

Administrative Censorship: The Pentagon's Press Rules as an Abridgment of Press Freedoms

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Media organizations with Pentagon press access have faced a significant decision over the past several weeks: sign a newly adopted Pentagon press policy or lose access to the Pentagon.¹ In an unprecedented affront to well-established press First Amendment rights, Defense Secretary Pete Hegseth ordered all press outlets to agree to a new policy that would significantly impact journalists' ability to obtain information from the Pentagon.² Previously, there were no limitations placed on the ability for journalists to solicit information.³ The policy, at the time of this writing, "lays out a number of requirements at odds with freedom of press protections."⁴ The document's most impactful portions are as follows:

1. Journalists would not be permitted to request access to Pentagon documents that are not authorized for release, even for documents that are unclassified.⁵
2. Failing to sign the document would revoke access for the respective media organization and risk journalists reporting on the Pentagon being deemed a "security or safety risk."⁶
3. Journalists face additional restrictions on access to certain areas of the Pentagon.⁷

Ultimately, these directives pose challenges to journalists in their ability to freely report information regarding Pentagon activity and military action.⁸ This change is of particular

¹ Ellen Mitchell, *Hegseth changes Pentagon press policy: 5 takeaways*, THE HILL (Oct. 14, 2025), <https://thehill.com/policy/defense/5555797-media-outlets-decline-pentagon-policy/>.

² *Id.* Erik Wemple, *How the Pentagon Is Blocking Out News Organizations*, N.Y. TIMES (Oct. 15, 2025), <https://www.nytimes.com/interactive/2025/10/15/business/media/pentagon-press-rules.html> ("The new rules codify sharp limitations on access and raise the prospect of punishment – including revocation of credentials — for simply requesting information on matters of public interest.").

³ Wemple, *supra* note 2 (providing a picture of the former press policy with no statements or rules governing how or where journalists solicit information in the Pentagon).

⁴ Erik Wemple, *Several News Outlets Reject Pentagon's Reporting Restrictions*, N.Y. TIMES (Oct. 13, 2025), <https://www.nytimes.com/2025/10/13/business/pentagon-restrictions-news-outlets.html>.

⁵ Mitchell, *supra* note 1 ("[U]nder which they would need to pledge to not obtain or use any unauthorized material, even if the information is unclassified").

⁶ *Id.* Andrew Goudswaard and Helen Coster, *US news outlets reject Pentagon press access policy*, REUTERS (Oct. 14, 2025), <https://www.reuters.com/business/media-telecom/us-news-outlets-reject-pentagon-press-access-policy-2025-10-14/>.

⁷ Memorandum for Senior Pentagon Leadership, Dept. of War, at 2 (Sept. 18, 2025), <https://www.nytimes.com/interactive/2025/09/20/us/pentagon-press-restrictions.html>.

⁸ Wemple, *supra* note 2.

importance considering the Trump administration's threat of or actual military action — including the current deployment of military personnel to Los Angeles and Chicago,⁹ and the threat of violent involvement of Trump and the U.S. in international conflicts¹⁰ — is of significant and *vital*¹¹ interest to the public. Adopting spatial and reporting controls over journalists who have historically had access since 1943¹² poses First Amendment concerns and furthers anti-media rhetoric Trump has repeatedly stated during both of his administrations.¹³

While all but 15 media organizations refused to sign the policy document,¹⁴ the primary implication cited by organizations has been the significant impediment of long-standing First Amendment protections for journalists.¹⁵ The First Amendment of the Constitution prevents the abridgement of the freedom of the press, among other enumerations aimed at protecting specific

⁹ Nick Schiffrin and Zeba Warsi, *At gathering of military leaders, Trump hints at deployment in U.S. cities*, PBS (Sept. 30, 2025), <https://www.pbs.org/newshour/show/at-gathering-of-military-leaders-trump-hints-at-deployment-in-u-s-cities>; All Things Considered, *NPR obtains memo about deploying Illinois Guard in Chicago*, NPR (Oct. 6, 2025), <https://www.npr.org/2025/10/06/nx-s1-5563792/npr-obtains-memo-about-deployment-of-illinois-guard-in-chicago>.

¹⁰ Luke Broadwater and Eric Schmitt, *Trump Says He May Give Tomahawks to Ukraine. Is He Bluffing?*, N.Y. TIMES (Oct. 14, 2025), <https://www.nytimes.com/2025/10/14/us/politics/trump-tomahawks-ukraine-russia.html>; See also Adam Cancryn, *Trump threatens to 'go in and kill' Hamas if group doesn't stop killing in Gaza*, CNN (Oct. 16, 2025), <https://www.cnn.com/2025/10/16/politics/trump-hamas-warning-gaza> (“[T]he president has suggested in increasingly stern language that he might allow Israel to resume fighting if Hamas does not hold up its end of the deal . . . the war would restart ‘as soon as I say the word.’”).

¹¹ Here “vital” is in italics considering the information the Department of War has is relevant to the ability for people to walk freely in the U.S. For example, reporting the Department’s demand for the military to be “domestic law enforcement.” Gregory Svirnovskiy, *Trump to federalize Illinois National Guard, Pritzker says*, POLITICO (Oct. 4, 2025), <https://www.politico.com/news/2025/10/04/trump-national-guard-illinois-00594266>.

¹² Michael Calderone, *Pentagon Reporters Turn In Press Badges as Pete Hegseth Restrictions Take Effect — but ‘the Work Continues’*, THE WRAP (Oct. 15, 2025), <https://www.thewrap.com/pentagon-reporters-journalists-turn-in-press-badges-pete-hegseth/#:~:text=The%20departure%20of%20so%20many,continue%20to%20inform%20the%20public>.

¹³ *100 DAYS OF HOAXES: Cutting Through the Fake News*, WHITE HOUSE (Apr. 29, 2025), <https://www.whitehouse.gov/articles/2025/04/100-days-of-hoaxes-cutting-through-the-fake-news/> (“HOAX: Fake News CNN attempted to ‘fact check’ President Trump’s claim that the Biden Administration spent millions on ‘making mice transgender.’ FACT: After their so-called ‘fact check’ was thoroughly debunked, they were forced to update it in disgrace and admit the claim was, in fact, true.”). Lisa Kashinsky and Andrew Howard, *Trump says he doesn’t ‘mind’ if someone has to ‘shoot through’ the media*, POLITICO (Nov. 3, 2024), <https://www.politico.com/news/2024/11/03/donald-trump-rally-fake-news-00186979> (“Donald Trump said Sunday that he wouldn’t ‘mind’ if someone had to ‘shoot through the fake news’ to get to him, a further escalation of his violent rhetoric.”). Tamara Keith, *President Trump’s Description of What’s ‘Fake’ Is Expanding*, NPR (Sept. 2, 2018), <https://www.npr.org/2018/09/02/643761979/president-trumps-description-of-whats-fake-is-expanding> (“Last month he tweeted about ‘fake books,’ ‘the fake dossier,’ ‘fake CNN,’ and he added a new claim — that Google search results are ‘RIGGED’ to mostly show only negative stories about him.”).

¹⁴ Scott Nover, *Hundreds of people cover the pentagon. These are the 15 who signed its new press policy.*, WASH. POST (Oct. 17, 2025), <https://www.washingtonpost.com/business/2025/10/16/more-than-100-people-cover-pentagon-only-15-signed-its-new-press-policy/> (“But a contingent of small outlets, foreign media, freelancers, and MAGA-friendly press did sign on.”).

¹⁵ *Id.* See also PBS News Hour, *Why news organizations are rejecting the Pentagon’s new press rules*, PBS, at 00:18 (Oct. 14, 2025), <https://www.pbs.org/newshour/show/why-news-organizations-are-rejecting-the-pentagons-new-press-rules> (“[b]ut virtually every news organization, to include PBS News, has refused to sign it, arguing that it infringes on First Amendment protections.”).

types of expression.¹⁶ For journalists, this amendment is of particular importance as “the press” is specifically named as a form of expression the drafters of the Constitution saw as necessary to provide explicit safeguarding.¹⁷ For generations since the First Amendment’s establishment, news and media organizations have faced significant legal challenges on several fronts. From journalists’ refusals to identify confidential sources in an effort to protect them,¹⁸ to defamation claim protections,¹⁹ the press has continually sought legal support to establish and bolster their ability to report on vital information.

Specifically, the portions of the unreleased policy that could arguably abridge press freedoms are the ““unnecessary constraints on gathering and publishing information.””²⁰ Under the policy, journalists with access to the Pentagon are prohibited from obtaining or soliciting information that is not already authorized for release.²¹ This provision is arguably closely aligned with prior restraint, the government censorship of speech before it occurs.²² Several Supreme Court cases have previously adjudicated similar issues to the prior restraint that is being enforced, or at least implied, through the press policy. The landmark case *New York Times Co. v. United States* dealt specifically with the ability for journalists to publish information related to the Pentagon.²³ When the government sought to enjoin the New York Times and the Washington Post from publishing a “classified study” related to the United States’ decision to enter into the Vietnam war, the Court reinforced that the government faces a heavy burden of justification when engaging in prior restraint.²⁴ Ultimately, the Court denied the government’s request for an injunction, with the concurrence stating:

I believe that every moment continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment . . . In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government’s power to censor the press was abolished so that the press would remain forever free to censure the Government.²⁵

¹⁶ U.S. CONST. amend. I.

¹⁷ *Id.*

¹⁸ *Journalists Jailed or Fined for Refusing to Identify Confidential Sources, as of 2019*, REPORTERS COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/jailed-fined-journalists-confidential-sources/>.

¹⁹ *N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964) (establishing actual malice as the standard for a defamatory statement about a public official).

²⁰ Brian Stelter, *Media outlets, including Fox News and CNN, refuse to sign Pentagon’s press access rules*, CNN BUSINESS (Oct. 14, 2025), <https://www.cnn.com/2025/10/13/media/pentagon-hegseth-press-restrictions-newsmax-fox-news>.

²¹ Wemple, *supra* note 5.

²² *Near v. Minnesota*, 283 U.S. 697, 733. *Prior Restraint*, FREEDOM OF THE PRESS FOUNDATION, <https://freedom.press/issues/prior-restraint/>.

²³ 403 U.S. 713.

²⁴ *Id.* at 714.

²⁵ *Id.* at 714-717 (Black, J., concurring).

The Pentagon press policy's statement that "unauthorized disclosure . . . [posing] a security risk that could damage the national security of the United States"²⁶ would result in a revocation of a press pass and a "consideration of whether you pose a security or safety risk."²⁷ It is not an unreasonable argument that this statement constitutes prior restraint on behalf of Pete Hegseth, with the support of Trump.²⁸ While the current policy does not provide an explicit bar on publishing unauthorized information, or for even soliciting such, it is possible to argue that the threat of Espionage Act charges are intended to do so — having a chilling effect on speech.²⁹ Similarly, a suit has been brought against the White House for revoking the Associated Press' (AP) access to the White House for publishing an article using "Gulf of Mexico" instead of Trump's newly named "Gulf of America."³⁰ Here, AP is arguing that the revocation constitutes viewpoint discrimination and "impermissible retaliation against the AP based on its constitutionally protected activity in ways that would chill the speech of similarly situated reasonable individuals."³¹ Embracing the policy, Trump "threw his support behind the Pentagon's policy, calling the press 'very dishonest' and insisting the rules were necessary."³²

In an administration that is shrouded in legislative and administrative changes that have stymied factual information sharing,³³ defunded vital news broadcasting,³⁴ and gutted government department workforces,³⁵ limiting journalist access to the newly named Department of War further increases the public's reliance on the Trump administration's framing of global issues.³⁶ NPR's

²⁶ Memorandum for Senior Pentagon Leadership, *supra* note 7, at 3.

²⁷ Mitchell, *supra* note 1.

²⁸ Mitchell, *supra* note 1.

²⁹ Goudswaard, *supra* note 6 ("The requirement that reporters acknowledge that disclosure of sensitive information could harm U.S. national security could aid prosecutors if they sought to charge a reporter for disclosing defense information under the Espionage Act.").

³⁰ Complaint at ¶ 17, *Associated Press v. Budowich*, No. 1:25-cv-00532 (TNM) (D.D.C. Feb. 24, 2025).

³¹ *Id.* at ¶ 54.

³² Mitchell, *supra* note 1.

³³ Tom Bowman, *Opinion: Why I'm handing in my Pentagon press pass*, NPR (Oct. 14, 2025), <https://www.npr.org/2025/10/14/g-s1-93297/pentagon-reporter-opinion-press-policy> ("In the 10 months that the Trump administration has been in office, Defense Secretary Pete Hegseth has given just two briefings. And there have been virtually no background briefings, which were common in the past whenever there has been military action anywhere in the world . . .").

³⁴ Scott Neuman and Frank Langfitt, *Corporation for Public Broadcasting says it's shutting down*, NPR (Aug. 1, 2025), <https://www.npr.org/2025/08/01/nx-s1-5489808/cpb-shut-down-public-broadcasting-trump>. Exec. Order No. 14290, 90 Fed. Reg. 19415 (May 1, 2025). *See also* Frank Langfitt, *Community radio stations are collateral damage as Congress cuts NPR funding*, NPR (July 20, 2025), <https://www.npr.org/2025/07/20/nx-s1-5469908/trump-npr-public-community-radio-corporation-broadcasting-federal-funding-cuts> ("But some of those hardest hit by Congress' decision last week to clawback [sic] \$1.1 billion in federal funds are small radio operations that provide local news and information to rural communities.").

³⁵ Nick Bednar, *Breaking Down OPM's 'Fork in the Road' Email to Federal Workers*, LAWFARE (Jan. 30, 2025), <https://www.lawfaremedia.org/article/breaking-down-opm-s--fork-in-the-road--email-to-federal-workers>; Joey Garrison, *'Batten down the hatches'. Trump White House warns of more layoffs during shutdown*, USA TODAY (Oct. 14, 2025), <https://www.usatoday.com/story/news/politics/2025/10/14/trump-white-house-more-layoffs-government-shutdown/86687704007/>.

³⁶ Quil Lawrence and Alana Wise, *Defense Secretary Hegseth requires new 'pledge' for reporters at the Pentagon*, NPR (Sept. 20, 2025), <https://www.npr.org/2025/09/20/g-s1-89713/pentagon-new-strict-guidelines-for-media>

Tom Bowman spoke specifically to this concern, stating that “[w]ith no reporters able to ask questions, it seems the Pentagon leadership will continue to rely on slick social media posts, carefully orchestrated short videos and interview with partisan commentators and podcasters.”³⁷ The nearly united front news organizations have taken across alleged political alignments may provide some semblance of hope — reinforcing that journalistic integrity and access are worth fighting for.

(“[t]hose who fail to obey the new policy will lose their press credentials — cutting off access to the headquarters of the largest department in the U.S. government.”).

³⁷ Bowman, *supra* note 33.