



THE NAIT TIMES



NAIT Welcomes Vindication by Fifth Circuit Court of Appeals

Inclusion of NAIT and other Muslim organizations on Co-conspirator List was based on 'untested allegation', and a Violation of Constitutional Rights

On October 20, 2010, the Fifth Circuit Court of Appeals in New Orleans issued its verdict in the Appeal filed by the North American Islamic Trust (NAIT) against the July 1, 2009 sealed Order of the District Court for the Northern District of Texas. District Court's sealed Order had been issued in the matter of publicly naming NAIT (ISNA, and 244 other Islamic organizations and individuals) as "unindicted co-conspirators" (UCC) by a Dallas prosecutor in an attachment to the Government's criminal pre-trial brief in the trial of Holy Land Foundation for Relief and Development (HLF).

The Fifth Circuit Court of Appeals rebuked the naming of NAIT and 245 American Muslim organizations and individuals as UCC. Circuit Court, composed of two Bush and one Clinton appointees, unanimously granted NAIT motion to unseal the District Court's order which declares that "the Government had violated the Fifth Amendment Rights" of these Islamic organizations and individuals.

The Appeals Court noted that "the Government does not contest the holding that NAIT's Fifth Amendment rights were violated". The Appeals Court states (citing the Government brief): "In fact, the Government has gone so far as to argue that it never, in the course of this litigation, labeled NAIT a criminal co-conspirator." For its part, the government admitted that it meant to list NAIT as Joint Venturer (without any criminal intent, "JV"), and not as UCC. It described its error as an "unfortunate oversight." The Appeals Court asserted that, "Therefore, even if NAIT could have been accurately characterized as a joint venturer, that characterization does not carry an inherently criminal connotation."

Explaining its decision to unseal, the Appeals Court agreed with NAIT that the effect of the sealing was "to leave NAIT hamstrung in its ability to mitigate the damage done by its public identification as a possible co-conspirator in the activities of the HLF Defendants."

The Appeals Court stated that: "It should be clear, therefore, that NAIT's inclusion in the (Government HLF pre-trial) brief was simply an untested allegation of the Government," It describes some of the District Court's arguments as "not relevant", "went outside the bounds" and "not grounded in any legal rule that would give that conclusion substance and boundaries."

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NAIT VISION

A righteous and thriving American Muslim community with sound and expanding human, economic, financial, intellectual, and waqf resources and institutions

Government: Listing 246 Muslim Organizations & Individuals was “Legal Tactic”

Litigation History: On July 27, 2004 the United States Department of Justice announced that a federal grand jury had issued a forty-two count indictment against HLF and seven individuals. The indictment charged the defendants with engaging in a criminal conspiracy and providing support to Hamas. NAIT was not named or identified in the Indictment and the charges and allegations in the Indictment had nothing to do with NAIT. Both the Indictment and Superseding Indictment filed on November 30, 2005, alleged the existence of a criminal conspiracy consisting of un-named co-conspirators “known and unknown” to the grand jury. However, in its May 29, 2007 pre-trial brief, the government asserted that the defendants engaged in a criminal conspiracy to support Hamas with “a host” of individuals and entities it identified as “unindicted coconspirators.”

Attached to the government’s HLF brief was a list of 246 individuals and organizations, including such organizations as ISNA, CAIR, NAIT, etc., characterized by the government as “co-conspirators” or “joint venturers” to the criminal conspiracy (the “List”). NAIT was included in the List and identified as one of the several “individuals/entities who are and/or were members of the U.S. Muslim Brotherhood.” The government, however, provided no explanation, either in its sixty-three page brief or in any public statement, for its description of NAIT as an UCC or its designation of NAIT as a “member” of the Muslim Brotherhood. The only explanation proffered by the government was by the lead prosecutor in the HLF case that the List was a mere “legal tactic” designed to provide the government an avenue through which to introduce evidence against HLF at trial under Federal Rule of Evidence 801(d)(2)(E). However, at no point during the course of both the trials of HLF in 2007 and 2008, the government introduced, or sought to introduce, a single statement, document or exhibit relating to NAIT under the Federal Rule of Evidence 801(d)(2)(E).

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District Court: Constitutional Rights of ISNA & NAIT were violated

District Court's Sealed Order: Before the HLF second trial commenced, NAIT and ISNA filed a Motion in District Court in Dallas on June 18, 2008, asserting the injuries NAIT and ISNA suffered as a result of the government's public branding as UCC. Both asked the District Court (Judge Solis) to declare the government's public naming of NAIT as an UCC and/or JV to be a violation of their Fifth Amendment rights, and order the government to expunge their names from the List or any publicly filed government document referring to them as UCC/JV.

On July 1, 2009, the District Court issued a non-public, sealed ruling ("Order") that the Government's public labeling of NAIT and ISNA – an unsupported accusation made without being formally charged of a crime and without being afforded a forum in which to prove the government wrong – constituted a violation of their due process constitutional rights under the Fifth Amendment. As a remedy, the District Court ordered the Clerk to seal the List and "all pleadings, records, documents, orders and other papers concerning the Motion of NAIT and ISNA; surprisingly it also sealed the Order. NAIT and ISNA requested the District Court that the Order be reflected in a public docket entry that stated, among other things, that NAIT's Fifth Amendment rights had been violated. Government objected. Finally, Judge Solis merely posted a docket entry reading "SEALED Memorandum and Opinion and Order...GRANTS IN PART AND DENIES IN PART."

As a result, NAIT and ISNA and others were barred by the District Court from telling the community, or even confirming to the press, that the court had found the government wrong in its unsupported public accusations of criminal conduct, while the Islamophobes continued maligning them and other Islamic organizations and individuals. That was unacceptable to NAIT. NAIT expeditiously filed a Notice of Appeal to preserve its rights to appeal the remedy of merely sealing. Ultimately, NAIT filed an appeal in the higher court, the Fifth Circuit Court of Appeals in New Orleans. NAIT knew that the litigation costs will be excessive, but establishing the honor and innocence of the Muslim community at large is priceless.

NAIT's Appeal: NAIT appreciated that the District Court correctly concluded that NAIT's Constitutional rights were violated by the Government, and the District Court also correctly recognized the public ignominy NAIT suffered as a result of that. NAIT argued, however, that the District Court erred in fashioning the remedy for that violation, and to make matter worse, kept its ruling confidential from the public, thereby perpetuating NAIT's injury. NAIT also challenged Judge Solis' analysis of the HLF trial's exhibits as if those showed any "association" with HLF. Seeing merits of the NAIT's arguments, Appeals Court granted NAIT's request for Oral Arguments. After Oral Arguments by NAIT's counsel and the government's lawyer before a three-judge panel on August 30, 2010, Appeals Court issued its ruling on October 20, 2010.

Contd. on Page 4: Court of Appeals' Verdict

THIRD-PARTY BLOGS:

The Holy Land Foundation trial and the three Muslim groups:

<http://blogs.jta.org/politics/article/2010/11/26/2741913/the-holy-land-foundation-trial-and-the-three-muslim-groups>

Appeals court says inclusion of Muslim groups on co-conspirator list based on 'untested allegation'

<http://www.prnewswire.com/news-releases/cair-court-says-government-violated-muslim-groups-rights-108772964.html>

Prosecutor Who Violated Rights of Islamic Groups by Accident is Now U.S. Attorney:

<http://www.mainjustice.com/2010/10/21/prosecutor-who-violated-rights-of-islamic-groups-by-accident-is-now-u-s-attorney/>

Muslim group gets mixed ruling on Hamas reference: <http://www.jta.org/news/article/2010/10/22/2741407/court-removes-coconspirator-tag-from-muslim-groups>

Court removes 'co-conspirator' tag from Muslim groups: http://www.jewishjournal.com/nation/article/court_removes_co-conspirator_tag_from_muslim_groups_20101022/

BOTTOM-LINE

- 1. Our community can successfully redress any injustice done to it by any quarter, through our judicial system.
- 2. Government cannot just accuse someone of being a criminal – using unfounded and untested accusations -- without giving them a forum to defend themselves or clear their name.
- 3. Publicly accusing American Islamic organizations and individuals through an intentional smear campaign may embolden the Islamophobes in their profession of hate mongering, but not for long.
- 4. Design of Islamophobes can be foiled by law-abiding national Islamic organizations with the support of a united American Muslim community.

Appellate Court Verdict

Appellate Court sided with NAIT in its appeal against the Government:

- Appeals Court affirmed the District Court’s ruling that NAIT’s Fifth Amendment rights were violated by being publicly listed as one of 246 unindicted coconspirators/joint venturers (“the List”).
- Appeals Court criticized the District Court for abusing its discretion by forbidding NAIT from telling the public that its constitutional rights were violated by the Government.
- It puts the government on record that it never intended NAIT to be branded a “criminal coconspirator”. Appeals Court affirmed the District Court’s findings that NAIT did not take part “in a criminal conspiracy to support Hamas.”
- Appeals Court called NAIT’s inclusion in the List as “simply an untested allegation of the Government, made in anticipation of a possible evidentiary dispute that never came to pass.”; mark the court’s distinction between ‘untested allegation’ and ‘evidence’, a distinction the Islamophobes loathe to acknowledge..
- Appeals Court went further than simply expunging NAIT’s name from the List; doing so would have permitted Islamophobes to allege that expunging of NAIT’s name was done on technical grounds and not on any substantive basis. Instead, Appeals Court rejected the District Court’s analysis of the basis for not expunging NAIT from the List, branding it as “not grounded in any legal rule that would give that conclusion substance and boundaries.”

The Department of Justice is now investigating whether the Dallas prosecutors engaged in serious misconduct, in violation of “Department policy and established legal principals” (Assistant Attorney General, March 18, 2010).

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