

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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YASSIN AREF,

Petitioner,

Case No. 1:04-CR-402 (TJM)

V.

UNITED STATES OF AMERICA,  
Respondent.

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MOHAMMED MOSHARREF HOSSAIN,  
Petitioner,

Case No. 1:04-CR-402 (TJM)

V.

UNITED STATES OF AMERICA,  
Respondent.

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**MEMORANDUM OF LAW**

The Muslim Solidarity Committee (MSC), Project SALAM, and the Masjid As Salam have moved this court for permission to file an Amicus brief in connection with petitions filed by the Petitioners in the above entitled actions pursuant to Section 2255 of the Federal Rules of Criminal Procedure.

**THE LEGAL STANDAND FOR GRANTING AMICUS STATUS**

The decision to allow a non-party to participate as amicus curiae is solely within the broad discretion of this court. James Square Nursing Home, Inc. Wing, 897 F. Supp. 682, 683 n.2 (N.D.N.Y. 1995) (Scullin, J.). “There is no governing standard, rule or

statue, prescribing the procedure for obtaining leave to file an amicus brief in district court.” Onondaga Indian Nation v. State of New York, No. 97 CV 445, 1997 WL 369389 at 2 (N.D.N.Y., 1997) (McCurn, J.).

Decisions from other states suggest some of the many ways that an Amicus brief can help the court in resolving issues presented. In Bryant v. Better Bus. Bureau of Greater Maryland, 923 F. Supp. 720, 727-28 (D. Md. 1996), the Court stated, “The aid of amici curiae has been allowed at the trial level where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance.”

In Liberty Resources Inc. v. Philadelphia Housing Auth., 395 F. Supp. 2d 206, 209 (E.D. Pa 2005), the court said, “[C]ourts have found the participation of an amicus especially proper where the amicus will ensure complete and plenary presentation of difficult issues so that the court may reach a proper decision, or where an issue of general public interest is at state.”

The fact that the proposed amicus is not a completely neutral entity with respect to the issues raised by the lawsuit is not a sufficient reason for denial of the motion. Bryant v. Better Bus. Bureau of Greater Maryland, 923 F. Supp at 728 (1996); Onondaga Indian Nation v. New York, 1997 WL 369389 at \*3; Concerned Area Residents for the Environment v. Southview Farm, 834 F. Supp. 1410, 1413 (W.D.N.Y. 1993). Indeed, it is often because amici have previously taken positions with respect to the issues, that they

are best able to assist the court in identifying relevant issues and authorities in the pending matter.

Requests for permission to be accorded amicus status are typically rejected where the issues are simple and straightforward, or where the amicus does not add anything new. US v. El-Gabrownny, 844 F. Supp 955, 957 n.1 (S.D.N.Y. 1994); US v. Ahmed, 788 F. Supp. 196, 198 n. 1 (S.D.N.Y, 1992); Long Island Soundkeeper Fund, Inc. v. New York Athletic Club, 1995 WL 358777 (S.D.N.Y. 1995). Here the issues are far from simple or straightforward, and the unrepresented defendants may have difficulty in presenting the legal and factual issues as fully as necessary

#### **THE COURT SHOULD GRANT AMICUS STATUS TO THE MOVANTS**

The petitioners, Aref and Hossain, have filed voluminous papers that raise a myriad of legal and factual issues. Because of the Amici's deep involvement in the cases, not only of Aref and Hossain, but of other Muslims prosecuted under the government's preemptive prosecution program, an Amicus brief could help put the allegations in a broader context. For example, the Department of Justice's own Inspector General in his report dated July 10, 2009, recommended that a special prosecutor be appointed to review prior terrorism-related cases to determine if the defendants were given appropriate discovery of exculpatory information from classified information. The Inspector General found that no procedure had been established for doing this and that the Justice Department, apparently violating its clear discovery obligations, had not done so. This

important issue might well be overlooked in all of the myriad of other issues presented by the petitioners.

The Amici include a significant number of Muslims who have never had an opportunity to be heard in connection with the government's preemptive prosecution program.

Muslim worship spaces have been infiltrated and invaded by the government. Agents provocateur have been sent into mosques to stir up trouble and try to entrap Muslims.

Muslim communities have been spied on using secret listening devices. Communities have been torn apart and families destroyed. An amicus brief would bring a different perspective on issues of "general public interest", which so far have been dominated by the government.

Muslim overwhelmingly are opposed to terrorism of any sort. They understand that if any terrorism occurs in the US they are likely to suffer for it more than anyone else and they have every reason to want to prevent it. But they do not want to be made a scapegoat or treated as second class citizens, or denied basic justice. They want their voices to be heard on the issue of the right way to prevent terrorism and the wrong way.

For all these reasons, the Muslim Solidarity Committee, Project SALAM, and the Masjid As Salam ask this court to exercise its broad discretion to permit the movants to participate as amici curiae by filing briefs and participating in oral argument on the issues presented in this case.

Respectfully submitted,

Muslim Solidarity Committee, Project SALAM and Masjid As-Salam

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