

Lawrence S. Lustberg (LL1644)
Shavar D. Jeffries (SJ0360)
**Gibbons, Del Deo, Dolan,
Griffinger & Vecchione, P.C.**
One Riverfront Plaza
Newark, NJ 07102
(973) 596-4500

Steven R. Shapiro
Lucas Guttentag
Lee Gelernt
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004-2400
(212) 549-2617

Edward Barocas
**American Civil Liberties Union
of New Jersey Foundation**
35 Halsey Street, Suite 4B
Newark, NJ 07102
(973) 642-2086

Nancy Chang
Shayana D. Kadidal
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012-2317
(212) 614-6420

David Cole
Georgetown University Law Center
60 New Jersey Avenue, NW
Washington, DC 20001
(202) 662-9078

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NORTH JERSEY MEDIA GROUP, INC.; NEW
JERSEY LAW JOURNAL,

Plaintiffs,

v.

JOHN ASHCROFT, Attorney General of the United
States; HON. MICHAEL CREPPY,

Defendants.

CIVIL ACTION NO.:

COMPLAINT

Plaintiffs, North Jersey Media Group, Inc. and New Jersey Law Journal, for their Complaint, state as follows:

PARTIES

1. Plaintiff North Jersey Media Group, Inc. publishes the Herald News and The Record, two daily newspapers serving the northern New Jersey area. North Jersey Media Group's principal place of business is 150 River Street; Hackensack, New Jersey 07601.

2. Plaintiff New Jersey Law Journal publishes a weekly newspaper covering law and public affairs. New Jersey Law Journal is a division of American Lawyer Media, Inc., a Delaware corporation. New Jersey Law Journal's principal place of business is 238 Mulberry Street; Newark, New Jersey 07102.

3. Defendant John Ashcroft is the Attorney General of the United States. Defendant Ashcroft is sued in his official capacity.

4. Defendant Hon. Michael Creppy is the Chief Immigration Judge of the United States. Defendant Creppy is sued in his official capacity.

JURISDICTION AND VENUE

5. This court has jurisdiction over this matter under 28 U.S.C. § 1331, as this matter presents federal questions arising under the First Amendment to the United States Constitution and the Code of Federal Regulations.

6. This court has jurisdiction under 28 U.S.C. § 1361 to compel the individual federal Defendants, as officers or employees of the United States or an agency of the United States, to perform a duty owed Plaintiffs.

7. Venue in this district is proper under 28 U.S.C. § 1391(e), as Defendants are federal officials and a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

PRELIMINARY STATEMENT

8. Plaintiffs challenge the legality of the policy and/or practice described in Chief Immigration Judge Michael Creppy's September 21, 2001 memorandum to all immigration judges, which mandates the closure of all immigration proceedings to the public and press when so directed by the Office of the Chief Immigration Judge. This blanket requirement of secret proceedings violates Plaintiffs' First Amendment and regulatory rights of access to immigration proceedings.

FACTS

9. On September 21, 2001, Chief Immigration Judge Michael Creppy issued a memorandum to all Immigration Judges and Court Administrators, informing them that the Attorney General "has implemented additional security procedures for certain cases in the Immigration Court." See September 21, 2001 Memorandum from Michael Creppy to Immigration Judges ("Creppy Memo"), attached as Exhibit A.

10. For these "special" cases, the Creppy Memo specifies a series of "additional security" procedures. These procedures require Immigration Judges "to hold the hearings individually, to close the hearing to the public, and to avoid discussing the case or otherwise disclosing any information about the case to anyone outside the Immigration Court."

11. Each case subject to the Creppy Memo "is to be heard separately from all other cases on the docket," and "[t]he courtroom must be closed for these cases – no visitors, no family, and no press."

12. Even docket information is withheld from the public, as the Creppy Memo's "restriction on information includes confirming or denying whether [a] [special procedures case] is on the docket or scheduled for a hearing."

13. The Creppy Memo requires closure in all cases selected by the Attorney General. It does not allow for an individualized determination of the reasons for closure in a particular case, nor does it allow for an individualized determination as to whether measures other than closure would serve the government's interests.

14. Upon information and belief, scores, if not hundreds, of immigrations hearings are currently being closed in this district pursuant to the dictates of the Creppy Memo.

15. For example, on or about November 22, 2001, Jim Edwards, a reporter with Plaintiff New Jersey Law Journal, attempted to attend immigration court proceedings in Newark, but was denied access to the proceedings by court personnel. See Declaration of Ronald J. Fleury (March 5, 2002) ¶ 3 (“Fleury Dec.”). This denial was based on the policies contained in the Creppy Memo.

16. On February 13, 2002, Hilary Burke, a reporter with the Herald News, a newspaper published by Plaintiff North Jersey Media Group, requested a docket sheet with information on special interest cases from the United States Immigration Court in Newark. The court clerk refused this request. See Declaration of Hilary Burke (March 5, 2002) ¶ 2 (“Burke Dec.”); Declaration of Young U. West, III (March 5, 2002) ¶ 2 (“West Dec.”). This denial was based on the policies contained in the Creppy Memo.

17. Also on February 13, 2002, Edwards requested access to the February 14 hearing of Ahmed Raza before Immigration Judge Eugene Pugliese in Newark. An immigration official informed Edwards that Edwards would not be able to attend the hearing. See Fleury Dec. ¶ 4. This denial was based on the policies contained in the Creppy Memo.

18. On February 14, 2002, Burke attempted to attend Raza’s hearing. Once Raza’s case was called, Judge Pugliese announced that Raza’s hearing was closed to the public and proceeded to clear the courtroom of all members of the press and public. See Burke Dec. ¶¶ 3-4; West Dec. ¶ 3. This closure was based on the policies contained in the Creppy Memo.

19. On February 21, 2002, Edwards and Burke attempted to attend the removal hearing of Malek Zeidan before Immigration Judge Annie Garcy. When Judge Garcy called Zeidan’s case, she asked the attorney for the Immigration and Nationalization Service whether the matter was a special interest case. Upon the attorney’s affirmative response, Judge Garcy closed the hearing, ordering all members of the public, including Edwards and Burke, to leave

the courtroom. See Fleury Dec. ¶ 5; Burke Dec. ¶¶ 5-6; West Dec. ¶ 4. This closure was based on the policies contained in the Creppy Memo.

20. These cases are merely illustrative of the scores, if not hundreds, of ongoing proceedings being conducted in secret pursuant to the Creppy Memo. Absent injunctive relief, Plaintiffs will continued to be excluded from immigration hearings.

CAUSES OF ACTION

COUNT I: FIRST AMENDMENT RIGHT OF ACCESS

21. The foregoing paragraphs are incorporated and restated as if set forth fully herein.

22. The press and public have a First Amendment right to attend deportation hearings in Immigration Court.

23. The Creppy Memo violates Plaintiffs' rights of access to deportation hearings because it is not narrowly tailored to further a compelling interest in closure.

COUNT II: RIGHT OF ACCESS UNDER FEDERAL REGULATIONS

24. The foregoing paragraphs are incorporated and restated as if set forth fully herein.

25. Federal regulations require that immigration court proceedings be open to the press and public except in narrow circumstances. Specifically, 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.

. . . .

26. Additionally, 8 C.F.R. § 240.10(b) provides that “[r]emoval 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.”

27. Defendants violated 8 C.F.R. § 3.27 and 240.10(b) by closing immigration hearings solely based upon the Creppy Memo, and without a case-by-case evaluation as to the necessity of closure or as to the appropriateness of other measures to serve any governmental interests in closure.

RELIEF REQUESTED

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

- A. A declaratory judgment that the practices and/or policies described in the Creppy Memo violate the rights of the public and the press to attend deportation hearings under the First Amendment to the United States Constitution as well as applicable federal regulations;
- B. A preliminary and permanent injunction preventing Defendants from enforcing the Creppy Memo;
- C. A preliminary and permanent injunction prohibiting Defendants from closing any immigration proceedings in the absence of case-specific findings demonstrating that closure is narrowly tailored to serve a compelling government interest;
- D. An award of Plaintiffs' costs and attorneys' fees related to this action; and
- E. Any further relief that this Court deems just.

Respectfully submitted,
**GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE**
A Professional Corporation

By:

Lawrence S. Lustberg (LL1644)
Shavar D. Jeffries (SJ0360)

Dated: March 6, 2002

CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other court, arbitration, or administrative proceeding.

Lawrence S. Lustberg (LL1644)