

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 8:03-cr-77-T-30TBM

v.

SAMI AMIN AL-ARIAN,
SAMEEH HAMMOUDEH,
GHASSAN ZAYED BALLUT,
HATIM NAJI FARIZ

Defendants.

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**SAMI AL-ARIAN'S MOTION TO DISMISS
COUNT 1 OF THE INDICTMENT**

COMES now the Accused Dr. Sami Al Arian, by counsel, and moves this Honorable Court for the entry of an Order dismissing count (1) of the above captioned indictment against the accused. As grounds for the aforesaid, the Accused avers that the use of RICO in the manner it is utilized by the government in the instant case violates the First Amendment of the United States Constitution.

Count (1) of the Indictment charges a RICO conspiracy in violation of 18 U.S.C. 1962(d). The government must prove five elements to establish a substantive RICO conviction:

- (1) The existence of an enterprise;
- (2) The enterprise affected interstate commerce;
- (3) The Accused was employed by or associated with the enterprise;
- (4) That he participated in the conduct of affairs of the enterprise; and,
- (5) That he participated through a pattern of racketeering activity.

In the instant case, Dr. Al-Arian is not charged with a substantive RICO offense. Dr. Al-Arian is charged with a RICO conspiracy, thus the government will seek to prove that through Dr. Al-Arian's words or actions he objectively manifested an agreement to participate in the conduct of the affairs of the enterprise through the commission of two or more predicate crimes. The concern is that many of Dr. Al-Arian's words and much of his actions involve the appropriate exercise of his First Amendment rights, rendering the use of RICO inappropriate and dangerous in this instance.

As previously noted in our earlier motion, the P.I.J. has never been involved in an act of violence in the United States according to the United States State Department. Undeniably, the P.I.J. has reacted violently to what it views as an illegal occupation of Palestine by the Israelis.

The United Nations Security Council, in Security Council Resolution 242 has recognized that the continued occupation of Palestine by Israel is illegal.¹ General Assembly Resolution 3236, November 22, 1974, recognizes the Palestinian's right to self determination, 47 resolutions of the United Nations call, demand, express deep concern, censure, deplore, deeply deplore, strongly deplore Israel with respect to its activities regarding its neighbor, Palestine. On September 21, 2004, in his remarks to the United Nations, the President of the United States called upon Israel to end the "daily humiliation of the Palestinian people."

There is little doubt that the illegal Israeli occupation of Palestine has resulted in serious injuries, including death to individuals of Palestinian descent. It is also clear that this long running dispute has been a concern for virtually all world bodies. Often an

¹ Failure to abide by U.N. resolutions has recently been given as grounds for a pre-emptive invasion for purposes of regime change.

oppressed people develop reactions to their oppression. These actions often result in political movements, some of which are nonviolent, some violent, and some are a combination of both advocates of violence and nonviolence.

Since the ultimate goal of the violent and nonviolent resistance is often the same, alliances are often struck. South Africa, Israel itself are two examples of this. Even here, in the United States, the Civil Rights movement often engaged in violent and nonviolent debate. The students rights movement also struggled with this issue of violence vs. nonviolence, as the Students for a Democratic Society turned first to the weathermen and finally to the weather underground. The oppressed must always struggle with the best way to overcome their oppression.

In the instant case, the facts established that Sami Al-Arian could have stayed in the Middle East and carried a gun or strapped a bomb to his waist and killed Israelis or Americans. However, the government is forced to concede that Dr. Al-Arian is himself, not accused of committing a single act of violence. In fact, the Magistrate, after hearing extensive evidence about Dr. Al-Arian's outstanding civic record was forced to concede that there was absolutely no evidence of violence in the history of the Accused.

Thus it is clear that whether Dr. Al-Arian was a member of or associated with the P.I.J., he made a personal choice that his role was one of nonviolence. However to punish Dr. Al-Arian, the government has fashioned a RICO conspiracy and has utilized Dr. Al-Arian's nonviolent conduct as the bridge between him and the P.I.J.

First Amendment activity permeates this RICO conspiracy. In the instant case, the government, through the use of RICO, seeks to utilize Dr. Al-Arian's words (advocacy for the Palestinian cause) and his actions (setting up conferences for people to exchange

ideas, advocacy for Muslim civil rights and liberties) to establish the words and actions sufficient to include Dr. Al-Arian in a violent RICO conspiracy. One need only review the indictment to discern the array and scope of First Amendment activity.

Additionally, by the RICO conspiracy in count (1), the government seeks to criminalize activity that was not criminal in 1984. Neither the bar to fundraising for the P.I.J. nor the prohibition regarding material support existed in 1984. By the utilization of a RICO conspiracy, the government criminalizes activity that the Accused had no notice was criminal at the time it was undertaken. When you add to this mix, the notion that since money is fungible, any contribution to the P.I.J. is a contribution toward violence, *regardless* of how the money was solicited or the intention of the contributor. In 1984, how was the Accused to know that if he solicited a contribution, this was going to be considered money contributed to further violence, regardless of how the money was utilized?

In this matter the government has the ability to utilize specific statutes that govern the conduct that it seeks to prohibit, see counts (2) through (4). The expansion of the RICO statutes into the First Amendment area clearly raises a chill and a specter of selective prosecutions. Organizations that support our predominate political views escape liability. Organizations supporting political views we happen to disagree with are subject to extended RICO liability. Thus an individual associated with the P.I.J. could raise his case in the hallways of the U.N. However, if he stepped outside into Manhattan and said the same things, his words and acts could form the basis of a RICO conspiracy.

Under the government's theory, words or actions which express any solidarity with the Palestinian cause becomes "an act in furtherance of RICO." Expressions of

Palestinian suffering become acts in furtherance of RICO; open meetings where ideas and solutions are expressed candidly and in public are “acts in furtherance of a RICO conspiracy”; supporting Arab American rights publicly are acts in furtherance of RICO conspiracies (See paragraph 41 of the Indictment). The authors of RICO could not have intended that it would be utilized in this manner. RICO, when utilized in the political arena, has great potential for harm and has the potential to destroy the First Amendment.

CONCLUSION

Counsel reasserts all arguments made in their earlier Motions to Dismiss on First Amendment grounds and incorporates them herein. For the foregoing reasons and any others as may arise, we ask that this Court dismiss Count 1 of the indictment.

Dated: 29 October 2004

Respectfully submitted,

/s/Linda Moreno

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2004, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and by U.S. Mail to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno
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Attorney for Sami Al-Arian