set out with specificity what is required and how Plaintiffs have failed to adhere to these standards. Letters at 1. The letters identify specific examples of Plaintiffs' conduct that he

determined fell below these standards. Letters at 1-2. The letters also provide Plaintiffs with an opportunity to respond to these concerns and submit materials for the President's reconsideration.

Significantly, Plaintiffs have declined to submit any response to these concerns. They do not defend their conduct. At the very least, the White House has a compelling interest in excluding reporters who fail to meet minimum journalistic standards, have been notified of their failures, and do not contest these determinations.

2. The Government has a compelling interest in national security

Second, the President has a compelling interest in protecting national security information. Indeed, the Supreme Court has recognized that the Constitution vests the President with the "authority to classify and control access to information bearing on national security." *Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988). Ultimately, the responsibility and "authority to protect such information falls on the President as head of the Executive Branch and as Commander in Chief." *Id.* at 527.

Here, the President has determined that Plaintiffs have reported classified or sensitive information bearing on national security. Letters at 1-2. Indeed, multiple examples concern reports about the White House complex currently under construction. ECF No. 16-1 at 1; ECF No. 16-3 at 1; *cf. Nat'l Park Serv. v. Nat'l Tr. for Historic Pres. in the U.S.*, No. 26A203, 2026 WL 2564318, at *3 (U.S. Aug. 31, 2026) (weighing increased "risk of foreign actors 'gathering intelligence on' the project" (citing JA)). Such reporting directly raises national security concerns. Brown Decl. ¶¶ 11, 15. Indeed, "[t]he release of such information is exactly the type of release that can cause harm to the national security." Wilson Decl. ¶ 22. Furthermore, such reporting incidents also divert resources of national security and other personnel. Brown Decl. ¶ 15. The "[p]ublication of sensitive security information" and even "misinformation about national security information"

requires Defendants to "evaluate whether the leaked information is classified, the source of any leak, and the security implications of any such disclosure." Letters at 1-2; Wilson Decl. ¶¶ 7-8. The President therefore has a compelling interest in excluding from White House grounds organizations that pose such a risk to national security. Brown Decl. ¶ 12; Wilson Decl. ¶ 20. Defendants "believe that the President's determination to revoke credentials for news outlets and reporters that have caused such interference with government functions would be effective in reducing the amount of information that is published that undermines national security." Wilson Decl. ¶ 21. That alone is a compelling interest.

B. Plaintiffs Are Unlikely To Prevail On Their Retaliation Theory

The President's actions were not retaliatory because the mere denial of special access is not an adverse action that would objectively chill a reasonable reporter, and because the Government would have taken the same action anyway, notwithstanding Plaintiffs' speech criticizing the President. To properly make out a retaliation claim under the First Amendment, a plaintiff must demonstrate that "(1) he engaged in conduct protected under the First Amendment; (2) the defendant took some retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again; and (3) a causal link between the exercise of a constitutional right and the adverse action taken against him." *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016) (quoting *Banks v. York*, 515 F. Supp. 2d 89, 111 (D.D.C. 2007)). Here, even granting that Plaintiffs engage in conduct protected by the First Amendment, Plaintiffs cannot satisfy the second or third elements—namely, deterrence and causation.

First, the President's decision to deny special, privileged access to the press pool or to the White House complex would not deter a reasonable reporter. The Fourth Circuit in *Ehrlich* considered an Executive-wide policy prohibiting all those government employees from speaking with two named reporters; the court ultimately "conclude[d] that the adverse impact of such

conduct is objectively *de minimis*." 437 F.3d at 419. Nor did the reporters themselves say they were in any way chilled in their reporting. *Id.* at 419 & n.1. The policy at issue in *Ehrlich* is much stronger medicine than the policy challenged here, which applies only to access to the White House. Nor do Plaintiffs allege that they have been chilled in their speech criticizing the President.

Second, as for causation, the Government can prevail if it can show that it "would have reached the same decision … even in the absence of the protected conduct." *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Here, "[t]he record … adequately supports the conclusion" that the Government would have taken the same action based on a neutral "justification alone." *TikTok Inc. v. Garland*, 604 U.S. 56, 79 (2025). The President determined that Plaintiffs have failed to maintain minimum professional journalistic standards by publishing classified and national security information. Letters at 1. This is an adequate, alternative ground to support the Government's actions here. Plaintiffs therefore cannot bear their burden of showing that the Government would not have taken adverse action against them, but-for their protected speech. Moreover, "the adverse impact" of being denied privileged access to government officials "is objectively *de minimis*[,]" as the Fourth Circuit found in *Ehrlich*. 437 F.3d at 419. Again, the policy at issue in *Ehrlich* was far more burdensome than the policy at issue here: that case concerned a ban prohibiting all executive branch employees from talking to the identified reporters. That is far more than what is at issue here, which is simply on-demand access to the White House complex without an escort.

Plaintiffs now argue that Defendants are chilling speech by acting "unpredicatabl[y]" and engaging in "adverse treatment" of Plaintiffs after the temporary restraining order by "denying access to [the] state dinner and interfering with CNN's assigned pool duties." Mot. for PI at 32. But as this Court recognized, "whether the President decides, as you say, to exclude people from

some further sort of smaller part of the White House based on that authority you mentioned, that's a different thing." Hearing Tr. at 22:21-24. *AP* is clear that the President has the discretion to limit reporters, on any grounds—including viewpoint—from other areas of the White House, which includes state dinners and pool responsibilities. *AP*, 2025 WL 1649265, at *1. Significantly, *AP* expressly addressed an outlet's exclusion from "the press pool," which the D.C. Circuit explained "is an historically privileged group of reporters that is at times given access to spaces like the Oval Office." *Id.* at *5. This "selected" group of journalists "may travel with the President aboard Air Force One and attend small press events at the President's home in Mar-a-Lago, usually to observe presidential speeches." *Id.* at *2. AP sued only after the White House "informed the AP that it would not be permitted in the Oval Office or press pool unless it revised its Stylebook to refer to the Gulf of America[.]" *Id.* at *2. Of note, the D.C. Circuit found that while "[r]eporters and photographers within the pool gather news and speak to the public about what they have seen and heard," the press "pool is not an 'instrumentality used for communication'" but rather "simply a mechanism for granting a select group of reporters access" to watch the President convey his preferred message. *Id.* at *5 (quoting *Cornelius*, 473 U.S. at 803). To the extent Plaintiffs now seek access to the press pool, their request is squarely foreclosed by *AP*.

C. Plaintiffs Are Unlikely To Prevail On Their Due Process Claim

Plaintiffs are unlikely to succeed on their due process claim, because they lack any constitutionally protected liberty or property interest in accessing the White House and they have received adequate process. "A procedural due process claim consists of two elements: (i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process." *Reed v. Goertz*, 598 U.S. 230, 236 (2023). *Sherrill* held that "the interest of a bona fide Washington correspondent in obtaining a White House press pass is protected by the first amendment" and "qualifies as liberty which may not be denied without due process of law under

the [F]ifth [A]mendment." 569 F.2d at 130-31; *see also* id. at 131 n.22 (declining to recognize property interest); *Karem*, 960 F.3d at 665. While Defendants acknowledge *Sherrill*'s holding that White House reporters have protectable due process rights in their hard passes, Defendants respectfully submit that *Sherrill* was wrongly decided and expressly reserve their right to argue this on appeal.

In fact, individuals do not have a constitutionally protected liberty interest in access to the White House complex given that the public has no First Amendment right of "entry into the White House," *Zemel*, 381 U.S. at 17, and the Constitution does not "require government to accord the press special access to information not shared by members of the public generally." *Pell v. Procunier*, 417 U.S. 817, 834 (1974). Just as "[i]t should be obvious that no one has a 'right' to a security clearance[,]" because "[t]he grant of a clearance requires an affirmative act of discretion on the part of the granting official[,]" *Egan*, 484 U.S. at 528, so does no one have a right to access the White House, which requires an affirmative invitation from the President to access his home.

Karem has recognized two due process issues relating to White House hard passes. The first is to have knowledge of the substantive standards and the consequences of violation before a person engages in conduct for which they are punished. 960 F.3d at 666. Here, the President has repeatedly and publicly stated his expectations of the press and criticized Plaintiffs as fake news. *See, e.g.*, White House Press Office, X (Jan. 14, 2026 at 10:31 AM) ("Leaking classified information puts America's national security and the safety of our military heroes in serious jeopardy. President Trump has zero tolerance for it and will continue to aggressively crack down on these illegal acts moving forward.").[2] Furthermore, as regards the publication of national security information, Federal law prohibits "knowingly and willfully … publish[ing] … any

[2] https://perma.cc/QV9F-W2G2

classified information." 18 U.S.C. § 798; *cf. Atkins v. Parker*, 472 U.S. 115, 130 (1985) ("All citizens are presumptively charged with knowledge of the law").

The second requirement is notice and an opportunity to be heard after a specific violation. *Karem*, 960 F.3d at 668. Here Plaintiffs are unlikely to succeed on their due process claim because Defendants have provided Plaintiffs with sufficient post-deprivation process. "Though the Due Process Clause generally requires the Government to afford individuals notice and an opportunity to be heard before depriving them of their property, there are 'extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.'" *Zevallos v. Obama*, 793 F.3d 106, 116 (D.C. Cir. 2015) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); *cf. Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (explaining that "due process is flexible and calls for such procedural protections as the particular situation demands"). Protecting sensitive information is just such an appropriate justification. *See Egan*, 484 U.S. at 527 (collecting cases); Wilson Decl. ¶¶ 16, 20.

The President has provided notice in writing to all Plaintiffs about the principles of decorum expected and required of reporters who have the privilege to cover the White House. Letters at 1-2. The letters explain that "[h]ard pass credentials are reserved for" outlets that engage in fact-based reporting satisfying minimum "standards of professional conduct" and otherwise "perform their duties in a way that does not interfere with the White House's daily operations." Letters at 1. The letters set out with specificity the factual bases for these decisions, including identifying with particularity a non-exhaustive list of reporting incidents where Plaintiffs' actions have threatened national security. Letters at 1-2. The White House provided Plaintiffs with process to contest these factual findings by end of business Friday September 25, 2026. Plaintiffs declined to submit any response or otherwise explain their conduct. Nor have they requested an extension,

argued that they need more time to respond, or demonstrated any interest in engaging with the White House on these concerns. The immediate suspension and opportunity to contest this initial decision was consistent with the Government's interest in protecting national security information. The fact that Plaintiffs did not avail themselves of the process that was provided does not render the process inadequate; it means that the opportunity to be heard was declined. This is a meaningful distinction between the motion for a temporary restraining order (which was adjudicated before Plaintiffs' opportunity to respond had expired) and this motion for a preliminary injunction (which was filed after Plaintiffs declined their opportunity to respond).

Plaintiffs are therefore unlikely to prevail on their due process claim.

II. Plaintiffs Cannot Show They Will Suffer Irreparable Harm

Plaintiffs cannot make the requisite showing of irreparable harm. To do so, they must clear a high bar and show harm that "is both certain and great." *Alpine Secs. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1332 (D.C. Cir. 2024). Plaintiffs may continue to publish whatever content or editorials they wish. Plaintiffs may continue to show footage from the White House; in fact, media outlets already agree to pool such footage given the impracticality of having duplicative camera sets around the White House. And the White House's website broadcasts much of the President's remarks. Even if Plaintiffs could show that their lack of access to White House grounds limited their ability to convey their preferred message, it is at most a de minimis harm and certainly not irreparable. *Ehrlich*. 437 F.3d at 419. Furthermore, the "law recognizes that the nature of political debate is rough and tumble." *Eaton v. Meneley,* 379 F.3d 949, 956 (10th Cir. 2004). "It would be inconsistent with the journalist's accepted role in the 'rough and tumble' political arena to accept that a reporter of ordinary firmness can be chilled by a politician's refusal to comment or answer questions on account of the reporter's previous reporting." *Ehrlich*, 437 F.3d at 419. Any such harm is not irreparable.

Plaintiffs' ability to show irreparable harm is also undercut by their refusal to engage with the process provided by the White House. The President afforded each Plaintiff with notice and an opportunity to respond in writing by September 25, but Plaintiffs did not respond. They did not request any extension. They did not defend their conduct. In other words, Plaintiffs received process and refused to participate, thus minimizing their claims of a procedural injury

Nor have Plaintiffs shown irreparable harm from "disrupting CNN's ability to fulfill its primary television network pool duties[.]" Mot. for PI at 38-39. Plaintiffs simply do not have any constitutional right or interest in participating in the primary network pool and can only gesture weakly at constitutional interests in attending criminal trials. *Id.* (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980)). Plaintiffs do not, and cannot, explain how the right to attend trial is equivalent to a private network participating in pool duties. That is true when the entire point of a pool is that all participants receive the information provided equally. To the extent those other outlets are harmed, they are not parties and their harm is self-inflicted; to the extent CNN alleges any harm, they are no worse off than other outlets. Even to the extent they are concerned that this may limit their viewership relative to other outlets, such harm would ultimately be "financial in nature" and thus not irreparable. *Anthropic PBC v. U.S. Dep't of War*, No. 26-1049, 2026 WL 1042493, at *3 (D.C. Cir. Apr. 8, 2026). Nor, as explained above in Part I.B, do they have any right to pool access under *AP*.

III. The Public Interest And Balance Of The Equities Favor The Government

The public interests in protecting classified and sensitive national security information strongly outweigh any countervailing interests Plaintiffs can identify. "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation." *Haig v. Agee*, 453 U.S. 280, 307 (1981); *see also United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936) (identifying President's interest in maintaining "[s]ecrecy" over classified

"information" and preventing its "premature disclosure"). More specifically, the Supreme "Court has recognized the Government's 'compelling interest' in withholding national security information from unauthorized persons in the course of executive business." *Egan*, 484 U.S. at 527 (collecting cases).

The D.C. Circuit recently recognized these harms in upholding a government policy limiting media access at the Pentagon, because it "furthers important national security interests." *New York Times Co. v. U.S. Dep't of Def.*, No. 26-5113, 2026 WL 1179440, at *2 (D.C. Cir. Apr. 27, 2026) ("*NYT*"). There, the Court accepted a government "declaration explaining that prior to the 2025 PFAC Policy, journalists obtained 'sensitive or classified' information 'often monthly, and sometimes multiple times per month,' including information concerning 'operational plans' and 'intelligence assessments.'" *Id.* at *2 (quoting declaration). The court further accepted that "[u]nescorted access to the Pentagon was … 'a significant contributing factor' to that pattern because it enabled reporters to 'observe activity patterns' and identify potential sources of sensitive information." *Id.* (quoting declaration). On this basis, the court found that the Government had "supported its claim that this aspect of its policy furthers important national security interests." *Id.* at *2 (citing *Haig*, 453 U.S. at 307); *see also* Wilson Decl. ¶¶ 9-20.

Here, Defendants' letters and declarations similarly set forth the harms to national security. Letters at 1-2; Brown Decl.; Wilson Decl. This court should "not lightly override the [Government's] judgments on matters involving national security." *Anthropic*, 2026 WL 1042493, at *3 (citing *Trump v. Hawaii*, 585 U.S. 667, 704 (2018); *see also Ctr. for Nat'l Sec. Stud. v. U.S. Dep't of Just.*, 331 F.3d 918, 927 (D.C. Cir. 2003) ("[W]e have consistently deferred to executive affidavits predicting harm to the national security, and have found it unwise to undertake searching judicial review."). That is especially true where that judgment was made by the President himself.

Defendants recognize that *Sherrill* rejected the proposition that concerns about the physical security of the President outside a Secret Service process could justify termination of a press pass. 569 F.2d at 130. Defendants, however, argue this precedent is wrongly decided and should be overruled because there is no such due process or First Amendment right attaching to these credentials. *Sherrill* also did not address threats to national security outside the physical security of the White House complex. Nor did *Sherrill* concern access determinations made personally by the President concerning reporters and outlets that had previously been afforded access to the White House and abused this privilege.

In this Court's opinion granting a temporary restraining order, the Court noted that the stories relied upon by the White House in justifying removing the individual reporter's hard passes were not published by the affected reporters. ECF No. 24 at 7. But that is of no moment. As a threshold matter, the policy identified and excluded news networks, not individual reporters, and so any analysis should turn on whether the President appropriately determined that such outlets should no longer be afforded continued access. Further, as a factual matter, the President determined that Plaintiff news networks had published stories that adversely affect national security, including publishing possibly classified or sensitive information. Wilson Decl. ¶¶ 21-24. In doing so, these outlets each demonstrated their willingness to publish information that undermines national security. *Id.* Restricting access to the White House removes one avenue for these outlets to obtain such harmful information.

The Court also stated that Defendants did not identify how the reporting identified in the letters damaged national security. ECF No. 24 at 7. Not so. The Director for Defense Intelligence, Counterintelligence, Law Enforcement & Security explained generally that publication of purported national security information can "signal intentions to adversaries, create potentially

catastrophic consequences for sensitive mission coordination, and undermine critical national security objectives" as well as "distract United States government personnel from their official duties by considering whether and how to respond, undermine the national security strategy of the United States by misleading and influencing the public and adversaries out of alignment with the national security strategy, and create complicated decision-making relating to adjustment or response to such information." Brown Decl. ¶ 15. The letters reiterated this point. Letters at 1-3. And Defendants provided a declaration that tied at least one story published by each outlet to a specific national security concern. Wilson Decl. ¶¶ 22-24.

Nor do Defendants need to show that the reporters or outlets actually published classified information. As each letter explained, the stories reported by each outlet diverted "White House resources and those of the national security team in particular, which must evaluate whether the leaked information is classified, the source of any leak, and the security implications of any such disclosure." Letters at 1. And their "spread of misinformation, especially relating to national security, is a threat that undermines the President's ability to safeguard the national security." *Id.* Nor would it be appropriate, administrable, or constitutionally necessary for the President to prove beyond a reasonable doubt or by a preponderance of the evidence that specific information harmed national security before limiting access to the White House complex.

On the other side of the ledger, Plaintiffs seek only to maintain continued access to White House grounds to marginally improve their existing coverage of national affairs. Significantly, Plaintiffs may still publish whatever content they choose, including any opinions or editorials criticizing the President or his policies. Rather, Plaintiffs argue that they require immediate continued physical access to White House grounds so that they can have "the ability to observe events firsthand and to ask questions of White House officials." Mot. for PI. at 38. But as the *NYT*

litigation illustrates, it can be this very access that gives rise to the publication of classified or sensitive national security information. Wilson Decl. ¶¶ 16, 20. Furthermore, Plaintiffs had a process open to them to contest the President's factual findings and declined to participate. The President has also continued to engage with members of the media, including Plaintiffs.

The public interest and balance of the equities therefore counsel against issuing a preliminary injunction requiring the President to grant Plaintiffs continued access to White House grounds, over his personal judgment of national security considerations. Such an extraordinary injunction would raise serious separation of powers concerns and set this Court on "a collision course" with the President. *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 389 (2004).

IV. Any Remedy Should Be Narrowly Limited And Stayed Pending Any Appeal Authorized

Unlike in their motion for a temporary restraining order, Plaintiffs now specifically request the Court enjoin Defendants from "depriving Plaintiffs and their reporters of the White House access they had before September 18, 2026[.]" ECF No. 32-23; *cf.* Hearing Tr. at 22:19-21 (The Court: "the temporary restraining order that is being requested here is only … to restore the hard passes"). As Plaintiffs explain, they previously had access beyond the designated press area on the White House grounds as part as the designated pool and had been invited to Air Force One or the Oval Office. Mot. for PI at 6-7. But this Court cannot enjoin Defendants to provide Plaintiffs with access to presidentially restricted areas, such as the Oval Office and Air Force One. Just last year, the D.C. Circuit stayed "a preliminary injunction prohibiting White House officials from denying, on the basis of viewpoint, access to press events held in the Oval Office, on Air Force One, and at the President's home in Mar-a-Lago." *AP*, 2025 WL 1649265, at *1. The D.C. Circuit made clear that "The White House therefore retains discretion to determine, including on the basis of viewpoint, which journalists will be admitted" to at least these areas. *Id.* That requires this Court

at the very least to uphold a lesser-included policy restricting Plaintiffs' access to these areas, including as members of the designated press pool. Plaintiffs have shown no liberty interest or First Amendment right to these areas, and thus any injunction that forced Defendants to provide this access would be overbroad.

Finally, if for any reason this Court should grant any part of Plaintiffs' motion for a preliminary injunction, the Court should stay any injunction pending any appeal authorized by the Solicitor General. For the same reasons Plaintiffs' motion fails, Defendants also satisfy the *Nken*, 556 U.S. 418, standard for a stay pending appeal.

CONCLUSION

This Court should deny Plaintiffs' motion for a preliminary injunction. If it grants Plaintiffs' motion, it should stay the injunction pending appeal.

Dated: October 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon Plaintiffs' counsel by the Electronic Case Filing system on October 2, 2026.

/s/Michael K. Velchik
MICHAEL K. VELCHIK

EXHIBIT 36

(Declaration of Katherine Fallow)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CABLE NEWS NETWORK, INC., et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

Civil Action No. 1:26-cv-3287

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

INTRODUCTION

The White House is the home and workplace for the Nation's Commander-in-Chief. Plaintiffs CNN, MSNOW, and Politico have long been granted privileged access to White House grounds. But the President concluded that they have failed to maintain basic minimum "standards of professionalism and decorum expected of those given access to the White House Complex, including" by "publishing sensitive or classified information." Ex. 1 Letter to CNN; Ex. 2 Letter to MSNOW; Ex. 3 Letter to Politico ("Letters"). In response, the President has preliminarily revoked their continued access to White House grounds. Letters at 1. After all, access to the White House is a privilege—not a right. The President has set out his factual findings and provided Plaintiffs an opportunity to contest this decision by 5:00 PM Friday, September 25, 2026.

Plaintiffs ask this Court to enjoin the President to provide them with immediate, continued access to the White House complex, contrary to his personal judgment, on three purported grounds. All fail. First, the President's actions are lawful under the First Amendment. While the D.C. Circuit has held that some areas of the White House grounds constitute a nonpublic forum, *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977), that decision is wrong and should be overruled. But even under *Sherrill*, the President's actions must be sustained because the President has "compelling interest[s]" in enforcing minimum standards for bona fide journalists and safeguarding national security information. At the very least, the Government may control reporters' access to restricted presidential areas, such as the Oval Office, even for viewpoint-discriminatory reasons. *Associated Press v. Budowich*, No. 25-5109, 2025 WL 1649265 (D.C. Cir. June 6, 2025) ("*AP*"). Second, the President's actions were not retaliatory because the Government would have taken the same action anyway, notwithstanding Plaintiffs' speech criticizing the President—indeed, the President has not revoked access to other outlets that have equally criticized the President. Third, Plaintiffs are unlikely to prevail on their due process claims because, even if they have a constitutional right to

access the White House, they have received adequate notice and post-deprivation process, including an opportunity to contest the President's factual findings. Finally, Plaintiffs cannot make the requisite showing of irreparable harm and both the public interest and balance of the equities favor the Government.

The Court should therefore deny Plaintiffs' motion for a temporary restraining order.

BACKGROUND

The White House is the official residence of the President. 3 U.S.C. § 102. Significantly, Presidents have long decided which journalists should receive privileged access, which has varied substantially by administration. For example, President Washington hand-picked which reporters would print his Farewell Address based on political considerations. *See* Harold Holzer, *The Presidents vs. The Press: The Endless Battle Between the White House and the Media—from the Founding Fathers to Fake News* 16 (2020) (explaining that President Washington selected a paper "never stained with the ribaldry and violence of party recriminations" (quotation marks omitted)). President Jefferson "encouraged the establishment of a new gazette ... that would remain reliably favorable to his administration"; its "reward would be first access to official news." *Id*. at 39.

In the early Twentieth Century, President Theodore Roosevelt began a practice of regularly inviting reporters into the Oval Office for off-the-record press conferences while he received his "regular midday shave." *Id.* at 93. He "picked and chose those he would allow to attend these sessions; he used the conference as an occasion for reward and punishment, screening out the reporters who were the least likely to be sympathetic to his policies." Blaire Atherton French, *The Presidential Press Conference: Its History and Role in the American Political System* 3 (1982). Indeed, President Roosevelt warned reporters that if they were to "violate a confidence or publish news that the President thought ought not to be published," then "he should be punished by having legitimate news withheld from him." Holzer, *supra*, at 100 (quotation marks omitted).

Decades later, President Kennedy sought to "court star correspondents" and thus gave certain reporters "special access" and "advance notice of administration announcements." Holzer, *supra*, at 213. President Johnson "tried to use personal interviews as a means of reward and punishment." Blaire Atherton French, *The Presidential Press Conference: Its History and Role in the American Political System* 18 (1982). Courts in this district have elsewhere summarized the comparatively recent history of press access, including hard passes, in seminal cases: *AP*, 2025 WL 1649265, at *1-*3; *Ateba v. Leavitt*, 133 F.4th 114, 117-119 (D.C. Cir. 2025); *Karem v. Trump*, 960 F.3d 656, 660-61 (D.C. Cir. 2020); *Sherrill*, 569 F.2d at 126-27.

Against this background, on Friday, September 18, the President issued a statement:

> I am proud to announce that, effective immediately, I am banning Fake News CNN, MSNOW (who recently changed their name from MSNBC due to lack of viewership and credibility!), and Politico (The recipients of an illegal and ridiculous $8 Million Dollar subscription, an All Time Record, directly from the United States Government, under Crooked Joe Biden, in order to keep them "alive." Seems like corruption to me!), from the White House as a result of their constant "reporting" FAKE NEWS! Media Outlets shouldn't be able to constantly write or report FICTION and LIES when they're covering the President of the United States, the Trump Administration, or the United States of America. Other Fake News Media Outlets to follow. Thank you for your attention to this matter! President DONALD J. TRUMP[1]

On Monday, September 21, 2026, the President further explained that:

> The White House is not instituting an assault on the Free Press, something which I cherish. It is instituting an assault on the FAKE NEWS, something that has grown like Cancer in our beloved United States of America. It is corrupt, purposeful, pervasive, fully coordinated, and totally out of control. It is a threat to our National Security, and must be stopped, NOW! Thank you for your attention to this matter. President DONALD J. TRUMP[2]

Later that day, Plaintiffs filed suit. Compl. In response, the President released another statement explaining, in part:

[1] Truth Social (Sept. 18, 2026, 3:04PM), https://truthsocial.com/@realDonaldTrump/117293599348325006.
[2] Truth Social (Sept. 21, 2026, 7:53AM), https://truthsocial.com/@realDonaldTrump/117308890736529824.

> Fake News people and publications that only write negatively, and who violate our National Security by writing false and defamatory stories with unknown "sources," shouldn't be allowed access to the most important Office anywhere in the World. It is called the Oval Office, and it should be treated with Decorum, Respect, and Dignity, not defiled by Third Rate Clowns, who purposefully distort, twist, and degrade with everything they write or publish. Virtually every story about me, or anything having to do with me, is negative, wrong and, in many cases, DANGEROUS for our Country![3]

On September 22, 2026, the White House issued letters to Plaintiffs providing "notice that the President has made the determination to revoke hard passes for members of your organization." Letters at 1. These letters explained that Plaintiffs "exhibited behavior in violation of the standards of professionalism and decorum expected of those given access to the White House Complex, including by trafficking in verifiable falsehoods about national security and other issues, and publishing sensitive or classified information." Letters at 1. Yet "[h]ard pass credentials are reserved for those who abide by standards of professional conduct, demonstrate a level of trustworthiness commensurate with the privilege of unfettered access to the White House Complex, and perform their duties in a way that does not interfere with the White House's daily operations." Letters at 1.

The letters also set out the factual basis for this preliminary decision. Each letter identified with specificity a "non-exhaustive list of reporting incidents, including those that have threatened national security and spread falsehoods." Letters at 1. For example, "CNN disclosed 'top-secret' construction details related to the East Wing bunker." Ex. 1 at 1; Wilson Decl. ¶ 22. "MSNOW reported on an alleged leak investigation," which, "if it existed, would be nonpublic sensitive law enforcement information." Ex. 2 at 1; Wilson Decl. ¶ 24. "Politico published a document detailing funding for the White House ballroom containing intricate descriptions of how the Secret Service would invest in security improvements." Ex. 3 at 1; Wilson Decl. ¶ 23. The letters elaborated that

[3] Truth Social (Sept. 21, 2026, 3:39PM), https://truthsocial.com/@realDonaldTrump/117310724294153031

the "[p]ublication of sensitive security information, and misinformation about national security information, diverts White House resources and those of the national security team in particular, which must evaluate whether the leaked information is classified, the source of any leak, and the security implications of any such disclosure." Letters at 1-2.

The President has given each Plaintiff the opportunity "to contest this initial decision or the factual basis set forth" in each letter. Letters at 2. Plaintiffs may submit any response by 5:00 pm on Friday, September 25, 2026. Letters at 2. Otherwise, "this initial decision will be final." Letters at 2. The President continues to engage the press, including Plaintiffs,[4] but believes they should not have access to White House grounds in light of his national security concerns.

LEGAL STANDARD

"A temporary restraining order is 'an extraordinary remedy that should be granted only when the party seeking relief, by a clear showing, carries the burden of persuasion.'" *New Mexico v. Musk*, 769 F. Supp. 3d 1, 4 (D.D.C. 2025) (quoting *Hulli v. Mayorkas*, 549 F. Supp. 3d 95, 99 (D.D.C. 2021)). To justify that relief, a plaintiff must show that it is "likely to succeed on the merits," that it "is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The government's interest and the public interest "merge" when the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Plaintiffs Are Unlikely To Succeed On The Merits Of Their Claims

Plaintiffs raise a First Amendment viewpoint discrimination claim, a First Amendment retaliation claim, and a Due Process claim. All are unlikely to succeed, because all flow from the mistaken conclusion that there is a special property or legal interest in access to the White House. There is not.

[4] *See, e.g.*, Brian Stelter, X (Sept. 22, 2026, 10:00AM) https://x.com/brianstelter/status/2102397658421752296

A. Plaintiffs Are Unlikely To Succeed On Their Viewpoint Discrimination Claim

The Supreme Court has explained that no one has a right to gain "unauthorized entry into the White House." *Zemel v. Rusk*, 381 U.S. 1, 17 (1965). Nor does "the First Amendment … mandat[e] a right of access to government information or sources of information within the government's control." *Houchins v. KQED, Inc.*, 438 U.S. 1, 15 (1978). Indeed, the D.C. Circuit just recently explained that the First Amendment does not apply to certain restricted presidential spaces. *AP*, 2025 WL 1649265, at *1 (staying preliminary injunction). Other areas of the White House have recently been treated as "a nonpublic forum." *Ateba*, 133 F.4th at 122. The White House may restrict press access to these areas "'as long as the restrictions are' viewpoint neutral and reasonable." *Id.* at 123 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)).

This line of cases traces back to *Sherrill v. Knight*, which held that because "White House press facilities hav[e] been made publicly available as a source of information for newsmen, the protection afforded newsgathering under the first amendment guarantee of freedom of the press, requires that this access not be denied arbitrarily or for less than compelling reasons." 569 F.2d at 129 (citations omitted). While Defendants acknowledge the D.C. Circuit's decision in *Sherrill*, that case was wrongly decided, and Defendants expressly reserve their right to argue so on appeal.

Access to the White House is a privilege, not a right. In *Sherill*, the D.C. Circuit emphasized that "[t]hese press facilities [were] perceived as being open to all bona fide Washington-based journalists[.]" *Id.* The reality is much better described by the D.C. Circuit's more recent decision in *AP*. 2025 WL 1649265. There, the court acknowledged that there are more journalists who wish to interview the President than he can accommodate; "[i]n deciding which journalists to speak with, the President may of course take into account their viewpoint." *Id.* at *6; *accord Baltimore Sun Co. v. Ehrlich*, 437 F.3d 410, 413 (4th Cir. 2006) (upholding State Governor's press directive

that "no one in the Executive Department or Agencies" should speak with two named reporters because the "Governor's Press Office feels that currently both are failing to objectively report on any issue dealing with" that administration). As a result, the court concluded that at least for certain spaces, "the White House may consider journalists' viewpoints when deciding whether to grant access." *AP,* 2025 WL 1649265 at *3. The same logic and standard should apply to access to White House grounds more generally. "Opening" the "White House" to some journalists should not "transform these spaces into nonpublic fora to which access must be granted on a viewpoint neutral basis." *Id.* at *10. Indeed, there are currently a finite number of hard passes, and yet the White House briefing room and West Wing facilities can accommodate only so many reporters. Under the *AP* decision, this counsels against the conclusion that the White House is a nonpublic forum. *See id.* at *9 ("These spaces should not be classified as nonpublic fora because access to them is tightly controlled and highly selective…. When access to government property is very limited, considerations of viewpoint may be permissible."). In short, there is no principled way of easily distinguishing between rooms that are a nonpublic forum and those that are no forum at all—particularly where the White House is not obligated to respond to any questions by reporters in the first place. *See id.* at *8 ("The AP's reporting on presidential events through electronic dissemination of news to editors or the public outside the White House is the only communicative activity at issue. But this activity could occur anywhere and therefore lacks the essential connection to the government space required to create even a nonpublic forum."). The reasoning of *AP* should properly control as to all parts of the White House complex.

Yet even under *Sherrill*, Defendants' decision to deny Plaintiffs continued access to White House grounds complies with the First Amendment because they have at least two "compelling

reasons," 569 F.2d at 129, namely, enforcing minimum standards of professionalism for journalists and protecting classified information.

1. The Government has a compelling interest in awarding hard passes to journalists satisfying minimum standards

First, Defendants may lawfully deny access to Plaintiffs because the President has concluded they fail to satisfy the minimum requirements of professionalism. Indeed, the D.C. Circuit has acknowledged that the White House can set standards governing qualifications for journalistic access. *Ateba*, 133 F.4th at 127. Nothing about *Sherrill* is inconsistent with the President's judgment that reporters who publish classified and sensitive information fail to meet the *Sherill* standard. Nor does *Sherrill* prevent the President from concluding that bona fide journalists would identify sources instead of relying on anonymous sources, commit to factual accuracy, and provide the White House an opportunity to comment. *Cf. Sherrill*, 569 F.2d at 128-130 (five times limiting ruling to "bona fide" journalists"). The President believes basic journalistic standards require calling, asking for comment, and providing a reasonable opportunity for a response. At a bare minimum, it is a significant violation of decorum to publish classified and sensitive national security information.

To be sure, the D.C. Circuit in *Sherrill* and *Karem* has held that advanced notice of prohibited conduct and of the consequences of noncompliance are required before a hard pass can be revoked. 960 F.3d at 667. Defendants submit those holdings should be overruled, but in any event, the White House has satisfied those requirements by providing an explanation of the relevant standards, both generally and with respect to Plaintiffs conduct specifically. Here, the President's letters set out with specificity what is required and how Plaintiffs have failed to adhere to these standards. Letters at 1. The letters point out with specificity examples of Plaintiffs' conduct that he determined fell below these standards. Letters at 1-2. The letters also provide Plaintiffs

with an opportunity to respond to these concerns and submit materials for the President's reconsideration.

2. The Government has a compelling interest in national security

Second, Plaintiffs' reporting gives rise to reasons to doubt their trustworthiness and, in fact, the President has determined that Plaintiffs have reported classified or sensitive information bearing on national security. Letters at 1-2. Defendants have a compelling governmental interest in protecting such information. Indeed, the Supreme Court has recognized that the Constitution vests the President with the "authority to classify and control access to information bearing on national security." *Dep't of Navy v. Egan*, 484 U.S. 518, 527 (1988). Ultimately, the responsibility and "authority to protect such information falls on the President as head of the Executive Branch and as Commander in Chief." *Id.* at 527.

Here, as explained in the Letters, the President has found that Plaintiffs have engaged in a number of reporting incidents that have threatened national security. Letters at 1-2. Indeed, multiple examples concern reports about the White House complex currently under construction. Ex. 1 at 1; Ex. 3 at 1; *cf. Nat'l Park Serv. v. Nat'l Tr. for Historic Pres. in the United States*, No. 26A203, 2026 WL 2564318, at *3 (U.S. Aug. 31, 2026) (weighing increased "risk of foreign actors 'gathering intelligence' on the project" (citing JA)). Such reporting directly raises national security concerns. Brown Decl. ¶¶ 11, 15. Indeed, "[t]he release of such information is exactly the type of release that can cause harm to the national security." Wilson Decl. ¶ 22. Furthermore, such reporting incidents also divert resources of national security and other personnel. Brown Decl. ¶ 15. The "[p]ublication of sensitive security information" and even "misinformation about national security information" requires Defendants to "evaluate whether the leaked information is classified, the source of any leak, and the security implications of any such disclosure." Letters at 1-2; Wilson Decl. ¶¶ 7-8. The President therefore has a compelling interest in limiting access to

White House grounds to organizations that do not pose such a risk to national security. Brown Decl. ¶ 12; Wilson Decl. ¶ 20. Defendants "believe that the President's determination to revoke credentials for news outlets and reporters that have caused such interference with government functions would be effective in reducing the amount of information that is published that undermines national security." Wilson Decl. ¶ 21.

B. Plaintiffs Are Unlikely To Prevail On Their Retaliation Theory

To properly make out a retaliation claim under the First Amendment, a plaintiff must demonstrate that "(1) he engaged in conduct protected under the First Amendment; (2) the defendant took some retaliatory action sufficient to deter a person of ordinary firmness in plaintiff's position from speaking again; and (3) a causal link between the exercise of a constitutional right and the adverse action taken against him." *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016) (quoting *Banks v. York*, 515 F. Supp. 2d 89, 111 (D.D.C. 2007)). But the Government can prevail if it can show that it "would have reached the same decision … even in the absence of the protected conduct." *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Here, "[t]he record … adequately supports the conclusion" that the Government would have taken the same action based on a neutral "justification alone." *TikTok Inc. v. Garland*, 604 U.S. 56, 79 (2025).

Here, the President determined that Plaintiffs have failed to maintain minimum professional journalistic standards by publishing classified and national security information. This is an adequate, alternative ground to support the Government's actions here. Plaintiffs therefore cannot bear their burden of showing that the Government would not have taken adverse action against them, but-for their protected speech. Moreover, "the adverse impact" of being denied privileged access to government officials "is objectively *de minimis*[,]" as the Fourth Circuit found in *Ehrlich*. 437 F.3d at 419. Significantly, the policy at issue in *Ehrlich* was far more burdensome

than the policy at issue here: that case concerned a ban prohibiting all executive branch employees from talking to the identified reporters. That is far more than what is at issue here, which is simply preferential access to the White House complex.

C. Plaintiffs Are Unlikely To Prevail On Their Due Process Claim

Plaintiffs are unlikely to succeed on their due process claim, because they lack any constitutionally protected liberty or property interest in accessing the White House and they have received adequate.

"A procedural due process claim consists of two elements: (i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process." *Reed v. Goertz*, 598 U.S. 230, 236 (2023). The D.C. Circuit in *Sherill* held that "the interest of a bona fide Washington correspondent in obtaining a White House press pass is protected by the first amendment" and "qualifies as liberty which may not be denied without due process of law under the [F]ifth [A]mendment." 569 F.2d at 130-31; *see also* id. at 131 n.22 (declining to recognize property interest); *Karem*, 960 F.3d at 665. While Defendants acknowledge *Sherrill*'s holding that White House reporters have protectable due process rights in their hard passes, Defendants respectfully submit that *Sherill* was wrongly decided and expressly reserve their right to argue this on appeal. In fact, individuals do not have a constitutionally protected liberty interest in access to the White House complex given that the public has no First Amendment right of "entry into the White House," *Zemel*, 381 U.S. at 17, and the Constitution does not "require government to accord the press special access to information not shared by members of the public generally." *Pell v. Procunier*, 417 U.S. 817, 834 (1974). Just as "[i]t should be obvious that no one has a 'right' to a security clearance[,]" because "[t]he grant of a clearance requires an affirmative act of discretion on the part of the granting official[,]" *Egan*, 484 U.S. at 528, so does no one have a right to access the White House, which requires an affirmative invitation from the President to access his home.

Even so, Plaintiffs are unlikely to succeed on their due process claim because Defendants have provided Plaintiffs with sufficient post-deprivation process. "Though the Due Process Clause generally requires the Government to afford individuals notice and an opportunity to be heard before depriving them of their property, there are 'extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.'" *Zevallos v. Obama*, 793 F.3d 106, 116 (D.C. Cir. 2015) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); *cf. Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (explaining that "due process is flexible and calls for such procedural protections as the particular situation demands").

Here, the President has provided notice to all Plaintiffs about the principles of decorum expected and required of reporters who have the privilege to cover the White House." Letters at 1-2. The letters explain that hard pass credentials are reserved for outlets that exhibit fact-based reporting and appropriate standards of professional conduct that do not interfere with the White House's daily operations. Such passes are reserved for those that demonstrate a level of trust commensurate with the privilege of unfettered access to the White House complex. The letters set out with specificity the factual bases for these decisions, including identifying with particularity a non-exhaustive list of reporting incidents where Plaintiffs' actions have threatened national security. The White House has also provided Plaintiffs with process to contest these factual findings by Friday. The Government will consider any materials that Plaintiffs wish to submit. The immediate suspension and opportunity to contest this initial decision is consistent with the Government's interest in protecting national security information.

Plaintiffs are therefore unlikely to prevail on their due process claim.

II. Plaintiffs Cannot Show They Will Suffer Irreparable Harm

Plaintiffs cannot make the requisite showing of irreparable harm. To do so, they must clear a high bar and show harm that "is both certain and great." *Alpine Secs. Corp. v. Fin. Indus. Regul.*

Auth., 121 F.4th 1314, 1332 (D.C. Cir. 2024). But Plaintiffs may continue to publish whatever content or editorials they wish. Many of the journalists in this country who report on the White House do not have access to the White House grounds. Like other reporters lacking on-grounds access, Plaintiffs may continue to show footage from the White House—indeed, media outlets already agree to pool such footage given the impracticality of having duplicative camera sets around the White House. And the White House's website broadcasts much of the President's remarks. Even if Plaintiffs could show that their lack of access to White House grounds limited their ability to convey their preferred message, it is at most a de minimis harm and certainly not irreparable. Many journalists broadcast from outside the White House's gates, and Plaintiffs inability to conduct broadcasts from outside the White House's North Portico does not rise to an irreparable harm. Furthermore, the "law recognizes that the nature of political debate is rough and tumble." *Eaton v. Meneley,* 379 F.3d 949, 956 (10th Cir. 2004). "It would be inconsistent with the journalist's accepted role in the 'rough and tumble' political arena to accept that a reporter of ordinary firmness can be chilled by a politician's refusal to comment or answer questions on account of the reporter's previous reporting." *Ehrlich*, 437 F.3d at 419. Any such harm is not irreparable.

Plaintiffs' ability to show irreparable harm is further limited by the fact that the President has provided each Plaintiff with notice and an opportunity to respond in writing by this Friday. In other words, Plaintiffs are receiving process and any injunction would short-circuit that process. If Plaintiffs wish to contest the factual findings contained in the letters, they may do so.

III. The Public Interest And Balance Of The Equities Favor The Government

The public interests in protecting classified and sensitive national security information strongly outweigh any countervailing interests Plaintiffs can identify. "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation."

Haig v. Agee, 453 U.S. 280, 307 (1981); *see also United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936) (identifying President's interest in maintaining "[s]ecrecy" over classified "information" and preventing its "premature disclosure"). More specifically, the Supreme "Court has recognized the Government's 'compelling interest' in withholding national security information from unauthorized persons in the course of executive business." *Egan*, 484 U.S. at 527 (collecting cases).

The D.C. Circuit recently recognized these harms in upholding a government policy limiting media access at the Pentagon, because it "furthers important national security interests." *New York Times Co. v. U.S. Dep't of Def.*, No. 26-5113, 2026 WL 1179440, at *2 (D.C. Cir. Apr. 27, 2026) ("*NYT*"). There, the Court accepted a government "declaration explaining that prior to the 2025 PFAC Policy, journalists obtained 'sensitive or classified' information 'often monthly, and sometimes multiple times per month,' including information concerning 'operational plans' and 'intelligence assessments.'" *Id.* at *2 (quoting declaration). The court further accepted that "[u]nescorted access to the Pentagon was … 'a significant contributing factor' to that pattern because it enabled reporters to 'observe activity patterns' and identify potential sources of sensitive information." *Id.* (quoting declaration). On this basis, the court found that the Government had "supported its claim that this aspect of its policy furthers important national security interests." *Id.* at *2 (citing *Haig*, 453 U.S. at 307); *see also* Wilson Decl. ¶¶ 9-20.

Here, Defendants' letters and declarations similarly set forth the harms to national security. Letters at 1-2; Brown Decl.; Wilson Decl. This court should "not lightly override the [Government's] judgments on matters involving national security." *Anthropic PBC v. U.S. Dep't of War*, No. 26-1049, 2026 WL 1042493, at *3 (D.C. Cir. Apr. 8, 2026) (citing *Trump v. Hawaii*, 585 U.S. 667, 704 (2018); *see also Ctr. for Nat'l Sec. Stud. v. U.S. Dep't of Just.*, 331 F.3d 918,

927 (D.C. Cir. 2003) ("[W]e have consistently deferred to executive affidavits predicting harm to the national security, and have found it unwise to undertake searching judicial review."). That is especially true where that judgment was made by the President himself. Defendants recognize that *Sherrill* rejected the proposition that concerns about the physical security of the President outside a Secret Service process could justify termination of a press pass. 569 F.2d at 130. Defendants, however, argue this precedent is wrongly decided and should be overruled because there is no such due process or First Amendment right attaching to these credentials. *Sherrill* also did not address threats to national security outside the physical security of the White House complex.

On the other side of the ledger, Plaintiffs seek only to maintain continued access to White House grounds to marginally improve their existing coverage of national affairs. Significantly, Plaintiffs may still publish whatever content they choose, including any opinions or editorials criticizing the President or his policies. Rather, Plaintiffs argue that they require immediate continued physical access to White House grounds so that they can have "the ability to observe events firsthand and to ask questions of White House officials." Mot. at 27. But as the *NYT* litigation illustrates, it can be this very access that gives rise to the publication of classified or sensitive national security information. Wilson Decl. ¶¶ 16, 20. Furthermore, Plaintiffs have a process open to them to contest the President's factual findings through Friday. The President has also continued to engage with members of the media, including Plaintiffs.

The public interest and balance of the equities therefore counsel against issuing a temporary restraining order requiring the President to grant Plaintiffs immediate, continued access to White House grounds, over his personal judgment of national security considerations. Such an extraordinary injunction would raise serious separation of powers concerns and set this Court on "a collision course" with the President. *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 389 (2004).

IV. Any Remedy Should Be Narrowly Limited And Stayed Pending Any Appeal Authorized

At the very least, no injunction may run against the President. *See Karem*, 960 F.3d at 668. Nor may this Court enjoin Defendants to provide Plaintiffs with access to presidentially restricted areas, such as the Oval Office and Air Force One. Just last year, the D.C. Circuit stayed "a preliminary injunction prohibiting White House officials from denying, on the basis of viewpoint, access to press events held in the Oval Office, on Air Force One, and at the President's home in Mar-a-Lago." *AP*, 2025 WL 1649265, at *1. The D.C. Circuit made clear that "The White House therefore retains discretion to determine, including on the basis of viewpoint, which journalists will be admitted" to at least these areas. *Id.* That requires this court at the very least to uphold a lesser-included policy restricting Plaintiffs' access to these areas.

Finally, if for any reason this Court should grant any part of Plaintiffs' motion, the Court should convert the motion for a temporary restraining order into a motion for a preliminary injunction, so that the parties' appellate rights are clear. In addition, the Court should also stay any injunction pending any appeal authorized by the Solicitor General. For the same reasons Plaintiffs' motion fails, Defendants also satisfy the *Nken*, 556 U.S. 418, standard for a stay pending appeal.

CONCLUSION

This Court should deny Plaintiffs' motion.

Dated: September 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon Plaintiffs' counsel by the Electronic Case Filing system on September 22, 2026.

/s/Michael K. Velchik
MICHAEL K. VELCHIK

EXHIBIT 37

(Declaration of Katherine Fallow)

Trump Pushes to Evict the Press From the White House

President Trump has talked about replacing the James S. Brady Press Briefing Room with an indoor swimming pool.

Listen · 10:58 min




By Maggie Haberman and Jonathan Swan

Maggie Haberman and Jonathan Swan are White House reporters.

Oct. 20, 2026

In late August, during one of Karoline Leavitt's final meetings with President Trump in the Oval Office, he pitched her on an idea in front of several senior aides. He told her to move reporters out of the James S. Brady Press Briefing Room, which would effectively remove news organizations from the White House. It would be, he told her, her "last legacy."

But the proposal never moved forward while she was there. The president had put the request to her several times over months, according to three people with knowledge of the discussions who were not authorized to speak publicly. Ms. Leavitt officially stepped down as White House press secretary on Aug. 27.

Mr. Trump has told aides he would prefer to bring back the indoor pool President Franklin D. Roosevelt added in 1933 as therapy for his polio-afflicted legs; President Richard Nixon later covered it over to make room for the news media. Journalists who are credentialed to cover the White House work out of a small office space connected to the press briefing room.

While moving the media out of the White House may be a relatively small debate considering Mr. Trump's attacks on journalists more broadly, it would be highly symbolic. The proximity of the media to the seat of U.S. executive power has long been an acknowledgment of the importance of a free press in a constitutional democracy.

It would also be a decision that would be difficult to undo by future presidents.

The White House swimming pool was installed in the West Terrace in the 1930s and later covered over to make room for the briefing room. Bettman Archives/Getty Images

Mr. Trump has brought up the press-eviction idea before, dating to his first term, and he has never quite dropped it. A growing number of people around him favor the idea. Several close to him believe that moving the news media, most likely to the Eisenhower Executive Office Building across the street, may be the latest escalation in a remarkable series of moves against the news media that have already gone further than most of them

expected.

As recently as Sept. 27, Mr. Trump shared a pair of images on Truth Social showing the briefing room as it is now, captioned “Fake News,” alongside another that shows the space reimagined as a gilded swimming pool, captioned “FDR Pool.”

The Wall Street Journal reported last month that Mr. Trump had repeatedly discussed moving the press corps out of the White House, and that his advisers had so far either offered pushback or waited for him to move on.

What has changed since Mr. Trump’s first term or even earlier this term is the staff around him. The president’s core team has shrunk from the already-tight unit that he brought into the White House last year. During earlier discussions, most of Mr. Trump’s senior aides agreed it served him better to keep the media nearby. But Mr. Trump has grown more enraged about his press coverage, and other advisers of growing influence have encouraged him to take drastic measures to punish journalists.

“America is rightly distrustful of the fake news media because they fabricate stories based off lies and sources who are not even privy to any type of information,” said Steven Cheung, the White House communications director. “All options remain on the table, and we will make an announcement when appropriate.”

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A Buffer Against the Press

President Trump entering the briefing room in January. The White House Press Office is just a few feet away from the briefing room podium. Eric Lee for The New York Times

During the 2016 Trump transition, Stephen K. Bannon, then the incoming chief strategist, suggested moving the press corps out of the West Wing, to a townhouse near Lafayette Square. Senior officials rejected the idea out of hand. Mr. Bannon proposed the Eisenhower building as a fallback option.

In January 2017, the incoming chief of staff, Reince Priebus, publicly confirmed that the team was weighing a move of press briefings to that location, framing it as a way to accommodate more reporters. But he and others dropped the idea, ultimately viewing it as too disruptive and impractical.

“From the moment I arrived in the White House I believed it was a national security threat to have the press literally surround the Oval Office — and devised a plan to either move them off campus next to the Blair House or at least to E.O.B.,” Mr. Bannon recalled in a statement to The New York Times this month. “But definitely physically remove them from the West Wing. That plan landed with a thud among all the other senior advisers to the president.”

The idea came up again during the summer of 2017, when the West Wing was undergoing renovations. A former administration official recalled that it was less a formal plan than an impulse tied to the renovations: With the space torn up anyway, why let the reporters

back in? The official said that Sean Spicer, the departing press secretary, and Sarah Huckabee Sanders, his successor, questioned the logistical complexities. It soon died again.

The idea came up yet again during the presidential transition in late 2024. Most of Mr. Trump's advisers thought it was better to leave the news media inside the White House. They knew Mr. Trump liked to call the cameras into the Oval Office at a moment's notice. And several of his more seasoned advisers suspected that if they followed his direction to evict the press — and his coverage got worse — Mr. Trump would blame them for the inevitable results of his own idea.

Mr. Trump frequently calls the press pool into the Oval Office. Kenny Holston/The New York Times

But even without physically moving the news media to a building outside the White House main gates, the administration has for months been building up a buffer against the press. Last fall, Mr. Trump's team barred reporters from entering "Upper Press," the area near the press secretary's office, without an appointment.

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It has been more than 30 years since another president seriously considered removing the news media from the White House. President Bill Clinton's first communications director, George Stephanopoulos, recounted in his memoir that in 1993 the first lady, Hillary Clinton, wanted to convert the press quarters back into a swimming pool. When word of her plan leaked, the blowback quickly ended it.

But Mr. Trump currently faces no comparable pressure to accommodate a news media that is despised by so many of his supporters. He has received relatively little backlash so far — even from Democrats — against his anti-media moves.

Attacks on the News Media

Karoline Leavitt, the former press secretary, delivering a briefing last year. The president put the request to move out the news media to her several times over months, according to three people with knowledge of the discussions. Eric Lee/The New York Times

Mr. Trump entered his second term emboldened by his victory, and he quickly went on offense against media companies that had covered him critically. He filed lawsuits against ABC, CBS and The Des Moines Register. His aides made clear that the president intended these suits to have a chilling effect on negative coverage.

One of the instigators of the swimming pool discussion has been Bill Pulte, the director of the Federal Housing Finance Agency, according to two people familiar with the

discussions. Mr. Pulte has no formal role in White House operations. But he created a foam board rendering of the briefing room restored as an in-ground pool, the people said.

Mr. Pulte often spends his weekends with Mr. Trump at his golf clubs. The president has only a tiny staff around him on the weekends, which means Mr. Pulte often enjoys freewheeling access to Mr. Trump, which he uses to pitch the president on his latest ideas. Senior White House officials say that Mr. Pulte brings along foam boards that highlight potential targets for revenge prosecutions.

Mr. Pulte did not respond to multiple messages seeking comment.

Another top adviser feeding into Mr. Trump's anti-media tendencies is Boris Epshteyn, the president's longtime lawyer and outside adviser, who pushed several of the lawsuits the president has filed against news outlets or individual journalists. Mr. Epshteyn's influence has grown in recent months, according to current officials and people close to the president. Mr. Epshteyn declined to comment.

In September, Mr. Trump startled some of his own advisers by declaring on social media that he was banning CNN, MS NOW and Politico from the White House over coverage he called "fiction and lies." The administration swiftly revoked the credentials of more than 70 journalists.

The Wall Street Journal reported that Natalie Harp, the aide who controls much of the media and messages from supporters that reach the president's desk, and the majority of his social media feed, had played Mr. Trump clips of MS NOW anchors criticizing his administration shortly before he announced the ban on the three outlets.

Ms. Harp did not respond to a request for comment.

The Brady Press Briefing Room is situated between the West Wing and the main structure of the White House. Alex Kent/The New York Times

White House officials say the group that provides Mr. Trump updates about news coverage is wider than just Ms. Harp, and that she didn't intend to prompt the media ban by showing him clips. He made a decision after months of his own anger over coverage, they said. Mr. Cheung singled out Ms. Harp for praise.

Judge Timothy J. Kelly, whom Mr. Trump appointed in his first term, had put a hold on the president's media ban, saying officials there had violated standard process. But the White House continued for a short period to bar those outlets from the grounds. Judge Kelly last week ruled that the president had violated the outlets' First Amendment rights and ordered their passes restored. The administration is appealing his ruling.

The campaign against the news media has not stopped there. On Oct. 9, the Justice Department sent letters demanding information from ABC, CBS, CNN, NBC and Fox News after the five networks temporarily halted their pooled White House TV coverage in solidarity with CNN. People with knowledge of the effort said it was an antitrust investigation.

That Justice Department effort came just a few months after F.B.I. agents showed up at the homes of Times reporters to serve them grand jury subpoenas. Earlier that week, they had reported on security concerns about Mr. Trump while he traveled to Turkey for the NATO summit, as well as the lack of some defensive equipment on the luxury jet, donated by Qatar, that Mr. Trump was using as his new Air Force One.

The president was livid about the reporting and demanded his aides find the leaks, multiple people familiar with the matter said.

The Justice Department withdrew the subpoenas within a few weeks, after the judge in the case admonished federal lawyers for violations of process in appearing to use subpoenas as a first option instead of a last resort to obtain information.

With Mr. Trump's encouragement, other government departments have taken draconian measures against the press as well. For much of the past year, the Defense Department required credentialed reporters to sign a pledge that included not soliciting unauthorized information. Nearly every major news organization, including Fox News, refused to do so, and instead chose to give up work space in the building.

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A version of this article appears in print on , Section A, Page 15 of the New York edition with the headline: Trump Intensifies Push To Evict News Media From the White House