

## **“Guantanamo at Home”: Muslim American Syed Fahad Hashmi Held in 23-Hour Solitary Pretrial Confinement for Over Two Years in Case Resting on Plea-Bargaining Government Informant**

One day after President Obama trumpeted the achievements and freedoms of Muslim Americans in his celebrated Cairo speech, we look at the case of Syed Fahad Hashmi, a US citizen who has been held in pretrial twenty-three-hour solitary confinement in a Manhattan federal prison for over two years. Hashmi is charged with providing material support to al-Qaeda in a case that rests on the testimony of Junaid Babar, an old acquaintance of Hashmi’s who turned government informant after his own arrest on terror charges. Hashmi is being prosecuted for a two-week period when Babar stayed at his home carrying rain gear that was allegedly later delivered to al-Qaeda members in Pakistan. [includes rush transcript]

Guests:

**Jeanne Theoharis**, advised Fahad Hashmi while he was a student at Brooklyn College. She wrote an article about him in the April 20th edition of *The Nation* magazine, [Guantanamo at Home](#). She holds the endowed chair in women’s studies and is an associate professor of political science at Brooklyn College, CUNY.

**Faisal Hashmi**, brother of Fahad Hashmi.

**Sean Maher**, Attorney for Fahad Hashmi.

- [The Free Fahad Campaign](#)

**AMY GOODMAN:** I want to turn now back to this major address that President Obama gave, both to the Muslim world and the Western world, I would say, yesterday, as he emphasized the importance of Islam in America while speaking in Cairo. He also highlighted the numerous achievements of American Muslims and the multiple freedoms they enjoy and are constitutionally guaranteed in this country.

**PRESIDENT BARACK OBAMA:** And since our founding, American Muslims have enriched the United States. They have fought in our wars. They have served in our government. They have stood for civil rights. They have started businesses. They have taught at our universities. They’ve excelled in our sports arenas. They’ve won Nobel Prizes, built our tallest building, and lit the Olympic torch. And when the first Muslim American was recently elected to Congress, he took the oath to defend our Constitution using the same Holy Koran that one of our Founding Fathers, Thomas Jefferson, kept in his personal library. [...]

Now, much has been made of the fact that an American—an African American with the name Barack Hussein Obama could be elected president. But my personal story is not so unique. The dream of opportunity for all people has not come true for everyone in America, but its promise exists for all who come to our

shores, and that includes nearly seven million American Muslims in our country today, who, by the way, enjoy incomes and educational levels that are higher than the American average.

Moreover, freedom in America is indivisible from the freedom to practice one's religion. That is why there is a mosque in every state in our union and over 1,200 mosques within our borders. That's why the United States government has gone to court to protect the right of women and girls to wear the hijab and to punish those who would deny it.

**AMY GOODMAN:** President Obama, speaking in Cairo. When we come back, we're going to look at the case of a Muslim American here in New York who's been in prison for two years, most of that time in solitary confinement. We'll speak with his brother, his professor and his lawyer. Stay with us.

[break]

**JUAN GONZALEZ:** Today we'll look at the case of a young Muslim American citizen who the *Village Voice* has described as "experiencing the Constitution in a cage." Twenty-eight-year-old Syed Fahad Hashmi, known to his family and friends as Fahad, has been held in pretrial solitary confinement in a federal prison in Manhattan for over two years now.

The Brooklyn College graduate was born in Pakistan but moved to Queens with his family when he was three years old. He is charged with providing material support to al-Qaeda and making a contribution of goods or resources to al-Qaeda.

Under the SAMs, or Special Administrative Measures, Hashmi has been held under twenty-three-hour solitary confinement, and his communication with anyone inside or outside prison is severely restricted. He is permitted only one immediate family visit every other week, and he experiences his single hour of daily recreation inside a cage. Hashmi's lawyers are also prevented from talking to the media about their contact with him.

**AMY GOODMAN:** Hashmi was initially arrested in London in 2006 as he prepared to board a flight to Pakistan and was then extradited to the United States. He has been held here in New York at the Manhattan Correctional Center since Memorial Day weekend of 2007.

Earlier this year, a judge denied a pretrial motion to consider the psychological impact of solitary confinement and ease the conditions of his detention. Fahad Hashmi's trial is set for late September.

For more on this case, we're joined by three guests here in the firehouse studio. Faisal Hashmi is Fahad Hashmi's older brother. Jeanne Theoharis advised Fahad when he was a student at Brooklyn College. She is a leading campaigner to free Fahad Hashmi and wrote an article about him in the April 20th edition of *The Nation* magazine called "Guantanamo at Home." She holds the endowed chair in women's studies and is an associate professor of political science at Brooklyn College. We're also joined by Fahad Hashmi's defense attorney, Sean Maher.

We welcome you all to *Democracy Now!* Faisal, you're Fahad's older brother?

**FAISAL HASHMI:** Yes.

**AMY GOODMAN:** Tell us about him, how this all happened.

**FAISAL HASHMI:** My brother was arrested in June 2006 in London. He had been living there doing his master's in international relations. We are originally from Pakistan, and we moved to this country in 1983, and we grew up in the Flushing area, the melting pot of Flushing, amongst a diverse community. And towards the later portion of his life, he went to college at Brooklyn College, graduated there with a bachelor's in political science.

He was an activist in the Muslim community. He had gone around in mosques and MSAs, talking about the situation of the Muslims domestically and internationally, about the situation in Kashmir, Palestine, Chechnya. And he was a vocal activist that talked about the US foreign policy in these countries.

And in 2006, he had got—well, he graduated from Brooklyn College and decided to pursue a master's degree in international relations at London Metropolitan University. He moved to London, and when he was doing his degree, the allegations against him are that a friend visited him in 2004. A friend visited and left. He stayed for a week or two and left. In 2006, my brother gets arrested at London Heathrow Airport. And the charges are that when this friend visited two years ago, he had ponchos and socks in his luggage—two years ago, that friend.

**AMY GOODMAN:** Two years before?

**FAISAL HASHMI:** Yeah, this friend. And he delivered these ponchos and socks to the third leading member of al-Qaeda, who is leading the insurgency in Afghanistan, from London to Pakistan.

This person gets arrested in March of 2004. His name was Junaid Babar. He gets arrested in March 2004 in New York. He is an interesting character. He's an admitted criminal, admitted liar. He goes into an immediate agreement with the government as a cooperating witness in 2004. My brother—again, the timeline is he gets arrested in 2006. When this person gets arrested in 2004, people all around the world get arrested based on his

testimony. People in England get arrested. People in Canada get arrested. And he is the main witness against these people.

Come back to 2006, they say, you know, during the course of this time, they say—when they arrest my brother, they say that, you know, “This person stayed with you. We’re indicting you on a material support of terrorism charge. You let him stay with you knowingly.” The allegations are knowingly let this person stay with you. And he had ponchos and socks in his luggage, which he delivered to al-Qaeda.

**JUAN GONZALEZ:** Jeanne Theoharis, you knew him when he was at Brooklyn College. In terms of the—he supposedly, while in England, was a member of a political organization there that is not considered terrorist here in the United States. That’s the only sort of real claim against him, other than these allegations. Can you talk about him, as when you knew him, and why you got involved with the campaign?

**JEANNE THEOHARIS:** Fahad was a student of mine in 2002. As a senior, you take, at Brooklyn College, a senior seminar. He took a senior seminar with me on post-civil rights politics, so 1960s to the present, where he and every student writes a significant research paper as kind of the end of their career.

And so, this is 2002. It’s in the aftermath of September 11th. And Fahad picked for his research topic sort of the civil liberties of Muslim groups in the United States. And so, his paper, his sort of senior seminar paper, was on, in fact, the abrogation of civil liberties and civil rights in the wake of September 11th for Muslim groups here in the United States. This obviously feels—again, fast forward to 2006, right, and now, and to now, right seven blocks away from where we sit today, right—Fahad’s own civil rights are being sort of abridged.

Fahad was very political. He was very outspoken. What I remember of him in class—again, this was many years ago—was that he loved to debate. He loved to talk with people who didn’t agree with him, in class, out of class. He would be one of those people who would stay after class and want to keep talking, keep arguing. He was outspoken about the treatment of Muslims within the United States and the treatment of Muslims abroad.

**AMY GOODMAN:** Faisal, in the Metropolitan Correctional Center, what are the conditions of his imprisonment? He has been there now for more than two years.

**FAISAL HASHMI:** Yes. He’s been there for two years, and Michael Ratner of the Center for Constitutional Rights describes it as “draconian.” He is kept in solitary confinement for two straight years, twenty-three- to twenty-four-hours lockdown. He’s kept—

**AMY GOODMAN:** He hasn’t gone to trial.

**FAISAL HASHMI:** He has not gone to trial. He's a pretrial detainee. In a civilized society, a pretrial detainee kept in complete solitary confinement for two years. Within his own cell, he's restricted in the movements he's allowed to do. He's not allowed to talk out loud within his own cell. So, imagine for yourself, you're a pretrial detainee, not convicted of anything, and you're held in these conditions where you're not allowed to move, not allowed to talk.

**AMY GOODMAN:** What do you mean, "move"?

**FAISAL HASHMI:** Certain movements within his own cell are censored. He is being videotaped and monitored at all times. He can be punished, more than he's already being punished, by denied family visits, if they say his certain movements are martial arts or something that they deem as incorrect.

He has Special Administrative Measures levied against him by the government itself. The new attorney general renewed these Special Administrative Measures. The old attorney general, Michael Mukasey, put them into effect. So, you know, for two years, we have suffered under his solitary confinement—one-and-a-half years under the Bush administration, five, six months under this new administration.

**JUAN GONZALEZ:** Sean Maher, you're his attorney, and you have your own limitations. First of all, why hasn't he gone to trial yet, if he's been held for this long? And secondly, what are the limitations on your ability to even speak about the case?

**SEAN MAHER:** I have severe limitations on what I can and can't say. One of the reasons why this case has taken so long to go to trial is the complex issues that go with these types of charges. There's classified information in this case, so the defense attorneys had to go through a background security check, the equivalent of a CIA officer. That takes time. It takes time to go through all the materials. And any litigation is done behind closed doors.

So, one of the paramount issues that this case brings up, without talking about any specifics in this case, is the use of secrecy in modern courtrooms. And in our Article III court, which we're all trying to get people in Guantanamo to, what is the role of secrecy? And what will secrecy's role play in these cases that President Obama says he might bring into these courts?

**JUAN GONZALEZ:** And when you say an Article III court, what do you mean?

**SEAN MAHER:** Traditional federal court, a federal judge, hearing the case in a public forum. So another tremendous issue that this case brings up is the pretrial conditions of detention, the SAMs, the Special Administrative Measures. Many people might remember the case of Lynne Stewart, the attorney who was convicted for violating the SAMs and that she spoke about what her client had said in a public forum, and then was now convicted and is appealing that. The same conditions apply in this case. Fahad can't

communicate with the media. His attorneys can't communicate what he says to the media, or we're subject to imprisonment potentially.

**AMY GOODMAN:** I want to talk about exactly what Fahad has been charged with, because in 2006 when he was picked up at Heathrow Airport, headed to Pakistan, it sounded extremely serious, that the initial charges mentioned allegedly conspiring to send money and weapons to al-Qaeda? Is that what he's charged with?

**SEAN MAHER:** It gets murky to some degree, and I'm going to say what I can say publicly. And I can talk briefly about the public charges, and those are that he's charged with providing—or conspiring to provide material support. The government has made representations in England, in the extradition process, that he supposedly provided military gear. Military gear was described as raincoats, ponchos and waterproof socks. So, there is—at this point we're not aware of an allegation that he's providing any weapons of any kind. It's that he knowingly allowed this other person to stay in his apartment, keep the raincoats and ponchos, perhaps let him use his cell phone. And this together has been—

**AMY GOODMAN:** And cell phone, what was—who did he call? Or who did the friend call?

**SEAN MAHER:** Well, again, the allegation is that Fahad permitted someone to use his own cell phone. That is what is being lumped together as military gear. And I can't get into more of the allegations. This is what the government has said publicly, and I have to leave it at that. But these are allegations that obviously we are contesting vigorously.

**AMY GOODMAN:** Faisal, what is your brother's mental state now? And how often can you visit him?

**FAISAL HASHMI:** Well, I haven't been allowed to visit him in two years. When he initially came here, he was not put under SAMs. For three months, the whole family visited every week. And then they imposed these SAMs. And these are extremely bureaucratic procedures.

**AMY GOODMAN:** Special Administration Measures.

**FAISAL HASHMI:** Special administrative procedures where I have to get cleared over and over again. At the moment, my parents visit every other week, when they're allowed to visit. Many times they've been turned away at the door because of bureaucratic hang-ups upon the Federal Bureau of Prisons. Their interpreter is not there yet or—

**AMY GOODMAN:** The prison's interpreter?

**FAISAL HASHMI:** The prison's.

**AMY GOODMAN:** So, they show up at the appointed time, and they're told they can't see their son.

**FAISAL HASHMI:** Yes. This has happened. It's gotten better in the past couple of months. But in two years, the amount of visits that he's supposed to have and the amount of visits that he actually had is a stark contrast.

**JUAN GONZALEZ:** And Jeanne Theoharis, the degree of support for him, is there any kind of defense committee that's been built up? How far does it extend? How knowledgeable are people even about his case?

**JEANNE THEOHARIS:** Last year, we began to build a movement and a group, starting with academics and writers. So, last spring, we sent a statement of concern outlining three sort of civil liberties issues: the conditions of his confinement; the lack of due process, particularly the use of secret evidence; and his First Amendment rights. And 550—more than 550 scholars and academics from around the country signed that statement, and we sent that to Attorney General Mukasey over the summer, and we sent that a month ago to Attorney General Holder.

**AMY GOODMAN:** Who signed?

**JEANNE THEOHARIS:** People like Henry Louis Gates at Harvard, Eric Foner at Columbia, Angela Davis, Susan Faludi, Ariel Dorfman. So, a huge range of disciplines, of people around the country.

We have also built and are beginning to build a movement of students, both at Brooklyn College and around the city. Muslim student groups in the city have taken a keen interest in this case. The antiwar movement has also recently come on board.

So it is growing, but again, I think there has been much more concern among civil liberties groups with looking at conditions outside of this country—which indeed are grave, right?—at Guantanamo, at Bagram, but have not put the same kind of attention to what's happening here in the United States and in the federal courts.

**AMY GOODMAN:** Now, this is a very important point, because, I mean, in President Obama's speech, again, yesterday in Cairo, he said they're closing Guantanamo. By the way, Faisal, what did you think of his speech?

**FAISAL HASHMI:** I thought it was—you know, if we can actualize some of the things that he's saying, it would be great. But at the end of the day, my brother is still in solitary confinement, and there's still an atmosphere of fear in the Muslim community domestically.

**AMY GOODMAN:** So you have President Obama saying they're closing Guantanamo, though people in his own party are balking at that and have not voted to give money to close Guantanamo. But the reason the whole movement is there, saying that that is

extrajudicial, that people aren't being tried, they're held without charge for years. So this is the federal system that we're talking about, Fahad is under. And Sean Maher, if you could explain further, how can this be?

**SEAN MAHER:** Right.

**AMY GOODMAN:** This isn't Guantanamo, though Professor Theoharis wrote a piece called "Guantanamo at Home."

**SEAN MAHER:** Right.

**AMY GOODMAN:** This is the federal government that everyone's saying, or that people who are supporting the closing of Guantanamo are saying, put them through it. Let them have trials. Let them go through the US judicial system.

**SEAN MAHER:** Right. Unfortunately, many people don't know what has happened in our courts at this stage. Right now, this issue of the Special Administrative Measures and this pretrial conditions of detention, of keeping people in solitary confinement when they're presumed innocent, is before the European Court of Human Rights. They are deciding whether they will prevent any European country from extraditing anyone to the United States if there is a possibility that they will be placed under SAMs. That will be decided within the next few months. And there's a potential that Europe, all the members of the EU, will not extradite anyone to this country if they face the SAMs, because they see it as a violation of the European Charter on Human Rights, that it is a human rights violation to hold someone in solitary confinement with sensory deprivation, months before trial, again, when you're presumed innocent. And even after you're found guilty, you don't have the right to keep someone in such draconian conditions.

**JUAN GONZALEZ:** What actually triggers the ability of the government to use SAMs? And does anyone know how many people are in prison under the SAMs regulations?

**SEAN MAHER:** SAMs have to be signed off by the attorney general himself or herself. It comes from the top, and then it comes down through the Bureau of Prisons, and it's implemented. It has been difficult to find out how many people are actually under SAMs. Recently there was a *New York Times* article where information came out that there are around fifty people in this country under SAMs. At that time, about six were pretrial, and of those, four were in the Southern District of New York. The rest were post-trial, serving sentences of conviction, many in the supermax prison, as it's called, ADX in Florence, Colorado.

**AMY GOODMAN:** We're wrapping up right now. Faisal, we will give you the last word. What do you want to see happen right now in the case of your younger brother Fahad?

**FAISAL HASHMI:** My ideal or my hope is that people will realize the injustice that Fahad is facing, the torture that he's facing in America—and they can research the case at

[www.freefahad.com](http://www.freefahad.com)—and realize the charges that he's facing are nonsense, that he's being persecuted for his beliefs and his values, and that a movement grows, and this atmosphere of fear gets pushed back. This is my hope, that academics, you know, people across America realize what's going on.

The closing of Guantanamo only means people will come into this federal system. It's a horrible federal system. It's devastating to the lives of many people. And all it does is foster fear within various communities, Muslim communities in Lodi, California, in Houston, Atlanta, New York City.

**AMY GOODMAN:** I want to thank you very much for being with us. Faisal Hashmi is the older brother of Fahad Hashmi, who's been in solitary confinement for more than two years now. Sean Maher is his attorney, limited in what he can say. And Professor Jeanne Theoharis taught Fahad at Brooklyn College.