

Scores of Muslim men jailed as “material witnesses” in wake of 9/11 attacks

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In the days and months following the September 11, 2001, terrorist attacks, the US Department of Justice rounded up scores of Muslim men as “material witnesses,” held them for months without charges, and subjected them to verbal and physical abuse as part of a coordinated government operation.

According to a joint report issued last month by Human Rights Watch and the American Civil Liberties Union (HRW/ACLU), the Justice Department held the men under a 1984 federal law that permits the arrest and brief detention of material witnesses who have important information about a crime, and who might otherwise flee to avoid testifying before a grand jury or court.

The 101-page report, “Witness to Abuse: Human Rights Abuses under the Material Witness Law since September 11,” documents the cases of 70 men—all but one of them Muslim—who were rounded up under the guise of this law, but were treated as terrorist suspects. In particular, the government exploited the fact the statute does not put a specific limit on how long witnesses can be held.

Imprisoning as “witnesses” individuals who are in fact terrorism suspects sets a dangerous precedent for future use of this extra-legal government power to deprive citizens and non-citizens alike of their democratic rights. The harrowing stories of the men caught up in this dragnet provide further proof of the Bush administration’s wanton disregard for civil liberties and due process of law in its “war on terror” in the wake of the 9/11 attacks.

Tarek Omar, an Egyptian national, was arrested along with seven friends and relatives in October 2001:

“They treated us like professional terrorists,” Omar related. “They put us in cars and had big guns—as if they were going to shoot people, as if we were Osama bin Laden. They didn’t let us speak, they didn’t let us ask why we were in detention. I never knew for how long we would stay in jail. It felt like we would stay forever.... I didn’t even know why I was in jail.” The eight men received an apology later from the FBI for their wrongful arrest.

Like Tarek Omar, most of the men were not informed why

they were arrested, were not read their Miranda rights, were denied immediate access to a lawyer and were not permitted to see the evidence used against them. The Justice Department violated fundamental legal standards in relation to the arrested witnesses as well, conducting court proceedings behind closed doors and sealing all court documents related to their cases.

The Justice Department has refused to reveal how many of these alleged material witnesses have been rounded up in connection with its post-9/11 counterterrorism investigations. However, after a year of extensive research, HRW and the ACLU have confirmed the cases of 70 men—all but one Muslim, 64 of Middle Eastern or South Asian descent, and 17 US citizens.

Although the men were seized as material witnesses, the HRW/ACLU investigation found that at least 30 of them were never brought before a grand jury or court to testify, and only 7 were ever charged with crimes relating to terrorism. Forty-two of them were ultimately released without any charges filed against them.

Another 20 were charged with non-terrorist-related crimes, such as credit card fraud or making false statements to the FBI, and 24 were deported. Two were turned over to the Defense Department as “enemy combatants” and at the time of the report’s publication were being held in solitary confinement in military brig.

According to the HRW/ACLU report: “Consistent with the Justice Department’s suspicions that the witnesses were dangerous men linked to terrorists, the witnesses were often arrested at gunpoint in front of families and neighbors and transported to jail in handcuffs. They typically were held around-the-clock in solitary confinement and subjected to the harsh and degrading high-security conditions typically reserved for prisoners accused or convicted of the most dangerous crimes. They were taken to court in shackles and chains. In at least one case, a material witness was made to testify in shackles.”

Anjana Malhotra, the report’s author, commented, “Muslim men were arrested for little more than attending the

same mosque as a September 11 hijacker or owning a box-cutter.” Others were arrested for having worked with a hijacker, gone to college parties with a terror suspect or buying a copy of the *Time* magazine issue with Osama bin Laden on the cover.

On September 12, 2001, Dr. Albader al-Hazmi, a medical doctor doing his residency in San Antonio, Texas, woke up in his house to five FBI agents with their guns drawn. After arresting al-Hazmi, agents searched his house for 12 hours, turning it “upside down” with little regard for his wife and small children.

While al-Hazmi had no previous criminal record, the government based his arrest on the fact that he shared the last name of one of the 9/11 hijackers and had been in contact at the Saudi Arabian Embassy with someone with the last name “bin Laden,” a common Arabic name. He was detained for two weeks in jails in Texas and New York before being released. He never testified before any grand jury or court.

Although supposedly being held as material witnesses, most of these men were held under maximum security conditions reserved for the most dangerous prisoners and criminal suspects, and were subject to verbal and physical abuse and humiliation.

Randy Hamud, an attorney for three post-9/11 material witnesses, stated, “The government held them like they were criminals. They treated them like thugs, threw them in high security as if they were felony convicts. They had to wear orange jumpsuits. They were in the cells 24 hours a day. They were not allowed to go anywhere unless they were chained at the waist. They were physically pushed up against the wall. Guards would step on their leg chains.... They were scared to death.”

Many material witnesses interviewed for the HRW/ACLU investigation reported being strip-searched by multiple guards, often in public places. Dr. al-Hazmi said that while being held at the Metropolitan Detention Center (MDC) in Brooklyn, New York, “I was searched naked many times, sometimes twice daily in front of many guards. The guards, they were enjoying searching us naked. When they felt like it they would beat us.... One of the guards said to me while beating me, say thanks to Allah.”

Ayub Ali Khan was held in the Special Housing Unit at MDC Brooklyn for over a year, much of it in solitary confinement. “I was in a small cell for 24 hours a day with the lights on,” he said. “Guards came every 10 to 15 minutes and banged on the door.... For two months, I left the cell only for interrogations.... I didn’t sleep for one or two months. The guards would bang on the door all night.

“They would say, ‘This is the guy—the Taliban guy,’ or call me ‘Khan Taliban.’ The guards said so many bad

things. They told me: ‘You won’t ever see your family. You’re going to die here.’ ”

One of the most chilling cases described in the report is that of Abdallah Higazy. He was arrested as a witness in December 2001 after federal agents were informed that hotel staff had found an air-to-land transceiver in the hotel room near the World Trade Center where he was staying at the time of the 9/11 attacks. The government agents said Higazy could have been communicating with the hijackers and, according to his lawyer Robert Dunn, were “hell-bent” on proving it.

Against his attorney’s advice, Higazy agreed to take a polygraph test in an effort to clear his name. Dunn was excluded from the examination room. The exam itself took only a few minutes, but escalated into a four-hour interrogation, without a break. According to Higazy, FBI agent Michael Templeton told him, “We will make the Egyptian authorities give your family hell if you don’t cooperate,” and insisted, “We can show ties between you and September 11. You are a terrorist.”

At one point, Higazy became so agitated that he started to hyperventilate, and an agent trained as an Emergency Medical Technician was brought in to treat him. After four hours of haranguing, Higazy finally confessed to owning the transceiver. “All I wanted to do is to keep away from September 11 and to keep my family away from them,” he said.

In January 2002, another guest at the hotel showed up to claim his belongings and reported his transceiver stolen. Apparently, a security guard had planted the device in Higazy’s room. The government dismissed the material witness warrant and criminal charges against Higazy, and a federal court has ordered an investigation into the Justice Department’s conduct in the case.

The Justice Department has maintained that in the interest of “national security,” court proceedings against arrested material witnesses must be held behind closed doors and all records in their cases have been sealed.

An official Justice Department statement argued that “disclosing such specific information would be detrimental to the war on terror and the investigation of the September 11 attacks.” A similar approach was taken in relation to the immigration proceedings against the more than 1,000 Muslim, Arab and South Asian non-citizens of “special interest” rounded up in the government sweeps after 9/11.



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