

ARGUMENTS CONTAINED IN THE 2255 MOTION

1. Aref was misidentified as Mohammed Yasin, a Pakistani Al Qaeda agent, and we believe the government supplied this erroneous (and previously classified) information to both the trial and appeal courts, or at least told them falsely that he was involved with Al Qaeda. Especially egregious was the secret argument the prosecution was permitted to make before the 2nd Circuit Court of Appeals in 2008, which the defense was not allowed to attend and which likely included this misidentification. It also was probably the true impetus for the trial judge's instruction to the jury in 2006 that there were "good and valid" reasons to target Aref.

2. The prosecution failed to disclose damaging information about its key witness, Shahed Hussain, the FBI informant in the case (based partly on his testimony during the Newburgh 4 trial in 2010, in which he was also the key witness).

3. Related to #2, the government failed to disclose the existence of an NSA recording of the February 12, 2004 meeting in the Aref-Hossain case, which would have shown conclusively that Aref was never told the meaning of the code word for "missile" that day, thus directly affecting Aref's conviction.

4. Aref is actually innocent: "The FBI acknowledged at the outset that because of certain information, some of which was classified, it targeted Petitioner because he was a possible security risk." In disclosing the existence of the NSA, the *New York Times* stated in January 2006 that some "...officials said the eavesdropping program might have helped uncover people with ties to Al-Qaeda in Albany...different officials agree that the NSA's domestic operations played a role in the arrest of an imam and another man in Albany in August 2004 as part of an F.B.I. counterterrorism sting investigation."

5. Aref was preemptively prosecuted: "...the government's program to eliminate potential security risks by prosecuting targets with contrived, manufactured, or pretext charges."... "The government...decided to neutralize [Aref] by setting him up in a preemptive sting operation. Surely there is no security interest involved in targeting and convicting the wrong person..."

THE 2255 MOTION REQUESTS THAT THE COURT:

- Unredact those portions of the FOIA file that were sent to Aref
- Provide the defense with a description of the classified material given to the trial and appeal courts, especially material that misidentified Aref as Mohammed Yasin
- Provide the defense with exculpatory material not previously provided at trial
- Grant a new trial
- Dismiss the charges against Aref on grounds of prosecutorial misconduct