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March 7, 2023

Honorable Kimberly C. Priest Johnson, Magistrate Judge  
United States District Court  
Eastern District of Texas  
Plano, Texas 75024

Re: U.S.A. v. Hemani, Case No. 4:23-cr-18

Dear Judge Johnson:

We, the Center for Constitutional Rights (“CCR”) and Muslim Advocates, write as concerned civil rights organizations on behalf of Ali Danial Hemani, a young 25 year-old Muslim-American whose motion for pretrial release is currently pending before this Court. As organizations with decades of experience fighting to end racial and religious discrimination in this country, including against Muslims, the prosecution’s proffered evidence opposing Mr. Hemani’s motion is of the sort with which we are distressingly all too familiar, where religion and national origin are cast as proxies for danger and risk. We urge the Court to reject the misuse of Mr. Hemani’s faith and identity as it considers his motion, and to strongly caution the government against further arguments premised on profiling. Ratification of the government’s arguments by this Court would not only impermissibly deny this young man his liberty, it would dangerously give such private and base stereotypes the force of law and signal to Muslim Americans – and all Americans – that Muslim identity is a legitimate basis to deny Muslims equal protection of the law.

### **I. Organizational Interest**

CCR is a non-profit legal, advocacy and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights since 1966.

Founded in 2005, Muslim Advocates is a national civil rights and advocacy organization

working to guarantee freedom and justice for people of all faiths.

Our organizations have worked intimately over the decades with racial and religious minority communities in the United States to fight unlawful discrimination in its myriad forms. After 9/11 in particular, when Muslim communities in and outside the United States came under particular scrutiny and attack, we saw and challenged, repeatedly, the unlawful use of national origin, ethnicity and religion as a basis for suspicion and surveillance,<sup>1</sup> detention,<sup>2</sup> ad-hoc regimes of confinement,<sup>3</sup> and other restrictions on personal freedom and movement.<sup>4</sup> In the context of federal criminal prosecutions specifically, we and other human rights groups documented and exposed such profiling by the government to ensnare Muslims for arrest and justify infringements on due process during the course of criminal proceedings.<sup>5</sup> We represented individuals subjected to the harshest of sentences and conditions not because of their actual alleged conduct, but the atmospherics around it – the fear and deference the prosecution was able to create and manipulate based on political and religious stereotypes.<sup>6</sup>

Indeed, we witnessed the systematic erosion in Muslim communities of some of our most fundamental rights – to due process, a fair trial, equal protection, privacy; rights that separate a democracy from a police state. Today, in 2023, over 20 years after the acute fear of 9/11 that resulted in so much unfounded targeting and harm of Muslims in the United States, when lessons should have been learned, one wishes the prosecution’s arguments about Mr. Hemani’s supposed danger to the community – arguments rooted in painful stereotyping and mischaracterization of his religion and origins – were only a vestige of times past, when Islam and the political dynamics of particular countries were so readily used as stand-ins for violence and threat, and not the present day.

## **II. Criminalization of Mr. Hemani’s Racial and Religious Background**

In its motion in support of pretrial detention, the prosecution outlines Mr. Hemani’s “international contacts,” specifically citing (1) his racial background and ties to “countries that do not have diplomatic relations with the United States [The Islamic Republic of Iran (Iran) and the Republic of Iraq (Iraq)];” (2) his family members living in Iran and Pakistan; and (3) that he is a “dual citizen in the Islamic Republic of Pakistan (Pakistan) and the United States.” Gov’t Br. at 5. By underlining that these three countries, commonly referred to simply as Iran, Iraq and

<sup>1</sup> *Hassan v. City of New York*, 804 F.3d 277 (2015) (challenge to the New York Police Department’s suspicionless surveillance of Muslim-Americans in New Jersey solely because of their Muslim identity). <sup>2</sup> *See, e.g., Ziglar v. Abbasi*, 582 U.S. 120 (2017) (challenge to mass detention of Muslim, South Asian and Arab men after 9/11 as “terrorism suspects” based solely on their race, religion, ethnicity, and immigration status). <sup>3</sup> *Aref v. Lynch*, 833 F.3d 242 (2016) (challenge to experimental prison units to which Muslim prisoners were disproportionately designated). <sup>4</sup> *Tanzin v. Tanvir*, 141 S.Ct. 486 (2020) (challenge to placement of Muslim individuals on the “No Fly List” in retaliation for their refusal to act as informants against their religious communities).

<sup>5</sup> *See* Human Rights Watch, *Illusion of Justice: Human Rights Abuses in U.S. Terrorism Prosecutions* (2014), available at <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions>.

<sup>6</sup> *See, e.g.,* Center for Constitutional Rights, *Statement of Faisal Hashmi on Behalf of Family of Syed Fahad Hashmi* (May 3, 2010), available at <https://ccrjustice.org/home/press-center/press-releases/statement-faisal-hashmi-behalf-family-syed-fahad-hashmi>.

Pakistan, are “Islamic Republics,” the prosecution seeks to weight Islamophobic tropes. These regional connections are discussed not only in arguing that Mr. Hemani is a flight risk because arguably he could not be extradited from Iran or Iraq, but as part of a “holistic” analysis of Mr. Hemani’s supposed dangerousness. *Id.* at 1. The government’s argument is in essence that because Mr. Hemani travels to Muslim-majority countries where “supporters” of a “cause advocating violence against the United States” may someplace be located, he is by remarkably attenuated association also liable to violence – even if his only reason for travel is to visit his brother and make religious pilgrimage. *Id.* at 4.

The prosecution’s dangerousness analysis also includes supposed evidence based on First Amendment-protected activity – and not even by Mr. Hemani himself, but by his mother. The government points to a brief social media post without context as a call to violence by his mother, and thus a connection to violence by Mr. Hemani himself by virtue of being her son. This shows not only a profound misunderstanding of Islam, as the defense discusses at length in its motion for pretrial release, *see Def’s’ Mot.* at 9-11, but is also irrelevant to an assessment of Mr. Hemani’s individual risk and motivations as a grown adult.

The prosecution’s discriminatory arguments are reminiscent of widely-criticized state sponsored Countering Violent Extremism (“CVE”) efforts,<sup>7</sup> which historically directed government and law enforcement officials to identify activities widely practiced within the Muslim community as indicators of radicalization.<sup>8</sup> For example, one of the most prominent FBI reports among government and law enforcement officials established that “[w]earing traditional Muslim attire,” [g]rowing facial hair, “[f]requent attendance at a mosque or a prayer group,” “[t]ravel to a Muslim country,” and [i]ncreased activity in a pro-Muslim social group or political cause” were predictors of “an individual going through the radicalization process.”<sup>9</sup> Not only have CVE efforts been roundly condemned by civil society groups and discredited by decades of scholarly research,<sup>10</sup> but they have also been exposed as ineffective by the government’s own studies.<sup>11</sup>

<sup>7</sup> Brennan Ctr. for Justice, *Why Countering Violent Extremism Programs Are Bad Policy* (2019), *available at* <https://www.brennancenter.org/our-work/research-reports/why-countering-violent-extremism-programs-are-bad-policy> (“CVE is a counterterrorism strategy that recruits community leaders, social workers, teachers, and public health providers ostensibly to assist the government in identifying individuals that may be ‘at risk’ of becoming violent extremists [ . . . ] and has “been discredited by decades of scholarly research.”).

<sup>8</sup> Counterterrorism Division, Fed. Bureau of Investigation, *The Radicalization Process: From Conversion to Jihad* (2006), *available at* <http://cryptome.org/fbi-jihad.pdf>.

<sup>9</sup> *Id.* at 9; *see also* New York Police Department Intelligence Division, *Radicalization in the West: The Homegrown Threat* (2007), *available at* <https://info.publicintelligence.net/NYPDradicalization.pdf>. <sup>10</sup> *See* American Civil Liberties Union, *Countering Violent Extremism, A Flawed Approach to Law Enforcement*, *available at* <https://www.aclum.org/en/countering-violent-extremism-flawed-approach-law-enforcement>; *see also* Faiza Patel & Meghan Koushik, Brennan Ctr. for Justice, *Countering Violent Extremism* (2016), *available at* <https://www.brennancenter.org/our-work/research-reports/why-countering-violent-extremism-programs-are-bad-policy>.

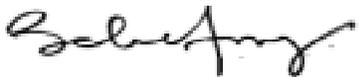
<sup>11</sup> U.S. Gov’t Accountability Off., GAO-17-300, *Countering Violent Extremism: Actions Needed to Define Strategy and Assess Progress of Federal Efforts* (2017), *available at* <https://www.gao.gov/assets/gao-17-300.pdf>

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The prosecution's leaps and twists of logic, and out-of-context statements by secondary speakers are far from meeting its burden of clear and convincing evidence to keep Mr. Hemani detained on the basis of an alleged danger to the community. Disturbingly, the government also sends a chilling message to other Muslims living in the United States – continues to, long after we should have course corrected – about the risks of religious and political speech, and of maintaining familial, religious or cultural ties with given countries based on the United States' diplomatic relations of the day.

In a case our organizations litigated challenging the unlawful surveillance of Muslim communities based on religion and country of origin, the Third Circuit discussed this country's dark history of religious discrimination and how easily it bleeds into other protected areas, including national origin and race. It warned against "tampering with religious affiliation" as "distinctions between citizens on religious grounds pose a particularly acute danger of stigma and stirred animosities." *Hassan v. City of New York*, 804 F.3d 277 (301-04) (internal citations omitted). We respectfully urge the Court to reject the prosecution's blatantly Islamophobic arguments in Mr. Hemani's case and beyond.

Sincerely,



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(stating "[t]he federal government does not have a cohesive strategy or process for assessing the overall CVE effort"; "we could not determine if the United States is better off today than it was in 2011 as a result of these tasks").