

Secret U.S. Evidence Entangles Immigrants; Rarely Used Law Now Falls Most Heavily on Arabs

The Washington Post

October 19, 1997, Sunday, Final Edition

Copyright 1997 The Washington Post

Section: A SECTION; Pg. A03

Length: 1179 words

Byline: William Branigin, Washington Post Staff Writer

Body

The day began as usual for Mazen Najjar, a Palestinian who has lived in the United States 16 years. After having breakfast with his wife and their three daughters, he was preparing to take the two eldest to school. Then came a knock on the door of his Tampa apartment.

As his family looked on, agents of the Immigration and Naturalization Service and FBI, accompanied by local sheriff's deputies, took Najjar away in handcuffs.

That was on May 19. Six months later, Najjar, 40, is still being held in a Florida county jail. Although he was arrested on a charge of overstaying his student visa, his continued detention stems from a more serious accusation, but one that U.S. authorities refuse to spell out.

Like more than a dozen other Arabs around the country, Najjar, former editor of an Islamic journal and a pastor at a Tampa mosque, has been denied bond on the basis of secret evidence the government only will say indicates an association "with a known terrorist group." So far, none of those being detained has been charged with any crime.

In trying to defend Najjar, "his lawyers felt they were fighting a ghost," said his sister, Nahla Arian, a naturalized U.S. citizen. She said he belonged to a Tampa committee that supported the Palestinian uprising known as the intifada before disbanding in 1992, but denied he has any connection to Middle Eastern terrorists.

After Najjar's arrest, his sister said, FBI agents interrogated him for two hours and offered to help solve his immigration problems for cooperation in their investigation. The FBI office in Tampa declined comment on grounds that the inquiry is "ongoing."

The use of secret evidence is prohibited in criminal cases, including spy trials involving issues of national security. But a little-known provision of immigration law in effect since the 1950s allows secret evidence to be introduced in certain immigration proceedings. The classified information, usually from the FBI, is shared with judges, but withheld from the accused and their lawyers.

Lately the rarely used provision has fallen most heavily on Arabs, and their advocates say this is no coincidence. U.S. Islamic and civil rights groups claim Muslims and Arabs are being targeted in a campaign of guilt-by-association that relies on secret evidence to brand opponents of Israel as terrorists.

Government officials maintain that no group is being singled out unfairly, but say there is evidence Muslim organizations in the United States have been used to raise funds for militant groups, such as Islamic Jihad and Hamas, that oppose the Arab-Israeli peace process and whose military wings have claimed responsibility for a number of bombings against civilian targets in Israel.

Secret U.S. Evidence Entangles Immigrants; Rarely Used Law Now Falls Most Heavily on Arabs

The American Civil Liberties Union and Arab-American groups are challenging the INS policy, and both sides say they expect the issue eventually to reach the Supreme Court.

Secret evidence also was introduced in at least two of six immigration cases involving members of the Irish Republican Army, but Attorney General Janet Reno last month suspended those cases after the State Department suggested that pursuing them could disrupt the peace process in Northern Ireland.

In **using secret evidence**, the INS says it observes legal distinctions based on court rulings that go back to the early 1950s. The agency cannot, for example, **use secret evidence** to determine whether someone should be deported. But it can present such information to block someone from receiving political asylum, permanent residence, naturalization or release on bond.

Critics argue that the **use of secret evidence** for any purpose ought to be illegal.

"In my view, it is unconstitutional to deprive someone of his liberty based on **secret evidence** that he has no opportunity to rebut," said David Cole, a Georgetown University **law** professor suing the government over the issue. "**Secret evidence** simply cannot be squared with the basic requirements of due process."

In Najjar's case, his arrest came after a long wrangle with the INS that began while he was studying at the University of South Florida. When he applied to adjust his status from student to legal permanent resident, the INS took his Egyptian-issued travel document identifying him as a Palestinian refugee, then lost his file for seven years, his sister says. The INS denies losing the file. In any event, the document expired, and the Egyptian Embassy has refused to renew it.

Najjar's family says his troubles mounted when the FBI in 1995 started investigating an Islamic think tank affiliated with the university, the World and Islam Studies Enterprise, which employed Najjar as chief editor of its research journal. The institute came under scrutiny after a former administrator, Ramadan Abdullah Shallah, became the leader of Islamic Jihad, succeeding a Palestinian militant assassinated by suspected Israeli agents on Malta in October 1995.

A founder of the think tank and brother-in-law of Najjar, Sami Arian, also was investigated by the FBI and INS, which opposed his application for **U.S.** citizenship in part on the basis of **secret evidence**. When Arian asked the INS for his file, the agency withheld 20 pages it had received from the FBI. In August, two years after requesting the pages under the Freedom of Information Act, the FBI produced them. They were clippings from Tampa newspapers.

According to Houeida Saad of the Washington-based American-Arab Anti-Discrimination Committee, part of the problem in the INS cases is that groups involved in terrorist attacks, such as Hezbollah and Hamas, also run clinics, orphanages and other social welfare services, a dual role that federal authorities often do not acknowledge. She cited the case of Ali Khalil Termos, a 30-year-old Lebanese held by the INS in Detroit for more than a year on the basis of **secret FBI evidence**. Under FBI questioning, she said, he had admitted sending more than \$ 300 to a Hezbollah-run orphanage in southern Lebanon to help care for two children of a relative killed in an Israeli raid.

The INS says the **secret evidence** was **used** to deny Termos bond, but he was picked up and eventually deported this month because he overstayed his student visa, worked illegally in a gas station and failed to heed a deadline for voluntary departure. He is married to an American citizen, which normally would make him eligible for an **immigrant** visa.

Among the **most** controversial cases is that of Nasser Ahmed, a 37-year-old Egyptian associate of Sheik Omar Abdel Rahman, a Muslim cleric convicted of involvement in a terrorist bombing plot in New York last year. Ahmed, who has lived in the **United States** 11 years, helped run a Brooklyn mosque and served as the sheik's court-appointed translator.

Secret U.S. Evidence Entangles Immigrants; Rarely Used Law Now Falls Most Heavily on Arabs

When he showed up for an immigration hearing in April 1996 after his application for political asylum was denied, he was arrested on a charge of overstaying his visa. For the last 1 1/2 years, he has been held in solitary confinement in a New York City jail, denied bond because of **secret evidence**.

Graphic

Photo, st. petersburg times/bill serne, Six months after his arrest, Mazen Najjar, who has lived in the **United States** 16 years, is still being held without bond.

Classification

Language: ENGLISH

Subject: ARRESTS (90%); IMMIGRATION (89%); TERRORIST ORGANIZATIONS (89%); MUSLIMS & ISLAM (89%); **LAW** ENFORCEMENT (89%); TERRORISM (89%); IMMIGRATION **LAW** (89%); RELIGION (89%); CRIMINAL OFFENSES (89%); INVESTIGATIONS (89%); SPECIAL INVESTIGATIVE FORCES (89%); ASSOCIATIONS & ORGANIZATIONS (88%); US FEDERAL GOVERNMENT (78%); HAMAS (78%); CITIZENSHIP (77%); FUNDRAISING (77%); PASSPORTS & VISAS (76%); MIGRATION ISSUES (76%); CRIMINAL INVESTIGATIONS (76%); ESPIONAGE (76%); ARAB AMERICANS (76%); SHERIFFS (76%); NATURALIZATION (76%); FEDERAL INVESTIGATIONS (76%); LAWYERS (72%); WAR & CONFLICT (71%); CORRECTIONS (70%); BAIL (70%); NATIONAL SECURITY (67%); HUMAN RIGHTS ORGANIZATIONS (67%); BOMBINGS (67%); **LAW** COURTS & TRIBUNALS (66%); SUPREME COURTS (66%); CIVIL RIGHTS (65%); EDITORIALS & OPINIONS (65%); PEACE PROCESS (50%)

Company: FEDERAL BUREAU OF INVESTIGATION (83%); FEDERAL BUREAU OF INVESTIGATION (83%)

Organization: FEDERAL BUREAU OF INVESTIGATION (83%); FEDERAL BUREAU OF INVESTIGATION (83%); FEDERAL BUREAU OF INVESTIGATION (83%); FEDERAL BUREAU OF INVESTIGATION (83%)

Industry: LAWYERS (72%)

Geographic: TAMPA, FL, USA (94%); FLORIDA, USA (79%); **UNITED STATES** (94%); ISRAEL (93%); STATE OF PALESTINE (92%); MIDDLE EAST (79%)

Load-Date: October 19, 1997