SECTION: PREPARED TESTIMONY

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HEADLINE: PREPARED STATEMENT OF THOMAS C. HOMBURGER VICE CHAIR, ANTI-DEFAMATION
LEAGUE AND AMERICAN JEWISH CONGRESS B'NAI B'RITH INTERNATIONAL, HADASSAH, AND
THE JEWISH COUNCIL FOR PUBLIC AFFAIRS

BEFORE THE HOUSE JUDICIARY COMMITTEE

SUBJECT - H.R. 2121 -- THE SECRET EVIDENCE REPEAL ACT BEFORE THE

BODY:

I am Thomas C. Homburger, Vice Chair of the Anti-Defamation League's National Commission. I have chaired both the League's National Civil Rights Committee and its Chicago Regional Board. ADL is pleased to testify today as the Judiciary Committee considers H.R. 2121, the Secret Evidence Repeal Act. Together with the American Jewish Congress, B'nai B'rith International, Hadassah, and the Jewish Council for Public Affairs, we represent organizations that have played leadership roles in support of civil rights and civil liberties in America, as well as international human rights and religious freedom.

We have also stressed America's importance as a haven for persons persecuted and oppressed in their native lands. Working with other religious and ethnic groups, the Jewish community has championed America's historic commitment to fair treatment for all immigrants. For decades, our organizations have strongly supported broad social welfare coverage and robust legal and due process protections for new immigrants. However, we oppose the drastic approach embodied in H.R. 2121, which would strip the government of important protections against compromising counterterrorism intelligence sources.

The current system, prescribed by the 1996 immigration reform law, under which aliens may be detained or denied immigration benefits without access to full information about the allegations of wrongdoing against them, clearly falls below the normal standards which form the basis of our justice system. But any change in law governing the detention of suspected terrorists, for example, must appropriately balance national security interests with individual liberty.

At oversight hearings on the threat of terrorism before the Immigration and Claims Subcommittee in January, 2000, Members heard extensive testimony about continuing efforts by foreign terrorists to infiltrate the United States to carry out criminal acts here -- and about individuals who come to the United

States to raise funds for and organize terrorist activity abroad. Investigating and preventing such acts requires law enforcement officials and investigators to be able to protect sources and methods.

As this Committee examines the necessary balancing test between an individual's rights and national security interests, we urge Members to reject the approach of H.R.2121 and look to existing models, approved by Congress and upheld by Federal Courts. These provisions more appropriately balance the legitimate efforts of the government to protect Americans from foreign security threats with the responsibility to provide an appropriate level of due process for aliens at the same time.

Models supported by Congress and the Federal Courts.

Congress has long grappled with the unique challenge of deterring and preventing terrorism in a free society -- balancing the need to protect confidential sources and methods with the due process rights of suspected terrorists. In 1996, Congress overwhelmingly passed the Antiterrorism and Effective Death Penalty Act (Public Law 104-132 (1996)) (AEDPA), which provided one useful model for balancing national security concerns and the due process rights of aliens accused of terrorist crimes.

The AEDPA established a workable mechanism for addressing sensitive, classified evidence. Under that law's carefully crafted provisions, such information was not required to be entirely revealed to the alien but neither was it permissible to utterly deny aliens (even suspected terrorists) access to evidence being used against them. Under AEDPA, if the Attorney General determines that public disclosure of evidence "would pose a risk to the national security of the United States," a judge must examine, ex parte and in camera, that evidence and approve an unclassified summary of the evidence "sufficient to enable the alien to prepare a defense." This standard affords necessary due process protection for the alien, while allowing the government, in these limited circumstances, to protect its confidential sources and methods. The 1996 immigration reform act amended AEDPA, and modified these standards, significantly reducing due process protections for these aliens.

Similar procedures which seek to strike this balance are contained within the Classified Information Procedures Act (CIPA), a statute which has been upheld against due process challenges. CIPA, 18 U.S.C. App. "1-16, provides another useful guide for how to provide an alien with limited access to classified information -- without unduly compromising national security interests. Under this procedure, classified evidence may be withheld -- even from US citizens -- where "disclosure of classified information would cause identifiable damage to the national security.--" The court, upon a sufficient showing, may permit a substitute -- either a summary of the classified information "admitting relevant facts that the classified information would tend to prove" or a summary of the specific classified information." In either case, the court must find that the statement or summary "will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information."

Strangely, H.R. 2121 would extend greater due process protection to aliens suspected of terrorist activity than is currently accorded to American citizens and other defendants who seek access to confidential information in their defense against criminal wrongdoing.

The Use Of Classified Evidence Should be Rare -- and Oversight by Justice Department Officials is Appropriate.

Aliens entering the US are entitled to significant procedural due process protections -- including the opportunity to defend themselves against unfounded criminal charges. These rights should be safeguarded, but full disclosure of classified evidence should not be required in those limited circumstances in which the government can appropriately demonstrate that a specific alien is suspected of involvement in terrorist activities and that the release of classified evidence will pose a danger to other persons or threaten national security. According to press reports, the Deputy Attorney General is now reviewing each new circumstance in which government officials seek to limit the evidence provided to a particular alien suspected of involvement in criminal activities. We welcome this step.

In addition, we believe the Attorney General should review the particular circumstances of those individuals currently being detained based, in part, on undisclosed classified information and determine whether relevant evidence of suspected wrongdoing has been properly withheld. This oversight function provides another important safeguard against inappropriate withholding of classified evidence from aliens suspected of terrorist involvement.

Providing an Appropriate Summary of Classified Evidence Would Help Balance Competing Concerns.

Any circumstance in which an alien is provided with less than full disclosure of the evidence against him raises serious concerns.

In those limited circumstances in which national security interests conflict with an individual's reasonable due process expectations, we believe the law should require disclosure of, at least, the nature of the charges and an appropriate summary of the evidence -- sufficient to permit the alien to prepare a defense. This approach ensures that the alien would have a more meaningful chance to respond to unfounded charges.

Summaries Are Admissible in Immigration Proceedings.

The notion of providing aliens with a summary of evidence against them has been well established within in the statutory scope of immigration court rules of procedure since 1952. Title 8 of the Code of Federal Regulations governing immigration courts, clearly allows the admission of a range of federal investigative reports. These reports are, by their nature, secondary summaries of information gathered from classified as well as other sources that often are not identified. The I-213 Record of Deportable Alien report -- the INS document regarding individual suspected of being present in the US illegally -- can include references to criminal records and other background derived from sources other than writer of the report.

Current law allows immigration judges to make a determination about the probative value of the document and how much relative weight to give a certain piece of evidence, but never deems these summaries inadmissible. The judge is not required to seek original sources and may consider the information, whether or not the source is identified.

State Department reports assessing country conditions which cite the danger an individual may face upon their return are admissible -- even if the report is based on classified information from the CIA, for example, which it does not source.

Suspected Alien Terrorists Deserve Due Process Protection No Greater than that Accorded US Citizens in National Security Cases.

Given the national security concerns in the case of suspected terrorists, why should the law provide a broader mechanism for discovery for these individuals than it does for aliens fearing persecution or others seeking relief from removal?

Our suggested middle-ground approach of providing a summary (such as that prescribed by CIPA) levels the playing field by providing aliens suspected of involvement in terrorism cases with the same measure of due process given other aliens facing removal and the same due process protection given U.S. citizens in cases in which there are national security concerns. But HR 2121 would allow much wider privileges to suspected alien terrorists such as: Section 4 would allow the alien to "cross-examine all witnesses presented by the Government" -- rights not currently given to other aliens seeking immigration benefits or facing removal. Section 6 would compel bond hearings to be held on the record -- not current practice for other categories of detained aliens. The current practice has not been found constitutionally deficient.

H.R. 2121 seeks to overhaul of the largely-unregulated process of discovery in immigration law -- but only in terrorism cases.

Moreover, unlike a criminal proceeding, in which a reference to undisclosed "classified CIA information" may make a strong prejudicial impression on jurors against the defendant, immigration judges have more experience with such information and should be better equipped to independently assess the reliability of undisclosed information and evaluate the relative weight that should be given a particular source of information.

H.R. 2121 Unduly Restricts the Ability of Government Officials to Protect Essential Confidential Sources and Methods.

Senior law enforcement authorities in the US have testified on numerous occasions before Congress that terrorist organizations seek to use the United States to plan, organize, and raise funds for terrorist activities here and abroad. H.R. 2121 too-broadly restricts the ability of law enforcement officials to protect intelligence sources. In some instances, because the information provided by intelligence sources is so singular in nature, known only by very few individuals, revealing it to suspected terrorists detained in this country would compromise those sources -- who may risk death if exposed.

H.R.2121 Could Force the Government to Release Terrorists Who Threaten National Security.

Because this legislation forces the government to choose between releasing a suspect or exposing intelligence sources, H.R. 2121 could lead to the release of individuals currently being detained who do, in fact, pose a terrorist threat. Law enforcement officials maintain that they cannot and will not expose sources and threaten the lives of personnel in order to move forward with a prosecution. Forcing this choice is tantamount to the ensuring the release of these suspects.

Discrimination or Profiling Solely on the Basis of Ethnicity or Religion is Always Unacceptable.

Even when faced with the significant threat of international terrorism, law enforcement officials must never engage in inappropriate stereotyping or profiling on the basis of ethnicity or religion. Members of specific ethnic or religious groups should never be singled out for different treatment on the basis of their personal characteristics. The creation of a sound procedural due process framework -- coupled with necessary training -- should help guard against abuses and prevent improper treatment of individuals based on any erroneous preconceived terrorist "profile."

Fighting Terrorism is Not a Zero-Sum Game

It is well established that the government has the constitutional right -- and the duty -- to keep our nation from being used as a base for terrorist activity. Limiting access to the US for individuals involved in terrorism, establishing sanctions on those nations that support terrorism, and banning fundraising and material support for foreign terrorist organizations in this country are important ways in which Congress and the Administration have attempted to prevent acts of terrorism before they occur. In the same way, creative means must be used to balance the government's legitimate security interests with an alien's legitimate expectation of due process protection in immigration proceedings. Congress will continue to grapple with this daunting challenge, but the ongoing threat posed by individuals who come to the US to engage in terrorism demands sustained attention.

Finally, it is important to keep in mind that terrorists do not play by our rules. Given the chance, terrorists and their sponsors in rogue nations will exploit our democratic freedoms to finance and organize terrorist activity here and abroad.

We very much appreciate this Committee's deliberate efforts to examine the existing procedural due process safeguards for aliens. We believe that the Administration and Members of Congress are rightly concerned about preventing misuse of classified information. Rigorous procedures must be in place to prevent the improper use of classified information against any individual. We would support appropriate refinements in existing law or administrative procedures that would provide additional safeguards against abuse, while maintaining the necessary investigative tools to prevent terrorist acts here or abroad. H.R. 2121, however, does not provide the proper balance between national security interests and individual liberty and we urge Congress to reject this extreme measure.

END

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HEADLINE: PREPARED TESTIMONY BY STEVEN EMERSON

BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY

SUBJECT - SUPPORTING THE GOVERNMENT'S USE OF CLASSIFIED INFORMATION TO PREVENT
THE PRESENCE AND PROLIFERATION OF ILLEGAL ALIEN TERRORISTS ON US SOIL

BODY:

Testimony of Steven Emerson, Terrorist Expert and Investigator Executive Director, The Investigative Project

Terrornews

aol.com Introductory Comments: Overview of "Secret Evidence"

As long and hard as one may look, there is no provision in any government law or regulation for the use of "secret evidence." The issue stated accurately 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 is made over the "pernicious secret evidence" provisions in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA); however, classified information was 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 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 against the deprived and suspect class of Arabs and Muslims. While wholly unfounded, appeals for due process and human rights have afforded militant Islamic groups proliferating in the US 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 walking a walk in the exact opposite direction.

Indeed, there are over a billion Muslims the world over and an estimated five to six million in the U.S., the majority of whom aspire to live in peace and despise 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. 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 are roundly 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. 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, classified information is not entered to prove that the alien is deportable. In most cases, the 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 301 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 Ressam 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 Egyptain 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, publicly demonstrates support, and acts on behalf of Gama'at al-Islamiya, reasonable minds would concur with government action to arrest the illegal alien terrorist and bring charges against him. At minimum, deportation or removal from the U.S. would be expected; but this was not the case with alleged terrorist Nasser Ahmed.

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." Procured 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 Ahmed's 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, his relationship with the Sheikh continued. 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 US 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 (an unindicted co-conspirator 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 infront 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-Jiahd 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 al-Gama'a al-Islamiyya which characterized U.S. courts as "courts of infidels."

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 hands." By discrediting Sheikh Al-Sharif'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 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 room was reserved by Representative Ciro Rodriguez (D-TX). 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."

As a free man, there is no argument that Nasser Ahmed should be stifled from exercising his First Amendment rights; 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 it's 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 (al Gamma al Islamiyya) 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 (Al-Gama'at) 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 in 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 ICP, WISE and the Palestinian Islamic Jihad. Presumably, the classified material would serve to strengthen these links.

Both of the these organizations were inextricably tied to Al-Najjar's brother-in-law, Dr. Sami Al-Arian who is one of the primary foci of the federal investigation into the activities of these organizations. According to the Affidavit of FBI Special Agent M. Barry Carmody, "Located and seized a 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 & 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.

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 communiquis 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...."

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 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."

Fawwaz Damrah, an unindicted co-conspirator in the World Trade Center bombing and a radical Islamic notable from 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."

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 an 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 Judaised 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!"

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 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."

At an ICP rally held in Chicago in September 1991 on behalf of Sheikh Abdel Aziz Odeh (which was memorialized 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 communiques 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," or suicide bombers, 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-a-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 something nefarious was afoot regarding Al-Najjar's connections with both WISE and ICP. 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 US 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. 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 is 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 successfully 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. Section 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. 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. 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 212(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. Section 1801 et. seq.).

On September 24, 1999, Immigration Judge Patricia Sheppard ordered Chehab to be removed to Lebanon with his right of appeal reserved for one month. 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.

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."

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 US 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. This argument is simple, shortsighted, and reflects a wonton disregard for matters of national security generally and counterterrorism specifically.

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 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 US is a threat to national security, the US 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 US 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 cannot 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 is the greatest threat to the United States and the world and it is important to recognize that the "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 US will not play host for the safe harbor and proliferation of international terrorists on US soil. Pronouncements to support a strong counterterrorism policy must be supported with action.

END

LANGUAGE: ENGLISH

LOAD-DATE: May 24, 2000

TESTIMONY

OF

BO COOPER

INS GENERAL COUNSEL

BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE U.S.HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 2121, THE "SECRET EVIDENCE REPEAL ACT"

I am pleased to have the opportunity to discuss with you, on behalf of the Department of Justice, H.R. 2121, and more specifically, the use of classified information in immigration proceedings.

At the outset, I want to emphasize that the INS understands and acknowledges the serious concerns about the *ex parte*, *in camera* use of classified information in immigration proceedings. We take these matters seriously, and we do not casually resort to the use of classified information. The INS prosecutes and the Executive Office for Immigration Review hears nearly 300,000 cases each year. There are currently 11 pending cases involving classified information.

As Members of this Committee know, the Department's pending matter policy, as well as its rules regarding the individual privacy of aliens, substantially constrain my ability to discuss individual immigration cases. Nor can the Department discuss sensitive national security information that is classified.

Having noted the constraints that govern my appearance today, I do want to address the policies and procedures that are at issue in the INS's use of classified evidence and that serve as the focus of this hearing this morning. I will try to illustrate the value to the United States of preserving the ability to use classified information in *ex parte*, *in camera* immigration proceedings.

Role of the Department of Justice

The Attorney General also recognizes the serious concerns implicated by this issue. As a result, she has instituted practices and procedures to ensure that classified evidence is used only when necessary to adequately serve the national interest. Before any final decision is made to use classified information in immigration proceedings, the information is subjected to rigorous review at high levels of all affected Justice Department components to ensure that it is necessary and appropriate to use the information.

Either the Attorney General or the Deputy Attorney General must currently approve any use of classified information in immigration proceedings. The aim of this review is to ensure that classified evidence is used only when it is necessary, and when it cannot be declassified.

Hypothetical Example

The issue of using classified information implicates two very important objectives that the Department of Justice strives to achieve: (1) adjudicating immigration claims in a manner that is as transparent and fair as possible; and (2) protecting the national security and the safety of all Americans.

There is a tension between these two goals in classified evidence cases. To make the problem more concrete, consider the following hypothetical example. Assume that the INS encounters an alien who has been in this country illegally for several years. The alien concedes that he is here illegally and that he is deportable. But then he asks the immigration judge to exercise discretion and to grant him asylum so he will not be returned home. The law says that an alien who is a threat to the national security cannot be granted asylum. The law also says that someone who is granted asylum can seek adjustment of status to become a permanent resident after one year. Now, suppose that the INS receives classified information that this alien is actually a dangerous person – perhaps an activist in a terrorist organization. And suppose that the classified information comes from a very reliable source, such as an official of that organization. And, suppose that we cannot reveal that information publicly without thereby revealing the source and compromising the entire intelligence-gathering operation.

Here is the dilemma. To protect the national security, the immigration judge must be allowed to see the classified information before she decides whether the alien should be given asylum. But neither the INS nor the immigration judge can show the information to the alien without risking the national security.

The INS believes that the judge should be allowed to see the evidence. That is what the law now says, that what the Supreme Court and most federal courts have said is constitutionally permissible, and that is what is appropriate to protect the national security.

H.R. 2121

H.R. 2121 would repeal most of the INS's statutory authority to present classified information *in camera* and *ex parte* in any type of removal proceeding. Specifically, H.R. 2121 would amend the Immigration and Nationality Act (INA or Act) by:

(1) repealing Title V of the Act, which governs proceedings before the Alien Terrorist Removal Court;

(2) amending section 240(b)(4)(B) of the INA, by removing language that currently provides that aliens in removal proceedings are not entitled to examine national security information presented by the INS to oppose the alien's admission to the United States or an application by the alien for discretionary relief under Act;

(3) providing aliens in removal proceedings access to all documents pertaining to the alien's admission or presence in the United States, including records and documents considered by the Attorney General to be confidential;

(4) prohibiting any decision on any application for a benefit, including custody on the basis of evidence not shared with the alien;

(5) prohibiting the use of expedited removal for national security cases under Section 235(c) in cases of lawful permanent residents, aliens granted parole or advance parole, and aliens seeking asylum; and

(6) allowing most detained aliens to seek review of custody determinations through petitions for writs of habeas corpus.

Relevant Immigration Law

The INS is charged with the difficult task of determining when to admit an alien to the United States, when to grant an alien's application for an immigration benefit, and when to place an alien in removal proceedings. The INS undertakes these tasks with vigilance in an effort to ensure the protection of our national security.

Congress has considered this issue in the past and, for good reason, has authorized the Attorney General to use and consider classified information in *ex parte*, *in camera* proceedings. The Attorney General has delegated much of her authority under the immigration laws to the INS.

Congress has authorized the Attorney General to consider classified evidence in several provisions of the Immigration Nationality Act (Act).

First, Section 105 of the Act authorizes the INS to maintain direct and continuous liaison with the federal intelligence and law enforcement entities for the purpose of enforcing the immigration laws in the interest of the internal security of the United States. To further this end, the INS has established a National Security Unit to coordinate counterterrorism efforts within INS and between INS and other law enforcement and intelligence agencies.

The second statutory basis for the use of classified information is Section 235(c) of the Act. Under Section 235(c), if an immigration officer or immigration judge "suspects that an arriving alien may be inadmissible" under INA §212(a)(3)(A) (other than clause (ii)), (B), or (C), the immigration judge or immigration officer shall order the alien removed without further inquiry. Pursuant to regulation, the case is referred to the appropriate INS regional director, who reviews the order, reviews any relevant "confidential information," and consults with "appropriate security agencies of the United States Government" over whether the "disclosure of the confidential information would be prejudicial to the public interest or security." If the regional director concludes that the alien is inadmissible on the specified security related grounds based on the confidential information that cannot be disclosed, the regional director may issue the final order of removal, or order any other action the regional director deems appropriate. Section 235(c) has been part of the immigration law since 1952.

The third way in which Congress has authorized the Attorney General to consider classified information is in the context of conventional removal proceedings under Section 240 of the Act. If an alien is removable from the U.S. on a charge based on unclassified evidence, such as overstaying a visa, but the alien applies for discretionary relief from removal, the INS may introduce classified national security information to oppose the application for relief. Discretionary applications for relief from removal include asylum, cancellation of removal, suspension, or adjustment of status. The INS presents classified information to oppose applications only when other agencies have provided substantive, credible, and relevant classified information which indicates that the alien is ineligible for such relief or does not merit the exercise of discretion.

This express statutory authority was added to the law as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. However, it is important to note that in 1996, Congress simply sanctioned by statute an authority to introduce classified evidence that had been a part of the Attorney General's regulations since at least 1961. Furthermore, the Supreme Court and other federal courts have upheld these regulations and this practice over the last four decades.

The fourth way that the Attorney General may use classified information is in immigration proceedings before the Alien Terrorist Removal Court (ATRC). The Antiterrorism and Effective Death Penalty Act of 1996 added a new Title V to the Act which established the ATRC. In proceedings before the ATRC, the Department of

Justice may present classified evidence *in camera* and *ex parte* to prove that the alien has "engaged in terrorist activity." In fact, to initiate a case under Title V, the Attorney General must determine that "removal under Title II would pose a risk to the national security of the United States." INA § 503(a)(D)(iii).

Taken as a whole, these provisions clarify the expectation of Congress that the INS must play a larger and increasingly critical role in counterterrorism activities. The laws have substantially strengthened INS' authority to remove aliens who support or are directly involved in terrorist activities. Incidents such as the December 1999 arrest at the United States – Canadian border, the 1998 embassy bombings, and the 1993 World Trade Center bombing have shown that the United States is a target for international terrorists. Interagency cooperation on terrorism is vital to protecting the security and the interests of the United States.

Removal Proceedings

An alien in conventional removal proceedings has certain statutory rights. The alien has the right: to be represented by an attorney at no expense to the government; to notice of whether the alien will be maintained in custody and, in some cases, to seek a bond redetermination hearing before an immigration judge; to a reasonable opportunity to examine the unclassified evidence against the alien; to present evidence on the alien's behalf; to cross examine witnesses presented by the INS; and to a complete record of the proceeding. However, Section 240(b)(4)(B) specifically states that "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 Supreme Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application for admission because the power to admit or exclude aliens is a sovereign prerogative. The Court, however, has held that once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly.

Based on this distinction, the burden of proof in a conventional removal proceeding depends on the type of charge. An applicant for admission bears the burden of proving that he or she is "clearly and beyond a doubt entitled to be admitted and is not inadmissible" to the United States or by clear and convincing evidence that the alien is lawfully present in the U.S. pursuant to prior admission. If the alien has been admitted to the United States, then the INS bears the burden of establishing by clear and convincing evidence that the alien is deportable.

It should also be remembered that immigration proceedings are administrative and not criminal proceedings. As the Supreme Court has noted, the purpose of immigration proceedings is to "provide a streamlined determination of eligibility to remain in this country, nothing more." *United States v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). Thus, the full range of rights guaranteed a criminal defendant, including the Sixth Amendment's right to confrontation of witnesses, are not applicable in immigration proceedings. Recognizing the interests involved, and the rights and duties of all parties, courts, including the United States Supreme Court, have concluded that INS use of classified information in *ex parte, in camera* proceedings to deny discretionary relief from deportation or to deny release on bond is appropriate.

Process for Using Classified Information

The INS learns that classified information relating to an alien may exist in two ways: from another agency or from the alien. In some cases, the INS requests that other agencies search their records to determine whether any information exists on the alien. In these cases, the INS usually has some indication that the alien may be involved in terrorist activity or human rights abuses. In other cases, the other agency contacts the INS to report that it possesses relevant information.

In still other cases, an alien may claim an affiliation with a United States agency. This claim is usually made in the asylum context. When such a claim is made, the INS goes to the specified agency and requests that the agency check its records and report whether it has any information on the alien.

In each of these scenarios, most, if not all, of the information is classified. I will leave it to Mr. Parkinson to explain the requirements under the relevant Executive Orders for classification of documents. However, I want to emphasize that the INS does not make the classification decision.

The decision to submit classified evidence is made on a case-by-case basis without regard to a person's religion, nationality or ethnic origin. The INS and the Department of Justice have developed standard procedures for dealing with each case that involves the potential use of classified information. In such cases the FBI, or whatever other agency has the information, shares it with the INS. The INS has established a National Security Law Division in the Office of the General Counsel to ensure that all national security cases are legally sufficient and are handled in a consistent manner. The INS carefully scrutinizes the information and meets with representatives of the originating agency to examine the information.

If the INS believes the information is relevant and necessary in the case, the case is referred to the Department of Justice for intra-departmental review and discussion with other components. In order for the classified information to be used, this review process must result in the determination that the information is properly classified and either that the alien poses a risk to the national security, or that the classified information is otherwise material to issues in the case. In addition, the Attorney General or the Deputy Attorney General must thereafter approve use of the evidence.

Once this process is completed, the INS presents the information to the immigration judge *in camera* and *ex parte*. The immigration judge then determines how much weight he or she will give to the information. If the immigration judge grants the application for relief, the INS may seek further review before the Board of Immigration Appeals (BIA), and if the immigration judge denies the application, the alien may appeal to the BIA.

It is important to note that while the *ex parte*, *in camera* use of classified information has garnered much media attention, it is in fact quite rare. In any given year, nearly 300,000 cases are processed by the INS and decided by the Executive Office for Immigration Review. The INS has presented classified evidence in only 11 pending cases, four of them involving detained aliens.

H.R. 2121's Amendments to Judicial Review

The INS opposes the bill's amendment to the judicial review provisions of the Act because the legislation is written so broadly it creates room for two parallel tracks of review, at both the district court and court of appeals levels. This will create confusion in the federal court system if the same case is pending at both levels at one time. The INS prefers the current law contained in Section 242(a) of the Act, which provides for judicial review of claims arising from removal proceedings through a timely-filed petition for review in the court of appeals.

Conclusion

For all these reasons, the INS opposes HR 2121. The INS believes that if H.R. 2121 were enacted, one result would be that aliens who have been involved in terrorist activity or human rights abuses in other countries would likely be able to obtain immigration benefits, in the absence of derogatory information that is unclassified. Once an alien becomes a lawful permanent resident, it is only a matter of time before that individual becomes a United States citizen. H.R. 2121 will put the INS in a position of extending the privilege of United States citizenship to those who are undeserving because they are dangers to the national security.

Mr. Chairman, this concludes my statement, and I would be happy to answer the Committee's questions.

May 22, 2000

URGENT

Note for:

Lisa M/OMB

From: Greg Jones, DOJ

Gr I haven't looked AT THIS yet.

Here is the revised FBI statement. Please let me know asap what if any additional changes are needed. I note that none of the changes were major; no policy problems.

INS should be done soon.

Thanks.

FAX- to:
Maria Echaveste
Irene Bueno
Wendy Patten
From: Lisa Macecevic

Revised FBI Secret Evidence Testimony.
Let me know if you like this

6 - 2883
6 - ~~6558~~
6 - 9140
Whoops!

TESTIMONY

OF

LARRY R. PARKINSON
GENERAL COUNSEL

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

THE HOUSE JUDICIARY COMMITTEE

CONCERNING

H.R. 2121, THE "SECRET EVIDENCE REPEAL ACT"

I am pleased to have the opportunity to discuss with you, on behalf of the Justice Department, H.R. 2121, and more specifically, the use of classified information in immigration proceedings. I cannot address specific cases because of ongoing litigation and the need to protect sensitive law enforcement information, but I will try to illustrate the value to the United States of preserving the ability to use classified information in ex parte, in camera immigration proceedings.

At the outset, I want to emphasize that the Justice Department understands and acknowledges the serious concerns about the ex parte, in camera use of classified information in immigration proceedings. We recognize that the use of such information can profoundly affect the people involved. We take these matters seriously, and we do not casually resort to the use of classified information. We have found, however, that in a small number of cases the use of such information is necessary to adequately protect the national security, and we believe that the laws currently in place, which allow for the use of such information in appropriate cases, strike the best balance between the various interests affected in these cases.

Moreover, I want to emphasize that the Justice Department, recognizing all of the serious concerns implicated by this issue, has instituted practices and procedures to ensure that classified evidence is used only when necessary to adequately serve the national interest. Before any final decision is made to use classified information in immigration proceedings, the information and the case are subjected to rigorous review at high levels of all affected Justice Department components to ensure that it is necessary and appropriate to use the information. When the decision is made to use classified information in court, the alien is given an unclassified summary of the classified information when one can be produced, to use in the preparation and presentation of his or her case. Moreover, the Department is currently in the process of an ongoing review of all pending cases involving the use of classified information, to ensure that the information was properly used. The

Department, under the Deputy Attorney General's Office, is also working on guidelines and regulations to regularize and improve these processes. The Attorney General and the Deputy Attorney General are both personally involved in these efforts. The Department believes that all of these practices will help ensure that the letter and the spirit of current law will be honored, by requiring that classified information is used only when necessary in the interests of the United States.

Congress has considered this issue in the past and, for good reason, authorized the Immigration and Naturalization Service (INS) to use and consider classified information in ex parte, in camera proceedings. In fact, the 1996 Congress thoroughly debated the competing interests involved during a review of the Immigration and Nationality Act, and on a bi-partisan vote of wide margins, determined that the United States should not be put to the choice of either admitting or suffering the continued presence of a terrorist alien, or compromising the national security information regarding that alien. INS has testified in the past as to its authority, and I will leave it to INS to respond to questions regarding the details of the immigration laws and regulations under which it operates. What I am here to emphasize is the value to the United States of preserving the INS's ability to present appropriately classified evidence in ex parte, in camera proceedings. This typically occurs when, in the considered opinion of executive branch officials, it is necessary to introduce such information in opposition to an alien's admission to the United States, or in opposition to an alien's application for discretionary relief such as the granting of asylum, adjustment of status, granting of bond, or cancellation of removal.

It is important to note that under current procedures classified information is not used to prove deportability in conventional immigration proceedings. In general, when the INS presents classified evidence ex parte and in camera, it does so only to demonstrate the alien's inadmissibility into the United States, to demonstrate that the immigration court should deny bond to an alien, or to demonstrate that the alien is ineligible for some type of relief he or she is seeking. In other words, classified evidence is used in conventional immigration proceedings only against aliens who are either seeking admission to the United States or, having been determined to be removable from the United States, are applying for relief from that removal. When an alien who has been determined to be removable, for overstaying a visa or on other grounds, seeks relief from removal --asylum, withholding of removal, suspension, or adjustment of status --and other agencies have provided substantive, credible, and relevant classified information which indicates that the alien is ineligible for such relief or does not merit the exercise of discretion, the INS should bring such information to the attention of the immigration court in the interest of the national security.

There are times when the government has highly relevant classified information that should be considered in determining an alien's immigration status, but the information cannot be made public or disclosed to the alien without harming the national security by compromising intelligence-gathering operations and sources. In such cases the FBI, or whatever other agency has the information, shares it with the INS, and the information is subjected to a clearance process within the Justice Department by all concerned components, at a high level. Once consensus is reached that the alien poses a risk to the national security, or that the classified information is otherwise material to national security issues in the case, the INS presents the information to the immigration judge. The immigration judge then determines how much weight he or she will give to the information. It is important to note that while the ex parte, in camera use of classified information has garnered much media attention, it is in fact quite rare. Classified evidence is involved in only 11 pending cases out of a total of 300,000 cases pending overall.

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. Although the United States has always welcomed immigrants, it has also always been the policy of the United States to exclude those aliens who pose a threat to national security, such as terrorists and foreign intelligence operatives, and those who would impose undue burdens on society, such as convicted felons. In recent years we have found that direct and continuous liaison with INS, and the ability to use classified information in appropriate cases, are essential to the effort to protect the national security by making proper decisions about aliens with ties to terrorism or other activities that threaten our national security.

I firmly believe that the FBI must be able to share classified information with the INS, and the INS must be able to use the information in ex parte, in camera proceedings, when necessary in order to adequately protect the national security. That means the INS must be able to use the information in a manner which protects the confidentiality of the information, and the methods and sources used to obtain the information. Disclosing such information to the public, or to the alien, would put the sources and methods at risk, and we could no longer count on being able to use those sources and methods to learn important information about critical national security matters.

It should also be remembered that immigration proceedings are administrative and not criminal proceedings. As the Supreme Court has noted, the purpose of immigration proceedings is to "provide a streamlined determination of eligibility to remain in this country, nothing more." United States v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984). Thus, the full range of rights guaranteed a criminal defendant, including the Sixth Amendment's right to confrontation of witnesses, are not applicable in immigration proceedings. Recognizing the interests involved, and the rights and duties of all parties, courts, including the United States Supreme Court, have concluded that INS use of classified information in ex parte, in camera proceedings to deny discretionary relief from deportation or to deny release on bond is appropriate.

In short, if the INS could not use classified information in ex parte and in camera proceedings, and was instead required to share all evidence with the alien, the United States would be faced with two equally unacceptable scenarios in the small number of cases involving national security threats Using a terrorism example, if we withhold the classified information in order to protect our important sources and methods, we let a dangerous alien obtain an immigration benefit which threatens national security, requires the release of the alien to move freely within the United States, and confers permanent status that may then aid the alien in obtaining United States citizenship. But if we reveal the classified information in an effort to obtain an appropriate ruling in the immigration court, we will jeopardize, and in most cases effectively eliminate, our ability to use those sources and methods in important national security investigations. Both scenarios pose unacceptable risks to the national security. We believe Congress properly considered all these factors, and struck the proper balance in favor of protecting the national security, when it came up with the current laws that allow for the ex parte, in camera use of classified information in appropriate cases. Again, the Department is taking appropriate steps to ensure the reliability of any classified evidence used in immigration proceedings.

I am providing two brief examples to illustrate how damaging it would be to national security to take away the ability to use classified information in immigration proceedings. The aliens in both of these examples are in the United States unlawfully.

CASE # 1:

We receive information from four separate foreign governments linking Subject #1 to terrorist groups and activities. Subsequent FBI investigation confirms Subject #1's dedication to a terrorist organization, and his commitment to violence. The FBI investigation indicates that Subject #1 participates in procuring weapons for terrorist violence, and has a desire to participate in violent activities himself. Additionally, the FBI investigation confirms that Subject #1 raises money to send to the terrorist organization, helps transmit communications for it, and engages in immigration fraud on behalf of members of the organization. Subject #1 wants to obtain lawful status so he can more easily leave and re-enter the country. He was the subject of an intelligence investigation for some time but has been referred to INS for evaluation of his right to be in the United States. Subject #1 was found to be excludable, but filed for asylum. We will want to use classified information to show that he should be denied asylum.

All of the foreign governments who provided information on Subject #1 did so on a classified basis only. The subsequent FBI investigation relied on classified means of acquiring information. Disclosure of either the foreign or FBI-acquired information would reveal the precise means and timing of the acquisition. In turn, that would disclose the scope of the investigation, the identities of other targets of the investigation, and the information that would have been provided to other nations to assist in prevention of terrorist acts. Disclosure of even the FBI-acquired information would reveal that specific individuals both abroad and in the United States were subjects of terrorism investigations by certain governments. That, in turn, would lead to the frustration of efforts by friendly foreign governments to prevent terrorist acts.

CASE #2:

Subject #2 applies for immigration relief. He comes to FBI attention as a result of reporting from a very singular and highly reliable source. Information from that source and further FBI investigation demonstrate that Subject #2 is in a leadership position of an organization that assumes responsibilities for gathering intelligence on behalf of a foreign power. Additionally, the FBI investigation shows that the foreign power directly contacts and tasks the individual and provides him with funds. Through the investigation, focusing on Subject #2's contacts, the FBI learns of intelligence activities being conducted by a number of individuals, as well as the methods of operation of both the organization and the individuals. Through a court-authorized electronic intercept targeting a person other than Subject #2, the FBI learns of significant activities by Subject #2 to circumvent United States laws for the benefit of the foreign power.

Disclosure of the classified information in this scenario would reveal the source of the information and, in all likelihood, would preclude further receipt of information from the source. It would reveal, as well, knowledge of the United States concerning the activities of the organization and the individuals supporting it. It would reveal our knowledge of a foreign power's efforts to circumvent United States law, and thereby alert the foreign power to the need to switch to new tactics. Disclosure of the electronic intercept would reveal the investigation and targeting of the other person. In short, the inability to use classified information in this case would do serious damage to the national security.

* * * * * * *

For all these reasons, the Justice Department is opposed to HR 2121.

Mr. Chairman, this concludes my statement, and I would be happy to answer the Committee's questions.

CAPITAL JOURNAL

By Gerald F. Seib

Terrorism Jitters Land Immigrants In Judicial Limbo

HANY KIARELDEEN HAS survived the kind of judicial nightmare the State Department likes to criticize in its annual report on human-rights problems around the globe.

For 19 months, he was held in jail on vague assertions that he was involved in terrorism. He wasn't told of the specific evidence against him, and the courts refused to disclose who had accused him. That information, he was told, would be kept secret from him and his lawyers on national-security grounds. For a year and a half he was in limbo, he says, never charged with any terrorist act or even questioned.

The most noteworthy aspect of the Kiareldeen case is the country where it transpired: He was held in the U.S., under a little-known "secret evidence" law that was part of an antiterrorism act passed in 1996.

The battle against terrorism continues, of course, as underscored by yesterday's disclosure by the White House that a planned visit to a Bangladeshi village by President Clinton was canceled due to fears of a terrorist attack. But there is a growing feeling that the secret-evidence law has taken the battle on terrorism a bridge too far.

Thomas Campbell

An odd-bedfellow group in Congress, led by Republican Rep. Thomas Campbell of California and Michigan Democratic Rep. David Bonior, is sponsoring "The Secret Evidence Repeal Act," which would roll back the 1996 statute. As evidence that civil-liberties issues can unite wildly incompatible liberals and conservatives, they are joined by leftist Democrat John Conyers of Michigan and rightist Republican Bob Barr of Georgia.

In a private meeting with Arab-American leaders three weeks ago, President Clinton also expressed interest in changes. Thus, in an election year when partisan politics promise to halt many initiatives, change is possible in the secret-evidence law.

"Nothing, frankly, is more important," Rep. Campbell says. "It's a violation of the Constitution. It's that simple and that outrageous, and we shouldn't tolerate it."

REP. CAMPBELL GUESSES that 90% of his colleagues didn't even realize that the secret-evidence provision was included when they passed the indelicately named "Anti-Terrorism and Effective Death Penalty Act." The provision allows the Immigration and Naturalization Service to arrest, detain and deport noncitizens on the basis of evidence that doesn't have to be disclosed to either the alien or his lawyers.

In practice, this has meant that the Federal Bureau of Investigation passes on evidence to the INS, which grabs immigrants as they try to change or extend their legal status in the U.S. Only a judge sees the evidence. The FBI argued in congressional testimony last month that telling even suspects and their lawyers would compromise foreign intelligence services and confidential informants, who would stop sharing information. The FBI says secret evidence is being used in only about a dozen cases.

BUT THOSE HELD, most often Arabs and Muslims, find that they have no way to respond to charges they aren't told about. Mazen al-Najjar is a Palestinian college professor and father of three young daughters who has lived in the U.S. for 18 years. Almost three years ago, he was arrested in Florida on charges of a visa violation, and then learned he was being held as a national-security threat for an alleged association with a terrorist group. He now has been in jail for more than 1,000 days, though David Cole, one of his attorneys, says he has never received even a summary of the evidence against him.

Mr. Kiareldeen is more lucky. After his 19 months in jails in New Jersey, a series of judges who saw the evidence against him decided it didn't justify holding him, and he was freed in October. The government eventually provided summaries alleging, among other things, that he hosted a meeting at his New Jersey apartment to discuss plans to bomb the World Trade Center. Once they learned of that assertion, Mr. Kiareldeen's attorneys successfully showed that he didn't actually live in the apartment until a year and a half after the Trade Center bombing. Mr. Kiareldeen and his lawyers strongly suspect the allegations originated with a disgruntled former wife, with whom he has been locked in bitter child-custody proceedings, but they can't be sure.

Rep. Campbell sees a possible compromise, in which new legislation might put a limit of 30 days on the time anyone could be held on secret evidence. The Clinton administration might not accept the compromise, but it would represent movement on what the congressman calls "the most important constitutional issue that we will have presented to us this year."

THE WALL STREET JOURNAL
WEDNESDAY, MARCH 22, 2000

Department of Justice

STATEMENT

OF

LARRY R. PARKINSON

GENERAL COUNSEL

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 2121 - THE SECRET EVIDENCE REPEAL ACT

PRESENTED ON

FEBRUARY 10, 2000

TESTIMONY

OF

LARRY R. PARKINSON
GENERAL COUNSEL

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

IMMIGRATION AND CLAIMS SUBCOMMITTEE

OF THE HOUSE JUDICIARY COMMITTEE

CONCERNING

H.R. 2121, THE "SECRET EVIDENCE REPEAL ACT"

I am pleased to have the opportunity to discuss with you, on behalf of the Justice Department, H.R. 2121, and more specifically, the use of classified information in immigration proceedings. I cannot address specific cases because of ongoing litigation and the need to protect sensitive law enforcement information, but I will try to illustrate the value to the United States of preserving the ability to use classified information in ex parte, in camera immigration proceedings.

At the outset, I want to emphasize that the Justice Department understands and acknowledges the serious concerns that some members of the Committee and other persons and organizations have expressed about the ex parte, in camera use of classified information in immigration proceedings. We recognize that the use of such information can profoundly affect the people involved. We take these matters seriously, and we do not casually resort to the use of classified information. We have found, however, that in a small number of cases the use of such information is necessary to adequately protect the national security, and we believe that the laws currently in place, which allow for the use of such information in appropriate cases, strike the best balance between the various interests affected in these cases.

Moreover, I want to emphasize that the Justice Department, recognizing all of the serious concerns implicated by this issue, has instituted practices and procedures to ensure that classified evidence is used only when necessary to adequately serve the national interest. Before any final decision is made to use classified information in immigration proceedings, the information and the case are subjected to rigorous review at high levels of all affected Justice Department components to ensure that it is necessary and appropriate to use the information. When the decision is made to use classified information in court, the alien is given an unclassified summary of the classified information when one can be produced, to use in the preparation and presentation of his or her case. Moreover, the Department is currently in the process of an ongoing review of all pending cases involving the use of classified information, to ensure that the information was properly used. The Department, under the Deputy Attorney General's Office, is also working on guidelines and regulations to regularize and improve these processes. The Attorney General and the Deputy Attorney General are both personally involved in these efforts. The Department believes that all of these practices will help ensure that the letter and the spirit of current law will be honored, by requiring that classified information is used only when necessary in the interests of the United States.

Congress has considered this issue in the past and, for good reason, authorized the Immigration and Naturalization Service (INS) to use and consider classified information in ex parte, in camera proceedings. In fact, the 1996 Congress thoroughly debated the competing interests involved during a review of the Immigration and Nationality Act, and on a bi-partisan vote of wide margins, determined that the United States should not be put to the choice of either admitting or suffering the continued presence of a terrorist alien, or compromising the national security information regarding that alien. INS has testified in the past as to its authority, and I will leave it to INS to respond to questions regarding the details of the immigration laws and regulations under which it operates. What I am here to emphasize is the value to the United States of preserving the INS's ability to present appropriately classified evidence in ex parte, in camera proceedings. This typically occurs when, in the considered opinion of executive branch officials, it is necessary to introduce such information in opposition to an alien's admission to the United States, or in opposition to an alien's application for discretionary relief such as the granting of asylum, adjustment of status, granting of bond, or cancellation of removal.

note deci to deport in 1st place

It is important to note that under current procedures classified information is not used to prove deportability in conventional immigration proceedings. In general, when the INS presents classified evidence ex parte and in camera, it does so only to demonstrate the alien's inadmissibility into the United States, to demonstrate that the immigration court should deny bond to an alien, or to demonstrate that the alien is ineligible for some type of relief he or she is seeking. In other words, classified evidence is used only against aliens who are either seeking admission to the United States or, having been determined to be removable from the United States, are applying for relief from that removal. When an alien who has been determined to be removable, for overstaying a visa or on other grounds, seeks relief from removal -- asylum, withholding of removal, suspension, or adjustment of status -- and other agencies have provided substantive, credible, and relevant classified information which indicates that the alien is ineligible for such relief or does not merit the exercise of discretion, the INS should bring such information to the attention of the immigration court in the interest of the national security.

There are times when the government has highly relevant classified information that should be considered in determining an alien's immigration status, but the information cannot be made public or disclosed to the alien without harming the national security by compromising intelligence-gathering operations and sources. In such cases the FBI, or whatever other agency has the information, shares it with the INS, and the information is subjected to a clearance process within the Justice Department by all concerned components, at a high level. Once consensus is reached that the alien poses a risk to the national security, or that the classified information is otherwise material to national security issues in the case, the INS presents the information to the immigration judge. The immigration judge then determines how much weight he or she will give to the information. It is important to note that while the ex parte, in camera use of classified information has garnered much media attention, it is in fact quite rare. Classified evidence is involved in only 12 pending cases out of a total of 300,000 cases pending overall.

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. Although the United States has always welcomed immigrants, it has also always been the policy of the United States to exclude those aliens who pose a threat to national security, such as terrorists and foreign intelligence operatives, and those who would impose undue burdens on society, such as convicted felons. In recent years we have found that direct and continuous liaison with INS, and the ability to use classified information in appropriate cases, are essential to the effort to protect the national security by making proper decisions about aliens with ties to terrorism or other activities that threaten our national security.

I firmly believe that the FBI must be able to share classified information with the INS, and the INS must be able to use the information in ex parte, in camera proceedings, when necessary in order to adequately protect the national security. That means the INS must be able to use the information in a manner which protects the confidentiality of the information, and the methods and sources used to obtain the information. Disclosing such information to the public, or to the alien, would put the sources and methods at risk, and we could no longer count on being able to use those sources and methods to learn important information about critical national security matters.

It should also be remembered that immigration proceedings are administrative and not criminal proceedings. As the Supreme Court has noted, the purpose of immigration proceedings is to "provide a streamlined determination of eligibility to remain in this country, nothing more." United States v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984). Thus, the full range of rights guaranteed a criminal defendant, including the Sixth Amendment's right to confrontation of evidence, are not applicable in immigration proceedings. Recognizing the interests involved, and the rights and duties of all parties, courts, including the United States Supreme Court, have concluded that INS use of classified information in ex parte, in camera proceedings to deny discretionary relief from deportation or to deny release on bond is appropriate.

In short, if the INS could not use classified information in ex parte and in camera proceedings, and was instead required to share all evidence with the alien, the United States would be faced with two equally unacceptable scenarios in the small number of cases involving national security threats. Using a terrorism example, if we withhold the classified information in order to protect our important sources and methods, we let a dangerous alien obtain an immigration benefit which threatens national security, requires the release of the alien to move freely within the United States, and confers permanent status that may then aid the alien in obtaining United States citizenship. But if we reveal the classified information in an effort to obtain an appropriate ruling in the immigration court, we will jeopardize, and in most cases effectively eliminate, our ability to use those sources and methods in important national security investigations. Both scenarios pose unacceptable risks to the national security. We believe Congress properly considered all these factors, and struck the proper balance in favor of protecting the national security, when it came up with the current laws that allow for the ex parte, in camera use of classified information in appropriate cases. Again, the Department is taking appropriate steps to ensure the reliability of any classified evidence used in immigration proceedings.

I am providing two brief examples to illustrate how damaging it would be to national security to take away the ability to use classified information in immigration proceedings. The aliens in both of these examples are in the United States unlawfully.

CASE # 1:

We receive information from four separate foreign governments linking Subject #1 to terrorist groups and activities. Subsequent FBI investigation confirms Subject #1's dedication to a terrorist organization, and his commitment to violence. The FBI investigation indicates that Subject #1 participates in procuring weapons for terrorist violence, and has a desire to participate in violent activities himself. Additionally, the FBI investigation confirms that Subject #1 raises money to send to the terrorist organization, helps transmit communications for it, and engages in immigration fraud on behalf of members of the organization. Subject #1 wants to obtain lawful status so he can more easily leave and re-enter the country. He was the subject of an intelligence investigation for some time but has been referred to INS for evaluation of his right to be in the United States. Subject #1 was found to be excludable, but filed for asylum. We will want to use classified information to show that he should be denied asylum.

All of the foreign governments who provided information on Subject #1 did so on a classified basis only. The subsequent FBI investigation relied on classified means of acquiring information. Disclosure of either the foreign or FBI-acquired information would reveal the precise means and timing of the acquisition. In turn, that would disclose the scope of the investigation, the identities of other targets of the investigation, and the information that would have been provided to other nations to assist in prevention of terrorist acts. Disclosure of even the FBI-acquired information would reveal that specific individuals both abroad and in the United States were subjects of terrorism investigations by certain governments. That, in turn, would lead to the frustration of efforts by friendly foreign governments to prevent terrorist acts.

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Disclosure of the classified information in this scenario would reveal the source of the information and, in all likelihood, would preclude further receipt of information from the source. It would reveal, as well, knowledge of the United States concerning the activities of the organization and the individuals supporting it. It would reveal our knowledge of a foreign power's efforts to circumvent United States law, and thereby alert the foreign power to the need to switch to new tactics. Disclosure of the electronic intercept would reveal the investigation and targeting of the other person. In short, the inability to use classified information in this case would do serious damage to the national security.

* * * * * * *

For all these reasons, the Justice Department is opposed to HR 2121.

Mr. Chairman, this concludes my statement, and I would be happy to answer the Committee's questions.

(1) Draft update from DOJ guidance
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Date: March 13/2000 1 of 5 pages

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Tel. No.: (202) 456-2721 Fax No. (202) 456-6218

FROM:

Name: Azizah al-Hibri

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March 13, 2000

President William Jefferson Clinton
The White House
Washington, D.C.

Dear Mr. President:

During a recent meeting at the White House, you asked me to propose language that would eliminate the improper use of secret evidence, thus alleviating the suffering of many immigrants to our country.

After extensive consultation with constitutional law scholars, the consensus is that speed is of the essence. For this reason, we have now concluded that the most efficient way of handling this constitutional matter, short of prohibiting all use of secret evidence (the better constitutional alternative in our view), is for you to issue a Presidential letter to Ms. Janet Reno, the Attorney General. Such a letter, which would limit the use of secret evidence, would also give immediate succor to long suffering victims.

We propose that the letter include the following language:

> In view of the substantial fairness concerns that arise when classified evidence is considered in camera and ex parte in immigration proceedings, I hereby order that the INS may use secret evidence, as specifically authorized by statute, against aliens living in the United States only if:
>
> (1) the government has reliable and credible evidence that the individual has engaged in or is planning to engage in specific criminal activity that threatens national security, which it must articulate in detail to the adjudicating body and which the adjudicating body must explicitly accept or reject, and

2) the government can give the affected individual a summary that affords him or her substantially the same opportunity to defend himself or herself as would the classified evidence itself. CIPA standards (Classified Information Procedures Act, 18 U.S.C., App. III) govern this evaluation, to be made by the adjudicating body.

These requirements are designed, first, to ensure that reliance on this procedure is reserved for aliens who truly pose a threat to national security, and second, to ensure that reliance on this procedure will not be permitted unless the alien can be afforded a meaningful opportunity to confront and rebut the charges against him or her. Only where both requirements are met should the extraordinary procedure of relying on secret evidence be invoked against aliens living here.

It is our view that such language would improve due process for aliens and reduce the possibility of misusing secret evidence against them. I hope that you find this language acceptable for inclusion in a Presidential letter.

Further, I continue to urge you, Mr. President, to lend your valuable support to the Secret Evidence Repeal Act pending now in Congress. Given your deep commitment to civil rights, and your excellent legacy in that area, we have high hopes that you will indeed go out of your way to right these wrongs before your term ends.

Respectfully,

Azizah Y. al-Hibri

March 8, 2000

MEMORANDUM

TO: Maureen Shea
FROM: Azizah Y. al-Hibri
RE: Contact information

As you may know, I am currently on sabbatical and spending my time as a Visiting Scholar at the Law Library of Congress.

If you need to reach me, my new contact information is as follows:

Tel. (O.) (202) 707- 4725
(H.) (703) 383- 3035

Fax (O.) (202) 707- 1820

My work address is:
The Library of Congress
Directorate of Legal Research
101 Independence Avenue, S.E.
Washington, D.C. 20540-3200

Thanks for all your help.

March 8, 2000

RICHMOND

UNIVERSITY OF RICHMOND
FOUNDED 1830

President William Jefferson Clinton
The White House
Washington, D.C.

Faculty
The T. C. Williams
School of Law

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University of Richmond
Virginia 23173

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Respectfully,

Azizah Y. al-Hibri

Azizah Y. al-Hibri

Irene Bueno
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Federal News Service

February 10, 2000, Thursday 12:09 PM Eastern Time

SECTION: PREPARED TESTIMONY

LENGTH: 744 words

HEADLINE: PREPARED TESTIMONY OF CONGRESSMAN TOM CAMPBELL

BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

SUBJECT - H.R.2121, THE SECRET EVIDENCE REPEAL ACT

BODY:

Thank you, Chairman Lamar Smith, for allowing me to testify at this hearing today. I would also like to thank Subcommittee Ranking Member Sheila Jackson-Lee, a co-sponsor of H.R.2121, and other Members of the Subcommittee for being present at this important hearing. Today I am pleased to testify in favor of"The Secret Evidence Repeal Act of 1999," a bill to repeal the use of 'secret evidence' in Immigration and Naturalization Service deportation hearings.

Under the Anti-Terrorism and Effective Death Penalty Act of 1996, the INS is allowed to arrest, detain and deport non-citizens on the basis of 'secret evidence' - evidence whose source and substance is not revealed to those who are targeted or their counsel.

The right to confront your accuser, hear the evidence against you and secure a speedy trial are fundamental tenets of the American justice system. This violates our deepest faith in the right to due process, and violates our democracy's most sacred document, the United States Constitution.

I am very concerned about the arrest, imprisonment and even forced deportation of individuals here in the United States based on evidence that the individual is not afforded an opportunity to review or challenge. The use of such 'secret evidence' directly contradicts our sense of due process and fairness. Secret evidence submitted in the form of classified information often consists of nothing more than rumor and innuendo. It is often unverified and unverifiable. It has not, and cannot be, tested reliability in cross-examination during a trial The Bonior-Campbell bill would correct this injustice by ensuring that no one is removed, or otherwise deprived of liberty based on evidence kept secret from them.

People should know the crimes with which they are being charged and should be given a chance to challenge their accusers in court. I am proud to join my colleague, Congressman David Bonior, in proposing legislation to end this practice.

According to the Immigration and Naturalization Service, about 25 secret evidence cases are pending currently, and approximately 50 secret evidence cases were filed from 1992 - Feb. 1998. In one secret evidence case, Nasser Ahmed, a 38-year old Egyptian was denied bond, asylum and withholding based on secret evidence. The immigration judge who heard the evidence said that he had "no doubt" that Mr. Ahmed would be tortured if returned to Egypt. If the decision in his case had been based only on the evidence in the public record -- evidence that Mr. Ahmed had the chance to challenge -- Mr. Ahmed would have won his case immediately. Instead, he was held in solitary confinement for approximately three years and was only recently released upon the order of an immigration judge, who ruled that the secret evidence the Government offered it was inadmissable as double or triple hearsay.

Perhaps the most egregious case is that of Dr. Mazen Al-Najjar of Tampa, Florida. Dr. Al Najjar, a Palestinian-American, is about to mark his 1,000th day of detention based on secret evidence. This 19- year resident of the U.S. was first detained almost three years ago! I'm glad to see that Mr. Al-Najjar's sister, Mrs. Nahla Al-Arian, will be testifying today and I look forward to her testimony.

Virtually all of the "secret evidence" cases have been directed at Muslims and people of Arab descent. This has created a perception in those communities that the Government is targeting them with the most repressive tools available to it. This law is clearly discriminatory and unconstitutional, and we need to take a strong stand against it.

The Secret Evidence Repeal Act would not require the government to release dangerous terrorists. It merely requires the Government to choose whether to reveal the evidence against a non-citizen whose liberty is in jeopardy, or keep that information fully secret and outside of immigration proceedings and determinations. It is common for prosecutors to make similar choices in criminal cases where a person's liberty is likewise at stake. These requirements were applied in prosecutions of truly dangerous terrorists, such as those who bombed the World Trade Center and the federal building in Oklahoma City, and those cases have been successfully prosecuted.

In sum, the fight against terrorism need not involve compromise of our most cherished constitutional rights. Mr. Chairman, thank you again for allowing me to testify before you today.

THE WHITE HOUSE

WASHINGTON

FAX COVER SHEET

TO: Lisa M

Fax: 5-3109

FROM: Irene B. Bueno, Special Assistant to the President for Domestic Policy

217 Old Executive Office Building
Washington, DC 20502
Phone: 202-456-6558 Fax: 202-456-5581
E-mail: irene_bueno@opd.eop.gov

DATE:

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COMMENTS:

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEET

DATE: 2/9/2000

TO: Irene Bueno Wendy Patten
Maria Echeveste

PHONE NO.
FAX NO. 456-5581 | 456-1907 | 454-9140

FROM: PATTY FIRST

PHONE NO.: 202/514-4810

FAX NO. 202/514-9149

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THE WHITE HOUSE

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TO:

Fax:

FROM: **Irene B. Bueno, Special Assistant to the President for Domestic Policy**

217 Old Executive Office Building
Washington, DC 20502
Phone: 202-456-6558 Fax: 202-456-5581
E-mail: irene_bueno@opd.eop.gov

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FAX COVER SHEET

TO: Patty First
Fax: 514-9149

FROM: Irene B. Bueno, Special Assistant to the President for Domestic Policy

217 Old Executive Office Building
Washington, DC 20502
Phone: 202-456-6558 Fax: 202-456-5581
E-mail: irene_bueno@opd.eop.gov

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THE WHITE HOUSE

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COMMENTS:

Testimony

information and the case are subjected to rigorous review at high levels of all affected Justice Department components to ensure that it is necessary and appropriate to use the information. When the decision is made to use classified information in court, the alien is given an unclassified summary of the classified information when one can be produced, to use in the preparation and presentation of his or her case. Moreover, the Department is currently in the process of an ongoing review of all pending cases involving the use of classified information, to ensure that the information was properly used. The Department, under the Deputy Attorney General's Office, is also working on guidelines and regulations to regularize and improve these processes. The Attorney General and the Deputy Attorney General are both personally involved in these efforts. The Department believes that all of these practices will help ensure that the letter and the spirit of current law will be honored, by requiring that classified information is used only when necessary in the interests of the United States.

Congress has considered this issue in the past and, for good reason, authorized the Immigration and Naturalization Service (INS) to use and consider classified information in ex parte, in camera proceedings. In fact, the 1996 Congress thoroughly debated the competing interests involved during a review of the Immigration and Nationality Act, and on a bi-partisan vote of wide margins, determined that the United States should not be put to the choice of either admitting or suffering the continued presence of a terrorist alien, or compromising the national security information regarding that alien. INS has testified in the past as to its authority, and I will leave it to INS to respond to questions regarding the details of the immigration laws and regulations under which it operates. What I am here to emphasize is the value to the United States of preserving the INS's ability to present appropriately classified evidence in ex parte, in camera proceedings. This typically occurs when, in the considered opinion of executive branch officials, it is necessary to introduce such information in opposition to an alien's admission to the United States, or in opposition to an alien's application for discretionary relief such as the granting of asylum, adjustment of status, granting of bond, or cancellation of removal.

It is important to note that under current procedures classified information is not used to prove deportability in conventional immigration proceedings. In general, when the INS presents classified evidence ex parte and in camera, it does so only to demonstrate the alien's inadmissibility into the United States, to demonstrate that the immigration court should deny bond to an alien, or to demonstrate that the alien is ineligible for some type of relief he or she is seeking. In other words, classified evidence is used only against aliens who are either seeking admission to the United States or, having been determined to be removable from the United States, are applying for relief from that removal. When an alien who has been determined to be removable, for overstaying a visa or on other grounds, seeks relief from removal -- asylum, withholding of removal, suspension, or adjustment of status -- and other agencies have provided substantive, credible, and relevant classified information which indicates that the alien is ineligible for such relief or does not merit the exercise of discretion, the INS should bring such information to the attention of the immigration court in the interest of the national security.

There are times when the government has highly relevant classified information that should be considered in determining an alien's immigration status, but the information cannot be would be faced with two equally unacceptable scenarios in the small number of cases involving national security threats. Using a terrorism example, if we withhold the classified information in order to protect our important sources and methods, we let a dangerous alien obtain an immigration benefit which threatens national security, requires the release of the alien to move freely within the United States, and confers permanent status that may then aid the alien in obtaining United States citizenship. But if we reveal the classified information in an effort to obtain an appropriate ruling in the immigration court, we will jeopardize, and in most cases effectively eliminate, our ability to use those sources and methods in important national security investigations. Both scenarios pose unacceptable risks to the national security. We believe Congress properly considered all these factors, and struck the proper balance in favor of protecting the national security, when it came up with the current laws that allow for the ex parte, in camera use of classified information in appropriate cases. Again, the Department is taking appropriate steps to ensure the reliability of any classified evidence used in immigration proceedings.

I am providing two brief examples to illustrate how damaging it would be to national security to take away the ability to use classified information in immigration proceedings. The aliens in both of these examples are in the United States unlawfully.

CASE # 1:

We receive information from four separate foreign governments linking Subject #1 to terrorist groups and activities. Subsequent FBI investigation confirms Subject #1's dedication to a terrorist organization, and his commitment to violence. The FBI investigation indicates that Subject #1 participates in procuring weapons for terrorist violence, and has a desire to participate in violent activities himself. Additionally, the FBI investigation confirms that Subject #1 raises money to send to the terrorist organization, helps transmit communications for it, and engages in immigration fraud on behalf of members of the organization. Subject #1 wants to obtain lawful status so he can more easily leave and re-enter the country. He was the subject of an intelligence investigation for some time but has been referred to INS for evaluation of his right to be in the United States. Subject #1 was found to be excludable, but filed for asylum. We will want to use classified information to show that he should be denied asylum.

All of the foreign governments who provided information on Subject #1 did so on a classified basis only. The subsequent FBI investigation relied on classified means of acquiring information. Disclosure of either the foreign or FBI-acquired information would reveal the precise means and timing of the acquisition. In turn, that would disclose the scope of the investigation, the identities of other targets of the investigation, and the information that would have been provided to other nations to assist in prevention of terrorist acts. Disclosure of even the FBI-acquired information would reveal that specific individuals both abroad and in the United States were subjects of terrorism investigations by certain governments. That, in turn, would lead to the frustration of efforts by friendly foreign governments to prevent terrorist acts.

CASE #2:

Subject #2 applies for immigration relief. He comes to FBI attention as a result of reporting from a very singular and highly reliable source. Information from that source and further FBI investigation demonstrate that Subject #2 is in a leadership position of an organization that assumes responsibilities for gathering intelligence on behalf of a foreign power. Additionally, the FBI investigation shows that the foreign power directly contacts and tasks the individual and provides him with funds. Through the investigation, focusing on Subject #2's contacts, the FBI learns of intelligence activities being conducted by a number of individuals, as well as the methods of operation of both the organization and the individuals. Through a court-authorized electronic intercept targeting a person other than Subject #2, the FBI learns of significant activities by Subject #2 to circumvent United States laws for the benefit of the foreign power.

Disclosure of the classified information in this scenario would reveal the source of the information and, in all likelihood, would preclude further receipt of information from the source. It would reveal, as well, knowledge of the United States concerning the activities of the organization and the individuals supporting it. It would reveal our knowledge of a foreign power's efforts to circumvent United States law, and thereby alert the foreign power to the need to switch to new tactics. Disclosure of the electronic intercept would reveal the investigation and targeting of the other person. In short, the inability to use classified information in this case would do serious damage to the national security.

* * * * * * *

For all these reasons, the Justice Department is opposed to HR 2121.

Mr. Chairman, this concludes my statement, and I would be happy to answer the Committee's questions.

DRAFT

TESTIMONY

OF

LARRY R. PARKINSON
GENERAL COUNSEL

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

IMMIGRATION AND CLAIMS SUBCOMMITTEE

OF THE HOUSE JUDICIARY COMMITTEE

CONCERNING

H.R. 2121, THE "SECRET EVIDENCE REPEAL ACT"

I am pleased to have the opportunity to discuss with you, on behalf of the Justice Department, H.R. 2121, and more specifically, the use of classified information in immigration proceedings. I cannot address specific cases because of ongoing litigation and the need to protect sensitive law enforcement information, but I will try to illustrate the value to the United States of preserving the ability to use classified information in ex parte, in camera immigration proceedings.

Therefore, we have and will continue to work with the members and others to address these concerns

At the outset, I want to emphasize that the Justice Department understands and acknowledges the serious concerns that some members of the Committee and other persons and organizations have expressed about the ex parte, in camera use of classified information in immigration proceedings. We recognize that the use of such information can profoundly affect the ~~people involved~~. We take these matters seriously, and we do not casually resort to the use of classified information. We have found, however, that in a small number of cases the use of such information is necessary to adequately protect the national security, and we believe that the laws currently in place, which allow for the use of such information in appropriate cases, strike the best balance between the various interests affected in these cases.

Moreover, I want to emphasize that the Justice Department, recognizing all of the serious concerns implicated by this issue, has instituted practices and procedures to ensure that classified evidence is used only when necessary to adequately serve the national interest. Before any final decision is made to use classified information in immigration proceedings, the made public or disclosed to the alien without harming the national security by compromising intelligence-gathering operations and sources. In such cases the FBI, or whatever other agency has the information, shares it with the INS, and the information is subjected to a clearance process within the Justice Department by all concerned components, at a high level. Once consensus is reached that the alien poses a risk to the national security, or that the classified information is otherwise material to national security issues in the case, the INS presents the information to the immigration judge. The immigration judge then determines how much weight he or she will give to the information. It is important to note that while the ex parte, in camera use of classified information has garnered much media attention, it is in fact quite rare. Classified evidence is involved in only 12 pending cases out of a total of 300,000 cases pending overall.

How many cases total - pending & completed

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. Although the United States has always welcomed immigrants, it has also always been the policy of the United States to exclude those aliens who pose a threat to national security, such as terrorists and foreign intelligence operatives, and those who would impose undue burdens on society, such as convicted felons. In recent years we have found that direct and continuous liaison with INS, and the ability to use classified information in appropriate cases, are essential to the effort to protect the national security by making proper decisions about aliens with ties to terrorism or other activities that threaten our national security.

I firmly believe that the FBI must be able to share classified information with the INS, and the INS must be able to use the information in ex parte, in camera proceedings, when necessary in order to adequately protect the national security. That means the INS must be able to use the information in a manner which protects the confidentiality of the information, and the methods and sources used to obtain the information. Disclosing such information to the public, or to the alien, would put the sources and methods at risk, and we could no longer count on being able to use those sources and methods to learn important information about critical national security matters.

It should also be remembered that immigration proceedings are administrative and not criminal proceedings. As the Supreme Court has noted, the purpose of immigration proceedings is to "provide a streamlined determination of eligibility to remain in this country, nothing more." United States v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984). Thus, the full range of rights guaranteed a criminal defendant, including the Sixth Amendment's right to confrontation of evidence, are not applicable in immigration proceedings. Recognizing the interests involved, and the rights and duties of all parties, courts, including the United States Supreme Court, have concluded that INS use of classified information in ex parte, in camera proceedings to deny discretionary relief from deportation or to deny release on bond is appropriate.

In short, if the INS could not use classified information in ex parte and in camera proceedings, and was instead required to share all evidence with the alien, the United States

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DEPORTATION BASED ON SECRET EVIDENCE

No person should be deprived of liberty on the basis of evidence kept secret from them.

This simple statement is a fundamental requisite of any fair legal system. "Star chamber proceedings" conducted out of sight of the accused and her attorney are a feature of totalitarian governments, not of our own. The Supreme Court has said time and again that deportation is a severe deprivation of liberty – one that can separate a person from home, family, career, and "all that makes life worth living."

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) together with the 1996 antiterrorism law, establishes a new court charged only with hearing cases in which the government seeks to deport aliens based on secret evidence submitted in the form of classified information. Though the secret evidence court has not yet heard a case, the INS has already moved in other proceedings to use secret evidence against aliens. In commenting on one such attempt, a court said, "One would be hard pressed to design a procedure more likely to result in erroneous deprivations. ... Secrecy is not congenial to truth seeking. ... No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and the opportunity to meet it." Our adversarial legal system demands no less.

The INS is currently using secret evidence in a number of cases to deny aliens -- virtually all of whom are Muslims and Arabs -- an opportunity to be freed on bond while their case is pending, and to deny them political asylum and similar relief known as withholding of deportation. The ACLU represents one such alien, Nasser Ahmed, a 37-year old Egyptian who was denied bond, asylum and withholding based on secret evidence. The immigration judge who heard the evidence said that he had "no doubt" that Mr. Ahmed would be tortured if returned to Egypt.

The INS is also using secret evidence in cases involving six Iraqis airlifted by the U.S. from Northern Iraq because they were part of a failed CIA plot to destabilize Saddam. The INS is denying them political asylum based on secret evidence. They are represented by a legal team including former Director of Central Intelligence R. James Woolsey, who was himself denied the opportunity to see the evidence against his clients, and who commented that secret evidence is what "one would expect to find in Iraq, not the U.S."

It is impossible to fight charges without knowing the nature of those charges, and who is making them. In one Supreme Court case, secret evidence was used to deny a WWII "war bride" the opportunity to come to the U.S. and join her husband. When eventually she was granted a hearing, the secret evidence was found to be worthless because the "confidential source" that offered it turned out to be a jilted former lover of her husband.

Nobody should be deported, or otherwise deprived of liberty, based on secret evidence. The INA's secret evidence provisions should be revised to track the Classified Information Procedures Act, which governs use of classified information in criminal cases. END any meaningful review, unsuspecting travelers can find themselves facing summary deportation based only on the subjective opinion of the inspector.

<u>The expedited removal law should be repealed.</u>

DEPORTATION BASED ON SECRET EVIDENCE: IIRAIRA, together with AEDPA, establishes a new court charged <u>only</u> with hearing cases in which the government seeks to deport aliens based on secret evidence submitted in the form of classified information. The INS already has tried in other courts to use secret evidence against immigrants. In commenting on one such attempt, a court said, "One would be hard pressed to design a procedure more likely to result in erroneous deprivations. ... Secrecy is not congenial to truth seeking. ... No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and the opportunity to meet it." This simple statement is a fundamental requisite of any fair legal system. Our adversarial legal system demands no less. Proceedings conducted out of sight of the accused and their attorneys are a feature of totalitarian governments, not of our own.

<u>The law should be amended so that no person should be deprived of liberty on the basis of evidence kept secret from them.</u>

American Immigration Lawyers Association
1400 Eye Street, NW, Suite 1200, Washington, DC 20005
Phone: (202) 216-2400 Fax: (202) 371-9449

34GR8068

Maureen T. Shea 06/23/99 05:51:47 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP, Erica R. Morris/WHO/EOP@EOP, Leslie Bernstein/WHO/EOP@EOP

cc:
Subject: Room Change

Tomorrow's immigration meeting has been moved to Room 100 because of a larger than anticipated crowd - still 1:00. List below:

Participants:

Carol Wolchok – American Bar Association

Gregory Nojeim – ACLU

Judy Golub – American Immigration Lawyers Association
Gary Merson - – American Immigration Lawyers Association

Laurie Olson Kozuba – President, Citizens and Immigrants for Equal Justice
Rebecca Robbins – Citizens and Immigrants for Equal Justice, Maryland Chapter

Melanie Nezer – Immigrant and Refugee Services of America

Bob Sakaniwa – Leadership Conference on Civil Rights

Christina Cook – Mexican American Legal Defense & Education Fund

Joane Lee – National Asian Pacific American Legal Consortium

Joel Najar – National Council of LaRaza

Angela Kelley – National Immigration Forum
H. Lisa Shuger - National Immigration Forum

J. Kevin Appleby – US Catholic Conference
Michael Hill – US Catholic Conference
Abigail Price - US Catholic Conference

CIEJ
CITIZENS & IMMIGRANTS FOR EQUAL JUSTICE
1625 Woodlawn Pkwy Mesquite, TX 75149 Phone/Fax 972-279-4168

A Coalition of American and Legal Permanent Resident Family Members of Legal Residents Adversely Affected by Enactment of AEDPA, and IIRIRA

Citizens & Immigrant For Equal Justice is a national coalition that promotes the rights and interests of Legal Residents targeted for deportation because of nonviolent criminal convictions, and their American families.

We are a support network that provides these families with, an information exchange forum, educational resources, updates on current events and proposed legislation, legal referrals, and guidance in addressing the affect that immigration legislation has on them, to interested parties.

We also serve as a liaison for these families to the general public and the media, informing them of the concerns of and the adverse affects to these families that legislation may or is having on them.

GOALS:

* Educate the general public:
  - About immigration laws and their relation and affect on American families.
  - Who Legal Residents are; their contributions and ties to the United States.
  - Proposed and current legislation that infringe Legal Residents rights to due process, and equal protection under the law.
* Monitor current immigration laws:
  - To ensure those affected by it are informed about them.
  - Educate interested parties about the adverse affect they have on American families.
  - Advise of possible solutions to all interested parties.
* Monitor proposed immigration legislation:
  - To ensure those it affects are informed.
  - To promote equal rights for Legal Residents.
* Network with other Immigrant Issue organizations:
  - To address issues related to Legal Residents with convictions and their American families.
  - Work together to achieve common goals.
* Work with the Immigration and Naturalization Service (INS)
  - To ensure that the problems and concerns of Legal Residents in detention are addressed.
  - To ensure that the problems and concerns of their American families are addressed.

Esther A 4-0405 6/23/99

- People effected by ~~esr~~ 1996 law -
- Kennedy working on a bill (discussed w/ Allen + Patrick)
Working Sen. Bob Graham, Mack - Chronic Detention in FL
Comprehensive Bill -
Restore relief from deportation
retroactivity
Restore waiver - restore judicial review
Scale back def
Change of def of imprison

Working w/ Canelino- ~~Gra~~ Graham
Introduce soon
Announce the hrg - in the month.

Broader than Frost
- Requires AG
~~Broader than Moynihan bill~~
Moynihan bill
- Broader
- Repeal visa program

- Get us language soon -

- Abraham -
may not be interested in moving legislation
Prosecutorial discretion - will not look until IRT
in ~~full~~ full swing.

Leigh –
report waives – used on the delay
tactics.

Hondiman

The U.S. Immigration Detention System: An Overview

Who is Subject to Detention?

For the first time, the Immigration and Naturalization Service (INS) has been empowered - and mandated - to detain almost every person believed to be present in the U.S. in violation of current laws, those seeking to enter the country whom the INS believes do not have proper immigration documentation, and lawful aliens who, based on their criminal records, may be subject to deportation. Currently, the INS detains asylum seekers, long-term permanent residents, nonimmigrants seeking temporary admission, persons with pending applications for relief from deportation, and lawful aliens with criminal convictions, including many with minor offenses, and even individuals with claims to U.S. citizenship.

What Laws Provide for These Powers of Detention?

The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) greatly expand the INS's powers to detain. Under IIRAIRA, Congress granted the INS vast new powers to detain and quickly deport anyone who has not been "lawfully admitted". This new rapid deportation process, called expedited removal, allows for no judicial review of individual claims, and very limited review of the implementation of the law. Asylum seekers, many of whom arrive at US borders fleeing for their lives after having faced torture and other forms of trauma, must express a fear of persecution upon their arrival in the U.S., or be sent back immediately under an expedited removal order. If they do express fear, they are detained, usually until their asylum case is decided.

Under these two new laws, the INS must also detain any non-citizen who has been convicted of a vastly expanded range of crimes, encompassing many relatively minor crimes. The INS detains people even if they completed their sentence decades ago and have been rehabilitated since then. There are few opportunities for release while people await the outcome of their removal proceedings. In some cases, people are being detained indefinitely because their country of origin will not accept their return. Opportunities for release are likely to be further reduced in October 1998, when a temporary rule giving the INS discretion to release certain criminal aliens is scheduled to expire.[1]

How Many People are Detained?

Immigration detention is literally the fastest growing incarceration program in the United States, in large part due to the new mandatory detention provisions. In 1992, the INS detention capacity was at 6,259 beds.[2] By the end of the 1997 fiscal year, 13,600 were in detention on an average day, representing a

1 For a description of the impact of IIRAIRA and AEDPA, as well as a review of the legal challenges to detention, see Kerwin, Donald, "Detention of Newcomers: Constitutional Standards and New Legislation: Parts One and Two," *Immigration Briefings*, Nov. and Dec., 1996.

2 Kerwin, Donald, "Detention of Newcomers: Constitutional Standards and New Legislation: Part One." *Immigration Briefings*, Nov. 1996.

doubling of detention capacity in five years.[3] The INS projects that the daily detention capacity will almost double again by the year 2001, when 24,000 will be detained on any given day.

Throughout the fiscal year of 1997, 137,000 people were detained. This is an increase from 109,000 in 1996, and 85,000 in 1995. It is projected that almost 302,000 people will be detained in the year 2001.[4]

Where are People Detained?

Approximately half of the total INS detainee population is held in facilities whose sole or main purpose is to detain people because of their immigration status. Nine such facilities, which ressemble medium security prisons, are run by the INS, and six are operated by private companies, such as Corrections Corporation of America. Two additional facilities, jointly operated by the INS and the Bureau of Prisons, house mostly criminal aliens.

The other half of detainees, including some asylum seekers, are held in over 500 state and county jails, some of which are maximum security.[5] The INS contracts with these jails for bed space, paying them a daily rate per detainee. The rate varies widely according to facility, but the average cost for one night of detention in any type of facility is $63 per night.[6] The contracts with the prisons for the most part do not require that INS detainees be treated differently from individuals serving time for criminal convictions. Most simply require the provision of security, food and emergency medical care. The INS plans to meet most of its goals for increased bed space over the next few years in these county jails.[7]

Many of the facilities are located in remote areas, isolated from family, friends, and legal assistance. Approximately 13 percent of the detained population is located in two large detention centers in Florence and Eloy, two small towns several hours from Phoenix, Arizona.[8] Detainees in remote county jails are often even more isolated; mixed in with the general criminal population, their different needs often go unnoticed.

For How Long are People Detained?

The length of detention varies widely for each case, depending upon the reason for detention, his or her eligibility for release, whether or not the individual has a lawyer to assist in gaining release, and if the individual is awaiting deportation, how long it takes to secure travel documents for deportation.

Most asylum seekers are detained at least until an immigration court decides upon the asylum claim, which usually takes several months. Asylum seekers subject to expedited removal are technically eligible for release after they pass a "credible fear" interview, usually conducted about a week after their arrival, in which an asylum officer decides whether or not they have a viable claim to asylum. However, the

3 Office of Field Operations, Immigration and Naturalization Service, December 1997.

4 Department of Justice, *Federal Detention Plan*, May 1997 Update.

5 Office of Field Operations, Immigration and Naturalization Service, December 1997.

6 Women's Commission for Refugee Women and Children, *Liberty Denied: Women Seeking Asylum Imprisoned in the United States*, April 1997.

7 Office of Field Operations, Immigration and Naturalization Service, December 1997; see also Department of Justice, *Federal Detention Plan*, May 1997 Update.

8 Florence Project for Immigrant and Refugee Rights, Florence, AZ, February 1998.

implementation of this release policy varies between INS districts. Some districts routinely deny release requests, and others will consider their release if the asylum seeker has a friend, relative or organization in the area willing to provide housing and food. Recently, only about 20% of all asylum seekers who had passed the "credible fear" screening were released from detention.[9] Individuals whose asylum applications are denied face up to several years of detention if they choose to file an appeal.

Certain individuals, such as those who are awaiting deportation to countries with which the U.S. has no diplomatic relations, are being detained indefinitely. Since their country of origin will not issue travel documents for their return, unless they are deported to a third country, they may stay in detention for years. Certain Cubans who arrived on the Mariel boat lift in the early 1980s are still being detained in U.S. prisons, since Cuba has refused to accept their return.[10]

What are Detention Conditions Like?

Recent reports by the Women's Commission for Refugee Women and Children, Amnesty International, and Human Rights Watch have described major problems with conditions at facilities around the country. While the extent of the problems is difficult to document with statistical certainty, among the most serious concerns observed first-hand by these organizations are: overcrowding; commingling of criminals with non-criminals; unhygienic conditions; poor or absent medical care; the inappropriate use of medication, including sedatives; shackling and strip-searching; the punitive use of solitary confinement; and physical and verbal abuse by guards. Women, who make up 7 percent of the detained population, are particularly at risk for improper and inhumane treatment. Due to their small numbers, women are often denied services offered to men, and are more likely to be commingled with those serving time for criminal convictions. The conditions of detention are most harsh in state and county jails. The INS claims to have very little control over the treatment of detainees in such jails.[11]

The INS also detains hundreds of minors, some of whom are asylum seekers. Many of these minors are held in shelter care facilities, but some remain in state or county-operated juvenile detention facilities. According to recent reports, children may be mixed with criminal juvenile offenders, deprived of educational opportunities, allowed little recreation time, and not informed of their legal rights.[12]

What Access Do Detainees Have to Legal and Social Services?

In most facilities, especially in county jails, access to legal and social services for detainees is extremely poor. In 1996, only about 10 percent of all INS detainees whose cases were heard by immigration judges were represented by legal counsel.[13] While the scarce resources of non-profit legal service providers

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9 Office of International Affairs, Immigration and Naturalization Service, Washington, DC, 1997.

10 Kerwin, Donald, "Detention of Newcomers: Constitutional Standards and New Legislation: Part One," *Immigration Briefings*, November 1996.

11 Women's Commission for Refugee Women and Children, *Liberty Denied: Women Seeking Asylum Imprisoned in the United States*, April 1997; Amnesty International and Human Rights Watch reports are forthcoming.

12 Human Rights Watch, Children's Rights Project, Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service, April 1997.

13 Kerwin, Donald, "Detention of Newcomers: Constitutional Standards and New Legislation: Part Two," *Immigration Briefings*, December 1996.

severely limit their capacity to represent detainees, major obstacles in gaining access to detention facilities exacerbate the problem. Detainees in many facilities are limited to collect calls and face severe visitation restrictions. Attorneys are often forced to wait long periods of time before being allowed to see their clients, and it is not uncommon for detainees to be transferred to a remote facility with no notice to their attorney.[14] Detainees are also in great need of a variety of social services and pastoral care, which, also due to limited resources and access constraints, are equally difficult to obtain.

What Regulations Exist for Detention Conditions and Access?

In late January, the INS released uniform standards for how INS detention facilities should provide detainees' access to legal representatives and legal rights materials, other visitors, and telephones. Other standards were released that address certain conditions issues, such as access to medical care. The INS has also promised to develop 27 additional standards for the operation of detention facilities.

While the standards mark an improvement on current practices, they only apply to INS and contractor-operated facilities. State and county jails, where the majority of INS detainees are held, are not covered by the standards. Furthermore, the standards have yet to be implemented, which will require major changes in current practices. Agencies providing legal and/or social services will play a large role in monitoring conditions and advocating for the implementation of the new standards.

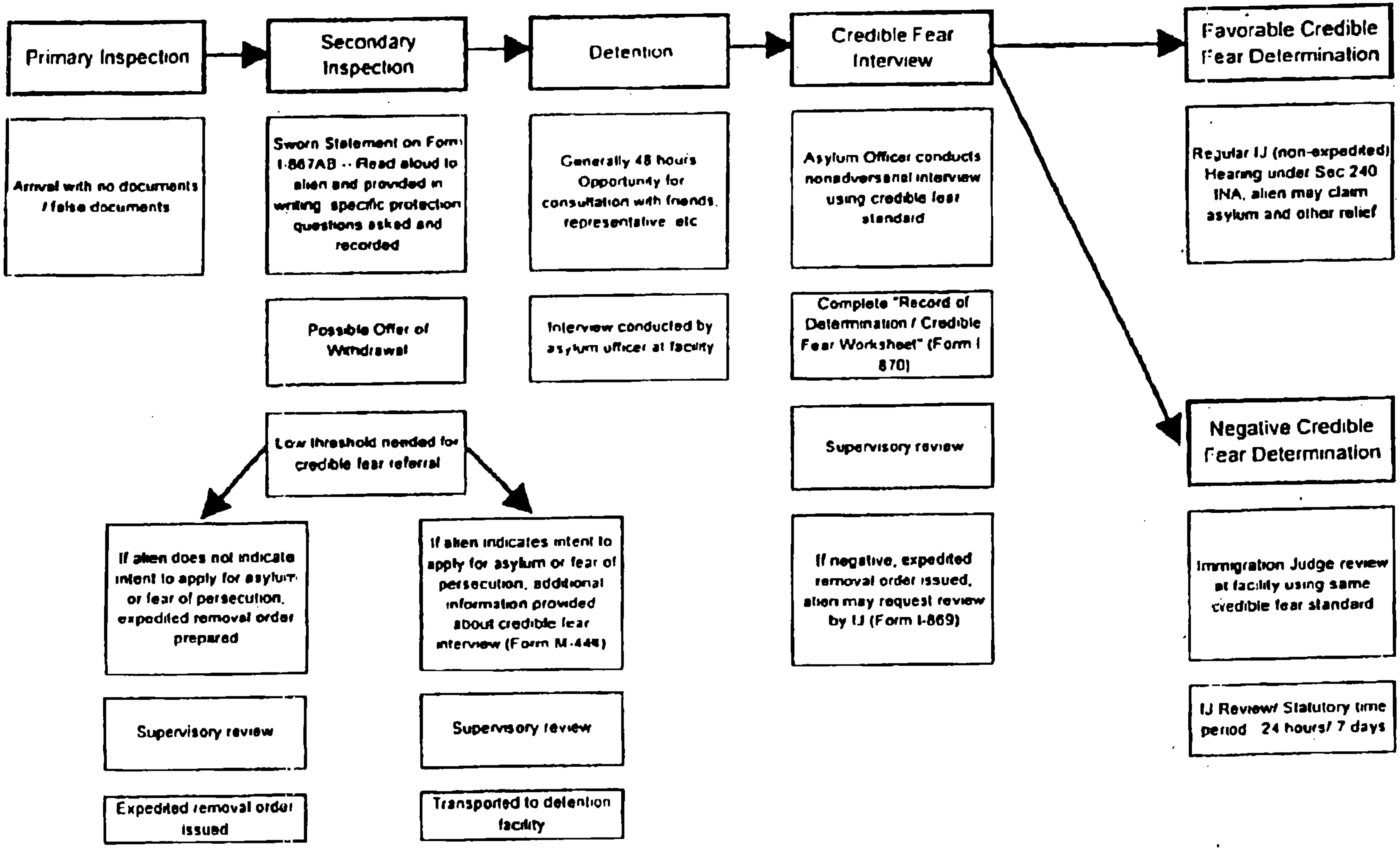
What Advocacy Efforts Are Underway to Address These Problems?

Local legal and social service providers, community volunteers, and advocates around the country are working to monitor and improve conditions and access to services for detainees, and to advocate for policy reform. The *Detention Watch Network* is a network of religious, immigrant and human rights organizations concerned about detention. The Lutheran Immigration and Refugee Service (LIRS), based in New York City, is helping to coordinate network efforts. For more information, or for a referral to a local service provider, contact Annie Wilson or Esther Ebrahimian at LIRS.

Detention Watch Network
Lutheran Immigration and Refugee Service
390 Park Avenue South
New York, NY 10016-8803
Tel. 212-532-6350
FAX 212-683-1329

[14] Women's Commission for Refugee Women and Children, *Liberty Denied: Women Seeking Asylum Imprisoned in the United States*, April 1997.

HIGHLIGHTS OF EXPEDITED REMOVAL / CREDIBLE FEAR PROCESS



Irene Bueno

06/25/99 11:51:23 AM

Record Type: Record

To: Leanne A. Shimabukuro/OPD/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: Immigration Issue

I know a little bit about it. Maureen and I met with a group yesterday that raised a number of issues that included this one - which was a new one to me.

I can give you info on it and let's figure out how you and want to work on it. It's seems involve both immigration and criminal issues. (see attached documents). I will also try to get more info from INS.

Leanne A. Shimabukuro

Leanne A. Shimabukuro 06/25/99 11:24:56 AM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc:
Subject: Immigration Issue

Do you know anything about this?

---------------------- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 06/25/99 11:24 AM ---------------------------

Michelle Peterson
06/24/99 10:12:48 AM

Record Type: Record

To: Jose Cerda III/OPD/EOP@EOP, Leanne A. Shimabukuro/OPD/EOP@EOP
cc:
Subject: Immigration Issue

Is this something either of you know about? Do you know if either we or Justice are prepared to take a position? Im happy to meet with them and hear them out, but I don't want to raise their hopes if DOJ/we are about to take a contrary position. Im afraid I don't know anything about the issue.

---------------------- Forwarded by Michelle Peterson/WHO/EOP on 06/24/99 10:10 AM ---------------------------

Maureen T. Shea 06/24/99 09:32:30 AM

Record Type: Record

To: Michelle Peterson/WHO/EOP@EOP

cc:
Subject: Question

Shelly - I'm Maureen Shea and I do religious outreach in OPL. I have worked a lot on outreach to the Muslim community. As you know, they are very concerned about issues involved with secret evidence. Rep. Bonior has a bill dealing with it. My understanding is that Justice has not taken a position on it. Would it be appropriate to bring in a group to speak with you or someone else about it, or should I direct them to Justice?

Many thanks - I'm on X62721 if you want to talk.

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WASHINGTON NATIONAL OFFICE
Laura W. Murphy
Director

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DEPORTATION BASED ON SECRET EVIDENCE

No person should be deprived of liberty on the basis of evidence kept secret from them.

This simple statement is a fundamental requisite of any fair legal system. "Star chamber proceedings" conducted out of sight of the accused and her attorney are a feature of totalitarian governments, not of our own. The Supreme Court has said time and again that deportation is a severe deprivation of liberty – one that can separate a person from home, family, career, and "all that makes life worth living."

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) together with the 1996 antiterrorism law, establishes a new court charged only with hearing cases in which the government seeks to deport aliens based on secret evidence submitted in the form of classified information. Though the secret evidence court has not yet heard a case, the INS has already moved in other proceedings to use secret evidence against aliens. In commenting on one such attempt, a court said, "One would be hard pressed to design a procedure more likely to result in erroneous deprivations. ... Secrecy is not congenial to truth seeking. ... No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and the opportunity to meet it." Our adversarial legal system demands no less.

The INS is currently using secret evidence in a number of cases to deny aliens -- virtually all of whom are Muslims and Arabs -- an opportunity to be freed on bond while their case is pending, and to deny them political asylum and similar relief known as withholding of deportation. The ACLU represents one such alien, Nasser Ahmed, a 37-year old Egyptian who was denied bond, asylum and withholding based on secret evidence. The immigration judge who heard the evidence said that he had "no doubt" that Mr. Ahmed would be tortured if returned to Egypt.

The INS is also using secret evidence in cases involving six Iraqis airlifted by the U.S. from Northern Iraq because they were part of a failed CIA plot to destabilize Saddam. The INS is denying them political asylum based on secret evidence. They are represented by a legal team including former Director of Central Intelligence R. James Woolsey, who was himself denied the opportunity to see the evidence against his clients, and who commented that secret evidence is what "one would expect to find in Iraq, not the U.S."

It is impossible to fight charges without knowing the nature of those charges, and who is making them. In one Supreme Court case, secret evidence was used to deny a WWII "war bride" the opportunity to come to the U.S. and join her husband. When eventually she was granted a hearing, the secret evidence was found to be worthless because the "confidential source" that offered it turned out to be a jilted former lover of her husband.

Nobody should be deported, or otherwise deprived of liberty, based on secret evidence. The INA's secret evidence provisions should be revised to track the Classified Information Procedures Act, which governs use of classified information in criminal cases. END

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Bill 1 of 50

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Secret Evidence Repeal Act of 1999 (Introduced in the House)

HR 2121 IH

106th CONGRESS

1st Session

H. R. 2121

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on **evidence** that is kept **secret** from the alien.

IN THE HOUSE OF REPRESENTATIVES

June 10, 1999

Mr. BONIOR (for himself and Mr. CAMPBELL, Mr. BARR of Georgia, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on **evidence** that is kept **secret** from the alien.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `**Secret Evidence** Repeal Act of 1999'.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) No person physically present in the United States, including its outlying possessions, should be deprived of liberty based on **evidence** kept **secret** from that person, including information classified for national security reasons.

(2) Removal from the United States can separate a person from the person's family, may expose the person to persecution and torture, and amounts to a severe deprivation of liberty.

(3) Use of **secret evidence** in immigration proceedings deprives the alien of due process rights guaranteed under the United States Constitution and undermines our adversarial system, which relies on cross-examination as an engine of truth-seeking.

SEC. 3. REPEAL OF SECRET EVIDENCE COURT PROCEDURES.

(a) REPEAL- Title V of the Immigration and Nationality Act (8 U.S.C. 1531-1537) is repealed.

(b) CLERICAL AMENDMENT- The table of contents for such Act is amended by striking the title heading, and the items, relating to title V.

SEC. 4. REPEAL OF USE OF SECRET EVIDENCE IN OTHER IMMIGRATION PROCEEDINGS.

(a) ALIEN'S RIGHTS IN PROCEEDINGS- Section 240(b)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1229a(b)(4)(B)) is amended to read as follows:

`(B) the alien shall have a reasonable opportunity to examine all of the **evidence** against the alien, to present **evidence** on the alien's own behalf, and to cross-examine all witnesses presented by the Government, and'.

(b) BURDEN ON ALIEN- Section 240(c)(2) of such Act (8 U.S.C. 1229a(c)(2)) is amended by striking the last sentence and inserting the following:

`In meeting the burden of proof under subparagraph (B), the alien shall have access to the alien's visa or other entry document, if any, and any other records and documents pertaining the alien's admission or presence in the United States.'.

SEC. 5. REPEAL OF USE OF SECRET EVIDENCE TO DENY AFFIRMATIVE APPLICATIONS FOR IMMIGRATION BENEFITS.

(a) IN GENERAL- Title I of the Immigration and Nationality Act is amended by adding at the end the following:

`SEC. 106. REPEAL OF USE OF SECRET EVIDENCE TO DENY AFFIRMATIVE APPLICATIONS FOR IMMIGRATION BENEFITS.

`No decision on any immigration benefit (including the granting of asylum, the withholding of deportation or removal, adjustment of status, naturalization, or the granting of temporary protected status) shall be made on the basis of any **evidence** not shared with the applicant.'.

(b) CLERICAL AMENDMENT- The table of sections for such Act is amended by adding at the end of the items relating to title I the following new item:

`Sec. 106. Repeal of use of **secret evidence** to deny affirmative applications for immigration benefits.'.

SEC. 6. REPEAL OF USE OF SECRET EVIDENCE IN BOND PROCEEDINGS AND JUDICIAL REVIEW OF BOND DETERMINATIONS.

(a) JUDICIAL REVIEW- Section 236(e) of the Immigration and Nationality Act (8 U.S.C. 1226(e)) is amended to read as follows:

`(e) JUDICIAL REVIEW- Notwithstanding any other provision of law, any alien against whom an order concerning detention, release on bond or parole pending or subsequent to an order of deportability, excludability, or removability shall be entitled to judicial review thereof in habeas corpus proceedings to determine whether the Attorney General is acting in violation of the laws or Constitution

of the United States, or is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances of the case.'.

(b) ALIENS' RIGHTS IN BOND PROCEEDINGS- Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by adding at the end the following:

`(f) ALIENS' RIGHTS IN BOND PROCEEDINGS- In proceedings under this section--

`(1) the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings;

`(2) the alien shall have a reasonable opportunity to examine all of the **evidence** against the alien, to present **evidence** on the alien's own behalf, and to cross-examine all witnesses presented by the Government; and

`(3) a complete record shall be kept of all testimony and **evidence** produced at the proceeding.'.

SEC. 7. REPEAL OF USE OF SECRET EVIDENCE AGAINST LAWFUL PERMANENT RESIDENTS, ASYLUM SEEKERS, AND ALIENS PAROLED INTO THE UNITED STATES.

Section 235(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1225(c)(1)) is amended by striking `If' and inserting: `Except in the case of an alien who (i) is a lawful permanent resident; (ii) was granted advance parole; (iii) was paroled into the United States under section 212(d)(5); or (iv) is seeking asylum, if'.

SEC. 8. TRANSITION.

(a) APPLICATION TO DETAINEES- Not more than 30 days after the effective date of this Act, the Attorney General shall, with respect to any alien then detained or whose liberty is otherwise restricted by the Attorney General, on the basis in whole or in part of information submitted by the Government ex parte and in camera to an immigration judge, to the Board of Immigration Appeals or to any court--

(1) provide such alien a copy or transcript of such information, and provide the alien with a redetermination of bond (or a reconsideration of the terms of custody, as the case may be) based on **evidence** disclosed to the alien and the alien's response to such **evidence** ; or

(2) withdraw from the record of any proceedings involving such alien any and all **evidence** , testimony, or other information submitted by the Government ex parte and in camera to the immigration judge, the Board of Immigration Appeals, or to any court, as the case may be, and--

(A) release such alien if such alien is detained; and

(B) cease all restrictions on the liberty of such alien if such restrictions exist,

unless detention is warranted solely on the basis of **evidence** disclosed to the alien; or

(3) release such alien.

(b) APPLICATION TO ALIENS SEEKING IMMIGRATION BENEFITS- Not more than 30 days after the effective date of this Act, the Attorney General shall, with respect to any alien physically present in the United States whose application for an immigration benefit is or was opposed by the Government on the basis in whole or in part of information submitted by the Government ex parte and in camera to an immigration judge, to the Board of Immigration Appeals, or to any court--

(1) provide such alien a copy or transcript of such information and a reasonable opportunity to respond to such information, and grant or deny the application or reopen the proceedings and afford the alien de novo reconsideration of the application, as the case may be, based solely on **evidence** in the public record; or

(2) withdraw from the record of any proceedings involving such alien any and all **evidence** , testimony, or other information submitted by the Government ex parte and in camera to the immigration judge, the Board of Immigration Appeals, or to any court, as the case may be, and grant or deny the application or reopen the proceedings and afford the alien de novo reconsideration of the application, as the case may be, based solely on **evidence** in the public record; or

(3) grant the application.

(c) TERMINATION OF PROCEEDINGS- In the case of an alien in immigration proceedings as of the effective date of this Act conducted under title V of the Immigration and Nationality Act--

(1) such proceedings are terminated as of the effective date of this Act without prejudice to the Attorney General or the alien; and

(2) the Attorney General may, in his or her discretion, commence de novo removal proceedings within 10 days thereafter under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

SEC. 9. REGULATIONS.

The Attorney General shall promulgate regulations, including regulations governing applications for asylum, withholding of deportation or removal, adjustment of status, naturalization, temporary protected status, and relief from deportation, exclusion, or removal to implement this Act not more than 90 days after the effective date of this Act.

SEC. 10. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to all aliens without regard to the date of arrival, admission, entry, or parole into the United States.

Bill Summary & Status for the 106th Congress

NEW SEARCH | HOME | HELP | ABOUT COSPONSORS

H.R.2121
SPONSOR: Rep Bonior, David E. (introduced 06/10/99)

COSPONSORS(8):

Rep Campbell, Tom - 06/10/99	Rep Barr, Bob - 06/10/99
Rep Conyers, John, Jr. - 06/10/99	Rep Rahall, Nick J., II - 06/18/99
Rep LaHood, Ray - 06/18/99	Rep Rivers, Lynn N. - 06/18/99
Rep Rodriguez, Ciro - 06/18/99	Rep Kildee, Dale E. - 06/18/99

Bill Summary & Status for the 106th Congress

NEW SEARCH | HOME | HELP | ABOUT COSPONSORS

H.R.1485
SPONSOR: Rep Frank, Barney (introduced 04/20/99)

COSPONSORS(53):

Rep Frost, Martin - 04/20/99
Rep Bentsen, Ken - 04/20/99
Rep Deutsch, Peter - 04/20/99
Rep Gonzalez, Charles A. - 04/20/99
Rep Gutierrez, Luis V. - 04/20/99
Rep Lampson, Nick - 04/20/99
Rep Hinchey, Maurice D. - 04/20/99
Rep Jackson-Lee, Sheila - 04/20/99
Rep Maloney, Carolyn B. - 04/20/99
Rep McGovern, James P. - 04/20/99
Rep Menendez, Robert - 04/20/99
Rep Ortiz, Solomon P. - 04/20/99
Rep Reyes, Silvestre - 04/20/99
Rep Ros-Lehtinen, Ileana - 04/20/99
Rep Shays, Christopher - 04/20/99
Rep LaFalce, John J. - 04/26/99
Rep Waxman, Henry A. - 05/04/99
Rep Meeks, Gregory W. - 05/06/99
Rep Meehan, Martin T. - 05/13/99
Rep Jackson, Jesse L., Jr. - 05/13/99
Rep Crowley, Joseph - 05/17/99
Rep Woolsey, Lynn C. - 05/20/99
Rep Norton, Eleanor Holmes - 05/24/99
Rep Brown, George E., Jr. - 06/07/99
Rep Pelosi, Nancy - 06/07/99
Rep Engel, Eliot L. - 06/22/99
Rep Nadler, Jerrold - 06/22/99
Rep Diaz-Balart, Lincoln - 04/20/99
Rep Delahunt, William D. - 04/20/99
Rep Filner, Bob - 04/20/99
Rep Green, Gene - 04/20/99
Rep Hall, Ralph M. - 04/20/99
Rep Lee, Barbara - 04/20/99
Rep Hinojosa, Ruben - 04/20/99
Rep Johnson, Eddie Bernice - 04/20/99
Rep Martinez, Matthew G. - 04/20/99
Rep Meek, Carrie P - 04/20/99
Rep Morella, Constance A. - 04/20/99
Rep Pastor, Ed - 04/20/99
Rep Rodriguez, Ciro - 04/20/99
Rep Roybal-Allard, Lucille - 04/20/99
Rep Wynn, Albert Russell - 04/20/99
Rep Rangel, Charles B. - 04/26/99
Rep Olver, John W. - 05/04/99
Rep Baldacci, John Elias - 05/06/99
Rep Christensen, Donna MC - 05/13/99
Rep Napolitano, Grace F. - 05/14/99
Rep Schakowsky, Janice D. - 05/17/99
Rep Berman, Howard L. - 05/20/99
Rep Lewis, John - 05/26/99
Rep McDermott, Jim - 06/07/99
Rep King, Peter T. - 06/09/99
Rep Weiner, Anthony D. - 06/22/99

Irene Bueno

08/16/99 05:40:29 PM

Record Type: Record

To: Scott Busby/NSC/EOP

cc:

Subject: FYI - Bonior Secret Evidence bill

HR 2121 IH

106th CONGRESS

1st Session

H. R. 2121

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(1) provide such alien a copy or transcript of such information, and provide the

alien with a redetermination of bond (or a reconsideration of the terms of custody, as the case may be) based on evidence disclosed to the alien and the alien's response to such evidence; or

(2) withdraw from the record of any proceedings involving such alien any and all evidence, testimony, or other information submitted by the Government ex parte and in camera to the immigration judge, the Board of Immigration Appeals, or to any court, as the case may be, and--

(A) release such alien if such alien is detained; and

(B) cease all restrictions on the liberty of such alien if such restrictions exist,

unless detention is warranted solely on the basis of evidence disclosed to the alien; or

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(b) APPLICATION TO ALIENS SEEKING IMMIGRATION BENEFITS- Not more than 30 days after the effective date of this Act, the Attorney General shall, with respect to any alien physically present in the United States whose application for an immigration benefit is or was opposed by the Government on the basis in whole or in part of information submitted by the Government ex parte and in camera to an immigration judge, to the Board of Immigration Appeals, or to any court--

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(2) withdraw from the record of any proceedings involving such alien any and all evidence, testimony, or other information submitted by the Government ex parte and in camera to the immigration judge, the Board of Immigration Appeals, or to any court, as the case may be, and grant or deny the application or reopen the proceedings and afford the alien de novo reconsideration of the application, as the case may be, based solely on evidence in the public record; or

(3) grant the application.

(c) TERMINATION OF PROCEEDINGS- In the case of an alien in immigration proceedings as of the effective date of this Act conducted under title V of the Immigration and Nationality Act--

(1) such proceedings are terminated as of the effective date of this Act without prejudice to the Attorney General or the alien; and

(2) the Attorney General may, in his or her discretion, commence de novo removal proceedings within 10 days thereafter under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

SEC. 9. REGULATIONS.

The Attorney General shall promulgate regulations, including regulations governing applications for asylum, withholding of deportation or removal, adjustment of status, naturalization, temporary protected status, and relief from deportation, exclusion, or removal to implement this Act not more than 90 days after the effective date of this Act.

SEC. 10. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to all aliens without regard to the date of arrival, admission, entry, or parole into the United States.

END

Maureen T. Shea 07/15/99 11:49:37 AM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: Justice

This is a note from a meeting of the AG in Michigan earlier this year:

- Secret evidence is used by the INS in immigration charges that result in deportee cases. There are growing concerns from elected officials, judges and lawyers over the accused and his attorney not being able to review the evidence in the case. *Attorney General Reno promised to review the constitutionality of these procedures but gave no time deadline for the review.*

Maureen T. Shea 06/25/99 03:23:04 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc: michelle peterson/who/eop@eop, leanne a. shimabukuro/opd/eop@eop

Subject: Re: Immigration Issue

I do not have anything in writing. Tuesday there was a meeting at the State Dept. with Muslims on civil rights issues. Julie Fernandez was there from Bill Lann Lee's office and said that Justice had not taken a position on Bonior's secret evidence bill. As you probably know, both Mort Halperin and Harold Koh of State, who were at the meeting, have long histories in this area. I contacted Shelly because the only issue I was raising was evidence. I told her that I did not want to do a briefing as yet for exactly the reason that it could raise expectations, but I am anxious to know what position we are going to take on the bill. Subsequently, on Debi's behalf I attended the larger immigration meeting where secret evidence was also an issue - but it was not raised by them as a major one.

Bottom line - I don't care who, I'm just interested in our position on the Bonior bill. I confess my response in both meetings was that we should be helping these people - Mary Beth's as well - but not clear to me how we reach a decision. I just know it is always complicated when it is INS/Justice/WH.

Let's consult when Debi returns - thanks.

First Patricia A <Patricia.A.First@usdoj.gov>
07/01/99 09:15:32 AM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:
Subject: RE: Secret Evidence

Irene --

Talk to James about this issue. It's very complicated and I just became involved in it. The Administration supported the secret evidence provisions in the AEDPA.

Patty.

-----Original Message-----
From: Irene_Bueno@opd.eop.gov@inetgw2
Sent: Wednesday, June 30, 1999 7:15 PM
To: St Denis Cathy; Erenbaum Allen; First Patricia A
Subject: Secret Evidence

A group spoke to us last week about the issue. Do we have a position? Is this part of your consideration as you develop a cancellation/discretion proposal? Let me know. Thanks.

---------------------- Forwarded by Irene Bueno/OPD/EOP on 06/30/99 07:10 PM ---------------------------

Maureen T. Shea
06/30/99 06:02:57 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc: Deborah B. Mohile/WHO/EOP
Subject: Secret Evidence

I put in our OPL weekly report to the President a note about Muslim concern about secret evidence/Bonior bill and he underlined it - which I understand means it's something he cares about - so if you could find out what Justice is up to on the Bonior bill and let me know, that would be great - thanks.

Attack on Child Poverty

NOT SO LONG ago, Republicans swore to cut government and Democrats scarcely dared resist. Nowadays the Republican front-runner for the presidency admonishes his government-cutting party colleagues not to go too far and Democrats propose expansions of government social programs. Last week both candidates for the Democratic presidential nomination, Al Gore and Bill Bradley, laid out their ideas for attacking child poverty. Mr. Bradley's speech was perhaps the most ambitious on this subject by any presidential candidate in the past 30 years.

Mr. Bradley promises to haul 3 million children out of poverty in his first term in office and another 4 million in his second. That would mean cutting child poverty in half, which would move America's child-poverty rate nearer to that common in most industrialized nations. It is a huge and profoundly worthwhile challenge. By offering precise targets, Mr. Bradley has set down markers by which his administration could be judged if he were elected.

Mr. Bradley stands out for his bold goals, but the details of his proposals are not substantially different from those of Mr. Gore. Mr. Bradley would raise the minimum wage, as Mr. Gore would, though he promises to lock in future raises by indexing the minimum wage to the pay of the median worker. Next, Mr. Bradley would make the earned income tax credit for poor workers more generous, continuing a bipartisan trend of recent years. Mr. Bradley also aims to decrease nonpayment of child support by absentee fathers. This was the main focus of Mr. Gore's recent speech on poverty.

In part, the focus on poverty reflects the closeness of the Democratic nomination race: Both candidates are competing for support from the liberal base of the party. In part, too, the new anti-poverty drive reflects prosperity: The expectation of budget surpluses in the next few years makes it possible to propose new programs without sounding fiscally irresponsible. These factors could easily fade. Once the primaries are over, the Democratic victor will start speaking to centrist voters. And the surplus is in large part an illusion, as the current budget negotiations in Congress have begun to make clear.

There also may be a third factor behind the renewed focus on poverty, and it is paradoxical. The enactment of welfare reform in 1996, which had the bad effect of risking a steep rise in child poverty, had at least the good effect of disarming those who had made careers of deriding the prior program. This opened the way for a renewed antipoverty crusade to become politically viable. Now that welfare reform has passed, it is harder to blame big government for fueling poverty by creating a culture of dependency. On the contrary, the need for public interventions that do not weaken incentives to work has become obvious.

Both Mr. Bradley and Mr. Gore have grasped this point. They regard jobs as the best antipoverty program and seek mainly to help those who remain poor even though they are working. "The foundation of our effort should be the guarantee that no one who works full time, year round, should have to live in poverty," Mr. Bradley declared. We hope that this sentiment catches on, whatever happens to the candidate.

Secrecy and Due Process

THE CASE OF Hany Mahmoud Kiareldeen is about as thorough an indictment of the use of secret evidence as one could ever expect to see. Mr. Kiareldeen, a Palestinian who has lived in this country since 1990, was arrested in March of last year. The government has sought to deport him and has used classified evidence to oppose his application for permanent residency and to keep him detained. No judge who has examined this evidence—and the count stands at seven—has deemed it a credible basis for his removal; a U.S. District judge this week even held that his continued incarceration based on secret evidence was unconstitutional. Yet Mr. Kiareldeen remains in custody, and the government continues to seek temporary stays of the various orders to release him.

The secret evidence purportedly indicates that Mr. Kiareldeen was a member of a terrorist group, that he had been alleged by a single source to have hosted a meeting of the World Trade Center bombing conspirators and that a source also had claimed that he wanted to kill Attorney General Janet Reno.

Mr. Kiareldeen has never been permitted to confront his accuser. But in immigration court, he nonetheless managed to poke serious holes in this supposed evidence. He presented numerous witnesses who testified that he didn't even live in the house at which he supposedly held the illicit meeting at the time the meeting took place, for example. And he showed that his ex-wife—who had filed a string of dubious domestic violence charges against him—was the likely source of the allegations against him. Testimony before the immigration court suggested that, far from being an Islamic fundamentalist, Mr. Kiareldeen was not especially religious—he drinks alcohol and is married to a non-Muslim—and not politically active either. Back in April the immigration court ruled that he should get permanent residency status and be released on bond pending any government appeal.

The Immigration and Naturalization Service, however, got his release stayed while it appealed this ruling, and Mr. Kiareldeen's lawyers subsequently filed a habeas corpus petition. In the past week, one three-judge immigration review panel upheld the decision to make Mr. Kiareldeen a permanent resident. Another upheld the decision to release him on bond. And federal district Judge William Walls held in the habeas case that "the government's reliance on secret evidence violates the due process protections that the Constitution directs must be extended to all persons within the United States, citizens and resident aliens alike." Yet despite such consistent and total repudiation of the government's case, Mr. Kiareldeen remains detained.

This case is another in a string of examples of secret-evidence cases collapsing upon the sort of close scrutiny the secrecy is intended to avoid. It is hard to escape the conclusion that a process as antithetical to our legal system as holding someone accountable in court on the basis of material he cannot directly attack can never be legitimate.

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