

## UNITED STATES FREEDOM OF EXPRESSION BUT THERE ARE THREATS

### Executive Summary

The United States scored 60.79 points on the Chapultepec Index of Freedom of Expression and the Press, placing the country in the 8<sup>th</sup> position among a total of 22 nations in the Americas. According to the Index data, citizens generally have good access to information, are free to express their opinions, and there is a positive flow of information. Although there are few restrictions on the exercise of journalism, some incidents of violence were reported during the period surveyed, and in two specific circumstances, journalists were killed, which is uncommon in this country. With respect to the legislative, judicial and executive environments, their influence on freedom of expression is slight. However, the legislative and executive environments had a moderate influence on the exercise of journalism.

### Introduction

Historically, freedom of speech and the press in the United States has been protected by the First Amendment of the Constitution, which clearly limits the power of the Congress to restrict freedom of speech and the exercise of journalism. Thanks to this law, the government has little influence over the media, the exercise of journalism, and the distribution of information; in general, the citizens have the freedom to express their opinion and access information from multiple sources.

The presidency of Donald Trump (2017-2020) marked one of the most recent periods where the exercise of journalism was threatened by the government. During said period there was an increase in verbal attacks against journalists and media outlets by Trump, and in some cases, the White House press coverage permit was revoked from a journalist. Trump went so far as to label the press as "the enemy of the people," and his political allies often repeated this message. There were also incidents where supporters of the now former president assaulted journalists during coverage of news events.

This atmosphere of tension changed significantly with Joe Biden's presidency (2021-present), where there have been no reported incidents of verbal attacks or criminalization against journalists covering the White House. The only incidents of hostility have been registered during the coverage of some news events where journalists and cameramen have been assaulted by police officers, temporarily detained, or been targeted by private citizens. Regrettably, there were two incidents where two journalists lost their lives after being attacked by citizens.

Under this context, the Chapultepec Index of Freedom of Expression and Freedom of the Press 2023 has given the United States a score of 60.79, which places the country in the eighth position out of a total of twenty-two nations, thus, qualifying as a country with a low restriction on freedom of the press. The United States is below countries such as the Dominican Republic (1),

Chile (2), Jamaica (3) and Canada (4), but above Colombia (9), Argentina (11), Brazil (13) and Mexico (15). The overall average was 47.84 points.

Among the examples of aggression or intimidation against journalists and the exercise of freedom of the press, we found attacks against journalists, photographers and cameramen covering a variety of news events. For example, television cameramen were attacked with pellet gunfire in Pennsylvania on two occasions, May and July 2023; a photojournalist was arrested in May 2023 while covering a tribute to a homeless man who was killed in the New York City subway; another photojournalist in Anchorage, Alaska, was attacked and beaten while working on a story on vandalized political banners in March 2023; and a journalist was attacked with pepper spray while covering a student demonstration at the University of Pennsylvania in October 2022.

One of the most serious incidents was the murder of Dylan Lyons, a television reporter who was working on the murder of a woman and her daughter in Orlando, Florida, in February 2023, when an armed assailant shot and killed him. Another serious incident relates to the investigative journalist, Jeff German of the Las Vegas Review-Journal, who was stabbed to death in September 2022 by the person who was the focus of one of his journalistic assignments.

### **On environments: The exercise of journalism carries out its challenges**

With regards to the influence of the executive, legislative and judicial environments on situations unfavorable to freedom of expression, the Chapultepec Index found that the degree of unfavorable influence was slight in the case of the United States. However, there are two examples where the influence of two environments was considered moderate.

Of the three environments, the Legislative Branch scored the highest (3.00 out of 10.00 points) with respect to realm B: "Exercise of Journalism", which was considered as a moderate influence. This manifested through several examples in which some legislatures in the United States tried to restrict the work of journalists.

Consequently, in January 2023, the Texas Senate extended the ban on allowing journalists on the main floor of the Senate for that year's session, a restriction that was first passed at the beginning of the COVID-19 pandemic. The decision means that journalists will have less access to senators, reported the Texas Tribune (Barragan, 2023).

A similar decision was made by the New York State Legislature on 23 January 2023, which decided to continue the policy of not allowing journalists on the main floor of the legislature (U.S. Freedom of the press Tracker, 2023a).

Another case involved a freelance journalist, Matt Tabbi, who was accused by a member of the US Congress of lying under oath when he testified before a House of Representatives committee. Democratic Congresswoman, Stacey Plaskett, said Matt Tabbi repeatedly lied about Twitter's policy of moderating content shared on its platform, and when that happens, one of the penalties is jail time. According to Plaskett, Tabbi was given several opportunities to correct his statements, but the journalist chose not to do so. The threat to imprison a journalist is seen as an attempt to limit the exercise of journalism (Christenson, 2023).

With respect to the executive environment, the Chapultepec Index determined that, in general, it had a slight influence on freedom of expression. However, the most significant score was obtained in realm B: "Exercise of Journalism", where it accrued 2.86 points out of 10.00, for a moderate influence type.

An example of the pressure to restrict or hinder the exercise of journalism happened in January 2023 when the Governor of Florida and Republican presidential pre-candidate, Ron DeSantis, attempted to promote a law that facilitates filing defamation lawsuits against the media. DeSantis has had a public feud with mainstream media and for a long time has only accepted invitations for interviews from conservative media outlets. Yet, his attempt to change Florida's laws failed in May 2023, and even several conservative media outlets opposed that initiative (Menzel, 2023).

Another example of how DeSantis is not comfortable with the media includes the September 22, 2022 event, when the Florida governor did not allow two journalists from the *Occupy Democrats* media outlet to participate in the press conference.

With respect to the judicial environment, here too the Chapultepec Index found that it had only a slight influence on freedom of expression. The highest score was in realm B: "Exercise of Journalism", where it obtained 1.43 points out of 10.00.

It is important to mention that the influence of the judicial environment is manifested in those cases where judges or investigative juries issue subpoenas to journalists, photographers and cameramen to hand over information obtained resulting from journalistic work or recorded in notes, photos or video images. With a few exceptions, these court orders are usually dismissed during the appeals process, and journalists or media outlets do not have to turn over any information to the authorities.

Examples include the music journalist who received a subpoena to force him to testify in the trial of singer R. Kelly (Aug. 3, 2022); a radio journalist who was compelled to testify in the trial of a member of the far-right organization Oath Keepers (Aug. 15, 2022); and a former Fox News producer who was compelled to testify in the defamation trial against the news channel (April 3, 2023).

## **Realm A: Few restrictions on access to information**

In the United States, residents generally have unrestricted access to information sources of different political inclinations and are free to express their opinions. However, during the period under study, the Chapultepec Index in realm A: "Citizens Free to Express Themselves" found that the United States scored 14.71 out of a possible 23.00 points, ranking in the "low restriction" category. In the "Flow of Information" sub-realm, the country scored 7.00 out of 11.00, and in the "Free Speech" sub-realm it received 7.71 points out of 12.00.

One way to measure this realm is through the rate of Internet users in the country. According to a report by the publication Datareportal, at the beginning of 2023 the United States had 311.3 million Internet users, equivalent to 91.8% of households, and there are approximately 246 million users of social media in the country, the equivalent of 72.5% of the population (Kemp, 2023).

Another interesting debate regarding access to information in the United States corresponds to the topics that can be shared on social media. In recent years, companies such as *Meta* (creator of Facebook and owner of Instagram) have tried to regulate the content that is shared on their platforms and have attempted to eliminate inappropriate, racist, anti-Semitic, false or uninformative content. The results have been mixed, and the system is under constant review.

On the other hand, the evolution of Twitter in 2023 is an interesting case of changes in social media. The company was acquired by billionaire Elon Musk in October 2022, and since

then the entrepreneur has launched a broad transformation. He started by laying off thousands of employees, and later relaxed content rules by allowing users banned for sharing false information to return to the platform. Finally, it made the biggest transformation by changing Twitter's logo and name to the letter *X* (Mac/Hsu, 2023).

## **Realm B: Access to information and press conferences**

In realm B: "Exercise of Journalism," the United States scored 6.29 out of 10.00 on the Chapultepec Index, placing the nation in the "low restriction" category. In general, journalists practice the profession with few restrictions and have access to official sources, but President Joe Biden has been criticized for giving few press conferences. According to a report by the Inter American Press Association (IAPA), Biden took more than two months to hold his first press conference with the media after taking office, making him the U.S. president who has taken the longest to have his first meeting with journalists in a century (Inter American Press Association, 2023).

One case that was national news was the violent arrest of a *NewsNation* reporter who was covering a press conference of Ohio Governor, Mike DeWine, on February 8, 2023. DeWine was giving details of the train derailment carrying toxic materials near the town of East Palestine, and about the efforts to clean up the incident. Journalist Evan Lambert was broadcasting the press conference live when he was thrown to the ground and arrested by police officers in unclear circumstances. The governor himself said he was surprised by the arrest and that he had nothing to do with it. Lambert was released hours later, and the charges against him were dismissed on 15 February (U.S. Freedom of the Press Tracker, 2023b).

Another journalist who was forcibly removed from a press conference was Ralph Cipriano, a freelance reporter in Philadelphia, Pennsylvania. On 8 August 2022, Cipriano was covering a press conference for District Attorney Larry Krasner, and after attempting to ask a question he was violently removed from the press room. Cipriano later explained that he had been attending press conferences for months with the intention to ask Krasner questions as the DA had ignored several requests for an interview. Cipriano was not formally charged, and finally, on September 12, 2022, Krasner allowed him to ask a question during the press conference (U.S. Freedom of the Press Tracker, 2022a).

According to the U.S. Freedom of the Press Tracker, which tracks on arrests and detentions of journalists while on the job, two journalists had been detained as of April 2023, compared to fifteen in 2022; 59 in 2021, 145 in 2020 and only nine in 2019 (IAPA Report).

## **Realm C: Journalists exposed to violence**

In realm C, "Violence and impunity," the United States received 18.65 points out of 42 in the Chapultepec Index, ranking it in the "in restriction" category. Incidents of violence against journalists usually occur during coverage of news events, press conferences, or some cases of assaults committed by ordinary citizens. Yet, two journalists were killed during the period surveyed, something unheard of in the United States.

On September 3, 2022 Jeff German, a veteran journalist with more than forty years of experience at the *Las Vegas Review-Journal* newspaper, was stabbed outside his home. German, who died the following day, had produced an investigative report about several purported corruption allegations committed by Robert Telles, a Clark County Public Administrator,

and as a result of this work, the official lost his re-election race. Telles was charged with murder and his trial was set on March 18, 2024 (Newberg, 2023).

German's murder also led to a court battle over access to the content of his cell phone, laptop, hard drive and three desktop computers that were confiscated by the authorities. In the end, the courts issued a ruling that favored the rights of the journalist and the newspaper, and prevented the removal and search of his news resources (U.S. Freedom of the Press Tracker, 2022b).

Another unfortunate news story was the case of television journalist Dylan Lyons of *Spectrum News 13* in Florida. Lyons and cameraman, Jesse Walden, went to the murder scene of a woman and her daughter in a suburb of Orlando. While reporting, the murder suspect returned to the scene and shot Lyons and Walden. Lyons died, but Walden survived the attack. A nineteen-year-old man was arrested and charged with the murders of Lyons, the woman and the nine-year-old girl; and with attempted murder of Walden. His trial was set for October 2023 (U.S. Freedom of the Press Tracker, 2023c) (Medina, 2023).

According to an IAPA report issued at the end of April:

[...] six journalists, including Lyons and Walden, have been assaulted on the job from 2023 to date [...] In 2022, 40 journalists suffered physical assaults, compared to 145 in 2021. Although these statistics represent a decrease from 2020, when 631 journalists were assaulted at work, they are much higher than in previous years.

## **Realm D: Little influence of the government over the media**

In respect to realm D: "Control over the Media", the United States obtained 21.14 points out of 25.00, according to the Chapultepec Index, which places the country in the "freedom of expression" category. This is the best score the United States achieved during the period surveyed. The result demonstrates that the government exercises little influence in controlling the media, and does not threaten media owners with removing broadcast licenses, or shutting down newspapers or television stations on political grounds.

During the period under study, one of the most relevant cases against the news media was the defamation lawsuit that the company Dominion Voting Systems filed against the cable news network Fox News Network. Dominion alleged that several journalists and personalities who appeared on Fox News claimed that the company rigged voting machines to steal the 2020 presidential election results from then-Republican President Donald Trump. Dominion's lawsuit demanded \$1.6 billion in damages.

On March 31, 2023, a Delaware judge ruled that none of the statements in question, aired by Fox News about Dominion were true, and set a date for a trial that would determine whether there was premeditation or malice in those comments. However, on the day the opening statements were scheduled to begin, a settlement agreement was announced between the litigants. Fox News agreed to pay Dominion \$787.5 million, and in exchange Fox News did not have to admit fault with respect to the statements. It is the largest known defamation media settlement in U.S. history (Bauder, Chase, Mulvihill, 2023).

## Conclusions

The United States was ranked by the Chapultepec Index as a country where there is a low restriction on freedom of speech and freedom of the press. With a score of 60.79 out of 100, the United States ranked eighth out of 22 countries. This result displays that citizens and resident enjoy free access to information and can express their views without restrictions. There are few barriers to the exercise of journalism; yet, there have been reported cases of attacks and violence against journalists by police forces and private citizens and, during the period surveyed, two journalists were murdered, something uncommon in this nation. Moreover, the government exercises very little influence in the direct or indirect control of the media.

While, in general, the three environments analyzed - executive, legislative and judicial - showed a slight influence on freedom of the press and expression, the legislative and executive branches had a moderate influence on freedom of expression with respect to realm B: "Exercise of Journalism". There were cases of journalists being arrested at governors and district attorneys press conferences, or other journalists who were denied access to press conferences. It was also reported that the Texas and New York legislatures did not allow journalists to be present on the main floor of these legislative bodies by keeping during 2021 and 2022, the restrictions that were implemented - for the first time - during the COVID-19 pandemic. These restrictions limit direct access to deputies and senators, and were criticized by freedom of the press organizations.

With respect to realm C: "Violence and impunity", the Chapultepec Index assigned it the category of mild influence, which indicates that, in general, journalists are in little danger when doing their work. However, this does not mean that they are not exposed to violent situations. During the period under review, dozens of incidents were reported in which journalists were assaulted by private citizens and police officers, and even two journalists were killed as a direct consequence of their work.

With respect to the other two realms, A: "Citizens Free to Express Themselves" and D: "Control over the Media", the United States reported positive figures showing that there is a low restriction on freedom of the press and expression in the country.

In conclusion, the Chapultepec Index for Freedom of Expression and the Press indicates that the exercise of journalism, freedom of expression and access to information are rights that are fully guaranteed in the United States. However, there are situations in which journalists are exposed to threats or attacks as a consequence of the work they do. Regrettably, when a journalist dies in the line of duty, it is usually the result of an aggression carried out by a private citizen and not the result of actions by the government. All this indicates that the exercise of journalism is exposed to risks even in countries such as the United States where there is a full guarantee of freedom of the press and expression; that is why monitoring these rights must be a constant duty.

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