



February 24, 2017

Via U.S. and Electronic Mail

Maria Jauregui
Court Administrator
U.S. Department of Justice
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
Maria.jauregui@usdoj.gov

Dear Ms. Jauregui:

I am writing on behalf of Darwin Bond-Graham of the East Bay Express. It has come to our attention that security personnel at the San Francisco Immigration Court have been attempting to bar him from observing immigration hearings, and that they questioned him and other reporters about their media affiliations and their reasons for wanting to observe these proceedings. Because this violates the First Amendment to the United States Constitution as well as a federal law that specifically makes these hearings open to the public, I am asking that you immediately take steps to ensure that this does not occur in the future.

Federal law specifically makes all immigration proceedings other than exclusion proceedings open to the public unless the immigration judge orders closure in an individual case based on the circumstances of that case.¹ Absent such an order,

¹ The relevant regulation reads as follows:

- All hearings, other than exclusion hearings, shall be open to the public except that:
- (a) Depending upon physical facilities, the Immigration Judge may place reasonable limitations upon the number in attendance at any one time with priority being given to the press over the general public;
 - (b) For the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing.
 - (c) In any proceeding before an Immigration Judge concerning an abused alien spouse, the hearing and the Record of Proceeding shall be closed to the public unless the abused spouse agrees that the hearing and the Record of Proceeding shall be open to the public. In any proceeding before an Immigration Judge concerning an abused alien child, the hearing and the Record of Proceeding shall be closed to the public.

neither the judge nor any other official may restrict access to the courtroom by members of the press who are willing to follow the general conduct rules that apply to all persons in the courtroom. In fact, the law requires the court to give priority to press access even when it excludes members of the public because of overcrowding.²

In addition, the exclusion of the press from these courtrooms violates the First Amendment. The United States Court of Appeals has held that the press and the public have a First Amendment right to attend proceedings in immigration court.³ And numerous courts have held that the government may not selectively exclude the press -- or specific members of the press -- from areas that are open to the public or to other media.⁴ As one court has specifically held, this means that even the immigration judge cannot exclude a specific person from a hearing without a valid reason to do so.⁵

I therefore ask that you immediately take all steps that may be necessary to ensure that Mr. Bond-Graham and other reporters and members of the public are allowed to observe all immigration proceedings, unless an immigration judge excludes the public in a specific case as authorized by law.⁶

Please let me know as soon as possible if you anticipate any difficulties in doing this. I can be reached at mrisher@aclunc.org or 415-621-2493.

(d) Proceedings before an Immigration Judge shall be closed to the public if information subject to a protective order under § 1003.46, which has been filed under seal pursuant to § 1003.31(d), may be considered.

8 C.F.R. § 1003.27

² *Id.* § 1003.27(a).

³ *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 710 (6th Cir. 2002); *but see N. Jersey Media Grp., Inc. v. Ashcroft*, 308 F.3d 198 (3d Cir. 2002); *cf. id.* at 221 (Scirica, J., dissenting).

⁴ *See Telemundo of Los Angeles v. City of Los Angeles*, 283 F. Supp. 2d 1095, 1102 (C.D. Cal. 2003) (“Several courts have determined that discriminatory access to public forums or information is generally violative of the First Amendment.”) (citing cases from six different circuit and district courts). For example, the United States Court of Appeals for the District of Columbia Circuit has held that the government cannot deny a White House press pass based on “arbitrary or content-based criteria”; instead, it must have valid, public criteria for issuing those passes and must provide unsuccessful applicants with the reasons for any denial. *See Sherrill v. Knight*, 569 F.2d 124, 129-131 (D.C. Cir. 1977).

⁵ *Stevens v. Holder*, 950 F. Supp. 2d 1282, 1289 (N.D. Ga. 2013) (appeal pending).

⁶ This is not the first time that my office has informed your office of our concerns that members of the public were improperly being excluded from the court. *See*

https://www.aclunc.org/sites/default/files/20150320-aclu_letter_re_interfaith_support.pdf

Sincerely,

Michael T. Risher

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Senior Staff Attorney

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