

Court: Deportation hearings can be closed;

Foiling terrorists was cited as a reason. The issue could be headed for the U.S. Supreme Court.

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Body

Reasoning that "the primary national policy must be self-preservation," a divided federal appeals **court** in Philadelphia ruled yesterday that the public has no right to attend immigration **deportation hearings** for people held as suspected **terrorists**.

The 2-1 decision by the **U.S. Court** of Appeals for the Third Circuit, in an appeal out of New Jersey, runs counter to an August decision on the same **issue** by the Sixth Circuit in Cincinnati, and thus provides context and a **reason** for review by the **U.S. Supreme Court**.

The **Supreme Court** traditionally accepts cases involving a conflict among the nation's 13 circuit **courts**. The Third and Sixth Circuits have now offered different takes on balancing the rights of immigrants facing **deportation**, public access to legal proceedings, and the government's need for secrecy to fight international terrorism.

The government contends that **terrorist** groups could learn investigative tactics and leads and how much **U.S.** intelligence agents know and thus could adjust their plans for **terrorist** attacks.

The Third Circuit decision resulted from a lawsuit by two North Jersey newspaper companies and the American Civil Liberties Union's Immigrants' Rights Project in New York.

Stefan Presser, the ACLU's legal director in Philadelphia, said an appeal would be filed, although he did not know whether it would be to the **Supreme Court** or to the full Third Circuit to reconsider yesterday's decision by the three-judge panel.

The Third Circuit decision was a victory for Attorney General John Ashcroft's Justice Department. The appeals resulted from a Sept. 21, 2001, directive by Chief **U.S.** Immigration Judge Michael Creppy that gave government lawyers unilateral power to **close** any hearing involving an immigrant believed to have information about, or involvement in, the Sept. 11 attack or other **terrorist** acts.

Writing for the majority, Chief **U.S.** Circuit Judge Edward R. Becker noted that, unlike criminal proceedings, "**deportation** proceedings' history of openness is quite limited, and their presumption of openness quite weak."

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"They plainly do not present the type of 'unbroken, uncontradicted history'... [required] to establish a First Amendment right of access," Becker wrote.

U.S. Circuit Judge Anthony J. Scirica dissented, writing that immigration hearing custom and **Supreme Court** precedent have created a "qualified right of access to **deportation hearings**."

Scirica wrote that immigration judges - not government lawyers - should decide whether to **close** a hearing on a case-by-case basis.

The case resulted from a lawsuit filed earlier by the New Jersey Law Journal and the North Jersey Media Group Inc., publisher of the Herald News of West Paterson, N.J. Between November and February, the two publishers' reporters were repeatedly denied access, under the "Creppy Directive," to information about **deportation hearings** at the federal Immigration **Court** in Newark.

Chief **U.S.** District Judge John W. Bissell, in New Jersey, granted judgment to the ACLU and the media, ruling that there had been a tradition of public access to immigration **deportation hearings** or, at a minimum, "no tradition of their presumptive closure."

The Justice Department appealed in an oral argument before the Third Circuit last month. The ACLU's Lee Galernt argued that "society has an overwhelming interest in knowing when the government detains individuals who have lived in this country for years, holds them in some cases for months on end, and then deports them."

Deputy Assistant Attorney General Gregory G. Katsas maintained that Congress has never specifically opened to the public administrative proceedings of executive branch agencies such as immigration and Social Security appeals **hearings**.

"Loose lips sink ships," Katsas argued, **citing** the need to prevent international **terrorist** groups from monitoring **deportation hearings** through the media.

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