

Project SALAM
Support and Legal Advocacy for Muslims
www.projectsalam.org

April 4, 2009

President Barack Obama
The White House
1600 Pennsylvania Ave. N.W.
Washington, DC. 20500

Attorney General Eric Holder
Department of Justice
950 Pennsylvania Ave. N.W.
Washington DC. 20530-4371

Dear President Obama and Attorney General Holder:

On February 17, 2009, we at Project SALAM wrote to you to request that you investigate the unfair and illegal tactics used by the Justice Department to convict and incarcerate Muslims after 9/11. A copy of that letter is attached, signed by 970 people. Now we want to call to your attention to four specific cases that we think merit your immediate attention.

1. US v. Syed Fahad Hashmi (www.freefahad.com)

Mr. Hashmi, a US citizen, was extradited to the United States from London and has been held in solitary confinement in Manhattan for the last 15 months under conditions that violate the prohibition against torture and the Constitution's 8th Amendment prohibition against "cruel and unusual punishment." He has had "special administrative measures" (SAMs) placed on him that have restricted his movements and contacts with humans to such an extent that his attorneys are concerned that the isolation will cause lasting psychological, emotional, and physical damage. He has not been found guilty of any crime, and is presumed to be innocent.

Mr. Hashmi is being charged with providing material support to Al Qaeda under a fact situation that is insubstantial. Mr. Hashmi supposedly allowed an acquaintance with a bag of clothes to stay in his apartment in London, where he was a student, for a week or so without any awareness by him that the bag or its contents – clothing – had anything to do with terrorism. Later the clothes – socks and ponchos – allegedly found their way to an Al Qaeda official, but not through Mr. Hashmi. There is no allegation that Mr. Hashmi took the clothes to Al Qaeda, or was aware that the acquaintance had anything to do with Al Qaeda. (Mr. Hashmi also allegedly allowed the acquaintance to use his cell phone, and the acquaintance called an Al Qaeda contact on the cell phone, but there is no allegation that Mr. Hashmi knew whom the acquaintance was calling.)

The charge is reminiscent of the claim by the Bush Administration that if an old lady contributed money to a charity believing that it would be used to relieve poverty and hunger, and the money was in fact used by a terrorist organization, the lady would be guilty of providing material support to terrorism even though she had no idea that she was committing a crime when she gave the money. Such an over-expansion of the "material support" charge, which criminalizes charitable and altruistic behavior, is unwarranted when there is no actual intention of providing support to terrorism.

The Obama Administration has just pledged to end torture in the American justice system. A good place

to begin to end torture and reestablish American justice would be right here in Manhattan. Investigate the Hashmi case to determine if there is any basis to continue to hold him. If not, dismiss the charges and let him go. If there is a basis for charges, then end the torture of solitary confinement and handle his case in the manner in which all such cases should be handled under the Constitution – beginning with the presumption of innocence.

2. US v. Sami Al-Arian (www.freesamialarian.com)

Dr. Sami Al-Arian is the son of Palestinian refugees and has lived in the United States since 1975. A respected scholar and teacher at a state university, Al-Arian dared to criticize the Israeli occupation and openly promote the rights of Palestinians; the Bush Administration responded by charging him with terrorism. After he was held in solitary confinement for 29 months, the case finally went to trial in 2005. After a six-month trial, the jury acquitted Dr. Al-Arian on the most serious charges and voted 10-2 in favor of acquittal on the other charges.

Despite this acquittal, the government continued to hold Dr. Al-Arian in jail. In early 2006, in an effort to gain his freedom, Al-Arian agreed to plead guilty to a single count of “conspiracy” in exchange for his release and voluntary deportation. The written agreement was made public in May 2006 and the Justice Department stipulated that Dr. Al-Arian

1. had not engaged in any violent acts and had no previous knowledge of violent acts committed in the United States or the Middle East;
2. would not be required to “cooperate” by providing information to prosecutors;
3. would be released for time served, and the Justice Department would assist in his immediate voluntary deportation.

However, the government continued to hold him, and called for him to testify before a grand jury. Dr. Al-Arian refused, saying the plea bargain exempted him. He was charged with contempt of court and was finally admitted to bail, after being held for five and a half years in jail. He is presently awaiting a trial on these contempt charges scheduled to begin in March 2009.

This trial represents the classic example of the over-zealous, biased prosecutor who is not interested justice but rather bends the rules to persecute, not prosecute. The US government should not be trying to ruin someone who did nothing more than exercise his right of free speech in a manner that the government (at that time) disapproved of. We ask you to examine this case and determine whether the prosecutor’s real motive was to prosecute a crime, or to persecute an outspoken scholar.

3. US v. Rafil Dhafir (www.dhafirtrial.net)

Dr. Rafil Dhafir, born in Iraq and naturalized as an American citizen, is a highly regarded doctor and oncologist from Syracuse NY who became concerned about the humanitarian catastrophe created by the Gulf War and the UN sanctions imposed on Iraq. Dr. Dhafir set up a charity, Help the Needy, to help the destitute in Iraq survive the effects of the embargo. For 13 years, Help the Needy openly sent food and medicine to starving Iraqi civilians at a time when approximately 1.5 million people, mostly children, died as a result of the embargo.

In 2003, Dr. Dhafir was arrested, and Attorney General John Ashcroft announced that “funders of terrorism” had been arrested. On that same day, 150 local Muslim families were interrogated because they had donated to his charity. However, no charges of terrorism were ever brought against Dr. Dhafir. Instead, he was charged with violating the embargo and held without bail until his trial in October 2004.

When Dr. Dhafir refused to accept a plea agreement, 25 additional charges of Medicare fraud were

added. Medicare fraud usually involves fictitious patients and non-existent treatments; Dr. Dhafir's case had none of this. The government never contested that his patients received appropriate care, treatment, and medicines; rather, it claimed that because Dr. Dhafir was sometimes not present in his office when patients were treated, Medicare forms were not filled out correctly, and so he was not entitled to any reimbursement for treatments actually given or for the expensive chemotherapy his office had actually administered. (In fact, Dr. Dhafir, being an exceptionally compassionate man, treated people without health insurance and paid for medicine and co-payments out of his own pocket for those who could not afford it).

Other companies violated the Iraqi embargo and were merely told by the US government to stop. Other doctors ran into trouble trying to bill under the confusing Medicare formula, and were merely told to straighten out their billing. But Dr. Dhafir was prosecuted to the full extent of the law. After he was convicted, the government switched theories again and claimed at sentencing — without any proof — that Dr. Dhafir was actually engaged in financing terrorism. He was sentenced to 22 years, to be served at the notorious Communication Management Unit at Terre Haute, Indiana – a prison for Muslims convicted of terrorist-related charges.

Dr. Dhafir's case displays the same tendency toward prosecutorial over-reaching that is found in the Al-Arian and Hashmi cases. In all three cases, the prosecutors were not so much prosecuting a crime as prosecuting a person who they thought might commit a crime in the future, or who might be coerced into helping the government. The prosecutors simply threw a bag full of charges at Dr. Dhafir and hoped that something would stick. When it suited their purposes, they said Dr. Dhafir was financing terrorism, and when it didn't (or when they could not prove it), they said he wasn't. We ask you to examine the case and see what the prosecutors really believed. Did they think Dr. Dhafir had committed real crimes, or did they simply want to have him locked up because they were not sure if he might commit some crime in the future, or did they prosecute for some other equally invalid reason?

Dr. Dhafir is currently awaiting a decision in his appeal to the Second Circuit Court of Appeals.

4. US v. Mohammed Hossain and US v. Yassin Aref (www.nepajac.org/Aref&Hossain.htm), (www.yassinaref.com)

The Hossain/Aref case makes no pretext that the prosecution was about a real crime. Neither of the two individuals would have committed any crime but for the strenuous efforts of the government to entrap them. The government became suspicious of Yassin Aref because his name was found in several notebooks in armed camps in northern Iraq. (Aref, a Kurd, was from northern Iraq, and so the fact that his name was found in address books is not surprising.) The government decided to entrap Aref, who was the imam at an Albany NY mosque, by setting up a sting that used a criminal informant awaiting sentencing named Malik.

First Malik, acting for the government, entrapped a member of Aref's mosque, Mohammed Hossain, into accepting a loan from Malik so that Hossain could improve his rental properties. Malik eventually told Hossain that the money for the loan came from the sale of a missile. Hossain, a naturalized American citizen from Bangladesh, indicated that he had no interest in missiles, but he agreed to take the loan so he could fix up his rental properties.

At this point, the two asked Aref to witness the loan. That was Aref's only act – to be a gratuitous witness for the loan – and the only relevant question at the trial should have been whether Aref was ever given enough information by Malik to understand that the money for the loan came from an illegal source. Any impartial reading of the record would indicate that Aref had no idea that anything illegal was going on; in fact, Aref made statements to Malik indicating his support for America and against violence and terrorism. The FBI later acknowledged that they had debated during the sting whether

to show Aref a dummy missile, and decided against it for fear that it might “spook” him – that is to say, Aref might have recognized the missile as something illegal and withdrawn from the transaction, thereby frustrating the FBI’s efforts to entrap him.

Much of the trial involved irrelevant but prejudicial material introduced out of context to prove that Aref had a “terrorist mindset.” Aref had been illegally wiretapped under the NSA program, but the prosecution would not turn over even exculpatory information requested. The judge told the jury that the FBI had “good and valid reasons” to target Aref, thus prejudicing the jury. Documents were mistranslated by the prosecution. Eventually the two defendants were convicted and sentenced to 15 years each.

Aref is serving his sentence in the CMU unit at Terre Haute, Indiana – the infamous Muslim prison. Hossain is currently serving his sentence in Fairton federal prison. He is a diabetic with other related health problems that were under control with adequate medical care before his imprisonment. During his time in federal prison, his health has deteriorated markedly, with loss of vision and kidney problems. He has also developed some new, possibly life- threatening health problems. No attempt has been made to address these medical problems, and his 15-year sentence may become a death sentence if he does not receive adequate health treatment.

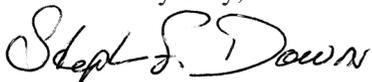
This case is a particular embarrassment to the judicial system because there is simply no evidence that either Aref or Hossain committed a crime or intended to commit a crime. Rather, the evidence indicates a massive effort by the FBI to entrap two defendants who had no criminal intent. Even the prosecutors and the FBI would acknowledge that Hossain was simply used to get to Aref, and that their only concern about Aref was not that he had committed a crime but that he might commit a crime some time in the future. Memos in the file would clearly indicate this.

Both Hossain and Aref had their appeals denied by the Second Circuit Court of Appeals, and have filed appeals with the Supreme Court.

Each of the cases described above indicates serious over-reaching by the prosecution and a mindset in which the defendants’ guilt of an actual crime was not the issue. The point of the prosecution in each case was to convict an innocent man and incarcerate him because of suspicion that he might commit a crime in the future, or to intimidate the Muslim community, or to justify the high budget for the FBI, or to convince the electorate that they should be scared because there were terrorists loose in the US.

We ask you to examine the files of these cases and determine whether the prosecutors believed they were prosecuting real crimes actually committed, or whether they believed they were convicting people who had not committed any crimes but might commit one in the future. We are confident you will find that none of these men intended to break the law, and that the charges against them were part of the “new paradigm” of the Bush Administration that put prevention above prosecution as the goal of law enforcement. “Preventive conviction” — the idea of convicting innocent people in order to prevent them from committing crimes in the future – has no place in our American system of justice. We hope you will act quickly to address this issue and give relief to those wrongfully charged or convicted.

Yours very truly,



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Plus 577 additional signatures omitted here. To see all of the signatures go to:

<http://www.projectsalam.org/downloads/Obama-Holder%20Letter%202004-08.pdf>