

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ABDEL MONIEM ALI EL-GANAYNI,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
ENERGY, and JEFFREY F. KUPFER,
Acting Deputy Secretary of Department
of Energy,

Defendants.

No. _____

VERIFIED COMPLAINT

Dr. Abdel Moniem Ali El-Ganayni (“Dr. El-Ganayni”), by his counsel, Schnader Harrison Segal & Lewis LLP and the American Civil Liberties Union/Foundation of Pennsylvania, files this Complaint against the United States Department of Energy (“D.O.E.”) and Jeffrey F. Kupfer, Acting Deputy Secretary of D.O.E., and in support thereof, avers as follows:

INTRODUCTION

1. Dr. El-Ganayni is a native-born Egyptian man who came to the United States in 1980. He settled in Pittsburgh, Pennsylvania, where in the subsequent decade he earned masters and Ph. D. degrees in physics from the University of Pittsburgh, married an American woman, was active in establishing one of the region’s first Islamic mosques, and in 1988 became a U.S. citizen. In 1990, Dr. El-Ganayni was hired as a physicist at Bettis Laboratory, a Pittsburgh-area

facility operated under contract with the U.S. Department of Energy (“D.O.E.”) that is solely dedicated to the Naval Nuclear Propulsion Program, a joint Navy-D.O.E. program responsible for the research, design, construction, operation, and maintenance of U.S. nuclear-powered warships. Dr. El-Ganayni’s employment required a security clearance that allowed him access to certain classified information and subjected him to routine clearance re-certification and other security measures. In seventeen years at Bettis, Dr. El-Ganayni never received a negative performance evaluation and was never accused of misconduct. Nevertheless, in December 2007 D.O.E. suspended Dr. El-Ganayni’s clearance, a decision that set in motion events leading to this lawsuit.

2. To this day Dr. El-Ganayni does not know exactly why his clearance was suspended and eventually revoked. He can only deduce the reasons based on the questions he was asked during approximately seven hours of interviews, first in October 2007 by Bettis and D.O.E. officials and then two weeks later by F.B.I. agents. The questions focused on Dr. El-Ganayni’s religious beliefs as a Muslim, his work as an Imam in the Pennsylvania prison system, his political views about America’s war with Iraq, and speeches he gave at local Mosques criticizing the F.B.I.’s mistreatment of and disrespect for Muslims, particularly in Pittsburgh. There were no questions related to security breaches at Bettis or the mishandling of classified information.

3. This action focuses not on the D.O.E.’s decision to revoke Dr. El-Ganayni’s clearance – a decision that cost him his nearly twenty-year-old job at Bettis – but on an apparently unprecedented May 19, 2008, decision by D.O.E. and Defendant Kupfer to invoke “national security” to deny Dr. El-Ganayni any explanation for the revocation and to circumvent due-process protections mandated by D.O.E. regulations. Dr. El-Ganayni alleges in this action

that D.O.E. invoked national security solely to shield the agency from having to disclose the unconstitutional retaliatory and discriminatory reasons for the clearance revocation, reasons that violate Dr. El-Ganayni's First Amendment right to freedom of speech and Fifth Amendment right to be free from discrimination based on his ethnicity and religious beliefs. In other words, based on available information D.O.E. suspended Dr. El-Ganayni because he is a foreign-born Muslim who has spoken publicly and critically about U.S. foreign policy and the F.B.I.'s treatment of Muslims. Dr. El-Ganayni seeks declaratory and injunctive relief, not to overturn the clearance-revocation decision, but to permit Dr. El-Ganayni to contest the revocation before a non-political, neutral arbiter, as mandated by D.O.E. regulations.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(4) and 1357.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Dr. El-Ganayni resides, and suffered harm, in this District as a result of defendants' actions.

PARTIES

6. Dr. El-Ganayni is a United States citizen who resides in Pittsburgh, Pennsylvania.

7. D.O.E. is an Executive-branch agency of the United States government, with headquarters at: 1000 Independence Avenue SW, Washington D.C. 20585

8. Jeffrey F. Kupfer was at all relevant times the Acting Deputy Secretary of the U.S. Department of Energy. He is sued in his official capacity.

FACTS

Background on Dr. El-Ganayni

9. Dr. El-Ganayni was born in Egypt and came to the United States in 1980. He was educated in Egypt, Canada and the United States. He received a masters degree in nuclear physics in 1983 and a Ph.D. in atomic physics in 1990, both from the University of Pittsburgh.

10. In 1982 Dr. El-Ganayni married an American-born woman, to whom he remains married. They have no children.

11. With the exception of one trip to Egypt shortly after his marriage in 1982, Dr. El-Ganayni has not left the U.S. or Canada since then.

12. Dr. El-Ganayni is Muslim. When he came to Pittsburgh in 1980, there was practically no place for Muslims to gather for worship. He was instrumental in helping to found one of the area's first Mosques, the Islamic Center of Pittsburgh ("ICP"). He served in the Mosque's leadership, most recently as President until 1992. Even though Dr. El-Ganayni relinquished his official role with the ICP in 1992, he continued to be a member of that congregation and regularly spoke at services there and at other Pittsburgh-area Mosques.

13. Dr. El-Ganayni has been actively involved in Muslim ministerial activities. From 1998 to 2005, he worked under contract with the Ohio Department of Corrections as an Imam to provide Islamic religious services to Muslim prisoners at the Belmont Correctional Institute, near St. Clairesville, Ohio. In or around 2005, as a result of prison cutbacks leading to decreased hours and compensation, Dr. El-Ganayni decided not to renew his contract, but still helped the Ohio Department of Corrections locate a replacement Imam.

14. Dr. El-Ganayni's activism within the Muslim community includes many other charitable works. He regularly shares a portion of his income with those less fortunate than him. For instance, each month, he sends money to a woman with six children in Yemen, who has no source of income. Dr. El-Ganayni befriended and helped the family when they lived in Pittsburgh. He informed his employer about this contact.

15. Another example of Dr. El-Ganayni's community service occurred in 2005. An Iraqi family brought a young boy, who had been severely disfigured by an American mortar attack in Fallujah, to Pittsburgh's Children's Hospital for complex surgery. Dr. El-Ganayni helped by driving the family to appointments and providing financial assistance. *See* Karen Roebuck, *Putting on a Brave Face*, Pittsburgh Tribune-Review, July 26, 2006 (accessible at http://www.pittsburghlive.com/x/pittsburghtrib/search/s_463404.html).

Dr. El-Ganayni's Employment at Bettis Laboratory

16. In 1989, Dr. El-Ganayni was offered a job at Bettis Laboratory, located in West Mifflin, as a Senior Scientific Programmer B. In 1997, he became a "Senior Scientist."

17. The Bettis Laboratory has for more than 50 years been developing advanced naval nuclear propulsion technology and providing technical support to ensure the safe and reliable operation of the United States' submarine and aircraft carrier fleets. In 1990 the Laboratory was operated for the D.O.E. by the Westinghouse Corporation, but several years ago operations transferred to Bechtel Bettis, Inc., which still maintains the facility. The Bettis Laboratory is dedicated solely to the "Naval Nuclear Propulsion Program," which is a joint Navy-D.O.E. program responsible for the research, design, construction, operation, and maintenance of U.S. nuclear-powered warships.

18. In order to work at the Bettis Laboratory, Dr. El-Ganayni was required to obtain a security clearance from the D.O.E. Dr. El-Ganayni underwent all required tests and interviews and was granted a security clearance in or around May of 1990, at which time he began working at the facility as a scientist.

19. Periodically, D.O.E.'s Office of Personnel Management conducts re-evaluations of security clearances. Dr. El-Ganayni has undergone at least 5 re-evaluations since 1990 and on each occasion he retained his security clearance. His employment responsibilities also required Dr. El-Ganayni to report all contacts with, and transfers of money to, foreigners, an obligation he has steadfastly fulfilled.

20. During his tenure at Bettis Laboratory, no one ever alleged or raised a concern that Dr. El-Ganayni had mishandled or in any way compromised classified information.

21. During his tenure at Bettis Laboratory, Dr. El-Ganayni never received a negative performance review.

22. Dr. El-Ganayni remained employed at this laboratory as a Senior Scientist until May 2008.

Dr. El-Ganayni's Religious and Political Activity After September 11, 2001

23. After September 11, 2001, Dr. El-Ganayni remained active in Pittsburgh's Muslim community. As was true nationwide, Dr. El-Ganayni witnessed a perceptible change in how the U.S. government treated Pittsburgh-area Muslims after the September 11 attacks.

24. Dr. El-Ganayni himself was scrutinized by the government. Some time between 2002 and 2005 the F.B.I. visited Dr. El-Ganayni at his home to request that he become an informant for the agency. Dr. El-Ganayni politely declined.

25. In 2005, Dr. El-Ganayni and his wife and mother were returning from a visit to his sister in Toronto when they were detained at the U.S. border. Border agents searched his wallet, his car, interrogated him, insisted that he provide fingerprints and took a retinal scan. Dr. El-Ganayni and his family members were then released after four hours.

26. A high-profile incident involving the Pittsburgh Muslim community occurred in summer 2006. On Friday, June 30, 2006, F.B.I. agents raided the Light of Age Mosque, on Pittsburgh's North Side, during solemn Friday prayer services known as Juma'h. Print and electronic media accompanied the F.B.I. on the raid. The raid interrupted the service and many worshipers were led outside, placed against the Mosque's wall in broad daylight, patted down and searched while TV cameras recorded the scene and countless bystanders looked on. No one was arrested. The F.B.I. would say only that the search was in connection with a criminal investigation. It later became known that the individual allegedly being sought in the raid had been apprehended by the F.B.I. in another location approximately two hours earlier.

27. The Light of Age Mosque's congregation and other members of Pittsburgh's Muslim community condemned the raid, which to them created an unwarranted disruption of a religious service, was unlawful, offensive, disrespectful to their religion and an abuse of the F.B.I.'s police powers. The raid gave the impression to the public that Muslims generally, and Light Of Age Mosque members in particular, were guilty of criminal wrongdoing. Because the raid involved a house of worship, took place during prayer services, and appeared to have been

unnecessary because the target had already been apprehended, many in the Muslim community and elsewhere viewed this raid as an intimidation tactic and another example of discrimination against Muslims. Many months later, the Acting Director of Pittsburgh's F.B.I. Office apologized to the Muslim community, at a meeting in Monroeville, for the way in which the raid was handled.

28. Dr. El-Ganayni was particularly upset at this latest incident. At a speech given during Juma'h prayer services at ICP two weeks after the raid, on July 14, 2006, Dr. El-Ganayni criticized the F.B.I.'s conduct, during the raid and otherwise. He stated that Muslims should cooperate with "law enforcement agencies," but that the F.B.I. was behaving more like a "political organization" and that until they resumed acting like a law-enforcement agency Muslims should refuse to act as informants. He criticized the Muslim community for having been intimidated into silence and failing to speak out against discriminatory and illegal acts perpetrated against Muslims by the U.S. government since September 11. He also criticized the notion promoted by some government leaders and various news commentators that Muslims have caused America's problems, arguing that it was in fact American foreign policy and particularly its actions in Iraq that have caused America's current problems. Presciently, he stated that he assumed the F.B.I. had someone in the audience who would immediately report to the agency that he had "attacked America," a sentiment that he then expressly refuted.

29. Shortly after the ICP Juma'h speech, in July or August of 2006, Dr. El-Ganayni traveled to Idaho for work. His wife and mother accompanied him, paying their own way. Both going to and from Idaho Dr. El-Ganayni initially was refused a boarding pass, causing him to miss his flights. His wife and mother received their boarding passes and were not detained. This was the first time he had any difficulty obtaining boarding passes at an airport.

30. In June or July 2007, Dr. El-Ganayni gave another speech at the Monroeville Mosque to promote prison-outreach efforts. Upon entering the Mosque he noticed that the F.B.I. had left on a table in the lobby brochures recruiting Muslims. Before delivering his prepared remarks, Dr. El-Ganayni told the congregants that he was upset that the F.B.I. was recruiting inside the Mosque, a house of worship that should be off limits to such efforts, and advised the congregants that while they certainly should report crimes if they become aware of any, they should not serve as informants for the F.B.I.

31. Meanwhile, in early 2007, the Pennsylvania Department of Corrections' director of religious services contacted Dr. El-Ganayni to ask him to serve as an Imam. Dr. El-Ganayni agreed and soon signed a contract to provide Islamic religious services at the State Correctional Institution at Forest ("SCI-Forest"). He started work in March 2007.

32. After he started at SCI-Forest, Dr. El-Ganayni requested on several occasions to speak to the SCI-Forest Superintendent about his concerns regarding the treatment of Muslim inmates, but was refused even a meeting. Dr. El-Ganayni was told by other prison officials that people in the prison thought that he was dangerous, but they provided no elaboration. In relatively short order, three incidents occurred that led Dr. El-Ganayni to lose his prison Imam position.

33. The first incident involved a ceremony for Eid al-Fitr, the feast celebrating the end of Ramadan, at SCI-Forest. In early July 2007, prison officials advised Dr. El-Ganayni that only prisoners who had sufficient funds in their accounts could attend the ceremony. In the past, both at SCI-Forest and at the Belmont facility in Ohio, the prisons had allowed outside contributions to enable inmates without sufficient funds in their accounts to enjoy the holiday

feast. The Superintendent refused Dr. El-Ganayni's offer to raise the funds himself, thereby precluding some inmates from participating in the most holy Muslim holiday meal. Dr. El-Ganayni told prison officials that it was unfair for the Superintendent to make these decisions affecting Muslims -- especially since they allowed Christian inmates at Christmas to do exactly what Dr. El-Ganayni requested and what had been the prison's practice in past years.

34. The second incident, which occurred shortly after the above disagreement, involved Dr. El-Ganayni's distribution of books or pamphlets that dealt with issues relevant to Islam. The prison's Chaplain Supervisor told Dr. El-Ganayni that the acting deputy superintendent was "bent out of shape" about one of the books that Dr. El-Ganayni had distributed, namely, "The Miracle in the Ant," by Harun Yahya (hereinafter the "Ant Book"). The Qur'an speaks about ants; indeed, Chapter 27 is entitled "The Ant" and describes King Solomon overhearing an ant telling other ants to get out of the way of Solomon's army. Dr. El-Ganayni had in the past used this book, which was included in the prison library and is sold in book stores, to answer prisoners' questions about ants and whether ants could in fact communicate. The Ant Book discusses numerous issues raised in the Qur'an. On pages 109-110 of this 163 page book, the following paragraph appears:

Discovered in 1970 by two entomologists, these ants [Camponotus species] are anatomically and behaviorally programmed to be walking bombs. Two huge glands, filled with toxic secretions, run from the bases of the mandibles all the way to the posterior tip of the body. When the ants are pressed hard during combat, either by enemy ants or by an attacking predator, they contract their abdominal muscles violently, bursting open the body wall and spraying the secretions onto the foe.

The passage is lifted verbatim from a biology text written by the world's foremost ant expert, Harvard Professor Edward O. Wilson. Dr. El-Ganayni did not highlight the passage or in any

way bring inmates' attention to it; rather, it was buried in over a hundred pages of text detailing ant behavior.

35. The third incident occurred about one week later. Dr. El-Ganayni had received a request from a female Muslim inmate at SCI-Muncy, who had been unable to see her mother and two minor sisters because they lacked transportation. Dr. El-Ganayni agreed to make the four-hour drive to SCI-Muncy with the inmate's family so that they could visit. Dr. El-Ganayni's wife called the prison ahead of time to confirm that they would be able to visit the inmate and she was assured that they would be admitted. Dr. El-Ganayni traveled over four hours with the inmate's family, but upon arrival was told they would not be admitted for a visit. Dr. El-Ganayni complained that they had been assured the visit was permissible, and asked to speak with the deputy warden and subsequently the superintendent. He was refused each time. Dr. El-Ganayni returned home and wrote a letter of complaint.

36. Several days later, Dr. El-Ganayni received a phone call advising him that SCI-Forest was canceling his contract. When he asked for the reason, he was told that SCI did not need a reason to terminate him. Dr. El-Ganayni elected not to contest the decision.

Interview with Bettis/D.O.E. Security Manager and Unidentified Person

37. On October 23, 2007, shortly after his termination from SCI-Forrest, Dr. El-Ganayni received a call from Bettis' Security Manager, who is also a D.O.E. official. The purpose of the call was to set up a meeting for the following day. The Security Manager would not tell Dr. El-Ganayni the purpose of the meeting.

38. The meeting took place on October 24, 2007, and included the Security Manager and an unidentified person. Dr. El-Ganayni was asked to sign some papers, which he did. Then, with a tape recorder running, the Security Manager and the unidentified person started asking Dr. El-Ganayni questions. They asked whether Dr. El-Ganayni supported killing Americans or ever promoted killing Americans. Dr. El-Ganayni responded no.

39. They asked whether he promoted killing Americans in Iraq, and Dr. El-Ganayni responded no. They asked whether he was against America. Dr. El-Ganayni responded that he was against the war in Iraq, but not against America.

40. They asked whether he supported suicide bombing, and Dr. El-Ganayni responded no. They asked him about the above-quoted paragraph from the "Ant Book" and whether someone could take that paragraph as encouragement for suicide bombing. Dr. El-Ganayni responded no, that the book was just about ants.

41. They asked him if he knew certain individuals, including the Iraqi boy who came to Pittsburgh for surgery and the family from Yemen to whom he sends money. Dr. El-Ganayni explained how he met these people and the extent of his interactions with them.

42. They asked him about the money he sent to the family in Yemen. Dr. El-Ganayni explained to them that he sends some money to this family each month because they have no other sources of income. He further explained that he had disclosed all of these transactions in forms filed with Bettis, as he was required to do as part of his security clearance.

43. They asked him whether he ever sent money to Palestinians. Dr. El-Ganayni responded that when he was President of the Mosque, the Mosque sent funds for food and

medicine to Palestine, but that he had not personally done so, and that he had not been President of the Mosque since 1992. They asked him whether he ever sent money to a terrorist organization like Hamas, and he responded no.

44. They also asked him about the three incidents, described above, with the Pennsylvania Department of Corrections.

45. They asked him whether he gave a speech in the Mosque in which he “attacked the United States.” Dr. El-Ganayni acknowledged giving the speech but denied that he attacked the United States. He had criticized America’s conduct in the Iraq war, something on which a majority of the American public agreed. They asked him whether he gave a speech in the Mosque in which he attacked the F.B.I. Dr. El-Ganayni responded that he did not attack the F.B.I., but he strongly criticized the F.B.I.’s raid of the Mosque on the North Side of Pittsburgh and the F.B.I.’s recruitment efforts inside Muslim places of worship.

46. They did not ask him any questions related to any alleged security breaches or mishandling of classified information.

47. At the conclusion of the questioning, the Security Manager read a statement which had been prepared ahead of time that he was suspending Dr. El-Ganayni’s security clearance pending “resolution of issues.” Dr. El-Ganayni was provided nothing in writing and was escorted out of the building.

Interview with F.B.I. and Suspension of Security Clearance

48. About two weeks later Dr. El-Ganayni received a phone call from the F.B.I. requesting an interview.

49. At the interview the F.B.I. agents advised Dr. El-Ganayni that the D.O.E. had requested that the F.B.I. determine whether he should continue to hold his security clearance. Many, but not all, of the questions were simply repeated from the earlier Bettis/D.O.E. October 24, 2007, interview.

50. In additions to similar questions about the Ant Book, the F.B.I. asked Dr. El-Ganayni the following:

- a. whether he had given a speech "attacking America";
- b. whether he had given a speech "attacking the F.B.I.";
- c. whether he had ever led a prayer asking Allah to grant victory over disbelievers (which is in fact one of the Islamic prayers that is said at virtually every service);
- d. his interpretation and understanding of the Qur'an;
- e. whether he believes an Iraqi man would be a martyr if he blew himself up and killed an American in the process;
- f. whether he was a member of Hamas, the Muslim Brotherhood or Al-Qaeda and whether he knew anyone in those organizations; and
- g. whether he ever watched television or internet news broadcasts in which Americans were killed in Iraq, and the identity of those individuals with whom he watched such news broadcasts.

51. This interview was also recorded. At the conclusion of the interview, the F.B.I. agents advised Dr. El-Ganayni that they may call him back for additional interviews, but no further interviews were ever scheduled.

52. Eventually, in December 2007, Dr. El-Ganayni received a letter dated December 5, 2007, from P.E. Salm, Manager of the Schenectady office of D.O.E., advising him that he was being suspended with pay based upon "reported information, which raises a substantial doubt concerning your continued eligibility for a clearance." The letter further stated that the D.O.E. was in possession of information that "continuation of your access authorization may endanger the common defense and security." This letter did not advise Dr. El-Ganayni of the substance of the "reported information" or how his security clearance could endanger national security.

53. On December 12, 2007, Dr. El-Ganayni was placed on reduced pay during the length of the suspension.

54. In January 2008, Dr. El-Ganayni received another letter dated January 14, 2008, from P.E. Salm of D.O.E., which purported to "inform you of the matters which are considered as being of significant concern by Department of Energy . . . and to advise you of the procedural rights in the resolution of your eligibility." A copy of this letter is attached hereto as Exhibit A.

55. The January 14, 2008 letter described the reasons for the suspension of his security clearance as follows:

Reliable information in the possession of the Department of Energy indicates that you have knowingly established or continued sympathetic association with a saboteur, spy, terrorist, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a foreign nation whose interests are inimical to the interests of the United States, its territories or possessions, or with any person

advocating the use of force or violence to overthrow the Government of the United States or any state or subdivision thereof by unconstitutional means.

Reliable information in the possession of the Department of Energy indicates that you have engaged in unusual conduct or are subject to circumstances which tend to show that you are not honest, reliable, or trustworthy; or which furnishes reason to believe that you may be subject to pressure, coercion, exploitation, or duress which may cause you to act contrary to the best interests of national security. Specifically, the circumstances or conduct involve conflicting allegiances.

This language simply tracked the language of D.O.E. regulations (10 C.F.R. 710.8 (b) and (l)).

56. The January 14, 2008 letter does not identify with what person he is alleged to have a “sympathetic association,” but to his knowledge, Dr. El-Ganayni has not associated with any such person. The January 14, 2008, letter does not identify what conduct allegedly tends to show he is not honest, reliable or trustworthy, or has conflicting allegiances.

57. The January 14, 2008 letter set forth a procedure for Dr. El-Ganayni to challenge these allegations. In particular, the procedure set forth in that letter includes:

- a. A hearing before a Hearing Officer “for the purpose of affording you an opportunity of supporting your eligibility for access authorization”;
- b. The right to submit written answers to the allegations;
- c. The right to present evidence on his behalf, through documents or witnesses, or both; and
- d. The right to be present for the entire hearing and be represented by counsel at his own expense.

58. Dr. El-Ganayni accepted the D.O.E.’s offer to contest the decision and requested a hearing pursuant to the procedure set forth in the January 14, 2008, letter.

59. On April 4, 2008, Dr. El-Ganayni received a letter from the D.O.E. Hearing Officer appointed to his matter, which reads in relevant part as follows: “In view of the paucity of information contained in the Notification Letter dated January 14, 2008 regarding the

information which creates a substantial doubt regarding your client's access authorization eligibility, I wish to immediately convene a telephone conference . . .”

60. This telephone conference occurred in early April 2008. During that conference, the Hearing Officer advised D.O.E. that its January 14, 2008, notice letter was facially deficient because it failed to provide Dr. El-Ganayni any notice of the allegations against him. The Hearing Officer instructed D.O.E. to provide additional notice. D.O.E. counsel responded that the agency was no longer relying on the language of the January 14, 2008, letter and did not intend to provide additional notice. The Hearing Officer instructed D.O.E. counsel to put its position in writing.

61. Five months into the D.O.E. hearing process, the agency abruptly terminated the proceedings. During a subsequent telephone conference with the Hearing Officer on May 19, 2008, D.O.E. counsel announced that the Acting Deputy Secretary of Energy, defendant Jeffrey F. Kupfer, had just signed a certification that the hearing “procedures [established by Executive Order and D.O.E. regulations] cannot be made available to Dr. El-Ganayni without damaging the interests of national security by revealing classified information.” Further, Kupfer terminated Dr. El-Ganayni's security clearance and stated that this determination was “conclusive,” thereby depriving the Hearing Officer of any authority to continue with the hearing process.

62. The hearing officer stated during the May 19, 2008, telephone conference that she had been a D.O.E. hearing officer for 13 years and had worked at the agency for 24 years and in all that time she had never heard of such a national-security certification being used to deny due process in an employee-security-clearance case.

63. On May 22, 2008, Dr. El-Ganayni received a letter from D.O.E. counsel attaching the "Certification." A true and correct copy of this letter, including the "Certification," is attached hereto as Exhibit B.

64. Also on May 22, 2008, Dr. El-Ganayni received notice that because his security clearance was terminated, he is no longer eligible to work at Bettis and was therefore discharged from the company's employ.

65. Defendants' actions, made in retaliation for Dr. El-Ganayni's exercise of constitutionally protected free-speech rights and because of his religious affiliation, inflict irreparable harm for which there is no adequate remedy at law.

66. Unless this Court enjoins, preliminarily and permanently thereafter, defendants from using the national-security certification to shield their clearance-revocation decision from scrutiny, Dr. El-Ganayni's rights to freedom of speech and freedom of religion will continue to be abridged.

67. As a direct and proximate cause of the defendants' actions, Dr. El-Ganayni has suffered, and is suffering, damages, including loss of income and benefits to date, loss of future income, damage to reputation, indignity, humiliation and emotional distress.

68. Upon information and belief, employees at Bettis Laboratory, including management employees, are interested in having Dr. El-Ganayni return to the facility to continue his work as a Senior Scientist.

**COUNT I – VIOLATION OF FIRST AMENDMENT RIGHTS
(SPEECH AND RELIGION)**

69. Plaintiff incorporates by reference paragraphs 1 through 68 of this Complaint as though set forth fully herein.

70. The First Amendment to the United States Constitution protects an individual's rights to free speech and free exercise of religion.

71. These rights include the right to speak critically against actions of the government with which the individual disagrees.

72. Dr. El-Ganayni exercised this right in various speeches in which he criticized the war in Iraq, the F.B.I.'s raid of a Mosque on Pittsburgh's North Side, and the F.B.I.'s recruitment inside Muslim houses of worship.

73. The speeches made by Dr. El-Ganayni were political speech protected by the First Amendment to the United States Constitution.

74. During his interviews with D.O.E. and F.B.I. personnel, Dr. El-Ganayni was repeatedly asked about his speeches and whether he criticized the F.B.I. or America.

75. During his interviews with D.O.E. and F.B.I. personnel, Dr. El-Ganayni was repeatedly asked about prayers he had led at the Mosque and his interpretation of the Qur'an and Muslim scripture.

76. Based on the questions posed to Dr. El-Ganayni during his interviews and other information, and upon information and belief, the decision to suspend and revoke Dr. El-

Ganayni's security clearance was made in retaliation for Dr. El-Ganayni's exercise of his rights to freedom of speech and religion, and Dr. El-Ganayni's security clearance would not have been suspended and revoked but for his exercise of those rights.

77. Upon information and belief, the suspension and revocation of Dr. El-Ganayni's security clearance was a violation of Dr. El-Ganayni's First Amendment rights to free speech and free exercise of religion.

78. Dr. El-Ganayni has suffered damages as a result of Defendants' actions, including the loss of his employment, damages to his reputation and his ability to obtain other employment, and other damages.

WHEREFORE, Dr. El-Ganayni seeks judgment in his favor and against Defendants, and in particular seeks:

(A) A declaration that Defendants' actions violated Dr. El-Ganayni's rights under the First Amendment to the United States Constitution;

(B) An order requiring D.O.E. to provide Dr. El-Ganayni notice and hearing procedures consistent with the United States Constitution and D.O.E. regulations to review the security-clearance revocation determination;

(C) Costs, interests and attorneys fees; and

(D) Any other relief deemed appropriate by the Court.

**COUNT II – VIOLATION OF EQUAL PROTECTION RIGHTS
UNDER FIFTH AMENDMENT TO U. S. CONSTITUTION**

79. Plaintiff incorporates by reference paragraphs 1 through 68 of this Complaint as though set forth fully herein.

80. The Fifth Amendment to the United States Constitution provides, among other things, that a person shall not be denied the equal protection of the laws.

81. Pursuant to the right to equal protection, the United States government and its agencies may not discriminate against individuals on the basis of, among other characteristics, religion or national origin.

82. During his interviews with D.O.E. and F.B.I. personnel, Dr. El-Ganayni was repeatedly asked questions about his religion, prayers he recited at ICP, his interpretation of the Qur'an, and his association with Muslims in his country of origin and elsewhere. He was asked questions regarding his knowledge of certain other Muslims, his financial contributions to Muslims in financial need, his activity as an Imam for the ICP and for the Pennsylvania Department of Corrections, his dispute with D.O.C. officials regarding Ramadan and the distribution of a book that discussed Islamic teachings.

83. Upon information and belief, no other scientist at Bettis faced a suspension and revocation of his or her security clearance during this time.

84. Upon information and belief, at the time of the suspension and revocation of his security clearance, Dr. El-Ganayni was the only active Muslim employed at Bettis.

85. Based on the questions posed at the interviews and upon information and belief, the decision to suspend and revoke Dr. El-Ganayni's security clearance was based on his religion and national origin, and Dr. El-Ganayni's security clearance would not have been suspended and revoked but for his religion and national origin.

86. Upon information and belief, the suspension and revocation of his security clearance was in violation of Dr. El-Ganayni's Fifth Amendment rights.

87. Dr. El-Ganayni has suffered damages as a result of Defendants' actions, including the loss of his employment, damages to his reputation and his ability to obtain other employment, and other damages.

WHEREFORE, Dr. El-Ganayni seeks judgment in his favor and against Defendants, and in particular seeks:

(A) A declaration that Defendants' actions violated Dr. El-Ganayni's rights under the Fifth Amendment to the United States Constitution;

(B) An order requiring D.O.E. to provide Dr. El-Ganayni notice and hearing procedures consistent with the United States Constitution and D.O.E. regulations to review the security-clearance revocation determination;

(C) Costs, interests and attorneys fees; and

(D) Any other relief deemed appropriate by the Court.

**COUNT III – DUE PROCESS
VIOLATION OF AGENCY REGULATIONS
UNDER ADMINISTRATIVE PROCEDURES ACT
AND THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

88. Plaintiff incorporates by reference paragraphs 1 through 68 of this Complaint as though set forth fully herein.

89. Pursuant to D.O.E.'s own regulations (10 C.F.R. 710.21(b)(2)), Dr. El-Ganayni was entitled to notice of the information that allegedly creates a substantial doubt regarding his access-authorization eligibility (which shall be as comprehensive and detailed as the national security permits) and why that information creates such doubt.

90. Pursuant to D.O.E.'s own regulations and the January 14, 2008 letter, Dr. El-Ganayni was entitled to such a hearing and was entitled to produce witnesses and other proof to support his defense to the allegations contained in the notification letter, and to testify himself and cross-examine D.O.E. witnesses (10 C.F.R. 710.25 and 710.26(a) and (d)).

91. Pursuant to its own regulations, D.O.E. is required to assist the Hearing Officer in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Hearing Officer (10 C.F.R. 710.26(d)).

92. D.O.E. regulations provide mechanisms for protecting against the disclosure of national security information and provides the Hearing Officer discretion to determine how to protect against such disclosure (10 C.F.R. 710.26(g) through (r)).

93. Pursuant to D.O.E.'s own regulations, if the Hearing Officer's decision is unfavorable to the individual, the individual may submit a request for further review with an Appeal Panel (10 C.F.R. 710.28(b)).

94. Pursuant to Executive Order 12968, which authorized the promulgation of regulations such as those cited above, Dr. El-Ganayni was entitled to the following rights:

a. To be provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

b. To be provided any documents, records and reports upon which a denial or revocation is based, to the extent such documents would be available under the Freedom of Information Act or the Privacy Act;

c. To be provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

d. To be provided written notice of and reasons for the results of the review;

e. To be provided an opportunity to appeal in writing to a high-level panel;

f. To be provided an opportunity to appear personally and to present relevant documents, materials and information at some point in the process before an adjudicative or other authority.

95. Dr. El-Ganayni was denied all of the afore-mentioned rights as a result of the Defendants' invocation of unidentified "national security concerns" to circumvent the hearing process.

96. Dr. El-Ganayni had a protected interest in his employment and his reputation, and the revocation of his security clearance without proper notice and hearing caused Dr. El-Ganayni to be terminated from his job, to be ineligible for any other job that would require a security clearance and caused harm and stigma to his reputation.

97. Defendants violated Dr. El-Ganayni's rights under the D.O.E. regulations and the Fifth Amendment to the United States Constitution by among other things:

a. Failing to provide adequate notice of the information that allegedly creates a substantial doubt regarding his access-authorization eligibility (which shall be as comprehensive and detailed as the national security permits) and why that information creates such doubt;

b. Failing to provide a reasonable opportunity to reply in writing to, and to request a review of, the determination;

c. Failing to provide a hearing;

d. Failing to provide an opportunity to produce witnesses and other proof to support his defense to the allegations contained in the notification letter;

e. Failing to provide an opportunity for Dr. El-Ganayni to testify himself and to cross-examine D.O.E. witnesses;

f. Failing to provide an opportunity to appear personally and to present relevant documents, materials and information at some point in the process before an adjudicative or other authority;

g. Failing to assist the Hearing Officer in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Hearing Officer;

h. Failing to provide an opportunity to request a review from an Appeal Panel in the event the Hearing Officer's decision was unfavorable;

i. Failing to provide an opportunity to question individuals whose statements formed the basis for the decision to suspend or revoke Dr. El-Ganayni's security clearance;

j. Failing to provide an opportunity to inspect documents or items which formed the basis for the decision to suspend or revoke Dr. El-Ganayni's security clearance; and

k. Failing to otherwise adhere to D.O.E.'s own regulations.

98. This Court has the authority to compel agency action unlawfully withheld under the Administrative Procedures Act. 5 U.S.C. § 706 (1).

99. This Court has the authority to hold unlawful and set aside agency action, findings and conclusions found to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege or immunity; . . . (D) without observance of procedure required by law . . . 5 U.S.C. § 706 (2).

100. Defendants' above-described actions were arbitrary, capricious, an abuse of discretion and not in accordance with law, including its own regulations.

101. Defendants' above-described actions are contrary to Dr. El-Ganayni's constitutional right to due process.

102. Defendants' above-described actions were committed without observance of the procedure required by law.

103. Executive Order 12968 is not to the contrary, and cannot be used as a shield to protect government agencies from willful deprivations of an individual's Constitutional rights and retaliation against individuals for the exercise of such rights. The D.O.E.'s own regulations provide mechanisms for protecting information that cannot be disclosed due to national security reasons. D.O.E.'s attempt to use Executive Order 12968 to bypass even the most basic due process rights set forth in its regulations and to avoid disclosure of its willful violations of Dr. El-Ganayni's Constitutional rights, cannot withstand scrutiny.

104. Further, Executive Order 12968 does not permit Defendants to summarily declare "national security" interests and thereby deprive Dr. El-Ganayni of all rights afforded under D.O.E. regulations. To the extent it applies at all, Executive Order 12968 would only permit the denial of a particular procedure upon a proper determination that the particular procedure cannot be made available. Executive Order 12968 does not contemplate a wholesale denial of any procedural rights without any review for Constitutional violations.

105. D.O.E.'s regulations and the Fifth Amendment require that Dr. El-Ganayni be advised of the allegations against him, provided an opportunity to counter those allegations, and to have a neutral fact finder review the decision to revoke his security clearance.

106. Dr. El-Ganayni had a reasonable expectation in his continued employment at Bechtel's Bettis Laboratory.

107. Defendants' above-described actions directly caused Dr. El-Ganayni to lose his employment at Bettis, his primary employment for over eighteen years.

108. Dr. El-Ganayni has suffered damages as a result of Defendants' actions, including the loss of his employment, damages to his reputation and his ability to obtain other employment, and other damages.

WHEREFORE, Dr. El-Ganayni seeks judgment in his favor and against Defendants, and in particular seeks:

(A) A declaration that Defendants' actions violated Dr. El-Ganayni's rights under D.O.E.'s own regulations and the Fifth Amendment to the United States Constitution;

(B) An order requiring D.O.E. to provide adequate notice and a hearing as mandated in its regulations and by the Fifth Amendment to the United States Constitution;

(C) Costs, interests and attorneys fees; and

(D) Any other relief deemed appropriate by the Court.

JURY TRIAL DEMANDED on all issues so triable.

Respectfully submitted,

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