AMERICAN CIVIL LIBERTIES UNION
Colorado

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SENT VIA EMAIL

Assistant Chief Immigration Judge Matthew W. Kaufman
Denver Immigration Court
1961 Stout Street, Suite 3101
Denver, CO 80294
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Re: Request to Protect Public Access and Independent Legal Practice at Denver Immigration Court

To the Honorable Matthew W. Kaufman:

We write to express our deep concern regarding recent restrictions at the Denver Immigration Court that function to significantly obstruct and limit public and attorney access to immigration proceedings, in contravention of the First Amendment, federal law, and Executive Office for Immigration Review (EOIR)'s own policies. In the last several weeks, we have received confirmed reports of the following obstructive tactics at the court:

- Legal observers have been handcuffed and detained without justification;
- Legal observers have been denied entry to the courthouse without explanation;
- Immigration judges and courtroom staff have prevented attorneys from advising litigants in the courthouse;
- Attorneys have been interrogated as to their relationship with specific people and told they may not give advisements inside the courthouse;
- Legal observers have been told that they cannot take notes on their own paper regarding dockets that are publicly posted in the hallways;
- Legal observers have been told they may not converse quietly in the lobby or hallways, even though quiet and nondisruptive conversation has been permitted for years;
- Security officers confirmed that long-present benches in the hallways were removed in response to the presence of legal observers;
- Court staff have told observers and attorneys that they must sit for the entire docket or be completely excluded from proceedings, even though no state or

federal court in Colorado requires members of the public or attorneys to choose between being present for the entire docket or being barred from the public courtroom completely; quiet and nondisruptive entry and departure is routinely permitted;
- Court staff have prevented legal observers from entering courtrooms allegedly due to "space constraints," when there are visibly empty seats in the courtroom;
- Court staff have prevented legal observers from entering courtrooms after the docket has started, even when respondents leave the courtroom leaving open seats available.

These restrictions function to significantly obstruct public access to immigration proceedings, in contravention of the First Amendment, federal law, and Executive Office for Immigration Review (EOIR)'s own policies. See EOIR, U.S. Dep't of Justice, *Observing Immigration Court Hearings*, https://www.justice.gov/eoir/media/1333591/dl?inline. Reducing public access to these proceedings undermines confidence in our immigration court system at a time where the "government is asserting a right to stash away residents of this country in foreign prisons without [a] semblance of due process." *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112, *1 (4th Cir. Apr. 17, 2025). The public's interest in these proceedings is especially significant given the recent increased immigration enforcement actions throughout Colorado, which have captured the attention of the country.

Under the First Amendment, the public has a presumptive right to access judicial proceedings that have been historically open to the general public and where access plays a significant positive role in the functioning of the proceeding. *Courthouse News Serv. v. New Mexico Admin. Off. of Cts*, 53 F.4th 1245, 1264 (10th Cir. 2022). Removal proceedings—including master, bond, and merits hearings—are and have historically presumptively open to the public. *See* 8 C.F.R § 1003.27; 8 C.F.R. § 1240.10(b). As a general matter, "[p]ublic scrutiny [of judicial proceedings] . . . enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the [respondent] and society as a whole." *Globe Newspaper Co. v. Superior Ct. for the Cnty. of Norfolk*, 457 U.S. 596, 606 (1982). Public access in the immigration context is especially crucial: it is "[t]he only safeguard on this extraordinary governmental power." *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002) (holding that national security concerns did not override the public's First Amendment access right to immigration removal proceedings).

Unless a "closure is essential to preserve higher values and is narrowly tailored to serve those interests," a court may not close a public proceeding. *Courthouse News Serv.*, 53 F.4th at 1270. Even when the government does purport to have a compelling interest in closure, that interest must be weighed against "conflicting constitutional claims" with a "presumption in favor of openness." *In re Charlotte Observer (Div. of Knight Pub. Co.)*, 882 F.2d 850, 853 (4th Cir. 1989). It is well established that generalized concerns, absent specific factual findings, cannot overcome the public's presumptive right of access. *Phoenix Newspapers, Inc. v. U.S.*

Dist. Ct. for Dist. Of Ariz, 156 F.3d 940, 949 (9th Cir. 1998) (citing *Oregonian Pub. Co. v. U.S. Dist. Ct. for Dist. Of Oregon*, 920 F.2d 1466 (9th Cir. 1990)). And any measures aimed at protecting substantiated concerns supported by specific factual findings must still be narrowly tailored and no greater than is necessary to address that concern. *Courthouse News Serv.*, 53 F.4th at 1270. Importantly, any member of the public "excluded" from a proceeding "must be afforded a reasonable opportunity to state their objections." *United States v. Brooklier*, 685 F.2d 1162, 1167-68 (9th Cir. 1982). The Court certainly may not impose the kind of overly broad restrictions reported to us that, in concert, function to deny meaningful access.

With respect to the restrictions on attorney speech, in places like the Denver Immigration Court, the government may only impose restrictions on speech that are "reasonable in light of the purpose of the forum and viewpoint neutral." *Summum v. Callaghan*, 130 F.3d 906, 919 (10th Cir. 1997). When the government targets "particular views taken by speakers on a subject," it engages in impermissible viewpoint discrimination in violation of the First Amendment. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). The targeting of attorney advisements is neither reasonable in light of the purpose of the immigration court nor viewpoint neutral.

Throughout the country, attorneys speak to clients and unrepresented parties in courthouse hallways, lobbies, and courtrooms outside of session, about their rights and options. Far from impeding the purpose of courthouses, these independent advisements are the very "speech and expression upon which courts must depend for the proper exercise of the judicial power." *Legal Servs. Corp. v. Valaquez*, 531 U.S. 533, 545 (2001) (describing how viewpoint-based restrictions on attorney speech impede the judiciary's ability to fairly and thoroughly interpret the law). Interference with this type of speech is especially alarming because the government has openly declared its viewpoint-based hostility toward that very speech. *See* Exec. Order No. 14159, sec. 19; Kyle Harris, "Trump's Immigration Czar Suggests Denver Know-Your-Rights Protestors Could Soon be 'in Handcuffs,'" Denverite, (February 6, 2025).

The consequences of failure to maintain open courts, accessible by the public and an independent, free bar cannot be overstated. Simply put: "democracies die behind closed doors." *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002).

These court proceedings must lawfully remain open to the public, including legal observers, community members, and members of the press, and attorneys must be permitted to practice inside the courthouse without government interference. For the reasons set forth in this letter, we request that the Court immediately do everything in its power to uphold longstanding constitutional principles, including open public access to immigration hearings and the independence of the bar.

Members of the public must be allowed to observe all immigration hearings without interference, unless an immigration judge meets the exacting requirements to close a proceeding established by federal law and enshrined in the U.S. Constitution.

Further, because those excluded from a proceeding must be afforded a reasonable opportunity to state their objections, the undersigned request that any member of the public who is excluded from a proceeding be provided, in writing, the specific factual basis for why closure of that proceeding is warranted. We also respectfully request that the Court take action to immediately end any interference with courthouse advisements.

Thank you for your prompt attention to these important issues.

Sincerely,

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