

Outside Counsel

The Exoneration of Our Client Ali Sadr

Something extraordinary happened this summer. The vaunted U.S. Attorney's Office for the Southern District of New York moved to dismiss the Iran sanctions criminal prosecution of our client Ali Sadr, after obtaining a guilty verdict, on the grounds that "it would not be in the interests of justice to further prosecute this case." This stunning development came after prosecutors pursued Sadr for more than six years. They executed search warrants on his email accounts and those of his family members. They charged him in a six-count indictment, arrested him with no prior notice of the investigation, and zealously fought for his pretrial detention, imprisoning him for three months before his release. No less than 14 prosecutors played a role in the case. The trial was marred by the mid-trial disclosure of exculpatory evidence undercutting the government's theory of the case, which the prosecutors had improperly suppressed.

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However, the court declined to dismiss the case, and the jury ultimately returned a guilty verdict on five of six counts after a hard-fought trial at which Sadr testified in his own defense. The government immediately sought to revoke Sadr's bond, which the court fortunately denied. Then nearly three months after trial, the U.S. Attorney for the Southern District of New York notified the court that the prosecutors were dropping the case.

On July 17, 2020, Judge Alison Nathan entered an order—much like the dismissal order in the Senator Ted Stevens case—vacating the unlawfully obtained verdict as null and void, granting a new trial, and then dismissing the indictment with prejudice, with no possibility of appeal or retrial. So how did the government's case unravel so quickly?

The mid-trial disclosures of exculpatory evidence were, as the court

surmised they might be, merely the "tip of the iceberg." We demanded the disclosure of all exculpatory evidence after trial. What followed was one stunning revelation after another. All told, the prosecutors made more than a dozen post-trial productions of evidence that never surfaced before trial. Sadr moved for a new trial based on the government's suppression of the exculpatory evidence contained in these post-trial productions, which we argued would have led to a different result at trial had it been timely produced.

Instead of opposing our *Brady* motion and explaining their actions, the prosecutors moved to dismiss the indictment on the day their opposition to our motion was due. Judge Nathan promptly demanded answers and the government's response revealed even more troubling issues than were previously known.

The Government's Aggressive Theory of Iran Sanctions Violations

The case against Sadr related to a large construction project in which an Iranian company owned by Sadr's father built low-income housing in Venezuela and was paid

in U.S. dollars by the Venezuelan government for those legitimate construction services. The construction company was privately owned and neither Sadr nor his father nor any of the companies involved was tied to the Iranian government, or designated as a Specially Designated National (SDN) by the Treasury Department's Office of Foreign Assets Controls (OFAC). The project payments were sent from Venezuela's foreign banks to bank accounts in Switzerland, and no money was ever transferred to or through Iran.

Nonetheless, the prosecutors argued that Sadr caused sanctioned exports of financial services from the U.S. to Iran based solely on correspondent banking transactions: the instantaneous electronic "clearing" by U.S. intermediary banks of foreign bank-to-foreign bank wire transfers, which purportedly benefitted companies and individuals in Iran. Sadr testified that he thought the sanctions applied to the Iranian government, SDNs, and certain military, nuclear or petroleum-related transactions, not to private businessmen doing business outside Iran who kept their assets outside Iran. The prosecutors mocked this defense in closing arguments as "absurd" and "complete nonsense."

Post-Trial 'Brady' Disclosures Undermined the Govt's Case

The post-trial disclosures included witness statements that powerfully supported Sadr's defense. They included a recorded

government interview of the Iranian construction company's project manager who shared Sadr's view of the sanctions and who told prosecutors that neither he nor anyone associated with the project did anything wrong.

They also included witness statements of a senior Venezuelan finance official who emphatically denied doing anything wrong and who told prosecutors that lawyers had vetted the transactions at issue in the trial before he approved them.

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The post-trial disclosures also included evidence that OFAC—the supposed "victim" that was allegedly prevented from enforcing the Iran sanctions by Sadr's actions—had affirmatively decided not to initiate enforcement proceedings against Sadr or anyone associated with the project. Some of this information was disclosed in the mid-trial *Brady* disclosures. But the post-trial disclosures included many additional details showing that OFAC made an informed decision not to pursue Sadr or the intermediary banks with full knowledge of the

prosecutors' allegations and theory of prosecution.

The post-trial disclosures also revealed for the first time the existence of classified evidence despite prosecutors' representations in a pretrial hearing that there was no classified discovery. We still don't know what exculpatory evidence is contained in the classified discovery because the prosecutors reneged on their agreement to provide that evidence when they moved to dismiss the case.

The Government's Dismissal Request

Following these major disclosures, the government decided not to oppose Sadr's motion for a new trial and sought instead to drop the case by seeking an order of *nolle prosequi*. In their request, the government acknowledged the "disclosure-related issues that arose during the March 2020 trial as well as in pre- and post-trial motion practice, including with respect to pretrial suppression litigation," and "recogni[zed] that Sadr would have pursued different investigative, litigation, and trial strategies had the disclosures been made." The government stated it "has determined that it would not be in the interests of justice to further prosecute this case."

Judge Nathan promptly demanded an explanation for this extraordinary request and a full accounting of the government's disclosure violations and misrepresentations to the court, including identification of all trial attorneys and supervisors involved

and whether there was any intentional misconduct.

The Government's Response

The government's response to the court contained a number of surprising and disappointing revelations, which were accompanied by excuses minimizing and rationalizing the disclosure violations while avoiding any acceptance of responsibility for the government's actions and lack of candor with the court.

First, when prosecutors realized in the middle of the trial that an important document had not been disclosed to the defense, one of the prosecutors sent a chat message to another prosecutor proposing to "bury it in some other documents," seemingly to try to slide the disclosure failure past the defense. The other prosecutor responded, "that's fine," and proposed some other documents to produce. That is exactly what the government tried to do. Remarkably, however, the government tried to defend this conduct in its response to Judge Nathan as *not* a "burial" because the document was promptly disclosed, even while recognizing that the prosecutors hoped at the time that "if the Government did not make a big deal about the document," the defense might not object or even notice.

Second, the prosecutors revealed that they were aware of the contents of the Venezuela finance official's interview statements before trial, and even considered whether they needed to be disclosed in an email chain in which one prosecutor

asked if the statements were "Brady we need to disclose," and another prosecutor acknowledged that this question "could be worth running by a chief." Yet the prosecutors "did not further pursue the question," and the plainly exculpatory evidence was suppressed.

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litigation that misled the court into upholding search warrants and saving critical email evidence from suppression. We had argued that the execution of email search warrants by the original investigators from the Manhattan District Attorney's Office (DANY) was unreasonable under the Fourth Amendment, because (1) there was never any responsiveness review of the raw search warrant returns to seize only documents pertinent to the state law offenses in the warrants, and (2) the state law offenses were pretextual and the investigators actually searched for evidence of federal sanctions violations.

In its post-trial response to Judge Nathan, the government revealed that the FBI directed DANY to run searches in the email search warrant returns to investigate "federal crimes rather than the state-law offenses at issue in the warrants, contrary to arguments we made during suppression litigation."

Other disclosures showed that DANY gave the FBI unfiltered state search warrant returns, treating the entirety of the returns as fair game upon receipt, again contrary to government representations during the suppression litigation. The government acknowledged that had these facts been disclosed during the suppression litigation, there is "a substantial risk that essential email evidence would [have been] suppressed." Without the email evidence, there is a near certainty that the trial would have been avoided altogether.

The Court's Dismissal Order and Potential Additional Proceedings

On July 17, 2020, Judge Nathan dismissed the indictment with prejudice in an extraordinary order that ends this case for good. The court first stated that Sadr had moved for a new trial on two grounds, arguing that (1) "the Government's multiple suppressions of exculpatory evidence violated his right to a fair trial under *Brady v. Maryland*" and progeny, and (2) "the Government's case was recklessly false." The court then granted Sadr's new trial motion and vacated the verdict. And finally, it construed

the government's application for an order of *nolle prosequi* as a motion to dismiss with prejudice under Federal Rule of Criminal Procedure 48(a), and granted the government's request to dismiss the indictment with prejudice, stating: "There was never a judgment of conviction in this case. The jury's verdict is vacated, and has no legal effect."

Although the dismissal order ends Sadr's prosecution, the Court earlier signaled that it may conduct additional proceedings to evaluate the prosecutors' conduct. In an order dated July 8, 2020, it stated:

In light of what has happened in this case, the internal communications disclosed by the Government in its July 2, 2020 letter, and Mr. Sadr's arguments regarding the Government's conduct in this case, it may be necessary for the Court to hold an evidentiary hearing in order to independently assess whether the issues that have arisen were the product of bad faith, knowing misrepresentations, or an intentional failure to comply with discovery obligations.

In addition, Sadr may file a petition under the Hyde Amendment for an award of legal fees based on the government's conduct in this case, which would require the court to make a similar evaluation.

Conclusion

We are obviously thrilled for our client Ali Sadr. This misguided prosecution never should have been brought in the first place. We firmly believe in Sadr's innocence and

were profoundly disappointed that the jury returned a guilty verdict. It is now clear that the prosecutors obtained that verdict unlawfully by suppressing a huge volume of critical exculpatory evidence. Had we possessed that evidence prior to trial, we could have devastated the government's already razor-thin case and the outcome of the trial would have been different. We were also disheartened by many of the revelations about the prosecutors' conduct in their response to Judge Nathan. Most significantly, had the true facts about the email search warrant execution been revealed during the pretrial suppression litigation, it is likely that the court would have suppressed the evidence and the trial would have been avoided altogether.

Acquitted Reagan administration Labor Secretary Raymond Donovan famously asked, following his acquittal, "Which office do I go to to get my reputation back?" It is impossible not to ask the same question on behalf of Ali Sadr. As in virtually all of its cases, the U.S. Attorney's Office issued a press release announcing Sadr's indictment and arrest with great fanfare. It issued another press release following the verdict. Both contained the government's damning version of the facts, now completely undermined by the evidence unlawfully suppressed by the prosecutors.

But not surprisingly, the U.S. Attorney's Office quietly filed its motion to dismiss on a Friday night with only vague descriptions of the reasons it had determined that it was

no longer "in the interests of justice to further prosecute this case." Were it not for Judge Nathan's order, the full extent of the government's disclosure violations might never have come out. And sadly, even now the government has yet to accept any meaningful responsibility for this debacle of a prosecution that devastated Sadr and his family.

Whatever the outcome of any further proceedings, Sadr deserves his reputation back. The dismissal order has rendered the unlawfully obtained verdict null and void. Sadr is entitled to have his exoneration shouted from the rooftops every bit as loudly as the government touted its charges and unlawfully obtained verdict.

Ali Sadr is an honest businessman and a patriotic U.S. immigrant who did not deserve the mistreatment he received from the U.S. government in this case. He did not violate the Iran sanctions and is not guilty of the charged offenses. We are proud to have represented him.