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Date: March 13/2000

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Please deliver this

TO:

Name: Maureen Shea

Location: Old Executive Building

Tel. No.: (202) 456-2721

Fax No. (202) 456-6218

FROM:

Name: Azizah al-Hibri

Location: Law Library of Congress

Tel. No.: (202) 707-4725

Fax No. (202) 707-1820

CONCERNING:

Message, if any:

Revised letter to President, with
blacklined copy reflecting additions
Thanks

[Signature]

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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

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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