

## APPENDIX C

### PREEMPTIVE PROSECUTION CASES MENTIONED IN THE STUDY<sup>1</sup>

Listed in alphabetical order by surname or case name.

**Abu Ali, Ahmed.** Ahmed Abu Ali was born in Houston, TX in 1981 to Palestinian parents, and his family later relocated to Falls Church, VA, where he was raised. He was the Valedictorian of his high school class, and then attended the Islamic University of Medina in Saudi Arabia on a scholarship.

In June, 2003, while he was in the middle of his exams, Abu Ali was arrested by Saudi authorities at the request of the U.S. government. According to his lawyers, he was targeted because his name appeared in an address book of someone in Saudi Arabia who was associated with Al-Qaeda in the Arabian Peninsula. Just 22 years old at the time, he was held without charges and tortured for approximately twenty months. Saudi authorities beat him until he confessed to a bizarre plot to assassinate President Bush and other offenses. FBI agents participated in Ahmed's interrogation by submitting questions and watching through a one way-mirror.

After his family filed a habeas petition, Abu Ali was returned to the U.S. However, he was then indicted, based on his tortured confession. A

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<sup>1</sup> For more information on these and many other cases of preemptive prosecution featured in the 2014 *Inventing Terrorists* Report, visit the Project SALAM website and download the PDF, "Victims of America's Dirty Wars," [http://www.projectsalam.org/downloads/Victims\\_of\\_Americas\\_Dirty\\_Wars.pdf](http://www.projectsalam.org/downloads/Victims_of_Americas_Dirty_Wars.pdf), a section of which describes cases in greater detail. You may also access the updated Project SALAM database at <http://www.projectsalam.org/database.html> and sign in as a guest account. Search for each defendant by name.

medical expert on torture physically examined Abu Ali and reported on the extensive evidence showing that he had been tortured, but the judge sided with the prosecution's "expert," a dermatologist who did not examine Abu Ali, but nonetheless concluded that the scars on his back from the beatings could just be normal "skin discolorations."

However, it was clear that the federal prosecutor was aware that Abu Ali had been tortured because when the family was filing the habeas petition in 2003 and asked this prosecutor, Gordon Kromberg, whether Abu Ali would be face charges in the U.S., he had responded, "He's no good for us here. He has no fingernails left."<sup>2</sup> Yet when Abu Ali was returned to the U.S., Kromberg indicted him anyway and argued there had been no torture.

Abu Ali was convicted based on his own tortured confession and was sentenced to life imprisonment. (He was originally sentenced to 30 years, but when he appealed his conviction, the 4<sup>th</sup> Circuit Court of Appeals held that 30 years was not enough, and he was then resentenced to life!)

Amnesty International has called Abu-Ali's trial unfair based on their observations in the period from November 7–10, 2005. They stated:

"Amnesty International is seriously concerned that the trial of Ahmed Abu Ali may set a precedent in US courts of according unqualified support to the declarations of a foreign government regarding its human rights record as a means of rendering evidence admissible, including statements obtained by torture and ill-treatment. In this case, the statements of officials from Saudi Arabia, a state with a clear record of widespread torture and ill-treatment, flatly denying that such practices existed appear to have been taken at face value with no serious attempts allowed to challenge the claims presented."<sup>3</sup>

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<sup>2</sup> Jerry Markon "Relentless Terrorism Prosecutor Faces Accusations of His Own," *Washington Post*, September 14, 2008, as quoted on Wikipedia, FN 5, at

[https://en.wikipedia.org/wiki/Ahmed\\_Omar\\_Abu\\_Ali](https://en.wikipedia.org/wiki/Ahmed_Omar_Abu_Ali)

<sup>3</sup> See <https://www.amnesty.org/en/documents/amr51/192/2005/en/>

Ahmed Abu Ali is held under highly restrictive conditions in the supermax prison in Florence, CO. In August 2008, he requested permission to receive two books by Barack Obama (*Dreams from My Father* and *The Audacity of Hope*) but prison authorities denied him on the grounds that the books contained material “potentially detrimental to national security.” For years, Abu Ali was held under Special Administrative Measures (SAMS) which cut off nearly contact between him and the outside world.

**Other Reference:** Esam Al-Amin, “The Harrowing Tale of Ahmed Abu Ali,” *Counterpunch*, June 28, 2013. <https://www.counterpunch.org/2013/06/28/the-harrowing-tale-of-ahmed-abu-ali/>

**Al-Arian, Sami.** Al-Arian, the son of Palestinian refugees, has been in the United States since 1975 and was a tenured professor at the University of South Florida who criticized the Israeli occupation of Palestine and openly promoted the rights of Palestinians. In 2001, the government began wiretapping a co-defendant, Hatem Fariz, although Al-Arian had been wiretapped for eight years before that. In 2003, Al-Arian, Fariz, and two other co-defendants were indicted and charged with having provided material support to Palestinian Islamic Jihad (PIJ). Even though he never waived his speedy trial right, he was held in solitary confinement during his first forty-one months of detention in humiliating and inhumane conditions, which became so bad that Al-Arian, a diabetic, eventually went on a hunger strike to protest his treatment. It almost killed him.

While the government presented eighty witnesses, including twenty-one from Israel, Dr. Al-Arian rested his case without calling a single witness, basing his defense on the First Amendment. Much of the government’s evidence presented to the jury during the six-month trial

were speeches Al-Arian delivered, lectures he presented, articles he wrote, magazines he edited, books he owned, conferences he convened, rallies he attended, interviews he gave, news he heard, and websites he never even accessed. In fact, several websites, presented to the jury as evidence, were created by anonymous individuals after his arrest while he was awaiting trial in solitary confinement in a federal prison.

Government prosecutors were aware that they had virtually no evidence to convict Al-Arian and his co-defendants, so during the twenty-eight-month pre-trial period they brought additional charges against Al-Arian's co-defendants, Fariz and Sameeh Hammoudeh, in an effort to get them to make a deal and give false testimony against Al-Arian, who was the real target. Both Hammoudeh and Fariz refused.

At the 2005 trial, with almost 100 counts between all defendants, the jury did not return a single guilty verdict on any count. Two other defendants were totally acquitted on all counts. Fariz and Al-Arian were acquitted on most charges, with the jury deadlocked (10 to 2 for acquittal) on some counts. The prosecution announced its intention to retry the defendants on the charges on which the jury was deadlocked.

In early 2006, in an effort to gain his freedom, Al-Arian agreed to plead guilty to a single count of providing immigration services in exchange for his release and voluntary deportation. The acts in the plea were non-violent: he admitted hiring a lawyer for his brother-in-law, filling out an immigration form for a visiting Palestinian scholar, and failing to disclose the political associations of a colleague to a newspaper reporter. The government then claimed that these acts provided material support to PIJ because the individuals involved were associated with the PIJ. In the written agreement, the Justice Department stipulated that 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; and
3. would be released for time served, and the Justice Department would assist in his immediate voluntary deportation.

However, even after his guilty plea, the government continued to hold Al-Arian in jail until another U.S. Attorney, Gordon Kromberg, subpoenaed him to testify before a grand jury in Virginia. Al-Arian refused to testify, saying that the plea bargain exempted him from “cooperation.” It was believed that the only reason the government wanted his testimony in another state was to charge him with perjury there. In 2008 he was charged with criminal contempt of court after serving more than one year beyond his original sentence on civil contempt charges. After his contempt trial proceedings began in Virginia, the government was forced to produce evidence that showed that the Florida prosecutors, who had negotiated the original plea bargain in which Al-Arian had pleaded guilty, were against calling Al-Arian before the Virginia grand jury and affirmed that the government had agreed during the plea negotiations to remove the “cooperation clause” that would have compelled him to testify. The defense then moved to dismiss the contempt charge as violating the plea bargain.

The presiding judge agreed to release Al-Arian under house arrest, and he remained under house arrest until 2014. Finally, the prosecutor (Gordon Kromberg) agreed to dismiss the case, and Al-Arian was deported to Turkey in 2015.

**References:**

“Free Sami Al-Arian,” website, various dates, <http://www.freesamialarian.com/>

William Fisher, "The Perpetual Trial of Sami Al-Arian," *OpEdNews*, May 30, 2012, <http://www.opednews.com/articles/The-Perpetual-Trial-of-Sam-by-WILLIAM-FISHER-120530-522.html>

Laila Al-Arian, "When Your Father Is Accused of Terrorism," *The Nation*, July 2012, <http://www.thenation.com/article/168373/when-your-father-accused-terrorism>

Associated Press, "5 years later, Fla.–Va. terrorism case in limbo," *Argus-Press.com*, May 15, 2014, [http://www.argus-press.com/news/national/article\\_22e6ca84-d0a6-5fe1-a2aa-cf79cbc509a9.html](http://www.argus-press.com/news/national/article_22e6ca84-d0a6-5fe1-a2aa-cf79cbc509a9.html)

**Al-Timimi, Ali.** A Ph.D. in computational biology, a cancer researcher, and an expert and lecturer on Islamic theology and philosophy, Al-Timimi was a young religious instructor at a mosque in Virginia.

On September 16, 2001, a few weeks after 9/11, a mosque group that engaged in paintball games and paramilitary exercise, met to discuss the current political situation. No recording was made of the meeting, but several participants later remembered Al-Timimi stating that in his opinion it was permissible for Muslims to fight abroad in Afghanistan to oppose a possible U.S. invasion in response to the 9/11 attack.

The group decided to continue their training without any plan to do anything specific, but some members went to Pakistan to train with the aim of possibly supporting the Taliban. Al-Timimi did not participate in these trainings with the paintball group and did not travel abroad. His participation was essentially limited to responding to religious questions during a single conversation after 9/11, giving his opinion that under Islamic law, jihad in support of the Taliban was permitted. (A non-Islamic analogy would be activists asking a lawyer if it were permissible for them to carry weapons to a demonstration, and the lawyer responding that since it was an open-carry state, firearms would be permitted. Would the lawyer be guilty of supporting terrorism for giving that advice?)

Al-Timimi was arrested and charged with Material Support for Terrorism. The government argued that as a religious instructor, Al-

Timimi's opinion amounted to a fatwa (an Islamic decree), notwithstanding that as a simple religious instructor Al-Timimi had no power to issue a fatwa. He was convicted and sentenced to life imprisonment. Receiving a sentence of life in prison simply for giving a religious/legal opinion, seems grossly excessive in a country like America that guarantees free speech. The life sentence is clearly a punishment for Al-Timimi's political/religious beliefs rather than for any crime he committed.

**References:**

"Free Ali Al-Timimi," website, various dates, <http://freeali.wordpress.com/>

"Ali al-Tamimi [sic]," Wikipedia, n.d., [http://en.wikipedia.org/wiki/Ali\\_al-Tamimi](http://en.wikipedia.org/wiki/Ali_al-Tamimi)

Kevin Bohn, "Muslim lecturer indicted in terror case," CNN, September 23, 2004, <http://www.cnn.com/2004/LAW/09/23/lecturer.indicted/index.html?eref=sitesearch>

**Aref-Hossain Case, The.** Yassin Aref was a Kurdish refugee from Iraq who was the imam of a mosque in Albany, New York. The government claimed to have become suspicious of Aref's "ideology" for some reason and decided to entrap him with a sting that used an *agent provocateur*, Shahed Hussein, who was called "Malik" for the sting. Malik, awaiting sentencing for his own crimes, was promised a sentencing break if he cooperated with the government to get Aref.

First Malik, acting for the government, entrapped a member of Aref's mosque, Mohammed Hossain, into accepting a loan so that Hossain could improve his rental properties. (The government conceded that it had no concern that Hossain was a terrorist; it was only using Hossain as a way to get to the real target, Aref.) Malik told Hossain (but not Aref) that the money for the loan came from the sale of a missile to a terrorist group. Hossain, a naturalized American citizen from Bangladesh, indicated that he

had no interest in missiles or terrorists, but he agreed to take the loan to fix up his rental properties.

At this point, Malik and Hossain 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 was whether Aref was given enough information by Malik to understand that the money for the loan came from an illegal source, the sale of the (fake) missile. 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.

After the indictment was announced, the governor of New York hysterically proclaimed to the media that “terrorists are living among us.” The FBI made absurd displays of security to intimidate the jury. The trial featured secret and presumably illegal surveillance material, mistranslations of foreign words and documents, and other tricks to convince the jury that the two men were dangerous.

The jury convicted Hossain of all his charges (twenty-seven counts of the indictment) but acquitted Aref of twenty of the thirty counts he faced. Other than one minor charge, Aref's convictions related to the last conversation between Malik and Aref during the sting. This last conversation was conducted using a code—the word “chaudry” meant “missile”—but there was no evidence introduced that Aref knew the code word, and without knowing it Malik's statements would not have meant anything illegal to him. Both men were sentenced to fifteen years.

On appeal, the appellate court apparently concluded that the conviction could not be sustained based on the evidence of that last conversation, presumably because there was no evidence that Aref knew

the code. However, in its analysis of the insufficiency of the evidence, the court never even mentioned the counts for which Aref was convicted by the jury. Instead, to sustain the conviction, it relied entirely on evidence taken out of context from earlier counts for which the jury found Aref *not* guilty. Thus Aref's appeal was denied solely on evidence that a jury had seen and rejected as unreliable and/or insufficient.

In explaining this inexplicable result, it is significant to note that during the appeal process, the prosecution was granted permission to file two secret briefs with the appeals court that neither the defense nor the public were allowed to see. The prosecution was also allowed to make a secret oral argument before the court, outside of the hearing of the defense and the public.

Until April 2011, Aref was serving his sentence in a CMU (Communication Management Unit). In 2010, Aref became the lead plaintiff in a lawsuit, brought by the Center for Constitutional Rights, which challenged the legality of the CMUs. In 2011, the lawsuit survived a motion to dismiss, and the government decided to move Aref out of the CMU and into the general prison population, apparently hoping (unsuccessfully) that it could avoid having a final judgment filed against it by moving the lead plaintiff into a new prison situation.

Also in 2011, Aref made a FOIA request for his FBI file; in the file was evidence that in 2002, nearly a year before the sting was implemented, the FBI thought Aref was an Al-Qaeda operative named Mohammed Yassin, who was killed in 2010. This evidence of misidentification allowed the defense to submit a request for a new trial or overturning of Aref's conviction. Permission to submit this appeal was denied by the 2<sup>nd</sup> Circuit Court of Appeals on March 3, 2014; in a two-sentence decision, the court

inexplicably said that the appeal “does not demonstrate, by clear and convincing evidence, ‘that no reasonable fact finder would have found [him] guilty of the offense’ had the proffered evidence been available to him prior to trial.”

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Stephen Downs, “From Sting to Frame-Up: The Case of Yassin Aref,”  
*Washington Report on Middle East Affairs*, October 2007,

<http://www.wrmea.com/component/content/article/313/9409-from-sting-to-frame-up-the-case-of-yassin-aref.html>

Yassin Aref, *Son of Mountains: My Life as a Kurd and a Terror Suspect* (Troy Book Makers, 2008).

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Christopher S. Stewart, “Little Gitmo,” *New York Magazine*, July 10, 2011,  
<http://nymag.com/news/features/yassin-aref-2011-7/>

Joe Wolverton II, “The FBI Imagines Crimes and Then Arrests the Criminals,”  
*The New American*, September 6, 2011,

<http://www.thenewamerican.com/usnews/crime/item/7531-the-fbi-imagines-crimes-and-then-arrests-the-criminals>

**Arnaout, Enaam.** Arnaout, a Syrian-American, was the director of the Benevolence International Foundation charity. In 2002, he was indicted on racketeering conspiracy charges for funneling a small percentage of the group’s charitable contributions to Muslim fighters in Bosnia in the 1990s—when the United States was fighting alongside these same Muslims. He eventually pleaded guilty to one count, but in the plea agreement the government stated that he had never acted contrary to the interests of the United States, and the judge said there was no evidence that Arnaout “identified with or supported” terrorism. He was sentenced to 120 months and was released in February 2011. In March, he sought permission to take

a three-month vacation to Turkey, Bosnia, and Saudi Arabia to deal with family business and to visit his ailing mother in Saudi Arabia. The U.S. Attorney's office in Chicago didn't object to the travel plan, but the judge decided to limit Arnaout's travel only to Saudi Arabia, saying that while he was allowed to visit with other family members, he must live with his brother and check in regularly with his probation officer by telephone. Evidently, now that he is out of prison, the government no longer considers him dangerous.

**Bout, Viktor.** On March 6, 2008, Thai authorities arrested Viktor Bout, an international arms dealer, as part of an international sting operation conducted by the U.S. Drug Enforcement Administration. Bout, a Russian, was indicted in the U.S. on charges of conspiring to kill U.S. nationals, acquire and use anti-aircraft missiles, and provide material support to a foreign terrorist organization. Upon arrival in New York City, he was held in the Special Housing Unit (SHU) of the Metropolitan Correctional Center for over fifteen months pursuant to the decision of the Bureau of Prisons. He spent twenty-three hours a day in his cell, entirely alone, except for once-a-week visits from his family and his lawyer. He was allowed only one telephone call a month.

On November 2, 2011, Bout was convicted on all charges. His sentencing was scheduled for March 12, 2012. On February 3, Bout made a motion requesting that he be taken out of the SHU and transferred to the general prison population. The government opposed the request, citing the nature of the charges, Bout's vast resources and potential contacts with terrorist organizations, and his potential leadership of other prisoners. However, the judge granted Bout's transfer to the general population,

stating: “I find that Bout’s placement in the SHU is not reasonably related to legitimate penological objectives but rather is an exaggerated response to the BOP’s concerns. Although I recognize that courts are loathe to interfere with questions of prison administration, an area in which the BOP is best suited to make decisions, I cannot shirk my duty under the Constitution and *Turner* [*Turner v. Safley*, 482 U.S. 78 (1987)] to ensure that Bout’s confinement is not arbitrary and excessively harsh.”

**References:**

*United States v. Viktor Bout*, “Order Granting Viktor Bout’s Request for a Transfer to General Population,” Opinion and Order, 08 CR 365 (SAS), February 24, 2012, <http://www.jdsupra.com/legalnews/order-granting-viktor-bouts-request-for-86008/>

**Butt, Ashar Iqbal.** Butt was a recent immigrant to the U.S. from Pakistan. Around September 8, 2001, while visiting Manhattan, he had a friend take pictures of him in front of the World Trade Center. The photo store said the pictures would be ready in a few days. On September 12, 2001, a day after the attack on the World Trade Center, Butt went to get the photographs, but the store had written his name down incorrectly and the clerk could not find the pictures. Butt left hurriedly, looking anxious. The clerk made a second search for the pictures, and on finding them saw the World Trade Center in the background and called the FBI. Butt was immediately arrested and accused of entering the U.S. on a false passport.

He was held in jail until June 8, 2002, much of the time in solitary confinement, and then was given an opportunity to plead guilty to the false passport charge, which he did on September 12. He was sentenced to six months in jail and ordered deported. Defense attorney Anser Ahmad called Butt a “victim of circumstances,” nationality, and limited English. “My understanding is that if they thought he was a threat, they would have filed federal charges against him,” he said.

**References:**

David Henry, "Al-Qaeda Threat to Philadelphia?", ABC Channel 6 Action News—Philadelphia, June 27, 2002,

<http://www.freerepublic.com/focus/news/707287/posts>

Matthew P. Blanchard, "U.S. sweeps mall kiosks, hunting for terror clues. In June, agents hit jewelry stands run by immigrants, including one in Phila. A Pa. case may be the reason. U.S. looks for terrorism ties in malls," Philly.com, July 8, 2002, [http://articles.philly.com/2002-07-08/news/25357950\\_1\\_intrigue-jewelers-mall-kiosks-ins-agents](http://articles.philly.com/2002-07-08/news/25357950_1_intrigue-jewelers-mall-kiosks-ins-agents)

Joseph A. Slobodzian, "Pakistani man gets jail, deportation. The illegal immigrant was arrested last fall after a clerk noticed his photos of the World Trade Center," Philly.com, September 13, 2002, [http://articles.philly.com/2002-09-13/news/25362029\\_1\\_ashar-iqbal-intrigue-jewelers-anser-ahmad](http://articles.philly.com/2002-09-13/news/25362029_1_ashar-iqbal-intrigue-jewelers-anser-ahmad)

**Chandia, Ali Asad.** Chandia was part of the Virginia Paintball Network (see description of that case below). He was a popular third-grade teacher who was only somewhat involved in the Network. Prior to 9/11, Chandia went to Kashmir and stayed with an LET official, Mohammed Ajmal Khan, at a time when LET was not a designated foreign terrorist organization. In early 2002, after LET had been added to the FTO list, Khan came to visit the U.S. and stayed for a short time with Chandia. While he was Chandia's guest, Khan borrowed Chandia's cell phone and called people associated with his organization. Khan also borrowed Chandia's computer and ordered a shipment of paintballs. Chandia helped Khan pack the paintballs for shipment overseas. This was the extent of Chandia's involvement. He was convicted of material support and is now finishing a fifteen-year sentence, due to be released in August, 2019.

**Daoud, Adel.** Adel Daoud, a seriously mentally-ill man from Chicago, came under government suspicion in 2011 based on some online statements he had made. In 2012 he was entrapped in an FBI sting operation into a fake car-bomb plot. After exchanging messages with him for quite awhile, FBI undercover agents eventually got him to meet with one of them and

then convinced him to participate in a bomb plot. Later he was also entrapped in a plot to murder one of the undercover agents.

Daoud was so mentally ill and delusional that he was found not competent for trial in 2016<sup>4</sup>. After taking medication for close to two years, he was found to be competent, but then he, still apparently believing in reptilian overlords and the Illuminati, was allowed (over the prosecutor's objections) to enter a rare "Alford" plea in 2018, pleading guilty in the bomb plot without actually admitting guilt<sup>5</sup>. His attorney, Thomas Durkin, stated, of the prosecution:

"They're the architects of the War on Terror, this is their war, they have to fight it, so let them continue to fight it. ... The whole case is sad. It's a tragic case and there's no good solution. I don't think we pay enough attention to the dilemma we've created with the War on Terror." <https://abc7chicago.com/judge-accepts-novel-plea-deal-for-chicago-terrorist-adel-daoud-/4768303/>

Daoud was due to be sentenced in April, 2019, but defense attorney Durkin learned the prosecution had withheld evidence supporting an entrapment defense in the murder plot case, and filed a motion stating that if the defense had been aware of this material before, he would have taken the case to trial. The evidence consisted of jail calls between the informant and his handler, and in one 2013 call, the informant told the handler that he had to work "like a mother-----" to get Daoud to say on tape that he wanted the agent dead. See [https://www.pantagraph.com/news/state-and-regional/crime-and-courts/judge-postpones-sentencing-in-chicago-terrorism-case-defense-alleges-evidence/article\\_53860dbe-2ef0-5f48-8350-695103a56e9e.html](https://www.pantagraph.com/news/state-and-regional/crime-and-courts/judge-postpones-sentencing-in-chicago-terrorism-case-defense-alleges-evidence/article_53860dbe-2ef0-5f48-8350-695103a56e9e.html). The judge,

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<sup>4</sup> See Jon Seidel, "Judge rules terrorism suspect finally fit to stand trial," *Chicago Sun Times*, March 14, 2018, <https://chicago.suntimes.com/news/judge-rules-terrorism-suspect-finally-fit-to-stand-trial/>

<sup>5</sup> See Chuck Goudie and Barb Markoff, "Judge accepts novel plea deal for Chicago terrorist Adel Daoud," *Chicago Sun Times*, November 26, 2018, <https://abc7chicago.com/judge-accepts-novel-plea-deal-for-chicago-terrorist-adel-daoud-/4768303/>

exasperated at the prosecution, agreed to postpone sentencing pending further defense investigation. Judge Coleman stated:

“This is very frustrating,” “I don’t like being the face of this situation. . . . Mr. Daoud has already been in (jail) for a third of his life, almost the entire time I’ve been on the bench.” *Id.*

**Dhafir, Dr. Rafil.** Dr. Rafil Dhafir, born in Iraq and naturalized as an American citizen, is a highly regarded oncologist from Syracuse, New York who became concerned about the humanitarian catastrophe created by the Gulf War and the UN sanctions imposed on Iraq throughout the 1990s. In direct response to this catastrophe, Dhafir founded the Help the Needy charity in 1990, and for thirteen years worked tirelessly to help publicize the plight of the Iraqi people and to raise funds to help them. According to the U.S. government, Dhafir donated \$1.4 million of his own money over the years. As an oncologist, he was particularly concerned about the effects of depleted uranium on the Iraqi population, which was experiencing skyrocketing cancer rates.

In 2003 (conveniently a few weeks before the U.S. invasion of Iraq), Dhafir was arrested, and Attorney General John Ashcroft announced that “funders of terrorism” had been apprehended. 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 Dhafir. Instead, he was charged with violating the Iraqi embargo and was held without bail for nineteen months until his trial in October 2004.

When Dhafir refused to accept a plea agreement, twenty-five additional charges of Medicare fraud were added. Medicare fraud usually involves fictitious patients and non-existent treatments; Dhafir’s case had none of this. The government never denied that his patients received appropriate care, treatment, and medicines; rather, it claimed that because

Dhafir was sometimes not present in his office when patients were treated, Medicare forms were not filled out correctly to reflect the treatment by someone else. Illogically, the government argued that if the forms were not correctly filled out, Dhafir was not entitled to any reimbursement for treatments actually given or for the expensive chemotherapy his office had actually administered, and so he was guilty of Medicare fraud. (In fact, Dhafir, a very compassionate man, treated people without health insurance and paid for medicine for those who could not afford it out of his own pocket.)

Other companies violated the Iraq embargo and were merely told by the U.S. 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 Dhafir was prosecuted as though he were a career criminal. After he was convicted, the government switched theories again and claimed at sentencing—without proof—that Dhafir was engaged in financing terrorism. He was sentenced to twenty-two years.

Unlike the Holy Land defendants (see the description of that case below), the government could not charge Dhafir with supporting a terrorist organization like Hamas: no listed terrorist organizations existed in Iraq because Saddam Hussein would not permit it. So the government simply framed him for Medicare fraud and then called it terrorism. This is precisely what preemptive prosecution is all about: convicting people of contrived crimes for ideological reasons.

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John Pilger, "The Political Trial of a Caring Man and the End of Justice in America," *Information Clearinghouse*, November 7, 2012, <http://www.informationclearinghouse.info/article32967.htm>

**Elashmouny, Ahmed Abdulla.** Elashmouny was the owner of S&A Aviation and ran a flight academy in Farmington, New York. In July 2002, he pleaded guilty to misrepresenting himself as a U.S. citizen and as a certified flight instructor on forms submitted to the Federal Aviation Administration, as well as to engaging in insurance, wire, and credit card fraud. He was sentenced to forty-four months in jail. There is no indication that he was considered to be involved in violence or terrorism.

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**Ferdous, Rezwan** At the time of the FBI sting operation targeting him, Ferdous was a severely mentally ill young man who was not even able to control his bladder, let alone any of the events around him. Rezwan Ferdous is an intelligent, sensitive man from Boston who began suffering from mental illness while studying physics at Northeastern University.

His family started noticing problems in January, 2007, during his junior year, when he began experiencing paranoia and hallucinations, claiming to have seen shadowy figures following him. Although Rezwan did manage to graduate in 2008, he was clearly struggling, and moved back in with his parents. He had lost his friends, could not find work related to his degree and scrambled to find and keep a series of menial jobs. In May,

2009, he had just been laid off from a job with a medical company and he became very depressed, almost never leaving his parents' house.

Throughout 2010 he barely worked, only finding a couple of odd jobs and, though continuing to reside with his parents, he barely spoke to them and isolated himself in his room. Rezwan also became more rigid in his religious beliefs. Because his son's mental health was so precarious, Rezwan's father, Showket, decided to retire when an opportunity arose, in order to stay home and take care of him. This opportunity came in May, 2011, but by that time Rezwan was already involved with the informant in this case.

In October, 2010 a couple of FBI agents came to the family home on to speak to Rezwan about an incident where he had driven a Muslim man to a gun shop (the man aroused suspicions there by taking pictures.) Rezwan acted so strangely that one of the agents said to Showket, "obviously he has mental issues."<sup>6</sup>

By December, 2010, Rezwan had lost control of his bladder. This was the same month the sting operation began, with the FBI sending their informant into the family's mosque to befriend Rezwan. A couple months later Rezwan was found, disoriented and having wet his pants, in the middle of a road one night. After that he began wearing diapers.

Around this time, after a February 11 meeting with Rezwan, the informant told the FBI that Rezwan was acting crazy. Between December, 2010 and September 28, 2011, while the informant was recording conversations with Rezwan, his condition deteriorated even more, to the point where he realized he needed help. He got that help, and began to

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<sup>6</sup> See Commutation Petition for Rezwan Ferdous, <http://www.civilfreedoms.org/wp-content/uploads/2016/05/Rezwan-Matin-Ferdous.pdf>

improve, but it was too late to change the course of events which had been set in motion by the FBI.

On July 8, 2011 when he was getting into the car to attend Friday prayer services, Rezwan was shaking uncontrollably. Even worse, he told his father he was having “intrusive thoughts, bad thoughts,” but that he couldn’t say what they involved. See Commutation Petition, *Id.*, “*Why Clemency,*” at 1. He told his parents he had a “mental problem” and he finally agreed to see a doctor. *Id.*

This was when Rezwan was recorded saying he wanted out of the plot. He told the informant he did not feel well, was having intrusive thoughts, and did not think he was up to the task. He also suggested that the others find a replacement whom he was willing to train. *Id.*

Although it took awhile, Rezwan did begin taking antidepressant medication (Celexa) on August 15, 2011, and slowly began improving. Then, on September 12, he saw another psychiatrist, who diagnosed him with Obsessive Compulsive Disorder and Depression and doubled the dose of his Celexa. Rezwan’s parents noticed several improvements in his behavior – he wasn’t as hostile to his brother, was less rigid in his beliefs, and was more social. But before he could go to the next appointment with the psychiatrist, he was arrested on September 28.

Rezwan Ferdaus was charged with attempting to damage a federal building with an explosive and related charges. Due to the fact that the law didn’t really allow for an entrapment defense (see main section of this Report, at 21 and 39-40) he pled guilty, and was sentenced to 17 years in late 2012.

The FBI was aware of Rezwan’s mental illness before it began targeting him. The government took advantage of Rezwan’s delusions and

suggestibility in order to create a case against him, using a drug-addicted informant who shoplifted while wearing a wire. When Rezwan said he was too sick to continue, was having intrusive thoughts, and said the FBI should find someone else, he was told he was ok, and could handle the operation. When he finally started getting treatment, he began improving, but was then suddenly arrested. Without the involvement of the government, it is clear that Rezwan never would have committed any of the offenses he was charged with.

**Fort Dix Five, The.** In January 2006, a store clerk in South Jersey, New Jersey gave the FBI a videotape of some young men riding horseback, having a pillow fight, shooting guns at a firing range, and shouting Islamic phrases. The men—brothers Eljvir, Dritan, and Shain Duka, along with Mohammed Shnewer and Serdar Tatar—had given the videotape of their family vacation together in the Pocono Mountains to the clerk to duplicate.

The FBI decided that the group looked suspicious and sent in two *agents provocateur* to try to entrap the young men in criminal activity. The agents showered attention on the young men and used money and manipulation to try to create an interest in jihad. They asked the men to download jihadist videos, taunted them for their lack of resolve to take action, and followed them around with hidden tape recorders to record every word spoken.

When the others were not present, one agent talked in general terms with one of the targets, Mohammed Shnewer, about how someone could theoretically attack the Fort Dix army base. In response to the agent's repeated demands, another defendant, Serdar Tatar, gave the agent a map of the Fort Dix base, which his father used to deliver pizza there. (Tatar

thought that the agent was suspicious and reported him to the local police, who told him not to worry about it.) The other agent then persuaded the Duka brothers to buy some guns, supposedly for target shooting in the Poconos, so they would not have to wait in line at public shooting ranges.

At this point, the whole group was arrested and charged with conspiracy to attack Fort Dix, even though no plans had been made to attack anything and most of the defendants had never had any conversation about any plan to attack Fort Dix. The government claimed that the men had formed a conspiracy to commit jihad, and so under the law each member of the conspiracy was responsible for the acts of every other member, even if he knew nothing about the acts. The Dukas were responsible for Shnewer's conversations with the agent about how to theoretically attack Fort Dix, although they knew nothing about it. And the Dukas and Shnewer were responsible for the map of Fort Dix that Tatar had obtained from his father.

This illustrates a typical government strategy, which is to try and divide defendants by using them differently, in the hope they will attack each other at trial. Since no one person knows the whole "plot," anything bad becomes "foreseeable" and is therefore attributable to all members. Thus the "plot" becomes a "conspiracy" and ramps up the charges against all of them.

All were convicted on conspiracy charges, as well as for material support, and the Duka brothers were sentenced to life plus thirty years (i.e., their sentences will expire thirty years after they have died.)

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**Hashmi, Syed Fahad.** The case of Syed Fahad Hashmi illustrates the use of material support charges and guilt by association, as well as the use of SAMs. On June 6, 2006, British police arrested Hashmi at London’s Heathrow Airport on a U.S. warrant for conspiracy to give material support to terrorism, claiming that in 2004 a bag of clothing—waterproof socks and raincoats—that was subsequently delivered to a terrorist official by informant Junaid Babar had been stored for two weeks in Hashmi’s apartment in London. There was apparently no evidence that Hashmi was involved in terrorism or that he knew the bag of clothing was to go to a terrorist. Babar had been an acquaintance of Hashmi’s, and Hashmi had simply allowed Babar to store the bag. A main contention was that, except through the testimony of Junaid Babar—who was not the most credible of witnesses—the government had no evidence that the package of clothing in Hashmi’s apartment had gone to terrorists.

Hashmi was extradited to the U.S. in 2007, where he was placed in solitary confinement in the Metropolitan Correctional Center (MCC) in New York for nearly three years under extremely harsh pre-trial conditions, including Special Administrative Measures (SAMs), and essentially was held incommunicado. Although he had been a model prisoner in London, the government justified imposing SAMs on Hashmi by citing his “proclivity for violence,” notwithstanding that he had no criminal record, had not been charged with a violent act, and had not tried to incite violence inside or outside of the prison or at any other time. Other prisoners at MCC—murderers, rapists, and gang members with records of violence—were not subjected to SAMs. Why, then, was Hashmi? Since prisoners

charged with terrorism who were subjected to SAMs pre-trial were almost exclusively Muslim, it seemed clear that both the prosecutor and the courts were following the theory that merely to be charged with a terror-related crime was the equivalent of a conviction. Thus Muslim defendants were guilty until proven innocent.

Prosecutors hinted that what they really wanted was for Hashmi to “cooperate” with them, and that he would be tortured with solitary confinement until he did what the government wanted. Hashmi refused, and later said at his sentencing, “In all reality, I had nothing to cooperate about.” That the government did this suggests that it had applied these draconian pre-trial measures not because it considered Hashmi a high-level terrorist, but to induce his cooperation or conviction.

By 2010, Hashmi was struggling to keep his sanity, and his lawyers were concerned about their ability to communicate with him and about his ability to cooperate in his defense. The government then disclosed that it had been following Hashmi for some time before his arrest, secretly recording his statements and especially his criticism of the U.S. and its policies. Over the objections of the defense—that these statements were simply Hashmi’s protected First Amendment rights—the judge ruled that he would permit the government to show at trial the “background of the conspiracy.”

When groups supporting Fahad indicated that they would attend the approaching trial, the prosecution made the bizarre argument that if the jury saw the courtroom packed with supporters, they might be intimidated by “speculation that at least some of the spectators share the defendant’s violent radical Islamic leanings.” The judge granted the prosecution’s

motion for an anonymous jury with extra security, thereby increasing the chance that the jury would be prejudiced before the trial ever started.

A day before trial, the government dropped three of the four charges against him. And a day after the judge delivered his decision, and apparently realizing that he could not get a fair trial, Hashmi accepted a plea bargain and pleaded guilty to one count of conspiring to provide material support, with the promise of a reduced prison sentence. He was sentenced to fifteen years in June 2010, and was released to a halfway house in early 2019.

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Jeanne Theoharis, “My Student, the ‘Terrorist,’” *The Chronicle of Higher Education*, April 3, 2011, <http://chronicle.com/article/My-Student-the-Terrorist/126937/>

**Hayat, Hamid.** Hamid Hayat is a U.S. citizen of Pakistani descent who was born and raised in California. In 2005 he was arrested and the FBI proclaimed he was part of an “Al Qaeda sleeper cell” – they later admitted this was not true<sup>7</sup>.

However, Hayat was convicted of material support and false statements and sentenced to 24 years in prison based on what appears to have been a false confession to having attended a training camp in Pakistan<sup>8</sup>. Given very weak evidence, the jury deliberated for nine days and initially deadlocked before finding Hayat guilty. The foreman said to a journalist that he couldn’t let Hayat go free “on the basis of what we know

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<sup>7</sup> See <https://www.themarshallproject.org/2018/03/12/the-video-alibi>

<sup>8</sup> See Sam Stanton, “Judge: Lodi man’s terrorism convictions should be vacated,” *Sacramento Bee*, January 11, 2019, [https://www.sacbee.com/news/local/crime/article224315150.html?fbclid=IwAR2EhGopNkW1q\\_uFqjohx4cgXHvv49uu6t57sn2UcbOb\\_LjPijZqMOWSvN\\_g](https://www.sacbee.com/news/local/crime/article224315150.html?fbclid=IwAR2EhGopNkW1q_uFqjohx4cgXHvv49uu6t57sn2UcbOb_LjPijZqMOWSvN_g)

of how people of his background have acted in the past<sup>9</sup>” (i.e. not based on the evidence presented at trial).

Many signs point to a false confession. After many hours of intense interrogation, the young man finally told the FBI what they wanted to hear – that he had attended training camps in Pakistan with the intent to support terrorism. In fact, there are many credible witnesses – not called to testify at trial – who show that this was not possible, because one of them was with him the whole time.

The prosecution also withheld evidence showing that the alleged training camp was not even in operation at the time Hayat was there. His trial attorney, while well-meaning, was very inexperienced, and had never picked a jury or tried a federal criminal case before. Hayat, with new attorneys, filed a habeas petition in 2014, and after an evidentiary hearing in 2018, the magistrate who heard the case has recommended that his conviction be vacated based on ineffective assistance of counsel<sup>10</sup>.

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**Holy Land Foundation, The.** In Texas, the Holy Land Foundation, formed in 1989 to provide relief to the Palestinian people impoverished by the repression of the Israeli government, eventually became the largest Muslim charity in the U.S. In 2007, the Bush Administration brought criminal charges against six of the foundation’s directors essentially for sending money (between 1995 and 2001) to *zakat* (charitable) committees

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<sup>9</sup> See Shirin Sinnar, “A Federal Judge Just Recommended One of the Earliest Post-9/11 Terrorist Convictions be Overturned,” *Slate*, January 22, 2019. <https://slate.com/news-and-politics/2019/01/hamid-hayat-terrorism-conviction-overturned-judge-finds.html>

<sup>10</sup> See Footnote 8

in Palestine that were supposedly controlled by Hamas, after Hamas was declared to be a terrorist organization (DTO).

There were two trials: the first trial resulted in one defendant being acquitted and a hung jury for the remaining five defendants. During the second trial, it was conceded by the government that the defendants had not encouraged or engaged in any violence, and that the money sent by the Holy Land Foundation had been used only to provide basic needs and services, such as building schools and hospitals for truly impoverished people. None of the money went to finance terrorism directly. But the government argued that since some Holy Land money went to *zakat* committees controlled by Hamas, a DTO, the charity's money had helped enhance the prestige of Hamas and allowed it to divert money from its charitable and social activities into promoting terrorism. The government "proved" that some *zakat* committees were controlled by DTOs by calling an anonymous Israeli agent to testify as an expert, notwithstanding that the agent could not be properly cross-examined because he was anonymous—in contradiction to the Sixth Amendment's guarantee of the right to confront witnesses.

The defendants argued that the *zakat* committees were the only practical way to get money to people who needed it. Other organizations, including UN agencies and USAID, used the same *zakat* committees for the same reasons. If Hamas controlled some of the *zakat* committees, it was because Hamas was, in effect, the government of Palestine at that time, as shown by Hamas's victory in the elections of 2006.

The five defendants were convicted of providing material support for Hamas. One director, Ghassan Elashi, was given a sentence of sixty-five years. The government has shut down most of the Muslim charities

operating in the U.S. without valid cause, and material support laws have essentially been used to criminalize charitable giving and management activity, even when there was no evidence that any money had gone to fund terrorism.

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**Houston Taliban, The.** In 2005 and 2006, a group of four idealistic Muslim students who helped people in the Houston community cope with poverty and homelessness became increasingly concerned about the U.S.-led invasions and violence overseas in Muslim lands, focusing especially on Afghanistan. They began to take camping trips into the woods to prepare themselves for paramilitary action in possible support of the Taliban in Afghanistan. The FBI sent in some *agents provocateur* to recruit more individuals and direct the group into more specific acts that might constitute crimes. Eventually one of the group’s leaders became concerned about the direction of the group, reported his concerns, and agreed to cooperate with the FBI. The FBI eventually charged core members of the group with material support for the Taliban, essentially for exercising their right of free speech to discuss the appropriate response to the U.S. intervention in Afghanistan.

**Iqbal, Javed.** Iqbal was an entrepreneur who operated a small satellite broadcasting company from a storefront in Brooklyn, New York and his garage in Staten Island. The programs included broadcasts by Christian evangelicals. In 2006 he was charged with providing service to a station supposedly controlled by Hezbollah. The station, Al Manar, had earlier been placed on the designated terrorist list in March 2006. The New York Civil Liberties Union filed an amicus brief with the court, arguing that Iqbal was being punished for publicizing the news and that he was entitled to the First Amendment protections given to journalists. However, Iqbal was convicted and sentenced to six years in prison.

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**Jayyousi, Kifah.** In Florida, Kifah Jayyousi was tried, along with a co-defendant, on material support charges in 2007. He is a well-respected engineer who had provided aid to Muslim fighters in Afghanistan and Bosnia prior to 1998, when they were not opposed to the U.S., did not direct violence toward the U.S., and when the U.S. was supporting those same Muslim fighters. So even though Jayyousi financially supported the same people that the United States supported militarily, he was later targeted and prosecuted for these previously applauded actions. He was convicted of only one count of conspiracy, but was sentenced to twelve years in prison, and was released in 2017.

**Jumaev, Bakhtiyor.** Bakhtiyor Jumaev was a refugee from Uzbekistan, who was working in a gas station in Colorado and sending most of his meager earnings to his wife and three children back in Uzbekistan. After coming to the attention of authorities in 2011, he was charged with material support for sending a single check for \$300 to a co-defendant, knowing it was to go to a designated terrorist group (the Islamic Jihad Union or IJU.)

Jumaev was convicted after trial, and the government was asking for fifteen years, which would have been fairly typical in such a case. However, Judge John Kane sentenced him to time served (this amounted to just over 6 years, since the case had been pending for a long time due to wrangling over illegal wiretapping.) A well-known legal blogger discussed this, titling the post, “*Terrorism isn’t what it used to be.*”<sup>11</sup>

Judge Kane called the government request for fifteen years “absurd,” and stated that the defendant should not receive a harsher sentence because he went to trial, stating<sup>12</sup>:

“In over forty years of judging I have never imposed a harsher sentence because a defendant asserted his right to trial by jury or to testify at that trial. I am not about to do so now or in the future. I consider any trial “tax” or penalty to be contrary to the ages-long values and standards of our legal system. It is more closely associated with the jurisprudence of Russia, as described by Dostoyevsky, than our own tradition as described by Benjamin Cardozo.

A just sentence is an act for which a judge is morally responsible. That responsibility can neither be shunned nor relinquished based on the nature of the crime. We must recognize that *a human being is the focal point of the sentencing process and should not be ignored or dismissed because of the inflamed rhetoric*

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<sup>11</sup> Scott Greenfield, “Terrorism isn’t what it used to be,” Simple Justice blog, July 23, 2018, <https://blog.simplejustice.us/2018/07/23/terrorist-isnt-what-it-used-to-be/>

<sup>12</sup> *United States v. Jumaev*, <https://blog.simplejustice.us/wp-content/uploads/2018/07/Jumaev-Sentencing-Order.pdf>

*of the war on terror. I am reminded of Judge Learned Hand's wise comment: —If we are to keep our democracy, there must be but one commandment: Thou Shalt Not Ration Justice.”*

**“Kansas Bomb Plot”, The.** Patrick Stein, a Kansas militia member, believed reports that President Obama was allowing Muslims to take over America. He became afraid for his family and expressed the need to defend America. A man named Dan Day, who was unemployed and nearly homeless, found a flyer depicting what he thought was an ISIS flag (it was in fact a Palestinian flag), and gave it to the militia, who gave it to the FBI. The FBI then hired Day and assigned him to try to get Stein to agree to engage in violence against Muslims<sup>13</sup>.

Eventually, after months of prodding them with false information about local Somalis, the informant talked Stein and two other militia members (Curtis Allen and Gavin Wright) into agreeing to be part of a (fake) FBI created bomb attack on a Muslim housing complex in Garden City, Kansas. The three men, comprising the “Kansas bomb plot,” were then convicted of conspiring to use weapons of mass destruction<sup>14</sup>.

It was the informant who picked the location of the attack, emailed the map to the FBI, who then printed it and gave it back to him, whereupon he provided it to Stein. It was then “found” in his truck and used as evidence against him. The informant was paid \$33,000 by the FBI. Wright and Allen were sentenced to 25 years, while Stein was sentenced to 30 years in January, 2019.

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<sup>13</sup> See Human Yassin, “For or Against: Is the FBI foiling terrorist plots or creating them?” *Medium.com*, April 30, 2018, <https://medium.com/@humayasin/for-or-against-is-the-fbi-foiling-terrorist-plots-or-creating-them-f79b9ab522f6>

<sup>14</sup> See Editorial Board, “FBI found not guilty in Kansas Muslim bombing case, but did law enforcement go too far?” *Kansas City Star*, October 17, 2018, <https://www.kansascity.com/opinion/opn-columns-blogs/melinda-henneberger/article206484234.html>

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**Lackawanna 6, The.** In the spring of 2001 (before 9/11), six young Yemeni men from Lackawanna, New York agreed to go to Afghanistan and accept training after a “recruiter” at their mosque persuaded them that it was their duty as Muslims. The six arrived for training just before 9/11 and did not like the anti-American feeling at the camp or the kind of training they received. They quickly returned to Lackawanna and spoke no more about it. Nonetheless, they were arrested on a tip from an anonymous informant and eventually pleaded guilty to material support charges after they became convinced that they could not receive a fair trial and after they were threatened with being sent to Guantanamo as “enemy combatants.”

In 2002, President Bush and Vice President Cheney were briefed directly by the FBI and CIA about this case, and it was personally directed by then-Attorney General John Ashcroft. New York Governor George Pataki and the media trumpeted the Lackawanna 6 as the nation’s first homegrown Al-Qaeda terror cell. It was a test case in that “it was the first time U.S. citizens had been investigated for terrorist activity since 9/11.” But “[t]here was no evidence whatsoever that the Lackawanna Six were planning to do anything or attack anyone. So they were on trial, in a sense, for what they might have done.”

However, U.S. Attorney Mike Battle saw the earmarks of a conspiracy: material support was the issue, rather than whether the men were a sleeper cell, and “given the national mood...it was easy to prosecute terrorists, even before they struck. Even, in other words, if they could be deemed terrorists before they became terrorists.” This case thus marks the

first time that preemptive prosecution was publicly stated to be a new law enforcement paradigm.

All the defendants are now out of prison, making them some of the first (and few) men imprisoned on terrorism-related charges to be released at all. It is assumed that a few are presently in the witness protection program, since three testified at Guantanamo before a military commission against Ali Hamza al-Bahlul of Yemen, who was characterized by counterterrorism analysts as Al-Qaeda's public relations director. They spoke of a two-hour video, which al-Bahlul had produced, that they had been shown at the Afghanistan training camp they attended. In March 2014, one of the men, Sahim Alwan, testified for the government at the trial of Sulaiman Abu Ghaith, a son-in-law of and close advisor to Osama bin Laden.

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**Mehanna, Tarek.** Mehanna, who holds a Ph.D. in pharmacology, began a serious study of Islam's tenets in the 1990s. Around 2000, he and two other individuals (one of whom eventually became an FBI informant) became best friends and frequently discussed their common interests, such as religion, Muslims' role in the U.S., and the justification for jihadist acts. After 9/11, the three friends talked about going to a training camp in Pakistan, but after one of the men went abroad and was rejected at the only training camp he tried to join, the men give up for the moment on the idea of fighting overseas.

In 2004, Mehanna went to Yemen. The government claimed that he tried to find a training camp there to attend, but he was not accepted, and after two weeks he returned home. Mehanna claimed that he merely went there for study. He also met and became friends with Daniel Maldonado before Maldonado went to a training camp in Somalia. While Maldonado was at the training camp, it was attacked, and he fled. Later Maldonado called Mehanna from Somalia to discuss his situation. (In January 2007, Maldonado was arrested in Somalia by Kenyan forces, transported to the U.S., and convicted of attending a training camp in Somalia. He received a sentence of ten years). When the FBI asked Mehanna about Maldonado, Mehanna did not tell them about the call that Maldonado had made to him from the training camp.

The FBI became interested in Mehanna and asked him to become an informant. Mehanna refused. The FBI said that they would make life very difficult for him, and that he could either do it the easy way or the hard way. Mehanna still refused. Meanwhile, he translated works by various Afghan and Iraqi scholars on jihad and posted them on his website, along with poetry and other material relevant to radical Islamic thought. One work was Anwar Al-Awlaki's *39 Ways To Serve and Participate in Jihad*. The work describes jihad as a struggle to achieve justice and includes examples of jihad like exercising, riding a horse, and doing charity work, as well as more military forms of jihad.

On November 8, 2008, as Mehanna attempted to leave the U.S., he was arrested at Logan Airport in Boston and charged with lying to the FBI about the phone call from Maldonado. Later the indictment was expanded to include conspiracy to give material support to terrorism by translating radical Arabic writings into English and posting them on his website. The

government earlier had “leaked” allegations that Mehanna and the others had discussed attacking people in shopping malls in the U.S., but the indictment contained nothing about a conspiracy to shoot shoppers in a mall.

Mehanna was kept in solitary confinement while awaiting trial. Several FBI informants testified at his trial about statements he made, indicating his interest in jihad. Mehanna’s defense at trial was that everything he had said was protected by free speech: he had not conspired to engage in any crimes, and he had talked only in theory about rousing Muslims to defend themselves against attacks by imperialist invaders, including the U.S. Mehanna was convicted of material support for terrorism on December 20, 2012—essentially criminalizing free speech.

At his sentencing, Mehanna gave an eloquent defense of his actions that may well become a classic. He noted that the Minutemen’s defense of American sovereignty was jihad, and that in studying history he learned of many important leaders from George Washington to Nelson Mandela to Malcolm X who had stood up for the underdog. Mehanna said he was simply encouraging Muslims in the Middle East who were being killed and abused by foreign troops to stand up and defend themselves, as the Americans had done with the British. He was sentenced to seventeen and a half years.

In November 2013, Mehanna’s appeal was denied. Regarding his translations, Mehanna’s lawyers and free speech advocates argued that his actions were protected under the First Amendment. “The fundamental problem with the [appellate] ruling is that it allows the government to prosecute unpopular political speech,” said Alex Abdo, staff attorney at the ACLU’s National Security Project.

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**Montes, Carlos.** On May 17, 2011, Los Angeles police and FBI agents smashed in the door of Carlos Montes, a longtime activist for immigration rights and the Chicano civil rights movement. They held him at gunpoint while ransacking his house and seizing personal computers, cell phones, and documents. He was questioned about the Freedom Road Socialist Organization, indicating that an ongoing FBI investigation of twenty-three peace activists was expanding to include immigrants and the Latino civil rights movement. Montes was charged with six felonies, and a subpoena was issued for him to appear before a grand jury, which he refused to do. On June 5, 2012, two felonies were dropped, as per a partial resolution by the local district attorney, if Montes pleaded “no contest” to one count of perjury. This proposal also included no jail time, three years of probation, and community service. Under advice from supporters, friends, and his attorney, Montes accepted this proposal. However, the district attorney stated that he still wanted Montes to do at least five years in state prison for the four felony charges remaining. Montes is currently free on bail.

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**Mohamud, Mohamed Osman/Christmas Tree Bombing Case, The.** On November 26, 2010, after attempting to set off what he thought was a car bomb at a Christmas tree lighting in Portland, Oregon, Mohamed Osman Mohamud, a twenty-one-year-old Somali-American, was charged with a single count of attempting to use a weapon of mass destruction, which carries a life sentence. An attorney for Mohamud argued that his client was entrapped in a sting operation that included an undercover FBI agent posing as a terrorist. Mohamed reportedly attracted the interest of the FBI after agents intercepted e-mails he was exchanging with a man who had returned to the Middle East and whom law enforcement officials described as a “recruiter for terrorism.” As the public gathered for the city's annual Christmas tree lighting, the informant placed a fake bomb in a van. Mohamud tried to detonate the bomb by dialing a cell phone that was attached to it. When the device failed to explode, the undercover agent suggested he get out of the car to obtain better reception.

Presumably aware of legal defenses based on issues of entrapment, FBI agents reportedly offered Mohamud multiple alternatives to a bombing, including prayer. Mohamud reportedly insisted he wanted to play an “operational” role, but a columnist, upon reading the FBI affidavit, asked, “How far would Mohamud have traveled down that road without the help of those very operatives?” and noted that the affidavit stated the following:

— When Mohamud could not get in touch with terrorists overseas, the FBI contacted him.

— While Mohamud “spent months working on logistics,” and

“allegedly identified a location to place the bomb,” he “mailed bomb components to the FBI operatives, who he believed were assembling the device.”

— The FBI “operative” was with Mohamud on November 4 at “a remote spot in Lincoln County, where they detonated a bomb concealed in a backpack as a trial run for the upcoming attack.”

— The FBI transported Mohamud to Portland so that he could carry out the “bombing.”

Noting that key evidence from an alleged July 30 meeting may have gone missing, a court ordered the FBI to preserve remaining media and recording equipment. Noting past behavior by the FBI in similar cases, New York lawyer Martin Stolar asserted the absence of such recordings was intentional. “Once somebody's been induced, and they agree to do the crime, that's when the recording starts...He's already been induced to commit the crime, so everything on the tape is shit.”

On January 31, 2013, a jury convicted Mohamud, and in September, 2014, he was sentenced to thirty years.

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**Newburgh Four, The.** On May 21, 2009, the FBI announced the indictment of four “Muslims,” Onta Williams, James Cromitie, David Williams, and Laguerre Payen, on charges that they were planning to blow up a synagogue and shoot down military airplanes at Stewart Airport in Newburgh, New York with a missile. The government claimed that they were violent Muslims who hated Jews and wanted to strike back against America for what it was doing in the Middle East. When the facts emerged, it turned out that all of the men were ex-convicts who were only marginally involved with Islam. They participated in the plot only because they were offered large amounts of money to do virtually nothing. The plot was created, financed, and continuously promoted by an FBI *agent provocateur*, Shahed (“Maqsood”) Hussein—the same informant who, a few years earlier as “Malik,” had entrapped Yassin Aref and Mohammed Hossain (see the Aref-Hossain case description above).

Pretending that he was a devout Muslim, Maqsood first went to a Newburgh mosque and fished for terrorists by talking about violent jihad. His con was so obvious that the real Muslims would have nothing to do with him, but he was able to attract Cromitie (and later the other three) with offers of money and friendship. Maqsood offered the defendants large sums of money to join his “team”—up to \$25,000 each, and \$250,000 to one of them—and he provided all of the equipment and plans. The defendants had no money, cars, driver’s licenses, contacts, weapons, training, or interest in jihad, and only went along for the money. At least one of the defendants had a drug addiction; another was unemployed; and

another had mental health issues. For \$250,000, the FBI could have entrapped similarly frustrated people in virtually any homeless outreach program or religious charitable organization in the country, and it is significant that it targeted only a mosque. It is also significant that the FBI, not the defendants, decided to attack a synagogue (to arouse religious anger in the country), and that the FBI, not the defendants, decided to attack military planes at Stewart Airport (to arouse patriotic anger in defense of the military). Thus the FBI cynically tried to manipulate public opinion into outrage, which would overlook the obvious fact that the men were entrapped.

The defendants clearly had no means of, or interest in, engaging in any terrorist activity, except for the relentless persuasion of Maqsood and his money. Significantly, the lead FBI agent in the case, Robert Fuller (who has been involved in a number of controversial cases, including the Tarik Shah case—see description of that case below) reassured security people at Stewart Airport that Cromitie “would never try anything without the informant with him.”

After the defendants were arrested, they were placed in solitary confinement twenty-three hours a day for four months. New York City Mayor Michael Bloomberg made a big show of congratulating the FBI on preventing “what could be a terrible event in our city,” even though the FBI had both created the crime and solved it and the defendants had virtually nothing to do with it except ride around in the FBI’s (Maqsood’s) car.

The defendants turned down a plea bargain offer of fifteen years and decided to go to trial. The presiding judge referred to the case as the “un-terrorism case” and appeared to be highly skeptical of the government’s

proof. At the trial, there was a devastating cross-examination of Maqsood, who was shown to be a habitual liar and con man who lied even to his own FBI handlers. Whenever the defendants indicated that they were no longer interested in the plot or wanted to withdraw, Maqsood would offer them more money, even when these offers were not authorized by the government. He also failed to record key conversations and lied about his past, his debts, and his personal life. Although it was difficult to believe anything he said, the jury convicted the four men of material support of terrorism.

After the trial, the defendants explained that they saw Maqsood as a source of money and wanted to con him out of it. They never had any intention to hurt anyone. Away from Maqsood they never talked about jihad or a “plot,” but around him they said what he wanted them to say because he gave them money afterwards. David Williams, who needed to raise money for his brother’s liver operation, said that “[o]ur role in this case was to get over on the [Confidential Informant] and get that money he was offering us... We were always lying to him and he was always lying to us.”

It is illegal for the government to entrap people who have no inclination to engage in criminal activity. And in this case, the courts permitted the government to ignore prohibitions against entrapment and to literally buy the convictions it wanted. The government is supposed to stop crime, not create it, yet as part of its preemptive prosecution program it regularly employs Muslim criminals like Maqsood to entrap innocent Muslims in activities it can claim are criminal.

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**Niazi, Ahmadulla.** In 2007, Niazi reported to the FBI the suspicious behavior of a new Muslim convert, Craig Monteilh, at his mosque in Irvine, California. Monteilh was talking about jihad and trying to get others at the mosque to join in planning for terrorist attacks. The FBI said that they would investigate the matter, and the mosque obtained a court injunction to keep Monteilh away from the mosque.

Later, FBI officials contacted Niazi and asked him to become a paid informant for the FBI. When he refused, the FBI agents allegedly threatened him by saying that they would make his life "a living hell." In February 2009 the FBI arrested Niazi and charged him with perjury, fraud, and false statements on his immigration papers. He was released on \$500,000 bail.

After several years of negotiations and claims that the charges were brought in retaliation for Niazi's refusal to become an informant, all the charges against him were dropped in 2011. The FBI has since identified Monteilh as a "government informant." On February 11, 2011, the American Civil Liberties Union sued the government for its actions in trying to entrap Muslims at the mosque based on their religion.

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**Padilla, José.** On May 8, 2002, Padilla, a U.S. citizen, was arrested when he tried to enter the U.S. The government claimed (without charging him) that he was working with Al-Qaeda and was planning to make and detonate a "dirty bomb" inside the U.S. Padilla was held on a material witness warrant until June 9, 2002, when, instead of charging him with a crime, President George Bush announced that Padilla would be held in solitary confinement indefinitely as an "enemy combatant." Defense lawyers filed an appeal on the legality of designating someone, especially a U.S. citizen, as an enemy combatant. The case worked its way through the court system for three and a half years while Padilla remained in solitary confinement in a Navy brig in Charleston, South Carolina. During this time, he was treated so deplorably, under conditions amounting to torture, that questions were raised as to his sanity.

After numerous district and federal court rulings were made and overturned, the case eventually reached the Supreme Court, essentially on the question of whether the president had the power as commander in chief of the armed forces to hold an American citizen in jail indefinitely without charges as an "enemy combatant." On January 4, 2006 in an unsigned opinion, the Supreme Court agreed to let the military transfer Padilla to

Miami to face criminal charges. In order to avoid a decision on an issue that the administration was likely to lose, Padilla was removed from “enemy combatant” status and charged with conspiracy to commit terror overseas in the 1990s in places like Bosnia. The charges did not mention the dirty bomb or any other terrorist plot, and were so lacking in facts that some commentators described the “conspiracy” as a plan to make a plan about something that never happened. On August 16, 2007, Padilla, along with Kifah Jayyousi (see his case above) and another defendant, was found guilty of conspiracy, and on January 22, 2008 he was sentenced to seventeen years and four months in prison.

For his prolonged detention and torture, Padilla subsequently sued John Yoo, author of the “torture memos” that were issued from the Department of Justice’s Office of Legal Counsel, where Yoo was deputy assistant U.S. Attorney General. In 2009, Padilla’s suit was sustained by a district judge in California, but in May 2012 the 9<sup>th</sup> Circuit Court of Appeals ruled that Yoo could not be held accountable for Padilla's treatment while in custody, as the treatment had not at the time been legally defined as torture and Yoo had qualified immunity in his government role.

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**Paracha, Uzair.** Uzair Paracha was born in Pakistan and was raised partly in New York, where he became a lawful permanent resident. His father is Saifullah Chapman, who has been at Guantanamo since 2003 – he has never been charged with any crime.

In 2003, Uzair Paracha was charged with several counts of material support to Al Qaeda, all based on his having helped Guantanamo detainee Majid Khan fraudulently obtain legal status in the U.S<sup>15</sup>. The question was whether he did so believing that Khan was a member of Al Qaeda. If not, he could have only faced minor immigration fraud charges, or would not have prosecuted at all. He was found guilty at trial of knowingly having supported Al Qaeda by helping Khan, and was sentenced to 30 years in prison in 2006.

In 2008, Paracha filed a motion for a new trial, based on new evidence, which consisted of statements by Majid Khan and two other Guantanamo detainees, indicating that Paracha *did not knowingly aid Al Qaeda*. It was previous unclassified summaries of alleged statements from them, obtained under torture, which had provided the chief evidence against Paracha at trial. This motion was *never decided until 2018*. It is not clear why the motion was pending for 10 years with no decision. In February, 2018, Paracha filed a handwritten “mandamus” motion from prison, requesting that the court issue a decision on the motion for a new trial.

In July, 2018, the court granted this motion, stating that the new statements go to the heart of the case against Paracha, and set the case down for a new trial<sup>16</sup>. CUNY law professor Ramzi Kassem, who has handled terrorism cases, spoke to the *Guardian* about the case, stating:

“The ruling in the Paracha case isn’t just an indictment of the endemic lack of transparency at Guantánamo and in its military commissions, which potentially cost Mr Paracha many years in prison. It also calls into question the integrity of post-9/11 terrorism trials in US courts more broadly. History will judge most of these

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<sup>15</sup> See Majid Khan, Wikipedia page, [https://en.wikipedia.org/wiki/Majid\\_Khan\\_\(detainee\)](https://en.wikipedia.org/wiki/Majid_Khan_(detainee))

<sup>16</sup> *United States v. Paracha*, <https://www.documentcloud.org/documents/4577656-Uzair-Paracha-Order-Granting-New-Trial-July-3.html>

cases harshly, in part because defendants are often denied exculpatory evidence on purported security grounds.”

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**Sadequee, Ehsanul “Shifa.”** In an earlier case, the Toronto 18, a group of young Muslim men in Canada attended several training camps and also engaged in considerable general online discussions about jihad and their obligations as Muslim men. Consequently, the U.S. government looked for U.S. “associates” of the Toronto 18 and focused on Ehsanul “Shifa” Sadequee, 20, and a co-defendant, Syed Haris Ahmed, 22, both from Atlanta, Georgia, who were involved in these online discussions, although no plans had been formed to do anything illegal.

Based on evidence from 2004 and 2005, Sadequee was charged with supporting a foreign terrorist organization, Lashkar-e-Taiba (LET), a group struggling to liberate Muslim-dominated Kashmir from India—although LET was not designated as a terrorist organization in the U.S. in 2005 and did not even exist as an organization then. The evidence against Sadequee included online chats between teenagers and religious literature that he had translated from Arabic to English and published online. He was also accused of sending videos of tourist sites in Washington, D.C. to his online friends, who supposedly were in contact with LET. However, the government could not demonstrate a single conversation or sentence from the online chats about plans or plots for attacking these sites.

Sadequee, a U.S. citizen, had gone to Bangladesh to get married. On April 17, 2006, he and his wife were returning home when he was kidnapped by Bangladesh authorities at the request of the U.S. government. No one knew where he was for four days. What had actually happened was that the FBI had kidnapped Sadequee and flown him via Alaska to New

York aboard a “secret” CIA plane, stripping off his clothes and wrapping him in a plastic-like material during the flight. The High Court Division of the Supreme Court of Bangladesh later declared Sadequee’s detention, deportation, and handover to U.S. authorities illegal because it violated international laws.

In New York, Sadequee was charged with making a false statement to the FBI. However, in pre-trial hearings, the FBI revealed Sadequee had never lied to them; rather, it was the FBI who had lied in the initial indictment to capture him: while he was in Bangladesh, FBI agents had communicated with him via e-mail and chat forums, pretending to be his teenaged friends. In addition, the government had searched his luggage and found a map of Washington, D.C. This, coupled with his sending videos of tourist sites in Washington, D.C. to his online friends, apparently caused the government to reinterpret these normal activities as something sinister, although prosecutors conceded that Sadequee was not discussing a terrorist plot; at best, they claimed that he was trying to get in contact with terrorists abroad, and that he was in some way “associated” with the Toronto 18, since he and Syed Haris Ahmad had met with some of those young men.

Sadequee was jailed at the Metropolitan Correctional Center (MCC) for three and half months before the government transferred him to the Atlanta Penitentiary in August 2006. Prosecutors offered him a plea bargain: in exchange for dropping three charges, he would plead guilty to one count of material support for terrorism, agree to identify other teenagers from the chats, and testify against Syed Haris Ahmed and other Muslims who were also facing similar charges. Sadequee refused. In Atlanta, he was placed in solitary confinement for over 1,300 days. During this time, his health declined significantly.

The evidence at trial demonstrated that Sadequee did not send videos to LET; that he did not send his co-defendant, Ahmed, to Pakistan to join LET; and that Ahmed never joined LET despite multiple opportunities to do so. Information related to Sadequee's kidnapping in Bangladesh was not presented to the jury. The majority of government witnesses were FBI agents who had not participated in the online chats but were allowed to interpret this evidence; no actual participants from the chats testified to interpret them. No act of violence had been committed by Sadequee or anyone else, but the connections to other teenagers (particularly the Toronto 18) were used as evidence only because they too were Muslims. The word "jihad" and quotations from the Qur'an with mistranslated interpretations were also used as evidence. Religious expression and the debates of teenagers were taken out of context by the government to paint them all as terrorists and to preemptively prosecute them. All the actual chats remained classified and were not presented to the jury. Sadequee was convicted and sentenced to seventeen years.

About this case, U.S. Attorney David Nahmias stated, "We can wait until something happens, or gets close to happening. But I think we all learned on September 11, 2001 not to do that." But surely we still have to wait for a crime to be committed before we convict someone of it. No crime was committed; the government simply created one based on guilt by association.

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**Shafi, Adam.** Adam Shafi, a web developer from Fremont, CA, was charged in 2015 with attempted material support based on allegations he was seeking to join the Al Nusra Front in Syria to fight against the Syrian regime. He was placed in solitary confinement with very difficult conditions.

However, after a trial in September, 2018, the jury was deadlocked, voting 8-4 to acquit him. On October 4, 2018, Mr. Shafi was released on bail after spending three years in pre-trial detention. The defense argued he did not actually take steps to travel to Syria, and was suffering from depression. In December, 2018, he accepted a plea deal, and was sentenced to time served in January, 2019.

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**Shah, Tarik.** Three months after 9/11, on December 1, 2001 the FBI directed an *agent provocateur*, Mohamed Alanssi, to go to Abdulrahman Farhane’s Islamic bookstore in New York City and say that he wanted to send some money to jihadist brothers overseas. Farhane refused to help, but referred the *provocateur* to Tarik Shah, a well-known jazz bass player, self-defense trainer, and martial arts teacher in New York City who had played at President Clinton’s inauguration. Shah did nothing illegal, but the *provocateur* continued to follow Shah around for three years, trying to persuade him to do something illegal. The agent was reportedly paid

\$100,000 for his work. (In a bizarre twist, Alanssi became so frustrated with his FBI handler, Robert Fuller, that in 2004 he set himself on fire outside the White House.)

In 2003, the FBI assigned another *agent provocateur*, Theodore Shelby (aka “Saeed Torres”), an ex-convict and former Black Panther, to get Shah. Shelby asked Shah to give him music lessons and eventually moved into Shah’s home with him, tape-recording every conversation. Shelby then introduced Shah to a supposed Al-Qaeda recruiter (who was actually an undercover FBI agent), who offered Shah \$1,000 a week if he would agree to train jihadists in martial arts. Shah agreed, although he did not accept any money. The “recruiter” then recruited an old friend of Shah’s, Dr. Rafiq Sabir, a physician, to provide medical assistance to injured combatants; Sabir, who lived in Florida, was in town visiting Shah. The *New York Times* wrote that “the tapes reveal a plot that was almost entirely talk...No weapons appear to have been bought, and no martial arts training took place.” The “plot” went on for two years, and became a joint FBI/NYPD sting operation.

Shah was arrested in 2004 and was held incommunicado for three days, during which he was threatened with both prosecution under the PATRIOT Act and rendition. Neither his attorney nor his family knew where he was for those three days, and only after that was he finally able to get legal counsel. At one point, Shah agreed to talk in a wiretapped conversation to a former martial arts student, Mahmud Faruq Brent, about Brent’s attendance at a training camp in Pakistan after 9/11 run by Lashkar-e-Taiba (LET), a group fighting for the independence of Kashmir that had been designated as a foreign terrorist organization (FTO). However, once Shah was wired and taken to Maryland for the phone call, he refused to

cooperate.

Shah was held for thirty-three months in solitary confinement at the Metropolitan Correctional Center (MCC) in New York from 2005 until 2007. Facing a thirty-year sentence, and realizing that he could not get a fair trial and would be found guilty by association, he pleaded guilty in April 2007 to one count of conspiracy to provide material support to terrorism. He was sentenced to fifteen years. Farhane pleaded guilty for similar reasons and was sentenced to thirteen years; Brent also pleaded guilty and received fifteen years for his attendance at the training camp. Sabir, who pleaded not guilty and went to trial, was convicted and sentenced to twenty-five years.

Like the Virginia Paintball Network convictions, the government fastened on an innocent activity—in Shah’s case, his practice of the martial arts—and said it was evidence of terrorist activity. But any such terrorist-related activity was suggested and facilitated only by the FBI *provocateurs* and agents, not Shah. The *New York Times* wrote that “[t]he government has acknowledged that neither Mr. Shah, nor the three others accused in the case...were on the verge of any violent act.” Shah was released in 2018 and is back to being an incredible jazz bassist.

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**Siddiqui, Aafia.** Dr. Aafia Siddiqui is a Pakistani citizen who graduated from MIT and then obtained a PhD in neuroscience from Brandeis University. In March 2003, while in Pakistan, Aafia and her three young children<sup>17</sup> Ahmed (then age 6), Maryam (then age 4), and Suliman (then age 6 months) were kidnapped off the streets of Karachi, by Pakistani Intelligence (ISI), apparently at the request of the U.S. government. They were “disappeared” for 5 years. There is evidence that they were held at one or more American black sites, likely near Bagram Air Force base in Afghanistan, and that Aafia was tortured there.

Five years later, in 2008, Aafia and possibly her oldest son Ahmed were found wandering in Ghazni, Afghanistan, and were detained by Ghazni police. (The U.S. government has since refused to release its classified information about where Aafia and her children were imprisoned, under what conditions, and how they were released.)

U.S. soldiers were given permission by the Afghan government to interview Aafia at the Ghazni police station, but they were denied permission to take her into US custody. When the US soldiers arrived at police station, they confronted Aafia, and then shot her twice in the stomach, almost killing her. Then, against orders, they forcibly took Aafia to the US where she was charged with the attempted murder of the soldiers who shot her.

At her 2010 federal trial in New York City, six U.S. soldiers testified that Aafia picked up a rifle that a soldier had inexplicably placed next to her, and fired two bullets at the American soldiers, which missed the soldiers and went into the wall behind them. The prosecution identified

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<sup>17</sup> Two of Aafia’s young children, both born in the U.S., were later returned to her sister Fowzia in Karachi, and they, now young adults, still reside there. The third child, Suliman, aged 6 months at the time of the abduction, is presumed to have died during the kidnapping.

two holes in the wall behind the soldiers as being made by the bullets. However, an FBI team who made a complete forensic examination of the room after the shooting, did not find any bullets in the holes. Aafia's fingerprints were not on any rifle, and no shells, rifle bullets, or powder residue from the rifle were found anywhere in the room.

Moreover, a photograph, taken *before* the incident, *showed the same two holes in the wall* behind the soldiers. The testimony of the soldiers was completely refuted by the forensic evidence which proved that Aafia never shot the gun. Yet, given the fear of terrorism surrounding the case, Aafia was convicted anyway. She was sentenced to 86 years – effectively a life sentence - for a crime she could not have committed, and in which nobody was injured except Aafia.

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**Siraj, Shahawar Matin.** Shahawar Matin Siraj immigrated to the U.S. from Pakistan with his family as a child. He was an immature, very emotional man with an IQ of 78 when he was befriended by a government confidential informant. The informant, Osama Eldawoody, a much older man, called Matin his son, and manipulated him into becoming involved in a fake terrorist plot. Eldawoody later told a Washington Post reporter that he was so good at manipulating people, and knowing "how to get them to the point" of committing a crime, that he should have been given much more than the \$100,000 he was paid by the government<sup>18</sup>.

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<sup>18</sup>See Robin Shulman, "The Informer: Behind the Scenes or Setting the Stage?" *Washington Post*, May 28, 2007, Page 3 <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/28/AR2007052801401.html>

Eldawoody also told the Washington Post that Matin was “impressionable.” An extensive forensic psychological report on Matin corroborated that statement, finding that Matin was very naïve and susceptible to manipulation. Eldawoody inflamed Matin by showing him photos of the abuses by US soldiers at Abu Ghraib prison, and told him that it was Islamically lawful to “kill the killers.”

Despite Matin becoming so emotional over this and other atrocities that he wanted to do something, Matin did not want to kill anyone, but only to cause economic damage. And he told the informant that he had to ask his mother before he could do anything. Before that happened, Matin was arrested and charged with an attempted bombing, despite having had no access to any explosives. He was convicted and sentenced to 30 years in 2007.

In July, 2014 Human Rights Watch published a Report entitled “Illusion of Justice: Human Rights Violations in US Terrorism Prosecutions,” in conjunction with Columbia Law School’s Human Rights Institute, which indicated that Matin’s case involved several human rights violations. The Report stated that this case was problematic because of the targeting of a vulnerable, intellectually-challenged person, and because of the way informants were used to create and further the plot. The Report is available at <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions>.

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**Stewart, Lynne.** Known as “the people’s lawyer” because of her commitment to represent her clients zealously, especially those who were being prosecuted for their politics, Lynne Stewart was one of the lawyers in 1993 for Sheikh Omar Abdel Rahman (the “Blind Sheikh”) and ten other co-defendants who were charged with conspiracy to bomb New York City landmarks, including two tunnels, the UN, and FBI headquarters. During the time he was incarcerated, Abdel Rahman was placed under Special Administrative Measures (SAMs), which curtailed his ability to communicate with the outside world. All of his visits and other communications, including those with his lawyers, were monitored by the government. Stewart correctly saw the SAMs as an assault on a lawyer’s time-honored ability to zealously represent a client. If the government monitored all of her communications with her client, how was attorney–client confidentiality to be maintained? Moreover, SAMs made it impossible to establish a relationship of trust with a client.

In 1999, Abdel Rahman wanted to make a statement to his supporters in Egypt. Stewart announced the statement at a press conference. Similar statements from the sheikh had been announced at press conferences in the past by other defense lawyers, and the prosecution had not objected. Indeed, the prosecution did not immediately object to this announcement, either.

Three years later, after 9/11, the government looked back at the incident, and in an apparent effort to intimidate lawyers who did not take SAMs seriously enough indicted Stewart and two other co-defendants for conspiracy and for violating the SAMs. They were convicted of conspiracy

and providing material support to terrorists in 2005. Stewart was disbarred. She was originally sentenced to twenty-eight months in prison, but because the prosecutor claimed that she had been under-sentenced in light of perjury at her trial, she was resentenced on July 15, 2010 to ten years. The sentence reflects an unprecedented attack on the legal profession by the government that makes it almost impossible to give zealous representation to clients in terrorist cases.

In prison, Stewart's breast cancer, which had been in remission, returned. Stewart was given compassionate release from prison on December 31, 2013 by order of the district judge who had resentenced her. She passed away from the cancer in March, 2017.

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**Umar, Warith Deen.** After Umar, an imam, retired from twenty-five years of service as a Muslim chaplain for the New York State prison system in 2002, he continued to minister to New York State inmates on a voluntary basis. As the U.S. geared up for the Iraq War in 2003, however, Umar spoke out against U.S. policies in Afghanistan and Iraq. Coming from a man who is both black and Muslim, such statements apparently were unacceptable during the build-up to the war. Umar was attacked in a long front-page article in the *Wall Street Journal*, which claimed he supported the 9/11 terrorists. He eventually filed suit against the newspaper for slander. Other newspapers, like the *New York Times* and the *New York Post*, jumped on the bandwagon. None could find a single quote in which

Umar expressed support for the 9/11 terrorists, but no newspaper devoted space to allow Umar to rebut their claims. New York Governor George Pataki and Senator Charles Schumer blasted him, alleging that he was spreading terror throughout the prisons. Schumer even demanded that all Muslim chaplains in the New York State prisons be fired. Umar was barred from working in the prisons, and all of his sources of related income dried up.

In December 2005, Umar was in a Bronx apartment building that he owned when a prospective tenant became belligerent and punched him. Umar grabbed an unloaded shotgun, ordered the man out of his apartment, locked the door, and called the police. The police arrived and arrested both men. The attacker was let go, but Umar was kept in jail overnight. While in jail, the police ransacked Umar's apartment and took or destroyed many of his personal belongings. A few days later, his car, which had been parked in front of the Bronx building, disappeared. The police refused to take a report. Later that day, Umar found the car several blocks away; in it was a set of keys that had been taken from his apartment by the police when they raided it.

On January 7, 2006, members of the New York City Police Department dressed in plain clothes raided Umar's Bethlehem, New York (suburban Albany) home. They forced their way into the house, terrorized his family, ransacked the house, and took personal possessions, including computers and book manuscripts. Umar was not at home at the time of the raid; he was in the Bronx.

The Bronx charges against Umar were dropped, but on February 3, 2006, five FBI agents arrested him at his Bronx apartment building and brought him to a federal detention facility in Manhattan. He was released

on \$100,000 bail. The charges involved Umar's ownership of an unregistered shotgun after having been convicted of a felony thirty-seven years ago. He was sentenced to one year of home confinement and fined \$100, after the judge considered the hundreds of letters attesting to his character written by friends and supporters. A minor technical offense was clearly used to continue to harass this man for his independent views and his right under the First Amendment to speak them.

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**Virginia Paintball Network, The.** In 2001, there was a group of Virginia Muslims who played paintball and engaged in some military-like training, with the idea that fighting might be necessary at some point in order to defend fellow Muslims. A few of them traveled to Pakistan to receive training with Lashkar-i-Taiba (LeT) - a group fighting for Kashmiri independence.

Later, the FBI investigated the network and brought charges against the members for planning jihad, even though nobody had made any plans to attack anything or to hurt the U.S. The eleven men faced accusations of helping the Pakistan-based militant group Lashkar-e-Taiba and using paintball games as a way to train for possible terrorist activity. They were essentially charged for exercising their right of free speech to urge support for Muslim communities in Bosnia, Chechnya, Afghanistan, and Kashmir. Some of the men who had traveled to Pakistan pleaded guilty and testified against the others. They received sentences of about three years.

Randall "Ismail" Royer pled guilty to firearms charges related to helping others in the group. He was sentenced to twenty years, but for

some reason was released early in December, 2016. Ali Asad Chandia (see separate entry for him in this Appendix) was convicted of material support for helping others in the group, and was sentenced to fifteen years. He is due to be released in August, 2019.

Ali Al-Timimi (see separate entry for him in this Appendix) was sentenced to life even though he did nothing but advise the group. Two other members of the group, Seifullah Chapman, who went to Pakistan just before 9/11, and Masoud Khan, who went just after 9/11, were also sentenced to life in prison, but recently were released when their sentences were reduced to time served.

Both Chapman and Khan were convicted of material support to LeT and some firearms charges – the most serious being the firing of weapons while training with LeT. Both Chapman and Khan had returned home without having fired a shot at anyone, and without having done anything to fight in Kashmir, Afghanistan or anywhere else.

The firearms law they were convicted under (18 USC 924[c]) said that if the firearms were used “in connection with a crime of violence” the sentence was much harsher. At the time of the sentencing the judge found that the material support to LeT constituted a “crime of violence.” This was based on a definition of “crime of violence” that included a finding that there was a “substantial risk that physical force against a person or property may be used in the course of committing the offense.” At the time the law required that this definition apply. They were both sentenced to life in prison based on having fired weapons while at the training camp.

In April 2018, the Supreme Court decided the case of *Sessions v. Dimaya*<sup>1</sup> which involved the same definition of “crime of violence.” The Supreme Court ruled that wherever a court used this definition, and applied

it based on an “ordinary case” without regard to the specific facts, it was unconstitutional because it was too vague—too hard for the judge to know whether it applied or not. Both this definition and the “ordinary case” standard were used in the cases of Chapman and Khan and resulted in their life sentences, so they filed motions to be resentenced as a result of *Dimaya*.

Judge Leonie Brinkema then decided that based on *Dimaya* she would *not* use the “ordinary case” standard (this had formerly been required) and instead looked at the particular facts of Chapman’s and Khan’s case. Very significantly, *she found that there was no “substantial risk” of their use of force* with respect to the material support charge. She vacated the firearms counts and resentenced both of them to 10 years. Since they had already served much longer than that, the two men were released.

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**Warsame, Mohammed.** In 2000, Warsame, who has been described as a young, naïve dreamer, decided to visit Afghanistan because he had heard they were building an Islamic utopian society there. He attended a training camp in Afghanistan at a time when there were no restrictions on traveling to Afghanistan, but decided it was not the paradise he had expected. In

2001 he returned to the U.S., where he enrolled at Minneapolis Community College to become a teacher.

In December 2003, the U.S. government asked Warsame for an interview, and he told them all about his time spent in Afghanistan. He was arrested the next day and was placed in “secret detention” as a “ghost” prisoner; he was registered at the jail anonymously so people would not know where he was and so he would leave no paper trail.

Warsame claimed that while he was in secret detention, the government tried to pressure him to lie and say that Zacharias Moussaoui had told him that he (Moussaoui) was part of the 9/11 plot. (At the time, the government was trying to build a case against Moussaoui.) When Warsame refused to lie, the government charged him with material support for terrorism. The FBI at first claimed that Warsame had lied to them and charged him with providing false information. Later, however, the FBI agreed that Warsame had been completely honest with them. But having already indicted him, the government’s problem was to find some evidence that he had actually violated the law.

While awaiting trial, Warsame was placed into solitary confinement under SAMs that continued for nearly six years. His may be the longest pre-trial solitary confinement in the history of the U.S. In 2006, his lawyers moved to dismiss the case because of the government’s repeated delays in bringing the case to court, but the judge denied the motion. Finally in 2009, with no relief from solitary in sight, Warsame agreed to plead guilty to one charge of material support.

At his sentencing, Warsame’s defense lawyer, Andrea George, made an impassioned plea that the court should give him a very “difficult” sentence: “He should serve 48,185 hours of solitary confinement.” He had

spent most of that time, she said, living in a ten-by-ten box. Then she noted that Warsame had already served this sentence while waiting for a trial he never received. She argued that this incredibly harsh sentence should be enough for a man who never did anything to hurt the U.S. and who tried to cooperate with the government when they asked him to. However, the judge was not impressed with this logic, and sentenced Warsame to serve an additional ten months.

It is astonishing that for almost six years Warsame was portrayed by the government as one of the most dangerous people on earth—so dangerous that only by completely isolating him pre-trial in a ten-by-ten cell would keep the country safe—right up until the time he agreed to plead guilty. After he pleaded guilty, the government no longer considered him dangerous, and agreed that he could be released.

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**Yaghi, Ziyad/Raleigh 7, The.** On July 27, 2009, the government brought the North Carolina Triangle conspiracy case (Triangle was an area of North Carolina near Raleigh), claiming that Daniel Boyd, a charismatic adventurer, was the ringleader of a conspiracy that involved Boyd’s two sons and five other individuals (the Raleigh 7) who allegedly knew Boyd: Ziyad Yaghi, Omar Hassan, Hysen Sherifi, Anes Subasic, and Jude Kenan Mohammed. The conspiracy was based primarily on actions by Boyd who, after 2007, had begun to buy guns legally and talked about possibly establishing a base in Bosnia to engage in jihad, but no specific plan was

ever made. By 2008 Boyd was preaching a more radical and violent doctrine of Islam, which he recognized at the trial as being false, even though he was preaching it to young, supposedly impressionable friends. The government also had tape recordings of conversations between Boyd and his followers that described vague, unspecific plans to engage in jihad.

All of the defendants were placed into solitary confinement and remained there until the trial in 2011.

On February 9, 2011, Boyd and his two sons pleaded guilty to conspiracy and agreed to testify against the others. But Ziyad Yaghi, Omar Hassan, Hysen Sherifi, and Anes Subasic went to trial, claiming that they had nothing to do with any conspiracy. Anes Subasic's trial was severed from the other three because he was representing himself. Another member of the group, Jude Kenan Mohammed, was not arrested and was presumed to be abroad, where he could not be located. But "...the United States government officially acknowledged for the first time [in 2013] what had long been rumored among his friends in Raleigh: that...Mohammad was killed on November 16, 2011 in a C.I.A. drone strike on a compound in South Waziristan, Pakistan."

Ziyad Yaghi was born in Jordan and came to the U.S. when he was less than two years old. His friend, Omar Hassan, who was going to college, knew Dylan Boyd, who was also at North Carolina State University, but the association was very casual and there was little contact with the Boyd family. Ziyad testified at his sentencing that his entire contact with Daniel Boyd if totaled up would not have exceeded twenty-four hours.

In 2006, Ziyad visited his relatives in Jordan on his own. Nothing unusual happened on this trip. In 2007, Ziyad and Omar decided to return

to Jordan together to visit relatives and arrange for Ziyad's wedding. Boyd and his two sons were traveling to Palestine at around the same time to visit holy shrines, and Boyd helped Ziyad and Omar get tickets through Boyd's travel agent by sending the agent a bank check, for which Ziyad and Omar later reimbursed him. Traveling separately from the Boyds, Ziyad and Omar landed in Israel but were not permitted to enter the country to visit the Al-Aqsa mosque, as they'd hoped, so they went instead to Jordan and Egypt to visit Ziyad's large family and had no further contact with Boyd. Nothing happened other than a family visit, which was confirmed by Ziyad's family. Astonishingly, these two trips form the only basis for the charge against Ziyad and Omar that they went abroad to commit violent jihad.

Later in 2007, a dispute arose between some acquaintances of Ziyad and Omar as to whether one individual owed money to someone else. The group, including Ziyad and Omar, accompanied the individual to an ATM to withdraw the money that he claimed was owed him. Later the individual claimed that he was threatened, kidnapped, and forced to withdraw the money. The group, including Ziyad and Omar, was arrested on extortion charges and kept in jail for four months until a plea bargain could be arranged.

While in jail, the FBI questioned Ziyad and Omar about their relationship with Boyd. The young men denied that they had any significant relationship with him. But the FBI claimed that the two knew more about Boyd than they were saying, and implied that they would be held in jail until they agreed to cooperate. The FBI told Omar that they wanted him as an informant. Omar refused. After this, Omar and Ziyad, who had had virtually no contact with Boyd after their trip to Jordan,

deliberately separated themselves from further involvement with Boyd and his group of friends because of concerns about the FBI's interest. They were not with Boyd in 2008 when Boyd began his "radical" phase.

At the conspiracy trial, which concluded in October 2011, the government claimed that Ziyad and Omar's two trips, although entirely innocent by themselves, were done to further a conspiracy and to "engage in violent jihad" by scouting out sites for a potential jihad attack. However, Boyd and both of his sons testified for the government that there was no conspiracy involving Ziyad and Omar, and no witness or evidence contradicted these statements.

Moreover, although the FBI had maintained secret electronic surveillance of Boyd, whereby it recorded his conversation with the alleged conspirators, none of the many tapes included Ziyad or Omar. This supported Ziyad's claim that he had had virtually nothing to do with Daniel Boyd after 2007, and previous to that had spoken to him for a total of less than twenty-four hours. Nevertheless, both Ziyad and Omar were convicted of material support for terrorism, and Ziyad was also convicted of conspiracy to engage in murder and violence abroad. Omar received a sentence of fifteen years, and Ziyad a sentence of thirty-two years.

Although neither Ziyad nor Omar said or did anything inherently illegal, their legal acts were supposedly made illegal by being loosely "associated" with an individual whose later actions were deemed illegal by the government. This is not only guilt by association but guilt by *former* association. When Omar appeared before the court for sentencing, he appeared completely baffled by what had happened and said, "What did I do? Could the Court please explain what I did that was wrong?"—to which the court gave no answer. Ziyad could well have asked the same question.

It appears that Ziyad and Omar were targeted and charged by the FBI as payback for refusing to cooperate with the FBI in the investigation and inform on their friends. The government used conspiracy laws to criminalize associations with friends or acquaintances who independently may have violated the law.

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