

September 4, 2002

## **SUSPECTED ALIEN TERRORIST DEPORTED TO MIDDLE EAST**

*(Al Najjar v. Ashcroft)*

The Immigration and Naturalization Service (INS) this week deported Mazen Al Najjar, a suspected fundraiser for Palestinian terrorists, to an undisclosed Middle East country. Despite efforts by the ACLU and other civil libertarian groups, the INS was allowed to continue to detain Al Najjar up until the date of his departure.

The continued detention of the suspected terrorist was a victory for the Washington Legal Foundation (WLF), which on two occasions filed briefs in the U.S. Court of Appeals for the Eleventh Circuit in Atlanta in support of Al Najjar's detention. His deportation brings to an end Al Najjar's latest court challenge to his detention; the appeals court is expected to dismiss the challenge as moot within the next week.

Al Najjar had been battling the INS's efforts to deport him since 1985. Although a final deportation order was issued in 1998 and a federal court rejected an appeal from that order in July 2001, his removal from the country was delayed while the INS searched for a country willing to accept him. Al Najjar argued that he ought to be permitted to live freely in Florida during the delay period.

In its most recent brief filed in *Al Najjar v. Ashcroft*, WLF argued that the INS does not violate the First Amendment rights of illegal aliens by detaining those it believes have engaged in fundraising for terrorist groups. WLF argued that such detention does not interfere with rights to political association, because fundraising goes beyond mere association and is not protected by the First Amendment. WLF also argued that the INS has the unfettered right to detain any alien who is facing a final order of deportation.

WLF filed its brief on behalf of itself, the National Fraternal Order of Police, the Allied Educational Foundation, the Jewish Institute for National Security Affairs, and Stephen Flatow (the father of Alisa Flatow, an American college student murdered by Palestinian terrorists in 1996).

Al Najjar's decades-long efforts to avoid deportation attracted considerable public attention. He admitted that he was here illegally, but he sought adjustment of status on a variety of grounds, including that he has three children who were born in this country and thus are American citizens. All of his petitions were denied, and the Eleventh Circuit in July 2001 rejected Al Najjar's latest challenge to those denials.

In 1996, the INS began receiving evidence that Al Najjar was engaged in fundraising for Palestinian Islamic Jihad ("PIJ"), which is on the Attorney General's list of terrorist organizations. Based on classified evidence that showed Al Najjar's close ties to PIJ, the INS took him into custody in 1997. Al Najjar thereafter became a *cause celebre* for the ACLU, which argued that the INS should not be permitted to detain aliens on the basis of classified evidence. The ACLU won Al Najjar's release in December 2000. Thereafter, WLF joined the battle to have Al Najjar taken back into custody.

That initial battle became moot in November 2001, when the appeals court refused to reconsider its rejection of Al Najjar's appeal of his deportation order. His deportation was then delayed while the INS sought a country willing to accept him. The INS took Al Najjar back into custody in November 2001 to ensure that he did not flee before the INS was able to effect his removal.

In December 2001, Al Najjar filed a new suit seeking release from detention. He argued that the Fifth Amendment's Due Process Clause prohibited his incarceration in the absence of evidence from the INS that he was likely to flee if released. He also argued that the INS was detaining him due solely to his political associations with PIJ, in violation of his First Amendment rights. The district court denied Al Najjar's claims in February 2002, and he appealed to the Eleventh Circuit.

WLF filed a brief in opposition to that appeal. WLF argued, *inter alia*, that even if it was true that the INS was singling out Al Najjar for detention because of his ties to the PIJ, it acted properly in doing so. WLF argued that the INS would be derelict in its duty if it did not do all in its power to detain an illegal alien who it believed was a major fundraiser for a terrorist organization. WLF argued that fundraising for a group designated by the Attorney General as a terrorist organization is not protected by the First Amendment, even when (as Al Najjar asserted) the fundraiser only seeks to support the group's peaceful activities.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to promoting America's national security.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302.

