

October 18, 2010

Patrick Fitzgerald
United States Attorney's Office
Northern District of Illinois, Eastern Division
219 S. Dearborn St., 5th Floor
Chicago, IL 60604

The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

RE: Investigations of Anti-War and International Solidarity Activists

Dear Mr. Fitzgerald,

As a group of concerned organizations, professors and elected officials, we write to denounce the use of sweeping raids and grand juries in your ongoing investigation of anti-war and international solidarity activists in Chicago and Minnesota. We are deeply concerned that your efforts to investigate individuals and organizations engaged in protected political activity has caused a chilling effect, not just on the individual targets of the investigation, but on many individuals engaged in constitutionally protected political dissent.

Grand juries have historically been used to disrupt and undermine political dissent. It is true that “[c]itizens generally are not constitutionally immune from grand jury subpoenas.” *Branzburg v. Hayes*, 408 U.S. 665, 682 (1972). Indeed, the U.S. Supreme Court has held that “[a]lthough the powers of the grand jury are not unlimited and are subject to the supervision of a judge, the longstanding principle that the public has a right to every man’s evidence, except for those persons protected by a constitutional, common law, or statutory privilege, is particularly applicable to grand jury proceedings.” *U.S. v. Dionisio*, 410 U.S. 1, 9 (1973) (internal citations omitted).

But even grand jury proceedings must respect constitutional guarantees. Justice Powell authored the Supreme Court decision in *U.S. v. U.S. District Court for the Eastern District of Michigan, Southern Division, et al.*, wherein he discussed the use of grand juries and their inevitable implications:

As illustrated by a flood of cases before us this Term, we are currently in the throes of another national seizure of paranoia, resembling the hysteria which surrounded the Alien and Sedition Acts, the Palmer Raids, and the McCarthy era. **Those who register dissent or who petition their governments for redress are subjected to scrutiny by grand juries, by the FBI, or even by the military.** Their associates are interrogated. Their homes are bugged and their telephones are

wiretapped. They are befriended by secret government informers. Their patriotism and loyalty are questioned. Senator Sam Ervin, who has chaired hearings on military surveillance of civilian dissidents, warns that 'it is not an exaggeration to talk in terms of hundreds of thousands of . . . dossiers.' . . . More than our privacy is implicated. Also at stake is the reach of our Government's power to intimidate its critics. **When the Executive attempts to excuse these tactics as essential to its defense against internal subversion, we are obliged to remind it, without apology of this Court's long commitment to the preservation of the Bill of Rights from the corrosive environment of precisely such expedients.** (emphasis added) 407 U.S. 297, 329-330 (1972).

In his critique of grand juries, Justice Powell also discussed the impact of FBI investigations of individuals engaged in protected First Amendment activity. Today, the FBI's use of informants in religious institutions¹ and civic organizations² has raised widespread alarm within these communities, inhibiting the expression of constitutionally protected religious activity and political speech. In conjunction with the current FBI raids, the grand jury subpoenas, and ongoing investigations of nonprofit leaders and anti-war activists, such government activity reflects an aggressive assault on political dissent, one which has quickly led to "another state of [national] paranoia," as noted above.

As Justice Powell so clearly stated, even national security investigations are subject to constitutional limits. The aggressive use of grand juries, planting informants in communities and raiding homes reflect precisely the corrosive environment that Justice Powell cautioned against. The recent Supreme Court decision in *Holder v. Humanitarian Law Project* makes clear that though "the material-support statute is constitutional as applied to the particular activities plaintiffs [in that case] . . . wish to pursue, [the Court does not] address the resolution of more difficult cases that may arise under the statute in the future." 130 S. Ct. 2705, 2712 (2010). To be clear, no court has characterized the anti-war and international solidarity work undertaken by the victims of the recent raids as "material support."

Thus, we ask that you halt the use of grand jury proceedings in your current investigations. Additionally, we ask that you stop investigating the protected and legitimate political activities of anti-war and international solidarity activists. This includes the use of undercover informants, which should be halted immediately.

Sincerely,

Alliance of South Asians Taking Action
American Friends Service Committee, Pacific Mountain Region
American MidEast Leadership Network
American Muslims for Palestine
American-Arab Anti-Discrimination Committee
Anakbayan East Bay
Arab American Association of New York
Arab Community Center for Economic & Social Services (ACCESS)
Arab Cultural and Community Center, San Francisco

Arab Jewish Partnership for Peace and Justice in the Middle East
Arab Muslim American Federation
Arab Resource and Organizing Center
Asian Law Caucus
Asian Pacific American Legal Center
Bay Area Campaign to End Israeli Apartheid
Birthright Unplugged
Black Alliance for Just Immigration
CARECEN, Central American Resource Center
Catalyst Project
Causa Justa::Just Cause
Center for Constitutional Rights
Center for Political Education
Chicago Faith Coalition on Middle East Policy
Coalition for Asian American Children and Families
Community Coalition
Community Justice for Youth Institute
Community United Against Violence (CUAV)
Council on American Islamic Relations - Michigan
Council on American Islamic Relations – San Francisco Bay Area Chapter
Culture and Conflict Forum
Desis Rising Up & Moving (DRUM)
Dignidad Rebelde
Eastside Arts Alliance
Electronic Frontier Foundation
Equal Justice Society
Filipino Advocates for Justice
Freedom Archives
Gabriela USA
Global Women's Strike/SF Bay Area
Hampshire College Students for Justice in Palestine
International Socialist Organization
Jewish Anti-Zionist Network, International
Jewish Voice for Peace
La Raza Centro Legal, San Francisco
La Raza Centro Legal Day Labor Program
Labor/Community Strategy Center
LatCrit, Inc.
League of Filipino Students, San Francisco State University
Middle East Children's Alliance
Middle East Report
Movement to End Israeli Apartheid-Georgia
National Network for Arab American Communities
National Network for Immigrant and Refugee Rights
Nihonmachi Outreach Committee
Omid Advocates for Human Rights

Palestine Solidarity Group-Chicago
Philadelphia Arab American Community Development Corporation
Pinay sa Seattle
Political Research Associates
Shura Council of Southern California
SOUL-School of Unity and Liberation
South Asian Americans Leading Together (SAALT)
South Asian Network
The United People of Color Caucus (TUPOCC) of the National Lawyers Guild*
US Campaign for the Academic and Cultural Boycott of Israel
US Campaign to End the Israeli Occupation
Vamos Unidos
WESPAC Foundation

***This endorsement is by The United People of Color Caucus, a committee of the National Lawyers Guild**

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¹ See e.g. Teresa Watanabe and Scott Glover, "Man says he was informant for FBI in Orange County," *Los Angeles Times*, 26 Feb. 2009; Nick Schou, "The FBI, the Islamic Center of Irvine and Craig Monteilh: Who was Conning Whom?" *OC Weekly*, 30 Apr. 2009; Leila Fadel, "Muslims in U.S. feel unfairly implicated in war on terror," *McClatchy Newspapers*, 11 Oct. 2009; Salvador Hernandez, "Informant tells of role in FBI probes," *The Orange County Register*, 30 Dec. 2009.

² See U.S. Department of Justice, Office of the Inspector General, "A Review of the FBI's Investigations of Certain Domestic Advocacy Groups," September 2010.