Case highlights use of secret evidence

US judge orders release of immigrant held three years in solitary confinement

Kate Randall
3 August 1999

A US federal judge on July 30 ordered the release of Nasser Ahmed, a 37-year-old electrical engineer from Egypt who has been jailed for more than three years in solitary confinement. The Immigration and Naturalization Service (INS) prosecuted Ahmed on the basis of secret evidence allegedly linking him to a terrorist organization. Judge Donn Livingston denounced the use of secret evidence, never revealed to either Ahmed or his lawyers, and recommended that he be granted political asylum.

INS lawyers filed an immediate appeal of the ruling that could take months to resolve, and Ahmed remains in custody.

Nasser Ahmed has lived in the US for more than a decade. He was arrested by INS officials in April 1996 as he arrived for a hearing on his immigration status, and has been detained at the Metropolitan Corrections Center in New York ever since. Government lawyers accuse Ahmed of being a follower of Sheik Omar Abdel Rahman. Ahmed served as a legal assistant to Rahman during the latter's 1995 trial in connection with the World Trade Center bombing. Government officials have refused to make their alleged evidence available to Ahmed's attorneys, claiming this could compromise national security.

The 1996 Antiterrorism and Effective Death Penalty Act authorized the establishment of a new court whose sole purpose is to hear cases in which the government, basing itself on secret, classified evidence, seeks to deport aliens accused of engaging in terrorist activity. The 1996 Illegal Immigration Reform and Immigration Responsibility Act expanded this court's jurisdiction, so that secret evidence could be used as the basis for deporting lawful permanent residents. Both of these acts violate the basic right to due process as outlined in the Fifth Amendment to the US Constitution. According to the American Civil Liberties Union (ACLU), the Sixth Amendment also prohibits the government from using secret evidence in criminal proceedings against both citizens and noncitizens.

The Secret Evidence Repeal Act, currently before Congress, would bar the deportation or denial of due process to any immigrant on the basis of secret evidence.

Although this special, secret-evidence court has yet to hear a case, the INS has used such evidence in dozens of other cases to deny noncitizens bond or relief from deportation. According to the ACLU, "The INS attempts to use secret evidence to deny mandatory relief from deportation, such [as] withholding of deportation, even though it has no statutory authority to do so." Judge Livingston commented in the Ahmed case that the use of secret evidence has created a "poisonous atmosphere" and is "unsuited for use in a courtroom."

Virtually every case in which the INS has used secret evidence involves a Muslim or Arab. Palestinian Mazen Al-Najjar, an 18-year US resident, has been held in detention for two years in the state of Florida. Al-Najjar was eating breakfast with his wife and daughters when he was hauled off by immigration officials for alleged violations of immigration laws. His request to be released on bond was denied based on secret evidence. Al-Najjar and his attorneys have yet to be informed of the basis of his detention.

There has been a marked increase in immigration prosecutions under the Clinton administration. In 1998, federal prosecutors brought action in 14,616

© World Socialist Web Site

immigration cases, twice the 1992 figure. While US Attorneys prosecuted 92 percent of immigration cases referred to them, they brought action in only 5 percent of civil rights cases.

In a radio address initiating the administration's anti-immigrant campaign in May 1995, Clinton said, "Right now we're deporting 110 illegal aliens every day. That's almost 40,000 a year. And we're going to do even better.... Every day illegal aliens show up in court who are charged. Some are guilty and, surely, some are innocent. Some go to jail, and some don't. But they're all illegal aliens, and whether they're innocent or guilty of the crime they're charged with in court, they're still here illegally and they should be sent out of the country."

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site