

**Testimony Supporting the Government's Use
of Classified Information to Prevent the
Presence and Proliferation of Illegal Alien
Terrorists on US Soil**

by Steven Emerson

May 23, 2000

*Congress of the United States
House of Representatives
Committee On The Judiciary*

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Introductory Comments:

Overview of “Secret Evidence”

The issue today before the Committee concerns the balancing of national security with individual liberty in the context of the government’s use of classified information in immigration proceedings. As proposed, enactment of H.R. 2121 would repeal all sections of the Immigration and Nationality Act providing for the government to enter classified information *in camera* and *ex parte* against illegal alien suspected terrorists that threaten national security. Creating the perception that this process is some kind of new phenomena, much ado has been made over what critics have characterized as “pernicious secret evidence” provisions in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). However, classified information has been used against non-citizens suspected of threatening national security for more than five decades and is permitted by United States Supreme Court precedent.

Over the last few years, the issue of “secret evidence” came to the fore as the foremost legislative and public relations priority of an emerging new and unprecedented force in the American political landscape — a coalition (partly) composed of elements seeking to roll back counterterrorism laws, deter their enforcement, and in the end, make the United States a safe haven for international terrorists and their supporters. With an estimated 300,000 cases adjudicated each year in immigration courts, the Immigration and Naturalization Service (INS) bears the enormous task of distinguishing between those aliens who deserve welcome, and those who do not—a small few for reasons of national security. FBI General Counsel Larry R. Parkinson testified in opposition to H.R. 2121 in the February 10, 2000 hearing on H.R. 2121 before the Judiciary Subcommittee on Immigration and Claims and stated, “The ability to use classified information in this manner is vitally important to the protection of our national security, because it allows us to proceed appropriately against the very small number of aliens who pose national security threats.” Parkinson testified that there are “only twelve pending cases” involving classified information and only five cases where suspects are currently incarcerated.

The majority of pending cases are believed to involve suspects who are militant Muslims and/or Arabs. According to their advocates, this disproportionate application directly demonstrates a policy of discrimination — framing the issue as an intolerable, unconscionable and racist attack by the United States government a minority group. Appeals for due process and human rights

have afforded militant Islamic groups proliferating in the U.S. the ideal opportunity to appear as genuine representatives for civil rights. Disguised under this humanitarian veneer, they have garnered sympathetic ears at the U.S. Department of State, the U.S. Department of Justice, Capitol Hill and almost all of the national media. Although many supporters of H.R. 2121 deserve credit for their esteemed records of defending the fundamental principles of civil liberties and human rights, by failing to look at the issue of “secret evidence” beyond the politically correct buzz words, they have unwittingly provided dangerous traction for the political interests of militant Islamic organizations operating in the U.S. — skilled in talking the talk of democracy and human rights, but harboring an ulterior agenda that is anything but democratic.

Indeed, there are over one billion Muslims the world over and an estimated five to six million in the U.S., the vast overwhelming majority who aspire to live in peace and wholly disapprove of terrorism. Nonetheless, “the primary terrorist threats to the United States emanate from two regions, South Asia and the Middle East,” states the latest report of *Patterns of Global Terrorism*, released May 1, 2000 by the U.S. Department of State. In fact, an analysis of international terrorist statistics provided annually by *Patterns of Global Terrorism* shows that 98.3 percent of American citizens killed or wounded from 1993 through 1999 were inflicted in incidents either within the territorial integrity of the Middle East and South Asia or were perpetrated by an organization or individual indigenous to or associated with the Middle East or South Asia. Islamic terrorism and Middle East extremist groups pose the greatest international threat to U.S. national security. That they are responsible for more than 98% of U.S. casualties in terrorist attacks is not an invention of Hollywood nor a stereotype but rather reflects an accurate and sober assessment of the truth. Recognition of this reality irrefutably discredits allegations of discrimination and racial bias and reflects an accurate and directed response to the terrorists that are inflicting American casualties. Only against this backdrop may national security and individual liberty be balanced appropriately in the context of so-called “secret evidence.”

Over the last year, several cases involving the government’s use of classified information have garnered much attention in the national media and drawn harsh criticism of the INS. Although there are many instances where the government effectively uses classified information to prevent the infiltration and presence of terrorists in the U.S.; the majority of these cases are not reported in the media nor made available for public scrutiny. In this vacuum where most successful cases remain classified and confidential, publicly available material typically involves exceptional circumstances or complicated issues — the cases that pose the greatest challenge for the government in achieving the appropriate balance of individual liberty with national security. Moreover, with government officials constrained from speaking publicly on pending cases, news reports for the most part have proven to be profoundly unbalanced and unobjective, disproportionately emphasizing the “human interest” element of the story and relying on comments from family members, friends and advocates for suspected terrorists who of course, deny any connection to terrorist groups. Often, the choices for the public servants involved are not a matter of choosing between good and bad alternatives, but rather, isolating the least of several highly volatile, sensitive and/or dangerous scenarios.

Current Cases Reported in the Media

To objectively analyze some of the recent cases that have drawn media attention, it is important to do so on a case-by-case basis, rather than simply condemning all cases where classified information is used as predicated on hearsay and guilt by association. Furthermore, a conclusive analysis of whether an individual is or is not a threat to national security is impossible without viewing the entire classified record; and conclusive proof is not the standard for the admission of classified information in the context at issue. Current immigration law provides for the use of classified information where there are reasonable grounds and/or information relevant that shows an alien is a threat to national security. Typically, as government officials have testified to before Congress, because of the possibility that sources and methods will be disclosed, classified information is not entered to prove that the alien suspected of being a threat to national security is deportable. Rather, in most cases, the government makes the case that alien is deportable for violations that do not involve threats to national security, such as overstaying a visa, engaging in a sham marriage, or engaging in some other kind of fraud on the government in furtherance of an immigration benefit. Once ordered deported on any one or more of these types of grounds, immigration law allows the illegal alien to seek various forms of relief from the order of deportation.

For instance, the illegal alien may file for asylum, arguing for the benefit of U.S. citizenship despite prior immigration violations. To protect an individual from the cruelty that could be inflicted if deported, there are instances where fairness and justice require the granting of asylum despite past immigration violations. Nonetheless, in these circumstances, which are typical of the cases that have propelled us here today, it is vital to the national security and safety of the public at large that where classified information is relevant, and/or where there are reasonable grounds to believe that an illegal alien in this or a similar position is a threat, he be detained where necessary on the basis of the classified record without any requirement that the sources and methods of the intelligence be compromised. Under these circumstances, the alien holds his own key out of detention by accepting deportation or removal. As previously considered by Congress, the law is reasonable and appropriate in its current form in striking the proper balance of the rights of the alien with the interests of national security. Whether improvements are necessary in the application of the law is a separate question for those vested with the power of enforcement.

Nasser Ahmed—a Case of Judicial Error

Under the banner of the “International Islamic Front for Jihad Against the Jews and the Crusaders,” Usamah Bin Laden and other master terrorists issued a fatwa (religious edict) on February 23, 1998 which states, “The ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it....” In addition to Bin Laden, the leaders of four other terrorist organizations signed the fatwa, including the leaders of the Egyptian Gama’ at al-Islamiya (the Islamic Group), the Egyptian Al-Jihad, the Jamiat-ul-Ulema-e-Pakistan, and the Jihad Movement in Bangladesh. Under this directive, the United States Embassies in Kenya and Tanzania were bombed on August 7, 1998 killing 224 people including twelve Americans and injuring thousands.

Since the dual Embassy attack, U.S. intelligence and law enforcement, working in coordination with their friendly counterparts world-wide, have thwarted over a half dozen other plots against U.S. interests sponsored by Bin Laden's network including the millenium plots to strike western targets in the Hashemite Kingdom of Jordan and the related plot foiled in Washington state where Ahmed Ressay was caught by Customs officials smuggling explosives across the border from Canada. FBI Director Louis Freeh warned in a January 1998 testimony before the Senate Select Committee on Intelligence, "Extremist groups such as Lebanese Hizballah, the Egyptian Gama'at al-Islamiya, and the Palestinian Hamas have placed followers inside the United States who could be used to support an act of terrorism here." With knowledge that the Egyptian Gama'at al-Islamiya, a signatory organization to the fatwa, maintains a presence in the United States, common sense dictates the necessity of identifying and arresting the components of the organization based on U.S. soil. Indeed, where an illegal alien living in the U.S. openly admits membership in, publicly demonstrates support for and provides "material support" of Gama'at al-Islamiya, it would be a serious dereliction of government duty were the government to fail to act appropriately.

Late Monday night on November 29, 1999, Nasser Ahmed, (a/k/a Nasser Ahmed Homosany, a/k/a Nasser Ahmed Kadri, a/k/a Ahmed Aly El-Homosany) was released from the Metropolitan Correctional Center in lower Manhattan. In custody since April 23, 1996, Ahmed's release was widely reported in the national media as another blow to the INS use of "secret evidence." Obtained under the Freedom of Information Act from the Executive Office of Immigration Review, a review of the declassified record in the Nasser Ahmed matter evinces multiple grounds demonstrating the viability of the government's case that Ahmed posed a threat to national security.

Born February 6, 1960 in Cairo, Egypt, Ahmed is a citizen of Egypt that came to the United States on July 17, 1983 as a nonimmigrant visitor. With authorization to remain in the U.S. until January 16, 1984, Ahmed sought to stay longer and filed for a change of visa status; but the request was denied and he was ordered to leave the country. Instead, he remained illegally and settled in Brooklyn, New York.

Ahmed was not just another one of the estimated five to six million aliens living illegally in the U.S. In 1991, Ahmed was elected to the Board of Directors of the Islamic Community Inc., otherwise known as the Abu Bakr El-Seddique Mosque (Abu Bakr Mosque or Mosque) located at 115 Foster Avenue, Brooklyn, New York. After arriving in the U.S. in 1990, this is one of the mosques where the militant Islamist Sheikh Omar Abdel Rahman preached hatred and violence against the secular government of Egypt and its allies including the U.S. and Israel. In October 1995, Sheikh Rahman was convicted along with thirteen other co-defendants of seditious conspiracy for leading plots to assassinate Egyptian President Hosni Mubarak and to bomb New York City landmarks including the World Trade Center, the United Nations, the New York Federal Building, the George Washington Bridge, and the Lincoln and Holland Tunnels. The Abu Bakr Mosque where Ahmed was a board member was used as a safe harbor and meeting venue for some of the terrorists that were convicted in the trial. Judge Michael B. Mukasey of Federal Court in Manhattan, who presided over the trial and sentencing, stated, "You [Sheikh Rahman] were convicted of directing others to perform acts which, if accomplished, would have

resulted in the murder of hundreds if not thousands of people...and would have made the related 1993 bombing of the World Trade Center seem insignificant.” Sheikh Rahman was sentenced to life on January 17, 1996 and is confined in Federal Prison in Springfield, Missouri.

During the seditious conspiracy trial, Ahmed worked as Sheikh Rahman’s paralegal and interpreter until his arrest by the INS on April 24, 1995. He was charged with deportability as an overstay and released on \$15,000 bail on or about April 27. Although Ahmed’s “professional” relationship with Sheikh Rahman was terminated by Judge Mukasey following his arrest, he continued to maintain personal contact with the Sheikh which was his right. According to Federal Bureau of Prisons records entered into evidence in Ahmed’s deportation proceedings, Ahmed flew to Springfield, Missouri and visited Sheikh Rahman on March 22, 23 and 24, 1996 and spoke with the Sheikh by phone on February 29, 1996 and on March 8, 14 and 25, 1996.

Shortly after these visits and phone calls, a letter authored by Sheikh Rahman was published in the April 14, 1996 edition of the Saudi owned London daily newspaper Al-Hayat. Bitter with prison’s hardships, Sheikh Rahman delivered a message to his supporters: “People of manhood, support, sacrifice and dignity: Rise up from your deep slumber and make your voice heard...Rise up and see justice done.” Four days later, on April 19, 1996, Islamic militants armed with automatic weapons and pistols opened fire on a group of mostly elderly Greek tourists waiting to board a bus outside their Cairo hotel. After about three minutes of gunfire, fourteen Greek women, three Greek men, and an Egyptian parking attendant were dead and many others were wounded. Gama’ at al-Islamiya claimed responsibility.

Ahmed’s release was revoked shortly after the terrorist attack on April 23, 1996. Determined to remain free, Ahmed requested a bond redetermination hearing which was held on April 29, 1996. His attorneys argued for his release and presented testimony that he and his wife intended to apply for various immigration benefits including asylum. Believing that Ahmed posed a threat to national security, the INS submitted classified information *in camera* and *ex parte*. A redacted and declassified copy of the information the INS submitted to the Immigration Judge states in part, “Investigation of [Ahmed] Homosamy has confirmed that he is a known member of Al-Gama Al-Islamiyya (AGAI).” The document further states, “[Ahmed] Homosamy, is a loyal supporter of Sheikh Omar Abdel Rahman, the spiritual leader of Al-Gama Al-Islamiya, who was convicted of conspiracy for his role in assassination and bombing plots in the United States and Egypt.” Under provisions of the Antiterrorism and Effective Death Penalty Act of 1996, AGAI was designated by the United States Department of State as a foreign terrorist organization on October 8, 1997. *Patterns of Global Terrorism 1999* states that Sheikh Rahman, “is al-Gama’at’s preeminent spiritual leader, and the group publicly has threatened to retaliate against U.S. interests for his incarceration.”

In a decision dated May 1, 1996, the Immigration Judge ordered Ahmed detained without bail pending the completion of his deportation proceedings concluding that he was a threat to national security (and that he was likely to abscond if released). On appeal, Ahmed argued that the Immigration Judge’s ruling was in error; essentially, because he was not given an opportunity to rebut the information against him. But Section 240(b)(4)(B) of the Immigration and Nationality Act provides, “The alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses presented by

the Government but these rights shall not entitle the alien to examine such national security information as the Government may proffer in opposition to the alien's admission to the United States or to an application by the alien for discretionary relief under this Act." The Board of Immigration Appeals ruled, "We find the respondent's [Ahmed's] contentions regarding the *in camera* use of classified information against him, and his right to review such evidence, to be unavailing. We have reviewed the classified information which was presented to the Immigration Judge, and we find that there are reasonable grounds for considering the respondent to be a risk to the security of the United States. We also affirm the Immigration Judge's decision not to provide a summary of material presented in *camera*."

Still seeking recourse, Ahmed filed a motion for another bond hearing. But with no changed circumstances, the request was denied. Pursuing a channel outside of the immigration courts, Ahmed filed a *habeas corpus* petition in the United States District Court for the Southern District of New York seeking release from detention. However, while Ahmed's deportation case was pending, classified information previously submitted *in camera* was declassified and by stipulation of the parties, in August 1998 the *habeas corpus* action was remanded to the Immigration Judge. More information was declassified, and after a thorough declassification review, Ahmed was afforded the opportunity to challenge most of the facts demonstrating his threat to national security.

On July 30, 1999, Immigration Judge Don Livingston withdrew his original order and granted Ahmed asylum and withholding of deportation. The ruling states, "Armed with a better understanding of the government's case, the respondent was successful in rebutting most of the factual allegations underlying the charge that he is a danger to the security of the United States." The INS appeal of this ruling is pending as of mid-March 2000, but an examination of the declassified and redacted documents submitted into evidence shows serious flaws in the Immigration Judge's decision, and raises questions about U.S. counterterrorism policy in general.

While the INS (coordinating with the FBI) relied on multiple reliable sources in determining Ahmed a threat to national security, the testimony of Sheikh Mohamed Mohamed Hassan ElShariff alone is compelling. With Sheikh Rahman behind bars, the Board of Directors of the Abu Bakr Mosque (which at that time included Ahmed) sought a new Imam. On April 22, 1995, Sheikh ElShariff arrived in the U.S. from Egypt and shortly thereafter began to perform the duties of Imam. He entered into an employment contract in July of 1995, but the contract was terminated by Ahmed (and others) in September 1995, and litigation ensued.

According to ElShariff's Affidavit dated August 27, 1996 submitted in the contract dispute to the Supreme Court of the State of New York County of Kings, at the time he was hired the mosque was controlled by three individuals including Ahmed. The Affidavit merits quoting in large part:

...Sattar [named on a Justice Department list "of unindicted persons who may be alleged as co-conspirators" in the World Trade Center bombing], Faramawi and Hommosany [Ahmed]... believe in an "extreme" form of Islam which often calls for them to engage in and advocate actions that are illegal in the United States or, based on my expert knowledge and learning of Islam, immoral. My teachings and

sermons...are based on a more mainstream interpretation of Islam and have attracted more moderate Muslims to the Mosque...they [Sattar, Faramawi and Hommosany] were not able to account for where the funds of the Mosque were going, and so I refused to collect even more funds for them...Therefore, [they] threatened to hurt me unless I left the Mosque.... I and the great majority of the members of the Islamic community believe that Sattar and Faramawi, along with the small number of their followers, do not represent the religious beliefs of the rest of the Islamic Community, and they are not tolerant of more moderate Islamic beliefs...Sattar and Faramawi and their followers have tried to remain in power by violent threats and acts. To try to force me to leave, they and their followers have broken into my room in the Mosque several times...In addition, they have ripped the microphone out of my hands in the middle of sermons, cursed me in front of the Islamic community...and threatened to hurt me or to “put me in a box” (to kill me).

According to the INS’ Memorandum in Opposition to Respondent’s Applications for Asylum, Withholding of Deportation, Voluntary Departure and Release from Custody (INS Memorandum) dated May 14, 1999, “...Sheik [sic] ElShariff testified that on numerous occasions, the respondent asserted his affiliation with the terrorist organization, al-Gama’a al-Islamiyya...the respondent [Ahmed] accused him of being an agent of the Egyptian Government and defiantly informed him, ‘I am from al-Gama’a al-Islamiyya and al-Jihad¹ and go tell the Egyptian Government that.’...Sheikh ElShariff testified that the respondent did not conceal his affiliation with the terrorist organization, al-Gama’a al-Islamiyya, among the community of the mosque; to the contrary, ‘he’d advertise himself as being from al-Gama’a al-Islamiyya.’...”

The INS Memorandum states that Ahmed verbally threatened ElShariff three or four times, “Sheik [sic] ElShariff testified that he believed that the respondent would carry out his threats if he were released from custody,” and explicitly details one of the threats, “the respondent [Ahmed] advised him [ElShariff] ‘we have Brothers in Egypt who will deal with your family and we will send you to Egypt in a box.’ He testified that he interpreted this to mean that he would be killed and that his body would travel back to Egypt in a coffin.” Furthermore, Sheikh ElShariff is cited in the INS Memorandum as testifying to personally witnessing Ahmed distribute pamphlets in the Mosque in support of Gama’ at al-Islamiya which characterized U.S. courts as “courts of infidels.”²

This evidence notwithstanding, the Immigration Judge did not credit Sheikh ElShariff’s testimony. The July 30, 1999 ruling states, “...Sheik [sic] Al-Sharif’s interest in employment by the mosque and his interest in remaining in the United States would be threatened by respondent’s release from INS custody...Sheik [sic] Al-Sharif is considered by this court to be seriously prejudiced against the respondent, highly interested in the outcome of this case and he appears to be under the control of the INS which holds his future immigration status in its

¹ Designated by the U.S. Department of State as a foreign terrorist organization under the Antiterrorism and Effective Death Penalty Act of 1996. Signatory to Bin Laden’s February 1998 Fatwa.

² “Al-Murabitoun” is Gama’ at al-Islamiya’s publication. The INS Memorandum states that Ahmed admitted in his testimony that Sheikh Rahman often brought “Al-Murabitoun” to the Mosque for distribution.

hands.” By discrediting Sheikh ElShariff’s testimony solely because he was a non-citizen, the Immigration Judge assumed duties beyond what is authorized and, according to the Service’s Brief on Appeal, “caused reversible error.”

Submitted by the INS on April 27, 1999, another compelling piece of evidence that the INS argues was erroneously discounted by the Immigration Judge is the Affidavit of New York City Detective Thomas F. Corrigan and a report of his September 6, 1996 debriefing of Abdo Rahman Haggag, a government witness in the seditious conspiracy trial of Sheikh Rahman. The report is an unrebutted account showing Ahmed’s participation in a meeting at Sheikh Rahman’s apartment dedicated to planning acts of terrorism, identifying targets and measuring the benefits of various terrorist acts. The report states, “...Sheik [sic] Rahman, Ahmed Sattar, Nassar Homosamy [Ahmed]...discussed hijacking an airplane. They believed this would enable them to put pressure on the United States Government, as well as make the public aware of their plight in Egypt. They determined that there would be no benefit from this action, as hijackings for the most part are unsuccessful...”

To any objective observer, the nature of this meeting is plain and straight-forward; but the Immigration Judge ruled, “The most that could be made from this document is that some irresponsible comments about airplane hijacking were made and the idea was rejected...This incident cannot be seen as any form of direct or indirect threat to the security of this country.”

Other evidence discounted by the Immigration Judge includes Ahmed’s attempts to obtain bomb-making manuals to send to overseas terrorist groups; his function as an informational conduit for Sheikh Rahman; his involvement in the sale of fraudulent immigration documents; and his obtaining false Afghanistan passports for himself and his family. Much of this evidence comes from a variety of other sources that remain confidential and the testimony of other law enforcement personnel whose names were redacted. The Immigration Judge found most of this evidence unreliable, not credible and/or hearsay. Rather than plainly measuring the merit of the classified evidence, the Services Brief on Appeal states, “...the Immigration Judge admitted the evidence, but declined to assign weight to it because of its classified nature and because he was not satisfied it was properly classified...The Immigration Judge did not weigh the classified evidence against other evidence and find it less persuasive. Instead, he discounted the classified evidence entirely because it was classified and he did not have the means to evaluate the reasons for the classification.”

Furthermore, apart from all the evidence demonstrating Ahmed’s engagement in terrorist activities, on June 8, 1999 a jury in the Eastern District of New York rendered Nasser Ahmed guilty of violating Title 18, United States Code, Section 1426(b) for submitting false statements of fact and a false Affidavit in support of his Application for Temporary Residence Status as a Special Agricultural Worker.

While the INS appeal of the ruling is pending, a free, soft spoken, and triumphant Nasser Ahmed has joined forces in the effort on Capitol Hill to bring an end to the use of “secret evidence.” Exploiting the same civil rights banner as some of his colleagues, Ahmed was a featured speaker and guest at a February 16, 2000 “Summit on Secret Evidence” held in Caucus Room 345 of the Cannon House Office Building. The founder and former Executive Director of the American

Muslim Council (AMC) and current President of the American Muslim Foundation, Abdurahman Alamoudi, recognized Nasser Ahmed as a hero to the audience of over 500 assembled before him. Encouraged by their political success with “secret evidence,” a confidant and empowered Alamoudi expressed his vision for future efforts, “...ladies and gentleman, brothers and sisters, we have to take this to a second level. I would like to give you a piece of my mind. I will not rest, ...[until] we reach the apex and the extent of revisiting Sheik [sic] Omar Abdel Rahman’s case.” This call was received by an enthusiastic round of applause

A Special Agent of the FBI (whose name was redacted on documents made public) warned in the October 7, 1998 bond hearing that if released, “he [Ahmed] would be more well known, lending to his credibility in the community both inside the United States and outside the United States...people would be more inclined to listen to him.”

Now free, Mr. Ahmed is exercising his First Amendment rights to speak out, as is his right; nonetheless, it is interesting to hear what he is saying. Taking his case of “political and religious prosecution” from Capitol Hill to the university lecture circuit, Ahmed wears his contempt for the United States and its institutions on his sleeve. “The FBI has a problem with informants. All the informants are liars,” he told a group of about 50 mostly Muslim students and local residents on March 8, 2000 at Columbia University. “There is not even one shred of evidence against Abdul Rahman...it was politically motivated and used then to serve the Egyptian regime....”

Describing the terrorist group that he is accused of being a member, “The Islamic Group [Gama’at al-Islamiya] is the biggest organization [sic] work peacefully and work around poor people and work to bring the life standard of the people to a higher standard...what they do basically is collect the money from the rich and distribute it to the poor. Honestly and fairly....”

But the State Department’s *Patterns of Global Terrorism 1998* provides this description of AGAI’s activities, “Armed attacks against Egyptian security and other government officials, Coptic Christians, and Egyptian opponents of Islamic extremism. Al-Gama’at has launched attacks on tourists in Egypt since 1992, most notably the attack in November 1997 at Luxor that killed 58 foreign tourists. Also claimed responsibility for the attempt in June 1995 to assassinate Egyptian President Hosni Mubarak in Addis Ababa, Ethiopia.”

Failing to condemn, criticize or even acknowledge the massacres of innocent civilians, Ahmed rationalized, “The Islamic group that the government claimed I belonged to never used violence since it was established in 1976 up until 1992-- when the government assassinated the spokesperson ...they assassinated him right in front of his kids and wife. That’s a time when revenge start[ed] between the Islamic groups and the govt. So I don’t support violence and I don’t believe that violence can establish anything [but] I don’t say that these guys are terrorists and they are bad.”

Ahmed goes on to state, “once you [Gama’at al-Islamiya] start to grow up politically, you are going to start to ask for other rights—for applying Islamic rules which the U.S. will never let [happen]...the U.S. don’t want any country in the world ruled by Islam.” Unlike some of Ahmed’s politically savvy colleagues against “secret evidence” who are masters of confining their public statements to issues appealing to the Western ear, Ahmed openly discloses that when

he is talking about rights—it is not individual rights that he is talking about, but Sharia-- Islamic law, and the rights of Muslims to live under an Islamic system of government similar to Iran, Sudan and Afghanistan. Indeed, it is a fundamental right that any Muslim, Christian, Jew or member of any faith be allowed to practice their religion freely, but the notion of imposing the dictates of one religion (or an interpretation of one religion) on others must be unequivocally challenged and condemned as has been the case in civilized societies for centuries.

Mazen Al-Najjar - Target in an On-going Grand Jury Investigation

On May 13, 1997, an order of deportation was entered against Al-Najjar in Immigration Court in Orlando, Florida. The basis for the order of deportation was that 1) Al-Najjar had overstayed his visa; 2) admitted his deportability and; 3) failed, in his petition for asylum and suspension of deportation to prove that he would face persecution if deported to his previous country of residence. As a matter of procedure, Al-Najjar was incarcerated on May 19, 1997, pending either his removal from the United States per the order of deportation or a ruling by the Board of Immigration Appeals on his appeal for asylum and suspension of deportation.

The classified information against Al-Najjar was not submitted until his bond redetermination hearings commenced in Bradenton, Florida, on May 29, 1997. On June 6, 1997, the Immigration Judge ordered that bond be denied based on the classified information presented by the government against Al-Najjar showing his involvement with terrorism. The order read in part, “I find that the respondent [Al-Najjar] is a threat to national security. Specifically, because of his association with the Palestinian Islamic Jihad terrorist organization.”

William West, a Supervisory Special Agent with the INS and an expert witness in the case, stated under oath on July 18, 1996, “I believe the respondent [Al-Najjar] is a mid-level-mid-level operative functionary within the WISE [World and Islam Studies Enterprise] and the ICP [Islamic Committee for Palestine], and his responsibilities primarily include the day-to-day running of the operations of both the WISE and the ICP.” West further elaborated that, “the WISE and the ICP exist as fronts for the purpose of fund-raising activities for the Islamic Jihad and the Hamas terrorist organizations and to also engage in other support-type activities primarily to allow for the perceptually legitimate entry of foreign nationals, aliens into the United States who are leaders and/or operatives of the Islamic Jihad, the Hamas and other terrorist organizations.”

The case of Mazen Al-Najjar demonstrates multiple instances where the classified record was reviewed to determine its merit and appropriateness in supporting continued detention. On September 15, 1998, the Board of Immigration Appeals entered an order on Al-Najjar's appeal for bond redetermination. This appeal was dismissed by the Board with the following conclusion: "...we find that the Immigration Judge conducted the bond proceedings in a fundamentally fair manner and reached a proper determination that the respondent should not be released from the custody of the Service." Furthermore, the Board stated in its decision: "Upon careful review of the record and the classified information considered by the Immigration Judge *in camera*, we affirm the Immigration Judge's denial of the respondent's request for a change in custody status."

Al-Najjar's case was also reviewed, prior to the Board's decision, by Deputy Attorney General Eric Holder at the behest of Al-Najjar's supporters in Tampa, Florida. In an undated letter from early July 1998, Holder wrote: "After careful review, the Department's [Department of Justice] lawyers have concluded that the evidence used against Mr. Al-Najjar in the bond redetermination hearing is properly classified and cannot be declassified. Furthermore, they have determined that it is highly relevant and, therefore, appropriately used."

In addition to the Board of Immigration Appeals ruling on his claim against "secret evidence," Al-Najjar's appeal for suspension of his deportation was also denied based on an October 26, 1999 ruling of the Board of Immigration Appeals. *Habeas corpus* proceedings have been held in federal court in Miami regarding Al-Najjar in the past month. The decision in these proceedings is currently pending in the Southern District of Florida.

There exists unclassified material in the public domain showing the links between the U.S.-based-ICP and U.S.-based WISE and the Palestinian Islamic Jihad. Both of the American headquartered organizations were inextricably tied to Al-Najjar's brother-in-law, Dr. Sami Al-Arian, who has been one of the targets of the federal investigation into the activities of these organizations. According to the Affidavit of FBI Special Agent M. Barry Carmody, "Located and seized at the residence of Sami Al-Arian on November 20, 1995, was a letter written by Sami Al-Arian in which Al-Arian is soliciting funds for the Islamic movement in Palestine. This solicitation letter states that despite obstacles, the Islamic movement operates at a time when combined scores of Arab armies fail to accomplish its goal, and the Hamas brothers continue improving. This letter also appeals for support for the Jihad so that the people will not lose faith in Islam. As noted previously, the Jihad has been declared an international terrorist organization by the Department of State." At issue is the extent of the connection between Al-Najjar, WISE, ICP and the Palestinian Islamic Jihad.

Al-Najjar and the World and Islam Studies Enterprise (WISE)

Mazen Al-Najjar was one of the founders of WISE in 1990 and served as an editor for its academic journal, *Qira'at Siyasiyyah* (Political Readings). He also acted as a director at WISE by writing checks on behalf of WISE to various individuals, including himself, for reimbursement and for salary purposes. The Chairman of the Board of Directors, according to visa applications filed by WISE on behalf of Palestinian Islamic Jihad leaders who were visiting the United States, was Dr. Sami Al-Arian, Al-Najjar's brother-in-law.

The Director of Administration at WISE and co-editor of WISE's journal from 1991 until June 1995 was Dr. Ramadan Abdullah. Abdullah is better known for his current role as the Secretary-General of the Palestinian Islamic Jihad. He assumed the post in October 1995, just months after leaving WISE and Tampa. Al-Najjar took over the post of Director of Administration of WISE following Abdullah's departure, but the two had worked together since Abdullah's arrival in Tampa in 1991.

In an interview with the publication *Al-Hayah* (as translated by the Foreign Broadcast Information Service) soon after his appointment as the head of the Palestinian Islamic Jihad in late October 1995, Abdullah was asked about his previous role in the organization. Abdullah stated that, “when he [Fathi Shikaki, the preceding leader of the Palestinian Islamic Jihad who was assassinated in Malta in October 1995] traveled, he asked me to run the affairs of the movement in his absence.” This shows that Abdullah’s role in the Palestinian Islamic Jihad was operational during his tenure with WISE and Al-Najjar in Tampa.

Another link between WISE and the Palestinian Islamic Jihad was established by Dr. Khalil Shikaki (Fathi Shikaki’s brother), the first director of WISE when it was founded in late 1990. Khalil Shikaki was also a speaker at the ICP annual conferences from 1989 until 1992, at which point he returned to a teaching post in the West Bank. Documents seized by federal agents at the WISE office in November 1995 show that Khalil Shikaki, after his departure from WISE in 1992, contacted his brother Fathi Shikaki through Ramadan Abdullah. Evidence released in the federal investigation against WISE and ICP included a letter and a fax between Abdullah and Khalil Shikaki showing that Abdullah served as a go-between for the brothers. These communications contained references to various matters including support for a project headed by “Abu Omar,” a *nom de guerre* of Hamas leader Musa Abu Marzook. In addition, Khalil Shikaki appeared together with Abdullah on December 30, 1990 on a panel at the ICP Annual Conference in which Abdullah recounted Palestinian Islamic Jihad operations. In comments made by Khalil Shikaki on December 24, 1989 at the ICP Annual Conference, he proclaimed support for the Palestinian Islamic Jihad as a unifying element of the Islamic resistance in Palestine. In addition, Al-Najjar worked closely with both of these individuals as they were his predecessors in the leadership positions of WISE.

In his 1989 speech, Shikaki extolled the virtues of the Islamic Jihad Movement in Palestine and encouraged the use of the armed struggle against Israel to achieve political aims.

In this atmosphere [of Islamic disunification in the Occupied Territories], the Islamic Jihad movement appeared to improve the Islamic Palestinian position. Indeed, it is impossible to ignore the significance of the appearance of this movement: its influence on the role of Islam in the confrontation of the armed struggle against the occupation. As it is sure that the confrontational struggle against Israel is a central Islamic issue of primary importance, there is no doubt that this development in the Islamic position paved the way for an extensive dynamic action within the Islamic leadership [that], at the appropriate time, from the outbreak of the Palestinian Intifadah in December 1987, through other events of basic development in the Islamic position, was exemplified by the appearance of the Hamas movement as a political/military outgrowth of the Muslim Brotherhood.

...[Shikaki then advises Palestinian leaders] to announce steps supporting the weapons of fire so that, in the end, the Intifadah will become an armed Palestinian revolution.

Another of Al-Najjar's colleagues at WISE was Dr. Bashir Nafi. Nafi was also a co-editor of WISE's journal and primarily worked out of his office in London. He did, however, come to the United States on a number of occasions to work with both WISE and ICP. He spoke at the annual ICP conferences in 1988 and 1989. In 1991, he participated in a panel on behalf of WISE with University of South Florida (USF), located in Tampa, to discuss plans for a joint research agreement between the two entities. (The WISE-USF agreement was formally instituted in the Spring of 1992 and involved the co-sponsorship of academic conferences on the Middle East.)

In 1994, Nafi, traveling on a visa procured by WISE, moved to the United States. The purpose of this move was for Nafi to work in Tampa with the staff of WISE. After Abdullah's appointment to the head of the Palestinian Islamic Jihad, immigration officials began to look more closely at Nafi. News reports surfaced in the Middle East suggesting that Nafi, along with Abdullah, had been in charge of the Palestinian Islamic Jihad's British office in London where he and Abdullah wrote and distributed communiqués for the group. The publication *Al-Urdun* on November 6, 1995 referred to Nafi as one of the possible successors to Fathi Shikaki after Shikaki's assassination in October 1995. Rather than undergo the arduous process of instituting charges of terrorist affiliations against Nafi, the Immigration and Naturalization Service used the more expeditious route of deportation by charging him with violating the stipulations of his visa, which had stated that he would be working in Tampa at WISE. In fact, since 1994, Nafi had been working as a Research Associate with the International Institute of Islamic Thought, an Islamic "think tank" based in Herndon, Virginia, which, according to letters exchanged between WISE and USF in 1991, served as the primary source of funding for WISE. After an order for his deportation was filed, Nafi left the United States voluntarily in mid-1996.

An interesting side note to Nafi's deportation lies in the fact that the INS, in its Order to Show Cause, which enumerated the immigration violations by Nafi, listed an alias for Nafi in the name of Ahmed Sadiq. This alias is important to his connections to terrorism. To those in the Palestinian Islamic Jihad, he was better known by this name. Under this pseudonym, Nafi wrote scores of articles in journals referred to by Palestinian Islamic Jihad head Fathi Shikaki as publications of the movement. Included among these are *Al-Mukhtar Al-Islami*, which is published in Cairo, and *Al-Taliah Al-Islamiah*, which was published in London (Nafi being on the editorial boards of both publications during the time that he wrote for them).

In addition, there are a number of references to Nafi as one of the "key players" in the Palestinian Islamic Jihad. One among these struck close to home in Tampa. A master's thesis presented by Abdul Aziz Zamel at the University of South Florida in Tampa (with whom WISE had signed a cooperative agreement) on April 17, 1991 referred to Nafi as an ideological head of the Palestinian Islamic Jihad along with Fathi Shikaki. Based on interviews with an anonymous individual identified by Zamel as a "founder" of the Palestinian Islamic Jihad, Zamel wrote, on page 192 of his thesis, that Nafi had actually "published and edited a journal, al-Taliah al-Islamiah (The Islamic Vanguard) [sic] specifically for the [Palestinian Islamic Jihad], which was sent to the occupied territories for reproduction, in the same shape and form, and distribution." Thomas Mayer, a researcher who wrote an article in Emmanuel Sivan and Menachem Friedman's 1990 book entitled *Religious Radicalism and Politics in the Middle East*, stated that Fathi Shikaki regarded Bashir Nafi as "an ideological friend." Mayer also discussed the cooperation between Nafi and Fathi Shikaki in distributing *Al-Taliah Al-Islamiah* throughout the

West Bank and Gaza Strip. These references suggest that Nafi was not merely a member of the movement, but a spokesperson with close ties to Shikaki.

Al-Najjar and the Islamic Committee for Palestine (ICP)

Al-Najjar's ties to the Palestinian Islamic Jihad front groups in Tampa were strengthened by his role with the Islamic Committee for Palestine (ICP). ICP was incorporated in 1988, and its registered agent was Sami Al-Arian, Al-Najjar's brother-in-law. Al-Arian is currently one of the foci in the federal investigation of both ICP and WISE (Al-Arian was also the registered agent for WISE). Al-Najjar was on the Board of Directors of ICP and, according to his resume, he served as co-organizer of its annual conferences from 1988 until 1992. He also wrote many checks on behalf of ICP to a number of sources including WISE.

According to his resume (which is in the public domain as a result of his deportation proceedings), Al-Najjar served as a co-organizer of the ICP annual conferences from 1988 through 1992. These conferences, held in St. Louis in 1988 and in Chicago from 1989 through 1992, played host to a number of radicals from around the world who called for a continuing *jihad* against Israel and the West. Among the many radicals who spoke at these conferences, two of the key speakers were: Sheikh Abdel Aziz Odeh, the spiritual leader of the Palestinian Islamic Jihad, who had been deported from Israel in 1988 for fomenting violence against the Israelis; and Sheikh Omar Abdel Rahman, who was sentenced to life in prison for his role in the conspiracy to blow up landmarks and tunnels in New York City.

INS Special Agent Bill West, in his testimony in the Al-Najjar deportation proceedings, described what went on at the annual ICP conferences as follows:

...Many of the speakers will, uh, will essentially, uh, condone violent acts against Israel, and Israelis, and Jews and Western targets. There will then be a period where the speakers will say that money is needed to support the various activities of the Jihad movement, and then they will solicit funds.... That's -- and -- and these are done against the backdrop of Islamic Jihad banners....³

Some of the speeches at these conferences specifically decry the ties between ICP and the Palestinian Islamic Jihad. The following statements are examples of this support. Sheikh Abdel Aziz Odeh, the spiritual leader of the Palestinian Islamic Jihad, recounted the bloody achievements of the movement at the ICP's 1988 conference held in St. Louis, Missouri:

People began to say, well, we are able to achieve victory against this enemy. We are in a position to inflict defeat on it. And we are able to finish him [the enemy] off and cause him pain. Then occurred the decisive event of 6 October 1987, wherein four holy warriors met their martyrs' death after they killed the big Israeli intelligence boss in Gaza, and his name is Victor Arouan. And from that day on, Gaza was never quiet again. Gaza stood up. And then there was the revenge operation for those young martyrs, on 6 March in Gaza. And then came the event

³ Transcript of the Mazen Al-Najjar deportation proceedings, July 18, 1996, p. 266.

that was most decisive, where an Israeli settler was killed. That was the Maqsura Operation on 8 December, which made the Intifadah spread through Gaza and also throughout the West Bank.⁴

Fawwaz Damrah [named by the Justice Department on a list of “unindicted persons who may be alleged as co-conspirators” in the World Trade Center] and now an Imam in the Cleveland Ohio, area, also spoke at this conference about the importance to engage in "terrorism" against their enemies, including the United States:

The first principle in which I believe -- and it is also found in the words of Allah the Almighty, in the Holy Qur'an -- this first principle is that terrorism and terrorism alone is the way to liberation.... [O]ur struggle with the Israeli enemy is the heart of the struggle, as Sheikh Abdel Aziz Odeh said. And that has to proceed from Palestine. I say, why don't we get in touch with those young men who went to Afghanistan, and make them open a front in Palestine? By causing a breach, I don't mean opening a door. Rather, it is proceeding on the basis of the words of Allah Almighty, and the gate that leads to them. And if you advance, you will defeat them. May God bestow his blessings upon them. Enter the gate toward them. We have advance upon the children of Israel, who fear death. As Sheikh Abdel Aziz Odeh also said, if there are men who love death, the problem will be solved. Therefore, we want to transfer those young men, who love death, and they are around, and there are lots of Palestinians among them -- they are around in Afghanistan -- and we want to establish military bases in Jordan, and in Egypt, and wherever we can find a way to do it -- and that is my simple and humble conviction. And I request Sheikh Abdel Aziz Odeh to answer, or to respond. The military solution: shall we continue the Intifadah just with stones, or use the same weapons that our enemy is using, including America? We are driving our children into death, so why not with proper weapons? Why don't we Muslims do it in the proper military fashion, for their liberation?

When Odeh responded that perhaps "terrorism" was not the right word to use in these circumstances, Damrah retorted, "But we are terrorists!" Odeh then conceded this point.

Sami Al-Arian delivered a speech to the opening session of 1990 ICP conference convened in Chicago, Illinois, in which he stated:

We assemble today to stand up and pay our respects to the march of the martyrs, which increases, does not decrease, and to the river of blood that gushes forth and does not extinguish. From butchery to butchery and from martyrdom to martyrdom, from Jihad to Jihad.⁵

⁴ This speech was translated from the original Arabic that was taped by the ICP and distributed by that organization.

⁵ This statement was included in a booklet published by the ICP which contained selected speeches from the 1990 ICP conference. This statement was translated from the original Arabic.

In another speech at this conference, Sheikh Odeh stated, "They (the Jews) understand only one language: the language of Jihad, and the language of confrontation, and the language of sacrifice."

Ramadan Abdullah, former director of WISE and current Secretary-General of the Palestinian Islamic Jihad, made his first appearance at the ICP conference in 1990. In his speech, Shallah recounted the story of a Palestinian Islamic Jihad martyr by the name of Iyad Abid who had died in a terrorist operation. In his speech, he stated:

There is currently a pervasive lie that there should be no armed Intifadah. And we say that it is a lie because no one can claim that the armed struggle means arming the people in its entirety to face the occupation forces [using] weapons and fire instead of the stone. Demanding armed struggle means that the rifle which has been fighting throughout the years of jihad and struggle in Palestine must not cease and must not be silenced, rather, it [the rifle] must re-fire.

In another speech at the 1990 conference, Sheikh Muharram Al-Arifi of Masjid (Mosque) Sidon in Lebanon made the statement:

The Intifadah means that our children, our brothers, and our sisters that were brought up under the rule of the Israelites and under the grasp of the Jews will not be Judaized and will not kneel to the Zionists. As long as the Aqsa Mosque, Omar al Mukhtar Mosque, Salah Al Din Mosque, Izz Al-Din Al-Qassam Mosque [this is the mosque in which Odeh had once preached and it still serves as a Palestinian Islamic Jihad bastion] and the rest of the mosques are still educating the generations of Mujahedeen, the generations will convene in these houses [of worship] and burst forth from them roaring:

Khaybar, Khaybar oh Jews,
The armies of Muhammad shall return.
We are all Salah Al Din.
Do not worry, oh Palestine!⁶

The conclusions adopted by the conference participants, distributed by the ICP in its booklet containing selected speeches from the conference, included the following points:

The participants assert that Jihad is the only way to get back the whole Palestinian holy land, which is a property of the whole Islamic nation, and nobody has the right to surrender or yield a span of a hand, or recognize the Zionist existence on any part of it, because this is considered as treason for Allah, his prophet, our Muslim nation, their Jihad, martyrs, and their sacrifices which did not stop at any time.

⁶ "Khaybar" is the name of a Jewish tribe in the Arabian peninsula that was defeated by Muhammad to the last man. Thus the effect of the above chant is to remind the Jews of the imminent death that they face once Muslim armies unite under an Islamic banner.

At an ICP rally held in Chicago in September 1991 on behalf of Sheikh Abdel Aziz Odeh (which was recorded on videotape), Ghassan Ballut, who was introduced as the ICP representative in Chicago, described the tremendous contributions of Palestinian Islamic Jihad and its operations for the Intifadah. After a brief break in the tape, Ballut's voice is again heard praising Fathi Ibrahim [Shikaki]:

This enemy who executed the deportation of the Islamic thinker, Al-Mujahid, Dr. Fathi Ibrahim [Shikaki], and accused him of leading the Intifadah from inside the prison of the enemy. Dr. Fathi is the brain of the Islamic Jihad.

This is significant because it is another direct link between ICP and the Palestinian Islamic Jihad. The *ICP representative*, Ballut, is referring to the known terrorist leader and the “brain” behind Palestinian Islamic Jihad operations. Ballut also made the following statement at the rally: "The road is straight ahead of us and may our guns be [aimed] one way - to the chest of the enemy."

Later in this rally, Al-Arian spoke. In his speech, Al-Arian made the following statement:

Here in front of us, it can only be said the path is clear and we are here today in a free position—not like those under occupation [unintelligible] we should present an example and a model –there will be no concession on even one single inch of [our] holy land. Yes to the Intifadah, yes to jihad for the sake of Allah, yes to Islam, protect this Intifadah, protect [the Islamic] nations and gather the nation until we see the future promised by Allah the Exalted. [1 unintelligible sentence] Allah is one, Muhammad is the leader, the Koran is our constitution, jihad is our path, victory to Islam and death to Israel. Revolution, revolution is the covenant of the people, marching onward toward Jerusalem. Revolution, revolution is the covenant of the people, marching onward toward Jerusalem. There is no God but Allah.

In the opening session of the 1992 ICP conference held in Chicago, Sheikh Naim Nasser stated, "The Jews'...plotting and scheming, their moral corruption...spreading corruption on earth...in all this darkness, there is one light, and this light is the Jihad Movement. Our hearts are with those in the cold of Lebanon, but they are kept warm with their faith."

In another panel at this conference, an unknown individual engaged in a fundraising campaign on behalf of the ICP for the "martyrs" and their families.

...Palestine, in respect to us in the United States, does not need martyrs. They have more who are prone to Shahada than we have here in the United States. They have the tears of the orphans and the widows. Brother Sami [Al-Arian] tells me before coming to the podium, there is a mother who has given three martyrs, and the fourth is under detention in Egypt, and she says, All thanks are due to Allah. Your brothers need your participation, that will be felt in Palestine.... What is your contribution to Palestine? We are giving you a list of 16 martyrs. This is a narration of some people who would like to sponsor the martyrs or the family of the martyrs. I want you to think with me, and to remember two things, that you

now, there is a satan among us. There is always discussion and argument. Umar is quoted as having said, You only can tell the nature of a man when you enter into a financial transaction with him. I say the following to you. The list of martyrs who were killed in defense of their deen and their land in Palestine, they have families, children, orphans. The name of these martyrs are the following... [The list of martyrs is almost exclusively those of the Palestinian Islamic Jihad.]

...[S]ome of these Shuhada [martyrs] died defending mosques in the occupied lands. Some of them died in amphibious operations. Some of them died in assault then died in amphibious operations. Some of them died in assault operations. Their families need your assistance.

According to informational brochures distributed by the ICP at its conferences, the ICP disseminated a number of radical Islamic publications in the United States that were primarily associated with the Palestinian Islamic Jihad. Among these were: *Al-Mujahid*, an official newspaper distributed by the Palestinian Islamic Jihad from Lebanon; and *Al-Islam wa Filastin*, a magazine published in Cyprus that was identified by former Palestinian Islamic Jihad leader, Fathi Shikaki, as a publication of his movement. *Al-Islam wa Filastin* listed in each issue both a return address in Cyprus and a P.O. Box for the ICP in Tampa, Florida. This magazine often published communiqués from the Palestinian Islamic Jihad in addition to interviews with the leadership of the movement, including the head of the Palestinian Islamic Jihad, Fathi Shikaki.

As stated previously, Al-Najjar's relationship with both WISE and ICP extended beyond simple peripheral association. In addition to editing the WISE journal and being on the ICP Board of Directors, Al-Najjar wrote checks for both WISE and ICP to individuals and organizations relating to these two groups. These included checks from ICP to WISE and from WISE to individuals including Abdullah and Nafi.

Al-Najjar, in interviews since his arrest, has claimed that he had no knowledge of any terrorist links in Tampa. However, audio tapes, video tapes, Islamic Jihad publications and other material evidence shows that Al-Najjar was aware of the activities of his colleagues and their involvement with the Palestinian Islamic Jihad. His role in organizing conferences by the ICP where funds were explicitly solicited to support the widows and children of "martyrs," i.e., those that died in attacks on Israeli targets, constitutes further evidence. The fact that he wrote checks for two organizations alleged to be terrorist "fronts" further casts suspicion on his protests to have no knowledge of any terrorist links in Tampa.

Civil rights organizations speaking on Al-Najjar's behalf feel that he has been the subject of a governmental violation of his due process rights vis-à-vis the government's use of "secret evidence" against him. The information that is available in the public domain, however, is at the very least, compelling that Al-Najjar knowingly was aware of the terrorist connections with both WISE and ICP in which he served as a key operative. In addition, the bottom line regarding Al-Najjar is that his deportation proceedings were conducted free from the use of any such evidence and his appeal for suspension of deportation was denied free from the specter of secret evidence.

Hany Mahmoud Kiareldeen – a Case where the Process Took its Course

Wholly different than the case of Al-Najjar, the Kiareldeen matter demonstrates a scenario where the evidence the government presented was refuted. A native and citizen of Israel, Kiareldeen was admitted to the United States on April 27, 1990 with a student visa authorizing him to remain in the U.S. through the course of his studies. Admitting that he failed to comply with the terms of his nonimmigrant status, Kiareldeen sought relief from removal by filing for adjustment of status, asylum, withholding of removal, Torture Convention protection and, in the alternative, voluntary departure. Opposing Kiareldeen's applications for relief, the INS presented classified evidence from the FBI and the respondent [Kiareldeen] was provided an unclassified summary.

The unclassified summary dated May 22, 1998 states that the information "was obtained from multiple reliable sources who have provided reliable information in the past." The allegations in the unclassified summary include assertions that Kiareldeen "is a suspected member of a terrorist organization[;]" "maintains relationships with other members and or suspected members of terrorist organizations dedicated to committing acts of violence against the people of the United States...;" that he hosted a meeting at this home in Nutley, New Jersey a week before the World Trade Center (WTC) bombing with "individuals who were talking about plans to bomb the WTC" including Nidal Ayyad who "(...is a convicted co-conspirator in the WTC bombing...);" and that "HANY expressed a desire to murder Attorney General JANET RENO for her role in the conviction of those responsible for the bombing of the World Trade Center."

After numerous court filings by the INS and Kiareldeen, the allegations of terrorist activity were refuted to the satisfaction of the Immigration Judge and the Board of Immigration Appeals with documentary evidence and credible testimony from several witnesses. On October 15, 1999, the Board of Immigration Appeals ruled, "The FBI's classified evidence and unclassified summaries, standing alone, may have been sufficient to establish a 'reasonable ground to believe' that the respondent is engaged in or is likely to engage in terrorist activity. The evidence submitted by the respondent to rebut the allegations raised therein, however, significantly diminishes the reasonableness of that belief."

Interestingly however, Kiareldeen was not released and the case was brought to the United States District Court for the District of New Jersey. In a ruling handed down on October 21, 1999, Kiareldeen's petition for a writ of *habeas corpus* was granted and he was ordered to be released immediately. But he was still considered a terrorist threat by the government and a stay of execution of the writ of *habeas corpus* was sought in the United States Court of Appeals for the Third Circuit. The government was ultimately unsuccessful in this petition; after spending nearly nineteen months in INS custody, Hani Kiareldeen was finally released from jail in New Jersey on October 25, 1999.

Indeed, it would be a grave injustice if Kiareldeen spent one day, let alone over a year and a half in jail based on allegations that were fabricated by his ex-wife as he and his supporters have contended; however, examination of the unclassified record discloses reliance on only one of the "multiple reliable sources" and a conclusive analysis on this case is impossible without access to the entire classified record.

Proponents of H.R. 2121 argue that the case of Kiareldeen epitomizes the dangers of the use of “secret evidence.” The ruling of the United States District Court for the District of New Jersey granting Kiareldeen’s petition for a writ of *habeas corpus* is roundly and mistakenly cited by H.R. 2121’s advocates and almost all of the national media as striking down the use of “secret evidence;” but this is not the case. The ruling applies explicitly to the application of the law to Kiareldeen, not the law itself. The ruling states, “The petitioner’s due process claims are treated as challenges to the validity of the statute and regulation as they were applied to his case. Also, because it is clear the petitioner [Kiareldeen] is not mounting a facial challenge to the statute, but instead questions the constitutionality of its application to his case, the court expresses no comment on the overall validity of 8 U.S.C. § 1229a (b) (4) (B) [which provides that ‘the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross-examine witnesses presented by the Government but these rights shall not entitle the alien to examine such national security information as the Government may proffer in opposition to the alien’s admission to the United States or to an application by the alien for discretionary relief....’].”

The Kiareldeen case does not reflect the majority of immigration cases where classified information is entered; but rather, is an example of an exceptional case. As demonstrated by the case study of Monzer Khalil Chehab below, there are many cases where classified information is used effectively to preserve the national security against the threat of suspected terrorists.

Monzer Khalil Chehab—New Information on the Removal of an Illegal Alien Suspected Terrorist

Normally portrayed as the villains with regard to the issue of “secret evidence,” the case of Monzer Khalil Chehab unequivocally demonstrates a success story for the INS and FBI whose agents are often the anonymous and unsung heroes in the war against international terrorism. Born in Kuwait, Chehab is a citizen of Lebanon that last arrived in the United States on January 26, 1993.⁷ While in the United States, he was a resident in the Boston, Massachusetts area and married an American citizen in 1997. Pursuant to the issuance of his Notice to Appear in Removal Proceedings, Chehab was detained by the INS on September 9, 1999.⁸ The charges enumerated in this Notice to Appear state that Chehab was not in possession of a “valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document” and was thus subject to removal based on Section 21/2(a)(7)(A)(1)(I) of the Immigration and Nationality Act.

Prior to Chehab’s Master Calendar Hearing on September 24, 1999 before the Immigration Judge in Boston, the INS served notice on September 22, 1999 saying that “in the event that respondent [Chehab] is found removable and that he applies for relief from removal,” the INS would reserve the right to use classified information authorized under the Foreign Service Intelligence Act (50 U.S.C. § 1801 et. seq.).⁹

⁷ “Notice to Appear in Removal Proceedings under section 240 of the Immigration and Nationality Act” (Form I-862) dated September 8, 1999 In the Matter of Monzer Khalil Chehab.

⁸ “Notice to EOIR: Alien Address” (Form I-830) dated September 9, 1999.

⁹ INS Notice In the Matter of Monzer Khalil Chehab, September 22, 1999.

On September 24, 1999, Immigration Judge Patricia Sheppard ordered Chehab to be removed to Lebanon with his right of appeal reserved for one month.¹⁰ Though Chehab still retained the right to appeal, a letter dated October 7, 1999 from Chehab's lawyer waived this right to appeal and accepted the decision of the Immigration Judge ordering Chehab's removal.¹¹

In an unclassified draft of the "Unclassified Extract and Summary of Classified Information" against Chehab, the "Summary of Classified Information" states the following, "Based upon its national security investigation, the FBI has determined that CHEHAB has been integrally involved in a terrorist organization since his most recent arrival in the United States and has made numerous misrepresentations to the INS concerning his connections to that terrorist organization." The summary concludes with the statement that this information "has created a serious concern within the FBI that Monzer Khalil Chehab poses a threat to the national security of the United States."¹²

This case is significant because although the classified information was never entered, the mere discretion of the INS to use classified information against this suspected illegal alien terrorist effected an expedited removal. Under amendments to the law sought by H.R. 2121, Chehab could have filed any number of applications for relief from removal and the government would have faced a nightmare scenario—having to choose between compromising its sources and methods of intelligence, or allowing someone actively involved in a terrorist organization to remain free in the U.S. to seek benefits under immigration law that could culminate in permanent residence or citizenship. Indeed, neither of these choices is tenable and the consequences of enacting H.R. 2121 could be catastrophic.

Conclusions and Recommendations

Aliens should be afforded the maximum in due process protections, but not to the extent that national security is jeopardized. Ensured the right to confront the accuser, advocates for H.R. 2121 argue that illegal aliens should be afforded the same due process rights as criminal defendants. In this regard, they contend, charge the illegal alien with a crime if they are suspected of threatening national security. But this argument does not reflect the need for an aggressive counter-terrorist policy to be enacted against those that have come to the United States illegally and do not deserve the same protection as those that come here legally.

To charge someone with a crime means to hold evidence that will likely demonstrate proof beyond a reasonable doubt. But in dealing with matters of national security, even a scrap of information may contribute to protecting lives. As was recognized by the United States Court of Appeals for the Ninth Circuit in a January 1998 ruling, "...the business of foreign intelligence gathering in this age of computer technology is more akin to the construction of a mosaic than it is to the management of a cloak and dagger affair. Thousands of bits and pieces of seemingly

¹⁰ "Order of the Immigration Judge in Removal Proceedings," September 24, 1999.

¹¹ Letter from Jason A. Levy to Immigration Judge Patricia Sheppard, October 7, 1999.

¹² Unclassified Draft of "Unclassified Extract and Summary of Classified Information," dated March 30, 1999.

innocuous information can be analyzed and fitted into place to reveal with startling clarity how the unseen whole must operate.” Kasza v. Perry, 133 F.3d 1159, 1166 (9th Cir. 1998).

Presented with any piece of information showing that an alien present in the U.S. is a threat to national security, the U.S. government must chart a course of action. Indeed, no reasonable person would argue to ignore the information; but the classified record may only meet the reasonable grounds standard and not support proof beyond a reasonable doubt. Furthermore, disclosure of the classified record, especially in cases involving singular or limited sources, may compromise the sources and methods of intelligence gathering. Where the alien is present in the U.S. illegally (a common thread in all the cases discussed above), the most appropriate action usually is to deport or remove the alien based on the illegal status, irrespective of the classified record.

Emphasizing that the language reads “person” and not “citizen,” the argument under the Fifth Amendment that, “No *person*...be deprived of life, liberty, or property, without due process of law;” as demonstrating that “secret evidence” violates due process is misguided. In circumstances where a classified record is relevant to an alien seeking relief from removal/deportation, the intelligence can not be ignored; and the maintenance of its classified nature does not violate due process. The alien is not picked up by armed thugs and beaten or tortured for information; nor is the alien summarily placed on the next boat home. Through the course of what may be a long process, the alien is guaranteed the right to counsel, the classified record is provided to the immigration Judge who must weigh and consider its merit, the alien is provided an opportunity to argue for bond, an unclassified summary of the classified record may be provided to the alien, and the highest levels of all Department of Justice components rigorously review the classified record before a final decision is made on its use. These legal and administrative guarantees strike a fair and appropriate balance of the due process rights of illegal aliens with the interests of national security.

Terrorists, their supporters and their sympathizers do not advertise themselves as such, but rather, use cover—sometimes the cover is a business that seems legitimate and sometimes the cover is an argument that sounds appealing. As we enter the Twenty-first Century, terrorism constitutes one of the greatest threats to the United States and the world and it is important to recognize that the exploitation of “secret evidence” issue is not beyond the radar screen of our enemies abroad. Recognizing that supporters and sympathizers of terrorists abroad were active participants in bringing this issue to the fore, it is vital that a strong and unequivocal message be sent from Congressional leadership that the U.S. will not play host for the safe harbor and proliferation of international terrorists on U.S. soil. Pronouncements to support a strong counterterrorism policy must be supported with action.

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Steven Emerson is an internationally recognized Washington-based author, filmmaker, and expert on international Middle East terrorism, western counter-terrorist policies, and the operations of militant Islamic fundamentalist networks. He frequently testifies before Congress on U.S. foreign policy in the Middle East, U.S. counter-terrorism policy, and Middle East terrorism. Since 1996, Mr. Emerson testified more than a dozen times.

He publishes in leading newspapers, routinely appears on network television, is regularly consulted by federal law enforcement agencies, and lectures around the world. The *New York Post* has called Mr. Emerson the “*foremost expert in the world on radical Islamic groups.*”

He was the producer of the critically-acclaimed 1994 PBS documentary “Jihad in America” which exposed the secret Islamic terrorist movements operating on American soil. Mr. Emerson received the **George Polk Award**, one of the nation’s most prestigious journalism honors, for “Jihad in America.” This film also earned the top investigative journalist award from **the Investigative Reporters and Editors** organization for “best investigative reporting in print, broadcast or book,” as well as a **National Headliner Award** and **Chris Award**. The documentary, which was excerpted on *60 Minutes*, is now standard viewing for federal law enforcement and intelligence organizations and has received the nation’s top journalism awards. He also served as an associate producer of the HBO film “Path to Paradise” chronicling the World Trade Center bombing conspiracy.

Mr. Emerson is the 1997 recipient of the Middle East Forum’s Albert J. Wood Public Affairs Award which “honors individuals who have made important contributions to the attainment of peace in the Middle East and who have enhanced American understanding of that turbulent region.” The award is “in recognition of his brave efforts to expose and combat the fundamentalist Islamic threat in America” as “one of the world’s most diligent investigators of international terrorism and counter-terrorism” and “commend[s] him for his courage and success in exposing a threat to this country and the world.” In previous years, Mr. Emerson earned three top investigative journalism awards from **the Investigative Reporters and Editors** for the best national investigative reporting in books and magazines.

Oliver Revell, former head of FBI Investigations and Counter-Terrorism, has stated that Mr. Emerson’s “**startling discoveries and findings on terrorism are all meticulously documented. His impressive body of investigative work has shown that he is more knowledgeable on international Middle Eastern terrorist issues and groups than either the FBI or CIA.**” Robert Blitzer, former Chief of the FBI’s Domestic Terrorism/Counter-Terrorism Planning Section, has said “**Steve Emerson has tremendous information and I have no doubt that he is better informed in many areas of terrorism than we were in the government.**”

A regular contributor to national newspapers and magazines, such as *The Washington Post*, *The New York Times*, *The Wall Street Journal*, and *The New Republic*, Mr. Emerson is now producing a new television documentary series on international terrorism and completing a book detailing his four-year investigation into radical Islamic activities.

Mr. Emerson is often interviewed on national television and radio programs. Mr. Emerson also lectures before federal and local law enforcement agencies about the modus operandi of radical Islamic extremist groups. Prior to entering the world of journalism and counter-terrorism, Mr. Emerson was a professional staff member of the U.S. Senate Foreign Relations Committee.

Mr. Emerson has authored or co-authored four books:

- ***Terrorist: The Inside Story of the Highest-Ranking Iraqi Terrorist Ever to Defect to the West* (Villard/Random House, 1991)**
 - ***The Fall of Pan Am 103: Inside the Lockerbie Investigation* (Putnam, 1990)**
 - ***Secret Warriors: Inside the Covert Military Operations of the Reagan Era* (Putnam, 1988)**
 - ***The American House of Saud: The Secret Petrodollar Connection* (Franklin Watts, 1985).**
- (Both “*Terrorist*” and “*The Fall of Pan Am 103*” were excerpted as cover stories for *The New York Times Magazine*.)

Between 1990 and 1993, Mr. Emerson served as a special investigative correspondent for CNN where he broke many international stories. He has also served as a senior editor for *U.S. News & World Report*. He has a B.A. and an M.A. from Brown University (1976/1977).