

VOICES

Pentagon Wants It to Be Illegal for Reporters to Ask “Unauthorized” Questions

The Trump admin wants to criminalize a key part of journalists doing their jobs — a broadside attack on a free press.

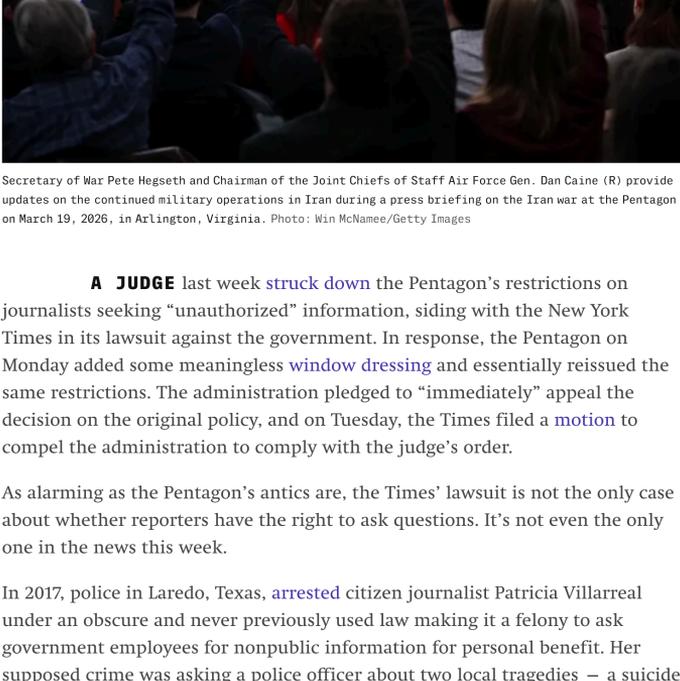


Seth Stern

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March 26 2026, 5:00 a.m.

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Secretary of War Pete Hegseth and Chairman of the Joint Chiefs of Staff Air Force Gen. Dan Caine (R) provide updates on the continued military operations in Iran during a press briefing on the Iran war at the Pentagon on March 19, 2026, in Arlington, Virginia. Photo: Win McNamee/Getty Images

A JUDGE last week **struck down** the Pentagon’s restrictions on journalists seeking “unauthorized” information, siding with the New York Times in its lawsuit against the government. In response, the Pentagon on Monday added some meaningless **window dressing** and essentially reissued the same restrictions. The administration pledged to “immediately” appeal the decision on the original policy, and on Tuesday, the Times filed a **motion** to compel the administration to comply with the judge’s order.

As alarming as the Pentagon’s antics are, the Times’ lawsuit is not the only case about whether reporters have the right to ask questions. It’s not even the only one in the news this week.

In 2017, police in Laredo, Texas, **arrested** citizen journalist Patricia Villarreal under an obscure and never previously used law making it a felony to ask government employees for nonpublic information for personal benefit. Her supposed crime was asking a police officer about two local tragedies — a suicide and a deadly car wreck.

Her arrest was **widely ridiculed**, and a judge quickly **threw out** the charges. When Villarreal sued over her arrest and mistreatment by officers, the legal question wasn’t whether the charges against her were permissible but whether it was so obviously bogus that she could overcome **qualified immunity**, the **unjust** and expansive legal shield that protects government employees from liability for all but the most blatant violations. That issue **went** to the Supreme Court twice, but on Monday, the Court **declined** to review a federal appellate court’s ruling that the officers were shielded from liability.



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No matter what our severely **compromised** Supreme Court thinks, the local cops who arrested Villarreal were embarrassingly ignorant of the Constitution. But they were also ahead of their time: The Department of Justice is making the same claims that turned the Laredo police into a First Amendment laughingstock — that reporters simply asking questions to the government is criminal — to federal district Judge Paul Friedman.

Most discussion of the Pentagon’s restrictions has focused on their conditions for reporters to receive press credentials, which the Pentagon says can be revoked if reporters publish “unauthorized” information. That policy is wildly **unconstitutional** on its own, and every mainstream outlet gave up their press passes rather than sign on, leaving war coverage inside the Pentagon to **the likes** of Turning Point USA’s Frontlines and MyPillow CEO Mike Lindell’s LindellTV streaming service.

But the Pentagon’s legal filings imply that reporters who don’t follow the rules risk more than their press passes. On March 12, the DOJ filed a **brief** to clarify its lawyers’ earlier comments in a discussion with Friedman at a hearing of “whether asking a question was a criminal act.” The government argued that although journalists may lawfully ask questions of “authorized” Pentagon personnel, “a journalist does solicit the commission of a criminal act, and that solicitation is not protected by the First Amendment, when he or she solicits ... non-public information from individuals who are legally obligated not to disclose that information.”

There you have it. What was once a fringe, failed legal theory concocted by some local cops in one Texas border city is now the official position of the federal government’s lawyers, which it felt compelled to put in writing in case anyone wasn’t sure where it stood after the hearing. Both the rogue cops and the DOJ’s lawyers contend that journalists merely asking questions to government officials constitutes unlawful solicitation.

“These Pentagon policies remind us that people in power will stop literally at nothing to control the story.”

As JT Morris, supervising senior attorney at the Foundation for Individual Rights and Expression (which represents Villarreal) told me in an email last week, the First Amendment “unquestionably protects our right to ask questions, whether it’s a citizen asking police about a local crime or the New York Times asking Pentagon officials about matters of national security. Officials can always respond, ‘no comment.’ But they cannot jail Americans for asking.”

The government’s argument would have turned countless Pulitzer-winning national security reporters into criminals. As Friedman **put it** in his ruling, the “role of a journalist is to solicit information. ... [A] journalist asking questions is not a crime!” (You can tell a judge is miffed when scholarly language fails and they resort to exclamation points.)

The DOJ’s “concession” in its clarification brief (and later in its revised policy) — that journalists can direct questions to authorized spokespeople — makes no difference. That the administration even felt the need to state something so obvious, presumably because they thought it would make them sound more reasonable, signals the extent to which they’ve threatened the First Amendment.

Reporters carry their belongings from the Pentagon in Washington, D.C. on Oct. 15, 2025, after news outlets including the New York Times, AP, AFP and Fox News declined to sign new restrictive Pentagon media rules and were stripped of their press credentials. Photo: Brendan Smialowski/AFP via Getty Images

Government agencies have long routed journalists’ inquiries to PR flacks and instructed non-public-facing staffers not to answer reporters’ questions. That’s **unconstitutional** in its own right; earlier this month, the Village of Key Biscayne, Florida, became the **latest** government agency to **settle** a lawsuit over its employee gag rule. But until this administration, the government at least placed the burden on its own employees to comply with restrictions on talking to reporters.

Now, the government expects journalists to make themselves a party to its censorship directives, and ignore Supreme Court **precedent** that they can print any government information they lawfully obtain, even if it shouldn’t have been released. “A contrary rule ... would force upon the media the onerous obligation of sifting through government press releases, reports, and pronouncements to prune out material arguably unlawful for publication,” the Court reasoned.

Journalist Kathryn Foxhall, who has for years **sounded the alarm** about “censorship by PIO,” including in collaboration with the Society of Professional Journalists, says the press has failed to meaningfully oppose these policies. “The media have done little to fight the ever-tightening ruse at federal agencies and elsewhere banning reporters from buildings and prohibiting employees from speaking to journalists without the authorities’ oversight. With amazing negligence journalists just assume whatever reporters get is the whole story, even in the face of the many thousands of gagged staff people. Now these Pentagon policies remind us that people in power will stop literally at nothing to control the story,” she told me.

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The Pentagon’s position that newsgathering is a prosecutable offense is not just theoretical. Although the DOJ’s brief didn’t explicitly reference it, just like the officers in Laredo, federal prosecutors have their own archaic and constitutionally dubious law on the books to sane-wash their nonsense arguments — the **Espionage Act** of 1917. Read literally, that law (Rep. Rashida Tlaib recently introduced a **much-needed bill** to reform it) arguably prohibits reporters and anyone else from obtaining or attempting to obtain national defense information.

But reading it that way to go after journalists would be unconstitutional and politically toxic, which is why past administrations have **refrained**. Had the Supreme Court denied the Laredo officers’ qualified immunity in Villarreal’s case, it would have signaled that arguments for expansive interpretations of arcane laws to criminalize routine reporting are a nonstarter.

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The Court ducked the issue despite being fully aware that the present administration is looking for any excuse to punish reporters that dare to undermine its narratives. They’ve already **claimed** Washington Post reporter Hannah Natanson — whose home they raided, seizing terabytes of data — violated the Espionage Act by obtaining leaked information. The Trump administration is barging through the door the Biden administration left wide open, when, despite **warnings** from First Amendment advocates, it extracted a **plea deal** from WikiLeaks founder Julian Assange on Espionage Act charges for obtaining and publishing government records, including about Iraq war crimes.

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The DOJ’s adoption of the Laredo police’s discredited theory is an extension of the Assange and Natanson cases; the claim that publishing leaked documents is criminal has evolved into a theory that merely asking questions is, too. The administration lost in court this time, but it **said** it will appeal, and may be emboldened by the Supreme Court’s cowardice in the Laredo case.

If this administration succeeds in chipping away at constitutional protections for journalistic practices as basic as asking questions, reporters who wish to do anything more than regime stenography may risk imprisonment just by doing their jobs. In her dissent to the Villarreal ruling, Justice Sotomayor put it well: “Tolerating retaliation against journalists, or efforts to criminalize routine reporting practices, threatens to silence ‘one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free.’”

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