

LET'S COERCE ALL THE LAWYERS: REVOCATION OF ATTORNEY SECURITY CLEARANCES AS A JAWBONE

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ABSTRACT

In an effort to manipulate and control lawyers' representation of clients and causes at odds with the Trump administration, the Executive Branch has revoked attorneys' security clearances. In early February 2025, President Trump instructed intelligence agencies to revoke the security clearances of any employees of law firm Covington & Burling LLP, the firm assisting former Special Counsel Jack Smith, who spearheaded criminal charges against then-former President Trump. This revocation set off a series of executive orders, memoranda, and intensive dealmaking between the Trump administration and cornered law firms across the country: continue to represent the enemies of the administration and risk losing critical information needed to represent their clients' interests, or capitulate at the expense of those very clients. This campaign against lawyers is a prime example of 'jawboning,' where government officials coerce or intimidate private actors, here being lawyers and law firms, via indirect methods of speech suppression and a trump on legal advocacy that would not be legal if done directly. Jawboning stands as a threat to a very fundamental principle of American democracy: the freedom to provide and seek independent legal representation. The First Amendment has long-protected advocates in their representation of clients, namely utilizing the right of speech, petition, and association to do so. These fundamental protections

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have created the foundation to the civil rights system, the rule of law, and critically, government accountability. Despite jawboning's antithetical nature to our democratic values, how can court systems analyze jawbone claims?

This Essay seeks to answer that question by reviewing the Executive actions against lawyers and their chilling impact on speech protections. This Essay will analyze and evaluate the First Amendment foundations that safeguard legal advocacy and the right to counsel in the national security context. Finally, through a review of the security revocation of Mark Zaid and the Supreme Court's analysis of jawboning in *National Rifle Association v. Vullo*, this Essay will make the case for a robust jawboning doctrine, one that is especially needed when First Amendment and democratic values are so undermined.

INTRODUCTION

"The first thing we do, let's kill all the lawyers."¹ Judge Beryl Howell's decision striking down an executive order targeting the law firm Perkins Coie LLP opens with this line to a Shakespearean villain who is intent on becoming king in *Henry VI*.² The line is a recognition that "[e]liminating lawyers as the guardians of the rule of law removes a major impediment to the path to more power."³ The second Trump Administration appears to have adopted a similar strategy by sending a message to lawyers that they will be punished if they advocate for causes or clients the President disfavors.

The Executive Branch has undertaken a campaign targeting lawyers who have advocated for causes or clients disfavored by the President, using sanctions such as the summary revocation of security clearances. Notably, through a series of executive orders in early 2025, the Trump Administration rescinded the security clearance of numerous lawyers pursuant to a policy apparently targeting the perceived viewpoints of attorneys and their clients. This included national security attorney Mark

1. William Shakespeare, *Henry VI*, Part 2, act 4, sc. 2, l. 75.

2. See *Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105, 119 (D.D.C. 2025), *appeal docketed*, No. 25-5241 (D.C. Cir. July 2, 2025).

3. *Id.*; see also *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 371 (1985) (commenting on the same line and explaining that "Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.").

Zaid.

These actions have occurred outside established procedures and without individualized or security-based assessments or any invocation of legitimate national security justifications. The revocation of attorneys' security clearances in retaliation for protected advocacy poses particularly acute challenges in the national security context where security clearance is often a prerequisite for representing whistleblowers and pursuing legal redress for governmental abuses. By chilling legitimate advocacy and deterring lawyers from representing disfavored clients, such actions threaten individual rights, the functioning of the adversarial system, and impede crucial whistleblowing that keeps government accountable to the People.

The freedoms to provide and seek independent legal representation have long been recognized as fundamental pillars of American democracy. These rights—safeguarded by the First Amendment's guarantees of speech, petition, and association—are essential to ensuring a robust system of civil rights, the rule of law, and government accountability. The role of attorneys as advocates—especially in matters involving litigation against the government—serves as a critical check on government power in facilitating the enforcement of constitutional rights. Well-established precedent holds that state action suppressing, punishing, or deterring lawyers based on the positions they advance through legal advocacy poses grave risks to both judicial independence, and the broader constitutional order.⁴ Recent developments have brought renewed attention to these principles.

This Essay examines the Trump Administration's mass revocation of attorneys' security clearances, which courts have determined to be unlawful retaliation and viewpoint discrimination in violation of the First Amendment. More significantly, this campaign serves as a textbook case of 'jawboning,' in which government officials coerce or intimidate private actors—in this case, attorneys and law firms—through indirect means to suppress speech or legal advocacy that would be impermissible if done directly. The unprecedented scale and publicity of these revocations send a chilling message to all lawyers, not just those implicated in the executive orders: representing clients at odds with the administration risks catastrophic consequences. The resulting coercive effect is evidenced by some law firms' capitulation to Administration demands and the growing

4. See *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 547 (2001).

reluctance among some attorneys to undertake representations disfavored by the President.

The Essay proceeds in four parts. In Part I, the Essay reviews recent Executive actions against lawyers and their chilling impact. Part II analyzes the First Amendment foundations that safeguard legal advocacy and the right to counsel in the national security context. Part III discusses the application of First Amendment retaliation doctrine to the Administration's revocation of Mr. Zaid's security clearance in the recent case *Zaid v. Executive Office of the President*.⁵ Part IV examines the campaign against lawyers as a species of 'jawboning,' which the Supreme Court in *National Rifle Association v. Vullo* recently reaffirmed, that violates the First Amendment. Building on Professor Genevieve Lakier's extensive analysis of *Vullo* and her suggestion that courts should recognize a wider array of jawboning campaigns to violate the First Amendment, this Essay ultimately contends that *Zaid* presents an effective case study for how to analyze such jawbone claims. The need for a robust jawboning doctrine is especially acute in the national security whistleblower context given the transcendent First Amendment values at stake when a whistleblower lawyer's security clearance is terminated because of protected speech. Permitting such governmental overreach would imperil core democratic principles by allowing the Executive to undermine legal dissent and the structures fundamental to our legal scheme of constitutional accountability.

I. ATTACKS ON LAWYERS IN TRUMP 2.0

In the opening months of the second Trump Administration, the machinery of government has been deployed to punish and suppress the

5. *Zaid v. Exec. Off. of the President*, No. CV 25-01365-AHA, 2025 WL 3724884, at *2 (D.D.C. Dec. 23, 2025), *appeal docketed*, No. 26-5009 (D.C. Cir. Jan. 13, 2026).

First Amendment rights of the free press,⁶ universities,⁷ civil society,⁸ and lawyers.⁹ The scale of the government's assault on the free expression that undergirds our democratic republic has not been paced since the Second Red Scare.¹⁰ Some of the most erosive attacks are those against lawyers

6. See *Associated Press v. Budowich*, 780 F. Supp. 3d 32, 58 (D.D.C. 2025) (granting preliminary injunction to Associated Press against the Trump administration's banning of Associated Press from White House press events for refusing to refer to the Gulf of Mexico as the "Gulf of America"), *appeal docketed*, No. 25-5109 (D.C. Cir. Apr. 10, 2025); *Media Matters for Am. v. Fed. Trade Comm'n*, No. CV 25-1959-SLS, 2025 WL 2378009, at *15–22 (D.D.C. Aug. 15, 2025) (granting a preliminary injunction to Media Matters on a retaliation claim because FTC's investigatory actions into Media Matters was likely unlawful retaliation for Media Matters' reporting on Elon Musk and X), *appeal docketed*, No. 25-5302 (D.C. Cir. Aug. 19, 2025); David Folkenflik, *Paramount Agrees to Pay \$16 Million to Settle Trump's CBS Lawsuit*, NPR (July 2, 2025), <https://www.npr.org/2025/07/02/nx-s1-5290171/trump-lawsuit-paramount-cbs-60-minutes-kamala-harris> [<https://perma.cc/YK86-PR99>]; Ted Anthony and Kevin Frekin, *CPB Says It Is Shutting Down After Being Defunded by Congress, Targeted by Trump*, PBS (Aug. 1, 2025), <https://www.pbs.org/newshour/politics/cpb-says-it-is-shutting-down-after-being-defunded-by-congress-targeted-by-trump> [<https://perma.cc/63PM-VYYE>]; Perry Stein & Jeremy Roebuc, *FBI Executes Search Warrant at Washington Post Reporter's Home*, WASH. POST (Jan. 14, 2026), <https://www.washingtonpost.com/national-security/2026/01/14/washington-post-reporter-search/> [<https://perma.cc/G8DR-28ZR>]; Mike Abrams, *Why The New York Times Sued the Pentagon*, N.Y. TIMES (Jan. 24, 2026), <https://www.nytimes.com/2026/01/24/insider/new-york-times-pentagon-first-amendment-lawsuit.html> [<https://perma.cc/V5LJ-742A>].

7. Elissa Nadworny, *All the Ways the Trump Administration Is Going After Colleges and Universities*, NPR (June 10, 2025, at 05:00 ET), <https://www.npr.org/2025/06/10/nx-s1-5424450/ways-trump-administration-is-going-after-colleges> [<https://perma.cc/L3FZ-AXDY>]. See generally *President & Fellows of Harv. Coll. v. U.S. Dep't of Health and Hum. Servs.*, 798 F. Supp. 3d 77 (D. Mass. 2025) (challenge to federal government's withholding of billions in research funding in retaliation for Harvard University's refusal to vet course offerings for "ideological diversity"); *President & Fellows of Harv. Coll. v. U.S. Dep't of Homeland Sec.*, 788 F. Supp. 3d 182 (D. Mass. 2025) (challenge to DHS's revocation of Harvard's Student Exchange Visitor Program, which would bar international students from entering the United States to study at Harvard, as retaliation for Harvard's exercise of academic freedom).

8. Haberman et al., *Trump Directs Justice Department to Investigate ActBlue, Democrats' Cash Engine*, N.Y. TIMES (Apr. 24, 2025), <https://www.nytimes.com/2025/04/24/us/politics/trump-actblue-democrats.html> [<https://perma.cc/FZL6-8UKK>]; Katie Rogers & Zolan Kanno-Youngs, *White House Plans Broad Crackdown on Liberal Groups*, N.Y. TIMES (Sep. 15, 2025), <https://www.nytimes.com/2025/09/15/us/politics/jd-vance-charlie-kirk-show.html> [<https://perma.cc/5XTK-TXVX>].

9. *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 198 (D. Mass. 2025) (documenting examples of President Trump's retribution for speech he disfavors).

10. Genevieve Lakier, *The Trump Administration's War on Free Speech, the McCarthy Analogy, and the Limits of the First Amendment—Part One*, BALKINIZATION (July 5, 2025), <https://balkin.blogspot.com/2025/07/the-trump-administrations-war-on-free.html> [<https://perma.cc/SY4L-JALT>] (explaining that during the Second Red Scare—also known as the McCarthy era—the government demanded loyalty oaths to retain government employment, engaged in retaliatory investigations, speech-based deportations, and mass firing of federal employees); Quinta Jurecic, *The Third Red Scare*, THE ATLANTIC (Nov. 10, 2025), www.theatlantic.com/ideas/2025/11/first-amendment-trump-free-speech-red-scare/684866/

representing causes and clients disfavored by the government.

During his 2024 presidential campaign, then-candidate Donald Trump threatened his political opponents with retribution, warning that “WHEN I WIN, those people that CHEATED will be prosecuted to the fullest extent of the Law,” and explaining that “this legal exposure extends to Lawyers.”¹¹ President Trump renewed those threats after his inauguration.¹² He made good on them beginning in early February 2025 when he directed intelligence agencies to revoke the security clearances of any employees of the law firm Covington & Burling LLP “who assisted former Special Counsel Jack Smith” and as Special Counsel, brought criminal charges against then-former President Trump.¹³

Since then, the Trump Administration has continued to deploy the power of the Executive against lawyers whose views, or whose clients’ views, it disfavors¹⁴ through executive orders, memoranda, and dealmaking

[<https://perma.cc/M59Q-R2LE>].

11. *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 784 F. Supp. 3d 127, 136–37 (D.D.C. 2025) (quoting Michael Goldberg et al., *Trump Threatens Prison Sentences for Those Who ‘Cheat’ in the Election if He Wins*, PBS NEWS (Sep. 8, 2024)).

12. “We have a lot of law firms that we’re going to be going after, because they were very dishonest people.” *Id.* (quoting Alex Woodward, *Trump Confirms Retribution Campaign Against Law Firms That Clash with His Agenda*, THE INDEP. (Mar. 9, 2025, at 21:11 GMT), <https://www.independent.co.uk/news/world/americas/us-politics/trump-law-firms-executive-order-interview-b2711843.html> [<https://perma.cc/G542-V6GJ>]).

13. *Wilmer Cutler Pickering Hale & Dorr LLP*, 784 F. Supp. 3d at 137; EXEC. OFF. OF PRESIDENT DONALD J. TRUMP, SUSPENSION OF SECURITY CLEARANCES AND EVALUATION OF GOVERNMENT CONTRACTS (Feb. 25, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/suspension-of-security-clearances-and-evaluation-of-government-contracts/> [<https://perma.cc/F3DG-7UUZ>].

14. *Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 105, 164 (D.D.C. 2025).

Viewed in conjunction with the facts and context of the instant case, the Covington Memorandum, [and executive orders targeting Jenner Block and WilmerHale] support the plaintiff’s description of a ‘broader campaign,’ of President Trump using the power of the presidency to target individual lawyers and law firms associated with them based on personal dislike of their legal work—in other words, for retribution.

Id. (internal citations omitted); Devlin Barrett & Jonah E. Bromwich, *Prosecutors Said to Pursue New Investigation of Letitia James*, N.Y. TIMES (Jan. 8, 2026), <https://www.nytimes.com/2026/01/08/us/politics/letitia-james-trump-justice-department.html> [<https://perma.cc/92L9-NHV6>] (detailing federal investigations into Letitia James, who as New York Attorney General pursued legal actions against Mr. Trump); Maya Yang, *US House Panel Drops Inquiry into Northwestern’s Law School Clinics*, THE GUARDIAN (Apr. 11, 2025), <https://www.theguardian.com/us-news/2025/apr/11/northwestern-us-house-committee-investigation> [<https://perma.cc/G3G9-KA5H>] (documenting the United States House Education and Workforce Committee’s threats to Northwestern Law’s Community Justice and Civil Rights Clinic directed by

with pressured law firms. Following his attack on Covington, President Trump issued a series of executive orders targeting five law firms because of those firms' prior legal advocacy, including defending the integrity of the 2020 election, challenges to the Trump Administration's policies, advocacy on behalf of LGBTQ+ persons and immigrants, and involvement in investigations into or prosecutions of then-former President Trump.¹⁵ The executive orders direct Executive Branch agencies and officials to: (1) revoke security clearances of individuals at targeted law firms; (2) require government contractors to disclose any business they do with the targeted firms and terminate any contracts for which the targeted firms have been hired to perform any service; (3) limit targeted firms' employees' access to government buildings, including courtrooms; and (4) refrain from hiring employees of targeted firms.¹⁶ In addition to targeting law firms, the Executive Branch has singled out specific attorneys who have taken on legal issues adverse or personally detrimental to President Trump. For example, on March 22, 2025, the White House released a Presidential Memorandum (the Presidential Memorandum) rescinding the security clearances of six attorneys, including national security litigator and whistleblower advisory Mark Zaid.¹⁷

Shelia Bedi). *See generally* Sonia Mittal, *Executive Branch Attacks on January 6 Prosecutors: A Notable Case of Democratic Backsliding*, 78 STAN. L. REV. ONLINE 52 (2025) (describing retaliation against attorneys who prosecuted those responsible for the January 6, 2021, attacks on the Capitol).

15. *See* Addressing Risks from Perkins Coie LLP, Exec. Order No. 14230, 90 Fed. Reg. 11781 (Mar. 11, 2025); Addressing Risks from Paul Weiss, Exec. Order No. 14237, 90 Fed. Reg. 13039 (Mar. 20, 2025) (revoked by Addressing Remedial Action by Paul Weiss, Exec. Order No. 14244 § 1, 90 Fed. Reg. 13685 (Mar. 21, 2025)); Addressing Risks from Jenner & Block, Exec. Order No. 14246, 90 Fed. Reg. 13997 (Mar. 28, 2025); Addressing Risks from WilmerHale, Exec. Order No. 14250, 90 Fed. Reg. 14549 (Apr. 3, 2025); Addressing Risks from Susman Godfrey, Exec. Order No. 14263, 90 Fed. Reg. 15615 (Apr. 15, 2025). *See also* EXEC. OFF. OF PRESIDENT DONALD J. TRUMP, MEMORANDUM FOR THE ATT'Y GEN. AND THE SEC'Y OF HOMELAND SEC. ON PREVENTING ABUSES OF THE LEGAL SYS. AND THE FED. COURT (Mar. 22, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/> [<https://perma.cc/6E3S-WU75>] (targeting immigration attorneys).

16. *See, e.g.*, *Susman Godfrey LLP v. Exec. Off. of the President*, 789 F. Supp. 3d 15, 29–32 (D.D.C. 2025), *appeal docketed*, No. 25-5310 (D.C. Cir. Aug. 26, 2025); *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76 (D.D.C. 2025), *appeal docketed*, No. 25-5265 (D.C. Cir. July 22, 2025).

17. EXEC. OFF. OF PRESIDENT DONALD J. TRUMP, MEMORANDUM FOR THE HEADS OF EXEC. DEP'TS AND AGENCIES ON RESCINDING SEC. CLEARANCES AND ACCESS TO CLASSIFIED INFO. FROM SPECIFIED INDIVIDUALS (Mar. 22, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/rescinding-security-clearances-and-access-to-classified-information-from-specified-individuals/> [<https://perma.cc/K5Z8-DGGH>] [hereinafter Presidential Memorandum].

The Executive Branch's revocation of lawyers' security clearances in retaliation for their prior legal advocacy is particularly damaging in the whistleblower context. A security clearance is often a prerequisite to a lawyer's ability to represent a whistleblower.¹⁸ To represent whistleblowers' interests, whistleblower attorneys must access, review, and discuss classified material.¹⁹ Revoking a lawyer's clearance impedes their ability to advocate on behalf of those clients. Although lawful whistleblowers possess statutory protections,²⁰ whistleblowers cannot fully realize those protections absent access to qualified counsel. Lawyers help whistleblowers navigate the complex and intersecting webs of statutory, criminal, and administrative laws that regulate disclosure.²¹ Such legal guidance enables national security personnel to determine what information they may share, to whom, and how they may lawfully do so.²² Yet such qualified counsel are not readily available. For example, Central Intelligence Agency (CIA) employees whose identities are classified require government approval to retain an attorney, and they can only retain attorneys holding a CIA-granted security clearance.²³ The procedures for granting and withdrawing attorneys' security clearances are extensive, and for good reason: limiting the pool of cleared attorneys impedes national security whistleblowers from lawfully revealing wrongdoing and from vindicating their legal rights when they are retaliated against for doing so.

18. See *Zaid v. Exec. Off. of the President*, No. CV 25-01365-AHA, 2025 WL 3724884, at *12 (D.D.C. Dec. 23, 2025); *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76, 91 (D.D.C. 2025); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 784 F. Supp. 3d 127, 156 (D.D.C. 2025).

19. *Zaid*, 2025 WL 3724884, at *2.

20. See, e.g., 50 U.S.C. § 3341(j) (prohibiting security clearance retaliation for lawful employee reporting of waste, fraud, and abuse).

21. See Mary-Rose Papandrea, *Leaker Traitor Whistleblower Spy: National Security Leaks and the First Amendment*, 94 B.U. L. REV. 449, 490 (2014).

22. See *Zaid Decl.* at ¶ 44, *Zaid v. Exec. Off. of the President*, No. 25-cv-1365 (D.D.C. May 21, 2025), ECF No. 9-2 [hereinafter *Zaid Decl.*] (attesting to the importance of legal counsel to clients holding classified meetings with congressional oversight committees).

23. See, e.g., CENT. INTEL. AGENCY, SECURITY GUIDANCE FOR REPRESENTATIVES (2009), <https://sgp.fas.org/othergov/intel/rep.pdf> [<https://perma.cc/XN32-L9AM>] (rules and non-disclosure agreements for attorneys whom the CIA has granted clearances to know an employee's classified association with the CIA); *Zaid Decl.* at ¶ 41.

II. FIRST AMENDMENT PROTECTIONS FOR LEGAL ADVOCACY IN THE NATIONAL SECURITY CONTEXT

Well-established First Amendment precedent prohibits the government from suppressing legal advocacy based on its viewpoint. This same principle applies fully for legal advocacy in the national security context.

A. The First Amendment Fully Protects an Attorney's Advocacy

At the heart of the American justice system are the intertwined rights of clients to choose their counsel and lawyers to advocate for their clients' interests. The right to counsel, the Supreme Court has explained, "is the foundation for our adversary system."²⁴ The Court has described the right as so central to republican government that it is implied therein, and "cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions."²⁵ Plainly, protecting civil and political institutions—and all civil and political rights—requires the availability of independent counsel.

The First Amendment rights of speech, association, and petition thus protect the pursuit of justice and the use of counsel in that pursuit.²⁶ These separate and distinct First Amendment rights overlap to safeguard both a client's right to seek legal counsel and an attorney's right to provide that counsel and advocate on that client's behalf.²⁷ In *Legal Services Corporation v. Velazquez*, the Supreme Court explained that the Speech Clause protects lawyers' freedom to advise their clients and to advocate on their behalf.²⁸ *NAACP v. Button* recognized that the First Amendment right of association similarly safeguards the ability of lawyers and clients to

24. *Martinez v. Ryan*, 566 U.S. 1, 12 (2012).

25. *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937).

26. *See United Mine Workers of Am. v. Ill. State Bar Ass'n.*, 389 U.S. 217, 221–22 (1967) (holding "that the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments" protect a union's "right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights."); *Denius v. Dunlap*, 209 F.3d 944, 953 (7th Cir. 2000) (holding that the "right to hire and consult an attorney" is protected by the First Amendment).

27. *See Thomas v. Collins*, 323 U.S. 516, 530 (1945) (recognizing that the rights of speech, press, assembly, and petition, while "not identical," are "cognate rights").

28. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 544 (2001); *see also Jacobs v. Schiffer*, 204 F.3d 259, 266 (D.C. Cir. 2000) (emphasizing that in the whistleblower context a government employee has a particularly strong First Amendment "interest in communicating with his attorney").

“associat[e] for litigation.”²⁹ Finally, in *Borough of Duryea v. Guarnieri* the Supreme Court explained that the “Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.”³⁰

These safeguards for legal advocacy are key to our system of constitutional checks and balances, where an “informed, independent judiciary presumes an informed, independent bar.”³¹ Indeed, the existence of an “independent bar,” able to pursue litigation without fear or favor is a foundation upon which all our civil rights depend.³² As Judge Howell emphasized recently—in finding that retaliatory threats in one of the law firm executive orders to remove lawyers’ security clearances violated the First Amendment—the independence of lawyers is key “to ensuring the American judicial system’s fair and impartial administration of justice.”³³

This principle has been “recognized in this country since its founding era,”³⁴ and these rights are so fundamental that they inhere in the “very idea of a government, republican in form.”³⁵ Efforts to interfere with a client’s right to select a lawyer and a lawyer’s right to advocate for clients undermine the administration of justice and strike at the very foundation of the rule of law.

29. 371 U.S. 415, 431–33 (1963) (rejecting limits on advising individuals “to seek the assistance of particular attorneys”); *see also* NAACP v. Ala. ex rel. Patterson, 357 U.S. 449, 460–61 (1958) (“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association . . .”).

30. 564 U.S. 379, 387 (2011); *see also* BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524–25 (2002) (explaining that freedom to petition extends to all departments of government, including redress before courts).

31. *See Legal Servs. Corp.*, 531 U.S. at 545.

32. *See* Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J. 877, 896 (1963) (explaining the essential role of an independent bar in “implementing the principles of free expression”).

33. *Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 105, 119 (D.D.C. 2025); *see also* *Jenner & Block LLP v. U.S. Dep’t of Just.*, 784 F. Supp. 3d 76, 98 (D.D.C. 2025) (“[L]imitations on lawyers’ speech must be examined with care, as such limitations threaten not only the lawyers and their clients but also the ability of a coequal branch of government to function.”); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 784 F. Supp. 3d 127, 156 (D.D.C. 2025) (quoting *Borough of Duryea*, 564 U.S. 379, 388 (2011)) (explaining that the “right to petition is ‘integral to the democratic process’”).

34. *Perkins Coie LLP*, 783 F. Supp. 3d at 119.

35. *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937) (the right to petition “cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions.”).

B. The First Amendment Bars Retaliatory and Viewpoint-Based Restrictions on Lawyers' Advocacy for Their Clients

The First Amendment prohibits the government from suppressing lawyers' speech, association, and petitioning activities based on the viewpoints they express through those protected activities.³⁶ It equally prohibits the government from retaliating against a lawyer for engaging in constitutionally protected advocacy.³⁷

The government may not regulate lawful petitioning based on “the message it conveys.”³⁸ In *Velazquez*, the Supreme Court struck down a law that limited the arguments that government-funded attorneys could make, declaring unconstitutional the attempt “to exclude from litigation those arguments and theories Congress finds unacceptable but which by their nature are within the province of the courts to consider.”³⁹ Restrictions on the subject matter of litigation to “insulate” the government’s view of the law from legal challenge are a potent form of viewpoint discrimination.⁴⁰ Such interference threatens the primary “lawful means to achieve legitimate political ends”—which in many cases “may well be the sole practicable avenue open . . . to petition for redress of grievances.”⁴¹ Nor may the government implement a system of prior restraint on petitioning activity to suppress views it disfavors.⁴²

Plainly, the First Amendment prohibits the government from “confin[ing] litigants and their attorneys” in ways that prevent them from pursuing legitimate challenges to government action—even if those challenges are “inimical to the Government’s own interest.”⁴³ Such viewpoint discrimination gives “one side of a debatable public question an advantage in expressing its views;” which “is antithetical to a free society”

36. *Rosenberger v. Rector*, 515 U.S. 819, 828 (1995); *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 187 (2024).

37. *Lozman v. City of Riviera Beach*, 585 U.S. 87, 90 (2018); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

38. *Rosenberger*, 515 U.S. at 828.

39. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 535 (2001).

40. *Id.* at 548.

41. *NAACP v. Button*, 371 U.S. 415, 430 (1963).

42. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (prior restraints on expression bear “a heavy presumption against” their constitutional validity); *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (finding prior restraint on publishing the Pentagon Papers was unconstitutional).

43. *Velazquez*, 531 U.S. at 548–49.

and presumptively unconstitutional.⁴⁴

The First Amendment also prohibits the government from “subjecting individuals to retaliatory actions after the fact for engaging in protected speech.”⁴⁵ Retaliation to effectuate viewpoint discrimination is “uniquely harmful to a free and democratic society.”⁴⁶ Denying a benefit “on the basis of ‘constitutionally protected speech or associations’” is unconstitutional retaliation.⁴⁷ These First Amendment protections apply “even though a person has no ‘right’ to a valuable government benefit,” including a security clearance.⁴⁸ The government may not deny a benefit, even a discretionary one, for impermissible reasons—including retaliatory or viewpoint-discriminatory ones. “[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to produce a result which it could not command directly.”⁴⁹

C. These Longstanding First Amendment Protections Apply to Summary Revocations of the Security Clearances of a Whistleblower Attorney

Traditional legal principles barring retaliatory, viewpoint-based limitations on expression extend to judicial review of the Executive’s process-devoid revocation of security clearances that restricts a lawyer’s ability to advocate for whistleblowers in the national security context. Indeed, careful judicial enforcement of First Amendment rights is particularly needed in this context. Whistleblowers, with assistance from counsel, provide a key restraint on Executive overreach and abuse in the opaque realm of national security. For this very reason, the Executive has palpable incentives to engage in viewpoint discrimination and retaliation against attorneys who advocate for such whistleblowers.

As Justice Douglas noted over fifty years ago, the “dominant purpose

44. *Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1141 (D.C. Cir. 2023) (quoting *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 785 (1978)); *see also Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 188 (2024).

45. *Perkins Coie LLP v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 105, 150 (D.D.C. 2025).

46. *Id.* at 151 (quoting *Vullo*, 602 U.S. at 187).

47. *Id.* (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)).

48. *See Perry*, 408 U.S. at 597.

49. *Id.* (quoting *Speiser v. Randall*, 357 U.S. 513 (1958)); *see also Associated Press v. Budowich*, 780 F. Supp. 3d. 32, 55 (D.D.C. 2025).

of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information.”⁵⁰ In a national security environment where the classification system is bloated and abused, lawful whistleblowing is an essential tool to combat suppression.

The Executive’s broad discretion over the classification of information “breeds rampant overclassification” that impedes meaningful public oversight.⁵¹ Dean Erwin Griswold, who served as President Nixon’s Solicitor General, and represented the government in *New York Times Co. v. United States*, later acknowledged that “there is massive overclassification and that the principal concern of the classifiers is not with national security, but rather with governmental embarrassment of one sort or another.”⁵² Multiple studies have similarly concluded that the government routinely classifies information whose disclosure would be entirely harmless; anywhere between 50% and 90% of classification may be improper.⁵³

More than 50 years ago, the “proclivity for overclassification” so concerned Congress that it mandated *de novo* judicial review of classification decisions under the Freedom of Information Act—over the veto of President Ford—to guard “against the potential for mischief and criminal activity under the cloak of secrecy” when the government asserts national security as the basis to keep information from the public.⁵⁴

50. *N.Y. Times Co. v. United States*, 403 U.S. 713, 723–24 (1971) (Douglas, J., concurring).

51. Heidi Kitrosser, *Classified Information Leaks and Free Speech*, 2008 U. ILL. L. REV. 881, 885 (2008); see also Papandrea, *supra* note 21, at 465 (underscoring how tight Executive control over national security information makes oversight difficult).

52. Erwin N. Griswold, *Secrets Not Worth Keeping*, WASH. POST (Feb. 15, 1989), <https://www.washingtonpost.com/archive/opinions/1989/02/15/secrets-not-worth-keeping/a115a154-4c6f-41fd-816a-112dd9908115/> [<https://perma.cc/L5NB-UE5V>].

53. See Elizabeth Goitein, *The Original Sin Is We Classify Too Much*, BRENNAN CTR. FOR JUST. (Jan. 26, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/original-sin-we-classify-too-much> [<https://perma.cc/JUN9-KU84>]; *Examining the Costs of Overclassification on Transparency and Security: Hearing Before Comm. on Oversight and Gov’t Reform*, 114TH CONG. 4 (2016) (statement of Rep. Jason Chaffetz referring to estimates that between 50% and 90% of classified material is not properly designated); *Too Many Secrets: Overclassification as a Barrier to Critical Info. Sharing, Hearing Before the Subcomm. on Nat’l Sec., Emerging Threats, and Int’l Relations of the Comm. on Gov’t Reform*, 108TH CONG. 82–83 (2004), <http://www.gpo.gov/fdsys/pkg/CHRG-108hhrg98291/html/CHRG-108hhrg98291.htm> [<https://perma.cc/F7MK-WCZV>] (statement of J.W. Leonard, Director, Information Security Oversight Office, National Archives and Records Administration); see also *id.* (statement of Rep. C. Shays, estimating that between 10% and 90% of classified information should never have been classified).

54. *Ray v. Turner*, 587 F.2d 1187, 1209 (D.C. Cir. 1978) (Wright, C.J., concurring) (quoting SOURCE BOOK: LEGISLATIVE HISTORY, TEXTS AND OTHER DOCUMENTS 460–61 (Comm. Print 1975)).

Instances of classification made in excess of authority to conceal unlawful behavior or prevent embarrassment have been well-documented in our history.⁵⁵ Equally well-documented are past examples of public debate being thwarted by the classification of information vital to those debates.⁵⁶

Whistleblowing provides a lawful and critical check against such abuse. Government agents subject to confidentiality obligations that come with a security clearance will often be the only ones who know when abuse occurs.⁵⁷ Whistleblowing and legal counsel for national security whistleblowers thus serve an essential function. As Justice Stewart observed in the Pentagon Papers case, in the arenas of national defense and international affairs an “informed and critical public opinion” may be “the only effective restraint upon executive policy and power.”⁵⁸ Suppressing legal advocacy for national security whistleblowers has significant consequences for the rule of law and for the courts’ role in guarding against Executive overreach.

Given the transcendent First Amendment values at stake when the government terminates a whistleblower lawyer’s security clearance, the Constitution imposes substantive and procedural safeguards. The government must deploy “sensitive tools,” with enough process to guard against official abuses and to avoid deterring individuals from exercising their First Amendment rights.⁵⁹ The First Amendment prohibits regimes that grant any official “unbridled discretion” to infringe First Amendment rights,⁶⁰ not merely because of “the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.”⁶¹

55. See, e.g., *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 139–40 (1951) (Attorney General exceeded authority to make classification designations); *ACLU v. Off. of Dir. of Nat’l Intel.*, No. 10-cv-4419-RJS, 2011 WL 5563520, at *5–6, *12 (S.D.N.Y. Nov. 15, 2011) (explaining that classification to conceal embarrassment is improper).

56. See, e.g., *N.Y. Times Co. v. U.S. Dep’t of Just.*, 756 F.3d 100, 104–08 (2d Cir. 2014) (surveying government efforts to shield the legal justifications relied upon in carrying out targeted killing).

57. See Seth F. Kreimer, *The Freedom of Information Act and the Ecology of Transparency*, 10 U. PA. J. CONST. L. 1011, 1037–45 (2008); see also *O’Donnell v. Yanchulis*, 875 F.2d 1059, 1062 (3d Cir. 1989) (noting the “significant interest in encouraging legitimate whistleblowing” where information about alleged illicit activity is not otherwise available to the public).

58. *N.Y. Times Co. v. United States*, 403 U.S. 713, 728 (1971) (Stewart, J., concurring).

59. See *Speiser v. Randall*, 357 U.S. 513, 525 (1958).

60. *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 770 (1988).

61. *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940).

To be sure, the President has significant discretion to revoke clearances for national security reasons after an individualized expert review of a person's fitness for such a clearance.⁶² But even in the national security context where some consideration of speech to keep classified information secure may be necessary, that discretion is subject to First Amendment limitations.⁶³ Nowhere else, perhaps, is a blunter application of decision-making procedures permissible under the First Amendment.⁶⁴ The required procedures are the same ones the Executive Branch typically uses in this context: notice of the potential revocation, a right to respond, a right to representation by counsel, a statement of the reasons for the revocation, and a right to appeal.⁶⁵

Where some knowable process is followed and security experts conduct an individualized review, the D.C. Circuit has held that courts should avoid second-guessing that authority: no justiciable First Amendment retaliation claim exists.⁶⁶ But where the Executive adopts a retaliatory policy and revokes clearances without any individualized review, it violates the procedural protections required by the Constitution and is subject to judicial review.⁶⁷ To hold otherwise would be to permit a licensing scheme, akin to a prior restraint, over the core First Amendment freedoms of speech, association, and petition.⁶⁸

The President's outsized authority over security clearances does not extend unbridled discretion to publicly punish individuals for protected First Amendment activity by summarily revoking security clearances. Even when the government invokes national security as the basis for its decisions,

62. Lee v. Garland, 120 F.4th 880, 891 (D.C. Cir. 2024).

63. Jenner & Block LLP v. U.S. Dep't of Just., 784 F. Supp. 3d 76, 94 (D.D.C. 2025); Zaid v. Exec. Off. of the President, No. CV 25-01365-AHA, 2025 WL 3724884, at *3-4 (D.D.C. Dec. 23, 2025).

64. *Id.*

65. See Perkins Coie LLP v. U.S. Dep't of Just., 783 F. Supp. 3d 105, 158 (D.D.C. 2025) (summarizing undisputed explanation of revocation process by Plaintiff's expert).

66. Lee, 120 F.4th at 893.

67. See Henry P. Monaghan, *First Amendment "Due Process"*, 83 HARV. L. REV. 518, 519 (1970) ("Like the substantive rules themselves, insensitive procedures can 'chill' the right of free expression. Accordingly, wherever First Amendment claims are involved, sensitive procedural devices are necessary.").

68. See Speiser v. Randall, 357 U.S. 513, 526 (1958) (finding that "a constitutional prohibition cannot be transgressed indirectly" by deploying blunt procedural mechanisms); see also *Am. Airways Charters, Inc. v. Regan*, 746 F.2d 865, 867 (D.C. Cir. 1984) ("[T]he controlling legislation, were we to read it as contemplating a government license prior to obtaining counsel, would trench on a right of constitutional dimension.").

the Supreme Court has declined to embrace notions of national security so broad as to result in complete judicial abdication, including in situations raising serious national security concerns. As the Court instructed in *Holder v. Humanitarian Law Project*:

Our precedents, old and new, make clear that concerns of national security and foreign relations do not warrant abdication of the judicial role. We do not defer to the Government's reading of the First Amendment, even when such interests are at stake.⁶⁹

The First Amendment prohibits "speech manipulation by the government, even in an arguably national security-related setting."⁷⁰

III. THE TRUMP ADMINISTRATION'S MASS REVOCATION OF SECURITY CLEARANCES IS UNLAWFUL RETALIATION IN VIOLATION OF THE FIRST AMENDMENT

Courts most commonly assess the revocations of attorney security clearances pursuant to the Trump Administration's executive orders targeting law firms and attorneys under the First Amendment's prohibition on retaliation for protected speech. The revocation of Mr. Zaid's security clearance falls under this slew of rash, retaliatory actions by the Trump Administration against other disfavored individuals and entities. Every district court to consider these executive orders targeting law firms has determined that the security clearance revocations violated the First Amendment by retaliating against protected speech.⁷¹

69. 561 U.S. 1, 34 (2010); *see also* N.Y. Times Co. v. United States, 403 U.S. 713, 719 (1971) (Black, J., concurring) (explaining that national security interests should not be invoked to abrogate fundamental First Amendment rights); William G. Weaver & Robert M. Pallitto, *State Secrets and Executive Power*, 120 POL. SCI. Q. 85, 90 (2005).

70. *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76, 103 (D.D.C. 2025).

71. *Zaid v. Exec. Off. of the President*, No. CV 25-01365-AHA, 2025 WL 3724884, at *8 (D.D.C. Dec. 23, 2025); *Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105, 128 (D.D.C. 2025); *Jenner & Block LLP*, 784 F. Supp. 3d at 89–90; *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 784 F. Supp. 3d 127, 138 (D.D.C. 2025); *Am. Bar Ass'n v. U.S. Dep't of Just.*, 783 F. Supp. 3d 236, 239 (D.D.C. 2025); *see also* *Associated Press v. Budowich*, 780 F. Supp. 3d 32, 41 (D.D.C. 2025) (retaliatory exclusion from press pool); *Am. Foreign Serv. Ass'n v. Trump*, F. Supp. 3d 248, 254 (D.D.C. 2025) (retaliatory removal of statutory labor protections); *Am. Ass'n of Univ. Professors v. Rubio*, 780 F. Supp. 3d 350, 360 (D. Mass. 2025) (ideological deportations in response to student activism).

Judge Amir H. Ali's decision in *Zaid v. Executive Office of the President* joins that chorus by finding that Mr. Zaid was likely to succeed on his First Amendment retaliation claim.⁷² To prevail on a First Amendment retaliation claim, a plaintiff must establish that they (i) were engaged in First Amendment-protected activity; (ii) the defendants responded with adverse action that would chill a person of ordinary firmness; and (iii) there was a causal connection between the protected expression and the adverse action taken.⁷³ In *Zaid*, the government did not dispute the first two prongs of the test. The Court found that Mr. Zaid engaged in First Amendment-protected activity when he "petitioned the government and courts on behalf of whistleblowers and other clients." It further determined that the revocation of his security clearance was "more than sufficient to constitute retaliatory action" that would chill a person of ordinary firmness.⁷⁴

In examining the third requirement—whether the revocation was causally linked to Mr. Zaid's First Amendment-protected activities—the Court found that "Zaid's representation of whistleblowers and other clients adverse to the government was the [government's] sole reason for summarily revoking his security clearance."⁷⁵ Courts consider context when evaluating retaliatory motive. The surrounding circumstances made clear that the Mr. Zaid's First Amendment protected activity was the "but for" cause of his inclusion in the Presidential Memorandum.⁷⁶ President Trump referred to Mr. Zaid as a "sleazeball" and called for his prosecution for "treason" in connection with his representation of the whistleblower that led to President Trump's first impeachment.⁷⁷

Contextual evidence of temporal proximity, for example, can satisfy the causation requirement all on its own.⁷⁸ The decision to revoke Mr. Zaid's

72. *Zaid*, 2025 WL 3724884, at *7. The court also found that Mr. Zaid was likely to prevail on his Due Process Clause and Fifth Amendment right to counsel claims. *Id.* at *8–12.

73. *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016).

74. *Zaid*, 2025 WL 3724884, at *7 (describing Mr. Zaid having to turn down new clients).

75. *Id.*

76. *See Nieves v. Bartlett*, 587 U.S. 391, 398–99 (2019) (setting out legal standard for a retaliation claim).

77. *Zaid*, 2025 WL 3724884, at *8.

78. *Singletary v. District of Columbia*, 351 F.3d 519, 525 (D.C. Cir. 2005); *Am. Bar Ass'n v. U.S. Dep't of Just.*, 783 F. Supp. 3d 236, 245 (D.D.C. 2025) ("Courts may consider a defendant's 'contemporaneous statements' when assessing 'retaliatory motive.'"); *see also Nat'l Treasury Emps. Union v. Trump*, 780 F. Supp. 3d 237, 255 (D.D.C. 2025); *Am. Foreign Serv. Ass'n v. Trump*, 783 F. Supp. 3d 248, 260 (D.D.C. 2025)

security clearance “took place just days after Zaid filed a lawsuit against the government on behalf of FBI employees to protect them from being targeted for their work related to the January 6 attack on the U.S. Capitol.”⁷⁹ Furthermore, the Presidential Memoranda, like the executive orders targeting law firms, do not even attempt to put forward a *non*-retaliatory motive, relying instead on empty references to a “national interest.”⁸⁰ The revocation of Mr. Zaid’s clearance without any procedural protections further evidences a retaliatory motive.⁸¹

For now, retaliation doctrine has served as an effective tool in vindicating Mr. Zaid’s First Amendment rights,⁸² but retaliation claims have limited application and may not provide an adequate avenue of relief for other attorneys and whistleblowers not directly targeted, but nevertheless chilled by the Trump Administration’s expansive campaign of bullying and intimidation. As Professor Evelyn Douek notes, while the chilling effects of the Trump Administration’s attacks on its perceived enemies extend far beyond the specific targets named in retaliatory executive orders, courts have struggled to address the broader chilling harms of such intimidation campaigns.⁸³ However, the Supreme Court’s recent affirmation in *National Rifle Association v. Vullo* that “a government official cannot do indirectly what she is barred from doing directly” offers a potential path forward.⁸⁴

79. *Zaid*, 2025 WL 3724884, at *8.

80. *Id.*; see also *Am. Bar Ass’n*, 783 F. Supp. 3d at 246 (concluding that “the government has not identified any nonretaliatory DOJ priorities,” where it merely stated that revoked grants “no longer aligned with DOJ’s priorities.”).

81. See *Zaid*, 2025 WL 3724884, at *8; cf. *Lathram v. Snow*, 336 F.3d 1085, 1093–94 (D.C. Cir. 2003) (holding that a jury could infer discriminatory motive where agency departed from its normal process without justification).

82. The government has appealed the grant of the preliminary injunction and at the time of publication that appeal is still pending. See generally *Zaid v. Exec. Off. of the President*, No. 26-5009 (D.C. Cir.) (ongoing litigation).

83. Evelyn Douek, *AAUP v. Rubio and the Big Chill*, BALKINIZATION (Oct. 7, 2025), <https://balkin.blogspot.com/2025/10/aaup-v-rubio-and-big-chill.html> [<https://perma.cc/E4HU-MCUR>].

84. 602 U.S. 175, 190 (2024).

IV. THE TRUMP ADMINISTRATION'S REVOCATION OF A
WHISTLEBLOWER ATTORNEY'S SECURITY CLEARANCE
OPERATES AS UNLAWFUL JAWBONE AND HAS COERCIVE
IMPACTS ACROSS THE ENTIRE BAR

Never before has a presidential administration revoked security clearances in broadly publicized executive orders; nor has any administration ever explained to the world that it was revoking security clearances as a means of political retaliation. The public, highly inflammatory revocation of Mr. Zaid's security clearance is part and parcel of this campaign of threats and intimidation. The effect, likely intended, is to send a message to any attorney who considers representing a client or cause the President personally dislikes: oppose Trump and his Administration and you, too, will lose your security clearance. That message may be more damaging to First Amendment interests than the individual act of retaliation against Mr. Zaid.⁸⁵ While the decision in *Zaid* correctly determined that the clearance revocation likely constituted impermissible retaliation, the facts of that case also presented an opportunity to bring an independent claim that the revocation was impermissible coercion of similarly situated lawyers and potential whistleblowers who may be adverse to the Administration's interests.

Core to protecting the freedoms of the First Amendment is the entrenched "principle that a government official cannot do indirectly what she is barred from doing directly."⁸⁶ For good reason. Permitting such constitutional evasion would reduce the First Amendment to a "simple semantic exercise."⁸⁷ The activities the President has targeted in the law firm executive orders and the Presidential Memorandum—petitioning the government with assistance of counsel—fall under the protections of the First Amendment. The President, therefore, cannot directly suppress that expression. Nor can he evade the First Amendment by seeking to accomplish those ends through indirect means.

In *National Rifle Association of America v. Vullo*, a unanimous

85. See *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76, 88 (D.D.C. 2025) ("More subtle but perhaps more pernicious is the message the order sends to the lawyers whose unalloyed advocacy protects against governmental viewpoint becoming government-imposed orthodoxy.")

86. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 75, 190 (2024) (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67–69 (1963)).

87. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 547 (2001).

Supreme Court reaffirmed that the government cannot do indirectly what it is barred from doing directly.⁸⁸ There, a government official used the threat of regulatory investigations to pressure private companies into terminating relationships with the National Rifle Association, a group the government official allegedly disfavored.⁸⁹ As Professor Genevieve Lakier expounds in a forthcoming article, the Constitution prohibits such “jawboning,” that is, the use of “informal censorship,” “to evade the constraints that the First Amendment imposes on government’s formal powers.”⁹⁰

Sixty years ago, in *Bantam Books, Inc. v. Sullivan*, the Court looked “through forms to the substance” of what the government was trying to accomplish and recognized that even “informal censorship” can violate the First Amendment.⁹¹ Informal censorship can be effectuated through coercive statements, including threats of legal sanction.⁹² *Vullo* reaffirmed what *Bantam Books* first indicated: the First Amendment “prohibits all efforts by government actors to coerce the private suppression of speech or to force private parties to disassociate from disfavored speakers.”⁹³ This analysis, Professor Lakier correctly explains, “should be an anti-formalist, context sensitive inquiry” to give effect to an appropriately broad interpretation of the rule against jawboning.⁹⁴ At the heart of these decisions is a prohibition on the practice of “constitutional evasion, not just the communication of explicit or ‘genuine’ threats.”⁹⁵ This is a prophylactic rule against all government attempts to coerce speech suppression—even where the coercive attempts ultimately fail.⁹⁶

Retaliation claims, on the other hand, typically involve *retrospective* punishment, requiring an adverse action that would chill a person of ordinary firmness, and a causal connection between prior speech and the adverse action.⁹⁷ As such, jawboning claims have broader reach than First

88. *Vullo*, 602 U.S. at 190.

89. *Id.* at 181–85.

90. Genevieve Lakier, *Enforcing the First Amendment in an Era of Jawboning*, 93 U. CHI. L. REV. (forthcoming 2026) (manuscript at 3), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5162523 [<https://perma.cc/7WNV-DWD9>].

91. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

92. *Id.*; *NAACP v. Button*, 371 U.S. 415, 433 (1963) (“The threat of sanctions may deter the[] exercise [of First Amendment freedoms] almost as potently as the actual application of sanctions.”).

93. Lakier, *supra* note 90, at 47; *Vullo*, 602 U.S. at 190.

94. Lakier, *supra* note 90, at 43.

95. *Id.*

96. *Id.* at 47, 72.

97. *Id.* (explaining that jawboning claims will lie even where “we might plausibly say that the

Amendment retaliation claims and can remedy *prospective* harms. Courts should therefore recognize *Vullo* to authorize claims against a wide variety of jawboning campaigns. The facts of *Zaid v. Executive Office of the President* offer a case study for how jawboning claims on behalf of whistleblowers and their attorneys might arise.⁹⁸

The Presidential Memorandum and related law-firm security clearance revocations send a coercive message to any prospective attorney for a national security whistleblower in furtherance of punishing and suppressing both the attorney's and the client's First Amendment-protected activities. By threatening any attorney who has security clearance with revocation should they represent anyone whom the President dislikes, the Administration is chilling both lawful whistleblowing activity, and constitutionally protected legal advocacy on behalf of those who blow the whistle. The campaign of clearance revocations constitute the most common jawboning model insofar as it seeks, in part, to chill the speech of a third party (whistleblowers) by suppressing the speech of another entity (attorneys).⁹⁹ Yet *Vullo*'s reasoning also extends with greater force to direct threats against attorneys themselves. In *Perkins*, for example, Judge Howell relied on *Vullo*'s informal censorship principle in finding that the President's threats of clearance revocation to Perkins Coie was coercive and intended to suppress Perkins' own expression, an actionable First Amendment harm.¹⁰⁰

When assessing jawboning claims, courts look to whether the conduct, "viewed in context, could be reasonably understood to convey a threat of

government's actions did not in fact cause the suppression of protected speech, either because there was no protected speech to worry about or because the independent actions of a third party (the compliant speech intermediary) cut the causal chain."); see also *Jenner & Block LLP v. U.S. Dep't of Just.*, 784 F. Supp. 3d 76, 97 (D.D.C. 2025); *Vullo*, 602 U.S. at 200–03 (Jackson, J., concurring) (explaining the difference between coercion and First Amendment retaliation).

98. Identifying all elements of a jawboning claim—including the standing analysis and what remedies are appropriate—are outside the scope of this Essay.

99. See Jack M. Balkin, *Old-School/New-School Speech Regulation*, 127 HARV. L. REV. 2296, 2309 (2014).

100. *Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105, 105 (D.D.C. 2025). See also, e.g., *Jenner & Block LLP*, 784 F. Supp. 3d at 97; *Am. Ass'n of Univ. Professors v. Rubio*, 780 F. Supp. 3d 350, 381 (D. Mass. 2025) (preliminarily rejecting defendants' argument that *Vullo*'s informal censorship analysis did not apply to allegations of a deportation policy based on non-citizens' ideology because plaintiffs alleged that defendants "are acting directly against the would-be speakers."); *Pen Am. Ctr., Inc. v. Trump*, 448 F. Supp. 3d 309, 326 (S.D.N.Y. 2020) (press freedom organization plausibly alleged jawboning claim premised on Trump Administration stripping member of press pass and threatening the same to other members).

adverse government action” to punish or suppress speech.¹⁰¹ This is a holistic, context-driven analysis. Non-exhaustive guideposts include: (1) the authority of the government official; (2) the content and purpose of the communications; and (3) the effect of the threats on the target audience.¹⁰²

The revocation of Mr. Zaid’s clearance is part of the Trump Administration’s “broader campaign’ of . . . using the power of the presidency to target individual lawyers and law firms associated with them based on personal dislike of their legal work.”¹⁰³ When viewed in that context, the government’s actions are more threatening than those in *Vullo* and cross well into the territory of unlawful coercion. First, the quintessential perpetrators of jawboning are those in the Executive Branch¹⁰⁴—and there is no doubt that the President wields extraordinary power, including the power to revoke security clearances pursuant to established procedures. Second, the content and transparent purpose of the President’s campaign is to punish lawyers who represent those he disfavors. Take for example, recent executive orders the President has issued against law firms: each references the firms’ representations of clients that were either political or personal opponents of the President and then offers the firms’ First Amendment protected activity as its basis.¹⁰⁵ Finally, the reactions of those receiving these threats reflect their coercive and speech-suppressive nature: nine law firms have cut deals with the Trump Administration to provide pro bono legal support for its preferred initiatives to avoid the sanctions in executive orders naming them or in anticipation of such orders.¹⁰⁶ President Trump’s threats have had their intended effect. Some law firms have capitulated to the President’s demands. Even lawyers not yet implicated are reluctant to draw his gaze.¹⁰⁷ If these powerful law

101. *Vullo*, 602 U.S. at 191.

102. *Id.* at 191–94.

103. *Perkins Coie LLP*, 783 F. Supp. 3d at 164.

104. See Paul R. Verkuil, *Jawboning Administrative Agencies: Ex Parte Contacts by the White House*, 80 COLUM. L. REV. 943, 943, 943 n.1 (1980).

105. *Perkins Coie LLP*, 783 F. Supp. 3d at 32, 37–38.

106. See Natalie K. Orpett & James Pearce, *The Law Firms’ Deals with Trump Are Even Riskier Than They Seem*, LAWFARE (May 16, 2025), <https://www.lawfaremedia.org/article/the-law-firms--deals-with-trump-are-even-riskier-than-they-seem> [<https://perma.cc/ULX2-DZSL>].

107. See *Perkins Coie LLP*, 783 F. Supp. 3d at 151 (detailing law firms “that chose to negotiate deals with the Trump White House to avoid being targeted by similar Executive Orders.”); see also Michael Birnbaum, *Law Firms Refuse to Represent Trump Opponents in the Wake of His Attacks*, WASH. POST (Mar. 25, 2025), <https://www.washingtonpost.com/politics/2025/03/25/trump-law-firms/> [<https://perma.cc/PBC8-L78G>] (detailing difficulties individuals with interests adverse to the Trump

firms, “presumably possessing ‘ordinary firmness[,]’ sought successfully to avoid being targeted by similar Executive branch actions,” it is reasonable to assume that other lawyers would reasonably seek to avoid the same.¹⁰⁸ The coercive effect of the Presidential Memorandum is even more potent than the executive orders targeting the law firms, because the Memorandum specifically names the attorney who has been marked for punishment by the President.

Two cases decided after *Vullo* gesture at the prohibition on informal censorship and jawboning in upholding claims involving broad chilling effects from intimidation campaigns, but stop short of finding harms that violate the *Vullo* coercion-framework. In *Jenner & Block LLP v. United States Department of Justice*, Judge John Bates held that the President’s executive order revoking the security clearances of attorneys at Jenner & Block violated the First Amendment by retaliating for protected speech.¹⁰⁹ Despite analyzing the revocations under the First Amendment’s retaliation doctrine, Judge Bates, citing *Vullo*, explained that those revocations had a “prospective silencing effect” in that the retaliation was ongoing and avoidable: the threat to Jenner and other attorneys will inhibit their protected speech unless they compromise their expression.¹¹⁰ Judge Bates described the threats as a subset of retaliation “akin” to a “‘scheme of informal censorship’ that arises when government actors use the ‘threat of invoking legal sanctions and other means of coercion to achieve the suppression of disfavored speech,’” but did not analyze the claim as one for jawboning.¹¹¹

In *American Association of University Professors v. Rubio (AAUP)*, Judge William Young’s powerful post-trial rulings held that the government’s policy of targeting noncitizens—who engaged in pro-Palestinian or anti-Israel speech and association—for arrest, detainment, and deportation violated the First Amendment.¹¹² Judge Young acknowledged that the government executed its coercion campaign to punish the speech of specific targets with the intent to broadly chill the speech of those similarly situated.¹¹³ *AAUP* is notable for finding that a First

Administration have faced in obtaining legal counsel).

108. See *Perkins Coie LLP*, 783 F. Supp. 3d at 158.

109. *Jenner & Block LLP v. U.S. Dep’t of Just.*, 784 F. Supp. 3d 76, 102–03 (D.D.C. 2025).

110. *Id.*

111. *Id.* (quoting *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 188–89 (2024)).

112. *Am. Ass’n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 185 (D. Mass. 2025).

113. *Id.* at 184.

Amendment violation can rely exclusively on the chilling effects experienced by individuals who were not the direct targets of the government's adverse enforcement actions. Judge Young relied on the general principles underlying *Vullo*, determining that evidence of the government's campaign of threats showed that chilled speech was the government's intent, supporting Plaintiffs' viewpoint discrimination claim.¹¹⁴ But the Court did not find that the Plaintiffs proved a jawboning claim because they did not produce "evidence of threats targeted specifically at their members, but rather of threats targeted at noncitizens in a general way."¹¹⁵ At first glance, prevailing on the viewpoint discrimination claim but not the coercion claim may seem inconsequential, but the lack of a coercion claim is perhaps why Judge Young's subsequent remedy order is rather limited. The order establishes a rebuttable presumption that any adverse immigration actions towards plaintiffs' members were done in retribution for speech—a remedy far narrower than what the plaintiffs sought. Success on the coercion claim would have presumably resulted in a broader remedy.

The Court in *Vullo* explained that government officials cannot "use the power of the State to punish or suppress disfavored expression."¹¹⁶ If, for example, Congress were to enact a law that read: "the President may revoke the security clearances of those whose views, or whose clients' views, he dislikes," courts would surely strike the law down under the First Amendment. A similar fate would await a policy promulgated by the President forbidding attorneys from representing clients he dislikes or seeking results that he disfavors.¹¹⁷ Such a policy would be flagrant viewpoint discrimination, effectively a prior restraint, and presumptively unconstitutional.¹¹⁸ The Presidential Memorandum attempts to achieve

114. *Id.* at 189.

115. *Id.*

116. *Vullo*, 602 U.S. at 188; *accord* Perkins Coie LLP v. U.S. Dep't of Just., 783 F. Supp. 3d 105, 151 (D.D.C. 2025).

117. *See* Perkins Coie LLP, 783 F. Supp. 3d at 151.

118. Such policies may also run afoul of precedent barring unconstitutional conditions. Agency for Int'l Dev. v. All. for Open Soc'y Inst., 570 U.S. 205, 214 (2013) (explaining that the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit."). *See* Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 548–49 (2001); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963); Jenner & Block LLP v. U.S. Dep't of Just., 784 F. Supp. 3d 76, 97 (D.D.C. 2025) (explaining that executive order targeting law firm was a type of ongoing retaliation akin to informal censorship and analogous to prior restraints).

those same ends through indirect means. That, the President cannot do.

CONCLUSION

The Trump Administration's campaign to revoke the security clearances of attorneys representing clients or causes disfavored by the President constitutes a grave threat to the foundations of American democracy and constitutional order, striking at the core of attorney independence and the adversarial system that protects civil rights and the rule of law.

Such actions do not merely harm the attorneys affected; they erode the ability of groups disfavored by the government to obtain qualified counsel. By weaponizing the clearance process and bypassing established procedures, the Administration chills the willingness of the entire legal profession to undertake disfavored representations, as evidenced by law firms capitulating to presidential demands and the subsequent deprivation of counsel for those challenging Executive overreach. 'Jawboning' claims perhaps might be the only way forward to stopping such intimidation campaigns and their broad chilling impacts.

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