

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

Your affiant, Donald E. Lichay, Special Agent with the Federal Bureau of Investigation (“FBI”), deposes and says as follows:

1. Your affiant has been a Special Agent with the FBI since April 2006. For the last two years, your affiant has been assigned to the Baltimore Division of the FBI investigating national security violations. Prior to his employment with the FBI, your affiant was a commissioned officer with the United States Marine Corps. Your affiant has received extensive training in counter-intelligence and national security investigations from both the FBI and the Department of Defense. As a Special Agent, your affiant has interviewed informants and cooperating witnesses, conducted physical surveillance, and participated in the preparation and execution of search, seizure and arrest warrants involving national security violations.

2. This affidavit is being submitted in support of a criminal complaint against Defendant MOUYAD MAHMOUD DARWISH charging him with conspiring to violate Section 951(a) of Title 18, United States Code. Section 951(a) makes it a crime to knowingly act in the United States as an agent of a foreign government, namely, in this instance, the Government of Iraq, the Ba’ath Party, and the Saddam Hussein regime, without prior notification to the Attorney General. At no time during the charged conspiracy was the Defendant: 1) a duly accredited diplomatic or consular officer of the Government of Iraq, the Ba’ath Party or the regime of Saddam Hussein, recognized by the United States Department of State; 2) an officially and publicly acknowledged and sponsored official or representative of the Government of Iraq, the Ba’ath Party or the regime of Saddam Hussein; or 3) an officially and publicly acknowledged and sponsored member of the staff of, or employee of, any such officer, official, or a representative of the Government of Iraq, the Ba’ath Party or the regime of Saddam Hussein.

3. The Defendant was born in Iraq and is a Canadian citizen currently residing in Canada. During a portion of the time frame of the charged conspiracy, the Defendant was residing in Maryland. The Defendant applied to become a lawful permanent resident of the United States in October 2001. His application was subsequently denied by United States Citizenship and Immigration Services (“USCIS”) in August 2006 based, in part, on discrepancies in information provided by the Defendant regarding his residence and employment. On August 2, 2007, USCIS approved a petition filed by the Defendant’s mother (a naturalized U.S. citizen) to obtain permanent residence status for her son; however, the Defendant has not been granted permanent residence at this time, and there is a ten year bar against the Defendant obtaining LPR status due to the denial of his previous application.

4. The facts and information contained in this affidavit are based on my personal knowledge of the investigation and information obtained from other Special Agents of the FBI and U.S. Immigration and Customs Enforcement involved in the investigation. This affidavit does not contain all of the facts and information known to me regarding this investigation, but does, in my belief, include facts sufficient to provide probable cause and support for the issuance of the criminal complaint.

A. Background and Documentary Evidence

5. From 1979 to 2003, the Government of Iraq was ruled by Saddam Hussein and his regime, which consisted of members of the Ba’ath Party. Insurgent groups and other individuals continued to support the Ba’ath Party and Saddam Hussein’s regime following the invasion of Iraq by coalition forces in March 2003. The Government of Iraq, the Ba’ath Party, and the regime of Saddam Hussein each qualified as a “foreign government,” as defined by Section 11 of Title 18,

United States Code, to include “any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States.”

6. The Iraqi Intelligence Service (hereafter “IIS”) was the foreign intelligence arm of the Government of Iraq under Saddam Hussein. The IIS was responsible for foreign and counterintelligence gathering, as well as the collection of information regarding individuals and groups considered hostile to the Government of Iraq, including those opposing the Ba’ath Party in the United States.

7. In August 1990, following Iraq’s invasion of Kuwait, the United States severed diplomatic relations with the Government of Iraq. Beginning in early 1991, a group of Iraqi diplomats were allowed to operate an Iraqi Interests Section (“ISEC”) within the Algerian Embassy in Washington, D.C. The IIS maintained an office within the ISEC that was referred to as the “Washington Station.” The ISEC remained in operation until the invasion of Iraq by coalition forces on or about March 19, 2003. The Iraqi Embassy was reopened in Washington, D.C., in or about December 2003/January 2004.

8. Under the regime of Saddam Hussein, the IIS routinely recruited and/or tasked certain individuals, either currently in the United States or to be placed into the United States, to support the strategic interest of the IIS and the Government of Iraq. Following the invasion of Iraq by coalition forces in March 2003, the United States military came into possession of various confidential documents generated by the IIS. These documents, which have been translated from Arabic into English by certified FBI translators, reflect that the Defendant had provided information and assistance to the IIS. For example, an IIS document dated March 27, 2000, reflects that the Defendant, referred to as “the friend Mouyyad Mahmoud Darwish,” was paid a sum of money by

the IIS on that date, through the Washington Station, for his “assistance.” Another IIS document dated August 6, 2002, indicates that the Defendant had provided information he received from a subsource of Iraqi descent that Iraqi volunteers (including the subsource) were being trained by the United States military in Virginia and were getting \$2000 per month. A third IIS document dated June 2002, identifies the Defendant as an employee of the ISEC in Washington, D.C.

B. Witness Information

9. Over the course of the last year, a confidential source, referred to hereafter as CS-1, has provided information to the FBI regarding his/her personal knowledge of the Defendant’s employment in the United States from in or about 2000 through March or April of 2004. To date, the information provided by CS-1 has not been proven unreliable. During this time frame, CS-1 personally observed the Defendant working full-time at the ISEC as an assistant to the accountant and as a driver, for which he was paid approximately \$1500 per month. CS-1 was also made aware by the Defendant of his subsequent employment at the Iraqi Embassy in late 2003 through early 2004. CS-1 was aware that the Defendant had obtained a work visa for a position as a cook at a restaurant in Laurel, Maryland, and was utilizing this position as a means to legitimize his presence in the United States during this period. Prior to 2000, CS-1 saw the Defendant at various National Day parties thrown by the ISEC. According to CS-1, these gatherings were used to recruit individuals to work for the IIS, interact with individuals who were already working with the IIS and Saddam Hussein’s regime, and maintain the loyalties of the participants to the Ba’ath Party and Saddam Hussein’s regime. The Defendant was caught on videotape at the 1998 National Day party here in the United States that was sponsored by the ISEC. That videotape is currently in the possession of the FBI. CS-1 knows from his/her interaction with the Defendant that the Defendant

worked closely with the Chief of the ISEC and known IIS officials at the ISEC.

10. During the period encompassing December 2003 through March/April 2004, the Defendant and his co-conspirators engaged in recorded conversations, currently in the possession of the FBI, that confirmed the Defendant's employment at the reopened Iraqi Embassy. During one of those recorded conversations that took place in early January 2004, a co-conspirator, in an effort to conceal his activities as an ISEC employee and Ba'ath Party member, asked that the Defendant locate and destroy any ISEC files associated with him (the co-conspirator). While attempting to locate the files, the Defendant learned that they had already been destroyed by other co-conspirators in an effort to conceal the activities of Ba'ath Party members in the United States and Iraq. The recorded conversations reveal that the Defendant shared this information with his co-conspirators. The conversations also reveal that the Defendant told his co-conspirators about his employment activities at the Iraqi Embassy and the ongoing activities in the United States of the Iraqi ambassador and other Iraqi government officials who were associated with the interim government following the downfall of the Saddam Hussein regime.

C. Defendant's Statements

11. During the period from October 2001 through 2006, the Defendant sought to obtain lawful permanent residence in the United States. In the documents he filed with U.S. Immigration (subsequently USCIS) in support of his application, he never revealed his affiliation with the Ba'ath Party or the Government of Iraq. In his initial application for LPR status, dated October 18, 2001, the Defendant left blank the section asking that he list any present or past membership or affiliation with political organizations, associations, funds, foundations, party, club, society or similar group in the United States or elsewhere. In an affidavit filed on October 13, 2005, in support of his LPR

application, the Defendant never revealed the fact of his employment with the ISEC/Iraqi Embassy from 2000 through early 2004. Instead, he misrepresented facts relating to the date, and the reasons for, his entry into the United States by claiming that he first entered on June 15, 2001, for the sole purpose of working at a restaurant in Laurel, Maryland, as a cook.

12. The Defendant was interviewed by agents of the FBI on May 20, 2003. During his interview, the Defendant made numerous misrepresentations regarding his presence in the United States. He stated that he arrived in the United States in May 2001. He asserted that at the urging of the local Iraqi community, he went to the ISEC to see if he could do anything to help. He began working at the ISEC on a part-time basis in late 2001 doing odd jobs, like mowing the lawn, making minor repairs, doing shopping, driving, and handling some accounting. He stated that the ISEC paid him in cash - usually \$200-300 per week - and sometimes he would not be paid for months at a time. At one point in the interview, the Defendant stated he was the accountant at the ISEC, but insisted that this was not a regular full-time job. The Defendant claimed that he had no knowledge of intelligence activities being conducted by, or at, the ISEC. He indicated that he was a full-time employee of a restaurant in Laurel, Maryland, and worked there from 5am to 9pm every day.

13. Based on the above information, your affiant believes there is probable cause to believe that the Defendant, Mouyad Mahmoud Darwish, has committed the crime of conspiring to knowingly act in the United States as an agent of a foreign government, namely, the Government of Iraq, the Ba'ath Party, and the Saddam Hussein regime, without prior notification to the Attorney General of the United States as required by law, in violation of Title 18, United States Code, Sections 951(a) and 371.

Your Affiant has signed this affidavit under oath as to all assertions and allegations contained

herein and states that its contents are true and correct to the best of his knowledge and belief.

Donald E. Lichay
Special Agent, Federal Bureau of Investigation

Signed to and sworn before me this 28th day of December, 2008.

Paul W. Grimm
Chief United States Magistrate Judge