

Australian government unilaterally detains doctor after court agrees to bail

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In an extraordinary display of arbitrary executive power, the Howard government yesterday sent a young Indian Muslim doctor into immigration detention just after a magistrate had granted him bail on a flimsy charge of “recklessly” providing support to a terrorist organisation.

Dr Mohamed Haneef, 27, who had already spent nearly two weeks in prison without trial under draconian “anti-terrorism” laws, now faces indefinite detention until his criminal trial is held. Whatever the outcome of the trial, he will likely be deported. The only evidence produced against him, despite a massive 14-day investigation reportedly involving 300 police and government lawyers, is that one year ago he gave a mobile phone SIM card to his second cousin, the brother of one of the men accused of last month’s failed terrorist bombings in London and Glasgow.

Immigration Minister Kevin Andrews used his personal powers under the Migration Act to overturn the bail ruling by Brisbane magistrate Jacqui Payne. Payne ordered Haneef’s release after the Australian Federal Police (AFP) failed to produce any evidence suggesting that he had any direct association with a terrorist group, or that the mobile phone had been used in the terrorist attack. Rather than appealing that decision to the Queensland Supreme Court, the government gazumped the bail order by revoking Haneef’s visa.

Haneef’s lawyers were stunned when they went to arrange their client’s release, on a \$10,000 surety, only to be told that Andrews had called a media conference in Canberra to announce that the young doctor’s visa had been cancelled on “bad character” grounds, and that he would be transferred from the Brisbane watchhouse to Sydney’s Villawood Detention Centre.

Andrews said he had used his powers under section 501 of the Migration Act to revoke Haneef’s visa because, “based on information and advice I’ve received from the Australian Federal Police I reasonably suspect Dr Haneef has had an association with persons involved in criminal conduct, namely terrorism”. Andrews refused to divulge the information he had received from the AFP. At the same time, he admitted he had discussed his move with Prime Minister John Howard.

Under hostile questioning from journalists, Andrews insisted he was not flouting the magistrate’s ruling. One reporter asked: “Doesn’t this go against the legal rule that we’ve established over a thousand years? That someone is innocent until proven guilty. You’re pre-empting a judgment on his innocence.” Another reporter asked: “What chances does this fellow have of gaining justice in this country when he faces criminal charges in one court, and in another place, in a sort of a Catch-22, a minister of the Crown declares that he’s a terrorist?”

While Andrews repeatedly claimed that his decision was completely unrelated to the criminal proceedings, he declared that Haneef would remain in detention until his trial concluded. The minister said he was not commenting on the legal charge, nor attempting to interfere in it; he was simply exercising his duties under the Migration Act. The fact remains, however, that after locking Haneef up for two weeks without trial, the government has now defied a court order to release him.

Because of his sweeping powers under the Migration Act, Andrews’s decision is exempt from the rules of natural justice, and there is no right of appeal to the Administrative Appeals Tribunal (AAT). Haneef can apply to the Federal Court for judicial review, but must prove a legal error, an almost impossible task. Andrews only has to argue that he “reasonably suspects” Haneef had an “association” with a group involved in criminal conduct and that the visa cancellation is in the “national interest”.

In legal terms, Andrews has engaged in an abuse of power—misusing a power intended for immigration purposes, for a different purpose—to hold a prisoner behind bars while awaiting trial. The result is a double Catch-22 for Haneef. He will be incarcerated under a law that says he must be detained only until he can be deported, but he cannot be deported because he is due to stand trial.

Magistrate Payne had considered her decision for two days, in the face of strongly prejudicial commentary against Haneef by the government and the media. She drew on several High Court cases to find that the “cumulative effect” of eight factors meant Haneef should be granted bail, despite the stipulation in the terrorism laws that bail must be allowed only in “exceptional circumstances”.

Her reasons included that he was not alleged to have been directly involved with a terrorist group behind last month’s failed attacks; that the mobile phone SIM card he gave to his second cousin was not alleged to have been used as part of an attack; and that he left it with a family member when leaving Britain. Payne also noted that Haneef was a doctor studying with the Australian College of Physicians; that he had no criminal record and a good employment history; that his passport had been confiscated and that he was likely to be placed under surveillance if released.

Haneef’s barrister Stephen Keim SC expressed outrage at the government’s move. “The actions of the minister are in direct contravention of assurances given to my instructing solicitor last week by federal police, namely that no action was proposed in relation to immigration matters,” he said.

Keim said the magistrate had found the case against his client to be “extremely weak” and that the Commonwealth Director of Public Prosecutions itself had conceded the charges were at the “lower end of such offences”. The barrister also condemned the arbitrary powers created by the anti-terrorism laws. “When you pass legislation that gives a police service in any part of the world powers, it just becomes part of the tool kit,” he said.

Based on conversations he had with federal police, Keim said Haneef would have been detained for another 14 days without charges—on top of the 14 he already endured at the Brisbane watchhouse—and might have been held for up to six weeks under the laws, if federal police had not charged him on Saturday. Keim said the closed process of applying for detention extensions, in which Haneef’s lawyers were left out of some of the proceedings, made a mockery of the so-called safeguards in the laws.

Stephen Estcourt, president of the Australian Bar Association, who

spent four years as an AAT member reviewing visa cancellations, said he could not believe the minister's action. "Usually this sort of visa cancellation takes place after charges have been laid against someone and ... they've resulted in a penalty being imposed ... I have not heard of this power being used pre-emptively in this way." The minister was "usurping the role of the court," he said. "It has got to be seen as a threat to the rule of law if a ministerial discretion is used to effectively reverse, or to reverse for practical purposes a decision of the court. And it's sophistry to say that one's got nothing to do with the other."

Prominent barrister Lex Lasry QC denounced the government's "appalling misuse of power" and accused Andrews of adding to the "running commentary" on the case by Prime Minister John Howard and Attorney-General Philip Ruddock, all depicting Haneef as guilty. Julian Burnside QC, president of Liberty Victoria, said it was "outrageous" that the government was using its visa power to trump a bail decision. He condemned the "scandalous abuse of power" and "unprincipled misuse of the Migration Act".

New South Wales Civil Liberties Council president Cameron Murphy said the federal government was undermining the independence of the court system. "It is not appropriate for the government to just keep him incarcerated because they don't like the decision of the magistrates court." Murphy said it was not the first time the government had acted in such a way, likening Haneef's case to that of Jack Thomas, who last year had a control order placed on him days after the Victorian Court of Appeal quashed his terrorism-related convictions.

Haneef was arrested on July 2 as he attempted to board a flight to India. He said he was leaving to visit his wife and newborn daughter. His family has strongly protested his innocence, with his wife Firdous, 26, appealing to Indian Prime Minister Manmohan Singh for help.

Ms Haneef angrily denounced the visa decision. "I think the Australians are determined to harass my husband... They are going to detain him for no reason at all. Or rather, the reason keeps changing from day to day. Why didn't they cancel his visa on Friday when they charged him? Why now, after he's been granted bail? Now the Indian government has to do something. They must help him. They can't keep quiet any longer."

Earlier, she described the charges against her husband as "baseless and senseless". "If it was an offence about a SIM card, they should have charged him on the first day itself." Ms Haneef said she believed the Australian police had implicated her husband on "frivolous" grounds. "They know that giving a SIM card is not an offence," she said. "Even after 12 days they have not found anything."

Haneef's younger brother Mohammed Shoab told Australian national radio the doctor had no intention of providing support for a terrorist act when he gave away his SIM card to his cousin Sabeel Ahmed last May. "He has not handed it to any unknown person, he has handed it to a known person, because there was free talk-time on the card and he didn't want to waste that," he said.

The family's requests for intervention by Singh are reportedly gaining support in India, where there is public concern about the length of time it took for the AFP to charge Dr Haneef. Senior Indian police investigators were quoted as saying they had found "not even a shred (of evidence) against that boy". The Indian government yesterday expressed concern over Haneef's treatment with the Australian High Commission in New Delhi.

Without being found guilty of even the marginal charge against him, Haneef has had his photograph plastered all over the Australian and world media as a "terror doctor". He faces eviction from his apartment, which was trashed by police during searches, and yesterday was stood down from his job as a hospital registrar by Queensland Health until all court proceedings are completed.

The charge laid against Haneef illustrates the far-reaching character of the array of anti-terrorism laws introduced by the Howard government and

its state Labor counterparts since 2002. The doctor has been charged under section 102.7 of the Criminal Code with "intentionally" providing support or resources to a terrorist organisation that "would help" it engage in terrorist activity, while being "reckless" as to whether the organisation is terrorist. For this, he faces 15 years jail.

Police have alleged that before he left the United Kingdom in May last year to work in Australia's Gold Coast Hospital, Haneef gave a mobile phone SIM card to his cousin Sabeel Ahmed. The card was allegedly found in the jeep driven by Ahmed's brother Kafael that was used in the attack on Glasgow airport. By this logic, anyone who sold petrol to the jeep driver, or "recklessly" provided any other resources, could also be charged. And, for that matter, anyone who gave a SIM card to a friend or relative could be detained if that card were later connected to an alleged terrorist plot.

Sabeel Ahmed himself has not even been charged with membership or association with a terrorist organisation. Last weekend, he was charged with withholding information from police that could have prevented an act of terrorism.

After Haneef was charged, the Howard government ramped up its constant commentary on his case in a renewed effort to blackguard him. Howard said the threat posed by the "menace of Islamic fanaticism was real, constant and insidious" and Howard warned that the war on terrorism would continue for decades. He said the allegations made against Haneef were a reminder to Australians: "Just as we seemed to be taking our mind off the issue and seemed to be relaxing into a new and different era, we are reminded of the ever-present threat."

On Sunday, Ruddock prejudiced Haneef's bail application by appearing on national television to publicise a police search of a house in Western Australia, emphasising that it, too, was connected to doctors and the UK bombings. Ruddock praised the AFP for working "assiduously in relation to issues arising from the linkages with the UK bombings" and foreshadowed even tougher legislation.

This morning, Rupert Murdoch's newspapers chimed in with reports that "damning confidential police briefings" led to Andrew's cancellation of Haneef's visa. Based on this unspecified material, obviously leaked from within the government or the AFP, the *Sydney Daily Telegraph* reported that the "relatively minor charge" against Haneef "might be followed by other indictments".

With opinion polls continuing to point to the government's defeat at this year's federal election, everything about its response points to an increasingly desperate effort to stoke new fears of terrorism and avoid acute embarrassment over the lack of evidence against Haneef. Even Murdoch's outlets, which have ardently promoted the "war on terror," warned the government last weekend that Haneef's prolonged detention without charge was eroding "public confidence" in the anti-terrorism laws and associated police powers.

Despite the widespread condemnation of the government's actions, the Labor Party gave the government immediate "in-principle" support for the visa cancellation, just as it backed Haneef's 12-day detention without charge. While calling for a further briefing, Labor's immigration spokesman, Tony Burke, said: "It appears he [Minister Andrews] has acted entirely appropriately." Burke did his best to join the witch hunt against Haneef, declaring, "Federal Labor takes a hard line on terrorism and on those who support terrorists."

Since 2002, Labor, both federally and at state and territory government level, has voted for all the police-state laws introduced on the pretext of protecting people from terrorism. Now, there are signs that Haneef's detention, following that of Mamdouh Habib and David Hicks in Guantánamo Bay, and the Jack Thomas case in Australia, has begun to cause deep unease among ordinary people. The response of both the government and Labor has been to ratchet up the "war on terror," trampling over fundamental legal principles and democratic rights in the

process.



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