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March 29, 2007

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Via Facsimile

Nihad Awad
Executive Director
Council on American-Islamic Relations
453 New Jersey Avenue, S.E.
Washington, DC 20003

Dear Mr. Awad,

Thank you for your extended response to my letter. I think a brief reply is in order.

Of course the Becket Fund wishes to uphold the Constitution and prevent violations of religious and civil rights. As I noted in my opening letter, we have represented virtually every major faith tradition, including Islam, and fully intend to continue doing so. We do not believe our attitude toward *Shqairat, et al. v. US Airways Group, Inc., et al.* is inconsistent with that objective. We are not taking sides in the lawsuit itself, nor do we think it is improper to have filed it. In fact I believe I noted in my initial letter that the airlines were “fair game” to such a suit. So, of course, is the government. I have no idea whose version of the facts is correct, or who will therefore prevail, but the idea of such a suit is not outside the civil rights tradition.

Nevertheless, targeting the John Does for suit is a very different thing. You point out that the imams’ attorney, Mr. Mohammedi, has backed down to some extent, and now threatens only “those who may have knowingly made false reports against the imams with the intent to discriminate against them.” This is certainly a step in the right direction. But it does not go nearly far enough.

There is no way Mr. Mohammedi can possibly determine whether the John Does “*knowingly* made false reports” against his clients “with the *intent* to discriminate against them” without taking their testimony under oath, at least during pretrial discovery. That prospect alone, of being dragged into costly court proceedings, will certainly provide a great disincentive for other citizens to come forward with their own suspicions.

This is all the more true when the only example the complaint continues to give of a John Doe “who may have knowingly made false reports against the imams with the intent to discriminate against them” is of the elderly gentleman who observed them praying while talking on his cell phone. There are no

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indications whatsoever that anyone falsely accused them of, say, carrying weapons, wearing shoe-bombs or the like. And in any event, any such extreme, false claims would surely be investigated and prosecuted by a government that takes even jokes about such things very seriously. No, the behavior Mr. Mohammedi seems bent on at least investigating under oath is simply that of ordinary people voicing their suspicions, as both the government and the airlines are repeatedly exhorting everyone to do.

To be sure, people sometimes do make false reports with a secret intent to discriminate. And to be sure again, this is a serious injustice. Nevertheless there are many instances where the law limits questioning people, who may have excellent information as to whether an injustice has been committed, in the service of a compelling governmental interest. A priest, for example, may not testify against a murder suspect who has confessed his guilt to him, even if the priest wishes to. Thus, even the attempt to bring a murderer to justice, as profound an interest as that is, must nevertheless give way to society's overriding interest in protecting the confidentiality of certain communications between the clergy and their congregants generally. Likewise, spouses may not be compelled to testify against one another, or parents against their children.

The same has to be true of airline passengers and the appropriate authorities in cases involving suspicions of terrorism. The timeframe for investigating such suspicions is very compact and the lives of a great number of people are at stake. We as a society simply cannot tolerate creating legal disincentives to people coming forward with their suspicions, even if that occasionally results in it being difficult to determine whether an injustice has been committed. Does this not impinge on religious liberty? To some extent at least, it certainly does. But the entire point of our offer to represent any John Does Mr. Mohammedi may sue, is that religious liberty is not absolute. It must yield before the government's legitimately compelling interests. And the prevention of terrorism aboard airlines is certainly such an interest. As you note, making false reports with the intent to discriminate "is a criminal offense." Someone who believes that he or she has been the target of such a report can always file a criminal complaint which it will be the government's duty to investigate. I recognize this is not wholly satisfactory, but it may in fact be the best that is available under these circumstances.

As for the headline of our press release referring to "legal terrorism," it was not meant as an insult. Rather, it was a reference to the line in the letter that said, "The public perception will likely be one of Muslim lawyers running amok, trying to change public behavior by sowing fear of being suddenly hit by an unexpected lawsuit." I think the public outcry over the targeting of the John Does proves the point I was trying to make: That legal tactic is self-defeating. Had Mr. Mohammedi and his clients pursued only the airlines and the government, and portrayed themselves as reluctant plaintiffs, suing as a last resort in order to vindicate a principle of justice, public opinion might well have been on their side. But by striking the pose of angry and vengeful victims bent on retribution against even ordinary citizens, they've managed to alienate nearly

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everyone. In the process, they are reinforcing precisely the caricature they say they are trying to eliminate.

You mention that you're more than willing to meet to discuss this case. So am I. But let me be clear: our opposition to using religious liberty as an argument for suing individual citizens who report their security suspicions is not diminished. We continue to believe this is a dangerous inflation of the whole idea of religious liberty. It debases the currency of that concept. And we will continue to vigorously oppose it.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kevin J. Hasson', written in a cursive style.

Kevin J. Hasson
President
Becket Fund for Religious Liberty
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