

INVENTING TERRORISTS

The Lawfare of Preemptive Prosecution

A Study by
Project SALAM
and
National Coalition to Protect Civil Freedoms
Written by Stephen Downs, Esq. and Kathy Manley, Esq.

May 2014

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Lynne Jackson, database designer

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About the Authors, Preparers, and Sponsors of This Study

Stephen Downs, Esq. graduated from Amherst College (1964) and Cornell Law School (1969) after serving in the U.S. Peace Corps in India (1964–66). He was chief attorney of the New York State Commission on Judicial Conduct from 1974–2003, part of the defense team in *U.S. v. Yassin Aref* (2006–2007), and a founder of Project SALAM (2008). He became executive director of the National Coalition to Protect Civil Freedoms in 2012.

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Project SALAM (Support And Legal Advocacy for Muslims), www.projectsalam.org, was founded and incorporated in 2008 after a conference at Albany (New York) Law School that focused on preemptive prosecution. The conference was convened by groups and other interested people who supported Yassin Aref, Dr. Rafil Dhafir, and Fahad Hashmi, and featured attorney Lynne Stewart as keynote speaker. Project SALAM's mission is to advocate for prisoners who have been preemptively prosecuted, assist their families, create and maintain a database to study the phenomenon of preemptive prosecution, and publish on the issue.

National Coalition to Protect Civil Freedoms (NCPCF), www.civilfreedoms.org, was founded and incorporated in 2010 as a coalition of Muslim, civil rights, and peace groups to oppose profiling, preemptive prosecution, and prisoner abuse. Current member organizations include: American Muslim Alliance (AMA), Bill of Rights Defense Committee (BORDC), Center for Constitutional Rights (CCR), Creating Law Enforcement Accountability and Responsibility (CLEAR), Committee to Stop FBI Repression (CSFR), Defending Dissent Foundation (DDF), Desis Rising Up and Moving (DRUM), Friends of Human Rights (FHR), International Action Center (IAC), Islamic Circle of North America (ICNA), Muslim Civil Liberties Union (MCLU), Muslim Legal Fund of America (MLFA), National Lawyers Guild (NLG), National Liberty Fund (NLF), Peace Thru Justice Foundation (PTJF), Project SALAM (Support And Legal Advocacy for Muslims), United National Antiwar Coalition (UNAC), and Universal Justice Foundation (UJF).

To see specific details on any of the preemptive prosecution cases mentioned in this study and its appendices, readers can access the Project SALAM database at <http://www.projectsalam.org/database.html> and sign in as a guest account; search for each defendant by name.

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- A: Tactics Used in Prosecution Sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present, or No Preemptive Prosecution Used [based on U.S. Department of Justice list, “National Security Division Statistics on Unsealed International Terrorism and Terrorism-Related Convictions 9/11/01–3/18/10”] A-1 to A-29
- B: Preemptive Prosecution Cases Mentioned in the Study B-1 to B-50
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Lawfare: the use of the law as a weapon of war.

— “Law and Military Interventions: Preserving Humanitarian Values in 21st-Century Conflicts” by Brigadier General (S) Charles J. Dunlap, Jr., USAF. In *Humanitarian Challenges for Military Intervention*, Harvard University, John F. Kennedy School of Government, The Carr Center for Human Rights Policy, November 2001.

SUMMARY

This study, sponsored by two national organizations, Project SALAM (Support And Legal Advocacy for Muslims) and the National Coalition to Protect Civil Freedoms (NCPCF), focuses on post-9/11 claims by the U.S. government that it keeps the country safe from terrorism by arresting hundreds of so-called “terrorists” who were about to strike the U.S. until the FBI foiled their plots. In fact, this study shows that there have been remarkably few actual terrorism threats to this country in the last decade. The vast majority of arrests in the war on terror have consisted of

- the FBI foiling its own entrapment plots; or
- the government arresting people on material support for terrorism charges that effectively criminalize innocent conduct, such as charitable giving and management, free speech, free association, peace-making, and social hospitality; or
- inflation of minor or technical incidents into terrorism events, such as immigration application inaccuracies, old weapons charges, or inaccurate statements to governmental officials

The study shows that the war on terror has been largely a charade designed to make the American public believe that a terrorist army is loose in the U.S., when the truth is that most of the people convicted of terrorism-related crimes posed no danger to the U.S. and were entrapped by a preventive strategy known as preemptive prosecution. The theme of the study links preemptive prosecution to the metaphor of “lawfare,” the use of the law as a weapon of war, in this case the war on terror.

Statistically, the study asks how many of the individuals who appear on the Department of Justice (DOJ) 2001–2010 list of “terrorism and terrorism-related convictions” (Appendix A) represented real terrorism

threats, and how many were cases of preemptive prosecutions. The study then categorizes the cases of the individuals on the DOJ list as one of three types of cases: preemptive prosecutions, cases that contained elements of preemptive prosecution, or cases that were not preemptive prosecutions/represented real terrorism threats.

The statistical analysis shows that 72.4% of convictions on the DOJ list represent cases of preemptive prosecution that were based on suspicion of the defendant's perceived ideology and not on his/her criminal activity. Another 21.8% of convictions on the DOJ list represent people who began on their own to engage in minor, non-terrorist criminal activity but whose cases were manipulated and inflated by the government to appear as though they were "terrorists"; these cases are referred to in the study as "elements of preemptive prosecution" or "elements." Overall, 94.2% of all the terrorism-related convictions on the DOJ list have been either preemptive prosecution cases or cases that involved elements of preemptive prosecution.

The study defines preemptive prosecution, gives background on the origin of the concept, discusses the tactical patterns that characterize its use by the government, and provides a methodology for determining the categorization of a case. The study then shows, for cases on the DOJ list, the percentages for each categorization of a case, as well as percentages for the tactical patterns used in each categorization. The study concludes that the government has used preemptive prosecution to exaggerate the threat of Muslim extremism to the security of the country, and presents some hypotheses as to why the government has done this, without taking a position on which possibilities may be correct. The study also makes recommendations to change the present unfair terrorism laws.

The following appendices are included: Appendix A is the DOJ list of terrorism/terrorism-related convictions with each individual's case designated as preemptive prosecution, elements of preemptive prosecution, or no preemptive prosecution used/real security threat. Appendix B contains descriptions of all preemptively prosecuted individuals and cases referenced in this study. Appendix C is a bibliography of sources.

DEFINITION OF PREEMPTIVE PROSECUTION

Preemptive prosecution (also called preventive, predatory, proactive, pretextual, or manufactured prosecution) is a law enforcement strategy, adopted after 9/11, to target and prosecute individuals or organizations whose beliefs, ideology, or religious affiliations raise security concerns for the government.¹ The actual criminal charges are pretexts, manufactured by the government to incarcerate the targets for their beliefs. These pretexts include:

- Using material support for terrorism laws to criminalize activities that are not otherwise considered criminal, such as free speech, free association, charity, peace-making and social hospitality.
- Using conspiracy laws to treat friendships and organizations as criminal conspiracies, and their members as guilty by association, even when most members of the group have not been involved in criminal activity and may not even be aware of it.
- Using *agents provocateur* to actively entrap targets in criminal plots manufactured and controlled by the government.
- Using minor “technical” crimes, which otherwise would not have been prosecuted or even discovered, in order to incarcerate individuals for their ideology (for example, making a minor error on

an immigration form, which is technically a crime; lying to government officials about minor matters; gun possession based on a prior felony many years earlier; minor tax and business finance matters).

Journalist Chris Hedges has written that “the concept of pre-emptive prosecution mocks domestic law as egregiously as pre-emptive war mocks the foundations of international law.”² Preemptive prosecution is similar to earlier methods of political repression in the U.S. whereby ideology, beliefs, and thoughts were targeted for prosecution: the Palmer Raids of the 1920s, the Japanese internments during World War II, the Communist witch hunts of the 1950s, and COINTELPRO during the 1960s and 1970s, which targeted progressives and particularly the Black Liberation movement for infiltration, disruption, frame-ups, and even assassination, i.e., Black Panthers Fred Hampton and Mark Clark.

The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (known as the “Church Committee” because it was chaired by Senator Frank Church) issued a report in 1976 on the COINTELPRO program that stated in part:

Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that...the Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence...nonviolent organizations and individuals were targeted because the Bureau believed they represented a “potential” for violence.³

Targeting non-violent individuals because the government believes that they represent a potential for violence is precisely what preemptive

prosecution is all about. In preemptive prosecution, the targets are prosecuted with fake, manufactured, or pretext charges to preempt them from developing their “potential for violence,” as the Church Committee report puts it.

METHODOLOGY

In 2010, the Department of Justice (DOJ) published a list of individuals that it claimed represented all of the terrorism and terrorism-related convictions in the U.S. from September 11, 2001 to March 18, 2010 (<http://web.archive.org/web/20100530015008/http://www.justice.gov/cjs/docs/terrorism-convictions-statistics.pdf>). Via the Project SALAM database, this study uses the DOJ list as a basis to categorize and analyze cases of preemptive prosecution. The DOJ list is unfortunately incomplete. It is both over-inclusive and under-inclusive: it omits “terrorism” cases decided after March 18, 2010, it omits some “terrorism” cases that were decided prior to that date, and it includes some cases that do not appear to be terrorism cases at all (see below under “No Preemptive Prosecution”). This probably reflects a lack of clear standards for inclusion on the DOJ list.

Project SALAM has built and maintained a much more comprehensive database that contains significantly more cases than the DOJ list, including more preemptive prosecution cases and additional cases that reflect a real security threat. However, the statistical analysis of this study considers, in Appendix A, only those cases that appear on the DOJ list. (Project SALAM’s database includes more complete information on each case than does the DOJ list, and thus Appendix A includes this information, but only with regard to those cases that appear on the DOJ list.) This study will refer later on to other cases that are not on the DOJ

list, but which are found in the Project SALAM database, as examples of issues the study has identified, but these additional cases not on the DOJ list are not included in the statistical analysis.

For purposes of terminology, this study refers interchangeably to the convicted individuals on the DOJ list as both “individuals” and “cases,” the latter term encompassing all the charges and tactics used to bring the prosecution against that individual, although a single case often had more than one defendant, especially those cases designated by their popular names, such as the Newburgh Four or the Virginia Paintball Network. The original DOJ list did not group such individuals by case, but the Project SALAM database has done this.

Appendix A lists all of the convicted individuals included on the DOJ list, and this study places each of those individuals’ cases in one of three categories: 1) preemptive prosecution, 2) “elements of preemptive prosecution” (a prosecution based on an initial decision by the defendants to engage in non-terrorism-related and often minor crime, but which the government then inflated into a terrorist charge), or 3) a terrorism-related charge that does not have the characteristics of preemptive prosecution. Using these categories, it is possible to quantify what percentage of the government’s terrorism and terrorism-related convictions represents preemptive prosecution cases, what percentage represents elements of preemptive prosecution cases, and what percentage represents cases that do not qualify as preemptive prosecution and thus were actual threats to national security.

Based on the above-mentioned classifications, the study made the following assumptions in designating cases.

Preemptive Prosecution: General Considerations

1. Preemptive prosecutions are generally characterized by the absence of a crime involving injury to people, damage to property, or disruption of public order. Rather, there is suspicion of what the defendant might do in the future based on the defendant's religion or ideology.

2. Preemptive prosecutions are characterized most clearly by the disparity between how individuals of a certain religion or ideology are treated when compared with the general public. Actions that would be ignored or treated lightly when performed by a member of the general public are heavily prosecuted and sentenced when performed by a member of the targeted group.⁴

3. Preemptive prosecutions are also clearly characterized by the unreasonable severity with which cases are prosecuted and sentenced. For example, because of the terrorism enhancement that effectively quadruples normal sentences, prosecutors can force defendants to accept plea bargains as the only alternative to draconian prison terms, or can force defendants to cooperate or become informants.

Preemptive Prosecution: Specific Considerations

1. Cases involving Muslim charities or charitable donations are considered preemptive prosecutions unless there is evidence that the defendants intended the money to support violence.

2. Prosecutions based on what would normally be protected speech under the First Amendment are considered preemptive prosecutions even if the defendants advocated non-specific violence. Free speech includes the right to use violent and hate speech, and it is not charged as a crime when right-wing terrorists or domestic hate groups engage in it. Charging only

Muslims or other targeted groups is discriminatory and preemptive.⁵ See, for example, the cases of Tarek Mehanna and Javed Iqbal in Appendix B.

3. All prosecutions based on “free association”⁶ are considered preemptive prosecutions unless there was evidence that the defendant intended to engage in violence. Simply being a member of a group, or being associated with certain individuals, should not be a crime unless there is evidence of specific intent to become involved in a given criminal action or conspiracy. A number of material support and conspiracy cases included individuals who were friends of others who were charged, and this association was the main evidence against them, with little or no additional evidence. These include the cases of Ziyad Yaghi, Ehsanul “Shifa” Sadequee, the Fort Dix Five, and several others. As long as friends do not discuss specific plans for criminal activity, their general association should not be criminalized.

4. All prosecutions of defendants who expressed a desire to go to a training camp, or who unsuccessfully tried to find one, or who attended one and failed to act on the training, are considered preemptive prosecutions unless the circumstances indicated that the defendant actually intended to engage in violence against civilians or the United States. Many defendants were drawn to attend training camps out of a desire to defend Muslim communities in Bosnia, Kashmir, Chechnya, Sudan, or other countries where there was/is conflict. This study takes the position that it is inappropriate and preemptive to criminalize these attempts to defend Muslim communities in foreign lands from attack.⁷ However, cases in which the defendants actually intended to commit acts of violence against American soldiers or against civilians are not included as preemptive prosecutions.

5. Charges of making false statements to the FBI or immigration or other federal law enforcement authorities are considered preemptive prosecutions if the false statements were unconnected to any other violations and appeared to be simply devices to hold the defendant because of suspicions about his or her ideology.⁸

6. Immigration charges are considered preemptive prosecutions when there was no evidence of any terrorist activity or of any crime beyond a technical violation, such as an omission on a form. Many of these cases, often prosecuted soon after 9/11, were based on initial suspicions that were proven false, or for which there was no evidence. See the cases of Ahmed Abdulla Elashmouny and Ashar Iqbal Butt in Appendix B.

7. *Hawali* (unlicensed money transfer) charges are considered preemptive prosecutions when there was no evidence that any of the money was being sent for criminal or terrorist activity. *Hawali* is an informal system of money transfer used mainly in the Middle East and Africa. It is often the only way that families in America can send money to impoverished families in the Middle East, but such unlicensed money transfers violate U.S. laws. The U.S. government generally does not prosecute (or shows great leniency to) those who send money to their relatives abroad—except for those about whom it is suspicious. Thus *hawali* prosecutions often are pretext charges based on suspicions about the defendant's ideology.

8. Sting operations are considered preemptive prosecutions when there was no evidence that the targets were already engaged in specific terrorist plots before being entrapped by the government. Entrapment is normally a defense in response to such a prosecution, but the government has successfully argued that in terrorism cases, the targeted defendants

were ideologically “predisposed” to commit the crime, and so the entrapment defense required that the defendant must have affirmatively rejected the FBI’s manufactured plot.⁹ In this way, the government has essentially eliminated the entrapment defense for terrorism cases.¹⁰ This is another example of how preemptive prosecutions have been prosecuted differently from normal prosecutions.¹¹

Elements of Preemptive Prosecution

This category involves cases in which the defendants engaged in non-terrorist crimes, often involving some form of fraud or theft (i.e., stolen cereal or cigarette smuggling), and the government was suspicious that the defendants might be related to terrorism in some way. This often happened when the government initially thought that the defendants might have been financing terrorism with illegal activities, but did not have evidence of that. The government then either added terrorism-related charges, used the sentencing enhancement for terrorism, or simply sentenced these defendants more harshly than normal for the crime in question. All of these individuals were included on the DOJ list by the government as having “terrorism or terrorism-related convictions,” even though many cases contained no terrorism-related charges.

No Preemptive Prosecution

Twenty-three individuals on the DOJ list (5.8%) were not considered by this study to have been preemptively prosecuted, nor did their cases contain elements of preemptive prosecution. However, this category includes some individuals who appear on the DOJ list who seem to have posed genuine threats to the nation’s security. Because such real threats are of interest not only to the government but to all citizens, the study describes these cases more fully here by further breaking down the category into four

groups, with brief details on each case: 1) Individuals who were guilty but were not terrorists; 2) Individuals who attacked other countries; 3) Individuals who were security threats inside the U.S.; and 4) Individuals not on the DOJ list who were security threats.

1. Individuals Who Were Guilty but Were Not Terrorists

Of the twenty-three individuals who are on the DOJ list but were not preemptively prosecuted, nine of them had nothing to do with terrorism at all. These include:

Amr I. Elgindy, Jeffrey Royer, Derrick Cleveland, Lynn Wingate, Robert Hansen, and Troy Melton Peters. All engaged in a clever stock fraud that had nothing to do with terrorism. First Royer, an FBI agent, stole confidential FBI information indicating that certain firms were under FBI or SEC investigation. Elgindy, the broker, then sold these stocks short so as to make a profit if the stock dropped in price. Then all of the defendants disseminated the stolen (and truthful) information about the FBI or SEC investigations to drive down the stock price so they could make a large profit.

Hasan Ali Ayesha. He was convicted of structuring currency transactions to avoid U.S. laws, wire fraud (creating a fake tax return that inflated his assets so he could obtain a loan), and naturalization fraud (signing a written statement that he was not violating any U.S. laws). Nothing in his plea or his actions indicated involvement in terrorism.

Zameer Nooralla Mohamed. In order to retaliate against his ex-girlfriend, Mohamed falsely claimed that she and her friends were planning to bomb a mall. There were no allegations of terrorism.

Vildirim Beyozit Tumer. He was a Turkish ship captain in Delaware who joked to the Coast Guard that there was a bomb aboard his vessel.

2. Individuals Who Attacked Other Countries

Ten individuals on the DOJ list attacked or attempted to attack other countries:

Vinh Tan Nguyen. He tried to bomb the Communist Vietnamese embassy in the Philippines and was sentenced to only fourteen months.

Nancy Conde Rubio. She was a member of FARC, a group in Colombia that the U.S. termed a designated terrorist organization (DTO).

David Coleman Headley. A former DEA informant, he organized various attacks, including the 2008 Mumbai attacks in India.

Christopher Paul. He trained Al-Qaeda members in Germany to attack tourists overseas.

Mohammed Mansour Jabarah. He planned embassy attacks in Singapore.

Artur Tchibassa. He was convicted of involvement in the kidnapping of an American employee of Chevron by a paramilitary group in Angola.

Bryant Neal Vinas. He fought for Al-Qaeda in Afghanistan.

Mohammed Junaid Babar. He gave support to Al-Qaeda fighters in Afghanistan.

Mohamed Suleiman Al-Nalfi. He was arrested after the 1998 embassy bombings in Kenya and Tanzania but pleaded guilty to only

one conspiracy charge of planning to attack American defense utilities, saying he had formed a Sudanese branch of Al-Qaeda. *Yasith Chhun*. He led a failed coup in Cambodia in 2000.

3. Individuals Who Were Security Threats Inside the U.S.

Four individuals on the DOJ list were real security threats inside the U.S.:

Zacarias Moussaoui. He admitted to being part of an Al-Qaeda plot in the U.S. (not 9/11, but he was suspected of being the “twentieth hijacker” on 9/11).

Richard Reid (the “Shoe Bomber”). He tried to blow up a plane headed to the U.S. by exploding a bomb hidden in his shoe.

Najibullah Zazi (and co-defendants) (the “Peroxide Bomber”). He tried to make a bomb out of hydrogen peroxide to detonate in the New York City subway system.

Nuradin Mahamoud Abdi. He discussed blowing up a mall in Ohio but never did anything to advance the plot.

4. Individuals Not on the DOJ List Who Were Security Threats

Seven individuals were not on the DOJ list but were real security threats:

Faisal Shahzad (the “Times Square Bomber”). He unsuccessfully tried to set off a car bomb in Times Square in New York.

Farouk Abdulmutallab (the “Underwear Bomber”). He unsuccessfully tried to blow up a domestic flight with a bomb hidden in his underwear.

Dzhokhar and *Tamerlan Tsarnaev* (brothers, perpetrators of the Boston Marathon bombing). Charged with the murder of a transportation police officer and with killing three and injuring 264

with bombs at the Boston Marathon, Dzhokhar has not yet gone to trial. (Tamerlan was killed in a shootout with police).

Major Nidal Hasan (the “Fort Hood Shooter”). An Army officer, he shot and killed thirteen soldiers and injured many others at Fort Hood in Texas.

Khalid Aldawsari. A Saudi student arrested in Texas in February 2011 and charged with trying to make a bomb (he had ordered chemicals and had allegedly e-mailed himself instructions), he pleaded guilty and was sentenced to life in 2012.

Naser Jason Abdo. He plotted to attack soldiers at Fort Hood.

Combining subcategories 3 and 4 gives a list of the most significant security threats to the U.S. since 9/11. Put another way, it can be said that, since 9/11, there have been eleven potentially significant threats to the U.S., but only three were successful (the Tsarnaev brothers and Major Nidal Hasan), accounting for seventeen deaths and several hundred injuries. When considered with the ten potential threats abroad, it is fair to say that there is indeed a continual background threat of violence to the U.S. that requires monitoring and good police work to prevent. However, this threat is a much lower magnitude of danger to the American public than other dangers, such as gun violence and driving while intoxicated. It is said that a person has a greater chance of dying of a dog bite or a lightning strike than from a terrorist attack.¹²

At the same time, it is fair to say that the amount of money and resources devoted to preventing terrorism threats is far greater than the resources devoted to other more common dangers. The budgets for the NSA and other intelligence agencies are classified, so they would be hard to even estimate. But considering the relatively low level of danger to the

public from a terrorist attack, the amount of money being expended to prevent an attack is difficult to justify.

With the possible exception of the Zazi case, none of the eleven individuals (ten cases) were exposed by NSA mass surveillance. Indeed, in these cases the FBI and other agencies missed some important leads that should have alerted them to the danger. For example, Farouk Abdulmutallab's father called the FBI to warn them that his son was dangerous, but the warning was ignored; the Russian police warned the FBI that the Tsarnaev brothers were dangerous, but the warning was ignored; the Army ignored many signals that Major Nidal Hasan was unstable and dangerous. It has been suggested that one reason the FBI has been unsuccessful at stopping real threats is because it has become distracted by pursuing fake or pretext cases against individuals who are not dangerous.¹³

STATISTICAL ANALYSIS

Appendix A shows the terrorism convictions listed by the Department of Justice. The total number of individuals on that list is 399. According to this study's classification, the number of preemptive prosecution cases is **289** out of **399**, or **72.4%**. The number of elements of preemptive prosecution cases is **87** out of **399**, or **21.8%**. Combining preemptive prosecution cases and elements of preemptive prosecution cases, the total number of such cases on the DOJ list is **376**, or **94.2%**.

The following is a breakdown of those same cases from the DOJ list, this time categorized by tactical pattern used, and then subcategorized by designation as either preemptive prosecution or elements of preemptive prosecution (herein called "elements").

Material support:

Preemptive prosecution cases containing material support charges: 99 of 399, or **24.8%**

Elements cases containing material support charges: 33 of 399, or **8.3%**

Combination of both types of cases containing material support charges: 132 of 399, or **33.1%**

Stings: (note that many sting cases also contained material support and/or conspiracy charges)

Preemptive prosecution cases that were stings: 71 of 399, or **17.8%**

Elements cases that were stings: 13 of 399, or **3.3%**

Combination of both types of cases that were stings: 84 of 399, or **21.1%**

Conspiracy:

Preemptive prosecution cases with conspiracy charges: 117 of 399, or **29.3%**

Elements cases with conspiracy charges: 42 of 399, or **10.5%**

Combination of both types of cases with conspiracy charges: 159 of 399, or **39.8%**

False statement or perjury charges:

Preemptive prosecution cases with false statement/perjury charges: 65 of 399, or **16.3%**

Elements cases with false statement/perjury charges: 9 of 399, or **2.3%**

Combination of both types of cases with false statement/perjury charges: 74 of 399, or **18.6%**

Immigration-related charges:

Preemptive prosecution cases with immigration-related charges: 26 of 399, or **6.5%**

Elements cases with immigration-related charges: 0 of 399, or **0%**

Combination of both types of cases with immigration-related charges: 26 of 399, or **6.5%**

DISCUSSION

1. Background

After 9/11, the FBI was charged with preventing future terrorist attacks, and it focused in part on ideology as a way to predict who might engage in future terrorist attacks. If a defendant said or did things to indicate he or she held a particular religious or political view, the FBI could claim that the defendant's innocent actions or statements involving charitable giving or management, peace-making, free speech, free association, or other constitutionally protected activity were material support for terrorism. If pretext material support charges were not available, the FBI engaged paid *agents provocateur* to entrap targets into saying or doing something illegal, or prosecuted targets for non-terrorism-related crimes that otherwise would not have been prosecuted. The trials were typically characterized by inclusion of secret evidence, excessive security to intimidate the jury, questionable governmental "experts," mistranslations and mischaracterizations of the defendant's words, and other unfair tactics that forced defendants to defend themselves on highly un-level playing fields. Many such defendants were sentenced to extraordinarily long prison sentences, often served at Communication

Management Units or in solitary confinement (see under “Recommendations,” #7).

Many people across the country spontaneously perceived these prosecutions and sentences to be unjust and formed grassroots support committees to protest the FBI’s actions. In August 2008, members of several such groups came together at a conference in Albany, New York and founded Project SALAM (Support And Legal Advocacy for Muslims). Project SALAM identified preemptive prosecution as the underlying similarity between these cases and began to build a database of cases that showed identifiable similarities. Other groups arose throughout the United States to protest injustices that reflected the same basic preemptive prosecution profile. In 2010, twenty different groups came together to form the National Coalition to Protect Civil Freedoms (NCPCF), an organization that, among other endeavors, studies and documents preemptive prosecution, profiling, and prisoner abuse. Part of its activity included augmenting the Project SALAM database of cases that involved preemptive prosecution.

Thus an understanding of preemptive prosecution arose from the experiences of groups all over the country struggling to explain cases of injustice in their own communities that seemed irrational in a conventional sense.¹⁴ It was only after the preemptive pattern became clear that people realized the charges in these cases were only pretexts. It was their perception that the defendants were being incarcerated because the government, often for secret reasons based on classified surveillance, believed that the defendants posed some kind of security risk; or because government agents and prosecutors wanted terrorist convictions to advance

their careers; or because agencies needed to justify the enormous budgets that were allocated for security and crime prevention.

2. Tactical Patterns of Preemptive Prosecutions

Preemptive prosecutions can be identified by the tactics of the pretext charges that the government uses. These include:

- **Material support for terrorism charges**

This study considers any charge brought against a target for material support of terrorism to be a preemptive prosecution unless the target intended to actually support terrorism, i.e., politically motivated violence or intimidation aimed at civilians or at the U.S. or another government. This is especially true if the charge relates to:

Constitutionally protected free speech. Under *Holder v. Humanitarian Law Project*,¹⁵ the Supreme Court held that material support for terrorism cannot be used to prosecute free speech unless the speech is “coordinated” with a designated terrorist organization (DTO). However, in practice the government has ignored this limitation and has repeatedly brought material support charges against targets simply for what they have said, even when the government has not suggested that the speech was coordinated with any DTO. The term “coordination” has never been defined legally, leaving journalists, NGOs, and other groups vulnerable to what speech might trigger a material support charge.¹⁶ The government has even suggested that a lawyer would be guilty of material support for terrorism for filing a brief on behalf of a DTO asking that the organization be removed from the terrorist list.¹⁷

Even worse, in some cases the government has brought charges without even suggesting that a DTO was involved; instead it has claimed that the speech was simply supportive of terrorism generally. For example, the government has claimed that simply putting translated documents on the Internet might allow Al-Qaeda to download the documents, without any proof that this actually happened.¹⁸ (And even if the documents were downloaded, there would be no proof of any “coordination.”) When Muslims work at a TV station, or make statements on Facebook that oppose U.S. wars in Afghanistan or Iraq or support Palestinian self-determination, they are construed by the government as support for terrorism, while the same statements by non-Muslims are looked at more innocently.¹⁹ Although such charges go well beyond the already-problematic holding in *Humanitarian Law Project* and do not give the public fair notice as to what is illegal, they have resulted in convictions that have been upheld on appeal.²⁰

Free association. The government has repeatedly brought charges against individuals simply because they were friends of a target, or because they were innocently involved in an association with individuals whom the government wanted to target because of their ideology. The government often calls these associations and friendships “conspiracies,” but a conspiracy must be based on an agreement to engage in criminal conduct. The fact that one or more of the members of a group of friends happens to be engaged in criminal activity

should not make all of his friends guilty by association. But in a preemptive prosecution, the government uses such guilt by association as a basis to bring conspiracy and material support charges. Because the line between friendship and conspiracy can be easily blurred by irrelevant but prejudicial allegations, especially when the individuals are Muslims, the government has been able to scare juries into conspiracy convictions, notwithstanding little evidence of any intent to engage in criminal conduct.²¹

Charitable giving and management. The government has repeatedly brought charges for engaging in charitable activity even where there is clear proof that the target did not know he or she was benefiting a DTO and had no intention to do so. Absent proof that the target intended to promote violence against civilians, all charity cases that are prosecuted should be considered preemptive prosecutions.²²

Social hospitality. Providing someone with a meal, loaning him a cell phone, or allowing him to store a bag of clothes should not be considered terrorism. A person providing social hospitality is not aware that he or she may be engaging in criminal conduct, nor is he trying to promote violence. Unless the social hospitality is directly linked with a plot to attack civilians, prosecutions of social hospitality should be considered preemptive prosecutions.²³ Although in these cases the government has to prove that the person giving the

social hospitality intended to help a DTO by his actions, the government has typically discharged this obligation by claiming that the defendant had a “radical” ideology and so any social hospitality must have been intended to help a DTO. The implication is unfair, but juries are so willing to convict Muslim defendants that they often ignore the lack of evidence of any intent to support a DTO. The potential sentences are so draconian, and juries are so easily manipulated by the government in terrorism cases, that defendants have on occasion pleaded guilty in flimsy cases rather than face the prospect of many decades in prison.²⁴

Training camps. Many young people desire to serve as protectors of communities under attack. The U.S. has a long history of permitting young Americans to fight against dictators and tyrants, such as in the Spanish Civil War, where many Americans fought against Franco. There is also a long tradition in America of permitting groups like the Ku Klux Klan to hold training camps in rural areas to indoctrinate individuals and give them firearms training. Such activities are protected by the First Amendment right to free speech and association and by the Second Amendment right to bear arms. The law is clear that as long as these groups, and the individuals in them, do not discuss specific criminal plans, simply meeting to talk politics generally and to undergo general military or other training is not illegal. The line is

crossed only when members engage in specific planning to engage in criminal activity.

By contrast, since 9/11 the FBI has consistently brought material support charges against Muslims simply for attending training camps involving a DTO, or for attempting to attend such training camps, or for even discussing attending a training camp at home or abroad, on the theory that a publicly expressed desire to attend a training camp constitutes material support for terrorism. It is easy to see some of these situations as preemptive prosecutions. Groups of young men go into the woods to practice physical fitness and discuss their religious and political beliefs. The FBI has infiltrated the group and knows that no plans are being developed for any specific criminal activity. Thus prosecuting such a group for material support for terrorism is clearly preemptive prosecution—prosecuting the group before its “potential for violence” has been developed and before a crime has been committed or contemplated. Even worse, inserting an *agent provocateur* into such a group to try to steer the group into committing prosecutable crimes is clearly preemptive prosecution. Most of the prosecutions of domestic groups fit this pattern, and so we define them to be preemptive prosecutions.²⁵

In the same way, it should not be a crime for someone to attend a foreign training camp with the goal of protecting communities abroad from attack by terrorist organizations or tyrannical governments. For example, a number of people attended training camps abroad and then defended Muslim

communities in places like Bosnia and Afghanistan at a time when they were fighting on the same side as the American government and were thus in accordance with American policy.²⁶ Prosecuting such people after the fact for material support for terrorism is clearly unfair and preemptive.

Prosecuting people for wanting to go abroad to get training is also clearly preemptive when the individuals do not actually obtain training, or do not act on the training once they understand what it is. Some people receive training and decide they do not want to become involved.²⁷ Some groups and individuals try to join training camps and are turned away.²⁸ Some groups or individuals merely discuss the idea but never actually try to join a training camp.²⁹ In each of these scenarios, individuals or groups are exploring their options through free speech and free association. Until they actually engage in violence against civilians or the U.S., or have made a specific plan to do so, they have not committed any crime and should not be prosecuted simply for their speech and associations.

The government argues that merely expressing interest in or visiting a training camp constitutes material support for terrorism, but without a specific plan to commit a crime, any prosecution for discussing or visiting a training camp would be preemptive.

- **Stings (entrapment)**

The government uses *agents provocateur* to target individuals who express dissident ideologies and then provides those provocateurs

with fake (harmless) missiles, bombs, guns, money, encouragement, friendship, and the technical and strategic planning necessary to see if the targeted individual can be manipulated into planning violent or criminal action. Ordinarily the law prohibits the government from entrapping innocent citizens into crime, but the law provides an exception when the target is “predisposed.” Although the term “predisposed” usually describes someone who was already involved in similar criminal activity, or where evidence shows he or she was inclined to do so *without* any government inducement, in preemptive prosecution cases the government has successfully claimed that the term can mean that the target “readily responded” to the inducement and did not subsequently withdraw from the plot. In the Newburgh Four case, for example, the government provocateur offered one defendant \$250,000 when he wanted out of the government plot, and he was convicted because he did not again try to withdraw after being offered the money. Beyond general anti-Semitic statements he made, there was absolutely no evidence of predisposition.³⁰

So far, this “ready response” theory has been upheld by the courts, and so in all practical respects the entrapment defense no longer exists. Moreover, it appears that based on Islamophobia and ignorance about Islam, Muslims are often considered to be predisposed to terrorism simply due to their religion, especially if they are religiously conservative.³¹

Stings are targeted at a particular person and play upon the particular weaknesses of that person. For example, the target may be very poor and is offered large sums of money to engage in criminal conduct; or the government may use the target’s ideology to pressure

and shame him or her into doing something illegal; or it may bring other pressure to bear to force the target to engage in criminal conduct. The target is typically presented with a test of whether he or she can withstand the inducements of the government to engage in illegal acts, whereby the government applies as much pressure as possible and uses the vast resources at its disposal, based on the premise that the targets may be recruited by highly persuasive, manipulative terrorists. (In reality, true terrorists would never recruit most of these people because they are too vulnerable and therefore unreliable.)

One of the best signs of a preemptive prosecution by sting is that the targets were either uninterested in or unable to develop any plot without the government's involvement. In many such cases, the government provided not only the resources but also the plans themselves.³² In the Aref-Hossain case, the FBI included a (dummy) missile in the sting so that as a weapon of mass destruction, it would trigger enhancements in the sentencing. But the FBI failed to show the missile to Aref, because they were afraid that if Aref saw the missile it might "spook" him and he might refuse to continue witnessing loans, thus ruining their frame-up.³³ In the Newburgh Four sting, the targets in New York were instructed to buy guns in Connecticut so that they would cross a state border, which would trigger federal jurisdiction

Stings often set up the targets for the harshest sentences by inducing them to become involved in actual bomb plots rather than just provide material support to some group. This accomplishes two

things: it ramps up fear on the part of the public,³⁴ and it often results in life sentences for these vulnerable young men.

- **Conspiracy charges**

In preemptive prosecutions, conspiracy charges are often brought along with other charges because a conspiracy allows more use of hearsay evidence and has other evidentiary advantages. All associates are considered equally culpable, even if they do not know of the existence of a plan; thus such charges are also a good way for targets to be found guilty by association: they are part of the conspiracy whether or not they know anything about a particular crime. As described above, many conspiracy charges are simply violations of a defendant's right of free association. Merely because a defendant is a friend of someone who has violated material support laws is not a basis to charge the defendant with conspiracy, but such governmental overreach is routine in preemptive prosecution.

Conspiracy charges in preemptive prosecution cases tend to focus on ideology as a proxy for the "agreement to commit a crime," which is required by conspiracy law. But because two individuals share a Salafist or a Communist philosophy does not mean that they have agreed to do something illegal. Once there is a conspiracy, however, then "foreseeable" acts of co-conspirators can be charged against any member of that conspiracy. And once it is accepted that there is a conspiracy, it doesn't take much evidence to show that a particular person is a member of it. For example, in the Ziyad Yaghi/Raleigh 7 case, the government claimed that some young men, including Yaghi and Omar Hasan, knew an older man, Daniel Boyd, and his sons, who advocated protecting Muslim communities

in Bosnia that were under attack. Because all the people knew each other, the government claimed that they must have shared a common ideology. When Boyd helped buy tickets for Ziyad and Omar to visit the Middle East to see relatives and arrange for a wedding, the government claimed that they were actually looking for targets to attack, even though there was no evidence of this. Their “association” with Boyd implied a common ideology, and the common ideology allowed the jury to infer that innocent actions like visiting relatives in the Middle East were actually cover for illegal intentions in furtherance of the common ideology.

Similarly, in the Fort Dix Five case, the three Duka brothers were convicted of planning to attack Fort Dix even though the government’s witness conceded that the three brothers knew nothing about a plan to attack Fort Dix. Their common “ideology” of defense for Muslim communities under attack supposedly permitted the inference of a conspiracy, even though the three brothers knew nothing about any actual criminal plan regarding Fort Dix.³⁵

- **Use of pressure to obtain information or cooperation**

Often the goal of preemptive prosecution is to pressure a target into cooperating or giving information. The target may tell the FBI that he or she is not willing to wear a wire to record information or to otherwise cooperate as an informant.³⁶ To increase the pressure, the government may then indict the target by using material support charges. In addition, the government often uses a target’s immigration status, or the status of a loved one, as a way of getting leverage over the target; or it may use preemptive deportation as a way of forcing the target to cooperate.

Often the FBI charges a defendant with lying to agents, which is a federal offense. The FBI has an official policy of not recording formal interviews; instead oral interviews are typically conducted with two or more FBI agents present, so that if the target is charged with lying it will be the latter's word against two or more FBI agents'. Under such conditions, targets have little chance to defend themselves. The FBI can then threaten the target with lying to agents during a voluntary conversation unless the target cooperates.³⁷ On other occasions, the FBI has investigated a target's past (as far back as decades) in an attempt to find something that was questionable, no matter how technical, and then has used that minor offense as a tool to obtain the target's cooperation.³⁸ All these attempts to unfairly pressure targets to cooperate represent preemptive prosecution.

- **Use of pre-trial solitary confinement and Special Administrative Measures (SAMs)**

The government often places targets in solitary confinement, or imposes Special Administrative Measures (SAMs) pre-trial, based on the claim that the defendants are too dangerous to be in the general prison population, as evidenced by the as-yet-untested charges themselves. This isolation of prisoners at a time when they are presumed innocent can be devastating psychologically and put enormous pressure on defendants to plead guilty. For example, Mohammed Warsame³⁹ returned to the U.S. from Afghanistan after 9/11 and told the FBI what he knew about Islamic groups there. The FBI was so impressed with his information that they asked him to work for the agency. Warsame refused, and the FBI threatened to make his life hell if he didn't cooperate. Warsame still refused, so

the government indicted him for material support and for lying to the FBI and kept him in solitary confinement for five and a half years pre-trial in order to break him, claiming that he was so dangerous that only by keeping him in solitary confinement could security be guaranteed. Finally Warsame was so worn down by the solitary confinement that he agreed to plead guilty in order to get out. He was sentenced to a few more months in jail and was released. Once he pleaded guilty, apparently he was no longer dangerous. This situation is typical of many preemptive prosecution cases, whereby the defendant is forced to plead guilty because it is not possible to get a prompt and fair trial, and the lengthy pre-trial solitary confinement is equivalent to torture.⁴⁰

3. Tactical Patterns of Elements of Preemptive Prosecutions

A second category of cases is described in this study as those that have “elements of preemptive prosecution.” Preemptive prosecution begins with the government’s decision to bring pretext charges to incarcerate a target for ideological reasons. In the “elements” category, the individual has already started to engage in criminal conduct on his or her own, but the government tries to inflate the seriousness of the crimes and the length of the sentence by adding terrorist elements. For example, a group may become involved in smuggling cigarettes on its own, but the government may try through *agents provocateur* to direct the money to a designated terrorist organization, or suggest purchase of weapons, or perform other actions toward the target to increase the number of crimes and the length of sentence. The government may also use the defendants’ supposed ideologies to justify an increased sentence, or list the cases as “terrorism” cases in its statistics.

4. Not Preemptive Prosecution: Real Security Threats

The final category of cases represents defendants who apparently were ready on their own to engage in violent activity relating to terrorism. (For example, see above under the category “No Preemptive Prosecution,” numbers 3 and 4.) They were not simply participating in crimes created by the FBI that were also solved by the FBI; thus this study does not consider them preemptive prosecutions.

It should be noted again that not all preemptive prosecution cases are included in this study, which surveys only the individuals on the DOJ’s list of terrorism cases. A number of other terrorism cases that were prosecuted after the time frame of the DOJ list, as well as many cases that were prosecuted during that time frame but for reasons unknown were not included on the list, are also preemptive prosecution cases and are included in Project SALAM’s database, but they have not been included in this study for statistical reasons. The study’s intent is to focus only on the government’s self-proclaimed terrorist prosecutions, to illustrate how arbitrary and inconsistent its approach to these cases has been. Why the government has not regularly updated its own list, and why it omitted those other cases, is a mystery.

CONCLUSIONS

This report demonstrates that the government has manufactured most of the terrorism convictions in the country and has greatly overstated the threat of terrorism, especially from Muslim extremism. The government is not being truthful with the American public about national security. It is beyond the scope of this report as to why the government is exaggerating a Muslim threat, but it is relevant here to state several hypotheses.

1. After 9/11, the FBI began a hunt for domestic terrorists on the assumption that terrorists had already established a network within the country and could be identified primarily by their extreme Muslim ideology. When such extreme Muslim networks could not be found, the FBI targeted “ideologies” by means of preemptive prosecution to demonstrate that it was aggressively protecting the country and to justify its expanded new budgets and enhanced police powers.⁴¹ To be fair, most FBI agents sincerely believe in the need to protect the country from another attack. The problem is that locking up people because of suspicions about what they might do results in many innocent people being incarcerated, with little gain in protection of the country.

2. Although preemptive prosecution may be unjustified in its application to individual cases, it sends a message to the Muslim population in particular that the government will prosecute them vigorously and unfairly for any indications of lack of loyalty (“suspicious ideology”) to the U.S. Thus preemptive prosecution is designed to scare—terrorize—the American Muslim population into silence over U.S. policy abroad. This allows the U.S. to aggressively pursue wars and drone attacks in the Middle East without fear of a political backlash from American Muslims over the killing of civilians in foreign lands.

3. Preemptive prosecution represents a new attempt to prosecute ideology, on the discredited theory that ideology predicts crime. Attempts at prosecuting ideology have a long history in the U.S. and have produced hundreds of political prisoners, many of whom are still in prison.⁴² In the present version of this process, Muslims are the first victims of political repression, and will likely be followed by repression against other groups, such as immigrants and the political left.

4. Over the last few decades, the U.S. has developed a mass surveillance capacity that gives it a competitive advantage in commercial spying, trade negotiations, repression of dissident groups, and the manipulation of political dialogue. Such surveillance, combined with the powers of indefinite detention, drone assassinations, and the classified nature of these policies, can potentially give a government almost dictatorial power. Of course, such powers would violate the Constitution. For example, during World War II, in *Korematsu v. U.S.* the Supreme Court allowed the U.S. government to indefinitely detain 110,000 Americans of Japanese ancestry in violation of the Constitution, but only because the Court was told, based on *false*⁴³ secret evidence, that there was an extreme threat to national security.⁴⁴ It may be that in order to bypass constitutional prohibitions against mass surveillance, the government has preemptively prosecuted hundreds of (mostly) Muslims in the last decade in order to create the illusion of a terrorist threat to the U.S.—which would justify the secret mass surveillance spy network.⁴⁵

This report takes no overall position on the reasons for the government's pursuit of preemptive prosecutions except to note that it has used these prosecutions to claim (incorrectly) that there is a greater security threat to the U.S. than in fact exists.⁴⁶ The government has further used this exaggerated threat to justify large security budgets, repression of the Muslim population, persecution of ideology, and mass surveillance, none of which have been shown to have any significant impact on the (exaggerated) terrorist threat. This in turn suggests that there may be other reasons (perhaps commercial spying, advancing a corporate agenda, repression of legitimate dissent, world control) for the government's pursuit of preemptive prosecution.

RECOMMENDATIONS

It is the position of this study that the laws and procedures surrounding terrorism prosecutions need to be reformed. Preemptive prosecutions create political prisoners without any gain in security and increase perceptions of injustice to levels that are simply not sustainable. Widespread injustice within the criminal justice system, tolerated and promoted deliberately at the highest levels, is a toxic, corrosive force that is far more dangerous to the security of this country than bombs or guns. Thus the study makes the following specific recommendations:

1. Reform the Material Support Laws

The laws prohibiting material support to a designated terrorist organization (DTO) should be amended to require a specific intent to support violence. Without this amendment, the law becomes a trap for people who give humanitarian aid with the intent to help relieve suffering.⁴⁷

The material support laws should only be applied to activities or transactions with organizations that are specifically on the DTO list. Unless the scope of the law is restricted to transactions with organizations on the list, it will create a trap for people who try to follow the law by avoiding DTOs, only to be charged later because their activities indirectly supported a DTO in some way. For example, in the Holy Land Foundation case, the government successfully claimed that even though the foundation had no transactions with a DTO, its activities—building schools and hospitals—constituted material support to a DTO because they raised the prestige of the DTO (Hamas, which was the *de facto* government in the area).⁴⁸ In the same way, organizations trying to get humanitarian aid to devastated areas must hire trucks and drivers, buy gas, pay tolls and taxes, etc.—and they

have no way of knowing whether the government at some future time may claim that the money found its way indirectly to some DTO or “raised its prestige.” The unfairness of this is obvious.

In addition, the material support laws should never be applied to constitutionally protected activities like free speech or free association. Under the *Holder v. Humanitarian Law Project* decision, free speech can only provide a basis for a terrorism charge if the speech is “coordinated” with the DTO. But the term “coordinated” has never been defined, and the government often ignores this requirement. The government has actually prosecuted free speech cases where no DTO is alleged to have coordinated with the defendant.⁴⁹ It is unfair and unconstitutional to bring criminal charges when the defendant has not been given reasonable notice of what is illegal, and free speech is chilled when it is impossible to know what statements may be considered “coordinated.” At a minimum, the term “coordinated” must be rigorously defined and adhered to. But the better policy would be to protect all free speech; even advising a DTO to avoid violence is prohibited under *Humanitarian Law Project*. America has many domestic terrorist organizations, like the KKK and the Aryan Nation, whose speech is protected under the First Amendment (unless the commission of a specific crime is being discussed); the same should be true of all organizations.

2. Strengthen the Entrapment Defense

The entrapment defense was originally created because it was generally agreed that the government should not be in the business of fostering crime. Under the law, the government can create the *opportunity* for individuals to engage in crime if they are “predisposed” (already

involved in similar criminal activity, or when there is evidence that the target is inclined to be involved *without* any government inducement), but it cannot try to persuade individuals who have no intention of breaking the law to engage in crime.

In terrorism cases, however, the government and the courts have broken down the entrapment defense so that it is now essentially meaningless. For example, in the Newburgh Four case, after a target withdrew from a plot to bomb a synagogue, the government offered him \$250,000 to continue with the plot.⁵⁰ This case represented a clear example of entrapment, and yet the defendants were convicted because the government successfully argued that “predisposition” could be shown by ideology. An individual with certain beliefs is considered “predisposed” to commit a crime even if he or she has never before engaged in any illegal activity. This allows the government to unfairly target a defendant simply because of his religious or political beliefs.

The government has also successfully argued that a defendant’s “ready response” to the inducement to commit a crime is proof that the person was predisposed; he would not have committed the crime if he were not predisposed to do so.⁵¹ This tautological argument essentially eliminates the entrapment defense. The only way for a defendant to avoid conviction would be to affirmatively withdraw from the supposed plot—in which case there would be no crime and thus no need for an entrapment defense. The FBI stated on its blog in 2012: “The consequence of a successful entrapment defense—the acquittal of an otherwise guilty defendant—is unacceptable...Executed properly, undercover operations—even those in which law enforcement provides both the means and the

opportunity for an individual to succeed in committing a ‘terrorist act’—are entrapment proof ...”⁵²

The entrapment defense needs to be strengthened by eliminating the “ready response” doctrine and by narrowing what may be considered “predisposition” evidence to avoid criminalizing political and religious beliefs. A defendant should be acquitted if he would not have committed the crime but for the government’s persuasion and offers.

3. Reform the Classified Information Procedures Act (CIPA)

CIPA was originally designed to prevent defendants with access to classified evidence (such as Oliver North) from scuttling prosecutions against them by threatening to introduce that evidence. CIPA provides for protective orders to keep a case’s classified evidence from being divulged to those without security clearances. However, in terrorism cases CIPA is used to allow the *prosecution* to present this evidence to the courts without the defense ever seeing it. Even when defense attorneys obtain security clearances, the evidence is not provided to them unless it is determined to be “material and favorable to the defense.” The problem is that the judge may not be in a position to determine what evidence is “material” or “favorable to the defense.” Classified evidence, which tends to bias the courts against the defendants, may appear at first glance to incriminate a defendant, when in reality it may be harmless or even helpful to the defense.⁵³

CIPA must be reformed so that *any* evidence provided to the courts is provided to security-cleared defense counsel.

4. Immediately Provide Defendants with Notice of Any Warrantless NSA Surveillance and Allow Related Court Challenges to Go Forward

Although material derived from NSA warrantless surveillance is routinely shown in secret to the court in many terrorism cases, the government has refused to acknowledge that the defendants were in fact subjected to warrantless surveillance, and has successfully blocked defendants who asked to see the material by claiming that the defendants could not prove that they were subjected to secret surveillance, so they had no standing to make this request.

In 2012, during an argument before the Supreme Court in *Amnesty International v. Clapper* about whether various groups had standing to challenge the legality of the government's mass surveillance policy, the government argued that the plaintiffs could not prove that they had been subjected to surveillance and thus had no standing. When the Court asked Solicitor General Donald Verrilli, representing the U.S. government, whether *anybody* then had standing to challenge the secret surveillance program, he erroneously stated that all criminal defendants were notified if evidence against them had been derived from warrantless surveillance, and that they would have standing. On the basis of Verrilli's incorrect statement, the Supreme Court dismissed the *Amnesty* case.

However, when Verrilli discovered that his statement to the Supreme Court was incorrect, he insisted that the Department of Justice's policy be changed. In September 2013, DOJ announced that it would begin to notify defendants whose trials included evidence derived from warrantless surveillance (both past and present cases), and that such notification should give defendants the standing necessary to challenge the legality of the

surveillance. To date, however, very few cases have received such notification.⁵⁴

DOJ is to be commended for finally changing its policy in this regard.⁵⁵ However, it is important to make sure that DOJ actually does notify appropriate defendants and that their defense attorneys are allowed to go forward with court challenges to the constitutionality of NSA evidence. Token notification in just a few cases would be completely unacceptable.⁵⁶

5. Stop False Statements Prosecutions Based on Unrecorded Interviews

The FBI and other federal agencies have a practice of refusing to record formal interviews with defendants, notwithstanding that it is a felony to lie to a federal agent. Instead, two agents are present so they can testify with regard to what the target said. This practice is highly unfair because it gives the FBI the power to decide, based only on agent notes and recollections, precisely what a target said during an interview, and thus gives agents the power to bring charges against the target for lying if the target says anything different from what the agents claim. The practice also makes it difficult or impossible to view the alleged lie in the context of the questioning to determine if the target was confused by vague or trick questions, or in other respects was trying to tell the truth. (The FBI frequently brings such charges against targets in order to pressure them into becoming informants, or to testify against other defendants.) If interviews were recorded, defendants' statements could be evaluated within the context of the questioning to determine if misstatements were the result of confusion or miscommunication, and fewer prosecutions would result. But

because the present system of questioning unfairly stacks the deck against a target, most lawyers advise their clients not to appear voluntarily for an interview with the FBI.

All interviews that could result in false statements charges should be recorded. An even better reform would be to follow the practice followed in most states, which is not to charge individuals for lying at all unless they are under oath.

6. Abolish the Terrorism Sentencing Enhancement

Punishments for terrorism-related offenses are grossly disproportional to the seriousness of the underlying offense. In the Holy Land Foundation case, for example—in which the government acknowledged that no foundation money went to support any violence or any terrorist organization—two of the directors received sentences of sixty-five years. In the Fort Dix Five case, in which the government informant acknowledged that the three Duka brothers had never been told about a plot to attack Fort Dix—the charge on which they were convicted—the three brothers were each sentenced to life in prison.⁵⁷

One reason for these excessive sentences is the “terrorism enhancement,” which, as part of the federal sentencing guidelines, is applied to most terrorism-related convictions. It essentially quadruples the length of a normal sentence: a ten-year sentence may become a forty-year sentence. The system of preemptive prosecution is unjust enough without quadrupling the injustice of the sentence. The application of the terrorism enhancement is also essentially arbitrary, since even minor actions like donating to charity, witnessing a loan, visiting a foreign country, storing a bag of clothes, or posting information on the Internet have all been

considered terrorism. And the enhancement has been applied in sting cases based on the contours of the plot that *the government created*. There is simply no reason to apply a terrorism enhancement that is so arbitrary and so punitive.

Wielding the power of the enhancement, prosecutors are able to bully defendants into pleading guilty and cooperating with the FBI. They can offer a “cooperative” defendant a recommended sentence of, say, five years in prison (below the maximum normal sentence of, say, twenty years). But if the defendant insists on a trial, the prosecution will demand the full penalty, including the draconian terrorism enhancement, if the defendant is found guilty: five years for a plea, eighty years if convicted. Given all the tools that the prosecution has to obtain convictions, few defendants—even those who believe they are not guilty—are likely to resist the pressure to plead guilty when the disparity between the potential sentences is so great. This pressure is unjust; our justice system is fundamentally compromised when the right to a jury trial carries with it a penalty potentially so severe that virtually all defendants in such a situation would rather plead guilty than face the possibility of conviction.⁵⁸ The terrorism enhancement should be eliminated.

7. Reduce the Use of Solitary Confinement and other Punitive Conditions of Incarceration

In terrorism cases, many if not most defendants are kept in solitary confinement for months, and in some cases years, before trial. Under the Geneva Conventions, it is illegal to hold a prisoner in solitary confinement for more than thirty days⁵⁹ because solitary confinement is so painful and debilitating that it has been equated with torture. Prisoners lose their ability to think and speak clearly and can become paranoid and delusional.

In some instances, prosecutors or prison authorities insist on holding the prisoner under Special Administrative Measures (SAMs), which further restrict the prisoner's interactions with others; often visitors (including lawyers) are forbidden by SAMs from repeating what the prisoner has said to others. Lawyer Lynne Stewart was convicted of violating SAMs (and material support for terrorism) for stating at a press conference what her client said, and many years later she was sentenced to ten years in prison.⁶⁰

Holding a prisoner in solitary confinement before trial, especially under SAMs, destroys the prisoner's ability to work with his lawyers, as well as his own ability to testify on his own behalf. It can become another powerful inducement to plead guilty.⁶¹

At present, the conditions under which a defendant is held pre-trial depend legally on the Bureau of Prisons' (BOP's) or other detention authorities' assessment of the prisoner's "dangerousness" and potential for violence; the courts have little role to play except under the most extreme conditions. However, in terrorism cases, BOP bases its assessment of dangerousness on the charges themselves (even when there is no indication that the defendant was involved with anything violent), rather than on any objective facts that might indicate either dangerousness or capacity for violence. The result is that terrorism defendants are treated much more harshly pre-trial than other defendants, which has made it very difficult for them to assist in mounting an effective defense or work with their lawyers. The rules should be changed to require that the courts,⁶² not BOP, determine whether solitary confinement or other punitive conditions of confinement are warranted, based not on the charges alone (of which the defendant is presumed innocent) but on objective facts proving that the defendant poses some unusual threat.⁶³

Post-conviction, terrorism defendants are often held under conditions much more restrictive than other prisoners'. In addition to the ADX (Administrative Maximum Facility) super-maximum security prison in Florence, Colorado, where many of these defendants are sent, the BOP created two Communication Management Units (CMUs) in the Midwest that hold mostly Muslim prisoners under conditions designed to isolate them from the outside world. Their phone calls and communications are greatly restricted, and they can see family and loved ones only from behind a Plexiglas window while talking on a monitored telephone. These "Muslim" prisons serve no purpose and should be abolished. A case presently in the courts, *Aref et. al. v. Holder et al.*, is going forward with due process challenges to the CMUs.⁶⁴

ENDNOTES

¹ It can be argued that the preventive strategy of preemptive prosecution, under one name or another, has been part of American law enforcement for most of our history. This study focuses on the particular period after 9/11, but recognizes that preemptive prosecution has long played a role in perpetuating injustice in America.

² Chris Hedges, “First They Come for the Muslims,” *Truthdig*, April 16, 2012, http://www.truthdig.com/report/item/first_they_come_for_the_muslims_20120416/

³ See <http://en.wikipedia.org/wiki/COINTELPRO>

⁴ See Diala Shamas, “Where’s the Outrage When the FBI Targets Muslims?,” *The Nation*, October 31, 2013, <http://www.thenation.com/article/176911/wheres-outrage-when-fbi-targets-muslims#>; Andrew Rosenthal, “Liberty and Justice for Non-Muslims,” *New York Times*, Taking Note blog, March 30, 2012, <http://takingnote.blogs.nytimes.com/2012/03/30/liberty-and-justice-for-non-muslims/>; and Elaine Cassel, “Is Playing Paintball and Firing Legal Guns Terrorism? Three Disturbing Convictions Strongly Suggest Discrimination Against Muslim Americans,” *Findlaw*, March 25, 2004, <http://writ.news.findlaw.com/cassel/20040325.html>

⁵ The MEK (Mujahadeen-e-Khalq) case is relevant here. A number of prominent U.S. politicians accepted money from MEK in exchange for lobbying to have MEK removed from the State Department’s list of designated terrorist organizations (DTOs). Although their actions clearly constituted material support for terrorism under the strained definition in the *Holder v. Humanitarian Law Project* decision, none of the politicians were ever prosecuted for their coordinated speech and advocacy for MEK. This study does not suggest that they should have been prosecuted, but only notes the disparity between Muslims who are prosecuted for speech not specific to any designated terrorist group, and prominent politicians who are *not* prosecuted for paid advocacy on behalf of a specific designated terrorist organization, MEK. See Scott Shane, “For Obscure Iranian Exile Group, Broad Support in U.S.,” *New York Times*, November 27, 2011, <http://www.nytimes.com/2011/11/27/us/politics/lobbying-support-for-iranian-exile-group-crosses-party-lines.html>

⁶ Free association charges involve guilt by association—charges based on the target’s association with others.

⁷ Many defendants to whom the authors spoke, who were convicted of trying to defend Muslim communities abroad from attack, were shocked that the U.S. considered their conduct criminal rather than laudatory, especially when (as in the case of Bosnia) the

U.S. was fighting on the same side. See the cases of Kifah Jayyousi and Enaam Arnaout in Appendix B.

⁸ These cases typically arise when the government is initially suspicious of the defendant for some reason and the suspicion is eventually proven to be unfounded. The government then often brings minor technical charges to justify the prosecution, or holds the defendant in prison until a more substantive charge can be manufactured. These charges are also brought to pressure defendants into becoming informants.

⁹ See Trevor Aaronson, *The Terror Factory, Inside the FBI's Manufactured War on Terrorism* (Brooklyn: Ig Publishing, 2013).

¹⁰ If the defendant affirmatively rejects the FBI's inducement, then there is no crime to prosecute and no reason to even have an entrapment defense, which can logically apply only if the crime is first committed.

¹¹ This study recognizes that sting cases can be legitimate under some circumstances. If, for example, the government had evidence that a terrorist cell was planning an attack in six months, but didn't have enough evidence to arrest all the members, it would be legitimate to introduce a government informant into the cell, or to have the informant pretend to be an Al-Qaeda agent offering assistance to the cell. However, targeting a sting at a particular individual solely because of his perceived ideology is unfair, especially given that many of the targets in these cases had mental issues or other conditions that made them particularly vulnerable to the government agent's coaxing and inducement.

¹² Zaid Jilani, "CHART: Only 15 Americans Died from Terrorism Last Year—Fewer Than From Dog Bites or Lightning Strikes," *Thinkprogress*, August 25, 2011, <http://thinkprogress.org/security/2011/08/25/304113/chart-only-15-americans-died-from-terrorism-last-year-less-than-from-dog-bites-or-lightning-strikes/#>

¹³ Democracy Now!, "Did FBI Focus on Controversial Stings Distract from Pursuit of Tsarnaev Before Boston Attacks?", website, April 26, 2013, http://www.democracynow.org/2013/4/26/did_fbi_focus_on_controversial_stings

¹⁴ A very recent grassroots effort, launched in January 2014 and supported by several national organizations, is the No Separate Justice Campaign, based in New York City: <http://no-separate-justice.org/>

¹⁵ *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010). For the Supreme Court decision, see <https://ccrjustice.org/holder-v-humanitarian-law-project>. See also Michael Deutsch, “Justice Department Prepares for Expansion of Law Prohibiting ‘Material Support’ for Terrorism,” *Information Clearing House*, November 14, 2010, <http://www.informationclearinghouse.info/article26815.htm>.

¹⁶ See *Hedges v. Obama*, http://en.wikipedia.org/wiki/Hedges_v._Obama. Journalist Chris Hedges and others sued the Obama Administration and Congress in January 2012 over the provisions of the National Defense Authorization Act (NDAA) of 2012, claiming that, among other issues, “...the vagueness of critical terms in the NDAA could be interpreted by the federal government in a way that authorizes [it] to label journalists and political activists who interview or support outspoken critics of the Obama administration's policies as ‘covered persons,’ meaning that they have given ‘substantial support’ to terrorists or other ‘associated groups.’” In July 2013, the Second Circuit Court of Appeals overturned a district court ruling for the plaintiffs, saying that the plaintiffs lacked standing to challenge the NDAA.

¹⁷ The government has even suggested that a lawyer would be guilty of material support for terrorism for filing a brief on behalf of a DTO asking that the organization be removed from the terrorist list. During oral argument in *Holder v. Humanitarian Law Project* in February 2010, then-Solicitor General Kagan “...talked herself into some trouble in arguing that the law might make it a criminal act for a blacklisted group even to hire a lawyer to put its views before a U.S. court...” See Lyle Denniston, “Analysis: Anti-terrorism case not an easy one,” SCOTUSblog, February 23, 2010, <http://www.scotusblog.com/2010/02/analysis-anti-terrorism-case-not-an-easy-one/>

¹⁸ See the Tarek Mehanna case in Appendix B.

¹⁹ See, for example, Ehsanul “Shifa” Sadequee, Ziyad Yaghi, and Javed Iqbal in Appendix B. See also Karin Friedemann, “CMU Prisoner Shifa Sadequee’s Sister Speaks to TMO,” *The Muslim Observer*, June 27, 2013, <http://muslimmedianetwork.com/mmn/?p=13450>. Regarding Javed Iqbal, see “US jails man over Hezbollah channel,” *Aljazeera*, April 29, 2009, <http://english.aljazeera.net/news/americas/2009/04/2009423233919457969.html>

²⁰ Cases in which defendants were convicted (or charged) primarily on free speech charges include Tarek Mehanna, the Holy Land Foundation, Ali Al-Timimi, Ehsanul “Shifa” Sadequee, Javed Iqbal, and Sami Al-Arian. The latter was acquitted of the charges but was later charged with refusing to testify before a grand jury about the very charges for which he was found not guilty. A motion to dismiss this obvious perjury

trap has been pending for years and is still undecided as of this writing, while the defendant remains under a form of house arrest.

²¹ Cases involving conspiracy convictions include Ziyad Yaghi, Aref-Hossain, and the Fort Dix Five.

²² Cases involving the criminalization of charitable intentions include the Holy Land Foundation, Dr. Rafil Dhafir, and Kifah Jayyousi. See Katherine Hughes, “Humanitarian Pays with Life for Feeding the Children of Iraq,” *Truthout*, March 13, 2011, <http://www.truth-out.org/humanitarian-pays-with-life-feeding-children-iraq68317>, and Allison Deger, Adam Horowitz, and Annie Robbins, “‘This is travesty of American criminal justice’: Supreme Court denies Holy Land Five appeal,” *Mondoweiss*, October 29, 2012, <http://mondoweiss.net/2012/10/breaking-supreme-court-denies-holy-land-five-appeal.html>

²³ Cases involving social hospitality include Ali Asad Chandia and Fahad Hashmi. See Andy Worthington, “Fahad Hashmi and Terrorist Hysteria in US Courts,” *Common Dreams*, April 29, 2010, <http://www.commondreams.org/view/2010/04/29-7>

²⁴ For example, Fahad Hashmi and Tarik Shah pleaded guilty; each was sentenced to fifteen years. See their entries in Appendix B.

²⁵ For example, the Virginia Paintball Network and the Houston Taliban. See Cassel, “Is Playing Paintball and Firing Legal Guns...”, note 4.

²⁶ For example, Kifah Jayyousi, José Padilla, and Enaam Arnaout.

²⁷ The Lackawanna Six, for example, received training in Afghanistan before 9/11, but realized after 9/11 that the U.S. would be a target of the training and did nothing more with it. See Dina Temple-Raston, *The Jihad Next Door, The Lackawanna Six and Rough Justice in the Age of Terror* (Philadelphia: Public Affairs Books [Perseus Books Group], 2007).

²⁸ For example, the Virginia Paintball Network.

²⁹ For example, Tarek Mehanna and Ehsanul “Shifa” Sadequee.

³⁰ See the Newburgh Four, Appendix B, and Gordon Corera, “Have U.S. anti-terror tactics strayed into entrapment?”, BBC, September 2011, <http://news.bbc.co.uk/2/hi/programmes/newsnight/9584637.stm>

³¹ For example, in the Holy Land Foundation case, the prosecution tried to argue that the standard Muslim greeting, “As salam aleikum” (“Peace be with you”), was a terrorist phrase. In the Dr. Rafil Dhafir case, the prosecutor told the Bureau of Prisons that Dhafir needed extra monitoring as a security threat because he was a “sheikh” and a “Salafist” (purely religious terms with no connection to terrorism).

³² For example, the Newburgh Four.

³³ Brendan J. Lyons, “It took patience to set the trap in terror sting,” *Albany Times Union*, October 12, 2006, <http://albarchive.merlinone.net/mweb/wmsql.wm.request?oneimage&imageid=6362926>

³⁴ For example, the “Christmas tree bomb plot” in 2010 in Portland, Oregon, an FBI-initiated and -scripted sting whereby the target, Mohamed Osman Mohamud, was supposed to explode a car bomb during a crowded public Christmas tree lighting ceremony.

³⁵ See Paul Harris, “Fort Dix Five: ‘They don’t want our side, our view, our words,’” *The Guardian*, February 13, 2012, <http://www.guardian.co.uk/world/2012/feb/13/fort-dix-five-fbi-terrorism-case>. “Omar [informant] was the first to be sent into the field and he rapidly befriended Shnewer, eventually persuading him to go on trips to scout out Fort Dix. The Duka brothers never did so, nor was any evidence presented that showed them as aware of the base as a target.” And, “Omar actually confessed that two Duka brothers—Dritan and Shain—did not know of any Fort Dix plot. ‘[They] had nothing to do with this matter,’ Omar said during the trial.”

³⁶ For example, Ahmadullah Niazi, and see Salvador Hernandez, “FBI tactics against Muslims questioned,” *Orange County Register*, October 7, 2010, http://articles.ocregister.com/2010-10-07/crime/24640008_1_fbi-agents-fbi-s-handling-ahmadullah-sais-niazi, and Ibrahim Hirsi, “CAIR charges that FBI agents intimidated a Minneapolis man who refused to become an informant,” *Twin Cities Daily Planet*, February 5, 2013, <http://www.tcdailyplanet.net/news/2013/02/05/fbi-agents-allegedly-intimidate-minneapolis-man-after-refusing-become-informant>

³⁷ For example, Ahmadullah Niazi was charged with making false statements after he refused to become an informant (charges were later dropped).

³⁸ For example, Carlos Montes (see Los Angeles Committee to Stop FBI Repression, “Victory Against Repression: Carlos Montes Court Case Ends in Victory!”, June 5, 2012,

<http://www.stopfbi.net/2012/6/5/victory-against-repression-carlos-montes-court-case-ends-victory>) and Warith Deen Umar (see Bethlehem Neighbors for Peace, Imam Umar Defense Committee, no title, n.d., <http://nepajac.org/umar.htm> and <http://nepajac.org/ImamUmar.htm>).

³⁹ David Thomas, “How Mohammed Warsame Became an Accidental ‘Terrorist,’” *The Nation*, November 27, 2013, <http://www.thenation.com/article/177397/how-mohammed-warsame-became-accidental-terrorist>

⁴⁰ For example, Fahad Hashmi, and see Sally Eberhardt and Jeanne Theoharis, “Guantanamo Here at Home,” *The Nation*, January 20, 2011, <http://www.thenation.com/article/157896/guantánamos-here-home?page=full>

⁴¹ See Amy Goldstein, “A Deliberate Strategy of Disruption,” *Washington Post*, November 4, 2001, <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/18/AR2007111800673.html>; Sydney P. Freedberg, “Terror Sweeps a Battle of Rights and Safety,” *St. Petersburg Times*, January 13, 2002, http://www.sptimes.com/2002/01/13/State/Terror_sweep_a_battle.shtml; and U.S. Department of Justice, Office of Public Affairs, “The Criminal Justice System as a Counterterrorism Tool: A Fact Sheet,” Justice blog, January 26, 2010, <http://blogs.justice.gov/main/archives/541>

⁴² Over 100 members of the Black Panthers or other revolutionary groups are still imprisoned in the U.S. as a result of the government’s illegal repression in the 1960s and 70s under COINTELPRO. See the website of the National Jericho movement, <http://www.thejerichomovement.com>

⁴³ See Mark Sherman, “U.S. lawyer cites WWII-era mistakes on internment,” *Seattle Times*, May 24, 2011, http://seattletimes.com/html/nationworld/2015131210_apuswwiiinternmentjusticedepartmentapology.html

⁴⁴ A new case, *Hedges v. Obama*, which “...attempt[s] to revive a constitutional challenge to Congress’s recent support of presidential power to detain suspected terrorists” and draws on the previous case of the same name (referenced in note 16), aims to “wipe off the books” the Supreme Court’s ruling in *Korematsu* “and tell the Court that it is no part of the justification today for detention of U.S. citizens during the war on terrorism.” See Lyle Denniston, “A plea to cast aside *Korematsu*,” SCOTUSblog, January 16, 2014, <http://www.scotusblog.com/2014/01/a-plea-to-cast-aside-korematsu/>

⁴⁵ A member of the White House review panel on NSA surveillance has acknowledged that mass surveillance contributes little, if anything, to detecting terrorism (see Michael Isikoff, “NSA program stopped no terror attacks, says White House panel member,” NBC News, December 20, 2013, <http://www.nbcnews.com/news/other/nsa-program-stopped-no-terror-attacks-says-white-house-panel-v21975158>), and in fact it has not been mentioned as a significant factor in detecting any of the few real threats against the U.S. in the last decade. However, the legality of mass surveillance in violation of the Constitution depends entirely on the argument taken from the *Korematsu* case—that mass surveillance is necessary to fight the war on terror.

⁴⁶ Mention must be made here of the January 2014 report from the New America Foundation (Peter Bergen et al., *Do NSA’s Bulk Surveillance Programs Stop Terrorists?*, http://www.newamerica.net/publications/policy/do_nsas_bulk_surveillance_programs_stop_terrorists), which, after a review of 225 individual “terrorist” cases, concludes that “...the contribution of NSA’s bulk surveillance programs to these cases was minimal” and that “...[s]urveillance of American phone metadata has had no discernible impact on preventing acts of terrorism and only the most marginal of impacts on preventing terrorist-related activity...” While the authors of this study agree with these conclusions, they in no way support the underlying assumptions of the foundation’s report, from its across-the-board application of the term “terrorist,” to its choice of cases (the majority of which this study also surveys and categorizes as preemptive prosecutions), to its lack of awareness of the differences between real terrorist activity and preemptive prosecution. There are also many inaccuracies in presentation of the facts of certain cases. Indeed, this study has been undertaken to counter such underlying assumptions by thoroughly examining preemptive prosecution and its tactical patterns (stings, conspiracy charges, etc.), which pass unexamined in the foundation’s report.

⁴⁷ A bill currently pending in Congress, H.R. 3526, known as HAFSA (the Humanitarian Assistance Facilitation Act of 2013), would partially reform the material support laws by allowing for humanitarian aid: <http://beta.congress.gov/bill/113th-congress/house-bill/3526/text>

⁴⁸ The Holy Land directors also specifically asked the government what organizations were on the DTO list, so they could avoid dealing with them. The government responded by saying the directors should consult the list. Hamas-related organizations were *not* specified as being DTOs, thus the directors assumed they could work through those organizations.

⁴⁹ For example, Tarek Mehanna.

⁵⁰ See Graham Rayman, “Were the Newburgh 4 Really Out to Blow Up Synagogues? A Defendant Finally Speaks Out.”, *Village Voice*, March 2, 2011, <http://www.villagevoice.com/2011-03-02/news/were-the-newburgh-4-really-out-to-blow-up-synagogues/>

⁵¹ See David J. Gottfried, J.D., “Avoiding the Entrapment Defense in a Post-911 World,” FBI Law Enforcement Bulletin, FBI website, January 2012, <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/january-2012/avoiding-the-entrapment-defense-in-a-post-9-11-world>

⁵² See Rayman, “Were the Newburgh 4 Really Out...”, note 50.

⁵³ In the Aref-Hossain case, the government claimed that Aref was a terrorism “commander,” saying that the Arabic word for “commander” appeared next to his name in a notebook that was found when U.S. forces bombed some sort of encampment in northern Iraq. However, this was before CIPA was invoked in the case; when the government was directed to provide this page to the defense, it was conceded that there had been a “mistranslation” and the word in question (not even an Arabic word, rather a Kurdish one) meant the honorific “Mister” or “Brother,” not “commander.” But after CIPA was invoked, the government gave a plethora of evidence to the trial judge and to the appeals judges that the defense was never allowed to see. It was only years later that the defense learned that the FBI had misidentified Aref as an Al-Qaeda agent and that it must have provided this false evidence to the courts.

⁵⁴ After notification by DOJ that NSA surveillance was indeed used in the Portland, OR “Christmas tree bomb plot” case, the sentencing of Mohamed Osman Mohamud was indefinitely delayed by the judge. See Carrie Johnson, “Judge Suspends Sentencing of Would-Be Bomber After NSA Revelations,” NPR blogs, November 26, 2013, <http://www.npr.org/blogs/thetwo-way/2013/11/26/247412767/judge-suspends-sentencing-would-be-bomber-after-nsa-revelations>

⁵⁵ In the Aref-Hossain case, a 2006 *New York Times* article (“Spy Agency Data After Sept. 11 Led F.B.I. to Dead Ends” by Lowell Bergman, Eric Lichtblau, Scott Shane, and Don van Natta Jr., January 17, 2006, http://www.nytimes.com/2006/01/17/politics/17spy.html?_r=1&pagewanted=all) stated that pre-FISA Amendments Act (i.e., clearly illegal) warrantless NSA surveillance had “played a role in the arrest of an imam and another man in Albany in August 2004 as part of an F.B.I. counterterrorism sting investigation.” Yet when Aref tried to challenge this, the government filed a completely classified response that the defense was not allowed to see, and the court issued a classified decision denying the motion that the defendant was not allowed to see. On appeal, the Second Circuit received more

classified briefs from the government that the defense could not see, and then ludicrously stated that notwithstanding the *New York Times* article (and other evidence), the defendant did not have a “colorable” (slight or minimal) basis to believe that he had been under surveillance by the NSA.

⁵⁶ In a 2009 report, the Inspectors General of several federal agencies recommended that the DOJ review prior terrorism cases to determine whether defendants had been given exculpatory evidence derived from secret surveillance. (Offices of the Inspectors General: Department of Defense, Department of Justice, Central Intelligence Agency, National Security Agency, Office of the Director of National Intelligence), (*U*) *Unclassified Report on the President’s Surveillance Program*, Report No. 2009-0013-AS, July 10, 2009, <http://s3.amazonaws.com/nytdocs/docs/108/108.pdf>). The Verrilli initiative would go a long way toward complying with the Inspectors General’s long-ignored recommendation, but because the initiative depends entirely on the good faith of the government, and because the government has ignored the recommendation for so long, the DOJ’s promised notification program must be viewed with some skepticism at this time.

⁵⁷ See Harris, “Fort Dix Five: ‘They don’t want our side...’”, note 35.

⁵⁸ This study recognizes that such unfair pressure exists in many non-terrorism federal prosecutions as well, but the problem is amplified in terrorism cases.

⁵⁹ Geneva Convention (III), Article 90, Relative to the Treatment of Prisoners of War, 1949, http://avalon.law.yale.edu/20th_century/geneva03.asp#art90. UN Special Rapporteur Juan Méndez stated in 2011 that solitary confinement in excess of fifteen days should be banned, “citing scientific studies that have established that some lasting mental damage is caused after a few days of social isolation.” (“Solitary confinement should be banned in most cases, UN expert says,” UN News Centre, October 18, 2011, <https://www.un.org/apps/news/story.asp?NewsID=40097#.U2HMGCjbwyF>

⁶⁰ See Michael Steven Smith, “The Sentencing of Lynne Stewart,” Center for Constitutional Rights, n.d., <http://ccrjustice.org/sentencing-of-lynne-stewart-michael-steven-smith>. On December 31, 2013, Stewart was granted compassionate release by the same district judge who had resentenced her; she is dying of cancer and has a very limited life expectancy.

⁶¹ Mohammed Warsame was kept in solitary confinement for five and a half years until he was so mentally abused that he agreed to plead guilty in order to be relieved of his suffering. He was released after six more months. See Thomas, “How Mohammed Warsame Became...”, note 39.

⁶² For example, Viktor Bout, a Russian arms smuggler, was placed in solitary confinement pre-trial for fifteen months in the Special Housing Unit (SHU) at the Metropolitan Correctional Center in New York City. However, Bout’s request to a district judge (not to BOP) for a transfer to general population was granted, with the judge stating that “... I ‘cannot simply defer to the Warden and abandon my duty to uphold the Constitution...’” (*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/>). However, this is all too rare, as most judges feel they have to defer to the BOP. Thus there is a need for reform in placing detention conditions under judicial review.

⁶³ SAMs were originally developed because of the dangers posed by some organized crime figures who were able to have witnesses murdered from inside prison.

⁶⁴ See “*Aref, et al. v. Holder, et. al.*,” Center for Constitutional Rights, n.d., <http://ccrjustice.org/ourcases/current-cases/aref-et-al-v-holder-et-al>

APPENDIX A

Tactics Used in Prosecution

Sorted by

Preemptive Prosecution Used,

Elements of Preemptive Prosecution

Present, or

No Preemptive Prosecution Used

Based on U.S. Department of Justice list,

“National Security Division Statistics on Unsealed

International Terrorism and Terrorism-Related

Convictions 9/11/01–3/18/10”

<http://web.archive.org/web/20100530015008/http://www.justice.gov/cjs/docs/terrorism-convictions-statistics.pdf>

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Preemptive Prosecution Used - 289 - 72.4%							
Ahmad Wais Afzali	3		Eastern District of New York	Yes	Yes	False statements,	deported because he was an informant but got in trouble in Zazi case because was friends with Zazi's father
Aafia Siddiqui	5	86 years	Southern District of New York	Yes	Yes	Tortured confessions, Mental health issues,	
Adarus Abdulle Ali	7	24 mo.	District of Minnesota	Yes	Yes	False statements,	Al Shabab case but only charged with (and pled to) false statements
Abdul Tawala Ibn Ali Alishtari	8	10 years and one month, 3 years supervised release	Southern District of New York	Yes	Yes	Sting Operation, Material Support, Training camp, Conspiracy,	helped to supply training camp
Ehsanul Islam Sadequee	9	17 yrs	Nothern District of Georgia	Yes	Yes	Material Support, Conspiracy,	vague conspiracy and convicted based on first amendment activity
Mohammed Ali Hasan Al-Moayad	10	Time Served	Eastern District of New York	Yes	Yes	Sting Operation, Material Support,	sting case - won his appeal and was deported
Mohammed Mohsen Yahya Zayed	11		Eastern District of New York	Yes	Yes	Sting Operation, Material Support,	co-def of Al-Moayad - mat support sting w/ informant Alannsi - won his appeal and was deported to Yemen
Syed Haris Ahmed	13	13 years	Nothern District of Georgia	Yes	Yes	Material Support, Conspiracy,	co-def of Ehsanul Sadequee -vague mat support conspiracy
Murugesu Vinayagamoorthy	17	time served	Eastern District of New York	Yes	Yes	Material Support, Conspiracy,	mat support to Tamil Tigers
Mohammed Abdullah Warsame	18	92 months, 3 years SR; ordered deported back to Canada at conclusion of sentence	District of Minnesota	Yes	Yes	Material Support, False statements,	charged with material support and held in solitary under harsh conditions for 5 years, then released soon after
Patrick Abraham	19	112.5 months; 15 years SR	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Liberty City sting
Burson Augustin	20	72 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Liberty City sting
Rothschild Augustine	21	84 months; 10 years SR	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Liberty City sting

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Narseal Batiste	22	162 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Liberty City sting
Stanley Grant Phanor	23	96 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Liberty City sting
Akram Musa Abdallah	25		District of Arizona	Yes	Yes	Charity financing, False statements,	HLF case
Ali Saleh Kahlah Al-Marri	26	8 yrs	Central District of Illinois	Yes	Yes	Material Support, Tortured confessions, Training camp,	arrested in Peoria, declared enemy combatant, tortured, eventually pled to attending training camp
Imdad Ullah Ranjha	32	Time Served	District of Maryland	Yes	Yes	Sting Operation,	sting
Sahilal Sabaratnam	34	25 yrs	Eastern District of New York	Yes	Yes	Sting Operation, Material Support,	Tamil Tigers mat support sting – got 25 years when some others convicted in non-sting material support to Tamil Tigers got time served.
Nadarasa Yograrasa	37	14 years	Eastern District of New York	Yes	Yes	Sting Operation, Material Support,	mat support to Tamil Tigers sting
Parvez Mehmood Sandhu	38	21 months	District of Maryland	Yes	Yes	Sting Operation, Material Support, Conspiracy,	\$ laundering and mat support sting
Khaleel Ahmed	39	100 months	Nothern District of Ohio	Yes	Yes	Sting Operation, Material Support,	mat support sting
Zubair A. Ahmed	40	120 months	Nothern District of Ohio	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Ohio material support sting
Saleh Abdel Elahwal	41	17 months	Southern District of New York	Yes	Yes	Material Support,	helped television station alleged to be connected to Hezbollah
Javed Iqbal	42	6 years	Southern District of New York	Yes	Yes	Material Support, Conspiracy,	convicted mat support for enabling satellite broadcasts in the U.S. by Al Manar, a television station controlled by Hizballah.
Dritan Duka	43	Life	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	Ft. Dix sting
Eljvir Duka	44	LIFE	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	Ft. Dix sting
Shain Duka	45	Life plus 30 years	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	Ft Dix sting
Mohamad Ibrahim Shnewer	46	Life plus 30 years	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	Ft. Dix sting

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Serdar Tatar	47	33 years	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	Ft Dix sting
Derrick Shareef	48	35 years	Nothern District of Illinois	Yes	Yes	Sting Operation, Material Support,	sting
Mufid Abdel Abdulqader	49	20 years	Nothern District of Texas	Yes	Yes	Material Support, Charity financing, Conspiracy,	Holy Land Foundation charity case
Shukri Abu-Baker	50	65 years	Nothern District of Texas	Yes	Yes	Material Support, Charity financing, Conspiracy,	Holy Land Foundation Charity case
Ghassan Elashi	51	65 years	Nothern District of Texas	Yes	Yes	Material Support, Charity financing,	charity case - Holy Land Foundation - unjust use of material support statute
Mohammad El-Mezain	52	15 years	Nothern District of Texas	Yes	Yes	Material Support, Conspiracy,	Holy Land Foundation charity case
Abdulrahman Odeh	53	15 years	Nothern District of Texas	Yes	Yes	Material Support, Charity financing,	HLF case
Luis Felipe Moreno Godoy	55	25 years	Southern District of New York	Yes	Yes	Sting Operation, Material Support,	arms dealer caught in FARC mat support sting
Mazhar Iqbal Chughtai	56	51 months	District of Maryland	Yes	Yes	Sting Operation, Conspiracy,	money transfer sting
Saifullah Anjum Ranjha	57	110 months, forfeit \$2,208,000	District of Maryland	Yes	Yes	Sting Operation, Material Support, Conspiracy,	unlicensed money transfer material support sting
Mohammad Zaki Amawi	59	20 yrs	Nothern District of Ohio	Yes	Yes	Sting Operation, Material Support, Conspiracy,	sting
Marwan Othman El-Hindi	60	13 years (includes sentence for sep. fraud conviction)	Nothern District of Ohio	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	sting
Wassim Ibrahim Mazloun	61	100 months (8.3 years); Life on supervised release	Nothern District of Ohio	Yes	Yes	Sting Operation, Material Support,	Ohio mat support sting case
Richard David Hupper	63	46 months; 2 years SR; \$15,000 fine	Southern District of Florida	Yes	Yes	Material Support, Charity financing,	material support to Hamas – worked with International Solidarity Movement and gave \$ to help civilians

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Hassan Abujihaad	65	120 months	District of Connecticut	Yes	Yes	Material Support, Mishandling classified information,	was in Navy – charged w/ mat sup & espionage for putting info on ship movements on online forum – Azzam.com (re Babar Ahmed) - was acquitted of material support
Mohammad Doudzai	66	8 months	District of Maryland	Yes	Yes	Conspiracy, False statements,	immigration fraud & false statements
Nadia Naeem	67	364 days	District of Maryland	Yes	Yes	Conspiracy, False statements,	marriage fraud and false stms
Muhammad Mubayyid	68	11 months; 3 years SR; \$500 SA; \$1000 fine	District of Massachusetts	Yes	Yes	Charity financing, Conspiracy, False statements,	Care International charity case
Emadeddin Muntasser	69	12 months	District of Massachusetts	Yes	Yes	Charity financing, Conspiracy, False statements,	CARE International charity case
Carmen Maria Ponton Caro	71	70 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	FARC sting case
Victor Daniel Salamanca	72	70 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	alien smuggling mat support sting
Edizon Ramirez Gamboa	73	36 months	Southern District of Florida	Yes	Yes	Sting Operation, Conspiracy, False statements,	FARC alien-smuggling sting
Zuhair Hamed El-Shwehdi	74	3 years probation; \$138,098.12 restitution	Southern District of Ohio	Yes	Yes	Charity financing, False statements,	charity case
Nabi Nabil	75	22 months	District of Maryland	Yes	Yes	Conspiracy, False statements,	immigration and marriage fraud
Jalal Sadat Moheisen	77	70 months, 3 years. SR, \$100 assessment & removal	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	alien smuggling mat support sting case
Nicolas Ricardo Tapasco Romero	78	36 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	alien smuggling sting re FARC
Agron Abdullahu	79	20 months	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	Ft Dix sting

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Jorge De Los Reyes Bautista Martinez	80	3 years	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	alien smuggling mat support sting case
Jose Tito Libio Ulloa Melo	81	30 mo	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	FARC-related alien smuggling sting
Bernardo Valdes Londono	82	30 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	mat support to FARC - STING via immigration fraud
Julio Cesar Lopez	83	Time Served	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	alien smuggling sting re FARC
Luis Alfredo Daza Morales	84	30 months	Southern District of Florida	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	alien-smuggling sting related to FARC
Jose Padilla	86	208 months	Southern District of Florida	Yes	Yes	Material Support, Tortured confessions, Training camp, Conspiracy,	suspected of dirty bomb but never charged with that, held as enemy combatant, tortured, and then convicted in minor training camp case
Kifah Wael Jayyousi	87	152 months	Southern District of Florida	Yes	Yes	Material Support, Conspiracy,	mat support for aiding Bosnians in the '90's - on the same side as the US
Adham Amin Hassoun	88	188 months	Southern District of Florida	Yes	Yes	Material Support, Conspiracy, False statements,	co-Def of Kifah Jayyousi and Jose Padilla
Mohammed Kamel Elzahabi	90	Time Served	District of Minnesota	Yes	Yes	Sting Operation,	had fought Soviets in Afghanistan and Chechnya but did nothing against US – but was convicted of false stms and deported
Michael Curtis Reynolds	92	360 months	Middle District of Pennsylvania	Yes	Yes	Sting Operation, Material Support, Conspiracy, Mental health issues,	sting - & has mental problems
Juvenal Ovidio Pineda	93	60 years	District of Columbia	Yes			
Rafiq Abdus Sabir	94	300 months; 2 years SR	Southern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Tarik Shah sting
Haniffa Bin Osman	97	37 months	District of Maryland	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Tamil Tigers sting

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Tarik Ibn Osma Shah	98	15 years	Southern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy,	material support sting
Mahmud Faruq Brent	99	15 years	Southern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Sting (co-defendant of Tariq Shah and others)
Haji Subandi	101	37 months	District of Maryland	Yes	Yes	Sting Operation, Material Support,	Tamil Tigers sting
Erick Wotulo	102	30 months	District of Maryland	Yes	Yes	Sting Operation, Material Support, Conspiracy,	mat support sting for Tamil Tigers
Sabri Benkahla	103	121 months	Eastern District of Virginia	Yes	Yes	Material Support, Training camp, Conspiracy, False statements,	VA paintball case
Abdelhaleem Hasan Abdelraziq Ashqar	104	135 months	Nothern District of Illinois	Yes	Yes	Contempt,	
Muhammad Hamid Khalil Salah	105	21 months	Nothern District of Illinois	Yes	Yes	Material Support, Tortured confessions, Charity financing, Conspiracy,	Palestinian acquitted on spurious terrorism charges (& was tortured confession) and convicted of single count of obstruction
Reinhard Rusli	106	12 months & 1 day for each count (to run concurrently)	District of Maryland	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Tamil Tigers sting
Helmi Soedirdja	107	12 months & 1 day for each count (to run concurrently)	District of Maryland	Yes	Yes	Sting Operation, Conspiracy,	Tamil Tigers sting
Shiraz Syed Qazi	108	10 months	Southern District of Texas	Yes	Yes	Sting Operation, Training camp,	Houston Taliban sting
Mohammed Subeh	109	1 yr probation; fine of \$250 and a SA of \$100	Western District of New York	Yes	Yes	False statements,	false stms for denying seeing a letter his brother wrote
Irfan Kamran	111	Time Served	District of Colorado	Yes	Yes	Conspiracy, False statements, False statements,	false statements and immigration charges
Abdul Qayyum	112	1 yr probation	District of Colorado	Yes	Yes	Conspiracy, False statements,	false statement
Kobie Diallo Williams	113	54 months	Southern District of Texas	Yes	Yes	Sting Operation, Conspiracy,	'Houston Taliban' sting

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Abdulrahman Farhane	114	13 years (156 months); 2 years SR	Southern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	Tarik Shah sting case
Mohamed Shorbagi	115	92 mo	Nothern District of Georgia	Yes	Yes	Material Support, Charity financing,	mat support to Hamas – by giving \$ to Holy Land Foundation
Yassin Muhiddin Aref	116	15 years	Nothern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy, False statements,	ridiculous material support sting - and Yassin Aref was the victim of mistaken identity.
Mohammed Mosharref Hossain	117	15 years	Nothern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy,	Aref/Hossain sting
Ronald Allen Grecula	118	5 years, 3 years SR	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	material support sting
Lina Rena	119	1 year probation	Eastern District of Michigan	Yes	Yes	Conspiracy, False statements,	false statements
Noura Berro	120	8 months; \$124,549 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	minor player in Berro fraud case
Zeinab Berro	123	15 months, restitution \$554,878	Eastern District of Michigan	Yes	Yes		bankruptcy fraud
Almire Ali-Sadek Berro	124	1 day with Time Served	Eastern District of Michigan	Yes	Yes	Conspiracy,	minor fraud
Bilal El-Sablani	128	1 day; \$ 489,174.25 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	minor player in Berro fraud case
Abdul Karim Akram Berro	129	10 months	Eastern District of Michigan	Yes	Yes	False statements,	false statements
Ahmed Murshed	132	Time Served; deportation proceedings pursuant to Title 18/ 3583(d).	Western District of New York	Yes	Yes	Conspiracy,	
Mohamed Albanna	136	5 years	Western District of New York	Yes	Yes	False statements,	unlicensed money transfer (targeted because he was the uncle and supporter of one of Lakawanna Defendants)
Hatem Naji Fariz	137	37 months	Middle District of Florida	Yes	Yes	Material Support, Conspiracy,	Sami Al-Arian co-defendant

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Arwah Jaber	138	15 months, 3 years SR, \$2,000 fine.	Western District of Arkansas	Yes	Yes	Material Support,	mat support (wanted to join PIJ)
Ali Asad Chandia	139	180 months.	Eastern District of Virginia	Yes	Yes	Sting Operation, Training camp,	VA paintball case
Umer Hayat	140	Time Served and a \$3600 fine	Eastern District of California	Yes	Yes	False statements,	Lodi case - false confession
Shahawar Matin Siraj	141	30 years	Eastern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy,	sting targeting vulnerable young man
Saleh Alli Nasser	142	3 years probation; deportation	Eastern District of Michigan	Yes	Yes	Conspiracy,	unlicensed money transfer case – co-def of Sadik Omian
Monasser Omian	143	30 months in custody, 2 years SR, a \$200 SA, & forfeiture approx. \$200K cash & \$9,693,669 in substitute assets	Eastern District of Michigan	Yes	Yes	Conspiracy, False statements,	unlicensed money transfer
Sadik Monasser Omian	144	12 months & 1 day in custody, 2 years SR, \$300 SA, forfeit \$200,000cash & \$5,391,000 sub assets	Eastern District of Michigan	Yes	Yes	Conspiracy, False statements,	unlicensed money transfer case
Jarallah Wasil	145	57 months in custody; forfeiture of approx \$200K cash & \$9,693,669 in substitute assets; possibility of deportation	Eastern District of Michigan	Yes	Yes	Conspiracy,	unlicensed money transfers
Hamid Hayat	146	24 years	Eastern District of California	Yes	Yes	Sting Operation, Material Support, Training camp, False statements,	sting
Chao Tung Wu	147		Central District of California	Yes	Yes	Sting Operation, Material Support, Conspiracy,	material support sting - all charges dismissed

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Sami Amin Al-Arian	148	57 months; 3 years. SR	Middle District of Florida and Eastern District of Virginia	Yes	Yes	Material Support, Conspiracy, Contempt,	Was acquitted of all serious charges, then put in solitary for years and then house arrest for more years
Monir Awada	150		Central District of California	Yes	Yes		cash smuggling
Noureddine Malki	154	108 mo	Eastern District of New York	Yes	Yes	Mishandling classified information, False statements,	translator charged with false stms and mishandling classified information
Uzair Paracha	155	360 months	Southern District of New York	Yes	Yes	Material Support,	material support for checking on immigration status of Majid Khan
Ahmed Omar Abu Ali	156	Life	Eastern District of Virginia	Yes	Yes	Material Support, Tortured confessions,	tortured into confession
Omar Abdi Mohamed	157	18 months, 3 years. SR	Southern District of California	Yes	Yes		suspected of involvement in terror financing, convicted of immigration violations
Tariq Gujar	158	3 years probation, \$5000	Nothern District of New York	Yes	Yes		soon after 911, this Pakistani man was charged with minor tax offenses and deported
Abad Elfgeeh	161	188 months & 5 years SR	Eastern District of New York	Yes	Yes	Conspiracy,	money transfers – gov't tried unsuccessfully to connect him to terrorism but still sentenced him to 188 months
Aref Elfgeeh	162	51 months	Eastern District of New York	Yes	Yes	Conspiracy,	money transfers
Ali Maatouk	163	24 months probation	Middle District of Florida	Yes	Yes	Conspiracy,	immigration violations – got prosecuted for it
Naji Antoine Abi Khalil	164	57 months on Arkansas charges; 57, 60 & 60 months on SDNY charges (all will run concurrently); 3 years SR; \$100,000 rest.	Southern District of New York	Yes	Yes	Sting Operation, Material Support, Conspiracy,	material support sting
Tomer Grinberg	165	6 months; 2 years SR	Southern District of New York	Yes	Yes	Sting Operation, Conspiracy,	Israeli caught, with Naji Antoine Abi Khalil, in Hezbollah mat support sting
Ahmed Hassan Al-Uqaily	167	57 months	Middle District of Tennessee	Yes	Yes	Sting Operation,	sting case against Iraqi peace activist

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Herbert Villalobos	168	4 months, 2 years SR	Eastern District of Virginia	Yes	Yes		911 hijackers pd him \$50 to drive them to get ID but he didn't know what they were doing
Mark Robert Walker	170	24 months	Western District of Texas	Yes	Yes	Material Support,	attempted mat support to a Somali group, and violating sanctions
Hemant Lakhani	171	47 years	District of New Jersey	Yes	Yes	Sting Operation, Material Support,	
Ali al-Timimi	173	Life	Eastern District of Virginia	Yes	Yes	Material Support, Training camp, Conspiracy,	VA paintball case
Akram Abodayah	178	Time Served (6 months)	District of New Jersey	Yes	Yes		feds suspected him for some reason and convicted him of simple drug possession (which they generally never bother with)
Mahmoud Youssef Kourani	179	54 months	Eastern District of Michigan	Yes	Yes	Material Support, Conspiracy,	mat support for Hezbollah
Cedric Carpenter	180	68 months for 18/2339A ; 3 yr SR; each w/ \$2000 fine & \$100 SA	Southern District of Mississippi	Yes	Yes	Sting Operation, Material Support, Conspiracy,	material support sting
Lamont Ranson	181	29 months; 3 years SR; \$2000 fine; \$100 SA	Southern District of Mississippi	Yes	Yes	Sting Operation, Material Support, Conspiracy,	mat support sting
Mohammad Salman Farooq Qureshi	183	48 months. w/ credit Time Served, 3 years SR (to be suspended if return to Pakistan)	Western District of Louisiana	Yes	Yes	Charity financing, False statements,	false stms re financial donations to charity connected to Wadih El-Hage
Rafil A. Dhafir	184	264 months	Nothern District of New York	Yes	Yes	Charity financing, Conspiracy,	Dr. Dhafir charity case
Ahmed Abdel Sattar	185		Southern District of New York	Yes	Yes	Material Support, Conspiracy, False statements,	Lynne Stewart case
Lynne Stewart	186	10 years	Southern District of New York	Yes	Yes	Material Support, Conspiracy, False statements,	attorney convicted of material support for non-violent advocacy for her imprisoned client
Mohammed Yousry	187	20 mo.	Southern District of New York	Yes	Yes	Material Support, False statements,	minor player in Lynne Stewart case
Ali Mohammed Al Mosaleh	190	Time Served	District of Minnesota	Yes	Yes	False statements,	false statements

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Ali Khaled Steitiye	192	60 months	District of Oregon	Yes	Yes	Training camp,	Portland 7
Saleh Eldin Ali El Hage	193	6 months	Southern District of Texas	Yes	Yes	False statements,	immigration-related charges
Elmeliani Benmoumen	195	Time Served	Western District of Pennsylvania	Yes	Yes	Conspiracy,	license bribe case
Kamran Shaikh	197	Time Served	Western District of North Carolina	Yes	Yes	False statements,	immigration and false stm charges – suspected because had tourist photos of landmarks
Farida Ahmed	199	Time Served	Southern District of Texas	Yes	Yes	False statements, False statements,	immigration and false statements
Manthena Raja	200	24 months	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	sting - co-defendant of Hemant Lakhani
Imran Khan	201	Time Served	District of Colorado	Yes	Yes	Conspiracy, False statements,	fake ID case
James Elshafay	202	RELEASED - 5 years	Eastern District of New York	Yes	Yes	Sting Operation, Conspiracy, Mental health issues,	sting - serious mental problems
Abdurahman Muhammad al-Amoudi	205	23 years	Eastern District of Virginia	Yes	Yes	Material Support, False statements,	false statements
Basman Elashi	206	84 months	Nothern District of Texas	Yes	Yes	Charity financing, Conspiracy, False statements,	charity case - violating economic sanctions on Libya and Syria - is related to Holy Land case
Bayan Elashi	207	7 years (84 months) incarceration, 3 years SR (for INFOCOM I and INFOCOM II trials)	Nothern District of Texas	Yes			
Hazim Elashi	209	60 months	Nothern District of Texas	Yes	Yes	Charity financing, Conspiracy, False statements,	related to Holy Land Foundation charity case
Fawaz Mohammed Damrah	210	2 months + 4 months house arrest, denaturalization	Nothern District of Ohio	Yes	Yes	False statements,	immigration violations
Osama Musa Alferahin	211	Time Served + denaturalization & deport	District of Arizona	Yes	Yes		failed to state on citizenship application that he had been married and divorced in the past

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Abdulghafir Abdul Hassan	214	36 months., 3 years SR	Eastern District of New York	Yes	Yes	Conspiracy,	money transfers
Moinuddeen Ahmed Hameed	215	Time Served	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	sting - in Hemant Lakhani case
Yehuda Abraham	216	2 years probation; \$10,000 fine	District of New Jersey	Yes	Yes	Sting Operation, Conspiracy,	Lakhani sting - Israeli-Afghan co-def of Hemant Lakhani
Hammad Abdur-Raheem	219	60 months	Eastern District of Virginia	Yes	Yes	Material Support, Conspiracy,	VA paintball case
Seifullah Chapman	220	780 months	Eastern District of Virginia	Yes	Yes	Material Support, Training camp, Conspiracy, False statements,	VA paintball case
Masoud Ahmad Khan	221	Life	Eastern District of Virginia	Yes	Yes	Sting Operation, Material Support, Training camp, Conspiracy,	VA paintball case
Muhammed Abid Afridi	222	7 months custody and 5 years SR	Southern District of California	Yes			
Numan Maflahi	226	60 months	Eastern District of New York	Yes	Yes	Charity financing, False statements,	false stms for supposedly denying helping someone else (Sheikh Sattar) in '99 – was charged in 2003
Sayed Abdul Malike	229	37 months	Eastern District of New York	Yes	Yes	Sting Operation, False statements, Mental health issues,	Afghan, NYC cab driver, seemed somewhat unstable, was sting but only convicted of false stms
Ibrahim Ahmed al-Hamdi	230	120 months	Eastern District of Virginia	Yes	Yes	Material Support, Training camp, Conspiracy,	VA paintball case
Randall Todd Royer	231	20 years	Eastern District of Virginia	Yes	Yes	Material Support, Training camp, Conspiracy,	VA paintball case
Jamil Salem Sarsour	234	2 yrs probation; 25K restitution	Eastern District of Wisconsin	Yes	Yes		was previously convicted in Israel of aiding Hamas, and later convicted here just of structuring financial transactions
Jeffrey Leon Battle	237	18 years	District of Oregon	Yes	Yes	Material Support, Training camp, Conspiracy,	Portland 7 training camp case
Patrice Lumumba Ford	238	18 years	District of Oregon	Yes	Yes	Material Support, Training camp, Conspiracy,	Portland 7 training camp case

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Soliman S. Biheiri	239	13 months., 1 day w/ credit for Time Served	Eastern District of Virginia	Yes	Yes	Charity financing, False statements,	false stm and immigration fraud, charity case
October Martinique Lewis	241	36 months	District of Oregon	Yes	Yes	Material Support, Training camp, Conspiracy,	Portland 7 training camp case
Muhammed Aatique	242	126 months	Eastern District of Virginia	Yes	Yes	False statements, False statements,	VA paintball case
Ahmed Ibrahim Bilal	245	10 years	District of Oregon	Yes	Yes	Material Support, Old charges as pretext, Training camp,	
Muhammad Ibrahim Bilal	246	8 years	District of Oregon	Yes	Yes	Material Support, Training camp,	Portland 7
Bassem Kamal Khafagi	249	Time Served (10 Months), 1 yr SR	Eastern District of Michigan	Yes	Yes		immigration fraud
Yong Ki Kwon	250	138 months	Eastern District of Virginia	Yes	Yes	Training camp, Conspiracy,	VA paintball case
Donald Thomas Surratt	251	46 months	Eastern District of Virginia	Yes	Yes	Training camp, Conspiracy,	VA paintball case
Khawaja Mahmood Hasan	252	135 months	Eastern District of Virginia	Yes	Yes	Training camp, Conspiracy, False statements,	VA paintball case
Hosam Yousef Jubara	253	5 months	Middle District of Florida	Yes	Yes		connected to Sami Al-Arian – Jubara was a professor suspected of connections to Palestinian Islamic Jihad who was convicted of minor immigration charges, served 5 months and then was deported.
Maher Mofeid Hawash	254	7 years	District of Oregon	Yes	Yes	Material Support,	Portland 7 training camp case
G. William Hatfield	257	2 years probation, \$15K fine	Nothern District of New York	Yes	Yes		Dr. Dhafir case
Priscilla Dhafir	258	2 years probation, \$10K fine & restitution	Nothern District of New York	Yes	Yes	False statements,	Dr. Dhafir charity case
Hussin Abuali	261	Time Served (5 months), 3 years. SR	District of New Jersey	Yes	Yes		was wrong tip he was connected to terrorism but then was convicted of stolen cereal

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Husam Addelhafiz Samhan	262	112 days	Central District of California	Yes	Yes	False statements,	suspected of connections to AQ and convicted of misusing SSN
Mukhtar al-Bakri	263	10 years	Western District of New York	Yes	Yes	Material Support, Training camp,	Lakawanna training camp case
Ahmed Ali	264	2 years probation, \$15K fine	Nothern District of New York	Yes	Yes	Charity financing,	co-Def of Dr. Dhafir
Yasein Taher	265	8 years	Western District of New York	Yes	Yes	Material Support, Training camp, Conspiracy,	Lakawanna training camp case
Ayman Jarwan	267	18 months.	Nothern District of New York	Yes	Yes	Conspiracy,	Dr. Dhafir case
Osameh Al-Wahaidy	269	2 years probation, \$5K fine	Nothern District of New York	Yes	Yes		co-defendant of Dr. Dhafir
Earnest James Ujaama	275		Southern District of New York	Yes	Yes	Material Support, Training camp, Conspiracy,	training camp case
Sahim Alwan	276	114 months	Western District of New York	Yes	Yes	Material Support, Training camp,	Lakawanna training camp case
Youssef Hmimssa	277	78 months	Eastern District of Michigan	Yes	Yes	Material Support, Conspiracy,	Moroccan who pled to ID fraud in Detroit Sleeper Cell case and then testified against the others, whose convictions were reversed.
Libardo Florez-Gomez	278	18 months	Southern District of Florida	Yes	Yes		unlicensed money transfer
Yahya Goba	280	10 years	Western District of New York	Yes	Yes	Material Support, Training camp, Conspiracy,	Lakawanna training camp case
Shafel Mosed	281	96 months	Western District of New York	Yes	Yes	Material Support, Training camp, Conspiracy,	Lakawanna training camp case
Jose Guillermo Alvarez-Duenas	287	Time Served	Southern District of California	Yes	Yes		alien smuggling mat support case but pled to immigration violations
Enaam M. Arnaout	288	120 months	Nothern District of Illinois	Yes	Yes	Material Support, Conspiracy,	mat support to Bosnians in '90's - on same side as US
Faysal Galab	291	84 months	Western District of New York	Yes	Yes	Material Support, Training camp,	Lakawanna training camp case

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Mohamed Ahmed Issa	292	6 months	Eastern District of Michigan	Yes	Yes	False statements,	immigration-related and false stm charges soon after 911
Yasir Khatib	293	Time Served (14 months)	District of South Carolina	Yes	Yes	False statements,	fake ID case in 2002 – was convicted of ID fraud and deported
Nageeb Abdul Jabar Mohamed Al-Hadi	294	Time Served (15 Months)	Nothern District of Illinois	Yes	Yes		arrested on 911 b-c on a plane, later convicted of immigration fraud
Rabi Ahmed	295	Time Served (4 months), 2 years. SR	District of New Jersey	Yes	Yes	Conspiracy,	was wrong tip he was connected to terrorism but then was convicted of stolen cereal
Majeda Dweikat	296	Time Served/Deported	Southern District of California	Yes	Yes		immigration fraud soon after 911
Osama Yousef Basnan	297	Time Served/Deported	Southern District of California	Yes	Yes		immigration fraud soon after 911
Ahmad Abeed Ahmad Ahmad	299	Time Served	Eastern District of Virginia	Yes	Yes	False statements,	false travel docs
Nabil Sarama	300	Time Served (10 Months)	Nothern District of California	Yes	Yes	False statements,	immigration charges soon after 911
Jean-Tony Antoine Oulai	303	Time Served	Middle District of Florida	Yes	Yes	False statements,	soon after 911 he was suspected but cleared of any connection to terrorism - eventually convicted of false stms and deported.
Saleh Ali Almari	305	4 Months	Eastern District of Virginia	Yes	Yes	Conspiracy,	convicted in “test-taking scandal” but suspected of connections to terrorism
Hussein Al Attas	306	Time Served	Southern District of New York	Yes	Yes		He was unlucky enough to be Zacarias Moussaoui’s roommate and was convicted of false stms re Moussaoui (though he had no knowledge of 911)
Ahmed Abdulla Elashmouny	309	35 months., 3 years probation, restitution & \$600	Eastern District of New York	Yes	Yes	False statements, False statements,	Egyptian flight instructor investigated soon after 911 – found some little fraud– got 3 years
Mohadar Mohamed Abdoulah	310	Time Served (335 days), 3years SR	Southern District of California	Yes	Yes	False statements,	suspected after 911 because he knew 2 of the hijackers, he was convicted of false statements and deported
Ayub Ali Khan	313	1 Year, 1 day; \$15,000	Southern District of New York	Yes	Yes		box cutters on train case

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Ihsan Elashyi	314	48 months	Nothern District of Texas	Yes	Yes	Charity financing,	related to HLF case
Kamel Mohamed Trabelsi	315	Time Served	Central District of California	Yes	Yes		immigration violations soon after 911
Nabil Al-Marabh	316	8 months	Western District of New York	Yes	Yes	Conspiracy, False statements,	suspected of links to hijackers and convicted of marriage fraud
Ashar Iqbal Butt	317	6 months	Eastern District of Pennsylvania	Yes	Yes	False statements,	false passport (suspected for having photos of WTC right after 911)
Mohammed Azmath	318	Time Served (9 Months)	Southern District of New York	Yes	Yes		box cutters on train soon after 911
Kumeit Al-Saraf	319	3 Years Probation	Western District of Pennsylvania	Yes	Yes	Conspiracy,	license bribe case – fake ID soon after 911
Mohamed M. Hussein	320	18 mo.	District of Massachusetts	Yes	Yes		unlicensed money transfer soon after 911
Javaid Iqbal	321	16 Months	Eastern District of New York	Yes	Yes		He was picked up, basically for being Pakistani, soon after 911. There were absolutely no connection to terrorism but he was convicted on immigration charges and deported, after being held in terrible conditions. He sued about his post -911 detention but the case was dismissed by the Supreme Court.
Eyad M. Alrababah	322	6 Months, 3 years. SR	Eastern District of Virginia	Yes	Yes		license bribe case
Kamel Albred	324	3 Months Probation, \$250	Western District of Pennsylvania	Yes	Yes		license bribe case
Haider Alshomary	325	1 Year Probation, \$250	Western District of Pennsylvania	Yes	Yes		fake ID soon after 911
Moen Islam Butt	326	Time Served, 3 years SR	Eastern District of Pennsylvania	Yes	Yes		marriage fraud and immigration charges after 911
Mohammed Ibrahim Refai	327	Time Served	Nothern District of Ohio	Yes	Yes	False statements,	immigration fraud soon after 911
Wathek Al-Atabi	328	3 Months Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Omer Salmain Saleh Bakarbashat	329	Time Served	Southern District of California	Yes	Yes		immigration fraud soon after 911

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Raad Al-Maleky	330	3 Years Probation	Western District of Pennsylvania	Yes	Yes		fake ID soon after 911
Samir Almazaal	331	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case - fake ID soon after 911
Ahmad Kilfat	333	3 years. SR, restitution	District of New Jersey	Yes	Yes		
Akeel Al Aboudy	334	36 Months Probation	Western District of Pennsylvania	Yes	Yes		wrong ID document
Ali F. Alazawi	335	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Mohammed Maddy	336	Time Served	Eastern District of New York	Yes	Yes		alien smuggling soon after 911
Hatef Al-Atabi	337	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case (fake ID soon after 911)
Mustafa Al-Aboody	338	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Hisham Al-Shiblawy	339	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Iftikhar Ahmed Sahi	340	Time Served	Eastern District of North Carolina	Yes	Yes		immigration charges soon after 911
Sabah Al-Hachami	341	1 Year Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Fadhil Al-Khaledy	342	3 Years Probation	Western District of Pennsylvania	Yes	Yes	False statements,	fake ID soon after 911
Hussain Al-Obaidi	343	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Hussain Sudani	344	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Agus Budiman	345	7 Months, 1 yr. SR	Eastern District of Virginia	Yes	Yes	False statements,	only immigration charges

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Zuhaier Ben Mohammed Rouissi	346	6 Months	Nothern District of Ohio	Yes	Yes		marriage fraud soon after 911
Malek Mohamad Abdulah	348	Time Served, 3 years SR	District of Arizona	Yes	Yes	False statements,	false stms soon after 911
Nadim Dawe	349	Time Served	Southern District of New York	Yes	Yes	False statements,	false statements soon after 911
Sofiane Laimeche	350	36 months	District of Arizona	Yes	Yes	False statements,	fake ID case soon after 911
Montaser Hamdan Al Hamdan	351	Time Served	Middle District of Florida	Yes	Yes		marriage fraud soon after 911
Raza Nasir Khan	352	177 days	District of Delaware	Yes	Yes		was arrested very soon after 911 only b-c had a GPS device while hunting - was charged w/gun possession since he's an immigrant and wasn't supposed to be hunting.
Mohammed Alibrahimi	353	5 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case – fake ID soon after 911
Assam Abdall	354	6 Months	Eastern District of New York	Yes	Yes	False statements,	false statements
Faisal M. Al Salmi	355	6 Months	District of Arizona	Yes	Yes	False statements,	false stms just after 911
Mohammad Aslam Pervez	356	Probation 1 year	Southern District of New York	Yes	Yes	False statements,	false stms soon after 911
Mustafa Kilfat	357	Time Served (6 Months) 2 years. SR	District of New Jersey	Yes	Yes		immigration violations soon after 911
Armoghan Absar Rizvi	359	Time Served	District of Colorado	Yes	Yes	False statements,	immigration charges
Arkan Alandon	360	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case
Robert A. Ferrari	361	18 months, 3 years. SR	Western District of Pennsylvania	Yes	Yes		license bribe case
Haider Al Tamimi	362	3 Years Probation	Western District of Pennsylvania	Yes	Yes		fake ID soon after 911
Arsalan Absar Rizvi	363	Time Served	District of Colorado	Yes	Yes	False statements,	immigration charges
Nasri Al Hamdan	364	Time Served (5 months)	Middle District of Florida	Yes	Yes		marriage fraud soon after 911

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Muhamed Nasir Bin Hasher Alghamdi	365	6 months; \$10,000	Southern District of Florida	Yes	Yes		fake ID & immigration fraud soon after 911
Wael Kishk	366	Time Served (6 Months)	Eastern District of New York	Yes	Yes	False statements,	false stm case right after 911
Ali Alubeidy	367	3 Years Probation	Western District of Pennsylvania	Yes	Yes		license bribe case – they were prosecuted because of unfounded suspicions of connections to 911 hijackers – but were found guilty of fraud related to trucking licenses for hazardous waste.
Salman Hyder	368	4 months	Central District of California	Yes	Yes		fake ID & immigration fraud right after 911
Mohammed Basheer Al Qaryuti	369	Time Served	Middle District of Florida	Yes	Yes		phony marriage soon after 911
Ahmed Nawaz Atta	371	Time Served	Central District of California	Yes	Yes	False statements,	false statements to immigration
Saber Hassan Abassi	372	63 Days, 2 years probation, \$500	Eastern District of Virginia	Yes	Yes	False statements,	false statements soon after 911
Maher Yousef Abu-Zbaida	373	10 Months	District of Montana	Yes	Yes		faced gun charges (for being immigrant) and was then deported
Roxanne Laura Kopke	374	50 Days	Eastern District of Virginia	Yes	Yes		immigration fraud soon after 911
Mujahid Abdulqaadir Menepta	375	15 Months	Western District of Oklahoma	Yes	Yes		suspected soon after 911 and then arrested for guns found in house
Hadir Awad	376	2 Years	Eastern District of Virginia	Yes	Yes		immigration fraud shortly after 911
Alawi Hussain Al-Baraa	378	6 months, Three years probation	Western District of Pennsylvania	Yes	Yes		license bribe case – just after 911
Salam Ibrahim El Zaatari	379	Time Served	Western District of Pennsylvania	Yes	Yes		art student had utility knife on plane soon after 911 – was deported
Hafiz Khalil Ahmad	380	12/20/2001	Southern District of Florida	Yes	Yes	False statements,	immigration fraud shortly after 911
Nermine Hani Ayoub Al Khammash	381	Time Served (3 Months)	Middle District of Florida	Yes	Yes		marriage fraud soon after 911
Abdul Farid	382	Time Served (6 Months)	Middle District of North Carolina	Yes	Yes	False statements,	he was arrested on a false tip that he was sending money to the Taliban and was deported after admitting he lied on a loan application.
Sherif Khamis	383	Time Served + 7 days	Middle District of Florida	Yes	Yes	False statements,	false stms soon after 911

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Imtiaz Ahmad Siddiqui	384	Time Served (5 months), 1 yr. SR	Middle District of North Carolina	Yes	Yes		immigration charges
Luis A. Martinez-Flores	385	21 Months, 2 years SR	Eastern District of Virginia	Yes	Yes		fake ID case soon after 911
Ben Sami Fathi Hafaiedh	386	6 Months	Central District of California	Yes	Yes	False statements,	immigration fraud
Vincente Rafael Pierre	387	24 Months	Western District of Virginia	Yes	Yes	Sting Operation, Conspiracy,	lived in a black Muslim compound in VA, and were charged in a weapons sting in 9/11
Traci Elaine Upshur	388	15 Months	Western District of Virginia	Yes	Yes	Sting Operation, Conspiracy,	wife of Vicente Rafael Pierre, they lived in a black Muslim compound in VA, and were charged in a weapons sting in 9/11
Jamshed Iqbal	389	5 Years Probation	Nothern District of New York	Yes	Yes		He and his brother were considered suspicious because they took flying lessons. But there was no evidence of terrorism so he was charged with immigration-related marriage fraud.
Jawaid Iqbal	390	1.5 Years Probation, \$3000 Fine	Nothern District of New York	Yes	Yes		He and his brother were considered suspicious because they took flying lessons. But there was no evidence of terrorism so he was charged with immigration-related marriage fraud.
Victor M. Lopez-Flores	391	27 Months, 3 years SR	Eastern District of Virginia	Yes	Yes		helped 911 hijacker get ID but without knowing what he was doing
Khalid S.S. Al Draibi	392	4 Months, 3 years SR	Eastern District of Virginia	Yes	Yes		immigration fraud case right after 911
Atif Raza	393	Time Served (140 days), restitution	Southern District of Alabama	Yes	Yes		minor fraud (access device fraud)
Hossain El Ouariachi	394	Time Served	Western District of Pennsylvania	Yes	Yes	False statements,	false statements case
Kenys Aleyda Galicia	395	1 Year	Eastern District of Virginia	Yes	Yes	False statements,	fake ID soon after 911 in EDVA
Manel Fall	396	3 Months	Western District of Pennsylvania	Yes	Yes		immigration-related charges soon after 911
Hafiz Tauseef	397	5 Years Probation	Nothern District of New York	Yes	Yes		immigration violations after Ansar Mahmood took innocent photo of reservoir

**Appendix A - Tactics used in prosecution sorted by
Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used**

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Aisha Younes	398	5 Years Probation	Nothern District of New York	Yes	Yes		Ansar Mahmoud case (Anwar took innocent photo of reservoir)
Arshad Hussain	399	3 mo Time Served	Western District of New York	Yes	Yes	False statements,	immigration charges soon after 911
Faycal Ahmed Haddoumi	400	30 Days	Nothern District of Indiana	Yes	Yes		minor immigration violation just after 911
Kamal Rahmani	401	30 Days	Nothern District of Indiana	Yes	Yes		immigration violations soon after 911
Ansar Mahmood	402	5 Yrs Probation	Nothern District of New York	Yes	Yes		deported after photographing reservoir – deported for letting undocumented friends stay with him
Francois Guagni	403	20 Months	District of Maine	Yes	Yes		convicted and deported for immigration violations shortly after 911

Preemptive Prosecution Used - 289 - 72.4%

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Elements of Preemptive Prosecution Present - 87 - 21.8%							
Zeinab Taleb-Jedi	6	time served	Eastern District of New York	Yes	Yes	Material Support,	
Nachimuthu Socrates	12	1 yr and 1 day	Eastern District of New York	Yes	Yes	Material Support, Conspiracy,	
Karunakaran Kandasamy	14	Time Served(5 yrs)	Eastern District of New York	Yes	Yes	Material Support, Conspiracy,	
Vijayshanthar Patpanathan	15	time served	Eastern District of New York	Yes	Yes	Material Support,	
Pratheepan Thavaraja	16		Eastern District of New York	Yes	Yes	Material Support, Conspiracy,	
Oussama Abdullah Kassir	24	Life	Southern District of New York	Yes	Yes	Material Support, Training camp, Conspiracy, Mental health issues,	
Abdifatah Yusuf Isse	27	36 mo.	District of Minnesota	Yes	Yes	Material Support, Training camp,	
Rahmat Abdhir	28	10 years	Nothern District of California	Yes	Yes	Material Support, False statements,	
Tareq Mousa Al Ghazi	29	25 years	Southern District of New York	Yes	Yes	Sting Operation, Material Support,	
Wesam Al-Delaema	30	300 mo	District of District Of Columbia	Yes	Yes	Material Support,	
Kamal Said Hassan	31	120 Mo	District of Minnesota	Yes	Yes	Material Support, False statements,	
Thiruthanikan Thanigasalam	35	25 years	Eastern District of New York	Yes	Yes	Material Support,	
Sathajhan Sarachandran	36	26 years	Eastern District of New York	Yes	Yes	Material Support, Conspiracy,	
Monzer Al Kassar	54	30 years	Southern District of New York	Yes	Yes	Sting Operation, Material Support,	
Ahmed Abdellatif Sherif Mohamed	58	180 months; 3 years SR; \$100 SA	Middle District of Florida	Yes	Yes	Material Support,	

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Eyad Suleiman	70	108 Months ; Restitution \$1,243,162.04	Western District of Kentucky	Yes	Yes	Conspiracy,	
Abdulla Kasem Ahmed Muthana	76	30 months, Supervised Release 36 months	Eastern District of California	Yes	Yes		
Thirunavukarasu Varatharasa	95	57 months	District of Maryland	Yes	Yes	Sting Operation, Material Support,	
Daniel Joseph Maldonado	96	10 years, \$1000 fine, & 3 years SR	Southern District of Texas	Yes	Yes	Material Support, Training camp,	
Hector Rodriguez-Acevedo	100	50 months	Southern District of Florida	Yes	Yes	Material Support, Conspiracy,	
Khalid Awan	110	14 years	Eastern District of New York	Yes	Yes	Material Support,	
Sami Ahmad Berro	121	27 months; \$124,549 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Sadek Berro	122	78 months; restitution \$1,224,003	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Houda Mohamad Berro	125	12 months and 1 day	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Abdul Halim Berro	126	35 months, \$421,120 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Abdulmir Berro	127	70 months. \$669,125 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy, False statements,	
Amira Ali Farhat	130	12 months; \$4000 fine, forfeiture \$72,611	Eastern District of Michigan	Yes	Yes	Conspiracy, False statements,	
Ali Abdul Karim Farhat	131	6 years, \$669,125 restitution, forfeiture of business & residential property	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Akram Abdul Karim Berro	133	44 months each of the 9 counts (concurrent) & restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Jamal Saadalla Berro	134	46 months each of the 9 counts (concurrent) & restitution	Eastern District of Michigan	Yes	Yes		
Syed Saadet Ali Fara Shah	149	225 months	Southern District of California	Yes	Yes	Sting Operation, Material Support,	
Nemr Ali Rahal	151	33 months; \$416,783 restitution	Eastern District of Michigan	Yes	Yes	Charity financing, Conspiracy,	
Fadl Mohammed Maatouk	152	60 months; \$58K forfeiture	Middle District of Florida	Yes	Yes	Conspiracy, False statements,	
Rania M. Fawaz Rahal	153	1 yr probation	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Ali Mohamed-Nameh Makki	159	2 years probation; \$10,190 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Tarek Makki	160	24 months, \$879, 056 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy, False statements,	
Michael Wagner	169	Time Served	Southern District of Iowa	Yes	Yes	False statements,	
Hussein A. Berro	172	14.5 months	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Samih Fadl Jamal	174	120 months, 3years SR	District of Arizona	Yes	Yes	Conspiracy, False statements,	
Fanny Cecilia Barrera-De Amaris	176	61 months/ 3 years probation	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	
Issam Abdul Berjaoui	177	17 months	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Carlos Gamarra-Murillo	182		Middle District of Florida	Yes	Yes	Sting Operation, Material Support,	
Edgar Fernando Blanco Puerta	196	Life	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	
Hassan Nasrallah	204	1 day; \$35K restitution	Eastern District of Michigan	Yes	Yes		
Carlos Adolfo Romero-Panchano	212	36 months	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Mohamad Daher	217	3 years probation; \$60K restitution; \$100 SA	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Issam Hassan Fawaz	218	15 months; 2 years SR; \$100 SA; \$5000 Fine	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Ilyas Ali	223	57 months	Southern District of California	Yes	Yes	Sting Operation, Material Support, Conspiracy,	
Aref Ahmed	224		Western District of New York	Yes	Yes		
Ali Abdulamir Daher	225	5 months for each count; 2 years SR ; \$200 SA; \$175,500 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Yaudat Mustafa Talyi	227	5 mo and fine	Eastern District of Louisiana	Yes	Yes		
Adriana Gladys Mora	228	120 months	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	
Tarek Abdelhamid Sallam	232	18 months	Central District of California	Yes	Yes		
Lori Foley	233	15 months	Central District of California	Yes	Yes		
Elkin Alberto Arroyave Ruiz	235	180 months	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	
Fadi Haydous	236	27 months to run concurrently w/ 99-CR-00131-14 in Western District NY, Plus 1 day consecutive; credited with time in WDNY; 2	Eastern District of Michigan	Yes	Yes		
Amna A. Mahmoud	240	3 years probation \$67,306.00	Eastern District of New York	Yes	Yes		
Hassan Abdallah	243	5 years probation	Eastern District of Texas	Yes	Yes	Conspiracy,	
Hassan Moussa Makki	244	57 months	Eastern District of Michigan	Yes	Yes	Material Support, Conspiracy,	

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Ali Mohamad Akhdar	247	12 months, 1 day	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Elias Mohamad Akhdar	255	70 months	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Uwe Jensen	259	168 months	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	
Marlon Rodriguez	260	12 months	Eastern District of Texas	Yes	Yes	Conspiracy,	
Iyman Faris	266	20 years	Eastern District of Virginia	Yes	Yes	Material Support, Mental health issues,	
Carlos Ali Romero Varela	268	120 months , 5 years SR, \$200 special assessment	Southern District of Texas	Yes	Yes	Sting Operation, Material Support,	
Omar Shishani	270	57 months, 2 years SR, \$200SA	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Salim Nemir Awde	271	Time Served (14 months), 3 years SR, \$100	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Nabil Mohamad Ismail	272	Time Served (12 months concurrent w/ sent. for 18/1029); 3 years SR; \$100 SA; \$37500 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Brandy Jo Bowman	273	4 months, 3 years SR in WDNY, \$45,750 restitution, \$100 SA	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Carole Gordon	274	7 months; 3 years SR; \$202,500 restitution; \$100 SA	Eastern District of Michigan	Yes	Yes	Conspiracy,	
Mohamad Ahmad Hariri	279	Time Served (6 months); 3 years SR; \$100 SA; \$2062,500 restitution	Eastern District of Michigan	Yes	Yes	Conspiracy,	

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Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Salim Boughader-Mucharrafille	282	12 months + 1 day	Southern District of California	Yes	Yes		
Choudhry Hussain	284	21 Months, 3 years SR	Eastern District of New York	Yes	Yes		
Suhail Sarwer	285	55 months 3 years SR	Eastern District of New York	Yes	Yes		
Patricia Serrano-Valdez	286	10 months, 2years SR	Southern District of California	Yes	Yes		
John Earl Johnson	290	46 months	Nothern District of New York	Yes	Yes		
Abdurahman Khahil Koshak	301		Western District of Pennsylvania	Yes	Yes		
Karim Tebbakh	302	6 mo Time Served	Eastern District of New York	Yes	Yes		
John Walker Lindh	308	20 Years	Eastern District of Virginia	Yes	Yes	Material Support,	
Mohamad Youssef Hammoud	311	30 years	Western District of North Carolina	Yes	Yes	Conspiracy,	
Chawki Youssef Hammoud	312	51 Months, 3years SR, \$700SA	Western District of North Carolina	Yes	Yes	Conspiracy,	
Mubarek Almutari	323	21 Months	Nothern District of Indiana	Yes	Yes	False statements,	
Nasser Abuali	332	Time Served (5 months), 3 years. SR	District of New Jersey	Yes	Yes	Conspiracy,	
Said Mohamad Harb	347	41 Months	Western District of North Carolina	Yes	Yes	Material Support, Conspiracy,	
Ehab Elmaghraby	358	24 Months, 3 years SR	Eastern District of New York	Yes	Yes		
Adel F. Badri	370	Time Served, 3 years SR, \$1,000	Western District of Missouri	Yes	Yes		
Mohamed Abdi	377	4 Months, 3 years SR	Eastern District of Virginia	Yes	Yes		

Elements of Preemptive Prosecution Present - 87 - 21.8%

Appendix A - Tactics used in prosecution sorted by Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
No Preemptive Prosecution Used - 23 - 5.8%							
David Coleman Headley	1	35 years	Nothern District of Illinois	Yes	No		
Nancy Conde Rubio	2		District of District Of Columbia	Yes	No		
Najibullah Zazi	4	life	Eastern District of New York	Yes	No		
Bryant Neal Vinas	33		Eastern District of New York	Yes	No		
Christopher Paul	62	20 years	Southern District of Ohio	Yes	No		
Yasith Chhun	64	Life	Central District of California	Yes	No		
Vinh Tan Nguyen	85	14 months	Central District of California	Yes	No		
Nuradin Mahamoud Abdi	91	10 years	Southern District of Ohio	Yes	No		
Troy Melton Peters	135	Time Served; special assessment \$200; \$706,300 restitution	Eastern District of New York	Yes	No		
Lynn Wingate	166	3 years probation, \$2500 fine	Eastern District of New York	Yes	No		
Zacarias Moussaoui	175	Life	Eastern District of Virginia	Yes	No	Material Support, Conspiracy, Mental health issues,	
Amr I. Elgindy	188	135 months; forfeiture of \$1,568,000	Eastern District of New York	Yes	No		
Jeffrey A. Royer	189	72 months	Eastern District of New York	Yes	No		
Zameer Nooralla Mohamed	191	60 months	Central District of California	Yes	No		
Hasan Ali Ayesb	194	5 years probation	Eastern District of Arkansas	Yes	Yes		
Yildirim Beyozit Tumer	203	Immediate Deportation to Turkey	District of Delaware	Yes	No		
Mohammed Junaid Babar	213		Southern District of New York	Yes	No		

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Preemptive Prosecution Used, Elements of Preemptive Prosecution Present or No Preemptive Prosecution Used**

Name	DOJ #	Sentence	Court	On DOJ Terrorist List	Targeted for beliefs	Charges	Description of Case
Artur Tchibassa	248	293 months; restitution	District of District Of Columbia	Yes	No		
Robert Hansen	256	3 years probation; \$2,500 fine	Eastern District of New York	Yes	No		
Mohamed Suleiman Al-Nalfi	289	121 months	Southern District of New York	Yes	No		
Richard Colvin Reid	298	Life	District of Massachusetts	Yes	No		
Mohammed Mansour Jabarah	304	Life	Southern District of New York	Yes	No		
Derrick Cleveland	307	4 years probation; \$5000 fine	Eastern District of New York	Yes	No		

No Preemptive Prosecution Used - 23 - 5.8%

Total Number of Records 399

Note: The DOJ Lists 403 people; however four are duplicated on the list, Earnest James Ujaama (80, 275), Ghassan Elashi (51, 208); Khalid Awan, (110, 283), and Soliman Biheiri (198, 239) - bringing the total list to 399.

APPENDIX B

Preemptive Prosecution Cases

Mentioned in the Study

APPENDIX B

PREEMPTIVE PROSECUTION CASES MENTIONED IN THE STUDY¹

Listed in alphabetical order by surname or case name.

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

¹ For more information on these and many other cases of preemptive prosecution, 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, a section of which describes cases in greater detail; or access the Project SALAM database at <http://www.projectsalam.org/database.html> and sign in as a guest account. Search for each defendant by name.

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. However, the court has been considering its decision on the motion since early 2009, while Al-Arian remains under house arrest.

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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>

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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 named in 2004 as an unindicted co-conspirator in the Virginia Paintball Network (see description of that case below). In a meeting he attended at a prominent northern Virginia mosque five days after 9/11, he supposedly told his followers that "the time had come for them to go abroad and join the *mujaheddin* engaged in violent jihad in Afghanistan." According to the prosecution, many who attended that meeting later formed the Virginia Paintball Network, trained for jihad, and some left the U.S. for training camps. Al-Timimi and others went to Afghanistan to support the Taliban, but arrived after the Taliban had collapsed. However, in 2003, Al-Timimi told the Arabic-language network Aljazeera that "[a]n American citizen should never kill another fellow American, no matter what the pretext. In Islamic law, if an Islamic country is attacked, those citizens of that country have a right to self-defense. And this is something that is not just an Islamic law, but it's also an international law...So, for the government to take a discussion that I might have had in the past, talking about the law of warfare in Islam, where I might say in a lecture that I gave in 1996 that if an Islamic country [is attacked], by Islamic law then the inhabitants of that country can defend themselves, and now to try to say that therefore I have encouraged killing, it is really a very silly and

theatrical sort of way of trying to present charges.”

Nevertheless, after the conclusion of the Virginia Paintball Network trials, prosecutors tried Al-Timimi for encouraging the Network to wage jihad in India and the U.S. On July 14, 2005, Al-Timimi was sentenced to life plus seventy years, essentially for one conversation. David Cole of Georgetown University said that the judgment against Al-Timimi was “overly harsh” and that the government’s case “raised questions about the violation of First Amendment free speech rights.”

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“Ali al-Tamimi [sic],” Wikipedia, n.d., 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 2nd 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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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,”
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<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, Thailand 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.

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

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

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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 serving a fifteen-year sentence.

In October 2010, an appeals court vacated (for the second time) Chandia’s sentence, agreeing with the defense that the application of a

“terrorism enhancement”—which turned a suggested six-year sentence into fifteen years—was not justified. However, on March 11, 2011, Chandia was resentenced to fifteen years. His lawyers say they will appeal again.

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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Katherine Hughes, “Humanitarian Pays with Life for Feeding the Children of Iraq,” *Truthout*, March 13, 2011, <http://www.truth-out.org/humanitarian-pays-with-life-feeding-children-iraq68317>

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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U.S. Department of Transportation, Office of the Inspector General, "Flight School Owner Jailed for 4 Years for Wide-Ranging Fraud," website, January 23, 2003, <http://www.oig.dot.gov/library-item/3080>

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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Paul Harris, “Fort Dix Five: ‘If they did something, punish them. But they’re innocent kids,’” *The Guardian*, November 16, 2011, <http://www.theguardian.com/world/2011/nov/16/fbi-fort-dix-five>

Paul Harris, “Fort Dix Five: ‘They don’t want our side, our view, our words,’” *The Guardian*, February 13, 2012, <http://www.guardian.co.uk/world/2012/feb/13/fort-dix-five-fbi-terrorism-case>

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, which he is now serving, still in solitary confinement.

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Andy Worthington, “Fahad Hashmi and Terrorist Hysteria in U.S. Courts,” *Common Dreams*, April 29, 2010, <http://www.commondreams.org/view/2010/04/29-7>
Jeanne Theoharis, “My Student, the ‘Terrorist,’” *The Chronicle of Higher Education*, April 3, 2011, <http://chronicle.com/article/My-Student-the-Terrorist/126937/>

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 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.

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. But in November 2013, a federal judge indefinitely postponed the sentencing hearing scheduled for December after the Justice Department notified his lawyers that part of the case against him had been “derived from” secret NSA electronic surveillance, which could lead to years of legal wrangling.

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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-terrorist 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 9th 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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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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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”), 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.”

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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, and her prognosis is grave. After one unsuccessful request for compassionate release in 2013, which was blocked by the director of the Bureau of Prisons on grounds that her “health was improving,” Stewart was given compassionate release from prison on December 31, 2013 by order of the district judge who had resentenced her.

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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. As early as 1999, a group of eleven young Muslim men worshipping in the Dar al-Arqam mosque in Falls Church, Virginia became concerned about the attacks on Muslims in various places in the Middle East and began to explore ways to defend these Muslim communities under attack. They were led by two charismatic men, Ali Al-Timimi (see description of his case above) and Randall Royer. After 9/11, Al-Timimi and others went to Afghanistan to support the Taliban, but arrived after the Taliban had collapsed. Since they were not involved in the fighting, they simply went back to America. 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. Three of the men who had traveled to Afghanistan after 9/11 pleaded guilty and testified against the others. They received sentences of three years. One defendant who had also traveled with them but was less involved pleaded not guilty and was convicted. He was sentenced to life plus forty-five years. The rest either pleaded guilty or were convicted.

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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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APPENDIX C

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APPENDIX C

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