Man Jailed on Secret Evidence Should Be Freed, Judge Says

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Body

A Federal immigration *__judge__* ruled yesterday that an Egyptian *__man__* kept in solitary confinement for the last three years on the basis of *__secret__* *__evidence__* allegedly linking him to a terrorist organization should be *__freed__* from *__jail__*.

The *__man__*, Nasser K. Ahmed, and his lawyers have never been told exactly what *__secret__* *__evidence__* the Government had on Mr. Ahmed, and contended that he was innocent. Yesterday, *__Judge__* Donn Livingston agreed, ruling that Mr. Ahmed was not a threat to national security and should, in fact, be given political asylum in the United States instead of being deported.

The ruling was the third case in the last year where immigration *__judges__* have questioned the Immigration and Naturalization Service's procedures in using *__secret__* *__evidence__* against suspected terrorists.

In a practice assailed by civil liberties and Arab-American groups, two dozen suspected terrorists, all Arabs, are being detained around the country by the immigration service on the basis of *__secret__* *__evidence__*. None of the defendants and their lawyers have been allowed to see the *__evidence__* against them. Immigration and intelligence officials argue that the *__evidence__* cannot be disclosed because it endangers the sources of the information and could compromise national security.

Mr. Ahmed, 38, a father of three, is unlikely to be *__freed__* quickly. Immigration service lawyers filed an immediate appeal of *__Judge__* Livingston's decision that could take months to resolve. Mr. Ahmed also awaits sentencing on a June conviction for making false statements on an immigration form.

Government lawyers accused Mr. Ahmed of being a follower of Sheik Omar Abdel Rahman, the blind Egyptian cleric convicted of conspiring to blow up the World Trade Center and other New York landmarks. Mr. Ahmed served as the sheik's legal assistant during his 1995 trial but he vehemently denied being a terrorist.

His lawyers *__said__* that the ruling yesterday further undermined the Government's use of *__secret__* *__evidence__*. In such cases, Government lawyers are allowed to present *__secret__* *__evidence__* and witnesses to *__judges__* in private sessions in the *__judge__*'s chambers. The defendants and their lawyers are not allowed to be present and are unable to rebut any of the *__evidence__*.

Lawyers for the detained *__men__* *__said__* they were eager to have a higher court rule on the constitutionality of the use of *__secret__* *__evidence__*. But no appeals of an immigration *__judge__*'s decision have been ruled on by a higher Federal court

to date. ***Judge*** Livingston, an administrative ***judge*** for the immigration service, was restricted to ruling on the facts of Mr. Ahmed's case only, not on the constitutionality of the practice.

In his ruling yesterday, ***Judge*** Livingston openly questioned the immigration service's procedures for calling ***evidence*** "***secret***." He ***said*** some of the ***evidence*** so declared in Mr. Ahmed's case could have been obtained from unclassified sources, thereby by giving Mr. Ahmed and his lawyers the right to know and rebut it.

The ***judge*** also revealed in his decision that during the ***secret*** sessions Government lawyers at times declined to answer his questions about why such information was made ***secret***. "Most of the court's questions regarding the reasons for classifying certain ***evidence*** were answered with simple boilerplate phrases, denial of knowledge or denial of authority to discuss the matter," ***Judge*** Livingston ***said***.

He ***said*** he did not believe that the Government lawyers were intentionally concealing information, but he warned that there was little incentive under the current system for the Government to make the extra effort of obtaining information from nonclassified sources. The ***judge*** wrote that the practice was "fundamentally unfair" and warned that "the possibilities for abuse, albeit inadvertent, are manifest."

In Mr. Ahmed's case, ***Judge*** Livingston forced the Government to declassify some of its ***secret evidence*** and Mr. Ahmed's lawyers were able to successfully rebut it.

Immigration officials pointed out that ***secret evidence*** was used in only a handful of the thousands of cases the agency dealt with each year. Russell A. Bergeron Jr., an I.N.S. spokesman, ***said*** two other ***judges*** had ruled in other cases that ***secret evidence*** justified detaining or deporting suspects.

"In a situation where an individual may be a threat to national security, we have an even greater obligation to insure that all of the ***evidence*** goes before the court," he ***said***.

But Abdeen M. Jabara, one of Mr. Ahmed's lawyers, ***said*** his client, who went on several hunger strikes during his three years in ***jail***, was "grossly mistreated." He ***said*** the use of ***secret evidence*** must stop.

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