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Illinois

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VIA EMAIL

Hon. Robert K. Villa
Chief Judge
Sixteenth Judicial Circuit
criminaldivision@16thcircuit.illinoiscourts.gov

Jamie Mosser
Kane County State's Attorney
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Amy Johnson
Undersheriff
Kane County Sheriff's Office
johnsonamy@co.kane.il.us

Re: First Amendment Rights of Rapid Response Observers

Dear Chief Judge Villa, State's Attorney Mosser, and Undersheriff Johnson,

The American Civil Liberties Union of Illinois is concerned about issues faced by rapid responders who observe and document Immigration and Customs Enforcement (ICE) activity around the Kane County Judicial Center. We have heard that these observers have faced questioning, ID and license plate checks by sheriff's deputies. We are concerned that Chief Judge Villa's June 25, 2026, General Order 26-09 (In the Matter of Court Facility Access, and Safety Guidelines Regarding Protest Activities) ("the Order"), may be applied to their constitutionally protected activities. Indeed, the Order's statement of purpose explicitly singles out speech "concerning immigration enforcement" or other law enforcement, raising the concern that some or all of it is directed to these activities.

Nonetheless, the Order provides that it shall not "be construed to prohibit lawful and peaceful expressive activity protected by the United States Constitution or the Constitution of the State of Illinois." We therefore assume that the Order conforms to basic First Amendment principles, including the following: First, "[t]he act of making an audio or audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press rights," and rules that "interfere[] with the gathering and dissemination of information about government officials performing their duties in public" are "subject to heightened constitutional scrutiny." *Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 595, 600 (7th Cir. 2012). Likewise, "observing government conduct" is a "paradigmatic protected activit[y]." *Los Angeles Press Club v. Noem*, 799 F. Supp. 3d 1036, 1063 (C.D. Cal. 2025), *vacated in part on other grounds* (9th Cir. 2026). Further, even in nonpublic forums, restrictions on speech must be reasonable and viewpoint-neutral, and a complete ban on First Amendment activity is impermissible. *Bd. of Airport Com'rs of City of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 572, (1987). And in public forums, "[r]equiring individuals and small groups to obtain permits before engaging in expressive

activities ... violates the First Amendment.” *Boardley v. U.S. Dept. of Interior*, 615 F.3d 508, 525 (D.C. Cir. 2010).

Based on these and other established First Amendment principles, it is our understanding that the Order does not prohibit the following constitutionally protected conduct on Justice Center grounds, when undertaken without physically interfering with law enforcement activity or pedestrian or vehicular access to facilities, and within or outside of the Order’s “Designated Public Assembly Areas”:

1. Sitting in a car in the parking lot to observe potential ICE activities;
2. Walking around the parking lot to detect ICE vehicles;
3. Taking photos or video in the parking lot of ICE license plates or license plate covers;
4. Taking photos or video of ICE activity;
5. Approaching and speaking to ICE officers, and recording such exchanges;
6. Approaching and speaking to individuals detained by ICE, and recording such exchanges;
7. Approaching and speaking to sheriff’s deputies, and recording such exchanges; and
8. Distributing literature in the parking lot and elsewhere on Judicial Center grounds.

Moreover, we assume individuals will not be harassed or investigated for engaging in these protected activities. If our understanding is incorrect, or if there is other information you think we should consider in connection with assessing the implementation of the Order, please advise.

Further, it is our understanding that one local group has a permit to put up tables and distribute literature every Wednesday in the plaza area directly in front of the courthouse, which is not within the Designated Public Assembly Areas. We therefore assume that you consider the plaza a “public forum” for First Amendment purposes, and that individuals or small groups are allowed to engage in protest and other speech without a permit as long as they do not interfere with people entering or exiting the building. *See, e.g., Cox v. City of Charleston, SC*, 416 F.3d 281, 285-86 (4th Cir. 2005) (invalidating sidewalk permit requirement as applied to small groups who did not interfere with pedestrian traffic). Again, please advise if this understanding is incorrect.

Thank you for your attention to this matter.

Sincerely,



Rebecca K. Glenberg
Chief Litigation Counsel for the First Amendment