

## USDOJ/OIG Special Report

# **Bombs in Brooklyn: How the Two Illegal Aliens Arrested for Plotting to Bomb the New York Subway Entered and Remained in the United States**

March, 1998

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**Executive Summary**

**I. Introduction**

In this report, the Department of Justice Office of the Inspector General (OIG) examines how two aliens, Gazi Ibrahim Abu Mezer (Mezer) and Lafi Khalil (Khalil), entered and remained in the United States before they were arrested on July 31, 1997, in a Brooklyn apartment for allegedly planning to bomb the New York City subway system. After their arrest, it was quickly discovered that both were Palestinians who were in the United States illegally. Mezer had been arrested three times in the previous thirteen months attempting to enter the United States illegally from Canada. The first two times, he was voluntarily returned to Canada. After the third apprehension, the Immigration and Naturalization Service

(INS) began formal deportation proceedings against Mezer, but he was released on bond while the proceedings were pending. After his release, Mezer filed a political asylum application in which he claimed that he suffered a fear of persecution if he were returned to Israel, in part because Israeli authorities falsely believed he was a member of the terrorist organization Hamas. It was also discovered that Khalil was in the United States illegally, having entered on a tourist visa but having remained here after the visa expired.

These disclosures generated harsh criticism in the media regarding how the INS handled these immigration cases. As a result of the controversy, the OIG conducted this review focusing on how Mezer and Khalil came to enter and remain in the United States. Our review details the actions by the INS and other federal agencies that came in contact with them. During our review, we examined documents relating to their contacts with immigration authorities, including Border Patrol records concerning Mezer's detentions, the transcripts of his deportation proceeding, and materials related to Khalil's visa. We interviewed numerous INS and government officials regarding these contacts, including the Border Patrol officials who detained Mezer three times, the INS officials who handled his deportation proceedings, the INS judges who presided over the deportation hearings, the State Department official who granted the visa to Khalil, and the INS immigration inspector who admitted Khalil to the United States. In total, we conducted more than 75 interviews of individuals involved in these matters. Because Mezer and Khalil currently are awaiting trial on criminal charges relating to the alleged plot to bomb the New York subways, we did not touch on certain sensitive issues relating to their criminal charges, but instead focused on the facts surrounding their immigration status.

## II. Mezer

Mezer, who was born in the West Bank of Israel, claimed Jordanian nationality on a travel document that he received from the Israeli government in 1993. In 1993, he received a Canadian visa to study in Canada. Shortly after arriving in Toronto, Canada, he applied for convention refugee status, which is similar to political asylum in the United States, based on his claimed fear of persecution in Israel. This application for convention refugee status allowed him to remain in Canada despite two criminal convictions in Canada.

Mezer later admitted that he traveled to Canada with the intent to reach the United States. Less than two weeks after arriving in Canada, he applied for a visa at the U.S. Consular Office in Toronto, but his application was denied. He also reported that he unsuccessfully attempted to enter the United States illegally while in Toronto.

On June 23, 1996, while attempting to enter the United States illegally, Mezer was detained by the National Park Service along with another person, Jamal Abed, in a remote wilderness area in North Cascades National Park in Washington state. After Mezer and Abed were turned over to the INS Border Patrol, both were returned voluntarily to Canada. INS officials told us that because of the unavailability of detention space, aliens who are apprehended attempting to enter the United States illegally from Canada along this stretch of border are typically returned to Canada voluntarily, as Mezer was, unless

there are unusual circumstances, such as evidence that the alien is an aggravated felon. Aliens are also rarely prosecuted for the criminal offense of entry without inspection, even after repeated apprehensions.

Although the National Park Service ranger who arrested Mezer and Abed believed that Abed was assisting Mezer in entering the United States, the Border Patrol reports concerning Mezer's arrest suggested that Mezer was suspected of alien smuggling in Canada. This suggestion appeared to be based on information contained in a Canadian immigration database about previous, unspecified "suspicious activity" by another man and Mezer in Manitoba Canada. Although the suspicion that Mezer was an alien smuggler was included in Border Patrol arrest and intelligence reports, no one in the Border Patrol could identify a genuine factual basis for this suspicion or how the facts of Mezer's detention suggested that he was an alien smuggler.

On June 29, 1996, the Border Patrol detained Mezer again trying to enter the United States illegally, when he was jogging through a park next to a busy port of entry 65 miles west of where he had been apprehended the previous week. The Border Patrol again voluntarily returned Mezer to Canada.

Six months later, on January 14, 1997, Mezer was apprehended a third time by a Border Patrol agent as Mezer was boarding a bus with two other men of Middle Eastern origin in Bellingham, Washington, 25 miles south of the Canadian border. This time, a Canadian immigration employee told the Border Patrol agent that Canada probably would not accept Mezer back. The Border Patrol agent therefore commenced formal deportation proceedings against Mezer and detained Mezer on a \$15,000 bond.

At the first status hearing before an immigration judge in Mezer's deportation case, Mezer admitted to being in the United States illegally and agreed to return to Canada again if the Canadians agreed to accept him. When Canada refused his return, Mezer informed the court at a second hearing on February 6, 1997, that he intended to file an application for political asylum in the United States. At this hearing, Mezer also requested a reduction in his bond, which the INS opposed. The immigration judge granted Mezer's request, reducing his bond to \$5,000. The judge told the OIG that this bond amount was still higher than in typical cases involving illegal entry. Moreover, at this time, there was no mention that Mezer was suspected of being a member of Hamas. On February 14, Mezer was released when a friend posted the \$5,000 bond for him.

By April 7, 1997, the next status hearing, Mezer had retained an attorney, who submitted on his behalf an asylum application to the INS and the immigration court. In the application, Mezer claimed that Israeli authorities had continually persecuted and detained him when he lived in Israel, in part because they wrongly suspected that he was a member of Hamas. He denied that he had any association with Hamas but claimed that he feared continued persecution if he was returned to Israel because of the false suspicion by the Israeli authorities. Both the INS attorney who handled this hearing, which was similar to an arraignment, and the immigration judge who presided over it said that they skimmed Mezer's application at the hearing and they did not notice the reference to Hamas in the application. But they said that even if they had noticed Mezer's claim that he was falsely suspected of being a member of Hamas, they would not have sought a change in Mezer's bond status, because there was no evidence that Mezer

in fact was a terrorist. They also said that it is common for aliens seeking asylum to claim that they are falsely accused of membership in a terrorist organization to support their claim that they face the prospect of persecution in their home country.

After the hearing, in accord with normal practice, the immigration court requested comments from the State Department on Mezer's asylum application. The State Department returned the application with a sticker indicating it did not have any specific information about Mezer. We found that it is typical for the State Department to provide this type of response to the thousands of asylum applications that are forwarded to it from the immigration judges and INS asylum officers. Although the immigration judge thought the State Department checked its databases for potential evidence of the individual's associations with known terrorists and terrorism, the State Department does not normally perform these individual checks absent a specific request to do so.

Before Mezer's hearing on his asylum application, scheduled for June 23, 1997, Mezer's attorney withdrew the application, and the hearing was converted to a status hearing. The attorney told us Mezer withdrew his application because the attorney and Mezer believed that his refugee status in Canada would prevent him from obtaining asylum in the United States. Therefore, before the hearing, Mezer called the attorney and told her that he had returned to Canada.

At the June 23 hearing, Mezer's attorney informed the immigration court that Mezer had reported to her that he was in Canada. The judge therefore granted Mezer a sixty-day period for voluntary departure from the United States, after which the formal order of deportation would become final and Mezer could be deported immediately without any additional hearings if he were subsequently found in the United States. Before the sixty-day period elapsed, Mezer was arrested in his Brooklyn apartment on July 31.

Our review did not find information available to the INS that Mezer was a known terrorist. Nor did we find that government officials acted improperly or contrary to normal procedures in handling his case. The Border Patrol agents who arrested Mezer in Washington state made reasonable efforts, consistent with their normal practices, to return him voluntarily to Canada after the first two arrests. After Mezer's third arrest, when Canada refused to take him back, the INS detained him and entered him into deportation proceedings. The INS received no suggestion that Mezer was a member of Hamas until after he was released on bond, when he filed his asylum application, and that application stated that he was falsely suspected of being a member of Hamas, not that he was a member. Thus, Mezer was the sole source of the information that he had a suspected association with Hamas. We were advised that asylum applicants often make such claims in an attempt to remain in the United States.

Although we did not find improper actions by any individual officials, our review did reveal important and systemic problems that are not unique to Mezer's case. His easy entry into Canada and his ability to remain in Canada despite at least two criminal convictions and repeated attempts to enter the United States illegally highlight the difficulty in controlling illegal immigration into the United States. Mezer's case also reveals the shortage of Border Patrol resources available along the northwest border to halt illegal immigration. In light of how few Border Patrol agents are assigned to guard this section of the

border on a regular basis, we found it surprising that Mezer was caught once, let alone three times, trying to enter the United States.

Mezer's case shows that aliens entering the United States illegally along the northwest border are rarely prosecuted, even after repeated apprehensions. INS and law enforcement officials normally do not detain such aliens, even after several illegal entries, and they are normally returned to Canada voluntarily, able to try again at any time to return to the United States, as Mezer did.

Mezer's case also demonstrates confusion among the affected United States government agencies as to which agency checks for information about whether an asylum applicant is a terrorist. The State Department did not conduct such a check on Mezer, although the immigration court thought that the State Department did so. The INS has access to databases with some information about suspected terrorists, but it is not clear that the INS consistently checks these databases before asylum decisions are made, particularly decisions by INS asylum officers. While we have no evidence that such checks would have revealed information about Mezer, we believe that his case reveals that the INS and the State Department need to coordinate more closely on appropriate procedures for accessing and sharing information that would suggest a detained alien or asylum applicant may be a terrorist.

### III. Khalil

Lafi Khalil was also born on the West Bank of Israel. In 1995, he received a Jordanian passport and in 1996 obtained a visa to enter Ecuador. On November 25, 1996, he applied at the U.S. Consular Office in Jerusalem, Israel, for a visa to travel through the United States to Ecuador.

Khalil's application was handled by a U.S. Consular Officer in Jerusalem, who interviewed Khalil briefly and granted him a "C-1" transit visa for transit through the United States on his way to Ecuador, not a tourist visa. According to the Consular Officer, Khalil said that he wanted to go to Ecuador to visit his uncle. The Consular Officer believed that Khalil needed a visa to transit through the United States to Ecuador. The Consular Officer also believed, correctly, that there were no direct flights to Ecuador from Israel or Jordan, and travel through the United States was often the cheapest route to Ecuador.

However, the Consular Officer did not check Khalil's representations, require him to show a ticket to Ecuador, or ask for evidence of sufficient funds for the trip to Ecuador. Nor did the Consular Officer consider requiring Khalil to transit through the United States to Ecuador in a "transit without visa" status, which would have allowed Khalil to go to the United States to catch a connecting flight to Ecuador, as long as Khalil remained in the airport or in the custody of the airline until boarding the connecting flight. Instead, the Consular Officer granted Khalil a C-1 visa, based on her quick interview of Khalil and her belief that he qualified for it. The C-1 visa allowed Khalil to actually enter the United States, and remain for up to 29 days, while on his way to Ecuador.

On December 6, 1996, Khalil flew from Amman, Jordan to Amsterdam, where he caught a flight to John F. Kennedy Airport (JFK Airport) in New York. At JFK Airport, Khalil presented his passport with the

C-1 transit visa to an INS immigration inspector. But the immigration inspector mistakenly thought that Khalil's passport contained a B-2 visitor's visa, which allowed Khalil to enter the United States for 6 months rather than 29 days. The immigration inspector stamped Khalil's passport with the B-2 visa, and after passing immigration, Khalil caught a flight to Syracuse. There is no record that he ever left the United States after that, even after his six-month visa expired. He was arrested on July 31, 1997, in a Brooklyn apartment along with Mezer.

When we interviewed the immigration inspector, he said that he did not remember Khalil specifically but assumed that in the rush of inspecting passengers, he simply made a mistake about which visa Khalil had in his passport. The inspector said almost 90 percent of the visas he sees are B-2 visas, and the only distinction between the C-1 and the B-2 visas is a small, type-written entry.

We found that the immigration inspector made a clear mistake in issuing Khalil a six-month B-2 visa, although the mistake was not intentional. Moreover, Khalil's transit visa would have allowed him to enter the United States in any event, for up to 29 days. He could have overstayed even a 29-day transit visa without much chance that the INS would attempt to locate him or deport him because of the large number of illegal aliens in the United States.

Some INS officials expressed concern about whether the typical passenger seeking merely to come to the United States to transit to another country should be granted a C-1 visa, which allows the alien to enter the United States. They said that if the purpose of the trip, as Khalil claimed, was merely to catch a flight to another country, the transit without visa program should be more carefully considered. We agree with this concern and believe that INS and State Department officials should more carefully consider when transit without visa travel is appropriate. In this case, the Consular Office did not even consider this status for Khalil.

Finally, we found during our interviews that there were significant differences of understanding about various officials' roles in the visa process. Neither the immigration inspector nor the Consular Officer thought it was his or her role to verify that Khalil had a ticket to Ecuador or funds for the trip. Neither thought that it was his or her responsibility to consider restricting the period of Khalil's stay to less than the maximum amount of time allowed by the visa -- 29 days in the case of a C-1 visa -- even though Khalil allegedly only wanted to come to the United States to catch a flight to Ecuador. We believe that this confusion over the appropriate role of each official needs to be addressed and clarified by the INS and the State Department in the interests of controlling illegal immigration.

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