

and to advocate against the “preemptive prosecution” program of the United States government, which prosecutes and incarcerates “suspicious” Muslims, including Aref and Hossain, who have not been involved in criminal activity. The MSC’s initial project was to allow the Capital District community an opportunity to express its opinion of the convictions to the Court. Prior to sentencing, the MSC collected and delivered to the Court approximately 970 signatures on a petition that requested leniency for the defendants. The MSC also encouraged the writing of, and delivered to the Court, over 100 letters of support for the two defendants, which also requested leniency in sentencing.

In addition to this advocacy, along with the Masjid As-Salam the MSC has raised over \$30,000 to date to support the families of the defendants, since the Aref and Hossain families were destroyed by their husbands’/fathers’ convictions and left without adequate resources to raise a total of ten children. This fundraising has provided the families with basic living expenses such as food and rent, school supplies and tuition for the children, and a small cushion for both families to become financially independent. Hundreds of people from all over the Capital District, the state, and indeed the country have contributed money and given support to the work of the MSC.

The MSC has a floating leadership group of about ten people to plan activities, and it holds monthly meetings that are open to the public. Members of the MSC have received awards from various civic organizations for their work with the MSC. May Saffar and Catherine Callan received the Carol S. Knox Award from the Capital Region Chapter of

the New York Civil Liberties Union in 2007 for founding the MSC; Dr. Shamshad Ahmad received the Jim Perry Progressive Leadership Award from Citizen Action of the Capital District in 2008 for his work with the MSC; and attorneys Kathy Manley and Stephen Downs received the Ed Bloch Award from the Interfaith Alliance of New York State in 2009 for their legal work in support of the mission of the MSC. Thus the MSC can claim to have broad-based and indeed enthusiastic support within the Capital District and beyond.

This application to submit an Amicus brief is part of the MSC's mission of allowing the public's voice to be heard in connection with the Aref and Hossain cases. These cases are not just routine criminal cases. The FBI and the federal government targeted two leaders of the Muslim community, used a deceptive "sting" operation to entrap them, and pretended to the public that they were terrorists, when in fact the government later publicly admitted that it had no evidence of terrorist plans by either defendant and publicly conceded that it had only targeted Aref to "preempt" him from committing some future crime. In the process, the Muslim community was terrorized by the government, the public saw two men smeared, convicted, and imprisoned, and substantial questions remained and still remain unanswered from the trial as to the good faith of the government in bringing these charges.

The MSC has been deeply involved in both the legal issues arising out of the cases and the human tragedy that the prosecutions caused. In his book *Rounded Up*, Shamshad

Ahmad, president of the Masjid As-Salam, the locus of the FBI sting, made the following observation about the MSC:

Since [the founding of the MSC on October 13, 2006], this committee has literally assumed oversight of the welfare of the two defendants and their families. They have been steadfast in defending the Masjid As-Salam and its community, and have become a watchdog group to ensure that Muslims are no longer targeted by the government. (*Rounded Up*, p. 168)

Included in the work that the MSC has undertaken are the following specific projects:

- In 2008, the MSC (via myself, a freelance editor, working with attorney Stephen Downs) edited and published Yassin Aref's autobiography, *Son of Mountains*, and in 2009 assisted Dr. Shamshad Ahmad in editing and publishing his book about the Aref and Hossain cases, *Rounded Up, Artificial Terrorists and Muslim Entrapment After 9/11*.
- In 2008, the MSC helped Ellie Bernstein produce her award-winning film about the cases, *Waiting for Mercy*.
- In 2007–2009, the MSC provided legal representation to the family of Yassin Aref in the form of a successful lawsuit against the United States government to obtain green cards for Aref's wife and children.
- Since 2006, the MSC has provided a continual source of public and community information about the Aref and Hossain cases via forums, speaking engagements, rallies, letters, articles, interviews, websites, legal advocacy and education, and media appearances.

The trauma of the men's arrests, trial, conviction, and incarceration is still deeply present in their families. It is extremely difficult for family members to trust anyone, especially

the government; one family will not even apply for social services benefits, even though it has no source of income, because of fear of the government. Aref, who has been incarcerated in special Communication Management Units in two prisons in the Midwest (Terre Haute, Indiana and Marion, Illinois), is too far from Albany for his family to visit by themselves. Since 2007, the MSC has driven the Aref family on two four-day trips to visit their father. Hossain, who is in poor health as a result of pre-existing medical issues that have been only minimally treated while in prison, is incarcerated in Fairton, New Jersey, a ten-hour round trip from Albany (with a visit, sixteen hours). On numerous occasions, the MSC has helped the Hossain family rent a van and has driven them to Fairton for family visits. The MSC also obtained tuition grants from the Rosenberg Foundation for Children so that all of the children can continue their Islamic education at the An Nur School in Colonie (suburban Albany). Members of the MSC visit both families on a regular basis and have tried to provide resources so that the children will have as normal an upbringing as possible under the circumstances. MSC members have also provided low-cost or no-charge carpentry, maintenance, and repair services for income-producing rental properties owned by one of the families.

The government claims that it has secret evidence that Aref was a threat, and that “he had the ideology” (to become a terrorist), but neither the families, the MSC, the mosque, nor the public can grasp how two men can be convicted in America based on secret evidence or “ideology,” and the appeals process has failed to provide any explanation. Therefore, the MSC requests that the Court appoint a special or independent prosecutor to review the defendants’ convictions, to answer some basic and lingering questions regarding the trial

and the evidence, and to provide reassurance that the trial was, in fact, fair and the convictions were just.

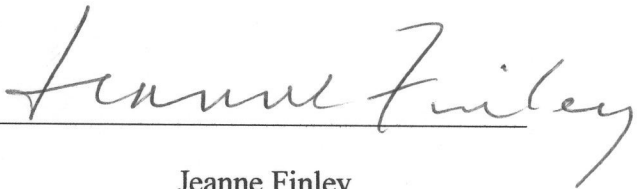
An Amicus brief should be allowed where it will help the Court to reach a just decision, especially where an issue of general public interest is at stake. *Liberty Resources, Inc. v. Philadelphia Housing Auth.*, 395 F. Supp.2d 206, 209 (E.D. Pa 2005); *Ellsworth Assoc., Inc. v. U.S.*, 917 F. Supp. 841, 846 (D.DC. 1996). The Aref and Hossain cases present just such issues of public interest where fundamental questions have been raised about the legitimacy and legality of the prosecution, and the reasons for it. Specific issues are stated in the attached draft of an Amicus brief that the Amici seek permission to file.

Amici request that the court extend the time within which they may request permission to file an Amicus brief because the 2255 applications filed by the defendants Aref and Hossain are voluminous, the defendants are not represented by attorneys, and the record in this case is complex.

Amici believe that their brief will assist the court in deciding the defendants' 2255 motions because the Amici represent different groups that have been deeply involved in the prosecution and the incarceration of the defendants, and have experienced the effects of the cases on both the local and the broader Muslim community. The Amici understand that the Aref and Hossain cases are not simple criminal prosecutions but are part of a program of the FBI to preemptively prosecute suspicious Muslims. Such a nationwide program presents significant and unusual issues that the court must consider in the

context of the 2255 motions. The defendants are not represented by counsel, and Amici believe that they can help the court narrow the voluminous issues presented by showing the background and context in which these issues arose.

WHEREFORE, on behalf of the Muslim Solidarity Committee, I request that the Court grant us permission to file an Amicus brief with the Court.



Jeanne Finley

Sworn To Before Me

This 17th day of March 2010.



Notary Public

MARK GILLEN
Notary Public in the State of New York
Qualified in Albany County No. 01618177524
My Commission Expires November 19, 2011



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

YASSIN AREF,

Petitioner,

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

V.

UNITED STATES OF AMERICA,

Respondent.

MOHAMMED MOSHARREF HOSSAIN,

Petitioner,

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

V.

UNITED STATES OF AMERICA,

Respondent.

State of New York)

SS

County of Albany)

SHAMSHAD AHMAD, being duly sworn, deposes and says:

1. I am a professor of physics at the University at Albany/SUNY, and the founder and president of the Masjid As-Salam. The mosque was founded in 1982 and moved to its present location at 276-278 Central Avenue in Albany, New York in 1999. It has grown to be one of the largest mosques in the Capital District.

2. In August 2004, the imam of the Masjid As-Salam, Yassin Aref, and one of the leaders of the mosque, Mohammed Hossain, were arrested by the FBI and charged with terrorism-related crimes. They were eventually convicted and are now serving fifteen-

year prison terms. The conviction of the defendants was a very traumatic experience to the Muslim community in Albany, and it had many ramifications in Muslim communities all across the U.S. These ramifications are being felt today in the form of a loss of confidence in the fairness of the United States government toward Muslims.

3. In 2009, I wrote and published a book about the trial, the case, and its consequences, entitled *Rounded Up, Artificial Terrorists and Muslim Entrapment After 9/11*. In the book, I described how members of our Muslim community knew well that neither Aref nor Hossain had any involvement in terrorism. Affidavits attached to Aref's 2255 motion attest to the fact that Muslims who worshipped in the Masjid As-Salam in close association with Aref knew that he had never counseled violence or jihad or any illegality toward America. The community held Aref in the highest regard as a peaceful and spiritual person. They knew the two defendants had been tricked and entrapped by the FBI. Thus the Muslim community in Albany, like Muslim communities in many other parts of the U.S., was faced with the terrifying prospect that the United States government would trick and entrap innocent people simply because they were Muslim. If Aref and Hossain could be tricked and entrapped, then no Muslim was safe in America.

4. I stated in *Rounded Up* (p. 194):

In recent years, every single Muslim in this country has been treated as a potential terrorist, and the government is distrustful of anyone who is Muslim. Targeting one of them and punishing him or her in violation of fairness and justice has been considered standard law enforcement practice. Muslims are considered guilty from the start, with no fair chance of proving their innocence. This has been the rule, rather than the exception. Such an attitude has led to establishment of laws, methods of investigation, and systems of policing that are unjust and are, in truth, wholly un-American. Law enforcement agencies have also manipulated the

emotions of the public, exploited their fear, and used false propaganda to carry out this ill-conceived mission—and they enjoy the blessings of the Bush Administration all the way to the top levels.

It is high time that some rational thinking takes place among law enforcement agencies and those who claim they are working to ensure the safety of our nation. Rather than wasting huge amounts of energy and resources on targeting innocent Muslims and their communities, they should focus on real intelligence and investigation in coordination with Muslim leaders, imams, intellectuals, and others. Once a relationship of honesty, trust and confidence is built up, there will be no lack of cooperation from the Muslim leadership itself and Muslims will be more than willing to open their communities, mosques, and institutions to law enforcement officials, reporters, and the non-Muslim public.

I beg the authorities, as well as the Muslim leadership in the country, to take concrete steps in removing the mutual distrust of each other that presently exists, and to develop a relationship of mutual trust and cooperation. Doing so will be a win-win game for everyone, in which there will be no losers.

5. My book describes the distortions and injustices in the trial that made the Muslim community and many non-Muslims doubt the fairness and validity of the convictions.

After the men's sentencing in March 2007, I issued a statement on behalf of the Masjid As-Salam, which said in part:

The bottom line is that these two men are now sentenced to serve long prison terms, but the fact remains that they are not criminals, nor have they committed a crime. This trial occurred because of the immense power of the government and its resolve to punish these two men, and through them, to punish the Muslim community locally and nationally. I invite you to think: there are more than six million Muslims in this country, and almost six years have gone by since 9/11, yet not a single Muslim terrorist has ever been found here. We are not terrorists. We are part of this society, we share its concerns, and we want to share in its success and prosperity. (*Rounded Up*, p. 183)


6. Nothing has changed in the three years since I wrote that statement. The convictions of Aref and Hossain, like the convictions of Muslims all over America for non-existent terrorism-related crimes, remain an injustice that will not go away. The appointment of a special or independent prosecutor to review these convictions is the

only way to start to move away from unfair “preemptive prosecutions” of Muslims and return to the rule of law applied equally to everyone.

7. I would be pleased to offer to the Court and to the prosecutors a complimentary copy of my book, *Rounded Up*, if the Court would like to read in it my analysis of the Aref/Hossain case and the overwhelming agreement in the Muslim community that the case was a frame-up based on lies and trickery.

8. An Amicus brief should be allowed where it will help the Court to reach a just decision, especially where an issue of general public interest is at stake. *Liberty Resources, Inc. v. Philadelphia Housing Auth.*, 395 F. Supp.2d 206, 209 (E.D. Pa 2005); *Ellsworth Assoc., Inc. v. U.S.*, 917 F. Supp. 841, 846 (D.DC. 1996). The Aref and Hossain case presents just such issues of public interest where fundamental questions have been raised about the legitimacy and legality of the prosecution, and the reasons for it.

WHEREFORE, on behalf of the Masjid As-Salam, I request that the Court grant us permission to file an Amicus brief with the Court.



Shamshad Ahmad

Sworn To Before Me

This 17th day of March 2010.



Notary Public

MARK GILLEN
Notary Public in the State of New York
Qualified in Albany County No. 016177524
My Commission Expires November 13, 2011



researching whether the United States government, in launching its “preemptive prosecution” program, violated the civil rights of Muslims across the United States. SALAM was founded in August 2008 by representatives from the MSC and from the support committees for Dr. Rafil Dhafir in Syracuse, New York and Syed Fahad Hashmi in New York City. SALAM has worked with support committees for the Fort Dix 5, the Newburgh 4, and Lynne Stewart, and has provided information to numerous organizations and individuals.

3. SALAM’s first project was to build a database of Muslims and Muslim organizations who were preemptively prosecuted by the U.S. government after 9/11. SALAM is presently following some 450 cases in its database. This database is available to anyone who visits the website.

4. Using the database, SALAM has prepared a series of letter-petitions (now totaling seven) calling on the president and the attorney general of the United States to appoint special or independent prosecutors to determine whether, in connection with their preemptive prosecution program, prosecutors failed to provide appropriate exculpatory information, failed to provide fair trials, and failed to do justice to the Muslims that they targeted. (See www.projectsalam.org, a site that includes the database and the seven SALAM letter-petitions to President Obama and Attorney General Holder). Over 2,600 people have signed these letter-petitions.

5. A summary of the seven letter-petitions follows, showing the broad range of topics and cases that SALAM has already written about to the president and the attorney general:

THE FEBRUARY 16, 2009 LETTER – A general request that the Justice Department review and dismiss cases involving “preemptive prosecution,” in which innocent Muslims are targeted and convicted based on their religion and post-9/11 suspicion rather than on evidence of actual crimes.

THE APRIL 4, 2009 LETTER – A request that the Justice Department review and dismiss certain specific cases of “preemptive prosecution,” including *U.S. v. Syed Fahad Hashmi*, *U.S. v. Sami Al-Arian*, *U.S. v. Rafil Dhafir*, *U.S. v. Mohammed Hossain*, and *U.S. v. Yassin Aref*.

THE MAY 21, 2009 LETTER – A request that the Justice Department stop using various illegal practices against Muslims, including the use of agents provocateur (the case of Ahmed Niazi); the secret rendition and detention (“disappearance”) of suspects (the case of Aafia Siddiqui); the detention of convicted Muslims at special Muslim prisons (CMUs); the invocation of the State Secrets Doctrine to block judicial consideration of illegal wiretapping and extraordinary rendition (*U.S. v. Arar*, *U.S. v. Jeppsen*); and the failure of the Obama Administration to prosecute war crimes or end activities that are illegal by treaty.

THE JULY 8, 2009 LETTER – A request that the Justice Department follow up on its exoneration of Senator Theodore Stevens by exonerating innocent Muslims convicted in preemptive prosecutions that were based on entrapment by agents provocateur, including the prosecutions of Hamid and Umer Hayat, the Fort Dix 5, the Miami (Liberty City) 6, the Newburgh 4, and Yassin Aref and Mohammed Hossain.

THE NOVEMBER 16, 2009 LETTER – A request that the Justice Department exonerate Muslims preemptively prosecuted on the basis of their charitable activities, including the blacklisting of Muslim charities; seizure of the assets of Muslim charities without due process (Kind Hearts, Al-Haramain Foundation); the use of illegal wiretapping to target innocent charitable activities; the criminalization of charitable activities (the Holy Land Foundation); and the case of Rafil Dhafir (Help the Needy).

THE MARCH 8, 2010 LETTER – A request that the Justice Department exonerate Muslims preemptively prosecuted on the basis of the material support for terrorism statutes, in situations where the statutes fail to provide notice that otherwise legal and even charitable activities are criminal. Such activities include

anti-terrorism services (the Humanitarian Law Project cases); charitable activities (the Holy Land Foundation case); normal social hospitality (the Syed Fahad Hashmi case, the Ali Asad Chandia case); guilt by association (the Ehsanul “Shifa” Sadequee case); and using material support statutes to charge people with crimes who refuse to voluntarily cooperate with the government (the Tarek Mehanna case). The letter also discusses the release of the FBI guidelines and the killing of Imam Luquman Ameen Abdullah by the FBI during a sting.

THE APRIL 2010 LETTER (presently in the process of being signed) – A request that the Justice Department deal with the serious issues of misconduct in which it has been engaged, including the failure of the Office of Professional Responsibility to discipline lawyers such as Yoo, Bybee, and Bradbury who committed serious professional misconduct in authorizing torture, and the office’s failure to discipline lawyers who fail to disclose exculpatory information (the *Stevens* case). Also discussed is the failure of the Department of Justice to take appropriate action in the cases of the CIA agents convicted of kidnapping and rendition in Italy; the failure to turn over exculpatory information in the Samuelli and Ruele cases; the dismissal of charges in the Blackwater prosecution; the “loss” of 22 million e-mails from the White House; the coverup of prisoner murders at Guantanamo; the manufacturing of emergencies to bypass warrant requirements; the continuing torture program of the Obama Administration; the killing of Imam Luquman Ameen Abdullah; and the implementation of the Total Information Awareness system in violation of the Constitution and the Bill of Rights.

6. Project SALAM provides speakers on the issue of preemptive prosecution of Muslims. Events that SALAM speakers have attended include a public forum on the case of the Fort Dix 5 (April 2009), a forum for family members of the Newburgh 4 (May 2009), and the July 3 Human Rights Mobilization in Washington, DC (July 2009—video available on YouTube at <http://www.youtube.com/watch?v=mBzt9ZP3Aio>). Several additional speaking engagements are scheduled for spring 2010.

7. This application to submit an Amicus brief is part of our mission of allowing the public’s voice to be heard in connection with the Aref and Hossain cases and to show the disturbing similarity of these cases to many more across the United States—cases in

which the U.S. government has apparently “preemptively prosecuted” otherwise innocent Muslims in order to prevent them from committing criminal acts in the future.

8. As just one example, in the case of the Fort Dix 5, a closely knit Muslim family used to go together to the Pocanos for vacations to ride horseback, play with their children, shoot on the rifle range, and take home movies. A store clerk developing these home movies saw a group of men holding guns on the rifle range, laughing and shouting “Allah Akbar”—God Is Great. The clerk turned the film over to the FBI, which dispatched two agents provocateur to entrap the family. The agents, pretending to be friends and secretly recording the conversations, eventually persuaded the men to make enough potentially incriminating statements that a jury convicted them. These young men in their 20s are now serving sentences of life plus thirty years. Between them, the men have two wives and six young children. Their families have been destroyed.

9. There are Muslim families like this one throughout the country, all destroyed by an FBI preemptive prosecution program that uses the vast resources of the U.S. government to trick people who might be suspicious into saying or doing something that sounds illegal. The Aref and Hossain cases are examples of the same preemptive prosecution program. Project SALAM is trying to follow all such preemptive cases to document what this government program does to the people who are targeted, and to their communities.

10. Since its founding, Project SALAM has advocated that the Justice Department must establish an independent office within the Justice Department to review all these

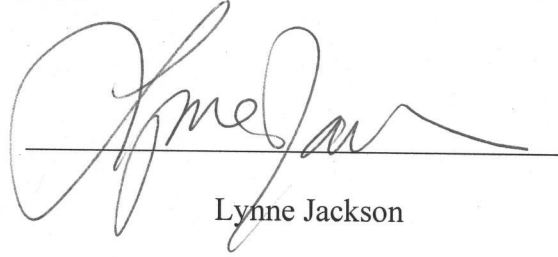
preemptive prosecution cases to determine whether the prosecution gave the defendants appropriate exculpatory evidence, a fair trial, and justice. Where a special prosecutor finds that the government engaged in a frame-up, or denied exculpatory information to the defendants, or proceeded knowing that the defendants were innocent, the Court must dismiss the charges. Without this check, our justice system will fail to give justice.

11. An Amicus brief should be allowed where it will help the Court to reach a just decision, especially where an issue of general public interest is at stake. *Liberty Resources, Inc. v. Philadelphia Housing Auth.*, 395 F. Supp.2d 206, 209 (E.D. Pa 2005); *Ellsworth Assoc., Inc. v. U.S.*, 917 F. Supp. 841, 846 (D.DC. 1996). This is especially so where, as here, the defendants are not represented by counsel and have filed motion papers that are voluminous and complex. An Amicus brief could help the Court focus on important issues that need to be addressed. The Aref and Hossian cases present just such issues of public interest where fundamental questions have been raised about the fairness, legitimacy, and legality of the prosecution, and the reasons for it. Specific issues are stated in the attached draft of an Amicus brief that the Amici seek permission to file.

12. Amici request that the Court extend the time within which they may request permission to file an Amicus brief, because the 2255 applications filed by the defendants Aref and Hossain are voluminous, the defendants are not represented by attorneys, and the record in this case is complex.

Amici believe that their brief will assist the Court in deciding the defendants' 2255 motions because the Amici represent different groups that have been deeply involved in the prosecution and incarceration of the defendants and have experienced the effects of the cases on both the local and the broader Muslim community. The Amici understand that the Aref and Hossain cases are not simple criminal prosecutions but are part of a program of the FBI to preemptively prosecute suspicious Muslims. Such a nationwide program presents significant and unusual issues that the Court must consider in the context of the 2255 motions. The defendants are not represented by counsel, and Amici believe that they can help the Court narrow the voluminous issues presented by showing the background and context in which these issues arose.

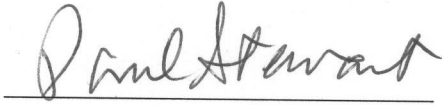
WHEREFORE, on behalf of Project SALAM, I request that the Court grant us permission to file an Amicus brief with the Court.



Lynne Jackson

Sworn To Before Me

This 16th day of March 2010.



Notary Public

PAUL STEWART
Notary Public, State of New York
No. 01ST5081074
Qualified in Albany County
Commission Expires June 30, ~~12/5/13~~