

Yassin Aref's Struggle for Justice in Police State America

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Global Research, March 13, 2008
13 March 2008

Region: [USA](#)

Theme: [Police State & Civil Rights](#), [Religion](#)

Yassin Aref is a 37 year old Albany, New York resident and one of many Muslim victims of police state justice in post-9/11 America. They've been hunted down, rounded up, held in detention, kept in isolation, denied bail, restricted in their right to counsel, tried on secret evidence and trumped-up charges, then incarcerated as political prisoners or deported to where they face possible arrest and torture.

Because of his faith and ethnicity, Aref was victimized by US "justice" in a post-9/11 climate of fear. He's an Iraqi Kurd who emigrated to the US as a UN refugee in 1999 with his wife and three young children. He's now in federal prison but committed no crime. He's also the author of a poignant memoir/autobiography titled "Son of Mountains: My Life as a Kurd and a Terror Suspect." He wrote it in custody at Troy, New York's Rensselaer County Jail after his wrongful conviction in October 2006.

It's his story in prose and poetry covering much more than his arrest, conviction and imprisonment. It's an account of an early life in poverty, his struggle to survive, his time in exile, of a two-time immigrant, and a UN refugee who sought peace and freedom in America but instead was persecuted. It's his story of wrongful conviction, of grave injustice, of a militarized state, of his constitutional rights denied, of despotism run amuck, of a nation where no one is safe, where many hundreds like him are imprisoned, and where we're all Yassins in police state America.

The story concludes with a powerful essay by pro bono lawyer, Stephen Downs, that details how Yassin was framed and wrongfully convicted. It explains how he "never before in (his) professional life (of over 35 years) encountered a deliberate frame-up. (He) was familiar with prosecutorial abuses" wrongful convictions, "sloppy police work, concealment of errors, hubris and arrogance, but what happened to Yassin was (much) different."

The government deliberately fabricated bogus charges and plotted to convict a man they knew was innocent. It was a "cold, calculating plan carried out over a long period of time, costing millions of dollars and involving dozens of agents, prosecutors, and the acquiescence of high-level officials, to convict two men of terrorism who had no involvement or interest in (it)...I could not adapt....to this new reality. For me, Yassin's case (won't end) until (his) injustice (is) corrected. Besides, (he's) now my brother." Today, we're all Yassin's brothers and sisters and must stand with him for justice.

The FBI Plot

In August 2004, FBI agents arrested Aref and Mohammed Hossain as part of a counterterrorism sting operation based on an unsubstantiated claim: that his name, address

and phone number were in a notebook in a “bombed out Iraqi encampment.” The information was classified and unavailable to his defense counsel even though he’s cleared for security. The government first claimed Aref was called “commander.” It then admitted there was a “mistranslation” and the Kurdish word “kak” means brother and is a common term of respect.

Aref originates from Iraqi Kurdistan where his grandfather was a famous imam, and Aref was known and respected in the area. No information is available on the target was bombed, whether a notebook really exists, or what’s in it if it does. Its “contents” are classified and kept under wraps, so that automatically raises suspicions about their authenticity or existence.

Nonetheless, the FBI claims Aref was tied to Mullar Krekar, Ansar al-Islam’s founder. It’s a Kurdish Sunni group that supposedly promotes radical Islamic and Jihad views. Since 1991, Krekar lived in Norway as a political refugee. While there, police investigated him for seven months, found incriminating evidence, and in April 2003 the country’s Supreme Court acquitted him of terrorism charges. In spite of it, US authorities recharged him with consorting with Ansar to carry out 2003 suicide bombings in northern Iraq.

Norwegian police then reopened their investigation, went to Iraq, and what they learned was disquieting. The key witness (Didar Khalan) was in Patriotic Union of Kurdistan (PUK) custody, and his statement was obtained through torture. He subsequently retracted it, said he never met Krekar, and Norwegian authorities dropped all charges they believed had no basis in fact.

The real issue is this. In mid-2002, US officials sought Ansar’s support for its planned Iraq invasion. When Krekar refused, Washington targeted him and his group. It got Jordan to demand his extradition on drugs-smuggling charges with no substantiating evidence. It also called Ansar the “missing link” between Saddam and Al Qaeda, and the New York Times mysteriously uncovered evidence of the group’s tie to bin Laden. The PUK was the rest of the “link” on a trumped up Ansar- Baathist connection. It was all untrue, but in February 2003, the State Department designated Ansar a “foreign terrorist organization (FTO),” claimed it was “one of the leading groups (against) Coalition (forces) in Iraq,” and accused Krekar as the group’s founder.

It also got Aref in trouble with trumped-up charges of his ties to Krekar and secret “evidence” supposedly proving it. After marrying, Aref left Iraq in 1994 and lived for five years in Syria. While there, the UN approved his refugee status and right to emigrate that allowed him to come to America. While still in Syria, he worked as a gardener, lost his job in 1998, and was hired by the Damascus office of an Islamic Kurdish US ally opposed to Saddam Hussein - the Islamic Movement of Kurdistan (IMK). Krekar was an IMK official. In 2001, two years after Aref left Syria, he formed Ansar al-Islam. Aref briefly met him in Damascus but neither knew him or espoused his views.

In 1999, Aref and his family came to America and worked as a hospital janitor and ambulance driver. A year later he became the Masjid As Salam Mosque’s imam. Aref’s troubles began when FBI agents targeted him in a 2003 sting operation that his lawyers call a frame-up. They convinced a Pakistani informant (facing a long prison sentence and deportation on fraud charges) to approach Aref’s friend, Mohammed Mosharref Hossain (a Bangladesh immigrant and US citizen), as a way to target him.

Shahed Hussein was the informant, he was known as Malik, and here's the essence of the scheme:

- Malik was wired to secretly record all conversations with his targets;
- he offered Hossain a \$50,000 loan, pretending an interest in his pizza shop; as a show of good faith, he asked for \$45,000 in checks so Hossain could keep the rest;
- Hossain was told the money came from a surface-to-air (SAM) Chinese missile purchase that was intended for a group called JEM (Jaish-e-Mohammed – a Pakistani-based Islamic group that's also a designated FTO); and
- the missile supposedly would be used against the Pakistani ambassador in New York.

It was all untrue, Malik was a willing FBI accomplice, Hossain thought JEM was a musical group, and he knew nothing about terrorism. He went along with the arrangement, and according to Muslim custom, brought in Aref to witness it. Later, the government arrested both men and claimed Aref was part of a money laundering and terrorist scheme. Aref's defense argued that he spoke poor English at the time, believed the loan was legitimate, was unaware of any laws broken, and the affair was a plot to entrap him.

Moreover, in January 2006, the defense learned that "evidence" was illegally obtained through NSA warrantless wiretapping and filed a motion to suppress it. It was denied. The defense appealed and was joined by the New York ACLU. Their appeal was denied on procedural grounds that no action could be taken while the case was still pending. It was unclear how this and other classified evidence (99% withheld from the defense) affected the trial. However, the Court instructed the jury that "the FBI had good and valid suspicions for investigating Yassin Aref."

He and Hossain were arrested in August 2004 and convicted in October 2006 – Hossain on 27 counts and Aref on 10 of 30 charges of money laundering, conspiracy to provide material support for a terrorist plot, terrorism, and making false statements in February 2002 and August 2004.

In March 2007, both men were sentenced to 15 years in prison and have filed appeals. In addition, Aref's counsel filed a lengthy sentencing memorandum to the US District Court for the Northern District of New York. It detailed his client's history and character and concluded as follows:

...."this case....raises a lot of troubling issues (including) the nature of the sting operation, targeting two individuals who had never been in any trouble before, and who clearly were not involved in any illegal activity at the time the informant entered their lives.... Moreover, the case occurred in a post-9/11 climate of great fear when ordinary Americans had become suspicious of Muslims.....history will recognize that this case never should have happened, and that the two defendants were the victims of an unfortunate over-reaction....Yassin Aref asks that the Court seriously consider his entire history and character (and) all (his) letters (of support,) the troubling nature of the case, and impose a truly just sentence."

Before sentencing, Aref professed his innocence and addressed the Court in imperfect English:"I know you, (your) Honor, and every single person and everybody, FBI, they check all my record, all my life, they interview thousands of the people....they knew never I did any violence, never I participate in any fighting, never I support any terrorist

group....everybody knew I did nothing to be one day in the jail for. And I did not come to this country to be in the jail. I came to be free. I did not come to this country to destroy (it). I came to be my life. I (didn't) threaten any human being....I came for my children to be safe from terrorist....I believe what's done for me it is unfair and I believe, (your) Honor, it is your duty to make sure that justice has been served."

The prosecution asked for 30 years. The Court imposed 15. After the convictions, the Muslim Solidarity Committee (MSC) was formed to support Aref, Hossain and their families. It collected letters and around 1000 petition signatures asking the Court for leniency. It also held vigils twice weekly between conviction and sentencing and raised funds to support the two families. IMC members were traumatized by the verdict and knew it could happen to them. Others in the community were also outraged because Aref was innocent and was targeted for political reasons. They united with a committed goal - to exonerate Aref and Hossain, get all charges against them dropped, and protect their families from further harm.

For now, however, Aref remains a victim of US justice. After sentencing, he endured a punishing 43 day odyssey that took him to Terre Haute, Indiana federal prison. But first he was sent to federal facilities in Massachusetts, Brooklyn, Oklahoma City and the Ray Brook, New York Correctional Institution about which he recounted his first days:

They "placed (him) in the special housing unit (SHU) or, as they call it, the Hole. Even in that unit they placed (him) in a special cell. (He) was alone by (himself), the rest of the prisoners were in double cells. (His) cell was so small and had a concrete bed in the middle of it where there was no room to talk and a small window with frosted glass, one could not see outside. The unit was like a basement and it was a nasty and filthy place. (He) was shocked to see that!....(He) did not know why (he was there). (He) was thinking how the place was (and) asking (himself) - how can such a place exist in the United States?

....It was like a bad dream....(He) had no mail....no books to read....no commissary....no cellmate....not even a call to (his) attorney!!....(He believed) the reason (he was convicted was) that (he) is a Muslim (with) a beard, not because (he) did something wrong....(and because he doesn't) know English well....am from the Middle East and speak Arabic (and) am not a citizen. (He kept) thinking about the kind of victory (the government) achieved (that) separate(d) (him) from (his) four very young children....They knew in their hearts what they did to (him) was unfair, unjust. (How can what they did to him be) a victory in the justice system of this country."

After Ray Brook, Aref was sent to the secret Terre Haute, Indiana federal penitentiary Communications Management Unit (CMU) that opened in December 2006. It's for "high-security risk" Muslim and Middle Eastern prisoners to limit or cut them off entirely from outside contact. Doing so, however, violates the May 3, 2004 US Supreme Court decision in *Johnson v. California* which held that segregating prisoners by race, ethnicity or language is illegal. In addition, Prison Bureau regulations stipulate that "staff shall not discriminate against inmates on the basis of race, religion, national origin, sex, disability, or political belief (including) administrative decisions (involving) access to work, housing and programs." Further, the Federal Administrative Procedures Act explicitly requires all prison regulations comply with this law.

At great personal risk, Aref described his CMU life in an October 2007 article titled "Dead Life - Inside out and upside down: Life at the 'Communication Management Unit' of Terre

Haute Federal Prison.” When he wrote it, his English had improved, and it was painful to read. He said Terre Haute is geared toward revenge, to hurt for the sake of hurting. There’s no pretense of rehabilitation, no thought of protecting society from harm. The place is a playground for thugs who like to make people suffer. CMU inmates are “lock(ed) down in this old leaky building and prohibit(ed) from hugging our children and calling them often....(This) will never bring peace to this country, and will never make this nation safer. But it is really putting the justice system in this country on trial.”

“Is it true that all humans are equal?

Is it true that everyone is free to choose his faith?

Are human rights really protected by law?

We hear this but we would like to see it!!”

Aref and Hossain’s appeal is before the Second Circuit Court of Appeals in New York. Oral arguments are scheduled for late March with a decision likely months in the future, so their status remains on hold. Their case may challenge NSA’s warrantless wiretapping as it’s the only time evidence from it has been used so far against a defendant. The motion before the Court states: “The government engaged in illegal electronic surveillance of thousands of US persons, including Yassin Aref, then instigated a sting operation to attempt to entrap (him) into supporting a non-existent terrorist plot, then dared to claim that the illegal NSA operation was justified because it was the only way to catch (him)!”

Winning won’t be easy, however, in a post-9/11 climate and after the Protect America Act of 2007 became law last August. It allows near-unrestricted warrantless spying of anyone considered a national security risk. It further ends Fourth Amendment protections against unreasonable searches and seizures and Fifth Amendment ones against self-incrimination. It effectively annuls the letter and spirit of the law and henceforth denies everyone its protection.

International law and human rights expert, Francis Boyle, explains what defense attorneys are now up against in federal court. In his new book, “Protesting Power – War, Resistance and Law,” he explains that federal judges abdicated their authority, defer instead to presidential lawlessness, and over two-thirds of them are from the extremist Federalist Society. It means winning in this environment is tenuous at best, but Aref’s lawyers are determined to press on.

Defense counsel Stephen Downs recounted the case in a Washington Report on Middle East Affairs (September-October 2007) article called “From Sting to Frame-Up: The Case of Yassin Aref.”

He described how, for three years, the government tried to destroy his life through bogus terrorist charges from a sting operation frame-up with “evidence” from it classified, inconclusive, and unavailable to the defense. So it hired a convicted felon (Malik) to entrap him through a “fictitious plot,” and for his cooperation would “make all of his legal troubles go away (and cancel his scheduled deportation)....” On October 27, 2006, a federal judge sentenced Malik to time served, and he’s now a free man.

Aref’s conviction highlights how America treats Muslims post-9/11 and in a climate where no

one is safe. Targets are innocent victims of rogue state justice that “send(s) a politically reassuring message to the country that the government is hard at work catching terrorists – even if (those targeted) are not real terrorists at all, but simply people the government can frame.” It makes no one safer – “indeed it makes us less safe by undermining the rule of law.”

Aref is well-known in Albany and his family recognized and respected. It’s reassuring that “Yassin’s case will not be forgotten. His family (bears) silent witness to the government’s reign of terror against people who have no involvement or interest in terrorism. Injustice, no matter how we try to rationalize it as part of a ‘war on terror,’ is still injustice, and it will not be forgotten.” Neither will Aref and Hossain until they’re exonerated and free in the land that should afford everyone that right but denies to Muslims and others police state America targets.

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