



October 30, 2025

The Honorable Claudia Cubas
Assistant Chief Immigration Judge
Hyattsville Immigration Court
4420 Kenilworth Avenue
Hyattsville, MD 20781

Re: Unconstitutional exclusions of journalists from immigration hearings

Dear Judge Cubas:

I write on behalf of Freedom of the Press Foundation (FPF) to express serious concern regarding [reports](#) that journalists from Capital News Service were expelled from immigration proceedings before Judge Dinesh Verma at the Hyattsville Immigration Court on October 28, 2025. The reporters were informed that they cannot attend future immigration hearings at the courthouse without advance permission from the Department of Justice—permission that is currently impossible to obtain due to the government shutdown.

The exclusion of journalists from immigration court proceedings absent special government permission violates the First Amendment's guarantee of press freedom and public access to judicial proceedings. That would be the case even if obtaining that permission were not impossible for the foreseeable future, and even if the administration that would need to grant such permission had not repeatedly [displayed](#) its hostility towards journalists exercising their constitutional right to cover immigration enforcement.

We urge you to ensure that full press access to all open immigration hearings at the Hyattsville court is restored immediately.

The Constitutional right of press access to judicial proceedings

The Supreme Court has firmly established that the First Amendment guarantees the press and public a qualified right of access to judicial proceedings. In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 577 (1980), the Court held that the right to attend criminal trials is implicit in the guarantees of the First Amendment, explaining that “the right of access to places traditionally open to the public, as criminal trials have long

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been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press.”

The Court later clarified in *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (*Press-Enterprise II*), that this right extends beyond criminal trials to other judicial proceedings. The Court established a two-part test: the First Amendment right of access attaches when (1) the proceeding has historically been open to the press and public, and (2) public access plays a significant role in the functioning of the proceeding. *Id.* at 8-9.

Providing access only to nonjournalists does not satisfy the right of access. As the Court explained in *Richmond Newspapers*, “Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public.” 448 U.S. at 572-73.

Applying the constitutional standards here

Applying the *Press-Enterprise II* test, immigration hearings are presumptively open to the public, including journalists. In *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 701 (6th Cir. 2002), the Sixth Circuit held that “deportation proceedings historically have been open” and that, since the enactment of the first general immigration act in 1882, “the general policy has been one of openness.” The court explained that public access “undoubtedly enhances the quality of deportation proceedings” because it serves “as a check on the actions of the Executive by assuring us that proceedings are conducted fairly and properly,” to ensure “that government does its job properly; that it does not make mistakes,” and to enhance the public’s “perception of integrity and fairness,” *id.* At 703–04 — functions which are especially necessary now, with immigration enforcement as newsworthy as ever. As a result, the Sixth Circuit concluded that closing deportation hearings categorically violates the First Amendment. *Id.* at 683.

Like the Sixth Circuit, the Fourth Circuit has repeatedly emphasized the importance of public access to judicial proceedings and records. *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180-81 (4th Cir. 1988) (recognizing a First Amendment access rights to particular judicial records and documents); *see also United States v. Moussaoui*, 65 F. App’x 881, 885 (4th Cir. 2003) (“The value of openness in judicial proceedings can hardly be overestimated.”). The Fourth Circuit has explained that public access “promotes not only the public’s interest in monitoring the functioning of the courts but also the integrity of the judiciary. . . . ‘Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like a fiat and requires

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rigorous justification.” *Doe v. Pub. Citizen*, 749 F.3d 246, 266 (4th Cir. 2014) (quoting *Hicklin Eng’g, L.C. v. Bartell*, 439 F.3d 346, 348 (7th Cir.2006)).

These precedents strongly indicate that the Fourth Circuit would almost certainly recognize—as the Sixth Circuit did—that immigration proceedings satisfy both prongs of the constitutional test for a First Amendment right of access to deportation hearings.

Further, the regulatory framework itself acknowledges this presumption of openness. 8 C.F.R. § 1003.27 provides that immigration hearings “shall be open to the public,” subject only to specific exceptions for privacy concerns in individual cases. *See also* 8 C.F.R. § 1240.10(b). The regulations contemplate case-by-case determinations by immigration judges—not a blanket policy requiring advance government permission for journalists to observe proceedings and excluding them when such permission is impossible to obtain. Shutting down the government does not shut down the First Amendment.

Access must be presumed

Under controlling First Amendment precedent, the default position must be that journalists may observe proceedings in immigration courts. Any closure of proceedings or exclusion of the press must be justified on the record in individual cases based on specific findings. *See Press-Enterprise II*, 478 U.S. at 13-14 (closure decisions must be supported by specific, on the record findings).

The current policy in Hyattsville Immigration Court inverts this constitutional framework by implementing a system of closed proceedings that journalists may observe only with advance government permission. This is backwards as a matter of constitutional law.

CNS reporters were reportedly allowed to observe proceedings for two months before their exclusion this week. This reversal—apparently not based on any conduct by the reporters or sensitivity in particular cases—suggests a policy-level decision rather than case-by-case adjudication. That violates the First Amendment.

Constitutionally problematic check-ins

In fact, the practice of requiring journalists to check in or identify themselves as journalists – which is apparently how Judge Verma knew who to exclude in the first place – is itself constitutionally problematic. It facilitates viewpoint discrimination and has a

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chilling effect on journalism, especially with an administration outwardly hostile to the press.¹

That is presumably why the EOIR's [own guidance](#) makes clear that observers, including journalists, do not need to notify the immigration court in advance of their visit and are merely "encouraged" to contact EOIR to coordinate visits. Journalists who were previously comfortable doing so may feel differently due to changed political circumstances, and the EOIR recognizes their constitutional right to report on public proceedings without announcing themselves.

This unauthorized departure from federal policy by the Hyattsville Immigration Court not only violates the First Amendment but exceeds the authority delegated to individual immigration courts under EOIR's regulations. Requiring journalists to "check in" so the government can determine whether to grant them access "will invite timidity and self-censorship and very likely lead to the suppression of many items that would otherwise be published and that should be made available to the public." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975)

The policy operates as a prior restraint

By requiring journalists to identify themselves and obtain advance permission, the Hyattsville Immigration Court has also converted EOIR's voluntary coordination policy into a mandatory licensing scheme—a prior restraint on newsgathering that violates the First Amendment.

The Supreme Court has held that prior restraints on the press "are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). Any system that requires government approval before journalists may observe and report on open judicial proceedings presumptively violates the First Amendment.

¹ To the extent that Judge Verma permits some journalists to remain while explicitly excluding others or that the Hyattsville Immigration Court policy permits certain journalists to attend and observe immigration proceedings while excluding others unless they obtain advanced permission from the government, this also raises concerns about unconstitutional attempts to favor certain speakers and disfavor others, a form of unconstitutional viewpoint discrimination. See *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011) (recognizing that speaker-based distinctions on speech are subject to heightened constitutional scrutiny).



Even licensing schemes with clear standards and prompt judicial review face strict constitutional scrutiny. See, e.g., *Freedman v. Maryland*, 380 U.S. 51 (1965); *Lovell v. Griffin*, 303 U.S. 444, 451 (1938). The current system at Hyattsville Immigration Court—which requires permission from a furloughed government official with no timeline, no clear standards, and no meaningful review—fails every constitutional safeguard.

The government shutdown makes this prior restraint absolute. When the gatekeeper is on furlough indefinitely, the permission requirement becomes a complete ban. The First Amendment does not permit the government to shut down press access to judicial proceedings because of budgetary impasses.

The public interests at stake

Beyond the constitutional requirements, the exclusion of journalists from immigration proceedings at this moment in history is particularly troubling from a policy perspective. Immigration policy is among the most important and controversial issues facing our nation today.

The current administration has drastically changed how the federal government approaches immigration. Kids in their Halloween costumes are being [teargassed](#) by federal agents in the name of immigration enforcement. People are seeing their neighbors and friends suddenly whisked away by masked officers while out running [errands](#) or relaxing at [home](#). The American public has an urgent need to understand how immigration laws are being enforced and how the immigration court system is functioning so people can determine whether the sacrifices they're being asked to make in the name of cracking down on immigration are worth it.

Public scrutiny is particularly important given the scope of [abuses](#) committed by immigration authorities in recent months — abuses we know about because of the press. Even in normal times, however, immigration cases involve fundamental constitutional and human rights questions—whether individuals will be separated from their families, returned to countries where they may face persecution, or allowed to remain in the United States. These are decisions of enormous public importance that demand public scrutiny.

Journalists serve as the public's eyes and ears in courtrooms across America. *Richmond Newspapers*, 448 U.S. at 572-73. When they can't do their constitutionally protected jobs, public confidence in the system erodes, and fear and misinformation fill the void.

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Only you can fix this

You may be the only person with the practical authority to fix this problem right now, given that key DOJ personnel are on furlough.

We urge you to issue guidance to all immigration judges at the Hyattsville court clarifying that:

1. Immigration hearings remain presumptively open to the press and public consistent with 8 C.F.R. § 1003.27 and the First Amendment;
2. Journalists may observe open proceedings without advance DOJ permission, just as they had until this week;
3. Any closure of a specific hearing must be justified on the record with specific findings about why closure is appropriate for that particular hearing.

The exclusion of journalists from immigration proceedings in Hyattsville is unconstitutional and indefensible. The First Amendment, Supreme Court precedent, and the public interest all demand that immigration hearings remain open to the press. We respectfully urge you to take immediate action to restore the constitution in the courtrooms you oversee.

We would welcome the opportunity to discuss these issues with you further. Please feel free to contact us by me at seth@freedom.press at your earliest convenience.

Sincerely,

Seth A. Stern, Esq.
Director of Advocacy
Freedom of the Press Foundation

CC: Hon. Ayodele A. Gansallo

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