

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC. and ABILIO  
JAMES ACOSTA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; JOHN F. KELLY, in  
his official capacity as Chief of Staff to the President  
of the United States; WILLIAM SHINE, in his  
official capacity as Deputy Chief of Staff to the  
President of the United States; SARAH HUCKABEE  
SANDERS, in her official capacity as Press Secretary  
to the President of the United States; the UNITED  
STATES SECRET SERVICE; RANDOLPH ALLES,  
in his official capacity as Director of the United  
States Secret Service; and JOHN DOE, Secret  
Service Agent, in his official capacity,

Defendants.

**Case No.**

**EMERGENCY HEARING  
REQUESTED FOR TODAY  
OR TOMORROW**

**PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

Plaintiffs Cable News Network, Inc. ("CNN") and Abilio James ("Jim") Acosta hereby request, pursuant to Fed. R. Civ. P. 65(b) and Local Rule 65.1, that this Court issue a temporary restraining order requiring Defendants to rescind the revocation of Mr. Acosta's White House press credentials and immediately restore Mr. Acosta's credentials to him. Alternatively, Plaintiffs request that this Court, at a minimum, require Defendants to restore Mr. Acosta's credentials pending due process, including but not limited to a formal written explanation of Defendants' justification as to why the pass is being suspended and an opportunity for Mr. Acosta to respond to those allegations before a neutral arbiter, in advance of any revocation.

A temporary restraining order is warranted here. Plaintiffs are likely to succeed in establishing that Defendants have violated, and continue to violate, Plaintiffs' rights under the First and Fifth Amendments of the U.S. Constitution and the Administrative Procedure Act. The law is clear: As the D.C. Circuit has held, "the protection afforded newsgathering under the first amendment guarantee of freedom of the press requires that this access [to White House press facilities] not be denied arbitrarily or for less than compelling reasons." *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977). And "notice . . . of the factual bases for denial [of access to White House press facilities] with an opportunity to rebut is a minimum prerequisite for ensuring that the denial is . . . [not] based on arbitrary or less than compelling reasons." *Id.* at 131. The government complied with none of these safeguards here, stripping Acosta of his credentials and White House access with no process whatsoever, in violation of the First Amendment and the Due Process Clause.

The harm is immediate and ongoing. Due to the exigency of the circumstances and the irreparable nature of the injury the temporary restraining order would prevent, Plaintiffs request a hearing on their temporary restraining order on Tuesday, November 13, 2018, and no later than Wednesday, November 14, 2018. The Defendants continue to violate Plaintiffs' rights. For example, on the Sunday after Defendants revoked Acosta's credentials, the Defendants denied him access to cover the "open" press event during the President's trip to France on the one hundredth anniversary of the end of World War One even though Acosta was present and had a French government-issued press pass. Every day that passes without Acosta regaining his press credentials is a concrete injury. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) ("The loss of First Amendment 'freedoms' . . . unquestionably constitutes irreparable injury.");

*Pursuing Am. 's Greatness v. Fed. Elec. Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016) (First Amendment violations “for even minimal periods of time” constitute irreparably injury).

This Court should issue a temporary restraining order to preserve the rights of the parties pending a resolution of this matter on the merits. As explained at greater length in the accompanying memorandum, the balance of equities and the public interest favors granting the temporary restraining order. Plaintiffs therefore request that this Court issue an temporary restraining order immediately requiring Defendants to rescind the revocation of Acosta’s press credentials and restore them to him until Plaintiffs’ motion for a preliminary injunction is decided.

Dated: November 13, 2018

Respectfully submitted,



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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTIONS FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

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Plaintiffs Cable News Network, Inc. (“CNN”) and Abilio James (“Jim”) Acosta bring this motion for a temporary restraining order and a preliminary injunction against Defendants Donald J. Trump, John F. Kelly, William Shine, Sarah Huckabee Sanders, Randolph D. Alles, the United States Secret Service, and John Doe Secret Service Agent. Pursuant to Local Civil Rule 65.1(d), Plaintiffs request that this motion be heard on an expedited basis so that Plaintiffs’ irreparable harm may be alleviated as quickly as possible.

### **PRELIMINARY STATEMENT**

Plaintiff Jim Acosta has been a journalist for more than two decades. He has diligently reported on presidential campaigns, Hurricane Katrina, and the Iraq War. For more than five years, Acosta has been CNN’s national political correspondent and, since January 2018, he has been the network’s chief White House correspondent. Acosta has covered the White House since 2012 and, since 2013, has possessed press credentials—often called a “hard pass”—allowing him access to the White House and White House briefings. *See* Decl. of Jim Acosta ¶¶ 2-9; Decl. of Sam Feist ¶¶ 3-4; Decl. of Todd Gillman ¶¶ 5-7; Compl. ¶¶ 1, 7, 18-19.

But on November 7, 2018, Defendants revoked indefinitely Acosta’s White House credentials. According to the President, Acosta is no longer permitted to cover the White House because he failed “to treat the White House and the Office of the Presidency with respect.” That justification, however, is merely an attempt to punish a reporter for his content, coverage, and critiques. It is plainly unconstitutional. Indeed, when Defendants initially revoked Acosta’s credentials, they attempted to justify this unprecedented penalty by stating that Acosta had “plac[ed] his hands” on a staffer. The President later disavowed that justification, and for good reason: Defendants’ account of what occurred is wrong. Acosta did not “plac[e] his hands” on a staffer as eyewitnesses and video evidence confirm. The only evidence the White House supplied to justify its claim is a video that was, according to wide reports, altered by and

obtained from a contributor to a fringe website known less for accuracy and more for hate speech and conspiracy theories.

The pretextual and unabashed attempt to censor a reporter and a network that the President views as one of his critics, however, is only the beginning. As the President explained, there “could be others also” who get their credentials revoked for not “treat[ing] the White House and the Office of the Presidency with respect.” The revocation of Acosta’s credentials is plainly unconstitutional. Defendants’ transparent attempt to ban from the White House a reporter the administration sees as a critic constitutes nothing more than a raw content- and viewpoint-based penalty for Acosta’s and CNN’s protected First Amendment activity. In addition, the White House’s actions violate the Fifth Amendment’s due process guarantee: The government provided no notice, no justification, and no opportunity for Acosta or CNN to be heard or to appeal the indefinite revocation of Acosta’s credentials and White House access. As the D.C. Circuit has held, “the protection afforded newsgathering under the first amendment guarantee of freedom of the press requires that this access [to White House press facilities] not be denied arbitrarily or for less than compelling reasons.” *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977) (citation omitted). And “notice . . . of the factual bases for denial [of access to White House press facilities] with an opportunity to rebut is a minimum prerequisite for ensuring that the denial is . . . [not] based on arbitrary or less than compelling reasons.” *Id.* at 131. The government complied with none of these safeguards here, stripping Acosta of his credentials and White House access with no process whatsoever.

Under this binding D.C. Circuit precedent, a temporary restraining order and preliminary injunction are required here. Our Constitution, well-established law, and the core principles of our democracy establish that the White House cannot be permitted to cast out and punish

reporters with whom it disagrees. Acosta and the rest of the press corps must be free to do their jobs, reporting the news and challenging government officials without fear of reprisal from the President and his administration.

### **BACKGROUND**

Since the start of his campaign and continuing to the present day, President Trump has heavily criticized any journalist or news organization he believes might report something he considers negative. As the President explained to Lesley Stahl of 60 Minutes: “You know why I do it? I do it to discredit you all and demean you all so when you write negative stories about me, no one will believe you.” Ex. 16; *see also* Ex. 2 (“If people don’t cover me fairly, or if they actually make things up, I don’t know why anybody should be allowed [into Trump campaign rallies].”); Compl. ¶ 3.<sup>1</sup>

In this regard, President Trump and his administration have been especially focused on CNN and Acosta. At a news conference on January 11, 2017, for example, when Acosta was attempting to ask then-President-elect Trump a question, Trump told Acosta, “your organization is terrible” and “you are fake news.” Ex. 3; Acosta Decl. ¶ 11; Compl. ¶ 27. Just a few weeks after he was inaugurated in 2017, President Trump tweeted that CNN was “the enemy of the American People.” Ex. 6; Compl. ¶ 29. A few months later, President Trump tweeted a video depicting him tackling and punching a man with a CNN logo superimposed on his face, noting “#FraudNewsCNN” and “#FNN” in the tweet. Ex. 7; Compl. ¶ 28; *see also* Ex. 8 (“While in the Philippines I was forced to watch @CNN, which I have not done in months, and again realized how bad, and FAKE, it is. Loser!”); Ex. 9 (“[W]e should boycott Fake News CNN. Dealing

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<sup>1</sup> Citations to Ex. \_\_ are to the Exhibits to the Declaration of Theodore J. Boutrous, dated November 13, 2018.

with them is a total waste of time!”); Compl. ¶¶ 28-29. A few weeks later, he described one CNN journalist as “the dumbest man on television,” Ex 13; Compl. ¶ 28; *see also* Ex. 14; Acosta Decl. ¶ 11.

President Trump’s criticisms of CNN and Acosta have not been limited to the Twitter universe. On August 30, 2018, for example, President Trump complained during a campaign rally about CNN’s coverage of him and his administration and said that CNN and its reporters are “just dishonest, terrible people.” Ex. 23; Compl. ¶ 29; *see also* Boutrous Decl. ¶¶ 4, 17, 20 (recounting and collecting similar incidents).

On November 7, 2018, the day after the 2018 midterm elections, President Trump held an approximately 90-minute news conference in the East Room of the White House. Acosta was present and one of the first reporters the President called on for questions. Speaking through a hand-held microphone, as all the White House journalists who asked questions did, Acosta asked a question about one of President Trump’s statements during the midterm campaign—namely, whether a caravan making its way to the United States from Central America constitutes “an invasion” of the country, a significant feature of the President’s messaging during the just-ended campaign. The President declined to respond, instead remarking: “You know what? I think you should . . . I think you should let me run the country. You run CNN. And if you did it well, your ratings would be much better.”

When Acosta attempted to ask a follow-up question, President Trump refused to take it. A White House staffer then approached Acosta and attempted to grab the microphone. The staffer reached all the way across Acosta’s body, successfully latched onto the microphone, and physically attempted to remove it from Acosta’s right hand. Acosta held onto the microphone, stated “Pardon me, ma’am,” and continued to ask his question.

The staffer then sat down and allowed Acosta to ask his follow-question. The President again declined to answer Acosta, saying: “I tell you what, CNN should be ashamed of itself, having you work for them. You are a rude, terrible person. You shouldn’t be working for CNN.” The President further stated that “[w]hen you report fake news, which CNN does, a lot, you are the enemy of the people.” The entire press conference (including the specific exchange in question at minutes 27:31 to 30:13) can be viewed here: *President Trump on 2018 Election Results*, C-SPAN, <https://www.c-span.org/video/?454223-1/president-trump-calls-2018-midterm-elections-very-close-complete-victory>, available at Ex. 27 (C-SPAN Video Clip); see also Ex. 28 (Associated Press Video Clip); Acosta Decl. ¶¶ 13-18; Compl. ¶¶ 30-38.

That evening, following the President’s press conference described above, Defendants revoked Acosta’s credentials to enter White House grounds. Acosta Decl. ¶¶ 16-17. They did so without notice, without providing Acosta any justification, and without an opportunity to appeal the revocation or otherwise respond. Acosta Decl. ¶ 17; Ex. 45; Feist Decl. ¶ 22; Compl. ¶¶ 47-48. The revocation of Acosta’s credentials was unprecedented: As Sam Donaldson has noted, in his nearly five decades as a reporter in Washington and two decades as a chief White House correspondent, he is unaware “of any prior situation in which a White House correspondent’s hard pass was revoked. My colleagues and I never would have imagined such action was possible.” Decl. of Sam Donaldson ¶¶ 1, 2, 3, 7; 8; see also Feist Decl. ¶ 14; Gillman Decl. ¶ 8. As a candidate, President Trump himself recognized how improper it would be to revoke the press credentials of White House reporters if he prevailed in the election and became President, noting that banning reporters from campaign rallies (as he had done) is “a different thing. In my case I’m a person running for office. I rent these large arenas . . . so I have an option. . . . When

*I'm representing the United States I wouldn't do that.*" Ex. 1 (Stelter Interview Tr.) (emphasis added).

White House official Sarah Sanders tweeted that Acosta's credentials were revoked due to the interaction between him and the White House staffer who had attempted to take his microphone. Compl. ¶ 39. Ms. Sanders tweeted that the White House "will . . . never tolerate a reporter placing his hands on a young woman just trying to do her job as a White house intern." Ex. 30. Ms. Sanders later posted to her Twitter account a video that has widely been reported to be manipulated, purporting to show Acosta "placing his hands" on the staffer, and called Acosta's conduct "absolutely unacceptable." Ex. 30, 31, 37; *see* Acosta Decl. ¶ 23; Compl. ¶ 43. The next day, President Trump advised that other reporters' credentials could be revoked and noted that the White House is a "sacred place," that "[y]ou have to treat the White House with respect," and that "[y]ou have to treat the presidency with respect." Ex. 51 at 6; *see* Acosta Decl. ¶ 24; Compl. ¶¶ 2, 58.

Many eyewitnesses present at the November 7 press conference have responded to the White House allegations, unequivocally denying that Acosta placed his hands on the staffer. Exs. 32, 35, 43, 48; Compl. ¶ 40. It has further been reported that the video Ms. Sanders disseminated to the public came from a contributor to InfoWars, an organization whose "conspiracy theories and hateful content" have led to it "being banned earlier this year by most major social media platforms." Ex. 42; *see also* Exs. 39, 49, 50 (calling the White House video post "visual propaganda"); Acosta Decl. ¶ 23. Moreover, according to numerous reports, the video had been "altered to exaggerate the aggressiveness of Acosta's actions." Ex. 50. Rather than portraying what actually occurred at the press conference, it appears to have been edited to suggest a more physical confrontation between Acosta and the staffer. As the *Washington Post*

explained, the video makes it appear that Acosta “swiftly chop[ped] down on the arm of an aide as he held onto a microphone while questioning President Trump. But in the original video, Acosta’s arm appears to move only as a response to a tussle for the microphone. His statement, ‘Pardon me, ma’am,’ is not included in the video Sanders shared.” Ex. 44; Ex. 48 (*New York Times* reporting the same); Ex. 46 (CBS reporting the same); Ex. 49 (*The Independent* reporting the same); *see also* Compl. ¶¶ 44-45. Counselor to the President Kellyanne Conway attempted to deny the video had been altered but then admitted it had been “sped up.” Ex. 52.

Video provided by independent news outlets makes the accuracy of the *Post*’s account plain. *Compare* Ex. 28 (Associated Press Video Clip), *with* Ex. 38 (S. Sanders Tweeted Video Clip). Video editing professionals have even layered the White House’s clip on top of the video provided by independent sources to show the key discrepancies. Exs. 39; *see also* Exs. 43, 44. In response to the apparent doctoring of the video the White House circulated to the American public, the White House News Photographers Association released a statement that “[a]s visual journalists, we know that manipulating images is manipulating truth. It’s deceptive, dangerous and unethical. Knowingly sharing manipulated images is equally problematic, particularly when the person sharing them is a representative of our country’s highest office with vast influence over public opinion.” Ex. 41; Ex. 43.

Of course, President Trump’s comments at the press briefing, which focused on the questions Acosta was asking and the content of his news reporting, left no doubt that Acosta’s credentials and White House access were revoked for content- and viewpoint-based reasons having nothing to do with the interaction between him and the staffer. *See* Acosta Decl. ¶¶ 23-24. In fact, two days later, on November 9, President Trump admitted in a public statement on the White House lawn that the interaction between Acosta and the staffer was not the basis for

revoking Acosta's credentials, stating: "I don't hold [Acosta] for that because it wasn't overly, you know, horrible." Ex. 51 at 10; *see also* Donaldson Decl. ¶ 9 ("[B]ased on my two decades of experience and the hundreds of White House press conferences in which I have participated, Jim Acosta's conduct and questioning of the President were appropriate and within norms of professional conduct for journalists generally and for a White House reporter specifically."); *accord* Feist Decl. ¶ 17 ("An effective correspondent cannot simply sit down when the President or other public official avoids a question through interruptions and personal attacks."); Compl. ¶ 53. President Trump further acknowledged that Defendants had revoked the credentials because he believed Acosta had failed to "treat the White House with respect" and "to treat the presidency with respect." Ex. 51 at 6. The President then threatened to take away the credentials of other allegedly disrespectful reporters. *Id.* ("Q. Mr. President, how long are you going to leave Jim Acosta in the penalty box?" A. "As far as I'm concerned, I haven't made that decision. But it could be others also."); Compl. ¶ 53.

### **ARGUMENT**

A Plaintiff seeking a temporary restraining order or preliminary injunction must demonstrate: (1) that he is likely to succeed on the merits; (2) that he is likely to suffer irreparable injury in the absence of preliminary relief; (3) that the balance of the equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also Morgan Stanley DW Inc. v. Rothe*, 150 F. Supp. 2d 67, 72 (D.D.C. 2001) ("The court considers the same factors in ruling on a motion for a temporary restraining order and a motion for a preliminary injunction."); *Stewart v. D.C. Armory Bd.*, 789 F. Supp. 402, 404 (D.D.C. 1992). As the D.C. Circuit has held, "[t]he loss of First Amendment 'freedoms,' . . . unquestionably constitutes irreparable injury." *Pursuing Am. 's Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016). Thus, in First Amendment cases, "the



likelihood of success ‘will often be the determinative factor’ in the preliminary injunction analysis.” *Id.*

Here, all four factors counsel strongly in favor of emergency relief. The Court should grant a temporary restraining order and preliminary injunction in favor of Plaintiffs.

## **I. Plaintiffs’ First Amendment and Due Process Claims Are Likely To Succeed.**

### **A. Plaintiffs Are Likely to Succeed in Demonstrating that the Revocation of Acosta’s Credentials Violated the First Amendment.**

The law is well settled that “arbitrary or content-based criteria for press pass issuance are prohibited under the first amendment.” *Sherrill*, 569 F.2d at 129. As the Court of Appeals has explained:

[T]he White House has voluntarily decided to establish press facilities for correspondents who need to report therefrom. These press facilities are perceived as being open to all bona fide Washington-based journalists, whereas most of the White House itself, and press facilities in particular, have not been made available to the general public. White House press facilities having 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*.

*Id.* (citing *Branzburg v. Hayes*, 408 U.S. 665, 681, 707 (1972); *Pell v. Procunier*, 417 U.S. 817, 829-35 (1974)) (emphasis added); *Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) (“[O]nce there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable.”); *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 675 F. Supp. 2d 411, 431 (S.D.N.Y. 2009) (collecting cases); *Cable News Network, Inc. v. Am. Broad. Cos.*, 518 F. Supp. 1238, 1244 (N.D. Ga. 1981) (“[T]he rights guaranteed and protected

by the First Amendment include a right of access to news or information concerning the operations and activities of government.”).

It goes without saying that the government has no legitimate interest in refusing reporters access to the White House based on the content or viewpoint of their reporting. *Cable News Network*, 518 F. Supp. at 1245; *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986). “The danger in granting favorable treatment to certain members of the media is obvious: it allows the government to influence the type of substantive media coverage that public events will receive. Such a practice is unquestionably at odds with the first amendment.” *Id.*

The First Amendment also “prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out,” *Hartman v. Moore*, 547 U.S. 250, 256 (2006), and to discrimination “based upon the content of the journalist’s publications,” *Stevens v. N.Y. Racing Ass’n, Inc.*, 665 F. Supp. 164, 175 (E.D.N.Y. 1987). Even when a restriction is not content-based on its face, it is impermissible where circumstantial evidence demonstrates it was motivated by content or viewpoint. *See id.* (finding it likely that a restriction was content-based where the imposer stated off the record that it was based on specific journalists’ coverage detracting from attention to the imposer’s event). When a government official’s “criticism [of the press] transforms into an attempt to use the powers of a governmental office to intimidate or to discipline the press or one of its members because of what appears in print, a compelling governmental interest that cannot be served by less restrictive means must be shown for such use to meet Constitutional standards.” *Borreca v. Fasi*, 369 F. Supp. 906, 910 (D. Haw. 1974).

Content-based and viewpoint-based restrictions “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015); *accord*

*Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010) (“Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints.”); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (“Viewpoint discrimination is . . . an egregious form of content discrimination.”); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) (“[T]he government’s ability to impose content-based burdens on speech raises the specter that the government may effectively drive certain ideas or viewpoints from the marketplace.”); *Regan v. Time, Inc.*, 468 U.S. 641, 648-49 (1984) (“Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.”); *Consol. Edison Co. v. Pub. Serv. Comm’n*, 447 U.S. 530, 538 (1980) (“[T]he First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. . . . To allow a government [to discriminate based on viewpoint] would be to allow that government control over the search for political truth.” (citation and quotation marks omitted)); *Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972) (“Any [content-based restriction on speech] would completely undercut the profound national commitment to the principle that debate on public issues should be uninhibited, robust, and [wide]-open.” (citation and quotation marks omitted)).

Here, there can be no question that the revocation of Acosta’s credentials is a content- and viewpoint-based punishment imposed on him because the President and his administration do not like CNN or Acosta’s reporting. President Trump has been very clear about his antipathy in this regard. Throughout the first two years of his tenure in office—and even before—he has described CNN as the “enemy of the people” and a purveyor of “fake news.” *See supra* at 3-4. Just two days after Acosta’s expulsion, the President berated Abby Phillip, a Harvard educated

CNN correspondent, when she asked whether the President wanted his new Attorney General to “rein in Robert Mueller.” Ex. 51 at 11-12. In response, the President stated: “What a stupid question that is. What a stupid question. But I watch you a lot. You ask a lot of stupid questions.” *Id.*; Feist Decl. ¶ 20.

By contrast—the President has encouraged and supported those media outlets he deems sufficiently favorable. Since his inauguration, the President has tweeted about CNN dozens of times, including numerous tweets that contrast Fox News’s favorable coverage of the President to CNN’s more critical reporting. Just days after he took office, for instance, President Trump tweeted “Congratulations to @FoxNews for being number one in inauguration ratings. They were many times higher than FAKE NEWS @CNN - public is smart!” Ex. 4. Weeks later, he stated “[t]he fake news media is going crazy with their conspiracy theories and blind hatred. @MSNBC & @CNN are unwatchable. @foxandfriends is great!” Ex. 5. His commentary continued well into the 2018 midterm election campaign. *See, e.g.*, Ex. 17 (“Real @FoxNews is doing great, Fake News CNN is dead!”); Ex. 21 (“Wow, @foxandfriends is blowing away the competition in the morning ratings. Morning Joe is a dead show with very few people watching and sadly, Fake News CNN is also doing poorly. Too much hate and inaccurately reported stories - too predictable!”). Defendant Shine, in fact, was co-president of Fox News Channel and Fox Business Network before he joined the President’s communications team. Ex. 18.

Defendants thus clearly believe that CNN’s and Acosta’s coverage of the current administration is unfair and overly critical. But such a concern—accurate or not—is a constitutionally infirm basis for revoking a reporter’s access to the White House. *See Knight First Amend. Inst. v. Trump*, 302 F. Supp. 3d 541, 575 (S.D.N.Y. 2018) (noting that when the President blocked Twitter users who disagreed with him, those users “indisputably [were]

blocked as a result of viewpoint discrimination”). The Framers of our Constitution embraced a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). The President lacks the authority to quash “[t]he sort of robust political debate encouraged by the First Amendment”—debate that is “*bound to produce speech that is critical of those who hold public office.*” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 51 (1988) (emphasis added); *accord United States v. Stevens*, 559 U.S. 460, 470 (2010) (“The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it.”); *see also* Acosta Decl. ¶ 12; Donaldson Decl. ¶ 10 (“No president fully likes reporters who ask uncomfortable questions, which may call for answers explaining mistakes or flaws or controversial actions in a president’s performance. But President Harry Truman summed up the necessary interplay between a president and the press corps when he advised government officials at every level ‘If you can’t take the heat, get out of the kitchen.’”).

In the face of this, the White House at first offered an unsupported reason: that they revoked Acosta’s credentials because he engaged in “inappropriate behavior” by “placing his hands on a young woman just trying to do her job as a White House intern.” Exs. 30, 31, 37. But that justification is neither factually true nor legally adequate. First, the contention that Acosta placed his hands on the intern is false, as eyewitnesses and contemporaneous, un-doctored video confirm. Reuters correspondent Jeff Mason, formerly the president of the White House Correspondents’ Association, tweeted: “I was seated next to @Acosta at today’s press

conference and did not witness him ‘placing his hands’ on the young intern, as the White House alleges . . . .” Ex. 36. Other reporters spoke out similarly. Exs. 32, 35; Compl. ¶ 40.

Independent experts have demonstrated that the video Ms. Sanders posted of the interaction between Acosta and the White House intern was altered to make it appear more confrontational than it was. Exs. 39, 43, 48, 49; *compare* Ex. 28 (Associated Press Video Clip), *with* Ex. 38 (S. Sanders Tweeted Video Clip).

The manipulated video undergirding the administration’s revocation of Acosta’s credentials shows that its justification was pretextual and not in good faith. *Cf. Sherrill*, 569 F.2d at 131 n.22 (“It is apparent that all parties to this case recognize the right of a journalist to a White House press pass if he has obtained House and Senate press credentials, resides in Washington, and has a need to report from the White House, *unless* he is a source of potential danger to the President or his family. There is no indication that the Secret Service has ever denied press credentials for any other reason.” (emphasis added)); 31 C.F.R. § 409.1 (“In granting or denying a request for a security clearance made in response to an application for a White House press pass, officials of the Secret Service will 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.”); *see also* Compl. ¶ 26. Indeed, on November 9, the President himself stated, regarding the alleged confrontation between Acosta and the White House staffer, that he doesn’t “hold [Acosta] for that because it wasn’t overly, you know, horrible.” Ex. 51 at 10. He further noted that Acosta’s credentials were revoked—and other reporters’ credentials could be, too—because they did not “treat the White House” and “the presidency” “with respect,” *id.* at 6—a

clear reference to the content of Acosta's reporting, and a particularly transparent one at that given the President's prior statements calling Acosta "actually a nice guy." Ex. 20.

**B. Plaintiffs Are Likely to Succeed in Demonstrating that Defendants Violated the Due Process Clause.**

To bring a claim under the Due Process Clause, "a plaintiff must show (i) deprivation of a protected liberty or property interest, (ii) by the government; (iii) without the process that is 'due' under the Fifth Amendment." *NB ex rel. Peacock v. District of Columbia*, 794 F.3d 31, 41 (D.C. Cir. 2015) (citations omitted). Here, because the Administration's decision to revoke indefinitely Acosta's pass violated his liberty and property interests without affording appropriate process—or any process at all—Plaintiffs are likely to succeed on the merits of their due process claim.

First, there is no question that the revocation of Acosta's pass deprived him of a protected interest. The D.C. Circuit has held that the interest of a White House correspondent and his publication in a White House press pass "*undoubtedly* qualifies as liberty which may not be denied without due process of law under the [Fifth Amendment]." *Sherrill*, 569 F.2d at 130 (emphasis added); *see also id.* at 129 ("Not only newsmen and the publications for which they write, but also the public at large have an interest protected by the [First Amendment] in assuring that . . . individual newsmen not be arbitrarily excluded from sources of information"). Acosta and CNN's liberty and property interests in Acosta's press pass are, if anything, far stronger than the interest the Court of Appeals addressed in *Sherrill*; although the Court there addressed an *applicant's* interest in receiving a press pass for which he applied, *id.* at 130-31, Acosta has held his pass for years and uses it regularly, and he and CNN require it to perform the constitutionally protected duties of reporting on the White House. Acosta Decl. ¶¶ 8, 18-20.

Moreover, the property interests here are significant. At stake is Acosta and CNN's ability to continue gathering and publishing news on the President and his administration. Acosta Decl. ¶¶8 (noting that the "hard pass" is "essential to my job"); *id.* ¶¶ 18-20; Feist Decl. ¶ 12; Compl. ¶¶ 22-25. The West Wing of the White House, or the President's location during trips, is Acosta's and his fellow correspondents' office, and Acosta's credentials—including his hard pass—provide him necessary access to that workplace. Feist Decl. ¶¶ 7-8, 13; Acosta Decl. ¶¶ 6-8; Compl. ¶¶ 22-25. As Acosta has explained, without his security credentials, he effectively cannot do his job of reporting on the administration—for CNN or any other news organization. Acosta Decl. ¶¶ 18-20; Gillman Decl. ¶¶ 9-15; Compl. ¶ 24. A hard pass lets Acosta react to "the often spontaneous newsgathering opportunities that present themselves at the White House, from informal conversations with administration staff to surprise announcements by the White House." Acosta Decl. ¶ 8; Feist Decl. ¶¶ 5-12; Gillman Decl. ¶¶ 9-15; Compl. ¶ 25. Without his credentials, he will miss the newsworthy events about which he has long reported and which allowed him to achieve the prestigious role he has attained—that of CNN's chief White House correspondent. Acosta Decl. ¶¶ 8, 18-20; Feist Decl. ¶ 4-11; Gillman Decl. ¶¶ 9-15. According to Todd Gillman, a member of the White House Correspondents' Association who counsels his colleagues on obtaining their security credentials, a hard pass is critical for *anyone* who reports daily on or at the White House. Gillman Decl. ¶ 9. And as the Court of Appeals has recognized, "[n]ot only newsmen and the publications for which they write, but also the public at large have an interest" in the ability of journalists to do their jobs. *Sherrill*, 569 F.2d at 129.

Second, this deprivation "occurred at the hands of the government." *NB ex rel. Peacock*, 794 F.3d at 42. The White House Press Secretary announced the deprivation on her government-



controlled Twitter account and a Secret Service agent enforced the deprivation by taking Acosta's pass at the White House gate. *See supra* 5-6.

Finally, the Administration unquestionably provided inadequate process—in fact, no process at all. Acosta Decl. ¶ 17. In *Sherrill*, the Court of Appeals concluded that the White House could not deny even an *application* for a press pass without providing “notice of the factual bases for denial, an opportunity for the applicant to respond to these, and a final written statement of the reasons for denial.” 569 F.2d at 130. Acosta and CNN are entitled to at least the same process for the revocation of a press pass. “[N]otice . . . of the factual bases for denial with an opportunity to rebut is a minimum prerequisite for ensuring that the denial is . . . [not] based on arbitrary or less than compelling reasons.” *Id.* at 131. And a final written statement of the reasons for denial is necessary to ensure that the Administration “has neither taken additional, undisclosed information into account, nor responded irrationally to matters put forward by way of rebuttal or explanation.” *Id.*

Both reasons apply here even more so than in *Sherrill*—especially where the only justification the Administration has offered is what the Supreme Court has called, in a different context, a “visible fiction.” *Scott v. Harris*, 550 U.S. 372, 381 (2007); *see supra* Part I.A. The Administration revoked Acosta's pass on the basis of the content of his reporting and then tried to justify it with a manipulated video, contradicted by video evidence and eyewitness testimony. *See supra id.* Given these facts, due process safeguards are essential to prevent the Administration from banning from the White House a major media outlet's leading national correspondent based on pretextual, inaccurate reasons. Worse, in the days since Acosta's credentials were taken from him, President Trump has warned that other journalists may be next, saying, “As far as I'm concerned, . . . it could be others also.” Ex. 51 at 6.

Cases arising under the Due Process Clause often turn on a careful examination of whether the deprived plaintiff received *adequate* process given the nature of the deprivation. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Here, the Administration provided Acosta and CNN with no process whatsoever—Acosta was blocked from entering his work space at the White House without notice and stripped of his “hard pass,” *see* Ex. 29, Ex. 34, at the same time Ms. Sanders was announcing the revocation in a tweet. Ex. 30; Acosta Decl. ¶ 17; Feist Decl. ¶¶ 15-16; Ex. 45; Feist Decl. ¶ 22; Compl. ¶¶ 47-48. The due process violation is self-evident.

Finally, the Administration’s interest in controlling access to the White House to protect the President’s safety, which *Sherrill* described as the *only* relevant governmental interest here, 569 F.2d at 130-31 & n.22, played no role in the decision to revoke Acosta’s credentials. Nor has the government claimed this is one of the “extraordinary situations” when the government interest at stake demands immediate action without the opportunity for process, or where process is simply impracticable. *See Freeman v. F.D.I.C.*, 56 F.3d 1394, 1403 (D.C. Cir. 1995). The Administration has never suggested—nor could it suggest in good faith—that Acosta’s presence in the White House briefing room caused “concern for the physical security of the President or his family,” *see Sherrill*, 569 F.2d at 131 n.22, or any other exigent circumstance requiring urgent decisionmaking. *See* Acosta Decl. ¶ 9 (“During my tenure as a White House correspondent, I have never had any altercations with any member of any president’s administration or the Secret Service. Never during that time, until November 7, 2018, was my press credential ever threatened in any manner.”). Granting reasonable process before revoking a press pass under these circumstances poses no risk to the government’s interests.

The Administration has violated the Due Process Clause and emergency relief must issue to redress this violation. At a minimum, the Court should require the Administration to restore Acosta's credentials until it affords him adequate process.

## **II. Plaintiffs Will Be Irreparably Injured Absent Injunctive Relief.**

A long and unbroken line of cases have established that “[t]he loss of First Amendment ‘freedoms,’ . . . unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *Pursuing Am. ’s Greatness v. Fed. Election Comm’n*, 831 F.3d 500, 511 (D.C. Cir. 2016) (same); *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (same); *Westinghouse Broad. Co., Inc. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass. 1976). That includes First Amendment violations “for even minimal periods of time.” *Pursuing Am. ’s Greatness*, 831 F.3d at 511. Indeed, the mere fact that First Amendment violations may have a chilling effect on speech is enough to satisfy the irreparable injury standard. *DeGuiseppe v. Vill. of Bellwood*, 68 F.3d 187, 192 (7th Cir. 1995) (“[R]etaliation need not be monstrous to be actionable under the First Amendment; it need merely create the potential for chilling . . . speech on matters of public concern.”). With both his actions and his words, President Trump has put other reporters on notice that they risk losing their press credentials unless they “treat the White House with respect.” Ex. 51 at 6; Acosta Decl. ¶ 24.

More pointedly, courts have held that restrictions on a reporter's coverage of White House and government affairs, like the serious restrictions imposed on Acosta here, constitute irreparable injury—to the reporters themselves, to the outlets they work for, and to the public at large. In *Cable News Network, Inc. v. American Broadcasting Companies, Inc.*, 518 F. Supp. 1238 (N.D. Ga. 1981), for example, several television crews were excluded from White House pool coverage. *Id.* at 1245-46. The court granted a preliminary injunction, noting that, absent such relief, the plaintiffs would “suffer irreparable injury.” *Id.* at 1245. The court reasoned that

by excluding these news outlets, “a complete visual record of the Presidential activities covered by the press pools is lost forever”—a loss that “clearly constitutes irreparable injury to [the news outlets], as well as the public.” *Id.* at 1246. Similarly, in *American Broadcasting Companies, Inc. v. Cuomo*, 570 F.2d 1080 (2d Cir. 1977)—a case involving the ouster of ABC’s television crew from several Democratic candidates’ campaign headquarters—the court concluded “[t]here [was] no question that irreparable harm [would] result if ABC [were] not permitted to broadcast live coverage . . . not only to ABC but to the public which views the events on its channel.” *Id.* at 1082. The court explained that excluding ABC from covering the election’s events would limit the public’s news-viewing options—and for some, “such as people in hospitals or other institutions who have a single channel to watch,” excluding ABC would foreclose their ability to watch the news altogether, irreparably harming the news station and public. *Id.*

Similarly, here, the revocation of Acosta’s press credentials irreparably harms Acosta, CNN, and the public at large. Acosta Decl. ¶¶ 8, 18-20; Donaldson Decl. ¶¶ 11-12; Feist Decl. ¶¶ 18-19; Compl. ¶¶ 51-52. Indeed, the day after Defendants revoked Acosta’s credentials, the President traveled to Paris to mark the centennial of the end of the First World War. Acosta Decl. ¶ 18; Feist Decl. ¶ 19; Compl. ¶ 50. As CNN’s chief White House correspondent, Acosta, too, traveled to Paris and attempted to cover the trip and the President’s activities. Acosta Decl. ¶ 18; Feist Decl. ¶ 19. But the White House denied him access to the main presidential event. Acosta Decl. ¶ 18; Feist Decl. ¶ 19. What’s more, even when the French government issued credentials to Acosta, the Secret Service *still* refused to allow Acosta to attend an allegedly “open” press event that journalists from around the world attended. Acosta Decl. ¶ 18; Feist Decl. ¶ 19; Ex. 53; Compl. ¶ 50.

CNN's and Acosta's ability to cover these vital, international public events, therefore, has already been irreparably harmed, and that harm will no doubt continue. Acosta Decl. ¶¶ 18-20; Feist Decl. ¶ 21. By continuing to withhold Acosta's credentials, Defendants are preventing CNN's chief White House correspondent from doing his job, foreclosing an essential source of news for the American public. Acosta Decl. ¶¶ 18-20; Feist Decl. ¶ 21. And every day the revocation is allowed to stand, it chills the vigilance of the entire press corps: "What reporter or news organization will feel safe from White House retaliation because of what questions they ask or what news stories they write and publish if the action against Acosta is not reversed?" Donaldson Decl. ¶ 12.

### **III. The Balance of Equities and the Public's Interest Strongly Favor Injunctive Relief Here.**

In light of the substantial First Amendment violations at stake here, the balance of equities sharply tips in Plaintiffs' favor. "Ordinarily, such a threatened injury to the plaintiff will easily outweigh whatever burden the injunction may impose, because the government is in no way harmed by issuance of an injunction that prevents the state from enforcing unconstitutional restrictions." *Hassay v. Mayor*, 955 F. Supp. 2d 505, 517 (D. Md. 2013) (citation and quotation marks omitted); *Telemundo v. City of Los Angeles*, 283 F. Supp. 2d 1095, 1103-04 (C.D. Cal. 2003) (where news outlet had initially been compelled to delay one of its broadcasts in light of defendants' production, holding that "equitable considerations [did] not weigh in favor of denying the preliminary injunction" on the ground that defendants' "commercial interest in the production . . . [did] not outweigh [the news outlet's] First Amendment rights and the public interest in diversity of coverage of newsworthy events"). In such situations, any harm to defendants is insignificant. Indeed, even in *Cable News Network*—which involved the wholesale exclusion of several television outlets from White House pool coverage—the court held that the

restoration of access to these outlets “would merely involve some minor inconvenience to the White House press staff,” a harm that would pale in comparison to the irreparable harm Plaintiffs and the public would endure absent such relief. 518 F. Supp. at 1246; *see* Acosta Decl. ¶¶ 8, 18-20; Feist Decl. ¶¶ 18-20.

Moreover, the public interest here strongly militates in Plaintiffs’ favor. Even President Trump himself as a candidate recognized how improper it would be to revoke the press credentials of White House reporters if he prevailed in the election and became President. Ex. 1. And courts have consistently held that the public’s unfettered access to news coverage is an interest warranting injunctive relief. *See, e.g., Sherrill*, 569 F.2d at 129-30 (explaining that “the public at large have an interest protected by the first amendment in assuring that restrictions on newsgathering be no more arduous than necessary, and that individual newsmen not be arbitrarily excluded from sources of information”); *Telemundo*, 283 F. Supp. 2d at 1103-04 (granting injunctive relief to Telemundo, which had been faced with the threat of restrictions on one of its broadcasts, because “[t]he public has an interest in viewing live coverage of the event”). Consistent with these cases, here, “[t]he pending analysis should clearly indicate that the public interest will be significantly benefitted, and in no way harmed, by the granting of the injunctive relief sought. [Acosta’s] participation in White House [] coverage benefits the public by informing it of the activities of its government.” *Cable News Network, Inc.*, 518 F. Supp. at 1246.

Worse, Defendants’ actions are designed to and will chill not just Acosta’s reporting, but also reporting generally—particularly reporting critical of the government. As Acosta has explained, “[t]his is a test for all of us . . . I do think they are trying to shut us down, to some extent, inside the White House press corps,” by “send[ing] a message to our colleagues.” Ex. 47

at 1; *see also* Acosta Decl. ¶ 24; Donaldson Decl. ¶¶ 11-12. President Trump has said essentially the same thing, warning on November 9 that reporters have to “treat the White House with respect,” and that absent such respect, there “could be others also” who have their credentials revoked. Ex. 51 at 6. The revocation of Acosta’s credentials are bound to have a rippling effect across the industry, particularly if they are not redressed. “Without an unfettered press, citizens would be far less able to make informed political, social, and economic choices. But 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). The public has a profound interest in access to news coverage at large—an interest that, absent injunctive relief, will be substantially undermined. Accordingly, the public interest strongly weighs in favor of preliminary injunctive relief.

### CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court issue a temporary restraining order and preliminarily enjoin Defendants, requiring them to restore Acosta’s press credentials and White House access.

Dated: November 13, 2018

Respectfully submitted.



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**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC. and ABILIO  
JAMES ACOSTA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; JOHN F. KELLY, in  
his official capacity as Chief of Staff to the President  
of the United States; WILLIAM SHINE, in his  
official capacity as Deputy Chief of Staff to the  
President of the United States; SARAH HUCKABEE  
SANDERS, in her official capacity as Press Secretary  
to the President of the United States; the UNITED  
STATES SECRET SERVICE; RANDOLPH ALLES,  
in his official capacity as Director of the United  
States Secret Service; and JOHN DOE, Secret  
Service Agent, in his official capacity,

Defendants.

**Case No.**

**CERTIFICATE OF NOTICE PURSUANT TO LOCAL RULE 65.1(a)**

I, Theodore J. Boutrous, Jr., counsel for Plaintiffs Cable News Network, Inc. and Abilio James Acosta, hereby certify that counsel for the Plaintiffs made the following efforts to give notice of the time of making the application for a temporary restraining order, and copies of all pleadings and papers filed in this action:

(a) emailed Daniel Van Horn, Chief of the Civil Division of the U.S. Attorney's Office for the District of Columbia, at the email address Daniel.vanhorn@usdog.gov, and provided the pleadings and papers filed in the action to date or to be presented to the Court at the hearing;

(b) emailed Emmet Flood, White House Counsel, at etf3sc@who.eop.gov and provided the pleadings and papers filed in the action to date or to be presented to the Court at the hearing; and

(c) emailed Donna Cahill, Chief Counsel for the United States Secret Service, at ogc@hq.dhs.gov and provided the pleadings and papers filed in this action to date or to be presented to the Court at the hearing.

Dated: November 13, 2018

Respectfully submitted,



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SANDERS, in her official capacity as Press Secretary  
to the President of the United States; the UNITED  
STATES SECRET SERVICE; RANDOLPH ALLES,  
in his official capacity as Director of the United  
States Secret Service; and JOHN DOE, Secret  
Service Agent, in his official capacity,

Defendants.

**Case No.**

**DECLARATION OF SAM DONALDSON IN SUPPORT  
OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

I, Sam Donaldson, hereby declare under penalty of perjury the following:

1. I worked as a reporter based in Washington, D.C. from 1961 to 2013. I am personally familiar with the facts set forth below and could and would testify competently thereto.

2. From 1967 through 2013, I was employed as a broadcast journalist at ABC News. During my over 50-year career, I covered many of the most significant international and national news stories of the day, including the assassinations of President John F. Kennedy, Senator Robert Kennedy and The Reverend Martin Luther King, Jr., and was an eyewitness to the attempted assassination of President Ronald Reagan, the Vietnam War, the Watergate scandal, the First Persian Gulf War, President Clinton's impeachment, and every presidential campaign from 1964 through 2012. I have received many professional recognitions for my work, including four Emmy awards, two Peabody awards, and the Edward R. Murrow Award from Washington State University (Murrow's alma mater). Throughout my career, I have seen countless examples of the importance of the press's duty to keep the public informed and hold government accountable.

3. During my career, I reported on the administrations of every president from John F. Kennedy to Barack Obama. I twice served as ABC's Chief White House Correspondent from 1977-1989, during the Carter and Reagan Administrations, and from 1998-1999, during the Clinton Administration.

4. As ABC's Chief White House Correspondent, I attended hundreds of press conferences and press "availabilities," asked countless questions of many Presidents, and observed thousands of questions from my White House press corps colleagues. I was known as an aggressive reporter who confronted Presidents with tough questions and tried hard not to settle for non-answers.

5. During the Reagan Administration, in particular, when the President developed a habit of going several months at a time without taking questions from the press, I took every opportunity I could to question him at public events outside the White House and even as he

walked to and from his limousine or helicopter. I believed then, and I still believe, that it was my duty as a journalist to seize those opportunities. I was aggressive in posing questions and pursuing answers because the job of obtaining factual information from and about the public servants I covered is a job (if I did it well) that contributed to holding government accountable to the citizens of this country. To do that job requires reporters to have as much free access to government as possible and the cooperation of the people in government in providing pertinent information.

6. Despite my reputation as an unrelenting questioner of numerous presidents, I never had my security credentials revoked, nor was there ever even the remote threat to do so by any presidential administration, whether in relation to my conduct at a press conference or for any other reason. White House officials were free to complain to me or my employer about my coverage and occasionally they did. But never was there a move to silence me or demand that I report a story differently than I in my own judgment thought was correct and fair.

7. During my two decades as a chief White House correspondent, I attended hundreds of press conferences at the White House and dozens during presidential trips. I have personally witnessed the full range of behavior at such briefings by reporters, the President, and White House staff. Since his employment by CNN, I have on many occasions seen Jim Acosta's reporting on television and found it to be most able and professional.

8. I was shocked and dismayed by the White House's decision to revoke Acosta's press credentials. I am not aware of any prior situation in which a White House correspondent's hard pass was revoked. My colleagues and I never would have imagined such action was possible.

9. I personally watched the entire live televised press conference at the White House held by President Donald J. Trump on November 7, 2018, and have reviewed video tape of several portions. In my opinion, based on my two decades of experience and the hundreds of White House press conferences in which I have participated, Jim Acosta's conduct and questioning of the President were appropriate and within norms of professional conduct for journalists generally and for a White House reporter specifically.

10. President Trump and his administration should not have revoked Jim Acosta's press credentials. This action is unprecedented and wholly without justification. It appears to have been done solely because President Trump does not like Jim Acosta as he made clear in his public denunciation of Acosta at the Press Conference, a dislike apparently the result of the President's unhappiness that Acosta had that night as he had often in the past pressed him to explain his answer to a proper question about a matter of public interest. No president fully likes reporters who ask uncomfortable questions, which may call for answers explaining mistakes or flaws or controversial actions in a president's performance. But President Harry Truman summed up the necessary interplay between a president and the press corps when he advised government officials at every level: "If you can't take the heat, get out of the kitchen."

11. As a retired White House Correspondent, I remain committed to the role of the press in safeguarding our democracy. I am deeply concerned that Acosta's security credentials were revoked without just cause. The First Amendment forbids the abridgment of the freedom of the press through a government law because the Amendment's writers believed to do so would gravely harm the public interest and in this case attempting to do it through the "back door" of revoking Jim Acosta's press credentials ought not be allowed. If the press is not free to



cover the news because its reporter is unjustly denied access, it is not free. And if denying access to a reporter an organization has chosen to represent it – in effect asserting the president’s right to take that choice away from a news organization and make it himself – is permitted, then the press is not free.

12. In revoking Jim Acosta’s credentials, the president is not only taking an unwarranted and in my opinion unconstitutional action against Acosta, he is doing something that will have a chilling effect on the press as a whole. What reporter or news organization will feel safe from White House retaliation because of what questions they ask or what news stories they write and publish if the action against Acosta is not reversed? I ask the Court to restore Jim Acosta’s White House credentials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of November 2018 in Albuquerque, New Mexico.

  
Sam Donaldson

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC. and ABILIO  
JAMES ACOSTA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; JOHN F. KELLY, in  
his official capacity as Chief of Staff to the President  
of the United States; WILLIAM SHINE, in his  
official capacity as Deputy Chief of Staff to the  
President of the United States; SARAH HUCKABEE  
SANDERS, in her official capacity as Press Secretary  
to the President of the United States; the UNITED  
STATES SECRET SERVICE; RANDOLPH ALLES,  
in his official capacity as Director of the United  
States Secret Service; and JOHN DOE, Secret  
Service Agent, in his official capacity,

Defendants.

**Case No.**

**DECLARATION OF SAM FEIST IN SUPPORT  
OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

I, Samuel Feist, hereby declare under penalty of perjury the following:

1. I am a Senior Vice President and the Washington Bureau Chief at Cable News Network, Inc. ("CNN"). I have personal knowledge of the content of this declaration, and I could and would competently testify to the truth of the matters stated herein.

**I. Background**

2. I am a graduate of Vanderbilt University and Georgetown University Law Center and am a member of the Bar of the District of Columbia. I have worked at CNN continuously



since 1991. I have served as the bureau chief of CNN's Washington bureau since 2011. As the Washington bureau chief, I oversee daily operations of the Washington bureau and lead all newsgathering and Washington-based programming. I also lead the production of CNN's campaign and election coverage, including debates, convention coverage, and election night.

3. In my role as Washington bureau chief, I oversee CNN's coverage of the White House and our White House correspondents, including our chief White House correspondent Abilio James Acosta, known as Jim Acosta. Acosta has served as CNN's chief White House correspondent since January 2018. Previously, Acosta served as CNN's senior White House correspondent from August 2013 to January 2018 and as a national political correspondent from February 2012 to August 2013. Acosta has reported for CNN since April 2007. Acosta has had a White House hard pass since 2013, and it has been regularly renewed. As the Washington bureau chief, I also have had a hard pass since 2011.

4. Acosta is an essential contributor to CNN's coverage of the White House and the President. He is exceptionally experienced in investigating and reporting rapidly developing political events as they unfold. He has deep relationships and long-established credibility with Washington politicians and officials of all political backgrounds. He is in the top tier of today's national journalists and his reputation with CNN's viewers is one of the network's valuable resources. Acosta has played a leading role in CNN's coverage of the Trump campaign and, since January 2017, of the Trump Administration.

## **II. The White House "Hard Pass"**

5. A White House "hard pass" is an essential credential for a White House correspondent. The "hard pass" permits a journalist to access the White House with minimal delay, which is a job requirement as the White House is the workplace for White House

correspondents. Obtaining a hard pass can take months and requires a background check performed by the Secret Service. Once obtained, the hard pass permits a journalist (with a gray hard pass) to enter White House grounds through the northwest entrance, the same entrance used by many White House employees (who have blue hard passes). The procedure for entry with a hard pass is expedited: the holder swipes his pass, enters a PIN, and after passing through a metal detector, gains access to the White House grounds. Every Secret Service agent is familiar with the hard pass on sight. Hard pass holders are presumed legitimate and are free to move around parts of the White House complex open to properly credentialed journalists with minimal interference.

6. Without a credentialed chief White House correspondent, any media outlet's ability to cover the White House and the Presidency would be severely damaged. For that reason, all major national media outlets ensure that their chief White House correspondents hold hard passes so that they are guaranteed intimate access to the center of American government. Any media outlet whose chief White House correspondent lacked a hard pass would be at a massive competitive disadvantage against the rest of the national media whose correspondents still hold hard passes. Today, CNN faces that very situation due to the revocation of its chief White House correspondent's hard pass.

7. A significant amount of newsgathering and dissemination occurs on White House grounds, which includes dedicated press quarters in accordance with the First Amendment protected tradition of open government. Immediately after a journalist enters through the northwest entrance are cameras lined up on the White House lawn, where live shots of journalists are frequently conducted. Journalists normally access the White House through the press room entrance, which is located between the executive mansion and the West Wing reception entrance.

Inside, adjacent to the press briefing room, there is a “lower press office,” where White House press staff interact continuously with White House correspondents, and also work spaces for all major networks, called “booths.” This is where Acosta and other CNN White House correspondents perform their daily work. As it is for White House correspondents for other networks and print media, the White House is Acosta’s everyday workplace, and he typically writes and broadcasts directly from the White House. Acosta’s work is so closely tied to the White House that he may not even come to CNN’s Washington bureau for weeks at a time. Rather his workplace is the White House or on the road with the President when the President travels. Being physically present in the White House or with the President when he travels is a fundamental part of being a White House correspondent.

8. Hard pass holders can also easily access the “upper press office,” another key area of interaction between White House correspondents and White House staff. The upper press office is in the “West Wing” of the White House, steps away from the Oval Office, includes the offices of the Press Secretary (currently, Sarah Huckabee Sanders), and the Communications Director (currently Bill Shine.) This area is guarded by Secret Service officers, but easily accessible by hard pass holders because the Secret Service recognizes the credential.

9. Newsgathering at the White House is performed in a variety of ways, many of which are spontaneous and take place with little to no notice, and which therefore require instant access to the White House. There is a procedure for journalists without a hard-pass to access the White House through a White House-issued day pass. A day pass requires a journalist to request permission to enter the White House on a specific day, and the request must be made 24 hours in advance. A day pass is valid only for the specific date requested. Day passes are not typically

an effective way to credential a permanent member of any news organization's White House team.

10. In addition to scheduled briefings, in the upper press office, "gaggles" between journalists and the Press Secretary, Deputy Press Secretary, or other government officials or elected leaders are a common, daily occurrence, taking place with little to no notice. Journalists also frequently talk to the Press Secretary and Deputy Press Secretaries one-on-one, to ask questions both on and off the record without notice of appointment. There are also frequent off-camera, unscheduled, background briefings in the White House briefing room. Access to the material from these off-camera briefings is not possible unless a reporter is physically present in the White House briefing room. These and other types of spontaneous newsgathering are not feasible for a journalist with only access to a day pass.

11. The hard pass has proven, if anything, even more important in covering President Trump. There are frequent spontaneous press briefings and other open-press events that are held without notice whatsoever. Open-press events are open to all credentialed White House Correspondents. Reliance on daily passes to access to these spontaneous events is impracticable at best, impossible at worst, due to the spontaneous nature of these events.

12. A hard pass is also essential to the recognition of a journalists' legitimacy in the West Wing. It is such an essential credential that the application for membership in the White House Correspondents' Association, the premier professional organization for White House correspondents, asks whether the applicant has a White House hard pass.

13. A hard pass is also essential to a journalist's ability to gather news about the President away from the White House, when traveling with the President. Hard passes are recognized by the Secret Service and journalists with hard passes are given access to the

“bubble”<sup>1</sup> of the President without delay and without being questioned, while such access may be delayed or denied for other journalists. As someone who has covered the White House for two decades and has supervised many other journalists covering the White House, possession of a hard pass has a significant, positive impact on the amount of access a journalist can obtain to the President and his entourage in the field.

14. Hard passes are subject to periodic renewal and are generally renewed as long as they are being actively used. Hard passes may not be renewed if the journalist in question has not reported to the White House regularly because the White House wants to ensure for security reasons that there are a limited number of passes in circulation. It is virtually unheard of for a hard pass to be revoked, and the only instance of that happening of which I am aware occurred when a freelance reporter, Trude Feldman, was caught in the Press Secretary’s office, looking through papers on the Press Secretary’s desk. Even in that case, Ms. Feldman’s pass was suspended for 90 days, not revoked entirely, and the suspension had nothing to do with the content of her reporting. I am not aware of any CNN journalist who has ever had a hard pass suspended or revoked.<sup>2</sup>

### **III. The Revocation of Acosta’s Hard Pass and CNN’s Response**

15. I first learned that Acosta’s hard pass had been revoked at approximately 8 PM on November 7, 2018, when Olivier Knox, President of the White House Correspondents

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<sup>1</sup> The “bubble” is a term used by journalists to refer to the President and his entourage.

<sup>2</sup> See Martha Bryant, “West Wing Story: The Characters of the White House Press Corps,” *Newsweek* (May 15, 2001) (“According to security, Feldman was caught one night (the White House press area closes at 8:30 p.m. rifling through a press aide’s desk drawers a few months ago. Some staffers wanted to revoke her pass; instead the White House suspended it for 90 days.”), *available at* <https://www.newsweek.com/west-wing-story-characters-white-house-press-corps-152523>.

Association contacted me by phone. He notified me that moments before, Press Secretary Sarah Sanders had released a statement that Acosta's pass had been revoked.

16. This revocation was done with no notice to either Acosta or the network, and with no opportunity to be heard.

17. Over more than two decades of experience as a Washington journalist, I have attended dozens of White House press briefings and press conferences and been involved in the coverage of hundreds more. I have watched the video of the November 7, 2018 press conference, and I believe Acosta's questions were wholly appropriate questions within professional norms, and within the norms of the White House press corps. When the President chose to avoid Jim Acosta's question by attacking Jim personally and by asking Acosta to sit down, Jim continued to stand. An effective correspondent cannot simply sit down when the President or other public official avoids a question through interruptions and personal attacks.

18. The revocation of Acosta's hard pass has had immediate consequences both for him professionally and for CNN as a news organization. CNN has requested, and was denied, a day pass for Acosta, so he has been denied the access to the White House and staff that is necessary for him to perform his job, frustrating CNN's efforts to fulfill its own mission to deliver the news.

19. Acosta was the correspondent previously slated to attend the President's trip to France this past weekend. I have described above the importance of a hard pass even to covering the President in remote locations. Acosta was also denied a White House credential for the President's most important event in France, a visit to an American military cemetery on the 100<sup>th</sup> Anniversary of the end of World War One on November 11<sup>th</sup>. When the White House denied Acosta's credential for the trip, the French Government then issued him a credential for the visit.

See Ex. 52.<sup>3</sup> It was not without irony to me that a U.S. White House correspondent who is an American Citizen was denied access to a ceremony by his own government but was granted access by the government of France. However, when Acosta arrived at the cemetery, despite having a press credential from the French government to cover the event, he was denied access by the U.S. Secret Service. Other credentialed journalists from around the world were permitted entry for this “open press” event but Jim Acosta was singled out by the U.S. government and denied access. Here, Jim’s ability to cover a public event of historic international importance was completely blocked by the White House. Blocking Jim Acosta from the event also denied CNN the ability for CNN’s chief White House correspondent to report from the cemetery and offer our viewers coverage of that important and newsworthy event.

20. Following the revocation of Acosta’s hard pass, President Trump has continued to criticize CNN and our reporters. During a November 9, 2018 news conference on the White House lawn, CNN White House Correspondent Abby Phillip asked President Trump whether he wanted newly-appointed Acting Attorney General Matthew Whitaker to “rein in Robert Mueller.” President Trump replied: “What a stupid question that is. What a stupid question. But I watch you a lot, you ask a lot of stupid questions.” Ex. 51.

21. As I described above, without a credentialed chief White House correspondent, any media outlet’s ability to cover the White House and the Presidency is severely damaged. Today, CNN faces that very situation due to the revocation of its chief White House correspondent’s hard pass. Moreover, Acosta has been denied day passes as well as other credentials necessary to cover the President fully.

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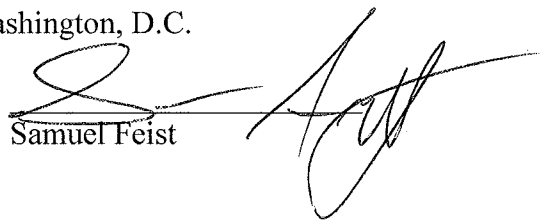
<sup>3</sup> References to “Ex. \_\_\_” are to the Exhibits to the Declaration of Theodore J. Boutrous, Jr., dated November 13, 2018.

22. I have reached out to White House officials including the Press Secretary, Sarah Huckabee Sanders, and the Director of Communications, Bill Shine, on the evening of November 7 and again on November 8, to ask when they would reinstate Acosta's hard pass, but I have received no answer. CNN's leadership has also reached out to the White House Chief of Staff and acting White House Counsel to request the reinstatement of Acosta's hard pass, and while receipt of the letter was acknowledged by the acting White House Counsel, neither the Chief of Staff nor the Counsel responded to CNN's request. Ex. 45. I understand that the White House Correspondents' Association has also been in contact with White House officials regarding the revocation of Acosta's hard pass.

23. As of today, the White House has not agreed to return Acosta's hard pass. I understand that White House officials have communicated that they currently do not plan ever to return his hard pass.

24. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of November 2018 in Washington, D.C.

  
Samuel Feist



**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC. and ABILIO  
JAMES ACOSTA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; JOHN F. KELLY, in  
his official capacity as Chief of Staff to the President  
of the United States; WILLIAM SHINE, in his  
official capacity as Deputy Chief of Staff to the  
President of the United States; SARAH HUCKABEE  
SANDERS, in her official capacity as Press Secretary  
to the President of the United States; the UNITED  
STATES SECRET SERVICE; RANDOLPH ALLES,  
in his official capacity as Director of the United  
States Secret Service; and JOHN DOE, Secret  
Service Agent, in his official capacity,

Defendants.

**Case No.**

**DECLARATION OF JIM ACOSTA IN SUPPORT OF PLAINTIFFS' MOTION FOR A  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

I, Abilio James Acosta, hereby declare under penalty of perjury the following:

1. I am a journalist with more than twenty years of experience. My full name is Abilio James Acosta, but I go by Jim Acosta. I am currently the Chief White House Correspondent at Cable Network News, Inc. ("CNN"). I have personal knowledge of the content of this declaration, and I could and would competently testify to the truth of the matters stated herein.

## **I. Background**

2. I have worked as a professional journalist since 1995. From 1995 to 2001, I worked for several local television networks as a reporter and substitute anchor. From 2001 to 2003, I was a correspondent for CBS Newspath. From 2003 to 2007, I was a CBS News Correspondent, where I covered events such as Hurricane Katrina and the Iraq War.

3. I have worked at CNN since 2007. During my time at CNN, I have covered many major national and international news stories, including U.S. presidential campaigns and administrations. In 2012, I became one of CNN's national political correspondents.

4. In the fall of 2013, during the administration of President Obama, I became a member of the White House press corps as CNN's senior White House correspondent. The White House press corps consists of journalists from multiple print, radio, and broadcast news outlets, including CNN, The New York Times, The Washington Post, NPR, ABC, CBS, NBC, Fox News, and others. The White House press corps regularly reports on the President from the White House and travels with the President on official business throughout the world. I covered the Obama Administration for CNN from 2013 through 2017, including President Obama's historic March 2016 visit to Cuba—from where my father immigrated—where I questioned Cuban President Raul Castro on his human rights record.

5. Since 2014, I have also been a proud member of the White House Correspondents' Association, a professional organization for journalists covering the White House.

## **II. My White House Press Credential**

6. In late 2013, in my role as CNN's senior White House correspondent, I applied for and was granted a White House press credential commonly known as a "hard pass." In order

to obtain this credential, I submitted an application to the Secret Service and underwent a background check.

7. With this press credential, which I proudly held from 2013 until November 7, 2018, when it was revoked, I covered the affairs of the White House under two presidential administrations and numerous press secretaries. This work has included multiple domestic and foreign presidential trips, ceremonies, and press briefings. I have always endeavored to conduct myself as a diligent but respectful reporter who asks probing but fair questions.

8. Until it was revoked on November 7, 2018, I possessed and regularly used that hard pass as a central part of my job covering the White House. It was essential to my job. Indeed, the White House is my workplace and where I spend my working days virtually every day the President is in Washington. It enabled me to enter the White House on a daily basis without advance notice, to bypass lengthy security lines and screening, and to move freely among those areas open to the press in the White House complex. As such, my hard pass enabled me to be present at White House press briefings, which I routinely attended and at which I regularly asked questions of White House officials. It also provided me with access to, and the ability to report on, the often-spontaneous newsgathering opportunities that present themselves at the White House, from informal conversations with administration staff to surprise announcements by the White House. The hard pass is also necessary for access to Air Force One and other restricted areas during presidential trips, which I frequently cover as part of my job. When traveling with the President, the hard pass is a credential that all Secret Service officers recognize, and allows journalists access to the presidential "bubble" that is necessary for thorough newsgathering. I am not aware of any regular member of the White House press corps who does not hold this press credential.

9. During my tenure as a White House correspondent, I have never had any altercations with any member of any president's administration or with the Secret Service. Never during that time, until November 7, 2018, was my press credential ever threatened in any manner. Moreover, I am not aware of this happening to any other journalist in the White House press corps.

### **III. My Work Covering the Trump Administration**

10. I have covered President Donald J. Trump for CNN since his election.

11. Beginning in January 2017, the President and his press secretaries have repeatedly publicly criticized CNN, and me specifically, due to the content of CNN's reporting. For instance, during January 11, 2017 news conference at which I was representing CNN, then-President-elect Trump told me "your organization is terrible;" "I am not going to give you a question;" and "you are fake news." Ex. 3.<sup>1</sup> On February 24, 2017, former White House Press Secretary Sean Spicer barred CNN from attending a media event. Ex. 54. On December 12, 2017, prior to attending a public signing by President Trump of the National Defense Authorization Act, current White House Press Secretary Sarah Sanders told me that if I were to ask a question on behalf of CNN, she could not promise that I would be allowed to participate in any similar White House events ever again. On January 23, 2018, he tweeted about me "Crazy Jim Acosta of Fake News CNN." Ex. 14. On July 13, 2018, at a press conference in England, in response to my attempt to ask a question, the President stated "CNN is fake news. I don't take questions from CNN," adding, as he addressed another reporter, "let's go to a real network." Ex. 19.

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<sup>1</sup> References to "Ex. \_\_" are to the Exhibits to the Declaration of Theodore J. Boutrous, Jr., dated November 13, 2018.

12. News networks and journalists have to be ready to deal with criticism from political figures; it is part of our proud American tradition of open debate. In my observation, however, the nature and volume of President Trump's criticisms of the press generally, and CNN in particular, have represented a change, and this has affected me personally. In my many years as a reporter, I never received a death threat. Now I receive death threats regularly, aimed at my work covering the President. This has frightened both me and my family and required us to take additional security measures in our daily lives.

#### **IV. The November 7, 2018 Press Conference**

13. In my role as CNN's chief White House correspondent, I am responsible for newsgathering at the White House, including attending and reporting on press briefings by the President and his staff.

14. On November 7, 2018, like most other working days that I reported from the White House, I used my hard pass to enter the premises. At 11:30 a.m., I attended a presidential press conference in the East Room of the White House on behalf of CNN.

15. During the November 7 press conference, I had two questions I wanted to ask the President, about the migrant caravan and the Russia investigation. I raised my hand and was called on by the President as had happened many times before. As the C-SPAN video of this press conference accurately reflects,<sup>2</sup> the President repeatedly interrupted me, and I firmly but politely persisted in asking my two questions and trying to get responses. The President apparently did not like my questions, however, as he did not respond to them and ultimately

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<sup>2</sup> The entire press conference (including the specific exchange described here at minutes 27:31 to 30:13) can be viewed here: President Trump on 2018 Election Results, C-SPAN, at 27:31-30:13, <https://www.c-span.org/video/?454223-1/president-trump-calls-2018-midterm-elections-very-close-complete-victory>.

directed me to stop talking. In other words, it was a typical presidential press conference. Indeed, the only thing unusual about this press conference was that at one point a White House intern approached me and attempted to physically remove the microphone from my right hand. The C-SPAN video accurately depicts what happened. As it shows, I held onto the microphone, stated “Pardon me, ma’am,” and continued asking the President my questions. As eyewitnesses have noted, and as the video clearly demonstrates, the White House’s contention that I “plac[ed] my hands on” the intern is false. In my time as a White House correspondent, I have not seen or experienced a White House intern trying to physically remove a microphone from a reporter’s hand. I interpreted the intern’s unprecedented actions as an expression of the President’s dissatisfaction with the topics of my questions.

#### **V. The Revocation of my White House Press Credential**

16. Following the November 7 Press Conference, I went back to work in the CNN booth in the press area in the White House known as the “lower press room,” where I frequently do my work. After working the rest of the afternoon and reporting live on-air at 5:00 p.m. and 6:00 p.m. from the White House lawn, I left the White House premises for dinner.

17. At around 7:45 p.m., as I tried to re-enter the White House grounds to report for the CNN program “Anderson Cooper 360,” I was physically blocked by Secret Service agents from entering the grounds. One of the agents then asked for me to turn my hard pass over to him and said he was “just told to do it.” I thanked the Secret Service agent for his service and surrendered my hard pass to him. I recorded a video of this interaction on my mobile phone. Ex. 34. No one at the White House gave me any advance notice that my hard pass was being revoked or provided me with an explanation of why it was being revoked. Nor was I provided

any opportunity to defend myself. Indeed, I have instead watched the White House's shifting justifications as any other member of the public.

18. The loss of my hard pass has had an immediate negative impact on my ability to do my job. Moreover, since the revocation of my hard pass, I have been denied other press credentials that might have otherwise partially made up for the loss of my hard pass, such as day passes to the White House. I was also denied a press credential needed to accompany President Trump on a trip to a U.S. military cemetery in France. Even after the French Government issued me a credential following the White House's refusal to do so, Ex. 53, upon arriving at the cemetery, I was denied entry by the U.S. Secret Service, rendering it impossible for me to cover this event adequately.

19. Without a hard pass, it is not feasible for me to continue in my current position as chief White House correspondent for CNN. I can no longer freely access the grounds of the White House, which is essential to my job. To access the White House, I must now, unlike every other member of the White House press corps, ask for approval to enter the White House 24 hours in advance in the form of a "day pass." The White House may choose to deny to admit me, or admission may be denied based on minor discrepancies in the application, such as a missing initial. Even if admitted and granted a day pass, I would need to be escorted by security around the building. Since many White House news events, briefings, or appearances are spontaneous, the lack of a hard pass renders me effectively unable to cover these events. The revocation of my press credential also bars my access to the frequent informal newsgathering opportunities that occur in the press areas of the White House—such as one-on-one discussions with White House press staff and informal "gaggle" briefings that are usually unscheduled.

20. The revocation of my White House press credential not only destroys my ability to perform my current job, it will follow me for the rest of my career. My reputation and my future career prospects have all been significantly harmed if not completely devastated. If my credentials are not restored immediately, I highly doubt that I will ever be able to work as a White House correspondent for any news outlet for the rest of my career.

21. I have no knowledge of any other journalist's hard pass ever being suspended or revoked for any reason at all.

22. I understand that CNN's efforts to get my press credentials reinstated have been unsuccessful and that the White House does not intend to reinstate or return my hard pass.

#### **VI. The White House's Shifting Justifications**

23. The White House's official statement on the revocation of my press credentials, delivered via the Press Secretary's Twitter account, indicated that my credentials had been revoked because I allegedly "plac[ed] [my] hands" on a White House staffer, which conduct was "inappropriate" and "absolutely unacceptable." Ex. 42. I understand, and it has been widely reported, that the video tweeted by the Press Secretary in support of these allegations originated from the Twitter account of a contributor to the purported news website *Infowars* and appears to have been altered to present an inaccurate depiction of the events at the November 7, 2018 press conference. Ex. 43.

24. Based on these facts, I believe that the White House actually revoked my hard pass because it dislikes my and CNN's coverage of the President's Administration, including but not limited to the questions I asked at the November 7 press conference. I believe this was done to send a message to other White House correspondents that asking tough questions and filing reports critical of the administration will be punished. The President appeared to confirm this



motive when he warned on November 9, 2018, that he might revoke the press credentials of other reporters too. Ex. 51.

25. I declare under penalty of that the foregoing is true and correct.

Executed on this 12th day of November 2018 in Washington, D.C.



Abilio James Acosta

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CABLE NEWS NETWORK, INC. and ABILIO  
JAMES ACOSTA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; JOHN F. KELLY, in  
his official capacity as Chief of Staff to the President  
of the United States; WILLIAM SHINE, in his  
official capacity as Deputy Chief of Staff to the  
President of the United States; SARAH HUCKABEE  
SANDERS, in her official capacity as Press Secretary  
to the President of the United States; the UNITED  
STATES SECRET SERVICE; RANDOLPH D.  
ALLES, in his official capacity as Director of the  
United States Secret Service; and JOHN DOE, Secret  
Service Agent,

Defendants.

**Case No.**

**DECLARATION OF THEODORE J. BOUTROUS, JR. IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

I, THEODORE J. BOUTROUS, JR., hereby declare under penalty of perjury the following:

1. My name is Theodore J. Boutrous, Jr. I am a partner with the law firm of Gibson, Dunn & Crutcher LLP and a member of the bar of this Court. I represent Plaintiffs Cable News Network, Inc. ("CNN") and Abilio James Acosta ("Jim Acosta") in the above-captioned action. By virtue of my direct involvement in this matter, I have personal knowledge of the content of this declaration, and I could and would competently testify to the truth of the matters stated herein.

2. Attached as **Exhibit 1** is a true and correct copy of an article by Brian Stelter of CNN entitled “Donald Trump: I won’t kick reporters out of White House press briefing room,” dated June 14, 2016, available at <https://money.cnn.com/2016/06/14/media/donald-trump-press-credentials-access/index.html>.

3. Attached as **Exhibit 2** is a true and correct copy of an article by Jim Rutenberg of *The New York Times* entitled “In Revoking Press Credentials, Trump Casts Himself as Punisher in Chief,” dated June 14, 2016, available at <https://www.nytimes.com/2016/06/15/business/media/donald-trump-washington-post.html>.

4. Attached as **Exhibit 3** is a true and correct copy of an article by Michael M. Grynbaum of *The New York Times* entitled “Donald Trump’s News Session Starts War With and Within Media,” dated January 11, 2017, available at <https://www.nytimes.com/2017/01/11/business/media/donald-trump-buzzfeed-cnn.html>.

5. Attached as **Exhibit 4** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated January 24, 2017 at 9:16 p.m., available at <https://twitter.com/realdonaldtrump/status/824078417213747200?lang=en>.

6. Attached as **Exhibit 5** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated February 15, 2017 at 6:40 a.m., available at <https://twitter.com/realdonaldtrump/status/831830548565852160?lang=en>.

7. Attached as **Exhibit 6** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated February 17, 2017 at 4:48 p.m., available at <https://twitter.com/realDonaldTrump/status/832708293516632065>.

8. Attached as **Exhibit 7** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated July 2, 2017 at 9:21 a.m., available at

<https://twitter.com/realDonaldTrump/status/881503147168071680>. Embedded in the Tweet is video depicting President Trump tackling and punching a man with a CNN logo superimposed on the man's face.

9. Attached as **Exhibit 8** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated November 15, 2017 at 5:45 a.m., available at <https://twitter.com/realdonaldtrump/status/930748627642998784?lang=en>.

10. Attached as **Exhibit 9** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated November 29, 2017 at 6:49 a.m., available at <https://twitter.com/realDonaldTrump/status/935838073618870272>.

11. Attached as **Exhibit 10** is a true and correct copy of an article by Maggie Haberman, Michael S. Schmidt, and Michael D. Shear of *The New York Times* entitled "Trump Says He Fired Michael Flynn 'Because He Lied' to F.B.I.," dated December 2, 2017, available at <https://www.nytimes.com/2017/12/02/us/politics/trump-michael-flynn.html>.

12. Attached as **Exhibit 11** is a true and correct copy of an article by Chas Danner of *New York Magazine* entitled "Did Trump Just Incriminate Himself by Saying He Knew Flynn Lied to the FBI?," dated December 3, 2017, available at <http://nymag.com/intelligencer/2017/12/did-trump-just-incriminate-himself-with-a-tweet-about-flynn.html>.

13. Attached as **Exhibit 12** is a true and correct copy of an article by Kristen Welker and Max Burman of NBC News entitled "Trump's lawyer claims responsibility for president's problematic tweet," dated December 3, 2017, available at <https://www.nbcnews.com/politics/white-house/trump-s-lawyer-claims-responsibility-trump-s-problematic-tweet-n826036>.

14. Attached as **Exhibit 13** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated December 11, 2017 at 9:17 a.m., available at <https://twitter.com/realDonaldTrump/status/940223974985871360>.

15. Attached as **Exhibit 14** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated January 23, 2018 at 6:31 a.m., available at <https://twitter.com/realDonaldTrump/status/955764970590961665>.

16. Attached as **Exhibit 15** is a true and correct copy of an article by Louis Nelson of *Politico* entitled “Trump claims he didn’t fire Comey over Russia investigation,” dated April 18, 2018, available at <https://www.politico.com/story/2018/04/18/trump-fire-comey-russia-531538>.

17. Attached as **Exhibit 16** is a true and correct copy of an article published by CBS News entitled “Lesley Stahl: Trump admitted mission to ‘discredit’ press,” dated May 23, 2018, available at <https://www.cbsnews.com/news/lesley-stahl-donald-trump-said-attacking-press-to-discredit-negative-stories/>.

18. Attached as **Exhibit 17** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated June 2, 2018 at 12:46 p.m., available at <https://twitter.com/realdonaldtrump/status/1002954515941941249?lang=en>.

19. Attached as **Exhibit 18** is an article by Kevin Breuninger of CNBC entitled “Trump says former Fox News exec Bill Shine joins White House staff,” dated July 5, 2018, available at <https://www.cnn.com/2018/07/05/trump-says-former-fox-news-exec-bill-shine-joins-white-house-staff.html>.

20. Attached as **Exhibit 19** is a true and correct copy of an article by Patrick Smith of *Buzzfeed News* entitled “Trump Refused to Answer a Question from a CNN Reporter in a Press Conference with Theresa May,” dated July 13, 2018, available at

<https://www.buzzfeed.com/patricksmith/trump-refused-to-answer-a-question-from-a-cnn-reporter-in-a>.

21. Attached as **Exhibit 20** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated July 14, 2018 at 7:24 a.m., available at <https://twitter.com/realDonaldTrump/status/1018093807060045824>.

22. Attached as **Exhibit 21** is a true and correct copy of a Tweet by President Donald J. Trump (@realDonaldTrump), dated August 2, 2018 at 7:04 a.m., available at <https://twitter.com/realdonaldtrump/status/1024974107337781248?lang=en>.

23. Attached as **Exhibit 22** is a true and correct copy of an article by Tamara Keith of NPR entitled “Trump Revokes Clearance Of Ex-CIA Boss Brennan, Puts Other Critics On Notice,” dated August 15, 2018, available at <https://www.npr.org/2018/08/15/638988643/trump-revokes-security-clearance-of-former-cia-head-puts-other-critics-on-notice>.

24. Attached as **Exhibit 23** is a true and correct copy of an article by Chris Cillizza of CNN entitled “The 43 most staggering lines from Donald Trump’s Indiana speech,” dated August 31, 2018, available at <https://www.cnn.com/2018/08/31/politics/donald-trump-evansville-speech/index.html>.

25. Attached as **Exhibit 24** is a true and correct copy of an article by Margaret Sullivan of *The Washington Post* entitled “Dishing up lies while proclaiming the love of facts, Trump and Sarah Sanders gaslight America,” dated October 4, 2018, available at [https://www.washingtonpost.com/lifestyle/style/dishing-up-lies-while-proclaiming-the-love-of-facts-trump-and-sarah-sanders-gaslight-america/2018/10/04/c6505d62-c7cc-11e8-9b1c-a90f1daae309\\_story.html?utm\\_term=.3cbb6e4cd3d7](https://www.washingtonpost.com/lifestyle/style/dishing-up-lies-while-proclaiming-the-love-of-facts-trump-and-sarah-sanders-gaslight-america/2018/10/04/c6505d62-c7cc-11e8-9b1c-a90f1daae309_story.html?utm_term=.3cbb6e4cd3d7).

26. Attached as **Exhibit 25** is a true and correct copy of an article by Peter Baker and Linda Qiu of *The New York Times* entitled “Inside What Even an Ally Calls Trump’s ‘Reality Distortion Field,’” dated October 31, 2018, available at <https://www.nytimes.com/2018/10/31/us/politics/fact-check-trump-distortion-campaign.html>.

27. Attached as **Exhibit 26** is a true and correct copy of an article by Glenn Kessler, Salvador Rizzo, and Meg Kelly of *The Washington Post* entitled “President Trump has made 6,420 false or misleading claims over 649 days,” dated November 2, 2018, available at [https://www.washingtonpost.com/politics/2018/11/02/president-trump-has-made-false-or-misleading-claims-over-days/?utm\\_term=.1d3e82044c2e](https://www.washingtonpost.com/politics/2018/11/02/president-trump-has-made-false-or-misleading-claims-over-days/?utm_term=.1d3e82044c2e).

28. Attached as **Exhibit 27**, contained on electronic media, is a true and correct copy of video published by C-SPAN of President Donald J. Trump’s November 7, 2018 press conference. The exchange between President Donald J. Trump and Jim Acosta can be viewed at 27:31 to 30:13.

29. Attached as **Exhibit 28**, contained on electronic media, is a true and correct copy of video published by the Associated Press capturing the exchange between President Donald J. Trump and Jim Acosta at President Donald J. Trump’s November 7, 2018 press conference.

30. Attached as **Exhibit 29** is a true and correct copy of a Tweet by Jim Acosta (@Acosta), dated November 7, 2018 at 7:46 p.m., available at <https://twitter.com/Acosta/status/1060332691143491584>.

31. Attached as **Exhibit 30** is a true and correct copy of a Tweet by White House Press Secretary Sarah Sanders (@PressSec), dated November 7, 2018 at 7:48 p.m., available at <https://twitter.com/PressSec/status/1060333176252448768>.

32. Attached as **Exhibit 31** is a true and correct copy of a Tweet by White House Press Secretary Sarah Sanders (@PressSec), dated November 7, 2018 at 7:50 p.m., available at <https://twitter.com/PressSec/status/1060333619728801792>.

33. Attached as **Exhibit 32** is a true and correct copy of a Tweet by Rob Elgas of ABC7 Chicago (@RobElgasABC7), dated November 7, 2018 at 7:50 p.m., available at <https://twitter.com/RobElgasABC7/status/1060333805989519360>.

34. Attached as **Exhibit 33** is a true and correct copy of a Tweet by Jim Acosta (@Acosta), dated November 7, 2018 at 7:52 p.m., available at <https://twitter.com/Acosta/status/1060334166083059712>. Embedded in this Tweet is a video filmed by Jim Acosta in which Acosta relinquishes his “hard pass” to a Secret Service Agent.

35. Attached as **Exhibit 34**, contained on electronic media, is a true and correct copy of the video embedded in Jim Acosta’s November, 7, 2018 7:52 p.m. Tweet (**Exhibit 33**) filmed by Jim Acosta in which Acosta relinquishes his “hard pass” to a Secret Service Agent.

36. Attached as **Exhibit 35** is a true and correct copy of a Tweet by Katie Rogers of *The New York Times* (@KatieRogers), dated November 7, 2018 at 7:57 p.m., available at <https://twitter.com/katierogers/status/1060335490518474755>.

37. Attached as **Exhibit 36** is a true and correct copy of a Tweet by Jeff Mason of Reuters (@jeffmason1), dated November 7, 2018 at 8:25 p.m., available at <https://twitter.com/jeffmason1/status/1060342568024711169>.

38. Attached as **Exhibit 37** is a true and correct copy of a Tweet by White House Press Secretary Sarah Sanders (@PressSec), dated November 7, 2018, at 10:33 p.m., available at <https://twitter.com/PressSec/status/1060374680991883265>. Embedded in this Tweet is a video



purporting to capture the exchange between President Donald J. Trump and Jim Acosta at President Donald J. Trump's November 7, 2018 press conference.

39. Attached as **Exhibit 38**, contained on electronic media, is a true and correct copy of the video embedded in Press Secretary Sarah Sanders's November 7, 2018 10:33 p.m. Tweet (**Exhibit 37**) purporting to capture the exchange between President Donald J. Trump and Jim Acosta at President Donald J. Trump's November 7, 2018 press conference.

40. Attached as **Exhibit 39** is a true and correct copy of a Tweet by Rafael Shimunov (@rafaelshimunov), dated November 8, 2018 at 3:34 a.m., available at <https://twitter.com/rafaelshimunov/status/1060450557817708544>.

41. Attached as **Exhibit 40** is a true and correct copy of an article by Molly Roberts of *The Washington Post* entitled "Sarah Sanders's diabolically clever attack on Jim Acosta," dated November 8, 2018, available at [https://www.washingtonpost.com/blogs/post-partisan/wp/2018/11/08/sarah-sanderss-diabolically-clever-attack-on-jim-acosta/?utm\\_term=.c98bc77d04fd](https://www.washingtonpost.com/blogs/post-partisan/wp/2018/11/08/sarah-sanderss-diabolically-clever-attack-on-jim-acosta/?utm_term=.c98bc77d04fd).

42. Attached as **Exhibit 41** is a true and correct copy of two Tweets by the White House News Photographers Association (@whnpa), dated November 8, 2018 at 4:57 p.m., available at <https://twitter.com/whnpa/status/1060652598607405056>.

43. Attached as **Exhibit 42** is a true and correct copy of an article by Oliver Darcy of CNN Business entitled "White House press secretary tweets misleading video from InfoWars personality to justify revoking CNN reporter's credentials," dated November 8, 2018, available at <https://www.cnn.com/2018/11/08/media/sarah-sanders-jim-acosta-infowars-video/index.html>.

44. Attached as **Exhibit 43** is a true and correct copy of an article by David Bauder and Calvin Woodward of the Associated Press entitled "Expert: Acosta video distributed by

White House was doctored,” dated November 8, 2018, available at <https://www.apnews.com/c575bd1cc3b1456cb3057ef670c7fe2a>.

45. Attached as **Exhibit 44** is a true and correct copy of an article by Drew Harwell of *The Washington Post* entitled “White House Shares Doctored Video to Support Punishment of Journalist Jim Acosta,” dated November 8, 2018, available at [https://www.washingtonpost.com/technology/2018/11/08/white-house-shares-doctored-video-support-punishment-journalist-jim-acosta/?utm\\_term=.9f8e9b4858a2](https://www.washingtonpost.com/technology/2018/11/08/white-house-shares-doctored-video-support-punishment-journalist-jim-acosta/?utm_term=.9f8e9b4858a2).

46. Attached as **Exhibit 45** is a true and correct copy of a letter from Jeff Zucker of CNN to President Donald J. Trump’s Chief of Staff, John F. Kelly, dated November 8, 2018.

47. Attached as **Exhibit 46** is a true and correct copy of an article by Christopher Brito of CBS News entitled “White House accused of sharing ‘doctored’ video of CNN reporter, intern exchange,” dated November 8, 2018, available at <https://www.cbsnews.com/news/jim-acosta-sarah-sanders-cnn-reporter-white-house-intern-video-doctored/>.

48. Attached as **Exhibit 47** is a true and correct copy of an article by Brian Stelter of CNN entitled “Reporters condemn White House decision to bar CNN’s Acosta,” dated November 8, 2018, available at <https://www.cnn.com/2018/11/08/media/trump-acosta-press-pass-reaction/index.html>.

49. Attached as **Exhibit 48** is a true and correct copy of an article by Michael M. Grynbaum and Elizabeth Williamson of *The New York Times* entitled “Trump Administration Uses Misleading Video to Justify Barring of CNN’s Jim Acosta,” dated November 8, 2018, available at <https://www.nytimes.com/2018/11/08/business/media/infowars-white-house-jim-acosta-cnn.html>.

50. Attached as **Exhibit 49** is a true and correct copy of an article by Tom Embury-Dennis of *The Independent* entitled “Jim Acosta: White House shares apparently doctored video posted by conspiracy site InfoWars to justify suspending CNN reporter’s press pass,” dated November 8, 2018, available at <https://www.independent.co.uk/news/world/americas/jim-acosta-trump-cnn-press-conference-pass-white-house-infowars-sarah-sanders-a8623441.html>.

51. Attached as **Exhibit 50** is a true and correct copy of an article by Paul Farhi of *The Washington Post* entitled “Sarah Sanders promotes an altered video of CNN reporter, sparking allegations of visual propaganda,” dated November 8, 2018, available at [https://www.washingtonpost.com/lifestyle/style/sarah-sanders-promotes-an-altered-video-of-cnn-reporter-sparking-allegations-of-visual-propaganda/2018/11/08/33210126-e375-11e8-b759-3d88a5ce9e19\\_story.html?utm\\_term=.973c04a31292](https://www.washingtonpost.com/lifestyle/style/sarah-sanders-promotes-an-altered-video-of-cnn-reporter-sparking-allegations-of-visual-propaganda/2018/11/08/33210126-e375-11e8-b759-3d88a5ce9e19_story.html?utm_term=.973c04a31292).

52. Attached as **Exhibit 51** is a true and correct copy of a briefing statement published by the White House entitled “Remarks by President Trump Before Marine One Departure,” dated November 9, 2018, available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-23/>.

53. Attached as **Exhibit 52** is a true and correct copy of an article by Brent D. Griffiths of *Politico* entitled “Conway: White House didn’t alter video of Jim Acosta,” dated November 11, 2018, available at <https://www.politico.com/story/2018/11/11/acosta-video-kellyanne-conway-982951>.

54. Attached as **Exhibit 53** is a true and correct copy of press credentials issued by the French government to Jim Acosta in connection with President Donald J. Trump’s November 11, 2018 visit to Paris, France.

55. Attached as **Exhibit 54** is a true and correct copy of an article by Ayesha Rascoe of Reuters entitled “White House bars some news organizations from briefing,” dated February 24, 2017, available at <https://www.reuters.com/article/us-usa-trump-media-idUSKBN1632JG>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of November 2018 in Washington, D.C.

A handwritten signature in blue ink, appearing to read "Theodore J. Boutrous, Jr.", is positioned above a horizontal line.

Theodore J. Boutrous, Jr.

# **Exhibit 1**


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# Donald Trump: I won't kick reporters out of White House press briefing room


 by [Brian Stelter](#) [@brianstelter](#)

June 14, 2016: 10:09 PM ET

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## Why Donald Trump needs the media

While Donald Trump's campaign is refusing to give press credentials to reporters from The Washington Post and several other news outlets, he says the ban will not remain in effect if he is elected.

At the White House, "it's a different thing," Trump told CNN in a telephone interview Tuesday night.

He repeatedly said he would not try to revoke any press credentials if elected president.

"In my case, I'm a person running for office. I rent these large arenas... so I have an option" to deny access to members of the media, Trump said. "When I'm representing the United States, I wouldn't do that. But I would let people know if somebody's untruthful."

Questions have arisen about Trump's hypothetical treatment of the White House press corps because his campaign has blocked reporters from BuzzFeed, Politico, Univision [and other outlets](#) from receiving press credentials.

The credentials provide recognition that a person is attending as a member of the media and provide special access at rallies and other events.

Journalists are not able to attend Trump press conferences without credentials.

On Monday, Trump's treatment of the press gained new scrutiny when he [announced that he was "revoking" The Post's credentials](#).

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Trump told CNN on Tuesday night that he has not spoken with Post editor Marty Baron about the ban yet.

Others at the newspaper have tried to contact Trump, but he said "I don't want to say what they are" doing.

When asked what the newspaper would have to do to regain press access, Trump said, "All I want is to be treated fairly."

He added, "By the way, if I have a bad story, that's okay, if it's true. If I deserve it. You know, I'll deserve bad stories on occasion. Hopefully not too often."

Asked to name a time he has deserved a "bad story," Trump declined.

Will Trump continue to give interviews to Post reporters like Robert Costa, whom he said he respects?

"I have not given it any thought at this moment," Trump said.

**Related: [Here are the media outlets on Trump's "blacklist"](#)**

Trump's action against The Post was prompted, at least in part, by a Monday morning web headline that said "Donald Trump suggests President Obama was involved with Orlando shooting."

"I never said anything like that. I never implied anything like that," Trump said, adding, "for them to imply it is a disgrace."

The headline was triggered by this comment that Trump made on Fox News: "Look, we're led by a man that either is not tough, not smart, or he's got something else in mind... There's something going on. It's inconceivable. There's something going on."

On Tuesday night, he explained the "something going on" comment this way: "I'm just asking, why doesn't he get tougher on the terrorists?"

The Post headline was later adjusted to say "Donald Trump seems to connect President Obama to Orlando shooting."

The reporter who wrote the story, Jenna Johnson, attended Trump's Tuesday night rally in North Carolina as a member of the general public. Trump's audience loudly cheered when he talked about his ban of the "dishonest" Post.

Trump had more positive things to say about the media during the phone interview with CNN right afterward.

"Just so you understand, I have great respect for professionals in your profession, in your business, in your world," he said. "I have great respect. There are many I have such great respect for. It's something really to be admired. But when people write false stories; when they write lies; when they write stories that have no bearing on the truth; when they say things that are so wrong, and they know they're wrong, and they tell me that they know they're wrong, but they refuse to change them, then I say, they're not going to come anymore."

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In the wake of the Post ban, Brian Smith of the Des Moines Register [wondered via Twitter](#), "Will a Trump White House even have a briefing room?" Eliza Collins of USA Today [asked](#), "What would the briefing room look like under Trump admin?"

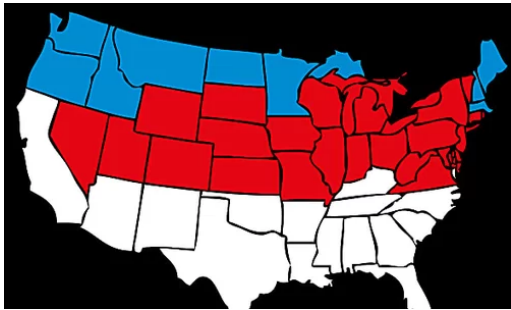
Trump's answer on Tuesday was that it would look the same as it does now -- although he asserted that the press corps goes too easy on President Obama.

"Whoever chooses the people that get the press credentials, I wouldn't even tamper with that, frankly," he said. "It's a much different situation than what I'm doing right now."

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CNNMoney (New York)  
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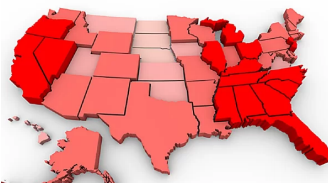
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# **Exhibit 2**

## The New York Times

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MEDIATOR

# *In Revoking Press Credentials, Trump Casts Himself as Punisher in Chief*

By Jim Rutenberg

June 14, 2016

You never know what's going to cause Donald J. Trump to officially ban a news organization from his presidential campaign events.

For The Washington Post, it was a headline on Monday saying “Donald Trump Suggests President Obama Was Involved With Orlando Shooting.” Mr. Trump said Mr. Obama’s refusal to say the words “radical Islamic terrorism” meant that, “there’s something going on.” He did not say what Mr. Obama’s secret agenda might be, leaving it to others to interpret. The Post later changed its headline to read that he “seems to connect” Mr. Obama to the shootings. Too late — banned! (And, of course, “SAD!”)

For the Politico reporter Ben Schreckinger, it was, apparently, a story about internal Trump dissension over his campaign manager’s “quick temper and heavy-handed leadership” that got his credentials revoked. For The Des Moines Register news team it was the editorial board’s call for Mr. Trump to exit the race. Then there was BuzzFeed News, The Huffington Post, Univision, The Daily Beast and so on.

There is no obvious consistency to it, from a candidate who can also be as accessible as any in history. After all, The Wall Street Journal’s similar headline, that Mr. Trump “Links Obama to Extremists,” didn’t cost that paper its official entree.

Only Mr. Trump knows whether the bans are the result of pique or some carefully thought-out strategy (he denies the latter).

But that doesn’t matter.

As of now, there is only this: The all-but-confirmed standard-bearer of one of the United States’s two major political parties is actively stripping credentials from news organizations that report things that he deems unfair or inaccurate. He has a black list and, unlike the one that Nixon kept, this is not a secret. Quite the opposite.

---

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I called and sent email to the Republican National Committee a couple of times on Tuesday, to see whether the party Mr. Trump will soon be nominated to lead would carry out the same bans, but I did not get a return call.

I did get a call back from Mr. Trump, who said that he was exercising his right to choose whom he grants credentials to as he runs a campaign that he has mostly paid for himself. “I’m from a different world, other than politics,” he said. “In my world, when people don’t treat you fairly ... ” He didn’t finish the sentence, but he didn’t have to: You cut them off.

“I don’t want good stories,” he said, “I want fair stories.”

To his mind, The Post had not been fair in its coverage of his speech, as evidenced by its decision to change its headline. But why, I asked him, was that the incident that led him to ban the paper. It was “the last straw,” he told me. At The Washington Post, he said, “virtually every article is negative even when I have big victories.”

The New York Times was not much better, Mr. Trump said, citing a recent article about his relationship with women over the years. He rebutted the article after it was published and his lawyer demanded, unsuccessfully, that the paper retract it. When I noted that Mr. Trump had not removed The Times’s credentials, Mr. Trump said, “You’re marginal, you’re marginal,” apparently meaning we, too, were close to losing credentials to cover him. He added, “It’s always possible, anything’s possible.”

I asked Mr. Trump what, exactly, will prompt a credential ban.

“If people don’t cover me fairly, or if they actually make things up, I don’t know why anybody should be allowed,” he said.

Fairness, and, increasingly, accuracy, is in the eye of the candidate and his or her supporters. That is worrisome, especially if Mr. Trump takes his strategy to the White House.

But Mr. Trump said he would not impose similar credential bans if he won the presidency. “That’s different from me taking something away — there I’m taking something away where I’m representing the nation,” he said. As for The Post, he said, “If they start covering me accurately, not even well, just accurately — I don’t want anything — they will get the credentials back.”

Martin Baron, The Post’s executive editor, said the newspaper was not going to change the way it covered Mr. Trump, which he described as “fair, honest and honorable.”

“I don’t think we have to seek a Good Housekeeping Seal of Approval from a presidential candidate — that’s true during a campaign and that’s true during a presidency,” he said.

There needs to be mutual respect between the media and the candidates, he said, and “in this instance, clearly no respect toward our role is being shown.” (Mr. Baron noted that The Post changed the headline of its own volition, to make it more accurately reflect Mr. Trump’s remarks,

which happens frequently across the media).

“Anybody who aspires to be president of the United States should exhibit behavior as a candidate that he or she would display as president of the United States,” he said.

The idea of a presidential campaign, after all, is to give the public a sense of how a candidate will behave in office. And yes, Hillary Clinton’s resistance to news conferences does not exactly augur an open hand with the news media either, and I don’t add that as mere “false balance.” She should do more.

Republicans, more than Democrats, have used the news media as a foil for decades. And neither of the last two Republicans to hold the White House — George H. W. Bush and George W. Bush — loved the news media. But neither of them denied credentials to reporters covering them. A notable exception: Vice President Dick Cheney, who tended to not make room for New York Times reporters on his plane. I personally was on the wrong end of that deal once.

But the campaign still gave us credentials for his events. And, either way, we made do, because it is the job of reporters to get the facts — and present them fairly and accurately — regardless of the obstacles. Mr. Trump made the same point, noting that reporters without official credentials were welcome to come to his events on their own, and report from the crowd should they manage to obtain entree.

“We’re not locking the doors where they can’t get in,” he said, though Mr. Schreckinger of Politico was recently escorted out of an event.

But doesn’t stripping credentials from out-of-favor reporters send a chill? “They send a chill by showing what a disgrace the media’s been,” Mr. Trump said.

Though Mr. Trump said his scraps with the media were not strategic, he noted they played well with some of his supporters. “Some people think they don’t like it,” he said. “Many people like it — they say, ‘They’re being punished for being dishonest.’”

Brrrr.

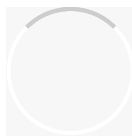
A version of this article appears in print on June 15, 2016, on Page B1 of the New York edition with the headline: In Revoking Credentials, Trump Acts as Punisher in Chief

# **Exhibit 3**



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# ***Donald Trump's News Session Starts War With and Within Media***



President-elect Donald J. Trump had sharp words for a CNN reporter: “Your organization’s terrible. ... You are fake news.” Jan. 11, 2017 · Sam Hodgson for The New York Times

By **Michael M. Grynbaum**

Jan. 11, 2017



He deemed BuzzFeed News “a failing pile of garbage,” mocked an inquiry about his tax returns — “Gee, I’ve never heard that one before” — and, in an unheard-of moment for a presidential news conference, shouted down questions from a

"Your organization is terrible," said President-elect Donald J. Trump, his voice rising as Jim Acosta of CNN tried to interject. "No, I'm not going to give you a question. I'm not going to give you a question."

"You," the president-elect said, as Mr. Acosta and other stunned journalists looked on, "are fake news."

Any hope that Mr. Trump would temper his attacks on the news media after the campaign seemed to dissipate in the marble atrium of Trump Tower on Wednesday, as the president-elect, holding his first news conference since July, turned a controversy over his ties to Russia into a deft and unrelenting attack on the journalists who reported it.

It was a spectacle that attracted nearly 300 reporters to Midtown Manhattan — the news conference was carried live in Australia, England and Germany — and it came against an extraordinary backdrop: reports that intelligence officials had briefed Mr. Trump on a document alleging collusion between the Russian government and his campaign.

CNN broke the news on Tuesday but declined to publish specific allegations, saying its reporters could not verify them. [BuzzFeed News published](#) the unverified claims in full, a move that prompted an ethical debate in journalistic circles — and offered Mr. Trump an opening.

"The fact that BuzzFeed and CNN made the decision to run with this unsubstantiated claim is a sad and pathetic attempt to get clicks," the incoming White House press secretary, Sean Spicer, said, inaccurately lumping the two news organizations together.

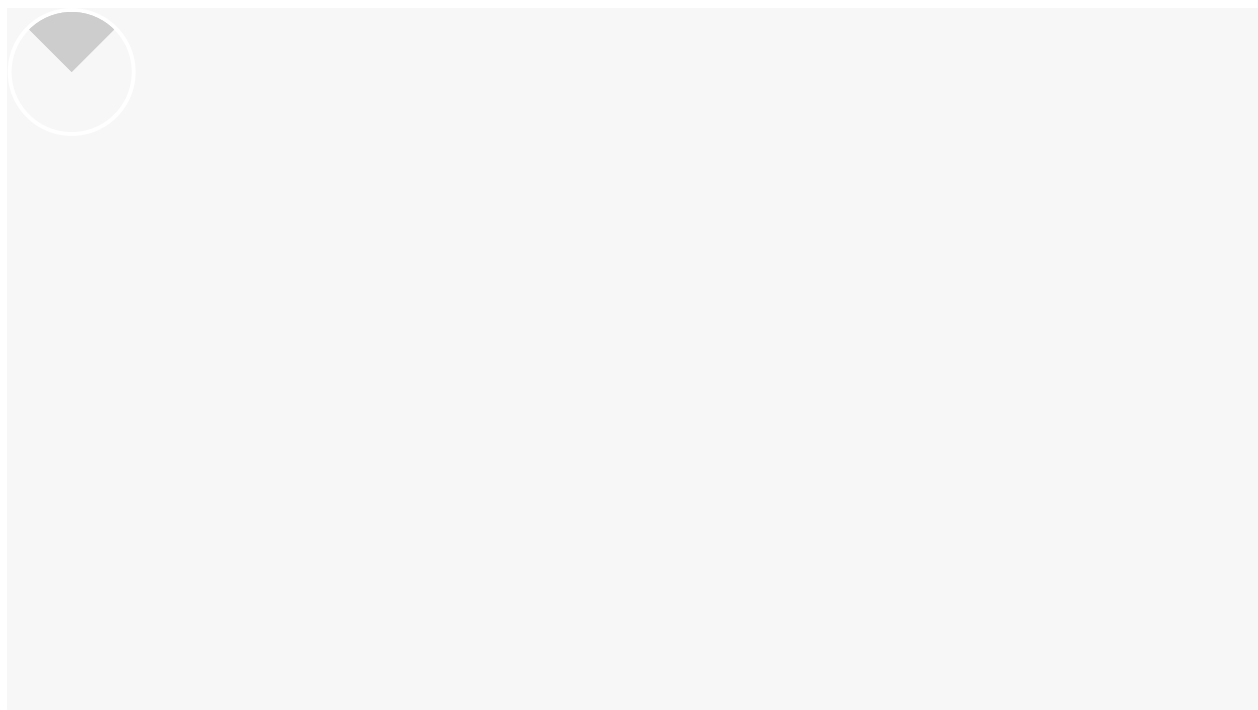
But the result was classic Trump: Not only did he break the norms of presidential engagement with the news media, snubbing organizations because of an unflattering story, but he also had elements of a frustrated political press corps warring with one another.

Immediately after the news conference, CNN defended its reporting and drew a

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sharp distinction between its news story and “BuzzFeed’s decision to publish unsubstantiated memos.” On a broadcast, the CNN anchor Jake Tapper said that BuzzFeed’s move “hurts us all.”

“It’s irresponsible to put uncorroborated information on the internet,” Mr. Tapper said. “I can understand why President-elect Trump would be upset about that; I would be upset about it. too.”

Later, Chuck Todd, the NBC News moderator, repeatedly pressed BuzzFeed’s editor in chief, Ben Smith, on why unverified claims did not amount to “fake news.”



President-elect Donald J. Trump on Wednesday in New York held a news conference for the first time in six months. Jan. 11, 2017 · Damon Winter/The New York Times

Mr. Smith, for his part, said he was “not going to participate in an attempt to divide the media against each other.” (In a memo on Wednesday, BuzzFeed’s chief executive, Jonah H. Peretti, defended the move. “We are going to keep doing what we do best, which is deliver impactful journalism,” he wrote.)

Still, by the time the news conference finished — with Omarosa Manigault, the “Apprentice” star and future member of the White House staff, heckling Mr.



Case 1:18-cv-02610-TJK Document 2-10 Filed 11/13/18 Page 5 of 6  
Acosta, shouting, "Cut it out!" — Mr. Trump had bobbed and weaved his way through nearly an hour of interrogation, offering vague answers to critical questions about his administration.

Yet the conduct of the news media, a familiar foil from Mr. Trump's campaign days, remained at the center of the day's story.

The treatment of Mr. Acosta raised alarms among news media advocates and his fellow journalists, particularly after Mr. Acosta described a threat by Mr. Spicer to eject him from the news conference when he persisted in trying to ask the president-elect a question.

Harsh words between reporters and press secretaries happen. But an anchor for a rival network, Shepard Smith of Fox News, later came to Mr. Acosta's defense, saying that no "journalists should be subjected to belittling and delegitimizing by the president-elect of the United States."

The National Press Club also lamented Mr. Trump's behavior, saying in a statement: "Presidents shouldn't get to pick and choose which reporters' questions they will answer based on what news outlet for which they work."

Mr. Trump, who ultimately took one question from a CNN reporter, also called on journalists from two right-leaning organizations: BreitbartNews and One America News. Matthew Boyle, the Breitbart reporter, asked the president-elect for his ideas on how to reform the news media.

Mostly, however, Mr. Trump took questions from journalists at the major television networks, with John Roberts of Fox News going first. A Greek chorus of sorts — mostly Trump supporters and aides, including Ms. Manigault — watched from the side, applauding Mr. Trump and jeering questions from reporters they deemed unpleasant.

A man who prides himself on finding an opponent's weakness, Mr. Trump at one point zeroed in on an existential question that has lingered in many newsrooms since his surprise victory: How much does the traditional news media still matter in a polarized age?

**Case 1:18-cv-02610-TJK Document 2-10 Filed 11/13/18 Page 6 of 6**  
**When Hallie Jackson, an NBC News correspondent, asked the president-elect if he would finally release his tax returns, to verify his claim that he has no financial dealings in Russia, Mr. Trump scoffed.**

**“You know, the only one that cares about my tax returns are the reporters, O.K.?” the president-elect said. “They’re the only ones who ask.”**

**“You don’t think the American public is concerned about it?” Ms. Jackson asked.**

**“I don’t think so,” Mr. Trump replied, before laying down the political equivalent of a mike-drop: “I won.”**

Sydney Ember contributed reporting

A version of this article appears in print on , on Page A19 of the New York edition with the headline: Trump Attacks News Media, Which Then Battle Among Themselves. [Order Reprints](#) | [Today’s Paper](#) | [Subscribe](#)



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# **Exhibit 4**



Donald J. Trump



@realDonaldTrump

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Congratulations to [@FoxNews](#) for being number one in inauguration ratings. They were many times higher than FAKE NEWS [@CNN](#) - public is smart!

9:16 PM - 24 Jan 2017

# **Exhibit 5**



**Donald J. Trump**



@realDonaldTrump

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The fake news media is going crazy with their conspiracy theories and blind hatred.

@MSNBC & @CNN are unwatchable.

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