

9/11 and the LA 8  
by David Cole

David Cole represents the LA 8.

The next time you hear Attorney General Ashcroft dismiss complaints about civil liberties abuses under the USA Patriot Act as "built on misrepresentation supported by unfounded fear [and] held aloft by hysteria," consider the plight of Khader Hamide and Michel Shehadeh. Born in the West Bank, both men came to the United States in their college years and have now lived here thirty-two and twenty-four years, respectively. They are lawful permanent residents and hard-working fathers--Hamide supplies luxury coffee shops; Shehadeh runs an Italian restaurant. They have never been charged with even the most minor criminal offense. Yet in September they learned that the government will seek their deportation under the Patriot Act for distributing Palestinian magazines and raising humanitarian aid in Los Angeles more than twenty years ago.

Such activity was legal at that time, and it is plainly protected by the First Amendment. Yet the Bush Administration claims that the Patriot Act authorizes the government to deport the two men. To be sure, Hamide and Shehadeh's troubles did not begin with the Patriot Act, or even with this Administration. Immigration authorities arrested them sixteen years ago with five other young Palestinians and a Kenyan woman--dubbed the "LA 8" by the media--on charges of being affiliated with the Popular Front for the Liberation of Palestine, then the second-largest faction of the Palestine Liberation Organization. The government claimed that the PFLP advocated world communism, making affiliation with it a deportable offense under the McCarran-Walter Act. At the time FBI Director William Webster testified before Congress that none of the eight had engaged in any criminal activity, and that had they been US citizens there would have been no basis for their arrest. In 1989, in a case I litigated with the Center for Constitutional Rights, the National Lawyers Guild and the ACLU, a federal judge declared the McCarran-Walter Act charges unconstitutional. The following year Congress repealed that McCarthy-era law. The government nonetheless pursued deportation under new charges. The federal courts next barred the deportations on the grounds that the government, in violation of the First Amendment, had selectively targeted the group for constitutionally protected political activities. In 1996, however, Congress stripped federal courts of authority to hear selective-enforcement challenges to deportation, and in 1999 the Supreme Court ruled that the cases could go forward.

The Administration's Patriot Act charges render foreign nationals deportable for providing "material support" to any group of two or more that has threatened to use or has used a weapon with intent to

endanger person or property. The government need not show that the support has any connection to terrorist activity. In the Orwellian land of the Patriot Act, distributing magazines becomes "material support." And it gets worse. At the same time, the Administration also announced that it would seek Hamide and Shehadeh's deportation under the original McCarran-Walter Act charges. The statute still technically applies, because its repeal did not affect pending cases.

But what interest does the government have in enforcing a statute that punishes speech and association, was declared unconstitutional fourteen years ago and was repealed by Congress thirteen years ago? It's all in the name of the "war on terrorism," the government will say. But the LA 8 case, seen in Arab-American communities as the prime example of US hostility toward Arab immigrants, has probably done more to undermine that effort than any case in the past twenty years. Immigrants from all over the world have come here, distributed magazines discussing the conflicts back home and sent charitable donations there as well. But the only immigrants in deportation proceedings for doing so for at least a quarter-century have been pro-Palestinian activists.

The vendetta against the LA 8 was a critical reason for the Arab community's deep distrust of the government even before 9/11. The cost of that distrust became clear in the aftermath of the attacks, as the government, evidently with no idea where the terrorist threats might lie, rounded up several thousand Arab and Muslim foreign nationals who had nothing to do with terrorism--further alienating the communities it most needs to cultivate. The latest chapter in the LA 8 case, courtesy of the Patriot Act, will do nothing to make us more secure--and much to make us less free.

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about

David Cole

Legal Affairs Correspondent

David Cole (cole@law.georgetown.edu), The Nation's legal affairs correspondent and a professor at Georgetown University Law Center, is the author of *No Equal Justice: Race and Class in the American Criminal Justice System* (New Press), co-author, with James X. Dempsey, of *Terrorism and the Constitution: Sacrificing Civil Liberties for National Security* (New Press) and author of *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism* (New Press).

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