

January 13, 2021

VIA ELECTRONIC MAIL

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Chief Executive Officer
United States Agency for Global Media
Wilbur J. Cohen Federal Building
330 Independence Avenue SW
Washington, DC 20407

Robert Reilly
Director
Voice of America
Wilbur J. Cohen Federal Building
330 Independence Avenue SW
Washington, DC 20407

Dear Mr. Pack and Mr. Reilly:

We write as counsel to Voice of America (“VOA”) Senior White House Correspondent, Patsy Widakuswara, regarding the purported removal of Ms. Widakuswara from her beat on January 11, 2021, in direct retaliation for the questions she asked Secretary of State Michael R. Pompeo after an event earlier that day.¹ You and Secretary Pompeo are making the First Amendment and the American tradition of freedom of the press a laughingstock around the world. You must stop before you inflict irreparable damage on this fundamental value.

The reassignment of Ms. Widakuswara is both unlawful and unconstitutional. We demand that Mr. O’Reilly reverse this decision and reinstate Ms. Widakuswara to her critical position as VOA’s Senior White House Correspondent on the eve of one of the most consequential transfers of presidential power in history. Failure to do so irreparably and unlawfully harms both Ms. Widakuswara and VOA itself.

The decision to punish Ms. Widakuswara for asking questions of a high-ranking administration official—core journalistic activity—is as shocking as it is disheartening. As the White House Correspondents’ Association rightly put it, the retaliatory removal of Ms. Widakuswara from her beat constitutes “an assault on the First Amendment.”² It violates the First Amendment’s free speech and free press protections, constitutes unconstitutional implied

¹ See, e.g., David Folkenflik, *Voice of America White House Reporter Reassigned After Questioning Pompeo*, NPR (Jan. 12, 2021 10:13 AM ET), <https://www.npr.org/2021/01/12/955976976/voice-of-america-white-house-reporter-reassigned-after-questioning-pompeo>.

² *Id.*

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viewpoint discrimination, and violates Ms. Widakuswara's due process rights. Moreover, the reassignment violates the International Broadcasting Act (the "IBA"), the VOA Charter, and your own obligations as fiduciaries to VOA. We demand that you reconsider your regrettable choice, which reflects all the more poorly on the United States' commitment to its core institutions, like the freedom of the press, at this critical time in our nation's history.

The absurdity of your decision to remove Ms. Widakuswara from her beat is highlighted by the context in which it played out. You retaliated against Ms. Widakuswara for asking questions of Secretary Pompeo as he left an event at which he "decried censorship and authoritarianism overseas."³ Indeed, during the event, Secretary Pompeo proclaimed that "censorial instinct is dangerous. It's morally wrong. Indeed, it's against your statutory mandate here at VOA. Censorship [is] authoritarianism, cloaked as moral righteousness."⁴ Going on, Secretary Pompeo pronounced that "the capacity to speak freely, [is a] core right[] that if a nation gets it wrong it will be less secure, it will be less prosperous, it[]s people will be less whole."⁵ That VOA's Director would seek to silence Ms. Widakuswara after this speech because she asked the Secretary a challenging question is an affront to the very values the Secretary just finished purporting to espouse.⁶ VOA journalists have the fundamental freedom to question government officials: It is both their right and their duty under the law to report credible, independent news, and to adhere to "the highest professional standards of broadcast journalism." 22 U.S.C. § 6202(a)(5), (b)(1). The irony that you have punished Ms. Widakuswara for doing her job immediately following Secretary Pompeo's invocation of First Amendment freedoms and lambasting of censorship is palpable and alarming. Open regimes allow questions; repressive regimes sanction them. As the House Foreign Affairs Committee Chairman and Ranking Member correctly noted: "We do not punish our journalists for seeking answers to their questions. A free and fair press is at the core of our Constitution and our democracy."⁷

Mr. Reilly's removal of Ms. Widakuswara from her beat flagrantly violates the First Amendment. As you are no doubt aware, the protections afforded by the First Amendment are

³ Peter Baker, Twitter (Jan. 12, 2021) (citing Paul Farhi, *Voice of America reassigns White House reporter after she sought to question Mike Pompeo*, The Washington Post (Jan. 12, 2021, 1:30 PM ET) https://www.washingtonpost.com/lifestyle/media/voice-of-america-reporter-demoted-pompeo/2021/01/12/caa1b22c-5496-11eb-a08b-f1381ef3d207_story.html).

⁴ Michael R. Pompeo, *Reclaiming America's Voice for Freedom*, U.S. Dep't of State (Jan. 11, 2021), <https://www.state.gov/reclaiming-americas-voice-for-freedom/>.

⁵ *Id.*

⁶ Jessica Jerreat, *Pompeo Defends Changes at USAGM Under Trump Appointee*, VOA (Jan. 11, 2021), <https://www.voanews.com/usa/us-politics/pompeo-defends-changes-usagm-under-trump-appointee>.

⁷ Press Release, Meeks, McCaul Ask for Answers on Demotion of VOA Reporter Patsy Widakuswara (Jan. 12, 2021), <https://foreignaffairs.house.gov/2021/1/meeks-mccaul-ask-for-answers-on-demotion-of-voa-reporter-patsy-widakuswara>.

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granted to all journalists, including journalists at VOA, like Ms. Widakuswara. *See* Mem. Op. at 33, 56–57, 76, *Turner v. US Agency for Global Media*, No. 20-2885, ECF No. 45 (D.D.C. Nov. 20, 2020). As Chief Judge Howell made clear in *Turner* in ruling against Mr. Pack and enjoining his flagrant violations of the First Amendment: “That U.S. foreign policy with respect to U.S.-funded international broadcasting is centered on the promotion and exportation of First Amendment values only bolsters the inevitable conclusion that enforcement of VOA and network editors’ and journalists’ First Amendment rights is in the public interest.” *Id.* at 76. The First Amendment right to freedom of the press includes, and indeed requires, the ability for all journalists to ask questions of the subjects they cover, especially public officials. “In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors.” *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring). Mr. Reilly’s decision, as a government official, to retaliate against a journalist engaged in the act of reporting, is a flagrant violation of the First Amendment.

The First Amendment also “prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out,” *Hartman v. Moore*, 547 U.S. 250, 256 (2006), and bars discrimination “based upon the content of the journalist’s publications,” *Stevens v. N.Y. Racing Ass’n, Inc.*, 665 F. Supp. 164, 175 (E.D.N.Y. 1987) (citing *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977), or the viewpoint expressed by a speaker, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). “Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints.” *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). Mr. Pack’s espoused mission to “drain the swamp” and purge the “left-leaning” “Deep State” in combination with Mr. Reilly’s decision to reassign Ms. Widakuswara after she asked challenging questions of a Trump Administration official makes clear that the reassignment of Ms. Widakuswara was plainly retaliatory and content-based—an effort to punish a diligent and professional reporter based on a faulty presumption that she harbors a liberal bias. That violates the First Amendment.

The reassignment of Ms. Widakuswara also violates the Due Process Clause of the Fifth Amendment. A governmental actor may not strip a reporter like Ms. Widakuswara of the right to cover the White House without affording her due process of law. *Karem v. Trump*, 960 F.3d 656 (D.C. Cir. 2020). Yet you have removed her from her beat without basis—at best because of your unstated, amorphous, and utterly flawed conceptions of what professional reporting looks like—a common problem in this Administration. *See id.* at 666 (quoting *Sherrill v. Knight*, 569 F.2d 124, 130–31 (D.C. Cir. 1977)). But the United States Court of Appeals for the D.C. Circuit has established that “aggressive conduct” by dedicated reporters attempting to do their jobs has long been accepted and cannot justify retaliation. *Karem*, 960 F.3d at 667.

Removing Ms. Widakuswara from her beat also flagrantly violates the IBA. Congress requires VOA to adhere to “the highest professional standards of broadcast journalism,” 22 U.S.C. § 6202(a)(5), and to produce “news which is consistently reliable and authoritative, accurate, objective, and comprehensive,” *id.* § 6202(b)(1). Those standards require that no

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action be taken “that may undermine the journalistic credibility or independence of VOA journalists.” Voice of America Best Practices Guide, *Turner*, No. 20-2885, ECF No. 12-20 (D.D.C. Oct. 13, 2020). In order to maintain their credibility and independence, journalists must be allowed to ask questions of public officials and public figures and cannot be retaliated against or chilled merely for doing their job. It cannot be disputed that punishing a journalist for questioning high-ranking government officials is a flagrant violation of the “highest professional standards of broadcast journalism.” If anything, professional journalistic standards dictate the opposite. Editors must support vigilance in their reporters, not suppress it as you have today. Ms. Widakuswara was more than entitled to question Secretary Pompeo—the basic tenets of federal law and the VOA Charter required her to do so.

In addition to the untold damage you have done to VOA’s global reputation, which is critical to VOA’s ability to fulfil its mission to “win the attention and respect of its listeners,” 22 U.S.C. § 6202(c), your rash decision will hobble VOA as a news broadcaster for weeks, if not months, to come. VOA, like all outlets, has a limited number of White House credentialed reporters. To reassign one such White House reporter from the White House beat in the final days of a presidential administration, in the midst of an impeachment, and on the eve of an inauguration, directly undermines the ability of VOA to achieve its mission and accurately report the news as it occurs. In short: Removal of Ms. Widakuswara from her beat is indefensible. And on top of the damage you have done to VOA, your conduct has caused irreparable, actionable harm to Ms. Widakuswara. To remove Ms. Widakuswara from her post in the waning days of this administration for even one day—“an eon in today’s news business”—constitutes a sanction of the highest magnitude. *Karem*, 960 F.3d at 665. It must be rectified immediately.

Finally, we remind you that Judge Howell’s preliminary injunction in *Turner* remains in effect, and specifically enjoins Mr. Pack and all USAGM employees “from making or interfering with personnel decisions with respect to individual editorial or journalistic employees at Voice of America.” Order at 1, *Turner*, No. 20-2885, ECF No. 44 (D.D.C. Nov. 20, 2020). To the extent there is evidence that Mr. Pack or anyone at USAGM, played a role in Ms. Widakuswara’s reassignment, we will not hesitate to seek appropriate relief from the court.

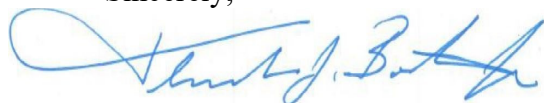
We recognize that Mr. Pack’s decision to install Mr. Reilly as director of VOA was meant to end-run around the *Turner* injunction and that you both remain determined to damage freedom of the press in this country and around the world—even on the eve of your expected removal from your positions. We, however, will not waver in our efforts to protect diligent, faithful journalists and public servants like Ms. Widakuswara who have given their lives to serving our nation as members of its news media and a critical check on government power. As Secretary Pompeo explained, your “censorship” is nothing more than “authoritarianism cloaked in moral righteousness.” We will uncloak it and ensure you are held responsible for your unlawful acts.

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We reserve all rights to seek relief for Ms. Widakuswara and reiterate our demand that you restore her to her beat immediately so that she may cover as planned the inauguration of President-Elect Joseph R. Biden, Jr. and the expected impeachment of his predecessor. Failure to do so exposes you to significant claims and will seriously damage VOA's ability to cover these historic events.

Sincerely,

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.