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Attorney General
Department of Justice
950 Pennsylvania Avenue
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USA

24 July 2000

LETTER TO THE USA GOVERNMENT

Dear Attorney General

I am writing to express Amnesty International's concern about the case of Mazen Al-Najjar, who has been detained in the USA for more than three years without charge on the basis of secret evidence purportedly linking him to a terrorist organization. Amnesty International believes that the procedures used in his case and the cases of others detained in similar circumstances contravene principles of due process under international law and require urgent review.

Mazen Al-Najjar, a Palestinian who has lived in the USA since 1981, has been held in an Immigration and Naturalization Service (INS) jail in Florida since May 1997 pending his appeal against a deportation order imposed for overstaying his student visa. Mazen Al-Najjar, who is married with three young children born in the USA, was denied bail on the basis of classified evidence introduced by the government that he was a threat to national security. During a bond redetermination proceeding in June 1997, an Immigration Judge (IJ) reviewed the classified information in camera with government agents, outside the presence of Al-Najjar or his attorney. Although Mazen Al-Najjar - who denies any involvement with terrorism - was able to present witnesses in rebuttal at the open portion of the bond redetermination proceeding, neither he nor his attorney were given access to any of the information or witness statements presented at the in camera proceeding. Instead, they were provided with a one-sentence summary of the classified material, stating only that: AThis court was provided with information as to the association of respondent with the Palestinian Islamic Jihad.@ In September 1998 the Board of Immigration Appeal (after also examining the classified evidence) affirmed the IJ decision denying Al-Najjar's request for release on bond.

On 31 May 2000, the U.S. District Court for the Southern District of Florida ruled that the government's reliance on classified evidence in Mr Al-Najjar's bond proceedings - and the failure to maintain any record of the ex parte in camera presentation of the classified evidence - deprived him of his right to Aconfront and rebut that evidence@,

and to a fundamentally fair hearing. The court ordered that the case be remanded for a new bond redetermination hearing on the basis of the public record in the case. The court said that, should the IJ determine that the public record was insufficient to conclude that Mazen Al-Najjar was a threat to national security, the government would not be entirely precluded from introducing classified evidence but in such an event must afford the petitioner access to the fullest extent possible. The court further ruled that Amere association with a known terrorist organization did not of itself constitute a threat to national security. Mr Al Najjar remains in detention pending the new hearing.

Amnesty International welcomes the decision to remand Mr Al-Najjar's case for further proceedings and we hope that it will now be subjected to a full and fair review. However, we remain concerned about the circumstances of his prolonged detention and by the use of secret evidence in other cases. Amnesty International fully recognizes that governments must take security measures where necessary, provided that they are in strict accordance with international standards. However, the procedures used in Mr Al-Najjar's and other cases lack the essential guarantees under international law which are designed to protect individuals from arbitrary or wrongful deprivation of their liberty.

Article 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the USA, provides that *no one shall be subjected to arbitrary arrest and detention*. Article 9(2) of the ICCPR, together with Principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, provides that a detained person has the right to be informed, at the time of arrest, of the reasons for arrest. Principle 11(2) of the Body of Principles further states that *a detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore*. Principle 11(1) of the Body of Principles states that *a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law*.

Amnesty International considers that the failure to provide any detailed reasons for the detention to Mr Al Najjar or his attorney meant that he was unable effectively to defend himself and challenge the basis for his detention, or be assisted by counsel, in violation of the above principles. The lack of opportunity for Mr Al-Najjar to see any part of the evidence against him, to challenge any inaccuracies or distortions or to cross-examine witnesses, constitutes a violation of due process and fundamental fairness.

Such proceedings also carry a high risk of error, as noted by the Florida district court, and may well lead to arbitrary or wrongful detention. In at least two previous cases, judges have ordered the release of individuals of Arab descent held for prolonged periods (over three years in one case) on the basis of secret evidence after reviewing the evidence and finding it highly unreliable or erroneous.¹

Before his arrest, Mazen Al-Najjar was editor of a research journal published by the World and Islam Studies Enterprise (WISE) at the University of South Florida in Tampa. The WISE institute reportedly came under the scrutiny of the US authorities when a former administrator became leader of Islamic Jihad. Although a supporter of the Palestinian cause, Mr Al-Najjar denies actively supporting Islamic Jihad or any involvement with terrorism. If Mr Al-Najjar is, as his supporters contend, being held purely for his non-violent political sympathies and background, then he would be considered a prisoner of conscience by Amnesty International.

Amnesty International urges the US Government to review the procedures providing for the detention of persons pending deportation proceedings on national security grounds, and to take measures to ensure that no-one is arbitrarily detained in violation of international standards, and that no-one is detained solely on account of his or her beliefs, political background or origin who has not used or advocated violence. We urge you to revise the present procedures to ensure that persons will not be detained on the basis of evidence which they are unable to review or challenge.

We are aware that a bill is currently before Congress which would prohibit the use of secret evidence in immigration proceedings and provides that no-one should be deprived of liberty based on evidence kept secret from that person, including information classified for national security reasons. We urge that you support this bill as an important safeguard against arbitrary or wrongful detention.

Yours sincerely

Javier ZdZiga
Program Director
Americas Regional Program

¹Federal district court ruling in case of Hany Kiareldeen, October 1999 and order of IJ in the case of Nasser Ahmed, July 1999.