

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DETROIT NEWS, INC., a Michigan Corporation;
CONGRESSMAN JOHN CONYERS, JR.; and
METRO TIMES, INC., a Michigan Corporation,

Plaintiffs,

Case No.

v.

Hon.

JOHN ASHCROFT, Attorney General of the United
States; HON. MICHAEL CREPPY, Chief Immigration
Judge of the United States, and HON. ELIZABETH
HACKER, United States Immigration Judge,

Defendants.

Steven R. Shapiro
Lucas Guttentag
Lee Gelernt
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500

Leonard M. Niehoff
Butzel Long
350 South Main Street
Ann Arbor, MI 48104
(734) 995-3110

Attorney for Plaintiff Detroit News, Inc.

Michael J. Steinberg
Kary L. Moss
American Civil Liberties Union Fund
of Michigan
60 West Hancock Street
Detroit, MI 48201
(313) 578-6800

Attorneys for Plaintiffs

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

NOW COME Plaintiffs, the Detroit News, Inc., Congressman John Conyers, Jr., and the Metro Times, Inc., by and through counsel, and for their complaint state as follows:

INTRODUCTION

1. Plaintiffs challenge the decision of Defendants to close all immigration court hearings to the public and the press in the high profile case of Rabih Haddad, a Muslim pastor and community leader in Ann Arbor, Michigan.

2. Plaintiffs also challenge the constitutionality of the policy and/or practice set forth in U.S. Chief Immigration Judge Michael Creppy's memorandum to all immigration judges, dated September 21, 2001, requiring the closure of all proceedings to the public and the press when directed to do so by the Office of the Chief Immigration Judge (see "Creppy Memo" attached as Exhibit A).

JURISDICTIONAL ALLEGATIONS

3. Jurisdiction is proper under 28 U.S.C. § 1331, federal questions being presented in this action under the United States Constitution.

4. This Court further has jurisdiction, pursuant to 28 U.S.C. § 1361, to compel Defendants, as officers or employees of the United States or an agency of the United States, to perform a duty owed Plaintiffs.

5. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2), this being a judicial district where a defendant "resides" and where a substantial part of the events or omissions giving rise to the claims occurred and will occur.

PARTIES

6. Plaintiff Detroit News, Inc., is a Michigan corporation that produces the Detroit News, a daily newspaper based in Detroit, Michigan, with an average daily circulation of more than 240,000. The Detroit News has been covering the story of

Rabih Haddad's arrest for an immigration violation, Haddad's hearings in immigration court, the protests in support of Haddad, and Haddad's connection to Global Relief Foundation – a charitable organization which the U.S. government suspects may have ties to terrorism. The Detroit News has sent a reporter to cover the immigration court proceedings, but he has repeatedly been denied access to the hearings. The Detroit News would like to send a reporter to future hearings involving Haddad, and it would like to obtain transcripts of past and future hearings as well as copies of all documents related to the case.

7. Plaintiff Congressman John Conyers, Jr., is a member of the U.S. House of Representatives who resides in and represents Detroit, Michigan. He is the ranking member of the House Judiciary Committee, which has oversight responsibility for immigration laws, immigration courts and the Department of Justice. Congressman Conyers was denied access to the immigration court hearings in the case of Rabih Haddad. He would like to attend future hearings involving Rabih Haddad.

8. Plaintiff Metro Times, Inc., is a Michigan corporation that produces the Metro Times, a weekly news, arts and culture newspaper based in Detroit, with an average circulation of approximately 110,000. The Metro Times has been covering the story of Rabih Haddad and the immigration court hearings. It featured Haddad and the hearings in a cover story in its issue dated January 16-22, 2002. Metro Times reporters have been repeatedly denied access to the hearings. The Metro Times would like to send a reporter to future hearings involving Rabih Haddad, and it would like to obtain transcripts of past and future hearings as well as copies of all documents related to the case.

9. Defendant Elizabeth Hacker is an immigration court judge in Detroit to whom Rabih Haddad's immigration case has been assigned. Upon information and belief, Judge Hacker resides within the Eastern District of Michigan.

10. Defendant David Creppy is the Chief Immigration Judge of the United States.

11. Defendant John Ashcroft is the Attorney General of the United States.

FACTS

12. Rabih Haddad is a Muslim religious and community leader in the Ann Arbor area who resides in Washtenaw County with his wife and four children.

13. Upon information and belief, Haddad is a co-founder and Board member of the Global Relief Foundation (GRF), a charitable organization that provides humanitarian aid to people in many Middle Eastern countries. Haddad, a Lebanese citizen, has lived in the United States off and on for more than 20 years where he has been a undergraduate student, a graduate student, a founder of Global Relief Foundation and an assistant Imam at the Islamic Center of Ann Arbor. Haddad last entered the United States in 1998 on a tourist visa which has since expired. In April, 2001, Haddad applied for permanent residency in the United States pursuant to the Legal Immigration Family Equity Act ("LIFE Act"), which permits non-citizens who are out of status to apply for legal immigration status (through a process known as "adjustment of status") by paying a fee of \$1000.00.

14. It is generally the practice of the Immigration and Naturalization Service to refrain from initiating deportation proceedings against individuals in the United States while their applications for permanent residency are pending.

15. After the terrorist attacks in New York and Washington, D.C., on September 11, 2001, Rabih Haddad was outspoken against the attacks and participated in several community forums where he condemned the terrorists' use of Islam to justify the attacks.

16. On December 14, 2002, during the Muslim holy month of Ramadan, the Immigration and Naturalization Service arrested Mr. Haddad at his home in front of his family for overstaying his immigration visa.

17. On the same day, pursuant to the USA PATRIOT Act, the federal government froze the assets of Global Relief Foundation at GRF's headquarters in Illinois because it suspected that GRF may have provided aid to terrorist organizations. Upon information and belief, GRF has not been designated a terrorist front organization.

18. Following Haddad's arrest, the District Director of INS refused to set a bond for Haddad so that he could remain free while he prepared his defense to the immigration charges. Instead, Haddad was held in solitary confinement in the Monroe County Jail.

19. Haddad filed a Motion for Redetermination of Bond on December 17, 2001, and a hearing was held on this motion before Immigration Court Judge Elizabeth Hacker in Detroit on December 19, 2002.

20. On December 19, 2002, hundreds of Haddad's supporters came to the Brewery Park Complex on Gratiot Street in Detroit, where the immigration court is located, for the purpose of attending Haddad's immigration court proceedings.

21. Additionally, numerous reporters were present representing local and national media sources – including newspapers, radio and television stations.

22. Among those present was David Shepardson, a reporter for the Detroit News, who was covering the story for his newspaper.

23. The reporters and the public gathered in the lobby of the courtroom and the hallway outside the lobby waiting for the courtroom to be opened.

24. Shortly before the hearing was to begin, court personnel and security officers announced that the immigration court hearing was closed.

25. Security officers then ordered all reporters and members of the public to vacate the lobby and hallway except for those who had seats in the lobby.

26. The entire hearing was closed and no members of the public, press and family were permitted to attend.

27. On information and belief, the following matters transpired at the closed hearing. Haddad's lawyer, Ashraf Nubani, objected to the closing of the proceedings on the record and asked for a hearing to determine whether it was necessary to close proceedings to the public.

28. Judge Elizabeth Hacker stated that her superiors had directed her to close the proceedings and that she did not have any discretion to hold a hearing on the matter. Accordingly, she held no hearing and made no individualized determination on the reasons for or the necessity of closing the proceedings.

29. Witnesses for Rabih Haddad testified at the hearing about Haddad's links to the community and how he neither posed a flight risk or a danger to the community.

30. The government claimed it was not ready to proceed and therefore the judge ordered the hearing on Haddad's Motion for Bond Redetermination to be continued until January 2, 2002.

31. At the conclusion of the hearing, Rabih Haddad was remanded back to the Monroe County Jail and held in solitary confinement.

32. On the date of the continued hearing, January 2, 2002, over 250 people came to Brewery Park Complex in Detroit to Haddad's immigration hearing.

33. However, security personnel forbade all members of the public from even entering the gate of the Brewery Park Complex -- several hundred feet from the building where the proceedings were held.

34. Those who were turned away formed a picket line along Gratiot Street peacefully protesting closure of the hearings and what they believed to be the denial of due process to Rabih Haddad.

35. Congressman John Conyers, Jr., attempted to enter the courtroom to observe the proceedings, but was turned away from the closed hearings.

36. Numerous members of the print, radio and television media – including, but not limited to, David Shepardson from Plaintiff Detroit News and Anne Mullen from Plaintiff Metro Times – attempted to enter the immigration court, but were turned away from the closed hearings.

37. The entire hearing was closed and no members of the public, press or family were permitted to attend.

38. On information and belief, the following matters transpired at the closed hearing. Haddad's attorney again objected to the closure of the hearings to the public, the media and Haddad's family. Judge Hacker ordered that the hearings were to remain closed upon the order of her superiors and indicated that she did not have the discretion to hold a hearing on the issue

of opening the proceedings to the public. Accordingly, she again held no hearing on the closing and made no individualized determination.

39. Judge Hacker denied Rabih Haddad's motion for bond, holding that Haddad posed both a flight risk and a danger to the community because Haddad had owned a hunting rifle.

40. The government did not introduce any classified or secret evidence at the January 2nd hearing or argue that Haddad was connected to terrorism in any way.

41. Judge Hacker ordered that a master calendar hearing be scheduled for January 10, 2002.

42. On the date of the master calendar hearing, January 10, 2002, approximately 70 to 80 people who wished to observe the immigration proceedings were again turned away at the gate of the Brewery Park complex and peacefully demonstrated along Gratiot Street.

43. Similarly, members of the print, radio and television media – including, but not limited to, David Shepardson of the Detroit News and Lisa M. Collins of the Metro Times – were precluded from entering the closed proceeding.

44. The entire hearing was again closed and no members of the public, press or family were permitted to attend.

45. On information and belief, at the closed hearing one of Haddad's lawyers protested the closing of the hearing and specifically asked Judge Hacker whether the hearings in Haddad's case were closed pursuant to the mandates set forth in a September 21, 2001 memorandum of Defendant Michael Creppy, Chief Immigration Judge for the United States (hereafter referred to as the "Creppy memo.")

46. Judge Hacker confirmed that Haddad's case had been ordered closed pursuant to the dictates of the Creppy memo.

47. The Creppy memo, which is attached to this complaint as Exhibit A, states that the Justice Department has designated a category of cases subject to additional security procedures and that the proceedings in those cases must, among other things, be closed to the public. In particular, the guidelines accompanying the Creppy memo provide that "[e]ach of these cases is to be heard separately from all other cases. The courtroom must be closed for these cases – no visitors, no family and no press."

48. On information and belief, at the closed master calendar hearing on January 10, 2002, Haddad admitted that he had overstayed his immigration visa, but indicated that he would present defenses to being deported at trial. A continuation of the master calendar hearing was scheduled for February 19, 2002, before Judge Hacker in Detroit.

49. At the continued master calendar hearing, it is expected that Haddad will formerly announce the defenses to deportation that he will present and that the court will set a date for the deportation trial.

50. Plaintiffs wish to attend the hearing on February 19, 2002, and all future hearings in this matter and would like to obtain transcripts of past and future hearings as well as copies of all documents related to the case.

51. On information and belief, the immigration proceedings of Haddad are closed solely on the orders of the Justice Department and pursuant to the dictates of the Creppy memo as applied by Immigration Judge Hacker. The immigration judge did not conduct any hearing on the reasons for the closing or make any individualized determination on whether to close the

hearing except to announce that the proceeding was governed by the Creppy memo. Pursuant to that memo and the orders already entered in this case, all future immigration hearings of Haddad will continue to be closed to all members of the public, press or family. At each hearing, Haddad has, through counsel, objected to the closing and affirmatively sought that all hearings in his case be open to the public and press. Absent injunctive relief, Haddad's immigration proceedings will continue to be closed and the public and press will be completely excluded.

CAUSES OF ACTION

COUNT I: FIRST AMENDMENT AND DUE PROCESS RIGHT OF ACCESS TO IMMIGRATION COURT HEARINGS

52. The preceding paragraphs of this Complaint are incorporated and restated as if set forth fully herein.

53. The public and the press have a First Amendment and Due Process right to attend hearings in Immigration Court.

54. The policy and/or practice set forth in the September 21, 2001, memo of Chief Immigration Judge Michael Creppy is unconstitutional on its face and as applied to the Rabih Haddad proceedings.

55. Defendants have denied Plaintiffs, as members of the press and public, their First Amendment and Due Process right to access the hearings regarding Rabih Haddad in Immigration Court.

56. Defendants have not shown that the denial of access to all proceedings in the Rabih Haddad case is necessitated by a compelling governmental interest or that the closure of all such proceedings is narrowly tailored to serve that interest.

57. Defendants have violated Plaintiffs' First Amendment and Due Process rights by closing the hearings based solely on the Creppy memo, without holding a hearing to determine whether closure was narrowly tailored to serve a compelling governmental interest.

**COUNT II:
RIGHT OF ACCESS TO IMMIGRATION COURT
PROCEEDINGS UNDER FEDERAL REGULATIONS**

58. The preceding paragraphs of this Complaint are incorporated and restated as if set forth fully herein.

59. The Code of Federal Regulations requires that immigration court proceedings be open to the public and press except in narrow circumstances. 8 C.F.R. § 3.27 provides:

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.

60. Additionally, 8 C.F.R. § 240.10(b), states, "Removal hearings shall be open to the public, except that the immigration judge may, in his or her discretion, close proceedings as provided in § 3.27 of this chapter."

61. Defendants Ashcroft and Creppy violated 8 C.F.R. §§ 3.27 and 240.10(b) by ordering that all hearings be closed in the case of Rabih Haddad without the Immigration Judge holding a hearing and making an individualized determination whether, in her discretion, it was necessary to override the presumption of openness and close the hearings.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief:

1. A declaratory judgment that the practices and/or policies set forth in the Creppy memo and the procedures it implements violate the rights of the public and the press guaranteed by the United States Constitution and federal regulatory law;
2. A preliminary and permanent injunction requiring Defendants to permit Plaintiffs access to all future proceedings relating to Haddad, and to produce to the Plaintiffs forthwith transcripts of all related proceedings already held, and copies of all documents related to the case;
3. An award of Plaintiffs' costs and attorneys' fees related to this action;
4. Any further relief that this Court deems just.

Respectfully submitted,

Steven R. Shapiro
Lucas Guttentag
Lee Gelernt
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(313) 549-2611

Leonard M. Niehoff
Butzel Long
350 South Main Street
Ann Arbor, MI 48104
(734) 995-3110

Attorney for Plaintiff Detroit News, Inc.

Michael J. Steinberg
Kary L. Moss
American Civil Liberties Union Fund
of Michigan
60 West Hancock Street
Detroit, MI 48201
(313) 578-6800

Attorneys for Plaintiffs

Dated: