

US civil liberties group challenges closed deportation hearings for detained Muslim cleric

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3 April 2002

On March 26, a hearing was held in Detroit federal court on the first lawsuit challenging the US Justice Department's decision to close immigrant deportation proceedings to the public and the press. A group of supporters rallied in front of the courthouse demanding due process for Rabih Haddad, whose case has sparked the suits. Haddad was arrested at his home in Ann Arbor, Michigan on December 14, allegedly for minor visa violations, and has been imprisoned ever since.

At the heart of this case are the wide-ranging attacks on civil liberties and democratic rights set into motion by the government in the wake of the events of September 11. The attempt by the government to close Haddad's hearings demonstrates the ominous growth of governmental secrecy at many levels and the expansion of special repressive powers passed by executive edict, with no public debate or Congressional approval.

The case is being closely watched throughout the country for its political implications. Haddad is the most prominent of the hundreds of Arab and Muslim immigrants being detained by the US government in the dragnet over the last six months.

A suit was filed by the American Civil Liberties Union (ACLU) after US Representative John Conyers and members of the Detroit media were barred from attending Rabih Haddad's deportation hearing. Three combined lawsuits were heard before US Federal Judge Nancy Edmunds at last week's hearing. The ACLU lawsuit was heard on behalf of Conyers, the *Detroit News* and the weekly *Metro Times*. Separate arguments were presented by lawyers for the *Detroit Free Press* and Rabih Haddad.

The suits oppose the closure of hearings on several grounds and seek an injunction against a September 21 memorandum issued by Chief Judge Michael Creppy of the Immigration and Naturalization Service (INS). Both the INS and Creppy work under the direction of the Justice Department headed by US Attorney General John Ashcroft.

(The Creppy memo is available at http://www.aclu.org/court/creppy_memo.pdf)

The judge's memo, issued under the heading "PLEASE DO NOT DISCLOSE," was a secret directive to all immigration judges specifying a new set of procedures, at the sole discretion of the attorney general, to be enforced in selective cases. The memo stipulated that such cases would be assigned only to judges who hold a "secret clearance"; courtrooms in these cases would be closed, barring visitors, families and press; and the Record of Proceeding would not be released to anyone but a specified attorney cleared by the government. All other requests for information on such cases were to be forwarded as a Freedom of Information request to the Office of the General Counsel. Restrictions would even include information on whether or not a case was scheduled.

The ACLU has pointed to the extremely dangerous implications of the Creppy memo. It disregards decades of legal precedents, which have consistently granted the media the right to scrutinize the actions of the government. The directive, moreover, is flagrantly unconstitutional because it violates the basic American constitutional right to due process, which entails open hearings.

The brief in support of the press and Haddad states: "It is clear that individuals like Haddad have due process rights under our Constitution and that immigration court proceedings implicating those rights accordingly must be open." A number of legal precedents for the democratic rights of non-citizens are cited, including the following: "Aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."

Citing a Sixth Circuit Court ruling in the case of *Brown & Williamson Tobacco Corp. v. Federal Trade Commission* the suit further states: "[P]ublic access provides a check on courts. Judges know that they will continue to be held responsible by the public for their rulings. Without access to

the proceedings, the public cannot analyze and critique the reasoning of the court ... one of the ways we minimize judicial error and misconduct is through public scrutiny and discussion.”

The suit also cites a 1985 ruling by the Sixth Circuit in the case of *Society of Professional Journalists v. Secretary of Labor*, which reads in part: “Access to the proceedings, where feasible, ensures that people realize that justice is being done.... Moreover, openness ensures that [the agency] properly does its job.

“The natural tendency of governmental officials is to hold their meetings in secret. They can thereby avoid criticism and proceed informally and less carefully. They do not have to worry before they proceed with the task that a careless remark may be splashed across the next day’s headlines. But it is exactly that type of public awareness and opportunity to criticize that is the very foundation of our democracy.”

At the Detroit hearing, government lawyers defended the Creppy memorandum with the ominous claim there is no First Amendment right to public access in administrative cases, such as immigration hearings. Government lawyer Brenda O’Malley claimed that the local immigration judge had the independent right to make decisions, such as granting Haddad bond, and that Haddad and the media had the right to appeal the case at the end of the trial. In a telling remark, Judge Edmund interjected, stating, “The immigrant judge has no discretion. The directive came from John Ashcroft. Let’s get real about appeals here.”

Leonard Gelernt, national immigrants’ rights director for the ACLU, opposed the Creppy memorandum on the grounds that it was an individual edict, not reviewed by any court, whereas the right to open hearings for immigrants has a long history and tradition supported by Congress.

Lawyers for the government claimed that the Constitution does not grant the media access to court hearings. In the course of the hearing Judge Edmund acknowledged that the media has long had the right to cover trials unless there is a justifiable issue of national security. Significantly, the government lawyers at no point attempted to justify the secrecy of Haddad’s hearings, stating only that at some point during his deportation hearing something might arise involving national security.

Herchel Fink, the attorney for the *Detroit Free Press*, defended the right of the press to independently review the actions of the government, and cited the unconstitutional internment of Japanese immigrants during World War Two. “It is vital that the public knows what the government is doing to combat terrorism,” Fink said. “What justification has the government put forward? National security is involved,” Fink said. “They are saying terrorists might learn from the open proceeding.... I think this is silly. Just as silly

as when John Ashcroft said that if the public hears the Osama bin Laden video that this would badly influence the public.”

Fink added, “Mr. Ashcroft overlooks the fact that Congress said in the 1996 Anti-Terrorism Act explicitly that trials should be open to the public.”

Rabih Haddad’s lawyer, Jonathan Martel, pointed out that the government has not said why it is holding Haddad. Martel said his client wants an open hearing because he has nothing to hide.

Kary Moss, executive director of the Michigan ACLU, reiterated the undemocratic nature of the Creppy memo: “If Congress wanted to pass that law, they could have done so, but didn’t. Ashcroft just made his own rule, without Congressional approval or anything. What we are saying is that while he has the right to issue the directive, it is in violation of the Constitution.” In addition to calling for an injunction of the Creppy memorandum, the ACLU is requesting transcripts of all the proceedings involved in the Haddad case.

The next immigration hearing for Rabih Haddad is scheduled for April 10. Judge Edmund promised the plaintiffs that she would have a judgment before the hearing.

This is the first challenge on the Ashcroft ruling and will set the basis for further decisions. There is another ACLU suit pending over closed hearings in New Jersey on behalf of the North Jersey Media Group.

Pete Woiwode traveled to Detroit from Ann Arbor to join the protest at the court hearing. He told the WSWS, “I think what is happening is absolutely frightening. They are going against American ideals and violating constitutional rights and getting away with it. Unfortunately there has been a resurgence of patriotism. Many can’t see that they are exploiting patriotism to blind people to what they are doing.

“I hesitate to say that what is happening is a blatant abuse of power. However, I also hesitate to say they are completely naive. I am confused. Once you get into this case, the falsehoods keep piling up. It is amazing how quickly talk of Osama bin Laden has faded from public view.

“They only thing they could stick to [Haddad] was the visa violation. INS policy has been not to prosecute people who are in the process of reapplication. This is unprecedented.”



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