

IN THE
Supreme Court of the United States

PRESIDENT DONALD J. TRUMP,

Petitioner,

v.

CABLE NEWS NETWORK, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), this Court held that a false statement framed as an opinion remains actionable as defamation if a reasonable reader could understand the statement to convey provably false facts. The Eleventh Circuit departed from that rule—and from the First, Second, Seventh, and Ninth Circuits—by treating false factual accusations as protected when conveyed through a pejorative label and inflammatory imagery. Here, CNN made false factual accusations about President Donald J. Trump’s challenges to the 2020 election process, and embedded them in pernicious comparisons to Hitler’s and Goebbels’s use of the “Big Lie” in antisemitic Nazi propaganda. The question presented is:

Whether the First Amendment protects a publisher from defamation liability when it conveys provably false factual accusations through a pejorative label and accompanying inflammatory imagery.

PARTIES TO THE PROCEEDING

Petitioner President Donald J. Trump was the plaintiff in the district court and appellant in the court of appeals. Respondent Cable News Network, Inc. was the defendant in the district court and appellee in the court of appeals. Respondent Cable News Network, Inc. is a wholly owned subsidiary of Warner Bros. Discovery, Inc., a publicly traded corporation whose stock ticker symbol is WBD.

RELATED PROCEEDINGS

Donald J. Trump v. Cable News Network, Inc.,
No. 23-14044 (11th Cir. Nov. 18, 2025)

Donald J. Trump v. Cable News Network, Inc.,
No. 22-cv-61842 (S.D. Fla. July 28, 2023)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
RELATED PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT	2
A. Factual Background	5
B. Procedural History	8
REASONS FOR GRANTING THE PETITION	11
I. The Eleventh Circuit’s Decision Below Conflicts with this Court’s Decision in <i>Milkovich</i> and Creates a Circuit Conflict over Its Application	11
II. The Question Presented Is Exceptionally Important.....	16
III. This Case Is an Ideal Vehicle To Decide the Question Presented	21
CONCLUSION.....	22

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED NOVEMBER 18, 2025	1a
APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED JULY 28, 2023.....	9a
APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED DECEMBER 5, 2023.....	24a
APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED MARCH 17, 2026	27a

TABLE OF AUTHORITIES

Cases	Page
<i>Berisha v. Lawson</i> , 141 S. Ct. 2424 (2021).....	18, 20
<i>Buckley v. Littell</i> , 539 F.2d 882 (2d Cir. 1976)	10, 15
<i>Coral Ridge Ministries Media, Inc. v.</i> <i>Southern Poverty Law Center</i> , 142 S. Ct. 2453 (2022).....	19
<i>Flamm v. Am. Ass’n of Univ. Women</i> , 201 F.3d 144 (2d Cir. 2000)	13
<i>Haynes v. Alfred A. Knopf, Inc.</i> , 8 F.3d 1222 (7th Cir. 1993)	12
<i>Hustler Mag., Inc. v. Falwell</i> , 485 U.S. 46 (1988).....	17
<i>Jolliff v. NLRB</i> , 513 F.3d 600 (6th Cir. 2008)	13
<i>Lee v. Bankers Tr. Co.</i> , 166 F.3d 540 (2d Cir. 1999)	13
<i>McKee v. Cosby</i> , 586 U.S. 1172 (2019).....	18
<i>Milkovich v. Lorain Journal Co.</i> , 497 U.S. 1 (1990).....	2, 4, 9, 11-16, 19, 22
<i>Nat’l Rev., Inc. v. Mann</i> , 589 U.S. 1088 (2019).....	16
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	18, 20
<i>Ollman v. Evans</i> , 750 F.2d 970 (D.C. Cir. 1984).....	10, 15

<i>Sindi v. El-Moslimany</i> , 896 F.3d 1 (1st Cir. 2018)	12
<i>Snyder v. Phelps</i> , 562 U.S. 443 (2011).....	17
<i>Turner v. Wells</i> , 879 F.3d 1254 (11th Cir. 2018).....	10
<i>Unelko Corp. v. Rooney</i> , 912 F.2d 1049 (9th Cir. 1990).....	12

Constitutional Provisions

U.S. Const. amend. I	1, 2, 4, 5, 13, 14, 16, 18-20
----------------------------	-------------------------------

Statutes and Other Authorities

28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1332	8

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a–8a) is unreported. The decision of the district court (Pet. App. 9a–23a) is reported and available at 684 F. Supp. 3d 1269.

STATEMENT OF JURISDICTION

The decision of the court of appeals was entered on November 18, 2025. The court of appeals denied a petition for rehearing on March 17, 2026. On June 5, 2026, Justice Thomas extended the time to file this petition to and including July 15, 2026, and on July 10, 2026, further extended the time to and including August 14, 2026 (No. 25A1357). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the Constitution provides in relevant part:

Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

STATEMENT

This Court in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), held that a publisher cannot immunize false factual accusations from defamation liability merely by casting them as opinion. When a so-called “opinion” conveys false factual assertions about what a person did, knew, possessed, or intended, the First Amendment does not protect those false assertions from liability for defamation. *Id.* at 18–21.

The courts of appeals have adopted different tests to implement *Milkovich*, but all require an analysis of how a reasonable reader would understand the challenged publication in context. In this case, the Eleventh Circuit created a conflict by holding that the supposed ambiguity of the pejorative label “Big Lie” protects the specific factual accusations giving the label defamatory meaning—even when CNN reinforced that meaning by pairing the label with photographs of Hitler and Nazi propaganda. In doing so, the Eleventh Circuit created a split with the First, Second, Seventh, and Ninth Circuits, all of which use various contextual, multi-factor tests to consider whether a statement of opinion conveys objectively verifiable facts to a reasonable observer.

As the Complaint alleges, political reporting and commentary often combine factual claims and (biased) moral condemnation in the same publication. A publisher may accuse its target of possessing no evidence, knowingly advancing falsehoods, or deliberately deceiving the public, then place those accusations beneath labels such as “fraud,” “propaganda,” “disinformation,” or

“treason.” If the label itself supplies immunity, as the Eleventh Circuit wrongly held in this case, the most inflammatory form of the accusation receives the greatest constitutional protection.

That is what occurred here. CNN falsely and maliciously portrayed President Donald J. Trump as a knowing liar who fabricated objections to the 2020 election, lacked supporting evidence, and deliberately deceived the American people. CNN then magnified its false and defamatory accusations by repeatedly invoking Nazi imagery, and wrongfully comparing the President’s conduct to Hitler’s and Goebbels’s use of the “Big Lie.”

CNN did not use the phrase “Big Lie” in isolation, it supplied the phrase with a specific historical meaning, expressly tied to Hitler, Goebbels, and antisemitic Nazi propaganda blaming Jews for all of Germany’s problems. CNN did so through various comparisons, including visual juxtapositions of President Trump with Hitler. CNN thus used the phrase as shorthand for concrete, false and defamatory factual accusations about President Trump’s evidence, knowledge, and intent: it falsely declared that President Trump, like Hitler and Goebbels, had “zero actual evidence,” possessed “no proof,” advanced “false claims,” pursued a “disinformation strategy,” and deliberately repeated falsehoods until the public accepted them. Pet. App. 10a–13a. After President Trump rightly demanded a retraction, CNN insisted that its false claims were “well-established” and objectively verified by judicial and governmental proceedings. Compl. ¶ 10 n.5, D. Ct. Doc. 1, at 4–5. As CNN thus admitted, it

deliberately used the phrase “Big Lie” and invoked images of Hitler to advance false factual claims about President Trump and his statements about the 2020 presidential election process.

The Eleventh Circuit acknowledged that it had never squarely addressed whether an inflammatory label such as “Big Lie” could encompass actionable factual accusations. Pet. App. 4a. It then abstracted that phrase from CNN’s publications, compared it to broad ideological labels such as “fascist” and “political Marxist,” and mistakenly treated its asserted ambiguity as dispositive. Pet. App. 4a–5a. That analysis ignored the false factual claims for which CNN used the “Big Lie” as a shorthand, including its use of photographs comparing President Trump to Hitler. Pet. App. 10a–13a. The panel thereby reduced CNN’s detailed and false factual narrative about President Trump to a “subjective assessment.” Pet. App. 5a–6a.

That holding was error and turns *Milkovich* on its head. CNN’s odious comparison of President Trump to Hitler and Goebbels intensified its false factual accusations; it did not erase them. Yet, the Eleventh Circuit erroneously treated the added stigma as the basis for First Amendment immunity.

The consequences are especially serious because CNN directed its false campaign at the President of the United States, both while he was in office and when he was the leading candidate in the next presidential election. The Complaint plausibly alleges that CNN weaponized its “Big Lie” accusation to impair the President’s political standing by falsely

portraying him as an authoritarian deceiver like Hitler and Goebbels. Compl. ¶¶ 1–3, D. Ct. Doc. 1, at 1–2. In other words, CNN used false charges of electoral manipulation to manipulate the electoral process itself.

This case thus squarely presents the question of whether, under the First Amendment, the use of an inflammatory label (“Big Lie”), coupled with images of evil Nazi leaders, somehow immunizes the false factual accusations conveyed by that label and those images. The answer is no. The Eleventh Circuit wrongly decided that acknowledged question of first impression, and rested its judgment entirely on the supposed absence of an actionable factual assertion beneath the pejorative label, ignoring that the label was combined with photos of Hitler and calculated to advance false factual claims. Pet. App. 3a–6a. This Court’s review is warranted.

A. Factual Background

Beginning in January 2021, CNN repeatedly and falsely accused President Trump of advancing a “Big Lie” about the 2020 presidential election. CNN linked that false charge to Hitler, Joseph Goebbels, and Nazi propaganda, at times reinforcing the false, malicious, and defamatory association through deeply disturbing visual juxtapositions of President Trump with Hitler. Compl. ¶¶ 16–17, 20, 22–29, D. Ct. Doc. 1, at 7–17.

The phrase “Big Lie” carried a specific and notorious historical meaning. As the Complaint alleges, the concept traces to Hitler’s *Mein Kampf*, and the premise that a sufficiently enormous

falsehood, repeated often enough, will eventually be accepted as truth. The Nazis employed that method as an instrument of organized propaganda: Hitler used the “Big Lie” to incite hatred of Jews, persuade Germans to ostracize them, and ultimately lay the groundwork for their persecution and genocide. Compl. ¶¶ 22–23, D. Ct. Doc. 1, at 12–13. CNN itself clearly understood that historical meaning and the extraordinary gravity of invoking it in American politics. In a prior broadcast addressing a comparison of Republicans to Nazis, CNN expressly connected the “Big Lie” to Joseph Goebbels and explained his role as Hitler’s propagandist. CNN’s Political Director responded that “Nazi comparisons never work in politics” and should not be made, while a CNN anchor called such comparisons “stupid and sick.” *Id.* ¶ 24, at 13.

Nevertheless, CNN deliberately imported that historical meaning into its coverage of President Trump. In Fareed Zakaria’s January 2022 special, CNN recounted Hitler’s rise and destruction of German democracy, while intercutting footage of Hitler and Nazi Germany with footage of President Trump. Zakaria warned that the historical pattern “may be repeating itself in America,” and stressed that “[t]he story in Germany began with a big lie.” Compl. ¶ 16, D. Ct. Doc. 1, at 7–8. CNN thus placed its false accusation against President Trump within an extended comparison to the specific means by which Hitler obtained and consolidated political power.

That clear historical context gave CNN’s “Big Lie” label a specific, false, and factual meaning. CNN was

not only falsely stating that President Trump was a “liar.” It compounded the defamatory statement by drawing a disturbing analogy to Hitler and repeatedly asserting that President Trump had “zero actual evidence,” possessed “no proof,” advanced “false claims,” and pursued a “disinformation strategy” with respect to election integrity issues in the United States. CNN thus further falsely accused the President, like Hitler and Goebbels, of deliberately spreading those supposed falsehoods until the public accepted them, and of using them to disenfranchise voters. Pet. App. 10a–13a.

Substantial evidence supported President Trump’s concerns about the administration and integrity of the 2020 presidential election, and he sincerely believed those concerns. More such evidence has come to light since 2021, adding further support for President Trump’s ongoing concerns about the 2020 election. Pet. C.A. Br. 26 n.4 (C.A. Doc. 19). CNN knowingly or recklessly distorted his evidence, beliefs, conduct, and purpose. CNN also applied the defamatory “Big Lie” accusation selectively, treating frivolous election objections by its favored political figures like Stacey Abrams as legitimate, while branding President Trump’s bona fide concerns a deliberate propaganda campaign. Compl. ¶¶ 30–35, D. Ct. Doc. 1, at 17–19.

CNN understood the harmful force of its direct comparison of President Trump to Hitler and Goebbels. Again, its own personnel had previously condemned Nazi comparisons in American politics as “stupid” and “sick.” Yet CNN went on to repeatedly and deliberately weaponize that same historical

association against President Trump in an effort to damage him politically. Compl. ¶ 24, D. Ct. Doc. 1, at 13.

CNN used increasingly inflammatory false accusations in a failed effort to turn voters against the President. Compl. ¶¶ 1–3, D. Ct. Doc. 1, at 1–2. A CNN employee described the network’s work as “propaganda” and boasted that CNN’s propaganda had helped “get Trump out.” Compl. ¶ 13, D. Ct. Doc. 1, at 6–7.

Before filing suit, President Trump demanded a retraction. CNN refused and asserted that the election’s outcome was “well-established” to have been unaffected by fraud and “verified” by lawsuits, judicial rulings, governmental investigations, and official proceedings. Compl. ¶ 10 n.5, D. Ct. Doc. 1, at 4–5. All of those assertions by CNN were incorrect. Though CNN claimed to have conducted factual verification when wrongly refusing to retract, it later secured dismissal of this suit by mischaracterizing the same supposedly verified false accusations as inherently unverifiable opinion.

B. Procedural History

President Trump filed this action against CNN for defamation and defamation per se in October 2022, invoking the district court’s diversity jurisdiction under 28 U.S.C. § 1332. His complaint asserted that CNN’s publications falsely accused him of intentional dishonesty, calculated public deception, and conduct fundamentally incompatible with the office of President. Compl. ¶¶ 37–75, D. Ct. Doc. 1, at 19–28.

CNN moved to dismiss under Rule 12(b)(6), contending, in an inherent contradiction, both that its accusations were true, and that they were constitutionally protected opinion. The district court granted the motion and dismissed the action with prejudice. Pet. App. 9a–23a.

The district court erroneously treated the case principally as one concerning whether CNN had literally accused President Trump of being Hitler or committing Nazi atrocities. It concluded that the complaint turned on an impermissible chain of inferences and that terms such as “Hitler-like” and “authoritarian” were too imprecise to be verified. Pet. App. 20a–23a. The court did not separately address CNN’s express, false assertions that President Trump had “zero actual evidence,” possessed “no proof,” advanced false claims, and deliberately repeated them as part of a disinformation strategy. From the premise that CNN’s statements constituted mere opinion, the district court concluded, again in error, that the falsity element of the actual malice standard could not be satisfied. Pet. App. 17a, 20a.

President Trump promptly sought reconsideration and, in the alternative, leave to amend. The district court denied both forms of relief. Pet. App. 24a–26a.

The Eleventh Circuit affirmed. Pet. App. 3a. The panel acknowledged that the Eleventh Circuit had never “squarely addressed” whether use of an incendiary term like “Big Lie”—with the most derogatory connotations—could convey a factual accusation. Pet. App. 4a. It resolved that issue of first impression by looking to pre-*Milkovich* decisions

such as *Buckley v. Littell*, 539 F.2d 882 (2d Cir. 1976), and *Ollman v. Evans*, 750 F.2d 970 (D.C. Cir. 1984) (en banc)—cases involving broad ideological labels such as “fascist” and “political Marxist.” From those decisions, the panel concluded that “Big Lie” was too ambiguous to be verifiably false. Pet. App. 4a–5a. Citing *Turner v. Wells*, 879 F.3d 1254 (11th Cir. 2018), the panel characterized CNN’s false accusations as merely a “subjective assessment” of President Trump’s conduct, which the panel held was “not readily capable of being proven true or false.” Pet. App. 5a–6a.

The panel relied on that generalized conclusion to dispose of the case. As a result, the panel did not separately analyze the many false claims underlying the network’s defamatory analogy between President Trump and the Nazis—for example, CNN’s false assertions concerning the absence of evidence, President Trump’s alleged knowledge of falsity, or his supposed intent to deceive. Nor did the Eleventh Circuit address the significance of CNN’s pre-suit statements that its false claims were “well-established” facts, objectively verified by courts and governmental investigations. Compl. ¶ 10 n.5, D. Ct. Doc. 1, at 4–5.

The panel further held that CNN’s thousands of repetitions of the false accusation did not matter because, in its view, repetition could not make a nonfactual statement factual. Pet. App. 6a.

President Trump sought panel rehearing and rehearing en banc. The petition emphasized that CNN had wrongly presented its false accusations as

objective truth, that the embedded factual charges concerned evidence, knowledge, and deliberate deception, and that the panel had extended cases involving loose political labels to materially different, fact-laden publications. Pet. C.A. Reh’g Pet. 7–15, 17–20 (C.A. Doc. 40). Rehearing was denied. Pet. App. 27a–28a.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit’s Decision Below Conflicts with this Court’s Decision in *Milkovich* and Creates a Circuit Conflict over Its Application.

In *Milkovich*, this Court rejected “a wholesale defamation exemption for anything that might be labeled ‘opinion.’” 497 U.S. at 18. This Court has long explained that, because an expression of opinion may communicate a concrete false factual allegation, courts cannot rely on labels, but must instead ask whether a reasonable factfinder could understand the publication, considered in context, to assert or imply facts capable of being proven false. *Id.* at 18–21. Thus, “In my opinion John Jones is a liar” may convey the same factual accusation as “Jones is a liar.” *Id.* at 18–19. The constitutional inquiry turns on the substance of the communication, not the rhetorical form in which the publisher delivers it.

The facts of *Milkovich* illuminate that rule. A newspaper column accused a high-school wrestling coach of lying under oath about an altercation at a match. *Id.* at 3–5. The charge appeared in commentary, and reflected the columnist’s

interpretation of disputed events. *Id.* This Court nevertheless held that readers could reasonably understand the column to assert that the coach had knowingly testified falsely. *Id.* at 21. That accusation remained factual because it could be resolved through “a core of objective evidence.” *Id.* at 21. *Milkovich* therefore establishes that a charge of deliberate dishonesty does not become constitutionally immune when conveyed through supposed commentary, inference, or opinion.

The courts of appeals have struggled to implement that rule when a publication combines factual assertions with evaluative or inflammatory language. Their formulations vary substantially. The Seventh Circuit focuses on whether the speaker purports to possess objectively verifiable facts. *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993) (statement framed as opinion may be actionable if context shows speaker’s pretense of “possession of objectively verifiable facts”). The Ninth Circuit considers figurative language, general tenor, and verifiability. *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1053–55 (9th Cir. 1990) (despite some hyperbole and humorous tenor, contradiction of claims made by manufacturer was capable of being understood as an assertion of fact). The First Circuit gives substantial weight to whether the publication discloses the underlying facts and leaves readers to draw their own conclusions. *Sindi v. El-Moslimany*, 896 F.3d 1, 14–17 (1st Cir. 2018) (affirming defamation liability where challenged “opinion” statements “imply[d] the existence of facts which are capable of being proven true or false”).

The Second Circuit employs a multifactor inquiry examining language, context, verifiability, and social setting. See *Flamm v. Am. Ass’n of Univ. Women*, 201 F.3d 144, 153 (2d Cir. 2000) (“(1) [W]hether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to ‘signal ... readers or listeners that what is being read or heard is likely to be opinion, not fact.’”) (citation omitted); see also *Lee v. Bankers Tr. Co.*, 166 F.3d 540, 546–47 (2d Cir. 1999) (considering “content,” “verifiability,” and “context” and explaining that opinion may be actionable where a reasonable factfinder would understand it to imply “reasonably specific assertions of fact”). The Sixth Circuit has recognized that courts use various methods to distinguish actionable factual meaning from protected hyperbole. *Jolliff v. NLRB*, 513 F.3d 600, 610–11 (6th Cir. 2008) (surveying the various approaches).

While the circuits’ approaches differ, each strives to implement *Milkovich*’s central inquiry into whether an ostensibly opinionated statement conveys objectively verifiable facts.

The Eleventh Circuit departed from that common baseline. It wrongly held that the First Amendment protected CNN’s use of the term “Big Lie,” because that term was supposedly ambiguous, without separately identifying the factual accusations CNN used to define the phrase, including through its use

of images of Hitler and President Trump. Pet. App. 4a–6a.

That approach effectively created a pejorative-label exception that contravenes this Court’s express instruction in *Milkovich*. Once the panel classified “Big Lie” as an ambiguous epithet, which was error in itself, the Eleventh Circuit wrongly held that the First Amendment protected the false factual accusations embedded within that label, notwithstanding that the epithet was combined with photos of Hitler, thus providing clear context for the false factual assertions that CNN was making. CNN had claimed that President Trump possessed “zero actual evidence,” had “no proof,” advanced “false claims,” pursued a “disinformation strategy,” deliberately repeated falsehoods until the public accepted them, and sought to disenfranchise voters. Pet. App. 10a–13a. CNN then joined those false factual charges to a Hitler/Goebbels-like “Big Lie,” described President Trump’s words as a “near-replication” of a proposition attributed to Goebbels, and associated his election concerns with Hitler, Nazi propaganda, and authoritarian suppression. Pet. App. 11a; Compl. ¶¶ 16–17, 22–29, D. Ct. Doc. 1, at 7–17. Indeed, as the Complaint explains, CNN placed references to President Trump within just ten words of “Hitler” or “Nazis” at least 645 times, and it reportedly used the “Big Lie” characterization *more than 7,700 times* after January 2021 to malign President Trump. CNN did so even after its own chairman objected to the phrase and told employees not to use it on air. *Id.* ¶¶ 20, 26–28, at 11, 14–17. That was malicious, false, and defamatory.

The panel nevertheless erroneously abstracted the label “Big Lie” from the context CNN supplied, including the photos of Hitler and President Trump, compared it to terms like “fascist” and “political Marxist,” and reduced the entire publication to a “subjective assessment.” Pet. App. 4a–6a. The resulting rule contravenes both *Milkovich* and other circuits, by allowing a publisher to avoid scrutiny whenever it buries false accusations about evidence, knowledge, intent, and unlawful purpose beneath a sufficiently inflammatory moniker. Under the Eleventh Circuit’s approach, inflammatory rhetoric can immunize the very falsehoods that make the publication defamatory.

The panel’s reliance on pre-*Milkovich* decisions including *Buckley* and *Ollman* confirms its error. The Second Circuit’s decision in *Buckley*, 539 F.2d at 893, involved broad ideological descriptions such as “fascist,” “fellow traveler,” and “radical right.” The D.C. Circuit’s decision in *Ollman*, 750 F.2d at 987, involved the phrase “outspoken proponent of political Marxism.” Those labels did not acquire a specific factual meaning from accompanying assertions about what the plaintiffs had done, known, or intended. CNN’s publications did. CNN itself supplied “Big Lie” with false factual predicates—no evidence, knowledge of falsity, deliberate repetition, and an intent to deceive—and then reinforced that meaning through its express analogy to Hitler and Goebbels, including their use of the “Big Lie” against Jews. By extending *Buckley* and *Ollman* from undefined political labels to CNN’s detailed accusations of knowing deception—which were

coupled with images comparing President Trump to Hitler—the Eleventh Circuit erroneously revived the categorical opinion privilege *Milkovich* rejected, and deepened the confusion over how that precedent applies.

The Eleventh Circuit’s error was dispositive precisely because it occurred at the threshold. By labeling the “Big Lie” moniker as ambiguous, and then treating it as sufficient to classify CNN’s entire publication as opinion, including its use of photos of Hitler and President Trump, the panel prevented a jury from deciding whether CNN’s embedded factual accusations were knowingly false, which they were. That approach collapses *Milkovich*’s reasonable-reader inquiry into a judicial choice among competing meanings—similar to the allocation problem Justice Alito has described as “call[ing] out for review.” *Nat’l Rev., Inc. v. Mann*, 589 U.S. 1088, 1091 (2019) (Alito, J., dissenting from denial of certiorari).

This Court should grant review to restore the rule *Milkovich* announced: juries are to decide whether an inflammatory label like “Big Lie,” coupled with images of Hitler to provide context for the use of that label, conveys false and defamatory allegations about the target—here, President Trump.

II. The Question Presented Is Exceptionally Important.

This Court has repeatedly recognized that questions concerning the scope of First Amendment protection warrant close review, particularly when a

lower court adopts a rule that may either suppress protected speech or immunize defamatory factual accusations. *See, e.g., Snyder v. Phelps*, 562 U.S. 443, 451–52 (2011); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50–51 (1988). The ruling below does the latter. It wrongly expands constitutional protection beyond opinion and hyperbole to cover concretely false accusations about the target’s evidence, knowledge, intent, and conduct.

The rule adopted below gets the constitutional balance exactly backward. Defamation is especially harmful when a publisher combines false factual accusations with language and images falsely portraying the target as corrupt, dangerous, or unfit for public trust. Yet, the Eleventh Circuit’s ruling affords such accusations greater protection precisely because they are expressed through inflammatory rhetoric and labels. The label “Big Lie,” combined with CNN’s use of photos of Hitler, clearly increased the injury to the President, and should not serve as the asserted basis for immunity.

The Eleventh Circuit’s contrary rule skews an already biased media environment by creating a strong incentive to package false factual accusations in pejorative and inflammatory language, labels, and images. Under the Eleventh Circuit’s approach, a publisher may falsely and maliciously claim that its target lacked evidence, knew the truth, deliberately deceived others, or pursued unlawful ends, then place those accusations under a label such as “fraud,” “propaganda,” “disinformation,” or “Big Lie.” If the label controls the analysis, the false factual accusations escape scrutiny.

That problem is increasingly important because modern political reporting and commentary frequently combine factual assertions with evaluative language. A label viewed alone may be subjective; but the same label may convey verifiably false facts when the publisher supplies additional context that includes those false factual predicates, as was the case here. Courts, therefore, must examine the communication as a whole, rather than strip the label from the factual context that gives it meaning. The decision below does the opposite, distorting an already ideologically skewed media environment by giving politically aligned outlets greater freedom to cloak false factual accusations in inflammatory rhetoric.

The concern is even greater because *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964), already raised the bar for public officials by requiring proof of actual malice. That rule—which members of this Court have criticized as wrongly decided—makes recovery difficult even when a publication is false and highly damaging. *McKee v. Cosby*, 586 U.S. 1172, 1173 (2019) (Thomas, J., concurring in denial of certiorari) (“*New York Times* and the Court’s decisions extending it were policy-driven decisions masquerading as constitutional law.”); *Berisha v. Lawson*, 141 S. Ct. 2424, 2425 (2021) (Thomas, J., dissenting from denial of certiorari) (“This Court’s pronouncement that the First Amendment requires public figures to establish actual malice bears ‘no relation to the text, history, or structure of the Constitution.’”) (citation omitted); *id.* at 2427–30 (Gorsuch, J., dissenting from denial of certiorari);

Coral Ridge Ministries Media, Inc. v. Southern Poverty Law Center, 142 S. Ct. 2453, 2454 (2022) (Thomas, J., dissenting from denial of certiorari) (criticizing *New York Times* for allowing media organizations “to cast false aspersions on public figures with near impunity”). The decision below compounds that error by wrongly creating an additional threshold immunity for factual accusations embedded in heated rhetoric. It thus makes an already demanding claim still harder to prove before discovery or factual development has begun.

Milkovich explicitly rejected that maneuver. The Court explained that existing First Amendment safeguards supplied sufficient breathing space and declined to recognize a separate constitutional privilege for statements labeled “opinion.” 497 U.S. at 19–21. The Eleventh Circuit effectively resuscitated that privilege by allowing a pejorative label to shield the factual accusations it conveys.

Such a rule is particularly harmful when the accusation concerns knowledge and intent. Falsely accusing someone of fabricating evidence, deliberately deceiving the public, or pursuing unlawful objectives attacks honesty and fitness for positions of trust. Those propositions are capable of proof through documents, communications, advice, conduct, and circumstantial evidence. Courts regularly adjudicate questions of knowledge and purpose. The use of inflammatory language does not make those factual questions unverifiable.

The consequences are especially grave here. CNN launched a false campaign against the President of the United States, first while in office and then as a leading candidate to return to that office. It falsely and maliciously charged that President Trump knowingly fabricated election concerns, deliberately deceived the American people, and employed a Hitler/Goebbels-like method of political manipulation. Those false accusations were calculated to injure the President's standing before the electorate. Such "lies impose real harm" on the very fabric of democratic self-government, which is why the common law historically regarded them as even "more serious and injurious than ordinary libels." *Berisha*, 141 S. Ct. at 2425 (Thomas, J., dissenting from denial of certiorari).

Here, CNN weaponized its false allegations in an effort to turn voters against President Trump and impair his future candidacy. Compl. ¶¶ 1–3, D. Ct. Doc. 1, at 1–2. A CNN employee described the network's work as "propaganda" and boasted that CNN had helped "get Trump out." Compl. ¶ 13, D. Ct. Doc. 1, at 6–7. CNN thus used false accusations of electoral manipulation to influence the electorate itself. Such defamation is deeply corrosive to the political process.

The First Amendment does not require courts to grant the greatest protection to the most inflammatory forms of defamation. *Sullivan* already imposes a demanding burden. The decision below raises that burden even higher by preventing any inquiry into falsity and fault whenever factual accusations are wrapped in a pejorative label. The

consequences are dire, and this Court’s review is warranted.

III. This Case Is an Ideal Vehicle To Decide the Question Presented.

The question presented by this petition was fully litigated and fully adjudicated below. The Eleventh Circuit expressly acknowledged that it had never “squarely addressed” whether the use of an incendiary moniker such as “Big Lie,” combined with photos of Nazis, could convey an actionable factual accusation. Pet. App. 4a. It then resolved that acknowledged question of first impression as a matter of federal constitutional law. Its holding that CNN’s false accusations were insufficiently factual to be proven false is squarely presented for review. Pet. App. 3a–6a.

President Trump vigorously litigated the issue of falsity at every step. In his opening brief to the Eleventh Circuit, the President maintained that CNN’s publications conveyed a “bundle of factually-false allegations” concerning the election, the evidence available to him, his understanding of events, and his purpose in speaking. Pet. C.A. Br. 14–15, 24–32 (C.A. Doc. 19). His reply brief argued that CNN’s statements were factual or, at a minimum, mixed opinions resting on false factual predicates, including the false charges that he had no evidence and deliberately intended to mislead the public. Pet. C.A. Reply Br. 7–14, 19–20 (C.A. Doc. 31). His rehearing petition again emphasized that CNN wrongly presented its false accusations as objective truth and that the panel disregarded the embedded

factual charges concerning evidence, knowledge, and deliberate deception. Pet. C.A. Reh’g Pet. 7–15, 17–20 (C.A. Doc. 40). The Question Presented reflects the theory litigated and decided throughout the appeal.

The motion-to-dismiss posture also makes the case especially suitable for review. The challenged publications are quoted in the complaint and reproduced in the appendix. No trial record requires examination, no credibility determination is at issue, and no factual finding receives deference. The Court need only decide whether *Milkovich* permits a court to disregard concrete factual accusations when the publisher embeds them in inflammatory rhetoric (it does not).

The question presented is important and ripe for review. The petition should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 2026

APPENDIX

TABLE OF CONTENTS

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED NOVEMBER 18, 2025	1a
APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED JULY 28, 2023	9a
APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FILED DECEMBER 5, 2023	24a
APPENDIX D — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED MARCH 17, 2026	27a

1a

**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT, FILED NOVEMBER 18, 2025**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 23-14044
Non-Argument Calendar

DONALD JOHN TRUMP,

Plaintiff-Appellant,

v.

CABLE NEWS NETWORK, INC.,

Defendant-Appellee.

Filed November 18, 2025

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:22-cv-61842-AHS

Before JORDAN, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

In 2022, Plaintiff-Appellant Donald J. Trump filed a defamation suit against Cable News Network, Inc. (CNN). He complained that, by using the phrase “Big

Appendix A

Lie” to describe his claims about the 2020 presidential election, CNN defamed him. The district court dismissed his complaint with prejudice. Trump then moved for reconsideration and, alternatively, for leave to amend his complaint. The district court denied these motions.

On appeal, Trump contends that the district court erred in dismissing his complaint and abused its discretion in denying his motions. We affirm the district court’s dismissal.

I.

“We review de novo a Rule 12(b)(6) dismissal for failure to state a claim upon which relief may be granted.” *Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 6 F.4th 1247, 1251 (11th Cir. 2021). “We review for abuse of discretion a district court’s denial of a motion for reconsideration under Rule 59.” *Gulisano v. Burlington, Inc.*, 34 F.4th 935, 941 (11th Cir. 2022).

II.

Under Florida law, defamation has five elements: “(1) publication; (2) falsity; (3) the statement was made with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) the statement must be defamatory.” *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018).

Appendix A

“When applying state defamation law to public figures, the First Amendment imposes additional limitations”: (1) “[T]he alleged defamatory statement must be sufficiently factual to be susceptible of being proved true or false”; (2) “the statement must be actually false”; and (3) the plaintiff “must prove that the defendant made the alleged defamatory statement with actual malice.” *Coral Ridge*, 6 F.4th at 1252 (footnote, citations, and internal quotation marks omitted).

The district court dismissed Trump’s defamation claim because the statements of which he complained were “opinion, not factually false statements, and therefore [we] re not actionable.” *Trump v. Cable News Network, Inc.*, 684 F. Supp. 3d 1269, 1274 (S.D. Fla. 2023). Alternatively, the court ruled that Trump did not sufficiently plead that CNN acted with actual malice. *Id.* at 1275. We agree that Trump did not adequately plead falsity. Therefore, we affirm the dismissal of Trump’s claim.

“A false statement of fact is the *sine qua non* for recovery in a defamation action.” *Hallmark Builders, Inc. v. Gaylord Broad. Co.*, 733 F.2d 1461, 1464 (11th Cir. 1984) (quoting *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th Dist. Ct. App. 1983)). Trump alleges that CNN published false statements of fact when it used the phrase “Big Lie” in relation to Trump, which he asserted was intended to associate him with Hitler and Nazi propaganda.

To be clear, CNN has never explicitly claimed that Trump’s “actions and statements were designed to be,

Appendix A

and actually were, variations of those [that] Hitler used to suppress and destroy populations.” Reply Br. at 7. But, according to Trump, this assertion is implied in CNN’s use of the phrase “Big Lie.” Further, he argues, the phrase “*could* reasonably be interpreted . . . by facets of the CNN audience as accusations that [Trump] is doing exactly what the historical record shows [that] Hitler did in his monstrous, genocidal crimes against humanity.” *Id.* at 8. And, the argument goes, these accusations are false statements of fact because Trump did not do exactly what Hitler did. Hitler engaged in a monstrous genocide; Trump “exercis[ed] a constitutional right to point out concerns with the integrity of elections.” *Id.*

Trump’s argument is unpersuasive. First, although he concedes that CNN’s use of the term “Big Lie” is, to some extent, ambiguous, he assumes that it is unambiguous enough to constitute a statement of fact. This assumption is untenable. Although we haven’t squarely addressed the point, case law from other circuits is persuasive. In *Buckley v. Littell*, 539 F.2d 882 (2d Cir. 1976), *cert. denied*, 429 U.S. 1062 (1977), the Second Circuit held that, by using the terms “fascist,” “fellow traveler,” and “radical right” to describe William F. Buckley, Jr., the defendant was not publishing “statements of fact.” *Buckley*, 539 F.2d at 893. Rather, the court ruled, the terms were “so debatable, loose and varying[] that they [we]re insusceptible to proof of truth or falsity.” *Id.* at 894. Similarly, in *Ollman v. Evans*, 750 F.2d 970 (D.C. Cir. 1984) (*en banc*), *cert. denied*, 471 U.S. 1127 (1985), the D.C. Circuit held that when the defendant called the plaintiff “an outspoken proponent of political Marxism,” his statement was “obviously

Appendix A

unverifiable.” *Ollman*, 750 F.2d at 987. Trump argues that the term “Big Lie” is less ambiguous than the terms “fascist,” “fellow traveler,” “radical right,” and “outspoken proponent of political Marxism.” But he does not explain this assertion. If “fascist”—a term that is, by definition, political—is ambiguous, then it follows that “Big Lie”—a term that is facially apolitical—is at least as ambiguous.

Second, Trump’s argument hinges on the fact that his own interpretation of his conduct—*i.e.*, that he was exercising a constitutional right to identify his concerns with the integrity of elections—is true and that CNN’s interpretation—*i.e.*, that Trump was peddling his “Big Lie”—is false. However, his conduct is susceptible to multiple subjective interpretations, including CNN’s. As we held in *Turner*, one person’s “subjective assessment” is not rendered false by another person’s “different conclusion.” 879 F.3d at 1264. In *Turner*, the defendants stated that, on at least one occasion, the plaintiff, James Turner, offensive line coach of the Miami Dolphins, participated in the “homophobic taunting” of one of his players. *Id.* Turner argued that this statement was false because his conduct was a “harmless ‘joke,’ as opposed to homophobic taunting.” *Id.* We rejected his argument, concluding that the statement “[wa]s the [d]efendants’ subjective assessment of Turner’s conduct and [wa]s not readily capable of being proven true or false.” *Id.* Just as the *Turner* defendants described Turner’s conduct as “homophobic taunting,” CNN described Trump’s conduct as his “Big Lie.” Just as Turner viewed his own conduct as a “harmless ‘joke,’” Trump viewed his own conduct as the exercise of a constitutional right. As in *Turner*, so too

Appendix A

here. CNN's subjective assessment of Trump's conduct is not readily capable of being proven true or false.

Trump has not adequately alleged the falsity of CNN's statements. Therefore, he has failed to state a defamation claim.

Trump's other arguments are likewise meritless. He argues that the district court erred in limiting its analysis to the five defamatory statements that he listed in his complaint. According to Trump, the district court should have also analyzed the "more than sixty instances of defamation set forth in the Notice Letter to CNN" and the "nearly 7,700 instances in which CNN had defamed Plaintiff with the 'Big Lie' allegation." Brief of Appellant at 18. Trump has not alleged that any of these "instances of defamation" refer to something other than CNN's use of "Big Lie." We have held that, by using "Big Lie" to describe Trump, CNN was not publishing a false statement of fact. Therefore, whether CNN used "Big Lie" one time or many is irrelevant to the question of falsity.

Trump also contends that a jury should decide whether CNN's publications are defamatory. We disagree. "Whether the statement is one of fact or opinion and whether a statement of fact is susceptible to defamatory interpretation are questions of law for the court." *Turner*, 879 F.3d at 1262-63 (citing *Keller v. Miami Herald Pub. Co.*, 778 F.2d 711, 715 (11th Cir. 1985)).

*Appendix A***III.**

After the district court dismissed his complaint with prejudice, Trump moved for reconsideration and, alternatively, for leave to amend his complaint. The district court denied these motions. Trump argues that the district court abused its discretion. We disagree.

Trump argues that, when the district court denied his motion for leave to amend, it applied a standard that was too strict. Essential to his argument is his claim that the district court did not issue a judgment when it dismissed his complaint with prejudice. “In these circumstances,” Trump argues, “leave to amend should have been ‘granted liberally.’” Brief of Appellant at 41 (quoting *Czeremcha v. International Ass’n of Machinists and Aerospace Workers, AFL-CIO*, 724 F.2d 1552, 1556 & n. 6 (11th Cir. 1984)). But Trump overlooks that, in its order, the district court indicated that “dismissal of the complaint constituted dismissal of the action.” *Id.* After dismissing Trump’s complaint with prejudice, the court stated that “[t]he Clerk of Court is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions.” *Trump*, 684 F. Supp. 3d at 1277. Therefore, the district court did not abuse its discretion in denying Trump’s motion for leave to amend.

Nor did the district court abuse its discretion in denying Trump’s motion for reconsideration under Rule 59. Trump asserts that the district court (1) “fail[ed] to consider the entirety of the circumstances surrounding CNN’s publication of the challenged statements” and

Appendix A

(2) “appeared to reframe its understanding of [the clear error] standard in a manner unrelated to the case.” Brief of Appellant at 51-52, 55. “The only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact.” *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (alteration in original) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)). Neither of Trump’s points involve newly discovered evidence or manifest errors of law or fact, and the record confirms that the district court cited and applied the correct standard. We find no abuse of discretion.

IV.

For all of the above reasons, we **AFFIRM** the district court’s dismissal of Trump’s complaint.

**APPENDIX B — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF FLORIDA, FILED JULY 28, 2023**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-61842-CIV-SINGHAL

DONALD J. TRUMP,

Plaintiff,

v.

CABLE NEWS NETWORK, INC.,

Defendant.

ORDER

THIS CAUSE is before the Court on Defendant Cable News Network, Inc.’s (“CNN”) Motion to Dismiss (DE [20]). The motion is fully briefed and ripe for review. For the reasons discussed below, the Motion to Dismiss is granted.

I. INTRODUCTION

Plaintiff, Donald J. Trump (“Trump”) is a former president of the United States of America and a citizen of Florida. (DE [1] ¶ 1, 5). Defendant CNN is a news media corporation organized and incorporated under the laws of Delaware with its principal place of business in Georgia.

Appendix B

(DE [30]). Trump has sued CNN for defamation,¹ alleging diversity of citizenship. (DE [1] ¶ 4). 28 U.S.C. § 1332.

Trump alleges that CNN defamed him by making statements comparing him to Hitler and the Nazi regime. Trump’s Complaint (DE [1]) specifies five instances of alleged defamation. *Id.* ¶ 28.a-e:

a. On January 25, 2021, CNN published an article written by Ruth Ben-Ghiat, a “frequent contributor to CNN Opinion,” entitled “Trump’s big lie wouldn’t have worked without his thousands of little lies.” Ben-Ghiat wrote: “This is Trump’s ‘Big Lie,’ a brazen falsehood with momentous consequences.” *Id.* Ben-Ghiat likened the Plaintiff to an authoritarian dictator, writing:

Trump, a leader of authoritarian intentions and tendencies, had disadvantages with respect to the foreign autocrats he so admires. He had no state media, like China’s Xi Jinping. He could not rule by decree, like Hungary’s Viktor Orbán. He had to govern and run for reelection in an open society with a relatively robust

1. In Florida, before suing a media outlet for defamation, a plaintiff must “serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory.” Fla. Stat. § 770.01. Trump provided a Notice Letter to CNN. (DE [1] ¶10; DE [8]). Accordingly, the conditions precedent for filing this action have been satisfied.

Appendix B

free press. Moreover, although he succeeded in making journalists into hate objects for many of his followers, he could not revoke or destroy the First Amendment.

So Trump took a different tack, unleashing a barrage of disinformation common in authoritarian states but without precedent in the history of the American presidency. He told more than 30,000 documented lies in public (30,573 was The Washington Post's final tally), on Twitter, at rallies and in interviews. If taken as an average, it would come out to 21 lies per day over his four-year term.

b. On July 5, 2021, CNN published an article written by Chris Cillizza, CNN Editor-at-Large, entitled "Donald Trump just accidentally told the truth about his disinformation strategy." In this article, CNN's Editor-at-Large likens the Plaintiff to Nazi propagandist Joseph Goebbels: "One can only hope that Trump was unaware that his quote was a near-replication of this infamous line from Nazi Joseph Goebbels: 'If you tell a lie big enough and keep repeating it, people will eventually come to believe it.'"²

2. The Trump quote referenced by Cillizza was made on July 3, 2022, in Sarasota, Florida: "If you say it enough and keep saying it, they'll start to believe you." *See* Trump's Big Lie Wouldn't Have Worked Without His Thousands of Little Lies," <https://www.cnn.com>.

Appendix B

c. On September 15, 2021, CNN published an article written by Chris Cillizza, CNN Editor-at-Large, entitled, “Donald Trump’s Mental Health becomes an issue again.” In this article, CNN Editor-at-Large wrote that President Trump “continued to push *the Big Lie* that the election was somehow stolen despite there being *zero actual evidence* to back up that belief.” *Id.* (emphasis added).

d. On January 16, 2022, CNN aired a television show entitled “State of the Union” that included host Jake Tapper making the following comments:

TAPPER: Over the weekend, while Martin Luther King III was in Arizona rallying to expand voting rights, *Donald Trump was*, the same day, in the same state, doing the exact opposite, *continuing to push his big lie*.

(BEGIN VIDEO CLIP)

TRUMP: Last year, we had a rigged election, and the proof is all over the place. They always talk about the big lie. They’re the big lie.

[com/2021/07/05/politics/trump-disinformation-strategy/index.html](https://www.cnn.com/2021/07/05/politics/trump-disinformation-strategy/index.html) (last visited July 26, 2023). Trump does not dispute making that statement.

Appendix B

(END VIDEO CLIP)

TAPPER: There is a reason Trump was in Arizona, to push the legislature to disenfranchise the state's voters based on all of his *deranged election lies*.

e. On February 11, 2022, CNN published an article written by Chris Cillizza, CNN Editor-at-Large, entitled, "Here's the terrible reality: Trump's election lie is on the march" with a link entitled, "New poll suggests Trump 2020 election lie is working." In the article, Cillizza claims:

This is the insidiousness of Trump's big lie. It's like an earworm - you may hate the song but you just keep finding yourself humming it in the shower. Trump has created a constant low-level buzz within the American electorate that something is wrong with the way we conduct elections. That he has no proof doesn't seem to matter; by sheer repetition, his false claims are wheedling their way into the consciousness of the public.

Complaint (DE [1] ¶ 28) (footnotes omitted) (emphases in original).

Appendix B

Trump alleges that the use of the phrase “the Big Lie” constitutes defamation per se because it “create[s] a false and incendiary association between the Plaintiff and Hitler.” *Id.* ¶ 39. He argues that the use of the phrase “the Big Lie” is defamatory because it “has incited readers and viewers to hate, contempt, distrust, ridicule, and even fear the Plaintiff causing injury to the Plaintiff, the Plaintiff’s reputation, and the Plaintiff’s political career.” *Id.* ¶ 64. As a result, Trump claims that viewers and readers “understood that Plaintiff would be Hitler-like in any future political role.” *Id.* ¶ 41.

Trump further alleges that CNN failed to similarly challenge Democrat politicians who complained about election integrity. *Id.* ¶¶ 31-34. He argues that CNN’s disparate treatment of public figures is evidence of malice and “evidence that Defendant is not reporting the news, but rather propagating its political views.” *Id.* ¶ 35. Trump seeks damages in excess of \$75,000, punitive damages in the amount of \$475 million, pre- and post-judgment interest, taxable costs, and trial by jury.

CNN moves to dismiss the Complaint with prejudice.

II. LEGAL STANDARDS

A. Motion to Dismiss

To survive a motion to dismiss, “factual allegations must be enough to raise a right to relief above the speculative level” and must be sufficient “to state a claim

Appendix B

for relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). “The mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss.” *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009), *abrogated on other grounds by Mohamad v. Palestinian Authority*, 566 U.S. 449, 132 S. Ct. 1702, 182 L. Ed. 2d 720 (2012).

In considering a Rule 12(b)(6) motion to dismiss, the court’s review is generally “limited to the four corners of the complaint.” *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (quoting *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002)). The court must review the complaint in the light most favorable to the plaintiff, and it must generally accept the plaintiff’s well-pleaded facts as true. *See Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984). But “[c]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1262 (11th Cir. 2004) (citation omitted); *see also Iqbal*, 129 S. Ct. at 1949 (“[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions”).

*Appendix B***B. Defamation**

The parties agree that Florida law applies to this dispute. In Florida, a defamation claim has “five elements: (1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory.” *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008). A claim of defamation requires a false statement of fact. *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (“A false statement of fact is the *sine qua non* for recovery in a defamation action”).

Statements of pure opinion are not actionable. *Zambrano v. Devanesan*, 484 So. 2d 603, 606 (Fla. 4th DCA 1986). “The distinction between fact and opinion is not always easy to perceive.” *Id.* “Thus, the law recognizes that some comments may be pure expressions of opinion whereas others may be mixed expressions of opinion.” *Id.* Whether a challenged statement is one of fact or opinion is a question of law to be decided by the court. *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018).

“When applying state defamation law to public figures, the First Amendment imposes additional limitations.” *Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 6 F.4th 1247, 1252 (11th Cir. 2021). The statement in dispute “must be ‘sufficiently factual to be susceptible of being proved true or false.’” *Id.* (quoting *Milkovich v.*

Appendix B

Lorain J. Co., 497 U.S. 1, 21, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990)). Next, “the statement must be actually false.” *Id.* Finally, the statement must have been made with “actual malice,” that is “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Id.* (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)). Thus, even if the statement is made with bad or evil intent, it is not actionable under the law if it is pure opinion.³

3. Trump asks the Court to reconsider *New York Times Co. v. Sullivan*. See Complaint (DE [1] ¶ 47, n.41). The Court is unable to do that; the case is legally binding on this Court. This Court has previously written and quoted Judge Laurence Silberman that the *Sullivan* case has no basis in and “no relation to the text, history or structure of the Constitution, and it baldly constitutionalized an area of law refined over centuries of common law adjudication.” *Tah v. Global Witness Publishing, Inc.*, 991 F.3d 231, 251, 451 U.S. App. D.C. 248 (D.C. Cir. 2021) (Silberman, J. dissenting). But any disagreement based on textualism is effectively moot for this lower Court once the Supreme Court has spoken. And even if *Sullivan* weren’t binding, the case appears to be looked upon with favor by a majority of various iterations of the Supreme Court over the case’s nearly sixtyyear existence with ongoing expansion of the holding. See *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967) (extending *Sullivan*’s applications beyond public officials to public figures); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) (“We begin with the common ground. Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”); *Counterman v. Colorado*, 600 U.S. 66, 143 S. Ct. 2106, 2115-16, 216 L. Ed. 2d 775 (2023) (requiring proof that a criminal defendant—often mentally ill—subjectively understands the threatening nature of his statements).

*Appendix B***III. DISCUSSION**

This case involves political speech of the highest order. The First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for public office.” *McCutcheon v. FEC*, 572 U.S. 185, 191-92, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S. Ct. 621, 28 L. Ed. 2d 35 (1971)). As a panel of the Eleventh Circuit recently stated:

The First Amendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. Accordingly, speech on public issues occupies the highest rung on the hierarchy of First Amendment values and is entitled to special protection. Speech involves matters of public concern when it can be fairly considered as relating to any matter of political, social or other concern to the community, or when it is a subject of general interest and of value and concern to the public.

Darlow v. Babineck, 2022 U.S. App. LEXIS 29955, 2022 WL 15345444, at *2 (11th Cir. Oct. 27, 2022) (quotations omitted). The contested speech in this case involves reporting and commentary on Trump’s challenges to the legitimacy of the 2020 presidential election.

There is no question that the statements⁴ made by CNN meet the publication requirement for defamation

4. Although Trump correctly argues that all the allegations of the Complaint are relevant to the “totality of the circumstances,”

Appendix B

under Florida law. The next question is whether the statements were false statements of fact. This is where Trump's defamation claims fail.

The problem is essentially two-fold. First, the complained of statements are opinion, not factually false statements, and therefore are not actionable. Second, the reasonable viewer, unlike when *Sullivan*, *Butts* or *Gertz* were decided, no longer takes the time to research and verify reporting that often is not, in fact, news. As an example, only one month ago, the United States Supreme Court issued a well written 237-page joint opinion with vastly divergent views in two cases known widely as the Affirmative Action decisions.⁵ Within minutes of the release of the opinion, the free press had reported just what the opinion supposedly said and meant although it was clearly impossible that the reporter had read the opinion. And of course, those initial news articles were repeatedly shared, commented upon and disseminated over social media and still to this day the reasonable viewer very likely hasn't read the opinion and never will. This is the news model of today. It is far different than that in *Sullivan* which altered law that existed for 175 years and has spawned a cottage industry over the last 60. But this too is not actionable.

Trump argues that CNN's motivation for describing his election challenges as "the Big Lie" was to undermine

the Complaint identifies five specific statements as defamatory. (DE [1] ¶ 28). This Order, therefore, addresses the defamatory nature of only those five statements.

5. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023).

Appendix B

Trump’s political standing. But political motivation does not establish falsity. The “intention to portray [a] public figure in [a] negative light, even when motivated by ill will or evil intent, is not sufficient to show actual malice unless the publisher intended to inflict harm through knowing or reckless falsehood.” *Donald J. Trump for President, Inc. v. CNN Broad., Inc.*, 500 F. Supp. 3d 1349, 1357 n.4 (N.D. Ga. 2020) (quoting *Don King Prods. v. Walt Disney Co.*, 40 So. 3d 40, 45 (Fla. 4th DCA 2010). *See also Dershowitz v. Cable News Network*, 541 F. Supp. 3d 1354, 1370 (S.D. Fla. 2021) (political motivation irrelevant to defamation claim); *cf. Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 666-67, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989) (profit motive behind publication does not establish actual malice).

Acknowledging that CNN acted with political enmity does not save this case; the Complaint alleges no false statements of fact. Trump complains that CNN described his election challenges as “the Big Lie.” Trump argues that “the Big Lie” is a phrase attributed to Joseph Goebbels and that CNN’s use of the phrase wrongly links Trump with the Hitler regime in the public eye. This is a stacking of inferences that cannot support a finding of falsehood. *See Church of Scientology of California v. Cazares*, 638 F.2d 1272, 1288 (5th Cir. 1981) *abrogated on other grounds*, *Blanchard v. Bergeron*, 489 U.S. 87, 109 S. Ct. 939, 103 L. Ed. 2d 67 (1989).⁶

6. Decisions of the former Fifth Circuit rendered prior to close of business on September 30, 1981, are binding on this Court. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc).

Appendix B

Church of Scientology is similar to the present case. There, a city official made numerous public statements opposing the church's presence in the city. In one he stated: "Scientologists are bringing to the city a helter-skelter world and philosophy." The church sued, stating that "the term 'helter-skelter' had, by reason of a best-selling book and television movie of the same title come into public understanding as descriptive of the policy of [a] generation of racial strife and indiscriminate mass murder allegedly espoused by the infamous and widely publicized Charles Manson." The church claimed that by using the term "helter-skelter," the defendant intended "to convey to the public that [the church] was dedicated to promotion of [a] generation of racial strife and indiscriminate mass murder." *Id.* at 1285, n.11. The former Fifth Circuit found no defamation, stating that it was "not prepared to build inference upon inference in order to find defamatory meaning in a statement." *Id.* at 1288. Neither is this Court able to create an inference of defamatory meaning.

Trump alleges that "the Big Lie" refers to a Nazi "propaganda campaign to justify Jewish persecution and genocide." (DE [1] ¶ 23). Like Trump and CNN personalities Ashleigh Banfield and Paul Steinhauser (*see* (DE [1] ¶ 24), the Court finds Nazi references in the political discourse (made by whichever "side") to be odious and repugnant. But bad rhetoric is not defamation when it does not include false statements of fact. CNN's use of the phrase "the Big Lie" in connection with Trump's election challenges does not give rise to a plausible inference that Trump advocates the persecution and genocide of Jews or any other group of people. No reasonable viewer could (or should) plausibly make that reference. *See Miami*

Appendix B

Herald Pub. Co. v. Ane, 423 So.2d 376, 389 (Fla. 3rd DCA 1982) (quoting *Walsh v. Miami Herald Pub. Co.*, 80 So. 2d 669, 671 (Fla. 1955)) (“The language of the publication declared upon should not be interpreted by the extremes but should be ‘construed as the common mind would ordinarily understand it.’”). And even if the phrase “the Big Lie” could somehow plausibly compel a reasonable viewer to perceive Trump as “Hitler-like,” or “authoritarian”, such terms are not statements of fact subject to defamation laws “because of the tremendous imprecision of the meaning and usage of such terms in the realm of political debate....” *Buckley v. Littell*, 539 F.2d 882, 893 (2d Cir. 1976).⁷ A connotation or implication is only actionable if it is “provably false.” *Coral Ridge Ministries Media, Inc.*, 6 F.4th at 1252 (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990) (“a statement on matters of public concern must be provable as false before there can be liability under state defamation law, at least in situations like the present, where a media defendant is involved”)). Being “Hitler-like” is not a verifiable statement of fact that would support a defamation claim. *Buckley*, 539 F.2d at 893.⁸

7. In *Buckley*, the court held that “political labels” such as “fascist,” “fellow traveler,” and “radical right” were too imprecise to be proven as statements of fact. 539 F.2d at 893.

8. Trump cites three cases where references to Hitler were deemed defamatory. See *State v. Guinn*, 208 Tenn. 527, 347 S.W.2d 44, 46-47 (Tenn. 1961); *O'Donnell v. Philadelphia Rec. Co.*, 356 Pa. 307, 51 A.2d 775, 777 (Pa. 1947); *Goodrich v. Rep. Pub. Co.*, 199 S.W.2d 228, 230 (Tex. Civ. App. 1946), *writ refused*. But these cases were decided *before New York Times Co. v. Sullivan* and its progeny and, therefore, have little to no bearing on this case.

Appendix B

Trump argues that a motion to dismiss is not the proper avenue for evaluating the defamatory nature of CNN's comments. The Court disagrees. "Whether the defendant's statements constitute defamation ... is a question of law for the court to determine." *Turner*, 879 F.3d at 1269 (affirming dismissal of defamation case at motion to dismiss stage) (citing *Brown v. Tallahassee Democrat, Inc.*, 440 So. 2d 588, 590 (Fla. 1st DCA 1983)). "Whether the publication is defamatory becomes an issue of fact for the jury only where the publication is susceptible of two reasonable interpretations, one of which is defamatory." *Id.* CNN's statements while repugnant, were not, as a matter of law, defamatory. The case will, therefore, be dismissed with prejudice.⁹ Accordingly, it is hereby

ORDERED AND ADJUDGED that CNN's Motion to Dismiss (DE [20]) is **GRANTED**. Plaintiff's Complaint (DE [1]) is **DISMISSED WITH PREJUDICE**. The Clerk of Court is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 28th day of July 2023.

/s/ Raag Singhal
RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

9. A district court is not required to grant a plaintiff leave to amend his complaint sua sponte when the plaintiff, who is represented by counsel, never filed a motion to amend nor requested leave to amend before the district court. *Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002).

**APPENDIX C — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF FLORIDA, FILED DECEMBER 5, 2023**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-61842-CIV-SINGHAL

DONALD J. TRUMP,

Plaintiff,

v.

CABLE NEWS NETWORK, INC.,

Defendant.

ORDER

THIS CAUSE is before the Court on Plaintiff Donald J. Trump’s (“Trump”) Motion for Reconsideration and/or Rehearing of Court’s Order Granting Defendant’s Motion to Dismiss. (DE [32]). The motion is fully briefed and ripe for review.

“Reconsideration is an extraordinary remedy to be employed sparingly.” *Holland v. Florida*, 2007 U.S. Dist. LEXIS 114848, 2007 WL 9705926, at *1 (S.D. Fla. June 26, 2007) (citation and internal quotation marks omitted). “The only grounds for granting a motion for reconsideration ‘are newly-discovered evidence or manifest errors of law or fact.’” *United States v. Dean*,

Appendix C

838 Fed. Appx. 470, 471-72 (11th Cir. 2020) (quoting *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (per curiam)). “[C]lear error or manifest injustice occurs where the Court ‘has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.’” *Great Lakes Ins. SE v. Boat Rental Miami, Inc.*, 2020 U.S. Dist. LEXIS 8300, 2020 WL 264674, at *6 (S.D. Fla. Jan. 17, 2020) (quotations omitted).¹

A motion for reconsideration should raise new issues, not merely address issues litigated previously. *Socialist Workers Party v. Leahy*, 957 F. Supp. 1262, 1263 (S.D. Fla. 1997). “A party’s disagreement with the court’s decision, absent a showing of manifest error, is not sufficient to demonstrate entitlement to relief.” *Dean*, 838 Fed. Appx. at 472 (citing *Jacobs v. Tempur-Pedic Int’l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010)).

Plaintiff’s Motion for Reconsideration is well-written and well-reasoned but does not raise issues of manifest error. Nor has Plaintiff set forth reasonable grounds for amending his complaint when Plaintiff never moved to

1. For example, assume there is a game with no ties, only winners and losers. Three upper echelon teams play the game against a variety of opponents. One team plays an entire season and only wins. Two other teams play an entire season and lose one game each. It is beyond dispute that the undefeated team has done everything it was asked to do—it has never failed. The teams that have lost have not succeeded in doing what they were asked to do. To reward the losing teams over the winning team is a manifest error.

Appendix C

amend prior to dismissal. Plaintiff seeks the proverbial “second bite of the apple” and this the Court cannot grant. “When a litigant simply thinks a district court’s ruling is wrong, the proper remedy is to appeal the ruling, not to seek reconsideration.” *Nuwer v. FCA US LLC*, 2023 U.S. Dist. LEXIS 117564, 2023 WL 4370737, at *1 (S.D. Fla. Apr. 5, 2023). Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff’s Motion for Reconsideration and/or Rehearing of Court’s Order Granting Defendant’s Motion to Dismiss (DE [32]) is **DENIED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 5th day of December 2023.

/s/ Raag Singhal
RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

27a

**APPENDIX D — DENIAL OF REHEARING
OF THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT,
FILED MARCH 17, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 23-14044

DONALD JOHN TRUMP,

Plaintiff-Appellant,

versus

CABLE NEWS NETWORK, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:22-cv-61842-AHS

ON PETITION FOR REHEARING AND PETITION
FOR REHEARING EN BANC

Before JORDAN, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED,
no judge in regular active service on the Court having

Appendix D

requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. FRAP 40, 11th Cir. IOP 2.