

2002 WL 31317398

Only the Westlaw citation is currently available.

United States District Court,  
E.D. Michigan,  
Southern Division.

DETROIT FREE PRESS, et al., Plaintiffs,

v.

John ASHCROFT, et al., Defendants.

Rabih HADDAD Plaintiff,

v.

John ASHCROFT, et al. Defendants.

No. 02-70339, 02-70605.

|  
Oct. 7, 2002.

ORDER GRANTING IN PART AND DENYING IN  
PART PLAINTIFFS' EMERGENCY MOTIONS [55-1  
& 57-1] TO COMPEL COMPLIANCE WITH COURT  
ORDER AND FOR ACCESS TO PROCEEDINGS

EDMUNDS, District J.

\*1 Pursuant to this Court's Order requiring the Government to conduct a new bond hearing for plaintiff Rabih Haddad ("Haddad"), before a new immigration judge, the immigration court began a bond redetermination hearing in Haddad's case on October 1, 2002, before Immigration Judge Robert Newberry. The October 1 hearing initially was open to the public; however, Judge Newberry closed a portion of the proceedings to the press and the public pursuant to agency regulations permitting closure to protect national security or law enforcement interests. *See* 8 C.F.R. § 3.46(a). Judge Newberry did not state on the record why the proceedings were being closed and denied the Newspaper Plaintiffs' counsel, who was present during the proceedings, the opportunity to object to the closure. According to the Government, the judge had reviewed the information the Government sought to introduce during a closed meeting earlier that morning and made particularized findings that closure was necessary.<sup>1</sup>

The Newspaper Plaintiffs and Haddad filed emergency motions with this Court, challenging Judge Newberry's closure of the proceedings. The Newspaper Plaintiffs ask the Court to require the immigration court to: (1) allow the Newspaper Plaintiffs' counsel to be heard; (2) make a particularized determination, on the record, that closure is necessary to further a compelling interest; (3) release transcripts of the closed proceedings; and (4) release a non-redacted copy of the Government's pre-hearing brief. Haddad essentially seeks the same relief, but additionally asks the immigration court to amend the Protective Order issued in Haddad's immigration case on October 1, 2002, to grant Haddad's counsel in this case access to the Declaration of FBI Agent Brent Potter ("Potter Declaration") in the form provided Haddad's immigration counsel.

The Court concludes that closure of Haddad's proceedings in order for the Government to introduce limited portions of the Potter Declaration was necessary to protect the source of the Government's information, and thus was necessary to protect the United States' national security or law enforcement interests. In accordance with this Court's earlier Order, however, Judge Newberry should have made particularized findings on the record as to why closure was necessary. Haddad's counsel in this case also should be given access to the evidence the Government introduced during the closed proceeding, under the terms set forth in the immigration court's October 1, 2002, Protective Order.

Being fully advised in the premises, having read the pleadings, and for the reasons stated on the record, the Court hereby orders as follows:

Plaintiffs' emergency motions [55-1 & 57-1] are granted in part and denied in part;

In the future, the immigration court should make particularized findings on the record prior to closing Haddad's immigration proceedings to the press and the public;

The limited closure of Haddad's detention hearing on October 1, 2002, was necessary for the Government to introduce evidence which, if disclosed, could harm the national security or law enforcement interests of the United States; and,

\*2 Haddad's counsel in this proceeding should have access to information provided to his counsel in his immigration

proceeding, subject to the immigration court's October 1, 2002, Protective Order.

**All Citations**

Not Reported in F.Supp.2d, 2002 WL 31317398

**Footnotes**

- 1 It is not clear from the parties' briefs whether the Government alone was present when Judge Newberry made his determination, or whether Haddad's immigration counsel also was present.

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