

August 5, 2019

Ms. Stephanie Grisham  
Assistant to the President  
White House Press Secretary  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Dear Ms. Grisham,

We write on behalf of our client, Brian Karem, who serves as the White House correspondent for Playboy, in response to your August 2, 2019 letter informing him of your “preliminary decision” to suspend his hard pass for 30 days, supposedly “due to [his] conduct at the press event in the Rose Garden on July 11, 2019,” and giving him one business day to submit a response before you “make a final decision in this matter.” We object to this arbitrary and unfair procedure threatening to deprive Mr. Karem of his constitutionally protected liberty and property interests in his hard pass, which would flatly violate the First Amendment and the Due Process Clause and the principles established by the D.C. Circuit’s decision in *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977) and many other cases. Your invocation of the Rose Garden event weeks after it occurred and without any notice whatsoever that you were considering taking action against Mr. Karem is the opposite of due process, and is clearly a pretext for punishing Mr. Karem based on his viewpoint and the content of his reporting on President Trump.<sup>1</sup>

As Press Secretary to the President of the United States, you have the privilege to be in a position to protect freedom of the press, and to ensure that our nation’s journalists have the ability to gather and report to the American people news about the President and the White House. But this Administration’s unprecedented and unconstitutional attempts to convert the hard pass system into a means of censoring and penalizing the press charts a dangerous path that we hope you will reconsider.

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<sup>1</sup> While we are submitting this response within the unreasonable deadline you set in your letter, we also request that you provide additional information relating to the decision, including any and all communications with Sebastian Gorka. We would also appreciate the chance to meet with you to discuss these issues prior to your making a final determination.

## I. Background

Mr. Karem is Playboy's senior White House correspondent, a political analyst for CNN, and the current president of the Maryland, Delaware, District of Columbia Press Association. He is a highly respected, award-winning journalist with a long history of standing up for press freedom. In 1990, he was jailed for contempt of court after refusing to disclose the name of confidential sources who helped him arrange a telephone interview with a jailed murder suspect, after which he won the National Press Club's Freedom of the Press award. He went on to work as executive editor of *The Sentinel Newspapers* in Maryland and as producer and television correspondent for *America's Most Wanted*, has served as a frequent news commentator, and authored seven books.

Playboy likewise has a long history of fighting for and advocating for First Amendment rights. For example, in 2000, Playboy convinced the Supreme Court to invalidate a section of the Telecommunications Act of 1996 limiting the transmission of sexually-oriented channels as an impermissible content-based restriction. *See United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803 (2000). Playboy founder Hugh Hefner was also a well-known champion of free speech, publishing *Fahrenheit 451* in serialized form in Playboy in 1954, and later starting the Hugh M. Hefner Foundation, a non-profit committed to the support of First Amendment freedoms.

In your August 2 letter, you purport to base your decision to suspend Mr. Karem's hard pass on a July 11, 2019 exchange between Mr. Karem and conservative radio host and former White House advisor, Sebastian Gorka. This exchange took place following a White House Social Media Summit attended by 200 conservative social media activists, including Mr. Gorka and a person who operated under the name "Carpe Donktum," and is best known for creating a widely distributed fake video of former Vice President Joe Biden. The event "was called a Social Media Summit, but no one from the largest platforms – Twitter, Facebook and Google – was included. Instead, the guest list included far-right extremists, people with a record of creating and trying to spread false conspiracy theories and racist tropes." *White House Social Media Summit Recap*, NPR (July 13, 2019), <https://n.pr/2GLAefk>; Katie Rogers, *White House Hosts Conservative Internet Activists at a 'Social Media Summit,' N.Y. Times* (July 11, 2019), <https://nyti.ms/31lyhhw> (noting that the event featured the attendance of "200 conservative social media firebrands," to whom the President stated "[t]he crap you think of . . . is unbelievable"). To say the least, it was a colorful and boisterous crowd.

The exchange in the Rose Garden followed President Trump's post-summit remarks on Attorney General Barr's strategy to include the citizenship question on the census. Mr. Karem asked whether President Trump would stick around and answer some questions,

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which he did not. One conservative social media activist then mocked Karem, saying “Don’t be sad, don’t be sad,” and Mr. Karem, in good humor, made a joke doing his Rodney Dangerfield impression —“looks like a crowd eager to be demonically possessed.” As the videos you cite make clear, the joke was well received by the assembled activists, many of whom were taunting and insulting the White House reporters in attendance.

In response, Mr. Gorka, as shown in videos and according to those in attendance, began yelling at Mr. Karem, taunting him and calling him a “journalist,” with mocking air quotes. In response to Mr. Gorka’s onslaught, Mr. Karem stated, “Hey brother we can talk anytime you want or go outside and have a long talk,” by which he was suggesting that he and Mr. Gorka actually discuss their views outside of the Rose Garden, not that the two engage in a “physical confrontation,” as your letter falsely indicates. And although Mr. Karem never crossed the rope line separating the press corps from the event attendees, Mr. Gorka charged across the Rose Garden to confront Mr. Karem, yelling at Mr. Karem, and accusing Mr. Karem of “threatening” him and shouting “You’re not a journalist! You’re a punk!” The crowd of invited conservative activists started cheering “Gorka! Gorka!” One woman in the crowd yelled, “Hit him, Gorka! Hit him!” Fox News contributor Jim Hanson even told Mr. Karem that “just for the record, [Mr. Gorka would] kick your punk ass.” Mr. Gorka also apparently referred to other reporters as “ass hats,” and Mr. Karem witnessed numerous attendees of the event actively heckling reporters, including CNN’s Jim Acosta. The escalation of this situation was the result of Mr. Gorka’s actions and the crowd’s response to them. At no time did any White House staffers or the Secret Service attempt to stop *any* of the guests from heckling the press, nor did they intercede to keep Mr. Gorka or any other event attendee from engaging in harassment.

Indeed, Mr. Karem actually approached Mr. Gorka after the confrontation in an attempt to de-escalate the situation and talk things out. Mr. Karem offered to shake Mr. Gorka’s hand. But Mr. Gorka rebuffed these efforts and refused to engage with Mr. Karem, other than insisting repeatedly that Mr. Karem was “done”—which may have foreshadowed Mr. Gorka’s efforts to bring about the current suspension. Similarly, subsequent to the July 11 press event, Mr. Karem reached out to your office multiple times to discuss the incident, but you canceled meetings you and he had scheduled, and two subsequent emails Mr. Karem sent to your office ended with no scheduled meeting. Your office then further advised that you would be available during the week of August 5, suggesting an effort to delay meeting with Mr. Karem until *after* you decided to suspend his hard pass.

Mr. Gorka appears to have relished the confrontation. He subsequently bragged that he took on the “fake news industrial complex,” <https://bit.ly/2KeBbyE>, and “read [Mr. Karem] the riot act, @SebGorka, *Twitter* (Jul. 11, 2019, 3:12 P.M.), suggesting his aggression aimed at Mr. Karem may well have been staged theatrics. He even called on

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others to follow his “example” in confronting journalists, <https://washex.am/2YANv4v>. President Trump applauded Mr. Gorka on Twitter, writing “@SebGorka Wins Big, No Contest!” The tweet is now “pinned” at the top of Mr. Gorka’s Twitter profile. The President’s tweet, in fact, demonstrates that he did not view Mr. Karem’s conduct as threatening to the administration or any of its guests, but rather thought it was humorous.

In the 22 day period between the social media summit and your August 2 “preliminary decision” to suspend Mr. Karem’s hard pass, President Trump has responded to several of Mr. Karem’s questions at press events, including answering two questions—one about potential Director of National Intelligence nominees and one about potential farm subsidies due to the China Trade War—a little less than two hours before Mr. Karem received the email telling him of your preliminary decision. On August 1, in fact—the day before you sent your letter—Mr. Karem asked the President to respond to presidential candidate Bernie Sanders’s contention that the President was a pathological liar, a question the President ignored.

The next day, despite no relevant communications since the Rose Garden event, you sent your letter advising of your “preliminary” decision to revoke Mr. Karem’s hard pass. Mr. Gorka immediately celebrated the suspension on Twitter, thanking you and the President “[o]n behalf of Americans who’ve had enough of FakeNews punks like @BrianKarem.”

## **II. The Preliminary Decision to Suspend Mr. Karem’s Hard Pass Violates His Due Process and First Amendment Rights**

Your own letter amply demonstrates the violation of Mr. Karem’s and Playboy’s constitutional rights. *First*, you acknowledge in your letter that the White House has “*not*” issued any “explicit rules . . . to govern behavior by members of the press at White House press events,” such as the social media summit on July 11.<sup>2</sup> Instead, you cite only vague, purportedly “widely shared understanding[s]” as the basis for your decision to temporarily suspend Mr. Karem’s hard pass—a pass our client has possessed for nearly a year and in which he unquestionably has a “First Amendment liberty interest,” *Cable News Network, Inc. v. Trump*, No. 18-cv-2610, Dkt. No. 22 (D.D.C. Nov. 16, 2019) (oral ruling).

In *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir. 1977), the D.C. Circuit made clear that due process in this context requires the government “*to articulate and publish* an explicit and meaningful standard” governing the denial of White House press passes, in advance of any

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<sup>2</sup> You note that the White House “had not previously though that a set of explicit rules was necessary to govern behavior by members of the press at White House events.” We agree and believe that the prior practice of the White House working cooperatively with the press is preferable to using revocation and threats of revocation of hard passes as a tool to stifle journalistic activity.

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such deprivation. *Id.* at 131 (emphasis added); *see also id.* at 129 (“[T]he 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.”). That is consistent with longstanding U.S. Supreme Court precedent requiring clear and objectively administrable standards, particularly where the First Amendment is concerned: “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Studios, Inc.*, 567 U.S. 239, 253 (2012). And “[w]hen speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.” *Id.* at 253–54.

In truth, there are no so-called “widely understood understanding[s]” that would support your preliminary decision, and the standards you have concocted are so vague and subjective as to be unconstitutional on their face. Notions that the press corps has widely understood that they must maintain “decorum,” “obey instructions from White House staff,” and refrain from “taunting other members of the press” appear to be nothing more than newly-generated pretextual rationales seeking to justify the White House’s decision *post hoc* in this circumstance. Indeed, numerous attendees at the July 11 event violated the apparent no-taunting rule, yet you have singled out only Mr. Karem for punishment without explanation.

Moreover, the vague “understanding[s]” referred to in your letter plainly do not constitute the “publish[ed] . . . explicit and meaningful standards” required under *Sherrill v. Knight* and other binding case law. This is precisely what the Constitution prohibits. *See, e.g., Fox Television Stations*, 567 U.S. at 253 (finding broadcaster’s due process rights were violated and noting that the “void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way”); *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997) (“The vagueness of [a content-based regulation of speech] raises special First Amendment concerns because of its obvious chilling effect on free speech.”); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996) (“Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.”); *Giaccio v. Pennsylvania*, 382 U.S. 399, 403 (1966) (“[O]ne of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce.”).

*Second*, Mr. Karem was afforded *no* process before you reached this “preliminary decision,” which was revealed to Mr. Karem after the fact, limiting Mr. Karem to an “appeal” on short notice of a decision already made. *See Sherrill*, 569 F.2d at 131 (“[N]otice . . . 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.”). There is no indication that responding to your “preliminary” decision to revoke Mr. Karem’s pass provides Mr. Karem any meaningful opportunity to be heard by an objective decision-maker as due process requires, thus rendering any final decision you make to strip him of his pass constitutionally infirm. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881 (2009) (noting that due process violated not only when a “judge is actually, subjectively biased,” but also when there exists even the “potential for bias”). You even state that the President is “aware” of your decision to suspend Mr. Karem’s pass and already “concur[s]” with it.

This retroactive application of vague, unarticulated standards to a journalist’s access to the White House through a process “shrouded in mystery” is just the type of due process violation that led the United States District Court for the District of Columbia to issue a temporary restraining order against members of the Trump Administration in November in connection with the revocation of another reporter’s hard pass. *See Cable News Network*, No. 18-cv-2610, Dkt. No. 22 (oral ruling).<sup>3</sup>

*Third*, while the stated rationale for the preliminary decision and the (lack of) process that led to it are by themselves fundamentally flawed, the facts and circumstances also suggest that the decision was in fact based on unconstitutional content and viewpoint-based discrimination and potentially made in coordination with Mr. Gorka. *See, e.g., Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226 (2d Cir. 2019) (invalidating the President’s viewpoint discrimination as unconstitutional); *cf. Cable News Network*, No. 18-cv-2610, Dkt. No. 22 at 11:7–8 (concluding that the Administration’s original justification for suspending Jim Acosta’s hard pass was based on evidence “of questionable accuracy”). Mr. Gorka attacked Mr. Karem for being what Mr. Gorka deems a fake journalist, a term that President Trump and his supporters frequently apply to what they perceive as negative coverage of the President, and called on others to follow his “example.” <https://washex.am/2YANv4v>. And President Trump tweeted his approval of Mr. Gorka’s actions, writing “@SebGorka Wins Big, No Contest!” Further, although Mr. Gorka and the

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<sup>3</sup> The court in *CNN* also concluded that “[e]ach day that [a reporter] is deprived of” his “First Amendment liberty interest in a White House press pass” “without the process prescribed by the court in *Sherrill*, he suffers a harm that cannot be remedied.” *Cable News Network, Inc.*, No. 18-cv-2610, Dkt. No. 22 at 6:14–15, 13:8–13. To the extent you unlawfully deprive Mr. Karem of his press pass for even one day, you will cause irreparable harm, and we reserve all legal rights to seek a concomitant remedy to that harm, including money damages for the violation of clearly established federal law.

other attendees of the summit were in fact responsible for the “gross breach of decorum” you identify in your letter, and not Mr. Karem, you decided instead to single out Mr. Karem for retaliation even while the President celebrates those, including Mr. Gorka via presidential tweet, who have behaved far worse. *See, e.g., Trump Praises Montana Congressman Who Body-Slammed Reporter*, CNBC (Oct. 19, 2018 6:19AM), <https://cnb.cx/33d1YCR> (noting the President’s praise of Greg Gianforte’s body slam of a reporter: “Any guy that can do a body slam—he’s my kind of guy . . . . He’s a great guy, tough cookie.”). This exhibits a clear and prohibited bias based on content of speech and the identity of the speaker. *See Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010) (“Speech restrictions based on the identity of the speaker are all too often simply a means to control content.”).

The fact that the suspension is content-based is also supported by the fact that the White House waited 22 days before issuing its preliminary decision to suspend Mr. Karem’s hard pass—with the President answering several of Karem’s questions during that period—suggesting that the decision is less about protecting safety or decorum than silencing a journalist known for tough questioning of the President. Indeed, the timing of the letter appears more connected to Mr. Karem’s questioning of President Trump on August 1 regarding Bernie Sanders’s contention that the President was a pathological liar, than to a press event three weeks earlier, not the first time Mr. Karem has appeared to rankle President Trump and White House officials with tough questions.<sup>4</sup> The fact that you made no effort, during the three-week delay, to inquire about the incident or provide a warning regarding conduct at Rose Garden events is further evidence that the “preliminary decision” to suspend Mr. Karem’s hard pass is nothing more than a pretext for punishing Mr. Karem for the content of his questioning and a means to chill Mr. Karem and other journalists from aggressively covering the President and the White House by instilling fear of having their hard passes suspended or revoked.

*Finally*, you also provide no explanation as to why suspending Mr. Karem’s hard pass is a sufficiently tailored restriction of his First Amendment liberty interests where

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<sup>4</sup> For example, as recently as July 24, 2019, nearly two weeks after the incident in question, the President called Mr. Karem and other journalists “fake news” while pointing his finger at Mr. Karem. As another example, on June 14, 2018, Karem had a widely-reported exchange with Sarah Huckabee Sanders in the White House briefing room. In response to a question from CNN White House correspondent Jim Acosta about the detention of immigrant children, Sanders responded that it is “biblical to enforce the law.” Karem then asked Sanders whether she had empathy, given that she herself is a parent. Later that day, Fox News host Jesse Watters said that Karem and Acosta “don’t belong” in the briefing room and that the White House “need[s] to start ripping press passes away.” The President has made clear his dislike of tough questioning by Karem. On February 21, 2019, after Karem asked the President where he got his statistics about border violence, Trump told Karem: “Sit down! Sit down! Sit down!” A few weeks later, on June 11, 2019, when Karem tried to ask the President a question, Trump turned and glared at Karem and said “Quiet! Quiet! Quiet!”

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several less severe restrictions are available. *Sherrill* requires “compelling” reasons for revoking a hard pass, and your letter does not articulate any such compelling reason. Instead, it again misstates the facts and shifts the rationale.

### **III. Conclusion**

Hard passes are not meant to be weaponized as a means of penalizing reporters for coverage with which the administration disagrees based on amorphous and subjective standards. Such actions unconstitutionally chill the free press. We thus respectfully request that you revoke your “preliminary” decision to suspend Mr. Karem’s hard pass and confirm the full restoration of his pass. In the event that you decline to do so, we request that you produce all communications between you, the President, and others in the White House or Press Office, on the one hand, and Mr. Gorka, on the other hand, regarding the July 11 “social media summit” and the incident that occurred there, and all documents relating to this preliminary decision. We further request that you meet with us prior to finalizing the decision so that Mr. Karem has a meaningful opportunity to respond to the evidence.

We reserve all rights to contest what would be an unconstitutional suspension.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Theodore J. Boutros Jr.', written in a cursive style.

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Theodore J. Boutros Jr.



August 9, 2019

**VIA ELECTRONIC MAIL**

Ms. Stephanie Grisham  
Assistant to the President  
White House Press Secretary  
The White House  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Re: *Brian Karem*

Dear Ms. Grisham,

This letter, and the enclosed statement from our client, Brian Karem, follow up on our meeting yesterday and provide additional information relevant to the events in the Rose Garden on July 11, 2019. As we have explained, those events provide no basis for suspending Mr. Karem's hard pass.

While I appreciate your meeting with my partners Tom Dupree and Anne Champion yesterday, that meeting falls far short of providing Mr. Karem due process. We still lack critical information that remains in your possession and that you have refused to disclose. For example, you have advised that you intend to rely on a witness statement you obtained from a Secret Service official who observed the events at issue, yet you have refused to give us the full statement, or even to disclose his identity. Instead, you read aloud to us what appeared to be a selected excerpt from the statement. We again ask that you provide us with the full statement, which may contain information that confirms that Mr. Karem did nothing wrong in the face of widespread taunting and even physical aggression and menacing from one of the invited guests.

Your email of last night revealed that you failed to conduct a reasonable investigation before reaching your preliminary decision. Among other deficiencies, you admit that you did not speak to a single witness. You did not speak to Sebastian Gorka, Jim Hanson, or any of the other individuals who are seen on video taunting and/or threatening Mr. Karem. You did not speak to any of the journalists who were standing alongside Mr. Karem in the press pen and observed firsthand what happened. Nor did you speak to Mr. Karem himself, despite his efforts to speak with you. In fact, you claimed to lack evidence that Mr. Karem

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made any attempt to speak with you. Enclosed with this letter are emails reflecting his efforts.

You have also elected to ignore publicly-available evidence that Mr. Gorka has trumpeted his confrontation with Mr. Karem, bragging that he took on the “fake news industrial complex,”<sup>1</sup> as well as evidence that the President himself viewed the events as humorous.<sup>2</sup> All of this information is highly relevant to your decision, yet you have deliberately chosen to ignore it.

You have advised us that the potential basis for suspending Mr. Karem’s hard pass was that he insulted the guests and then “escalated” the situation by stating to Mr. Gorka, “Hey brother we can talk anytime you want or go outside and have a long talk.” As Mr. Karem explains in the enclosed statement, the alleged insult was intended as a humorous remark—and was understood by the crowd as such, as the laughter that followed makes abundantly clear.

Mr. Karem also explains that, by asking Mr. Gorka to go outside and have a long talk, he did not intend to start a fight. Mr. Karem did not call on Mr. Gorka simply to step outside; rather, he asked Mr. Gorka to go outside *so they could have a conversation*. Those words cannot be reasonably understood as an invitation to fight. The Supreme Court has described “fighting words” as “those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace,” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942), and Mr. Karem’s statement does not remotely approach that standard.

The President himself has used far stronger language and imagery. Among other things, he has tweeted an image of himself wrestling a CNN icon to the ground,<sup>3</sup> and stated that a congressman who body-slammed a reporter is “my kind of guy.”<sup>4</sup> He has also urged his supporters to “knock the hell” out of protestors at his rallies,<sup>5</sup> and remarked about one protestor, “I’d like to punch him in the face.”<sup>6</sup> If the President’s statements cannot reasonably be understood as endorsing or inciting violence, the White House cannot possibly

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<sup>1</sup> <https://bit.ly/2KeBbyE>.

<sup>2</sup> The President tweeted about the incident, writing “@SebGorka Wins Big, No Contest!”

<sup>3</sup> <https://mobile.twitter.com/realDonaldTrump/status/881503147168071680>

<sup>4</sup> *Trump Praises Montana Congressman Who Body-Slammed Reporter*, CNBC (Oct. 19, 2018 6:19AM), <https://cnb.cx/33d1YCR> (noting the President’s praise of Greg Gianforte’s body slam of a reporter: “Any guy that can do a body slam—he’s my kind of guy . . . . He’s a great guy, tough cookie.”).

<sup>5</sup> <https://www.latimes.com/politics/la-na-trump-campaign-protests-20160313-story.html>.

<sup>6</sup> <https://www.latimes.com/politics/la-na-trump-campaign-protests-20160313-story.html>

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deem Mr. Karem’s offer to “go outside and have a long talk” as over the line. *See Nwanguma v. Trump*, 903 F.3d 604, 609 (6th Cir. 2018) (dismissing claims that President incited violence at a campaign rally and holding that “only speech that explicitly or implicitly encourages the imminent use of violence or lawless action is outside the protection of the First Amendment”) (citing *Brandenburg v. Ohio*, 395 U.S. 444 (1969)).

Mr. Karem’s “have a long talk” statement must also be viewed in context. When he spoke those words, Mr. Karem was not in a barroom, but in the Rose Garden—one of the least likely places on earth to challenge someone to a fight. Moreover, Mr. Karem did nothing to suggest he wanted a physical confrontation. Throughout the incident, he remained standing in the press area and did not advance toward Mr. Gorka. In contrast, Mr. Gorka made a beeline toward Mr. Karem, shouting at him, making menacing and aggressive gestures, calling him a “punk” and not a real journalist—all to further whip the crowd into a frenzy. Indeed, Mr. Gorka’s behavior was so threatening that it caused the crowd to start yelling at Mr. Gorka to hit Mr. Karem, and prompted Mr. Hanson to declare that “just for the record, [Mr. Gorka would] kick your punk ass.” The videos show that, in the face of this onslaught, Mr. Karem folded his arms respectfully—body language making clear he had no wish to engage in a physical confrontation—and said to Mr. Gorka, “I’d be happy to talk to you.”

Any reasonable viewer of the video of this event would conclude that Mr. Karem was not the aggressor and did nothing to escalate the situation. The aggressors were Mr. Gorka and a hostile crowd whose anger against Mr. Karem and his colleagues in the press pen had been stoked by the President’s constant references to the media as “fake news,” the “opposition party” and “the enemy of the people.”<sup>7</sup> Indeed, after the event, both Mr. Gorka and the President celebrated Mr. Gorka’s aggression on Twitter as a “win” for Mr. Gorka over Mr. Karem and the “fake news industrial complex.”

Under these circumstances, your decision to single out Mr. Karem—and not punish anyone else, even those who can be seen on video expressly calling for Mr. Karem to be attacked—conclusively establishes that a suspension would amount to arbitrary, discriminatory, content-based punishment arising from Mr. Karem’s viewpoint and the content of his reporting. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 388-91 (1992) (constitutionally impermissible to single out and punish content-based speech through prohibition on “fighting words”).

Finally, you have asked what lesser sanctions might be appropriate. As we explained yesterday, we believe that Mr. Karem did not act inappropriately and no sanction is

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<sup>7</sup> <https://cpj.org/blog/2019/01/trump-twitter-press-fake-news-enemy-people.php>

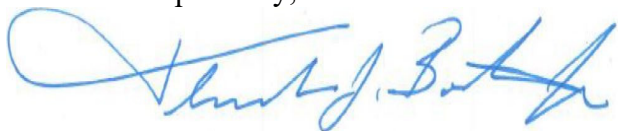
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warranted. If you are nonetheless inclined to impose a lesser sanction, it could consist of a letter setting forth your position on these events—an approach that would be consistent with the way the White House resolved the matter involving Jim Acosta.

We continue to reserve all rights to contest what would be an unfair, unlawful, and unconstitutional suspension.

Respectfully,

A handwritten signature in blue ink, appearing to read "Theodore J. Boutros, Jr.", with a large, stylized initial "T" and "B".

Theodore J. Boutros, Jr.

cc: Patrick Philbin, Deputy White House Counsel

Attachments

## STATEMENT OF BRIAN KAREM

I write to provide you with background about myself and to tell you my side of the story regarding what happened at the Social Media Summit on July 11, 2019.

I have been a political reporter for almost 40 years. I have also covered crime and wars, and I have run community newspapers. I've been jailed, shot at, beaten, and threatened. I am currently Playboy's senior White House correspondent and a political analyst for CNN. I am president of the Maryland, Delaware, and District of Columbia Press Association. In 1990, I was jailed for contempt of court after refusing to disclose the name of confidential sources who helped me arrange a telephone interview with a jailed murder suspect, after which I was awarded the National Press Club's Freedom of the Press award. I went on to work as executive editor of The Sentinel Newspapers in Maryland and as producer and television correspondent for America's Most Wanted. I have also authored seven books.

I have covered six White Houses. While I have held my current hard pass since last year, in the past I also held hard passes. My experience in the White House is important because I can tell you, point blank, that the behavior of the press corps today is tame by comparison.

The first time I walked into the White House I was 25. It was 1986 and Ronald Reagan was president. The first person I met was Helen Thomas, who covered the White House under *ten* Presidents, and who, as it turns out, knew my great grandfather from Lebanon. She offered to take me to her house and make me an authentic Lebanese dinner.

Then she walked upstairs to Acting Press Secretary Larry Speakes' office and began banging on the door, encouraging him to come outside and talk to her. I watched, amused and in awe. President Clinton's Press Secretary, Mike McCurry, later told me that when Helen was around he would bring her coffee and a donut by seven a.m. every morning.

It was a wild time, with other reporters like ABC News Correspondent Sam Donaldson and long-time White House reporter Sarah McClendon in the briefing room.

"There's nothing wrong with the president trying to put his best foot forward," Sam told me. "But it's our job to find out what's really going on," he added.

"If you're looking for friends, then you're in the wrong business," Helen told me.

Sarah McClendon told me, "Watch and learn."

CBS White House Correspondent Bill Plante once, in a story widely told by his peers, nearly got into blows with a guest in the Rose Garden. They were a vocal bunch, those reporters of old, and pushed the envelope and pushed back—hard—against presidents and their agendas.

I have come and gone in that briefing room over the years, rarely staying long enough to be a central player in the history of the White House and the battles with the press that have been memorable and an important part of the American tapestry. I've seen administrations learn from the questions asked by reporters and adapt their policy and strategy based on what was asked of them in briefings.

The briefings have been contentious at times. Or silly. Or both. I remember a defrocked minister who always asked about UFOs or Big Foot. One day a press secretary walked in with the usual huge briefing book to refer to administration policy, facts and figures. He fielded a question from the minister who asked if we were hiding a Big Foot family or aliens.

The administration official thumbed back and forth through the huge book, settled on a page. He opened it wide, ran down the length of the page, seemed to find the appropriate information and looked up. "No." He said. Then he moved on.

I remember once tripping over myself in the White House (I am now an aging klutz and looked up to see President Reagan smile at me as I tried to pull myself up.

I remember covering scandals, angering presidents, and laughing with them. I've often talked to sources in the White House, or invited them off the grounds for private conversations. I adopt an upbeat and jovial attitude inside the White House because there is so much of a serious nature going on that I find a little levity helps people make it through the day. I know I benefit from a sense of humor.

When Rodney Dangerfield said, "I'm telling you it's a tough room," I used that in the White House. When I didn't get answers, I have been known to say, "I'm tellin' you, no respect." Sean Connery and Curly from the Three Stooges have visited through my impersonations as well.

All I have seen and all I've been a part of in the last four decades, however, did not prepare me for the White House of President Donald Trump. Reporters covering the White House are routinely demeaned by the President and some of his allies, as "fake news," "enemies of the people," and other epithets. Reporters have been threatened—explicitly by some of the President's more fringe followers—and sometimes the President implicitly supports this rhetoric. I myself have been subjected to ugly threats, in particular in the weeks since July 11, 2019.

On July 11, 2019, we saw these forces collide. That day, I went to the White House, as I do most days when the President is in town. President Trump had scheduled that day with no open press events.

But on his schedule was a Social Media Summit, or something similarly named. But as the day wore on, the President announced he would allow a pool spray during the summit at 3:45 p.m. and then would have a press conference for the open press at 5 p.m. in the Rose Garden.

Rose Garden events are mixed blessings. It can be mid-January with an ongoing blizzard, but it always seems that in the Rose Garden it is 150 degrees, sunny, with no wind. Many reporters remember the day President Trump announced we were leaving the Paris Climate Accords and took it as a warning sign that many of us were close to a heat stroke in that sun.

So, no one was looking forward to a Rose Garden press conference. And, as it turns out, the President did not have a press conference. He was fashionably late. It was hot. We waited. He came out. He made a statement—that could've been made in the 3:45 p.m. event. Then he turned and left. As the President did so, I said words to the effect of "Mr. President, do you mind sticking around to answer a few questions?" I think one or two others may have tried to ask a question. My voice is loud. I was heard. The President left and did not respond, but some of the bloggers apparently thought the President's departure was an opportunity to try to humiliate the working press. Some of the guests had already been heckling the press corps. The heckling began anew. And I heard someone from the crowd say, "He talked to us, the real news." Someone else taunted me, "don't cry, don't be sad" that the President hadn't taken my questions, or something equally demeaning.

I'm telling you. Tough Room. I get no respect... So, in an attempt to defuse the situation, I did my Rodney Dangerfield: "Hey, looks like a group eager to be demonically possessed." I smiled. They smiled. We laughed. I thought that was that. Hey, at least I got a laugh.

Then I heard Sebastian Gorka taunt me from across the lawn about being a journalist. I don't know Gorka. I have only seen him twice in my life. I've never read anything that he's written or listened to his podcasts. I only know about him from others, figured he was a character, and relished the idea of getting to know him—not fight him. So I said "Hey, we can

talk here brother, or we can go outside and have a long conversation.” I actually had a thought I could get him on my podcast and that might be fun. He said I wanted to fight and began calling me a punk and threatening me as he made a beeline toward me from across the lawn—getting in my face as I stood behind the rope-line. As he continued to yell at me, the crowd began to join in, jeering and yelling, “Gorka! Gorka!”

I was a little discombobulated by his aggression, which I did not understand and did not feel I had provoked. I told him, “I’d be happy to talk to you,” assuring him I did not want to fight.

I mostly remained motionless. I’ve invited dozens of people outside the White House during the last 35 years to talk. The optimal word of course is “talk”—not fight. Who would invite someone to a WWF smackdown in the White House Rose Garden in front of 200 people, dozens of television cameras? Certainly not me. I’m about to be a grandfather for the first time. The only thing I’m fighting is arthritis and a bad meniscus.

A few days after I ran into Gorka I invited someone else I saw at the White House to go off campus and have a talk. It’s always better to talk where there are fewer reporters and listening devices. Privacy is hard to come by.

I saw John McCain at the White House once and asked him that very same thing. “Can we go outside and have a conversation?” I asked. I remember him saying, “Where to?” I suggested “Off the Record Lounge.” He smiled. “Too many people know me there.” I settled for a short stroll in Lafayette Park.

No one I’ve ever said this to has ever taken this to mean I wanted to fight them.

At the White House, I come in with a smile. I sing. I dance. I entertain lower press. I’ve done that off and on over the years when I come to the White House. You might as well enjoy a laugh because life is too short.

Most everyone who knows me knows that’s me. I’ve done my Rodney impression and a few other impressions (some like the Sean Connery and others like show tunes). I take my job seriously, but I do not take myself too seriously.

Gorka escalated events. He wanted the fight. I just wanted to talk. I thought he’d be a fascinating guy to talk to for my podcast and still do. I’ve interviewed Trump campaign advisor George Papadopoulos, Republican communications consultant Alice Stewart, former Trump White House Communications Director Anthony Scaramucci, comedian Carl Reiner, and reporter Sam Donaldson, so why not Gorka?

After he stormed off, we began to leave. The rope fell. I think I tripped over the rope as I was trying to leave. A Secret Service Agent said I had crossed the fallen rope. I apologized. I moved back. I never strayed too far. I certainly didn’t chase after anyone.

As we left and the hubbub had died down, I passed Gorka and approached him to see if he was just playing things for the camera and to make peace with him. I offered to shake his hand, and he wouldn’t do it. I told him I had no intention of fighting with him and said we could talk any time. He wouldn’t shake my hand. I shook my finger in disappointment at him, not aggression, while he yelled at me over and over again, “You’re done!”

I still wouldn’t mind having him on my podcast.

I left.

I never heard one word from the White House about this matter. Not once. White House logs should show that I was at the White House at least a dozen times from July 22 until my suspension on August 5. I interacted with the White House staff two or three times a day during those visits, including with Hogan Gidley and Stephanie Grisham, at least briefly. Not once did

this episode ever get mentioned by them, nor did they say they wanted to schedule time to talk to me about it.

I had been trying to schedule an interview with the new press secretary Stephanie Grisham for some time. I had scheduled an interview prior to the Social Media Summit and she canceled it. After the event I tried to reschedule my meeting, hoping to discuss this issue with her—specifically I wanted to ask her if she could make sure White House guests could refrain from heckling and insulting working members of the press.

She never rescheduled that meeting, though I asked her, and her secretary Annie LeHardy, in person at least once and via email twice, as late as July 17. On that day, I believe I was told she would be available that week. We are submitting some related emails. Later I was told Grisham would not be available until this week for a meeting—apparently after the preliminary decision to yank my press pass.

Meanwhile, I've seen Gorka celebrating this confrontation with the “fake news industrial complex” and encouraging others to do as he did. He apparently used this episode for several days on his radio show, I'm told, to further drive home his desire to confront reporters.

In the several weeks following the Summit, the President took several questions from me in appearances on the South Lawn. It was, frankly, business as usual.

On July 17, I asked him if he'd ever been to a social function with Jeff Epstein and underage girls. He didn't answer. On July 18, I asked him if he disavowed racism, and he told me he did. On July 24, he called me and others “Fake News” gratuitously and pointed his finger right at me. Then he singled me out again, saying I had been nice to him and could ask him a question—which I did and he answered. The day before I received the suspension letter, I asked the President to respond to Bernie Sanders's statement that the President was a pathological liar, and the President didn't answer.

Then, on Friday, August 2, 2019, on the South Lawn he took two questions from me in a rather cordial exchange. At 4:55 p.m. in the afternoon, I received an email from Ms. Grisham attaching her letter informing me that my hard pass had been suspended for 30 days, and I could respond within one business day, by 5 p.m. Monday, August 5, 2019. Given that the letter came weeks after the Social Media Summit, I thought it had more to do with the question I had asked the day before about Sanders' statement that the President was a pathological liar.

I understand that Ms. Grisham says she has taken this action against my hard pass because I insulted White House guests and escalated the situation. The escalation ran the other direction, as did the insults. The crowd was heckling the journalists, and singled me out because of my parting question to President Trump. Then Gorka singled me out, and interpreted my friendly attempt to defuse the situation as a threat. At no point in time was I ever of the mindset I was going to fight anyone. As I said, I'm 58 years old, about to be a grandfather for the first time and I've got bad knees. I ain't fighting anybody. Seriously. There would have been NO confrontation if Gorka hadn't come after me. I wasn't looking for him. I don't cover Gorka. I cover the president.

Of course, I ask questions and write things that the White House may not like. But reporters aren't scribes and contention is normal. What is not normal is retaliation. Since the Social Media Summit, I've received a great deal of hate mail, a few death threats, threats against my children, and one anonymous caller who said, “I will stake you to a tree and make you watch while I rape your wife.” And now, of course, I face the prospect of having my hard pass suspended. At the same time, apparently no action has been taken against Mr. Gorka or other attendees of the Summit who escalated the situation.



All of this is perhaps not surprising when the President himself repeatedly insults journalists, smears the mainstream media, and threatened a Time magazine reporter who tried to take a picture of a letter from Kim Jong Un with prison time.

As a journalist, it's my responsibility to ask tough questions of President Trump and this administration. I was just doing my job on July 11, as I have done in previous administrations. Just today, I asked the President two questions regarding assault weapons bans and the NRA. After the news conference, as he walked by me and headed to Marine One, I asked if we could do this indoors sometime—he stopped, laughed, and waved.

It's essential that I hold on to my hard pass so that I can continue to carry out my responsibility. After all, that's what the First Amendment is all about.

And I still look forward to a one-on-one sit down with the President at his earliest convenience. I believe it would be informative and fun.

A handwritten signature in black ink, appearing to read 'BK', with a horizontal line extending to the right from the end of the signature.

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Brian Karem  
August 9, 2019

THE WHITE HOUSE

WASHINGTON

August 16, 2019

Theodore J. Boutrous Jr., Esq.  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197

Dear Mr. Boutrous:

I previously informed your client, Brian Karem, that I had preliminarily determined that his hard pass should be suspended for 30 days due to his conduct at the press event in the Rose Garden on July 11, 2019. As explained below, I have now made a final determination to suspend Mr. Karem's hard pass for 30 days, effective immediately through Saturday, September 14, 2019.

**Process**

On August 2, 2019, I provided Mr. Karem with written notice that I had reached a preliminary decision to suspend his hard pass for 30 days due to his conduct at the press event in the Rose Garden on July 11, 2019.<sup>1</sup> That letter provided notice of the factual basis for my preliminary decision, explicitly provided Mr. Karem with the opportunity to contest that decision by submitting a written response to me by 5:00 PM on August 5, 2019, and explained that I would consider any timely written response before making a final determination.

On August 5, 2019, you submitted an eight-page written response on Mr. Karem's behalf.<sup>2</sup> That response did not include any supporting material, but did request, among other things, a meeting: "We further request that you meet with us prior to finalizing the decision so that Mr. Karem has a meaningful opportunity to respond to the evidence."<sup>3</sup> The next day, I acknowledged receipt of your response and informed you that my office would be happy to meet "with Mr. Karem and you or other counsel" on August 8, 2019.<sup>4</sup> In light of your complaint that you had not had sufficient time to prepare a written response and in light of this anticipated

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<sup>1</sup> See 8/2/2019 Letter from S. Grisham to B. Karem (Preliminary Decision).

<sup>2</sup> See 8/5/2019 Letter from T. Boutrous Jr. to S. Grisham (Initial Response). Your initial response complained that "Mr. Karem was afforded *no* process before [I] reached this 'preliminary decision.'" Initial Response at 6. That complaint is fundamentally mistaken. The first step in providing process is providing notice, which is exactly what my August 2 letter provided. While Mr. Karem may be entitled to due process before his hard pass is suspended, my preliminary decision did not suspend his hard pass. My preliminary decision merely provided written notice to Mr. Karem that I intended to suspend his hard pass, informed him of the factual basis for that decision, and gave him an opportunity to respond. Preliminary Decision at 1–2. Mr. Karem's hard pass has not been suspended or restricted in any way pending this final decision.

<sup>3</sup> Initial Response at 8.

<sup>4</sup> 8/6/2019 Letter from S. Grisham to T. Boutrous Jr. (emphasis added).

meeting, I also explained that Mr. Karem could submit any supplement he wished to his written response by 5:00 PM on Friday, August 9, 2019.<sup>5</sup> The next morning, you stated that your “partners Thomas Dupree and Anne Champion are available to meet at 4 PM on Thursday, August 8, 2019.”<sup>6</sup> I reiterated that I was “happy to meet tomorrow, August 8, 2019 at 4:00 PM *with Mr. Karem*, along with Mr. Dupree and Ms. Champion.”<sup>7</sup> Mr. Dupree then responded that he and Ms. Champion would meet with me, but that “Brian will not be accompanying us.”<sup>8</sup>

Despite Mr. Karem’s decision not to attend the meeting he had requested, I met with Mr. Dupree and Ms. Champion at about 4:00 PM on August 8, 2019, along with attorneys from the Office of White House Counsel. During that approximately 45-minute meeting, I provided Mr. Dupree and Ms. Champion with the opportunity to present whatever facts and arguments they wished until they were finished, and we asked some clarifying questions as well. Mr. Dupree and Ms. Champion confirmed that there was no reason for Mr. Karem’s absence other than a belief that he was not required to be there. They offered to have him come to *another* meeting if I wished to arrange a separate, second meeting to speak with him.

An attorney from the Office of White House Counsel also informed you of additional information that I would consider in making my final decision—the observations of the U.S. Secret Service agent who intervened and spoke to Mr. Karem during the incident. Because Mr. Karem was not present at the meeting, we invited you to respond to the agent’s recollections in your supplemental response.<sup>9</sup> On August 8, 2019, I sent you an email outlining all of the information on which I would base my final decision.<sup>10</sup> You submitted a supplemental, four-page response on August 9, 2019 along with supporting materials, including a written statement by Mr. Karem.<sup>11</sup>

I have thus provided Mr. Karem with written notice and three opportunities to respond, in person and in writing, and the opportunity to submit any materials that he considers relevant.

### **Facts**

As I confirmed on August 8, 2019,<sup>12</sup> I have based my final decision on the following:

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<sup>5</sup> *Id.*

<sup>6</sup> Email from T. Boutrous Jr. to S. Grisham (Aug. 7, 2019 9:17 AM).

<sup>7</sup> Email from S. Grisham to T. Boutrous Jr. (Aug. 7, 2019 4:09 PM) (emphasis added).

<sup>8</sup> Email from T. Dupree Jr. to S. Grisham (Aug. 7, 2019 5:06 PM).

<sup>9</sup> See Email from S. Grisham to T. Dupree Jr. & A. Champion (Aug. 8, 2019 9:02 PM). Your supplemental response speculates that the Secret Service agent may have provided exculpatory information that is not included in this final decision. 8/9/2019 Letter from T. Boutrous Jr. to S. Grisham (Supplemental Response). Your speculation is factually incorrect. I have relied on the Secret Service agent’s statement only for the point that the agent approached Mr. Karem because he grew concerned, after Mr. Karem’s invitation to “go outside” and Mr. Gorka’s response, that a physical altercation might break out and for the agent’s recollection of what he said to Mr. Karem. The Secret Service agent did not provide any information “confirm[ing] that Mr. Karem did nothing wrong” as you hypothesize, *id.*

<sup>10</sup> Email from S. Grisham to T. Dupree Jr. & A. Champion (Aug. 8, 2019 9:02 PM).

<sup>11</sup> See generally Supplemental Response; 8/9/2019 Statement of B. Karem (Karem Statement).

<sup>12</sup> Email from S. Grisham to T. Dupree Jr. & A. Champion (Aug. 8, 2019 9:02 PM).

- Seven publicly available videos, which show multiple angles of the incidents involving Mr. Karem in the Rose Garden on July 11, 2019;<sup>13</sup>
- The observations of the U.S. Secret Service agent who intervened and spoke to Mr. Karem as shown on the videos and whose recollection concerning the incident we described during the August 8, 2019 in-person meeting;
- Mr. Karem’s August 5, 2019 initial response; and
- The in-person discussion on August 8, 2019.

I have also relied on Mr. Karem’s August 9, 2019 supplemental response, which includes a statement from Mr. Karem and several emails between Mr. Karem and my office. As I also confirmed to you on August 8, 2019,<sup>14</sup> I have not conducted, and have not relied on, interviews with any other witnesses. After considering the sources listed above, I find the following.

After the conclusion of the President’s address in the Rose Garden to invited guests of the White House Social Media Summit, Mr. Karem attempted to ask the President a question as he walked away, but the President did not respond and continued walking. I credit Mr. Karem’s assertion that, at this point, a couple of the invited guests made comments to Mr. Karem, such as “[h]e talked to us, the real news,”<sup>15</sup> and at least one video shows that a guest said “don’t be sad, don’t be sad.”<sup>16</sup> In response, Mr. Karem, who was standing in the designated press area behind a rope line, insulted the President’s invited guests, stating that “This is a group of people that are eager for demonic possession.”<sup>17</sup> One of the guests, Sebastian Gorka, then asked, while gesturing sarcastically with air quotes, “And you’re a journalist, right?”<sup>18</sup> In response, Mr. Karem escalated the exchange by calling to Mr. Gorka from across the Rose Garden, “Come on over here and talk to me, brother. We can go outside and have a long conversation.”<sup>19</sup> Mr. Karem accompanied the suggestion that they “go outside” by gesturing with his right hand (closed hand, thumb extended, gesturing over his shoulder) and noticeably cocking his eyebrow—as if to indicate, “you know what I mean.”<sup>20</sup> Under the circumstances, Mr. Karem’s

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<sup>13</sup> Bloomberg TicToc, Sebastian Gorka Clashes with Journalist After Trump Refuses Media Questions, YouTube (July 11, 2019), <https://youtu.be/VNfPaZ4Ipsw> (Video 1); Baxter, *Journalist Brian Karem picks a fight with Sebastian Gorka*, YouTube (July 11, 2019), <https://youtu.be/HMVmkTFedUc> (Video 2); Terrence Daniels, *Fights in The Rose Garden...*, YouTube (July 11, 2019), <https://youtu.be/qQe2JFS08Rg> (Video 3); Nicholas Ballasy, *Sebastian Gorka and Reporter Get Into Shouting Match at White House*, YouTube (July 11, 2019), <https://youtu.be/mNySuQFh2YE> (Video 4); Washington Post, *Gorka to Karem: ‘You’re not a journalist, you’re a punk’*, YouTube (July 11, 2019), <https://youtu.be/zRogWTuS5HI> (Video 5); Washington Examiner (@dcexaminer), Twitter (July 11, 2019, 3:53 PM), <https://twitter.com/dcexaminer/status/1149451612227887104> (Video 6); Reuters Top News (@Reuters), Twitter (July 11, 2019, 3:29 PM), <https://twitter.com/Reuters/status/1149445607288950784> (Video 7).

<sup>14</sup> Email from S. Grisham to T. Dupree Jr. & A. Champion (8/8/2019 9:02 PM).

<sup>15</sup> Karem Statement at 2.

<sup>16</sup> E.g., Video 1, <https://youtu.be/VNfPaZ4Ipsw?t=13> (at 0:13–0:15); Video 4, <https://youtu.be/mNySuQFh2YE> (at 0:00–0:02).

<sup>17</sup> E.g., Video 1, <https://youtu.be/VNfPaZ4Ipsw?t=17> (at 0:17–0:20); Video 4, <https://youtu.be/mNySuQFh2YE?t=4> (at 0:04–0:08).

<sup>18</sup> Video 1, <https://youtu.be/VNfPaZ4Ipsw?t=23> (at 0:23–0:25).

<sup>19</sup> Video 2, <https://youtu.be/HMVmkTFedUc?t=10> (at 0:10–0:14).

<sup>20</sup> See *id.*

words and gestures together created the impression to a reasonable observer that Mr. Karem was suggesting a physical confrontation.

Mr. Gorka then crossed the Rose Garden to approach Mr. Karem, shouting in response to Mr. Karem: “Are you threatening me now in the White House? In the Rose Garden? You’re threatening me in the Rose Garden?”<sup>21</sup> As Mr. Gorka approached, Mr. Karem moved towards him, while staying within the rope line designating the press area.<sup>22</sup> The assertion in Mr. Karem’s supplemental response that Mr. Karem “did not advance toward Mr. Gorka”<sup>23</sup> is belied by the video of the event. Mr. Karem and Mr. Gorka then traded insults face to face. Someone shouted “hit him, Gorka!”<sup>24</sup> After calling Mr. Karem a “punk,” Mr. Gorka turned and walked away, and some guests briefly chanted, “Gorka, Gorka, Gorka.” As Mr. Gorka turned to walk away toward the Palm Room, a U.S. Secret Service agent moved quickly from a position to Mr. Karem’s right, approached Mr. Karem, placed the fingers of his right hand on Mr. Karem’s right forearm and kept that position for a moment as Mr. Gorka continued to leave and as Mr. Karem shouted after him, “Go home!”<sup>25</sup>

As videos show,<sup>26</sup> the Secret Service agent then crossed in front of Mr. Karem and began to move in the direction that Mr. Gorka had gone. Mr. Karem yelled after Mr. Gorka: “Go home! Go Home!” and “Hey Gorka, get a job!” Mr. Karem then left the designated press area and paced in front of other members of the press and in front of the rope that marked the designated press area (which had partially fallen to the ground). One of the guests said, “Just for the record, he’d kick your punk ass.” The Secret Service agent turned around and saw that Mr. Karem had stepped outside of the designated press area. The Secret Service agent approached Mr. Karem, put his hand on Mr. Karem’s chest, and said something to Mr. Karem that is not audible on the videos, at which point Mr. Karem stepped back into the press area.

In an interview,<sup>27</sup> the Secret Service agent explained that he approached and intervened during Mr. Karem’s exchange with Mr. Gorka because he believed there was a risk of a physical altercation. He also explained that when he approached Mr. Karem the second time, he said words to the effect of, “Take a look around, remember where you’re at, and please step back into the press pen. Let’s calm down a little bit.”

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<sup>21</sup> E.g., Video 1, <https://youtu.be/VNfPaZ4Ipsw?t=28> (at 0:28–0:35); Video 4, <https://youtu.be/mNySuQFh2YE?t=15> (at 0:15–0:23).

<sup>22</sup> E.g., Video 2, <https://youtu.be/HMVmkTFedUc?t=17> (at 0:15–0:19).

<sup>23</sup> Supplemental Response at 3.

<sup>24</sup> E.g., Video 2, <https://youtu.be/HMVmkTFedUc?t=19> (at 0:19–0:20).

<sup>25</sup> E.g., Video 1, <https://youtu.be/VNfPaZ4Ipsw?t=28> (at 0:39–0:40); Video 5, <https://youtu.be/zRogWTuS5HI?t=10> (at 0:10–0:13).

<sup>26</sup> E.g., Video 1, <https://youtu.be/VNfPaZ4Ipsw?t=40> (at 0:40–1:09); Video 2, <https://youtu.be/HMVmkTFedUc?t=23> (at 0:23–0:33); Video 3, <https://youtu.be/qQe2JFS08Rg?t=7> (at 0:07–0:16); Video 4, <https://youtu.be/mNySuQFh2YE?t=25> (at 0:25–0:46); Video 5, <https://youtu.be/zRogWTuS5HI?t=11> (at 0:11–0:31); Video 7, <https://twitter.com/Reuters/status/1149445607288950784> (at 0:17–0:31).

<sup>27</sup> The facts in this paragraph are the only ones that came solely from the interview of the Secret Service agent. While these facts supplement my understanding of the events, they are not critical to my findings or decision. I would reach the same findings and decision without them.

As video shows,<sup>28</sup> after leaving the Rose Garden; Mr. Karem found Mr. Gorka in the Palm Room and again tried to engage with him. As he persisted in attempting to engage Mr. Gorka, Mr. Karem ignored a White House staffer's repeated directions to leave and instructions that "the press are leaving now." I credit Mr. Karem's assertion that he attempted to say some words to Mr. Gorka "to make peace with him" and that he "offered to shake his hand."<sup>29</sup> When Mr. Gorka made clear that he would not shake Mr. Karem's hand, however, Mr. Karem turned this exchange into a confrontation as well. Mr. Karem repeatedly said "you won't shake my hand," and then wagged his finger in Mr. Gorka's face. Mr. Karem asserts that he "shook [his] finger in disappointment at him, not aggression."<sup>30</sup> However, after a confrontation that included an invitation to "go outside" and shouted insults, a reasonable observer would view shaking a finger in another adult's face as only renewing the confrontation. Mr. Gorka then referred to the instructions to leave from the White House staffer, repeating "You're done!" and saying "Listen to him. Get out. Get out."<sup>31</sup> As he said this, Mr. Gorka gestured toward the staffer. Mr. Karem eventually left after Mr. Gorka rebuffed him.

In defense of Mr. Karem's conduct, you have not disputed the basic outline of events. Instead, you primarily argue that Mr. Karem's actions should be characterized as nothing more than a good-natured and humorous exchange with the invited guests and as an attempt to de-escalate aggression initiated by Mr. Gorka when he crossed the Rose Garden to Mr. Karem's spot. That argument depends on two assertions: (1) Mr. Karem's "demonic possession" comment was good natured and part of what you call Mr. Karem's "Rodney Dangerfield" routine, and (2) Mr. Karem's invitation to Mr. Gorka to "go outside and have a long conversation" was genuinely asking Mr. Gorka for a conversation and was an effort to de-escalate the situation. Based on the totality of the circumstances, I find that these assertions are not credible. Moreover, even if I found that these assertions were consistent with Mr. Karem's subjective intent, Mr. Karem still should have known how his actions would have been received by a reasonable observer.

*First*, Mr. Karem's "demonic possession" comment cannot credibly be understood as mere light-hearted comedy. Mr. Karem has asserted that he made that comment as a Rodney Dangerfield impersonation. I do not find that assertion credible. During our August 8, 2019 meeting, Mr. Dupree and Ms. Champion conceded that Mr. Karem's "demonic possession" comment is not a quotation (or a variation of one) from any Dangerfield movie or routine. And I do not believe that any reasonable observer would have seen anything about Mr. Karem's choice of words, mannerisms, or inflection that remotely evoked Rodney Dangerfield. In addition, Mr. Karem has asserted that "everyone" in the press pool knows that he does a Dangerfield impersonation, but, despite having the opportunity to do so, he has not provided any statement from press members familiar with his impersonation stating that Mr. Karem was performing that impersonation on this occasion. In any event, even if Mr. Karem had been doing an impression, it would not alter the fact that he insulted White House guests. An insult to guests is still an insult even if delivered while mimicking a comedian.

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<sup>28</sup> Video 4, <https://youtu.be/mNySuQFh2YE?t=173> (at 2:53–3:26).

<sup>29</sup> Karem Statement at 3.

<sup>30</sup> *Id.*

<sup>31</sup> Video 4, <https://youtu.be/mNySuQFh2YE?t=186> (at 3:06–3:11); Video 4, <https://youtu.be/mNySuQFh2YE?t=200> (at 3:20–3:24).

You have placed a great deal of weight on the fact that there was some laughter after Mr. Karem's comment about demonic possession. I do not believe that laughter in that situation somehow establishes that Mr. Karem was having nothing more than a good-natured exchange. Mr. Karem's comment was not light-hearted; it denigrated the mental state of the gathered audience. And the laughter in response was equally consistent with a reaction in disbelief at the bizarreness of Mr. Karem's taunt. In any event, the comment was certainly taken as an insult by some members of the audience, as evidenced by Mr. Gorka's response. That objective response, no matter Mr. Karem's subjective intent, reinforces the fact that the comment was inappropriate and unprofessional.

*Second*, Mr. Karem's invitation to Mr. Gorka to "go outside and have a long conversation" cannot objectively be understood as an effort to de-escalate by making a genuine invitation for a conversation in another forum. Any characterization of this comment as a neutral comment or an attempt to de-escalate the situation is belied by the facts shown on the videos. As a threshold matter, the videos plainly show that it was the suggestion to "go outside" that *escalated* the situation. Before that comment, Mr. Karem had made his "demonic possession" comment and Gorka had responded from across the Rose Garden by suggesting that Mr. Karem was a "journalist" only with air quotes. It was only after Mr. Karem invited Mr. Gorka to "go outside" that Mr. Gorka asserted that he had been threatened and began to cross the Rose Garden to confront Mr. Karem. In particular, any suggestion that the invitation to "go outside" was designed to defuse a situation *after* Mr. Gorka had acted aggressively is flatly contrary to the sequence of events.

In addition, when Mr. Karem made this comment, his body language did not remotely suggest an effort to defuse tension. Instead, Mr. Karem's hand gesture (a closed hand, thumb extended, gesturing over his shoulder), his noticeably cocked eyebrow, and his tone of voice<sup>32</sup> all indicate an aggressive posture inviting further confrontation—not someone trying to calm down the situation or genuinely interested in talking.

Consistent with Mr. Karem's body language, the videos show that other people contemporaneously understood Mr. Karem's comment as an invitation to a physical altercation. It appears that Mr. Gorka understood it as a threat and repeatedly asked Mr. Karem if he was "threatening him." Other individuals responded at the time as if it were a threat. One individual yelled, "hit him Gorka!"<sup>33</sup> A second individual told Mr. Karem that Mr. Gorka would "kick your punk ass."<sup>34</sup> A third individual, speaking to Mr. Karem just over a minute later, explicitly characterized it as a threat:

Individual: "You just threatened Gorka just a minute ago. You told him to go outside."

Mr. Karem: "I said I would talk to him. I didn't threaten. I was standing right here."

Individual: "Everybody knows what that means. What were you going to do?"

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<sup>32</sup> Video 2, <https://youtu.be/HMVmkTFedUc?t=10> (at 0:10–0:14).

<sup>33</sup> E.g., Video 2, <https://youtu.be/HMVmkTFedUc?t=17> (at 0:17).

<sup>34</sup> E.g., Video 2, <https://youtu.be/HMVmkTFedUc?t=31> (at 0:31–0:34).

Mr. Karem: “No, it means talk.”

Individual: “You could talk to him right here. Why would you take him outside?”

Mr. Karem: “I’d be happy to talk.”

[cross-talk]

Mr. Karem: “I didn’t threaten to kick his butt. I said I would talk to him.”

Individual: “We all know what that means.”<sup>35</sup>

Mr. Karem claims that he was “a little discombobulated by [Mr. Gorka’s] aggression.”<sup>36</sup> But the videos of the incident do not show Mr. Karem reacting in a manner that suggests discombobulation. Instead, Mr. Karem advances toward Mr. Gorka as he approaches, within the limits permitted by the rope line defining the press pen.<sup>37</sup>

Mr. Karem’s further conduct also belies any claim that he was trying to de-escalate the situation. After he had invited Mr. Gorka to “go outside,” after Mr. Gorka had asked if that was a “threat,” after Mr. Gorka and Mr. Karem had exchanged words, and after Mr. Gorka had turned to walk away, Mr. Karem sought to continue the confrontation. As Mr. Gorka was leaving, Mr. Karem shouted loudly after him “Go home! Go home!” and “Hey Gorka, get a job!” and then stepped over the partially fallen rope line to pace in front of the other journalists.<sup>38</sup> Those taunts are inconsistent with any intent to de-escalate the situation.

Another factor also weighs against Mr. Karem’s interpretation of the events. Because Mr. Karem’s characterization of his words depends critically on the asserted sincerity of his invitation to talk and requires convincing me of his credibility with respect to that assertion, I find it significant that Mr. Karem chose not to meet with me in person to explain his conduct after I expressly invited him to do so.<sup>39</sup>

Finally, Mr. Karem’s subjective intent is not, in any case, dispositive here. Even if I credited Mr. Karem’s assertion that his sincere subjective intent was to de-escalate the situation, it would not alter the fact that his comments were objectively inappropriate to the circumstances. Even if Mr. Karem subjectively believed that his actions were non-threatening, he should have known how a reasonable observer would have reacted to these repeated confrontations, as many

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<sup>35</sup> E.g., Video 4, <https://youtu.be/mNySuQFh2YE?t=133> (at 2:13–2:36); Video 6, <https://twitter.com/dcexaminer/status/1149451612227887104> (at 0:50–1:12).

<sup>36</sup> Karem Statement at 3.

<sup>37</sup> Video 2, <https://youtu.be/HMVmkTFedUc?t=17> (at 0:15–0:19).

<sup>38</sup> E.g., Video 1, <https://youtu.be/VNfPaZ4Ipsw?t=40> (at 0:40–1:09); Video 2, <https://youtu.be/HMVmkTFedUc?t=23> (at 0:23–0:33); Video 4, <https://youtu.be/mNySuQFh2YE?t=25> (at 0:25–0:46); Video 5, <https://youtu.be/zRogWTuS5HI?t=11> (at 0:11–0:31); Video 7, <https://twitter.com/Reuters/status/1149445607288950784> (at 0:17–0:31).

<sup>39</sup> I have noted that, at the August 8 meeting, Mr. Dupree and Ms. Champion said that Mr. Karem would be happy to come to a subsequent meeting if I wanted to speak with him. This, however, is beside the point. Mr. Karem, through counsel, asked to meet in person. I agreed to that meeting, specifically stated that I was happy to meet with Mr. Karem, the meeting was scheduled, and Mr. Karem did not attend, nor did he claim any conflict that prevented him from attending.



observers did, in fact, react at the time. His remarks had the predictable effect of offending and provoking White House guests, and constituted a significant lapse in judgment, regardless of Mr. Karem's intent. The objective fact is that Mr. Karem's words elicited a predictable response and that combination of events prompted a Secret Service agent to intervene due to a perceived risk of a physical altercation. It is inconsistent with widely-shared understandings and norms of media professionalism to yell statements that could reasonably be interpreted as insults or threats to guests in the Rose Garden, to repeatedly confront those guests afterward, and to disobey instructions from White House staff.

### **Decision**

Based on the facts described above, I conclude that Mr. Karem's actions, as viewed by a reasonable observer, (1) insulted invited guests of the White House, (2) threatened to escalate a verbal altercation into a physical one to the point that the Secret Service deemed it prudent to intervene, and (3) re-engaged with Mr. Gorka in what quickly became a confrontational manner while repeatedly disobeying a White House staffer's instructions to leave. Mr. Karem's conduct, taken as a whole, was unacceptable and disruptive, and requires a response to ensure that it does not happen again.

I have carefully considered a range of potential responses to Mr. Karem's actions, including permanently revoking his hard pass, temporarily suspending his hard pass, providing a written warning, and taking no action. In my judgment, a permanent revocation would be too great a punishment for the conduct involved here. Taking no action, on the other hand, would be insufficient to deter Mr. Karem and other members of the press from disrupting White House events.

I have concluded that a temporary suspension of Mr. Karem's hard pass is an appropriate response. It properly accounts for Mr. Karem's stated need for his press pass and it imposes no greater a restriction than is necessary for an effective sanction. The purpose of a hard pass is to provide day-to-day access to the White House campus so that a member of the press can report and ask questions of officials who are taking questions. But a hard pass must be used in a manner that is respectful of the White House property and grounds in light of the extensive access it provides. There is a widely-shared understanding that at all times at White House press events, members of the press must act professionally, maintain decorum and order, and obey instructions from White House staff.<sup>40</sup> Disruptive behavior, such as Mr. Karem's, is clearly prohibited. Moreover, I note that Mr. Karem did not use the access granted by his hard pass for the journalistic purposes for which it is granted. Instead, Mr. Karem used the access granted by his hard pass to insult invited guests, to make intemperate comments that threatened to escalate a verbal confrontation into a physical altercation, and to repeatedly disobey the instructions of White House staff to leave with the rest of the members of the press after the conclusion of the event. Mr. Karem's actions escalated the situation to the point that the Secret Service deemed it prudent to intervene to ensure that verbal confrontations involving Mr. Karem would not escalate into a physical one.

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<sup>40</sup> Preliminary Decision at 1.

The only less restrictive alternative that you have proposed is a written warning. After considering that suggestion, I conclude that a written warning would be insufficient given the serious nature of Mr. Karem's misconduct and the ineffectiveness that a written warning would have in deterring similar misconduct by Mr. Karem or others in the future. On the present record, there is no indication that Mr. Karem would take to heart a written warning that his behavior was inappropriate. I base that conclusion on at least two factors. First, throughout the twelve combined pages of his two written submissions prepared by counsel and his five-page personal statement, Mr. Karem has nowhere acknowledged even the slightest indication of any regret for his conduct or recognition that it could, even possibly, have transgressed any boundaries of professional conduct for the press corps. Instead, Mr. Karem's statement suggests that, in his view, it *is* appropriate to "nearly [get] into blows with a guest in the Rose Garden."<sup>41</sup> In short, Mr. Karem seems to be oblivious to the fact that his conduct was wrong. Second, Mr. Karem has continued to insist that his invitation to Mr. Gorka to "go outside" was sincerely meant as a de-escalatory invitation for a genuine conversation. For all the reasons explained above, I find that assertion lacking in credibility. Mr. Karem's insistence on continuing to press a characterization of events that is plainly incompatible with his words, gestures, tone, and actions in the Rose Garden indicates to me that some form of sanction beyond a mere warning letter is warranted.

I have carefully considered your assertion that a 30-day suspension is too harsh, and I disagree. A warning would be insufficient for the reasons above. Although you have not suggested that a suspension of any lesser length would be appropriate, I have considered that alternative as well. In light of the seriousness of Mr. Karem's conduct, however, I do not believe that a suspension of fewer than 30 days would be proportionate to the nature of his conduct, which turned a Rose Garden event into a spectacle and risked a physical altercation.

You have raised several additional arguments on Mr. Karem's behalf, which I address below.

*First*, you argue that "there are no so-called 'widely understood understanding[s]'" that would have put Mr. Karem on notice that his conduct was improper.<sup>42</sup> I find that argument wholly insubstantial. Members of the press certainly understand that, in any professional context, trading insults with guests at a venue where a press event is taking place and escalating a verbal confrontation with an invitation to "go outside" is unacceptable behavior. Mr. Karem does not seriously contend that he lacked actual notice that it is prohibited conduct in the White House for a member of the press to disrupt a White House press event by threatening guests and escalating a verbal altercation with insinuations of physical violence such that the Secret Service deems it prudent to intervene, or to repeatedly disobey a staffer's instructions to leave. Indeed, Mr. Dupree and Ms. Champion explicitly confirmed during our in-person meeting that they were not second-guessing the White House's need to ensure basic decorum, order, and security.

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<sup>41</sup> Karem Statement at 1 ("CBS White House Correspondent Bill Plante once, in a story widely told by his peers, nearly got into blows with a guest in the Rose Garden.").

<sup>42</sup> Initial Response at 5.

*Second*, you assert that I “failed to conduct a reasonable investigation before reaching [my] preliminary decision” because I “did not speak to a single witness.”<sup>43</sup> That argument rests on a fundamentally flawed premise. There was no need for an investigation involving witness interviews here because Mr. Karem’s words and conduct were caught on multiple videos recorded from several different angles. You have not provided any basis for believing that the imperfect recollections of witnesses would somehow provide a more accurate basis for assessing events than the video and audio recordings that capture exactly what happened second by second. Where there was one interaction that was potentially relevant but could not be heard on any of the videos—the Secret Service agent’s interaction with Mr. Karem—the Secret Service agent was interviewed. Mr. Karem has not disputed the Secret Service agent’s observations and recollection, nor have you identified any specific way in which additional investigation could uncover relevant facts that would be important to my decision. Indeed, as we explained to Mr. Dupree and Ms. Champion on August 8, Mr. Karem knows which members of the press witnessed events that day and he was free to provide statements from them if he believed they would be useful. You have neither provided any witness statements nor even provided any plausible basis for thinking that witness statements could possibly bring to light different information that would justify a different conclusion in this matter.

In that regard, it is worth noting that the subjective, after-the-fact “impressions” of witnesses would not be particularly relevant to my decision, because my decision here involves determining whether Mr. Karem breached standards of conduct based on an objective assessment of his actions, which can be determined from the objective facts recorded on tape.<sup>44</sup> Whether one individual or another might have believed that a particular comment was funny or light hearted is not the critical point. A poll of the opinions of everyone present is not required to determine the objectively reasonable understanding of Mr. Karem’s statements and actions.

*Third*, you have made wholly unfounded accusations that taking action against Mr. Karem for his conduct on July 11 is actually a pretext for unconstitutional content-based and viewpoint-based discrimination against Mr. Karem. Those accusations are baseless. The content and viewpoint of Mr. Karem’s reporting have played no role in this decision. Indeed, admissions in Mr. Karem’s own submissions disprove the theory that there has been some effort to stifle his speech. Both Mr. Karem’s initial response and his statement admit that the President has called on Mr. Karem and answered Mr. Karem’s questions several times since the incident in the Rose Garden on July 11, 2019.<sup>45</sup> Indeed, as Mr. Karem admits, the President answered two questions from Mr. Karem, in what you admit was “a rather cordial exchange,” on August 2, shortly before I issued notice of my preliminary decision.<sup>46</sup> These admissions confirm that the content and

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<sup>43</sup> Supplemental Response at 1.

<sup>44</sup> You claim that I have “elected to ignore publicly-available evidence that Mr. Gorka has trumpeted his confrontation with Mr. Karem, bragging that he took on the ‘fake news industrial complex,’ as well as evidence that the President himself viewed the events as humorous.” Supplemental Response at 2. I have not ignored these points. I have considered them, but I reject them. The fact that Mr. Gorka may have touted his response to Mr. Karem’s taunts to spin the whole event to his advantage in the media is irrelevant. Mr. Gorka is a known media figure and such a response is to be expected. It does not alter the original impropriety of Mr. Karem’s conduct. Similarly, the President’s tweet suggesting that Mr. Gorka had the better of the exchange does not undercut my conclusion that Mr. Karem’s conduct was improper and does not suggest that it was merely a “humorous” interlude that warrants no sanction.

<sup>45</sup> Initial Response at 7; Karem Statement at 4.

<sup>46</sup> Karem Statement at 4.

viewpoint of Mr. Karem's journalism have nothing to do with this decision. If the White House had been engaged in some effort to "silenc[e] a journalist known for tough questioning,"<sup>47</sup> as you claim, the President could have simply ignored Mr. Karem and refused to answer any of his questions. The very fact that the President has continued to call on Mr. Karem demonstrates that there has been no effort to silence his journalism.

**Fourth**, you have argued that Mr. Karem sought "multiple times" to discuss the July 11 incident with me and that when my office rescheduled a meeting with him it was done deliberately to delay speaking with him at all until after his hard pass had been suspended.<sup>48</sup> All of these assertions are false. Mr. Karem's initial submission claims that, after July 11, Mr. Karem "reached out to [my] office *multiple times to discuss the incident*."<sup>49</sup> In his personal statement, Mr. Karem modified that claim to assert solely that he had been "trying to schedule an interview with" me "for some time" and that he had "hop[ed] to discuss" the events of July 11, 2019 with me.<sup>50</sup> The only contact from Mr. Karem of which I had been aware was an effort to schedule an off-the-record meeting as a get-to-know-you meeting after I started as Press Secretary on June 25. That meeting was scheduled and then canceled more than once, just as I have canceled similar meetings with more than a dozen other reporters due to other matters arising on my schedule as Press Secretary. At the meeting with Mr. Dupree and Ms. Champion on August 8, we explained that we were not aware of any contacts from Mr. Karem seeking to discuss the July 11 incident and asked you to provide any emails or other evidence showing that he sought to discuss the incident with me. The emails that Mr. Karem has submitted in response do not support your assertions.<sup>51</sup> None of them mentions or even hints at a desire to speak with me about the events of July 11, 2019, and they certainly do not suggest that Mr. Karem attempted "multiple times to discuss the incident" with me. One email chain simply thanks me for the format of a briefing with Secretary Mnuchin and provides no support whatsoever for your assertions.<sup>52</sup> The other set of emails involved an initial request made on July 8, 2019 for a ten-minute off-the-record meeting—before the events in the Rose Garden on July 11. That earlier request is then referenced and renewed in emails after July 11 when my schedule required rescheduling our meeting.<sup>53</sup> Those emails involved simply the request for a get-to-know-you meeting that I mentioned above. There is no indication in any of the emails, however, that in Mr. Karem's efforts to reschedule that meeting, which was initially requested on July 8, he was actually hoping to discuss with me the events of July 11.

**Fifth**, you have emphasized the fact that some of the invited guests made comments to Mr. Karem before Mr. Karem's "demonic possession" comment, such as, "don't be sad."<sup>54</sup> The assertion that "he started it first," however, is not a justification for a member of the press to insult invitees at the White House, nor is it a license to escalate the situation, and it certainly does not absolve Mr. Karem of responsibility for his conduct. In addition, your argument on this

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<sup>47</sup> Initial Response at 7.

<sup>48</sup> *Id.* at 3.

<sup>49</sup> Initial Response at 3 (emphasis added).

<sup>50</sup> Karem Statement at 4.

<sup>51</sup> See 8/9/2019 B. Karem Emails in Supp. of Supplemental Response.

<sup>52</sup> See Email from B. Karem to S. Grisham (July 16, 2019 1:53 PM).

<sup>53</sup> See Email from B. Karem to A. LeHardy (July 9, 2019 6:40 PM); Email from B. Karem to S. Grisham (July 9, 2019 12:54 PM).

<sup>54</sup> Karem Statement at 2; Video 4, <https://youtu.be/mNySuQFh2YE> (at 0:00–0:02).

point ignores the fact that there is a fundamental difference between invited White House guests and the press. The press is present to cover events and to ask questions of those officials who are taking questions. Openly insulting a gathering of guests is never appropriate conduct for a member of the press at the White House, even if one of the guests has directed remarks to the press.

*Sixth*, for similar reasons, your complaint that I am not imposing consequences on others involved—by which I assume you mean Mr. Gorka or any guests who made comments to Mr. Karem—is misplaced. Mr. Gorka and other individuals were present in the Rose Garden as invited guests, not members of the press. My responsibility as Press Secretary involves credentialing members of the White House press and providing the press access to the White House campus so that they can do their jobs. In that role, I am responsible for ensuring that basic standards of conduct are maintained by the press so that White House events can proceed without disruption and with a basic level of decorum. I am not the behavior czar for everyone who enters the campus. I have no authority to dictate the conduct of all guests invited to the White House, nor do I have authority to revoke press passes for guests who did not use a press pass for access to the event. Mr. Gorka, in particular, does not hold a press pass. The assertion that Mr. Karem was “single[d] out”<sup>55</sup> is thus incorrect. You have not identified any members of the press whose conduct in the Rose Garden on July 11, 2019 was remotely comparable to Mr. Karem’s or that warrants any sanction.

In addition, Mr. Karem’s hard pass is not being suspended merely for a single insult that violates what you characterize as a “no-taunting rule.” Instead, as explained above, it is the totality of the conduct in this case that warrants such a sanction, including disrupting the press event with a persistent series of comments that threatened to escalate a verbal altercation into a physical one to the point where the Secret Service had to intervene—and then disobeying staff instructions to leave while trying to re-engage with Mr. Gorka. You have not identified any member of the press who engaged in equivalently egregious and persistent conduct that day.

*Seventh*, you have speculated that this decision has been “potentially made in coordination with Mr. Gorka.”<sup>56</sup> That is false. As I confirmed during the August 8, 2019 in-person meeting, I am the decision-maker in this matter. I have informed you of the materials on which my decision is based, and I can state categorically that I have not coordinated or communicated with Mr. Gorka at all about Mr. Karem or the events in the Rose Garden on July 11, 2019. Your request for discovery of any communications between anyone at the White House and Mr. Gorka is equally baseless, and you are not entitled to review White House communications based on unfounded speculation. However, even if Mr. Gorka had contacted me to complain about Mr. Karem’s conduct and had requested that Mr. Karem be sanctioned in some way, there would not have been anything improper about such a request from a guest who had been insulted and who felt threatened, and it would have been perfectly appropriate for me to take such a request into account. As it happens, no such contact occurred.

*Eighth*, Mr. Dupree and Ms. Champion argued that Mr. Karem’s conduct was less deserving of punishment than the conduct of Jim Acosta at a press event on November 7, 2018,

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<sup>55</sup> Supplemental Response at 3.

<sup>56</sup> Initial Response at 6.

because Mr. Karem's conduct occurred after the press event had ended, the President was not present, and there was no physical contact here, whereas Mr. Acosta's conduct occurred during a press event while he was asking questions of the President and there was incidental physical contact with an intern. *See generally* Tr. of Mot. Hr'g, ECF No. 22, *Cable News Network, Inc. v. Trump*, No. 1:18-cv-02610-TJK (D.D.C. Nov. 16, 2018). I have considered these points, and I disagree. Mr. Karem's conduct in this case was completely different in kind from the event in November 2018, and it warrants a significant sanction. Persistently taunting others in a way that threatens to escalate a situation into a physical altercation and prompts Secret Service intervention is always prohibited. The fact that the press event had ended and Mr. Karem's conduct was not related in any way to asking questions during the press event serves only to reduce First Amendment concerns for imposing sanctions on his conduct. And to the extent there was physical contact involving Mr. Acosta and the intern, it appeared incidental and fleeting, whereas Mr. Karem's words and actions in this case were deliberate, intentional, and persistent, and threatened to escalate into an actual physical altercation.

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As explained above, Mr. Karem's White House hard pass is suspended effective immediately through Saturday, September 14, 2019. Please inform Mr. Karem that if Playboy has another correspondent they wish to send to the White House during his absence, they should contact me and we will arrange a press pass as swiftly as possible.

Sincerely,



Stephanie A. Grisham  
Assistant to the President  
White House Press Secretary

CC: Thomas Dupree, Esq.  
Ann Champion, Esq.