

The "L.A. Eight" and Investigation of Terrorist Threats in the United States

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In the pre-dawn hours of January 26, 1987, scores of officers from the FBI, INS, and Los Angeles police department began an anti-terrorism operation in the Los Angeles area. Awakened by loud knocks on his door, Khader Hamide, a permanent resident alien and aspiring United States citizen, opened the door at seven a.m. and was handed an arrest warrant. Another warrant was handed to Julie, Hamide's wife. Both were told that they were terrorists. They were handcuffed and whisked away in separate cars, while police blocked the street outside and a helicopter hovered overhead. The same scene was repeated at six other locations in the Los Angeles area that morning, while an eighth suspect was later arrested while taking a college chemistry exam. For 23 days, six of the "LA Eight" sat in maximum security cells.¹ Although no criminal charges were ever filed against any of them, their legal problems are not over, 13 years later.²

Amid growing fears of potential terrorist attacks in the United States, in January 1986

President Reagan issued National Security Decision Directive 207, a secret directive that created the National Program for Combating Terrorism.³ On the west coast, the FBI

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¹ Michael J. Ybarra, *Domestic Dilemma: Long Effort to Deport Terror Suspects Raises Difficult Rights Issues*, WALL STREET J., Nov. 11, 1991, at A1.

² Two months after the arrests, FBI Director William Webster admitted that none of those arrested had been found to have engaged in terrorist activities, and that there would not have been a basis for arrests had the LA Eight been U.S. citizens. *Hearings Before the Senate Select Committee on Intelligence on Nomination of William H. Webster to be Director of Central Intelligence*, 100th Cong. 94-95 (1987).

³ See CHRISTOPHER SIMPSON, NATIONAL SECURITY DIRECTIVES OF THE REAGAN & BUSH ADMINISTRATIONS: THE

began to probe what it believed to be a shadowy network in the United States that raised funds for international terrorism and threatened to provide the catalyst for terrorist attacks in the United States.⁴ The NSDD also created the Alien Border Control Committee (ABCC), designed to prevent "suspected terrorists or supporters of terrorist activities" from entering the United States, or from remaining in the country when violations of immigration rules are uncovered.⁵ In particular, the directive instructed the ABCC to find ways to deport "PLO activists who have violated their visa status . . . while protecting classified information."⁶ The directive thus explicitly linked national security and immigration policy, requiring intelligence and immigration officials and processes to work in tandem, if not together.⁷ The ABCC directive "attempted to coordinate the full weight of the government's . . . resources in a campaign against radical Islamic guerrillas and similar groups."⁸ However, the directive also appears to link mere advocacy by activists to terrorism, without regard to the peaceful nature of any particular advocacy.

During the mid-1980s, a group of Palestinian activists from the Los Angeles area associated with the Popular Front for the Liberation of Palestine (PFLP) drew the attention of federal officials. PFLP is a Syria-based splinter group of the Palestine Liberation Organization and known sponsor of international terrorism that has been tied to bombings, assassinations, and the high profile 1976 airline hijacking foiled by Israeli

⁴ DECLASSIFIED HISTORY OF U.S. POLITICAL & MILITARY POLICY, 1981-1991 632, 656-59 (1995) [hereinafter SIMPSON].

⁵ *Id.*

⁶ *Id.* at 633 (quoting SIMPSON in declassified form).

⁷ David Cole, *Terrorist Scare (Guarding against PLO terrorism and activism)*, THE NATION 1, Apr. 19, 1999; JAMES X. DEMPSEY & DAVID COLE, TERRORISM & THE CONSTITUTION: SACRIFICING CIVIL LIBERTIES IN THE NAME OF NATIONAL SECURITY 37 (1999) (describing the role of the Alien Border Control Committee) [hereinafter DEMPSEY & COLE].

⁸ DEMPSEY & COLE *supra* note 6 at 36 ("Lacking any evidence that [the LA Eight] had been involved in criminal conduct, the FBI turned to the INS." INS sought deportation "at the behest of the FBI").

⁸ SIMPSON, *supra* note 5 at 632.

commandos at Entebbe in Uganda. At a fundraising function, Khader Hamide urged those present to contribute money "for the combatants in Lebanon and on the West Bank. The revolution requires support."⁹

After a lengthy FBI investigation, in December 1986 the Immigration and Naturalization Service (INS) initiated deportation proceedings against the LA Eight, including Hamide. The INS claimed that the eight were members of the PFLP, and that Hamide "was the California head of an active but furtive recruiting and support system for the PFLP."¹⁰ INS charged them with being deportable as aliens belonging to an organization that advocates the "doctrines of world communism."¹¹ INS did not allege that the eight had actually engaged in any terrorist activities. Six of the eight had entered the United States on student or visitor visas between 1975 and 1983, while the other two, Michel Shehadeh and Hamide, are permanent residents.

Hamide moved to the United States from the West Bank in 1971. After meeting his wife-to-be in the MBA program at the University of Oregon, he eventually worked selling sun shades for windshields and as a waiter. But political advocacy dominated Hamide's life: "I was very visible and outspoken on behalf of Palestinian rights, as well as being very involved in the peace and justice community . . . [b]ut not in any way different from what many other people are doing."¹² Indeed, Hamide publicly voiced his pro-Palestinian

⁹ David G. Savage, *The Great Alien Lockout*, A.B.A.J., Nov. 1998, at 34.

¹⁰ Ybarra, *supra* note 1 at A1.

¹¹ McCarran-Walter Act, 8 U.S.C. 1182(a)(28)(D) (1988). The original proceedings against the permanent residents were brought pursuant to the ideological deportation grounds of the McCarran-Walter Act, which permitted deportation of those who advocated world communism.

¹² Frank Trejo, *Lives on Hold: Palestinians Accused of Terrorism Fight to Stay in U.S.; Noncitizens Rights Seen as Key to Case*, DALLAS MORNING NEWS, Dec. 29, 1992, at 1A, available at 1992 WL 10778206. (Hamide later noted that the lack of official political institutions in the occupied territories means that funds given to a clinic or hospital

views, writing letters to newspapers, appearing at college forums, and working in the presidential campaigns of Jesse Jackson; however, Hamide and his colleagues denied any involvement with the PFLP or terrorism. Although they were targeted by the FBI and eventually by the INS on the alleged affiliation with the PFLP, the LA Eight maintained that they raised money for humanitarian projects (such as clinics and hospitals in the Gaza Strip and West Bank), and conducted seminars and distributed Palestinian magazines. Hamide had applied for U.S. citizenship a few days before he was arrested.¹³

In 1987, the LA Eight and several organizations brought suit to challenge the facial constitutionality of the "world communism" provisions of the McCarran-Walter Act.¹⁴ A few days before a hearing on the constitutionality of this provision, the government withdrew the original charges and reinstated deportation proceedings against the nonimmigrant aliens for routine visa violations, and against the permanent residents for being members of an organization that advocates or teaches the unlawful destruction of government property.¹⁵ INS later added a charge that the resident aliens were associated with a group that advocates the unlawful assaulting or killing of government officers.¹⁶ The INS regional counsel indicated that the changes in charges were for tactical reasons, and that all eight would be deported because they are members of the PFLP.¹⁷ After 1990 amendments to the Immigration and Nationality Act (INA) repealed the world

could, in theory, be linked to organizations operating there, such as the PFLP).

¹³ *Id.*

¹⁴ See *American-Arab Anti-Discrimination Committee v. Reno*, 70 F.3d 1045, 1053 (9th Cir. 1995).

¹⁵ *Id.*; 8 U.S.C. § 1251(a)(6)(f)(k)(iii) (1988).

¹⁶ *Id.*; 8 U.S.C. § 1251(a)(6)(f)(ii) (1988).

¹⁷ *American-Arab*, 70 F.3d at 1053.

communism and advocacy grounds, new charges were brought against the permanent residents for "terrorist activities."¹⁸

Hamide first learned that a significant investigation of his activities had occurred when he asked one of the arresting agents why he looked familiar. The agent told Hamide that he had been his neighbor for nine months.¹⁹ During the INS proceedings, some of the aliens requested that the immigration judge order the government to affirm or deny the existence of electronic surveillance directed against them or their lawyers. The government responded with a declaration that none of the evidence that would be presented in the deportation proceedings had been gathered by electronic surveillance, without stating whether any such surveillance had occurred.²⁰ After the immigration judge granted a motion requesting that the government affirm or deny that such surveillance had occurred, the government responded that there had been some video surveillance, and that the FBI had placed a pen register on the telephone of one of the parties.²¹ In addition, the government's affidavit admitted that some of the named aliens had been subject to electronic surveillance approved by a special court, the Foreign Intelligence Surveillance Court (FISC).²² The FISC may authorize electronic surveillance or physical searches of persons or organizations that are connected to a foreign power.²³

¹⁸ *Id.* at 1054; See Immigration Act of 1990, 8 U.S.C. § 1251(a)(4)(B), 1182(a)(3)(B)(iii)(1994).

¹⁹ Trejo, *supra* note 12, at A1.

²⁰ United States v. Hamide, 914 F.2d 1147, 1149 (9th Cir. 1990).

²¹ *Id.* A pen register records the dialed numbers to enable identification of outgoing calls on a line subject to surveillance.

²² *Id.*

²³ See *infra* text accompanying notes 79-82.

Anticipating the aliens' next move, the government sought a determination of the legality of the surveillance from the federal district court in California,²⁴ pursuant to the statute that created the FISC, the Foreign Intelligence Surveillance Act (FISA).²⁵ The Attorney General submitted an affidavit requesting an ex parte, in camera review of the surveillance records, alleging that their disclosure, or even an adversary hearing about them, "would harm the national security of the United States and [would expose] intelligence sources and methods."²⁶ The district court judge complied with the Government's request and, after the ex parte, in camera review, determined that the FISA surveillance was lawful.²⁷ The aliens appealed to the Ninth Circuit, and brought a civil action challenging the surveillance in the federal district court for the District of Columbia while the appeal was pending.²⁸

Based on the declaration submitted by the Justice Department in their deportation proceedings, the alien plaintiffs sought a declaratory judgment that the admitted surveillance was unlawful, and, based on "information and belief," they sought to enjoin any ongoing surveillance against them. Their claims for relief included violations of FISA, as well as their First, Fourth, and Fifth Amendment rights. In essence, the plaintiffs argued that they were singled out for surveillance solely on the basis of their political beliefs and associations as advocates for Palestinian causes. They claimed the government violated FISA and the Constitution because it had no basis for believing that the surveillance targets were agents of a foreign power. In addition, the two resident

²⁴ *Hamide*, 914 F.2d at 1149.

²⁵ 50 U.S.C.A. §§ 1801-1829, 1841-1846, 1861-1863 (West Supp. 2000)

²⁶ *United States v. Hamide*, 914 F.2d 1147, 1149 (9th Cir. 1990).

²⁷ *Id.* at 1150.

²⁸ *ACLU Foundation of Southern California v. Thornburgh*, Civ. No. 89-2248, mem. op. (D.D.C. June 26, 1990).

aliens alleged that the "agent of foreign power" determination was made "solely on the basis of activities protected by the first amendment" and thus violated a FISA proscription against such surveillance directed at permanent residents.²⁹

However, while the government acknowledged overhearing them in the course of FISA-authorized surveillance, the government never admitted that any of the plaintiffs were targets of the past surveillance. Thus, the government answered that plaintiffs may have been overheard incidentally, and that the existence of ongoing surveillance could not be confirmed or denied. The government then moved to dismiss the surveillance action for failure to state a claim. The motion was granted in the district court.³⁰

On appeal, the D.C. Circuit ruled that the legality of any past surveillance was finally determined by the district court in California in the INS case.³¹ However, the court refused to sustain the dismissal of the plaintiffs' complaint for failure to state a claim regarding ongoing surveillance.³² While past surveillance in no way proves ongoing surveillance, noted the court, plaintiffs were entitled to try to prove their claims. On remand, the plaintiffs would have to show that the government intentionally targeted them and intended to disrupt their lawful activities, and that the two resident aliens were targeted "solely" on the basis of protected expressive activities.³³ Especially since the government is not obligated to affirm or deny any facts pertaining to FISA surveillance, information and belief would not provide the necessary support that there was some

²⁹ *Id.*

³⁰ *Id.*

³¹ *ACLU Foundation of Southern California v. Barr*, 952 F. 2d 457, 463 (D.C. Cir. 1991).

³² *Id.* at 467.

³³ *Id.* at 469.

genuine dispute about the material facts. The plaintiffs would be required to meet this burden without the benefit of discovery. Because FISA obliges the reviewing court to prevent disclosure of information relating to FISA surveillance in adversary proceedings, the traditional discovery rules do not apply. Thus, the government could seek and obtain summary judgment even before they answer the complaint. The plaintiffs could not even obtain an *ex parte* hearing on the legality of the surveillance.³⁴

Eventually, the L.A. Eight sued to enjoin their deportation proceedings on constitutional grounds. In essence, they argued that INS singled them out for selective enforcement of the immigration laws in retaliation for the exercise of constitutionally protected associational activities. After two rounds of litigation in the district court and court of appeals, the Ninth Circuit affirmed a district court decision granting a preliminary injunction halting the deportation proceedings of the resident and non-resident plaintiffs on First Amendment grounds.³⁵ The court found that INS sought deportation on the basis of the plaintiffs' mere membership in the PFLP, and that there was no evidence in the record that any of the plaintiffs had any specific intent to further the unlawful aims of the PFLP.³⁶

Meanwhile, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).³⁷ The Act contains a provision restricting judicial review of the Attorney General's decision to commence proceedings against any alien, leaving until a final order of deportation is issued any opportunity for judicial review of

³⁴ *Id.* at 469.

³⁵ *American-Arab Anti-Discrimination Committee v. Reno*, 119 F.3d 1367 (9th Cir. 1997).

even constitutional rights violations associated with deportation.³⁸ Although the Ninth Circuit found jurisdiction to review the plaintiffs' claims under an exception for pending cases in the 1996 Act,³⁹ in *Reno v. American-Arab Discrimination Committee*,⁴⁰ the Supreme Court interpreted the 1996 provision to deprive federal courts of jurisdiction over such lawsuits and thus reversed the Ninth Circuit decision and ordered that the injunction be vacated.⁴¹

After thirteen years and more judicial decisions than anyone cares to count, it remains unclear under what circumstances the laws of the United States permit surveillance and subsequent deportation of lawfully admitted aliens based upon national security justifications. It is clear that the laws of the United States permit intrusive electronic surveillance of lawfully admitted aliens without finding probable cause to believe that a crime has been committed. In addition, targeting those associated with terrorism for deportation is an obviously legitimate technique. The surveillance and immigration techniques also serve different objectives and are legally distinct. However, the wide net thrown by Congress and the national security agencies over "support" for "terrorist activity" has created discretion for investigators to target for surveillance and then deportation lawful residents who were merely exercising protected expressive activities. Whether such discretion was exercised in this instance cannot be determined from the public record. The fact that it is more common to target individuals for activities they

³⁶ *Id.* at 1376.

³⁷ Pub. L. No. 104 - 208, 110 Stat. 3009-546 (1996).

³⁸ 8 U.S.C. § 1252(e); 8 U.S.C. § 1252(g) (Supp. IV 1998).

³⁹ *American-Arab*, 119 F. 3d at 1372.

⁴⁰ 525 U.S. 471 (1999).

⁴¹ *Id.*

hold confidential does not foreclose the possibility of intrusive surveillance or even deportation of persons who exercise protected freedoms.

While the statutory schemes provide greater protections for permanent residents, all of the claimants in AADC continue to allege constitutional violations that must finally be decided before the relationship of national security and terrorism concerns to immigration practices and procedures can be understood. Does advocacy and fundraising for Palestinian causes justify surveillance on the basis that some of the funds may be supporting terrorist activities outside the United States? Must the agents who seek surveillance authority demonstrate that the surveillance target plans to further the unlawful aims of the organization? What should the government's policy be toward an association of U.S. residents who support a foreign organization that engages in violent activities abroad? To what extent will a profile of a supporter of such a group in the United States justify targeting an individual for secret surveillance and then possible deportation? Reacting to the Supreme Court's 1999 decision, Hamide noted an irony: In the mid-1980s, he actively voiced support for a Palestinian state. Now, "the United States government has come around to basically say now what we said then."⁴²

⁴² David G. Savage, *Ruling Eases Way for Deportation of Illegal Immigrants*, L.A. TIMES, Feb. 25, 1999, at A1, A12.