

NEAL M. SHER
ATTORNEY AT LAW

The French Building
551 Fifth Avenue
31st Floor
New York, NY 10176

Tel: 347-306-2860
Fax: 646-706-7029
nealsher@gmail.com

November 17, 2014

The Honorable Alejandro Mayorkas
Deputy Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

VIA: First Class Mail &
alejandro.mayorkas@dhs.gov

Re: Ineligibility of Mahmoud Abbas to
Enter the United States

Dear Secretary Mayorkas,

This is to request that Mahmoud Abbas, *aka* Abu Mazen (DOB: 26 March 1935), President of the Palestinian National Authority (“PA”) and leader of Fatah be declared ineligible to enter the United States under Sections 221(g) and 212(a) of the Immigration and Nationality Act, which bars entry into this country of any persons who, *inter alia*, incited terrorist activity or used his position of prominence to endorse or espouse terrorist activity in a way that undermines United States efforts to reduce or eliminate terrorist activities.

I make this request as counsel for over 140 victims and family members of the November 5, 2009 terror attack at Ft. Hood, Texas. The perpetrator of that massacre, Nidal Hasan, was radicalized by persons who incited, endorsed and espoused terrorist activities. My clients know painfully well the deadly consequences of such incitements and endorsements.

I also write as a former Director of the Office of Special Investigations in the Department of Justice, responsible for enforcing visa ineligibility requirements of our immigration laws regarding Nazi persecutors. In that capacity I was responsible for the 1987 decision to bar entry to this country of Kurt Waldheim, then the President of Austria. See attached DOJ Press Release announcing that action.

There is an abundance of publicly available evidence to establish that Abbas personally (1) incited terrorist activity and (2) used his position of prominence to endorse terror activity. Additionally, ranking officials of the PA and Fatah, over whom Abbas has control and for whom he must be held responsible, have engaged in a widespread, deliberate campaign to incite and endorse terrorism.

Incidents in which Abbas and his top underlings have incited or endorsed terrorist activity are legion and have been made public on a regular – at times almost daily – basis. Set forth below are very recent samples - but by no means a full exposition – of such incitements and endorsements.

- Abbas publicly glorified the perpetrator of the attempted assassination of Yehuda Glick – an American – declaring that he was a “martyr” and in so doing endorsed a clear act of terror;
- In his speech at the United Nations earlier this year, Abbas deliberately resorted to inflammatory and threatening rhetoric regarding the situation in Israel, which was a transparent call for violence and terrorism;
- Abbas publicly urged Palestinians to prevent Jews from entering the Temple Mount “by all means necessary”, an unambiguous call for violence.
- Under Abbas’s leadership, PA and Fatah officials - through their official Facebook page, newspapers, TV and radio stations - repeatedly called for “jihad”, glorified and endorsed the deadly acts of terrorists, and threatened an explosion of a religious war could engulf the United States;
- A close advisor to Abbas proclaimed on the PA’s official Facebook page that the convicted terrorist who in October of this year rammed his car into an Israel rail station and killed a three month old infant was a “martyr” and worthy of honor. It is hard to imagine a more and despicable endorsement of terrorism;
- Moreover, after additional incidents where vehicles were used as weapons of terror, official PA outlets incited Palestinians to show their anger by “running over Israelis”;
- Similarly, in a clear-cut example of incitement to and endorsement of terrorism, the PA Facebook page posted ugly depictions of the three Israeli teenagers who were kidnapped and murdered in June of this year. One of the victims was an American. The kidnappers and murderers were praised, honored and glorified leaving no doubt that their conduct should be emulated.

Such conduct unquestionably and ineluctably leads to a finding that Abbas is ineligible for entry into the United States under, *inter alia*, the following provisions of Section 212 (a) of the Immigration and Nationality Act:

- (3) (B) (i) (III) : for having “incited terrorist activity”; and
- (3) (B) (i) (VII): in that in his position of prominence and leadership he “endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization.”.

I also note, as referenced above, that there is precedent taking the requested action against a leader of a political entity: on April 27, 1987 the United States barred Kurt Waldheim, who was then the President of Austria. Moreover, since neither Abbas nor the PA enjoys sovereign immunity, Abbas should be barred from entry in both his personal and official capacities. If it was determined that Abbas's presence in this country was necessary, a parole order could be issued by the Attorney General.

I appreciate your consideration of this request and be assured that I stand ready to assist you in any way you deem appropriate. I look forward to hearing from you.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Neal M. Sher", followed by a horizontal line extending to the right.

NEAL M. SHER



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, APRIL 27, 1987

OPA
(202) 633-2007

Director of Public Affairs Terry Eastland today issued the following statement:

"The Department of Justice and the Department of State are announcing today that the Department of Justice has determined that a prima facie case of excludability exists with respect to Kurt Waldheim as an individual, and his name is being placed on the 'Watchlist.' This determination was based on United States law prohibiting entry to any foreign national who assisted or otherwise participated in activities amounting to persecution during World War II.

"Both Departments emphasize that this decision deals with Mr. Waldheim as an individual for past activities.

"Relations between the people and Government of the United States and the people and Government of Austria have traditionally been close and friendly. We share a fundamental commitment to democracy, human rights and the rule of law. We highly value our relationship with Austria and we will work to strengthen our friendship."

Attachment

STATEMENT CONCERNING THE STATUS OF KURT WALDHEIM

1. Under United States law, the Attorney General is required to determine whether any alien brought to his attention is ineligible for entry into the United States, inter alia because, between March 23, 1933, and May 8, 1945, under the direction of the Nazi Government of Germany, he "ordered, initiated, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion." 18 U.S.C. Sec. 1182(a)(33).

2. The practice in implementing this law has been to place on an appropriate list ("Watchlist") the names of all persons concerning whom a prima facie case of ineligibility is found to exist for the reasons described above. Many thousands of persons have been placed on the list who have never actually sought entry into the United States, and without regard to whether they intend ever to seek such entry.

3. The standards applied in placing persons on the Watchlist do not require a finding of having engaged in "war crimes" or "crimes against humanity." The statutory standard is met if a person assisted or participated in any material manner in any form of proscribed persecution. Such cases are frequently based upon a person's membership in an organization listed as

"inimical" because of its particularly heinous activities, or upon a person's playing a role in an organization or operation that provides a reliable basis for inferring the proscribed assistance or participation. Efforts by a person to hide or otherwise distort potentially improper activities have routinely been regarded as significant in determining whether a prima facie case exists.

4. The Office of Special Investigations, Department of Justice, collected and analyzed evidence pertaining to the activities of Kurt Waldheim, between 1942 and 1945. Careful consideration was given to this matter, and a full opportunity was afforded to Mr. Waldheim and his attorney to provide information and to comment on issues. The evidence collected satisfies the applicable statutory standards, in that it establishes a prima facie case that Kurt Waldheim assisted or otherwise participated in the persecution of persons because of race, religion, national origin, or political opinion.

5. The Department of Justice has therefore ordered, as required by law, that Kurt Waldheim's name be added to Watchlist. The Department of State has also, therefore, ordered that his name be added to the Automated Visa Lookout System, to alert consular officers as to his prima facie ineligibility for a visa to enter the United States.

6. These determinations are without prejudice to any consideration of an application to enter the United States based on special authority.

####