

Dr. Rafil Dhafir Case Summary

Since the events of September 11, 2001, the government has raided and closed down six major Muslim charities and many smaller Muslim charities, accusing each of funding terrorism. In each case, alleged “guilt by association” meant that the charities’ assets were frozen and their principals arrested. Yet despite new investigative powers, government authorities have failed to produce evidence of terrorist financing by any of these Muslim charities. Dr. Rafil Dhafir, an Upstate New York oncologist, is the founder of one of these charities.

As a direct response to the humanitarian catastrophe created by the Gulf War and U.S. and U.K. sponsored UN sanctions on Iraq, Dhafir founded the charity Help The Needy (HTN). For 13 years he worked tirelessly to help publicize the plight of the Iraqi people and to raise funds to help them. According to the government, Dhafir donated \$1.4 million of his own money over the years. As an oncologist, he was also concerned about the effects of depleted uranium on the Iraqi population which was experiencing skyrocketing cancer rates.

Born in Iraq in 1948, he completed medical school before immigrating to the U.S. in 1972; he has been a U.S. citizen for 30 years. He was a founding member of the Islamic Society of Central New York (ISCNY) and for about seven years, when there was no regular imam, he served as the ISCNY spiritual leader. He was an oncologist in Rome, NY, an underserved area and, until his arrest, he and his African-American wife, Priscilla, were very active in Syracuse civic affairs. He often spoke at events and on local TV and radio about health and cancer care.

Seven government agencies investigated Dhafir and Help the Needy. They intercepted his mail, email, faxes and telephone calls; bugged his office and hotel rooms; went through his trash; and conducted physical surveillance. They were unable to find any evidence of links to terrorism and *no charges of terrorism were ever brought against Dhafir.*

Yet Dhafir and other HTN associates were subjected to high-profile arrests in the early morning of February 26, 2003, just weeks before the U.S. invasion of Iraq. Simultaneous to the arrests, between the hours of 6 and 10 a.m., law enforcement agents interrogated 150 predominantly Muslim families because they had donated to HTN.

Dhafir was never released. Held without bail for 19 months before trial, this greatly impeded his ability to prepare his defense.

The first indictment against Dhafir contained 14 charges related only to the Iraq sanctions. Later, when Dhafir refused to accept a plea agreement, the government piled on more charges and, after a lengthy trial, he was found guilty on 59 counts of: violating federal regulations related to economic sanctions imposed against Iraq, money laundering, mail and wire fraud, tax evasion, visa fraud—all related to running the charity*—and Medicare fraud.

Medicare charges usually involve fictitious patients and made-up illnesses; Dhafir's case had none of this. The government never contested that patients received care and chemotherapy medicine. Its argument for all 25 counts was, because Dhafir was sometimes not present in his office when patients were treated, the Medicare claim forms were filled incorrectly and he was not due *any* reimbursement for treatment or for the expensive chemotherapy his office had administered.

From the outset of this case the government was duplicitous**. Using unfair tactics and innuendo, and aided by a compliant media, the government distorted Dhafir's community image from a compassionate humanitarian into a crook and supporter of terrorists.

Unfair tactics: on the day of the arrests then-Attorney General John Ashcroft announced that “funders of terrorism” had been arrested. And just before Dhafir's trial began in October 2004, then-New York Governor Pataki described the case as a “money laundering case to help terrorist organizations ... conduct horrible acts,” an announcement perfectly timed to reach potential jurors.

Innuendo: first prosecutors successfully petitioned the presiding judge to exclude any mention of terrorism from the proceedings. Then, throughout the trial, the prosecution hinted at more serious (terrorism) charges, but now the defense was prohibited from addressing these inflammatory innuendos head on.

Dhafir was convicted of violating International Economic Emergency Powers Act (IEEPA), white-collar crimes related to his charity, and Medicare fraud. Yet he is now serving 22 years (release date 04/26/2022) in Federal Correctional Institution Allenwood Low, White Deer, Pennsylvania, for a crime he was never charged with in a court of law—money laundering to help terrorist organizations.

Attorney Peter Goldberger exhaustively appealed Dr. Dhafir's case through the three tiers of the federal court system without the courts shaving a day off his sentence.

Through the Muslim Legal Fund of America The Dr. Dhafir Support Committee obtained Charles Swift who submitted a 2255 habeas motion on behalf of Dr. Dhafir, his last remaining legal remedy, on grounds of ineffective trial counsel, discrimination and the fact that prior investigations involving terrorism and Medicare fraud had been closed due to lack of evidence, using material from an on-going FOIPA request . This motion was rejected by the government on April 1, 2015 and was appealed on May 12, 2015. This appeal was rejected by Judge Mordue on June 25, 2015, but was appealed to US Court of Appeals for the second circuit on September 4, 2015. The second circuit summarily denied, without benefit of oral argument, his application for a certificate of appealability on January 5, 2016.

At the same time, another attorney, Kathy Manley, challenged Dr. Dhafir's classification so that he could be transferred to Otisville NY FCI near his home town of Fayetteville, N.Y. Kathy's initial motion was rejected and she appealed on March 6, 2015. This appeal was rejected on 12/27/16.

When Dr. Dhafir was incarcerated at Federal Medical Center, Devens, MA he was detained in a Solitary Housing Unit without cause for over two months, and for a second time immediately prior to his transfer, after the tape of the interaction responsible for his stay in the SHU was lost. At Devens Dr. Dhafir had a required medicine withheld for a week, and was being made to use an upper bunk despite a recent examination showing his hernias had returned. The offices of Senator Gillibrand and Warren have been instrumental in returning him to the general population from the SHU and in restarting the FOIPA request which was arbitrarily closed. They have been contacted regarding the bunk issue which has been resolved and the transfer request which was also subsequently resolved.

On March 8, 2019 Warden D.K. White of FCI Allenwood Low replied to an inquiry from Senator Schumer's office regarding Dr. Dhafir's medical condition and herniated disk. Although Rafil reported being in constant pain and difficulty walking, the warden's letter contradicted that.

In early April of 2019, Dr. Dhafir with the help of Attorney Kathy Manley, applied to the warden of FCI Allenwood Low for compassionate relief. The warden denied it in 24 hours. Kathy Manley is helping Rafil apply for the new elderly home confinement program that was in the First Step Act. However that was denied on September 26, 2019 by the warden.

In early May of 2019 Attorneys Peter Goldberger and Kathy Manley filed a motion to reduce Rafil's sentence on account of "extraordinary and compelling circumstances" (the legal term, often casually but inaccurately called "compassionate release"). This motion was made possible by the First Step Act, signed into law in late December, which eliminated the prior power of the BOP as the only entity that could file such motions. The grounds are a combination of age, time-served and health. In fact, Rafil qualifies under two different combinations of criteria, and soon will also fit a third category. First, he is over 65 (actually, he is 71), has served more than ten years, and is suffering a deterioration in his health due to the aging process. The motion is supported by a letter from his brother, Dr. Mazin Dhafir, which details the pertinent medical conditions. Second, his medical conditions affect his ability to handle daily life in prison. This is a separate criterion for relief. And third, as of August 26, 2019, he qualified as a prisoner over age 65 who has served 75% of a sentence of more than 13.3 years, which again is enough to qualify. The US Attorney recommended this motion be denied. Peter Goldberger and Kathy Manley submitted a motion in reply. On July 19, 2019 Judge Mordue ordered that their motion for early release from custody be denied.

Dr. Dhafir is scheduled to be released on 11/24/21

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