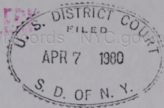


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENTERED BY
APPEALS CLERK



MUHAMMAD ABDUL AZIZ (NORMAN 3X
BUTLER),

Petitioner,

v.

SUPERINTENDENT, OSSINING
CORRECTIONAL FACILITY,

Respondent.

80 Civ. 1345

ORDER

Alpert

GRIESA, J.

Petitioner has applied to this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In accordance with Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. following Section 2254, I have considered the petition preliminarily and direct that respondent file an answer within 30 days of this order. The Clerk of the Court is directed to serve, by certified mail, a copy of this order and the underlying petition on respondent and the Attorney General of the State of New York.

So ordered.

Dated: New York, New York
March 26, 1980

Thomas P. Griesa

THOMAS P. GRIESA
U.S.D.J.

ORIGINAL

JUDGE GRIESA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

80 CIV. 1345

-----x
MUHAMMAD ABDUL AZIZ (NORMAN 3X
BUTLER) and KHALIL ISLAM
(THOMAS 15X JOHNSON),
:

Petitioners,
:

-against-
:

SUPERINTENDENT OF OSSINING AND
~~CLINTON~~ CORRECTIONAL FACILITIES,
:

Respondents.
:

PETITION FOR WRIT OF
HABEAS CORPUS

-----x
TO: THE HONORABLE DISTRICT JUDGES FOR THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of MUHAMMAD ABDUL AZIZ and KHALIL ISLAM,
pursuant to 28 U.S.C. ~~§2541~~ and 2254, alleges as follows:

1. Petitioners are two Black men who are presently
illegally, unlawfully and unconstitutionally incarcerated in the
following New York State penitentiaries, namely, Ossining
Correctional Facility, Ossining, New York (AZIZ) and Clinton
Correctional Facility, Dannemora, New York (ISLAM).

2. The alleged reason for their said incarceration is their
conviction by a jury on March 11, 1966, for the assassination
of Alhaji Malik Shabazz (Malcolm X), in the Main Ballroom of the
Audubon Ballroom, New York, New York, at approximately 3:00 p.m.
on February 21st, 1965, and the resultant sentences of life im-
prisonment imposed upon them by the trial judge on April 14, 1966.

c. Subsequently, two other men, petitioners herein, were arrested at their homes, on the following dates:

February 26, 1965 - AZIZ
March 3, 1965 - ISLAM

d. On or about March 10, 1965, petitioners and the said Mujahid Abdul Halim (Halim) were indicted by a New York County Grand Jury for the murder of Malcolm X. (A. 95, 99).

e. On February 28th and March 1st, 1966, Halim, after having previously testified in his own behalf during the joint trial of the three said defendants and denied his own guilt, was recalled as a witness for AZIZ and now admitted that he had participated with four accomplices in said murder but insisted that neither petitioner had been involved therein. (A. 12).

f. However, he refused, on cross-examination by the prosecution, to name or describe his said accomplices or give anything but the sketchiest of details about the crime. (A. 12).

g. In the fall of 1977, Halim decided to furnish more details about the assassination and did so in an affidavit given to petitioners' counsel, which said affidavit did not contain the names of his accomplices. (A. 5-7).

h. On February 25, 1978, Halim amplified his earlier affidavit, now giving the names of his accomplices as follows:

- (1) Ben or Benjamin Thomas or Thompson, residing on Hamilton Avenue, Paterson, New Jersey, and a member of Mosque #25, Newark, New Jersey (A. 74).
- (2) Leon Davis, residing on Hamilton Avenue, Paterson, New Jersey, across the street from Ben, and a member of Mosque #25, Newark, New Jersey. Id.

(3) William X, residing on South Orange Avenue, Newark, New Jersey, directly across the street from the aforesaid Mosque. Id.

(4) Wilbur or Kinley, residing in Newark, New Jersey (A. 74-75).

i. Halim was the first approached in the summer of 1964 by Ben and Leon with reference to the assassination of Malcolm X. He was soon joined by William X and Wilbur. (A. 73-74).

j. Thereafter, a number of meetings about the project were held, either in automobiles or at the homes of Ben or Leon. (A. 75).

k. On one occasion, the five men drove to the home of Malcolm X in East Elmhurst, Queens, New York, but found it too heavily guarded to carry out the project. (A. 75).

l. They eventually decided that the assassination would take place at the Audubon Ballroom and, during the winter of 1964-65, attended a speech there given by Malcolm X and discovered that nobody was being searched at the door. Id.

m. Driving back from the Ballroom in Ben's car that day, they discussed the fact that, given the number of people who would be attending one of Malcolm's speeches at that location, they would have a good chance to escape after the assassination. Id.

n. They visited the Ballroom again on the evening of February 20, 1965, attending a dance being given there, and looked the place over. (A. 76).

o. On the way back to New Jersey that evening in Ben's car, they decided to commit the crime the next day and to meet at Ben's house the next morning to formalize their plans. Id.

p. The next morning, they decided to get to the Ballroom early and that Leon and Halim would sit in the front left side of the Main Ballroom, facing the stage, with William and Ben directly behind them. Wilbur/Kinley was to sit in the rear of the room and accuse someone of picking his pocket and throw a smoke bomb when Malcolm began to speak. Id. (See also A. 105-106).

q. All of the weapons possessed by the assassins were purchased by Halim who also made the smoke bomb. (A. 77).

r. Halim had a .45 caliber automatic pistol, Leon a 9 mm. Luger pistol and William a 12-gauge shotgun. As soon as Wilbur created the disturbance referred to in ¶p above, the three men with the weapons were to rush to the podium, fire at Malcolm X, and then run to the exit. (A. 76).

s. On the day of the crime, the five assassins drove to New York in Wilbur's car, a blue, approximately 1962 Cadillac, and parked a few blocks from the Ballroom, facing in the direction of the George Washington Bridge. (A. 77).

t. They then committed the crime as set forth in ¶r above. (A. 116-119, 120 and 123).

6. On March 27, 1979, Halim furnished counsel for petitioners with much more complete descriptions of his confederates.

These are as follows:

a. Benjamin Thomas

Secretary or Assistant Secretary of the Newark Mosque; 30 years old; 5'8" or 5'9" tall; 170 pounds; wore glasses with black frames; thin with brown complexion; close-cut hair; well-spoken; married with four or more children; lived in a second-floor 4-5 room apartment in a wooden building on Hamilton Avenue, Paterson, New Jersey; worked in an envelope manufacturing company in Hackensack, New Jersey as a cutter; attended public schools in Paterson, New Jersey, and possibly Tuskegee Institute in Tuskegee, Alabama; played basketball; member of the Fruit of Islam (FOI); may have driven a black Chrysler.

b. Leon Davis

20-21 years old; 5'9" tall; 175 pounds; dark brown complexion; no glasses; well-spoken; close-cropped hair; used to reside on lower Market Street, Paterson, New Jersey; married and lived on second floor of same kind of an apartment house as Benjamin Thomas on Hamilton Avenue, Paterson, New Jersey, diagonally across the street from him; attended public schools in Paterson, New Jersey; worked in an electronics plant in that city; member FOI.

c. William X

27 years old; stocky build; 5'10" or 5'11" tall; dark brown complexion; close-cropped hair; lived in Newark, New Jersey; member Newark Mosque and FOI; known as a stick-up man. (This man,

whose last name is Bradley, is, upon information and belief, presently incarcerated in the Essex County Jail, Caldwell, New Jersey, and will not discuss the matter with a representative of petitioners.)

d. Wilbur Kinley

Over 30 years old; 5'9" tall, on the thin side; brown complexion; close-cropped hair; thick moustache; married; had own construction business and did work around the Newark Mosque; member FOI; lived in Newark; owned a light blue Cadillac; long-time member of the Newark Black community.

7. Halim's version of what happened on February 21, 1965, at the Audubon Ballroom and who was involved in the events of that day concerning the killing of Malcolm X is amply buttressed by reports of the Federal Bureau of Investigation (FBI) concerning the assassination. In this respect, the Court's attention is respectfully called to A. 98, 108, 109, 110, 112, 116, 118, 123, 126, 127, 132, 136, 138 and 139.^{*/} For example, compare the description of the man who wielded the shotgun in the FBI report at A. 126, namely, "a tall dark-skinned Negro . . . a member of the Newark Temple," with that given by Halim, who had never read such reports, in ¶6c, supra. There is also attached hereto, as Appendix C, a page of an FBI report dated March 12, 1965, which refers to "a member of the NOA from Paterson, New Jersey . . . sitting in the last seat on the rightside, facing the stage and is believed . . . to be one of the assassins. ¶3.

^{*/} One FBI report refers to a statement by a Life Magazine reporter who was overheard saying that "the killers of Malcolm X were possibly imported to NYC." (A. 112).

8. In addition to petitioners' alibis (each was at home with his family on February 21, 1965, a Sunday), there is disinterested evidence that neither was present at the Audubon Ballroom at the time of the murder. See, e.g., Affidavits of Benjamin Karim (Goodman) who introduced Malcolm X that day (A. 153-159), and that of attorney William M. Kunstler (A. 160-164).

9. Despite the voluminous documentation submitted by petitioners in their efforts to obtain a new trial, their motion was denied. (A. 169-174). In addition, they were denied leave to appeal to any of the New York appellate courts on December 19, 1978 (Appendix D, A. 176), thus exhausting all available state remedies.

10. Halim and Benjamin Karim are prepared, if subpoenaed, to testify at an evidentiary hearing herein, and William X. Bradley is easily locatable in Caldwell, New Jersey. Moreover, the rather full descriptions now furnished by Halim make it highly probable that the other three accomplices can easily be found.

11. Petitioners do not know of any comparable case in American jurisprudential history when one accomplice in a murder has not only furnished the names and descriptions of his confederates, but has fully described the planning and execution of the crime, without a thorough investigation by the prosecution ensuing there-
by.^{*/} It would be an unforgiveable and unconscionable travesty of justice if, given the amount of information now available, no efforts were undertaken to ascertain the accuracy thereof while

*/ On November 8, 1979, six Philadelphia homicide detectives began serving federal prison terms for violating the civil rights of witnesses and subjects in a 1975 fatal firebombing case in that city. Prior to their conviction, it was discovered that a person other than the defendant had confessed committing the crime but that his statement had been disregarded. New York Times, 11/11/79, p. 52, col. 1

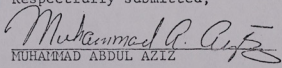
two innocent men rot in jail, now into the fifteenth year of their incarceration. Although the contents of Halim's second affidavit, which was sealed at petitioner's request, were divulged to the prosecution with a request that it investigate the allegations contained therein (A. 166-168), it refused to conduct any investigation thereof other than to check its own files, a position unfortunately sustained by the court considering the motion to vacate petitioner's sentences. (A. 171).

12. Since petitioners, having been incarcerated for almost fifteen (15) years, possess no tangible property and are indigent, they pray that they be granted in forma pauperis status.

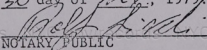
13. No previous application for the relief sought herein, other than as indicated above, has been made to this or any other Court.

WHEREFORE, petitioners respectfully pray that this Honorable Court issue its Writ of Habeas Corpus discharging them from custody or, in the alternative, grant them an evidentiary hearing to prove the allegations of their petition.

Respectfully submitted,


MUHAMMAD ABDUL AZIZ

Sworn to before me this
30 day of Nov., 1979.


NOTARY PUBLIC

KHALIL ISLAM

Sworn to before me this
___ day of ___, 1979.

NOTARY PUBLIC

RALPH LIVELI
Notary Public of Dutchess County
Certificate Filed in Westchester County
Notary Regulation No. 2381740
Commission Expires 3/30/80

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MUHAMMAD ABDUL AZIZ (Norman 3X Butler),:

Plaintiff, :

v. :

80 Civ. 1345

SUPERINTENDENT, OSSINING CORRECTIONAL :
FACILITY, :

Defendant. :

-----X

KHALIL ISLAM (Thomas 15X Johnson),

Plaintiff, :

v. :

80 Civ. 1346

SUPERINTENDENT, CLINTON CORRECTIONAL :
FACILITY, :

Defendant. :

OPINION

-----X

GRIESA, J.

These are petitions for writs of habeas corpus by two state prisoners, who were convicted of first degree murder in connection with the killing of Malcolm X. The convictions occurred in 1966 in Supreme Court, New York County. In 1977 petitioners filed a motion to vacate the judgments of conviction. They asserted several grounds, including a claim of newly discovered evidence. There were lengthy proceedings in the state court on this motion, resulting in an opinion by Justice Rothwax on November 1, 1978 denying the motion. A petition for leave to appeal to the Appellate Division was denied.

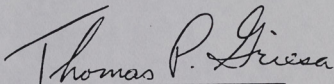
The present habeas corpus petitions again assert a claim of a right to a new trial on the ground of newly discovered evidence. The petitions must be denied. No claim of violation of a federal constitutional right was articulated in the state proceedings. Thus there has been no proper exhaustion of state remedies. Moreover, there is no reasonable statement even in the present proceeding as to how it is claimed that petitioners' federal constitutional rights have been violated. In fact, even if we read the present petitions liberally and infer a due

process argument, the denial by the state court of the motion to vacate judgment did not infringe petitioners' due process rights. There is no indication that the absence of the newly discovered evidence at trial resulted in a miscarriage of justice.

The petitions are denied and dismissed.

So ordered.

Dated: New York, New York
December 31, 1980

A handwritten signature in dark ink, reading "Thomas P. Griesa". The signature is written in a cursive style with a large, sweeping "T" and a long, trailing flourish at the end.

THOMAS P. GRIESA
U.S.D.J.

ENTERED BY
APPEALS CLERK

msa

Alpert

RECEIVED

FEB - 1981

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEPT. OF LAW
NEW YORK CITY OFFICE

MUHAMMAD ABDUL AZIZ (Norman 3X Butler)

and
KHALIL ISLAM (Thomas 15X Johnson),
Petitioners,

-against-

SUPERINTENDENTS OF OSSINING and
JEROME CORRECTIONAL FACILITIES,
Respondents.

: 80 Civ. 1345/1346

TPG

NOTICE OF APPEAL

Petitioners herein, MUHAMMAD ABDUL AZIZ (Norman 3X Butler) and KHALIL ISLAM (Thomas 15X Johnson), hereby appeal to the United States Court of Appeals for the Second Circuit from an order of this Court, Grisea, D.J., duly made and entered on the 31st day of December, 1981, dismissing petitioners' joint petitions for writs of habeas corpus, and from each and every part thereof.

William M. Kunzler

WILLIAM M. KUNZLER
853 Broadway
New York, N. Y. 10003
(212) 674-3303

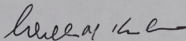
Attorney for Petitioners

Dated: New York, N. Y.
January 28, 1981

To: Clerk, U.S. District Court
Clerk, U.S. Court of Appeals
District Attorney, New York County

CERTIFICATE OF SERVICE

The undersigned, a member of the bar of the State of New York, hereby affirms, under the pains and penalties of perjury, that, on the 27th day of January, 1981, he served true copies of the within Notice of Appeal upon the Clerks of the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit, and the District Attorney of New York County by prepaid first class United States Mail.



WILLIAM M. KUNSTLER

Dated: New York, N. Y.
January 29, 1981.

A C H I E V E M E N T S

Muhammad Abd al-Aziz, 66A0057

WORK EXPERIENCE

- 1 Tutor, Psychology 101, Mercy College, February 19, 1981 to the present.
- 2 Imam, American Muslim Mission (A.M.M.), 1967 to the present. Responsibilities of the Imam include organizing, staffing, and administering the activities of the Islamic Community. This includes providing spiritual counsel and overall guidance in daily activity to those who need it. In sum, the office of Imam is charged with planning the spiritual, social, educational, economic and political future of the Islamic Community for which it is responsible; and raising the level of moral consciousness in its sphere of influence.
- 3 Organizer and Manager of a fund raising project involving the sale of pastries and oils for Masjid Muhammad, at Ossining Correctional Facility (O.C.F.), from November 1977 to the present.
- 4 President, Inmate Grievance Resolution Committee (I.G.R.C.), Attica, January 1975 to January 1976. The I.G.R.C. is a conflict resolving body; it investigates grievances brought by inmates, reviews the facts arising from their investigations and attempts to resolve the problem to satisfaction of the grievant, if the facts warrant it.
- 5 Law Clerk, Attica, December 1974 to January 1975.

MILITARY SERVICE

U.S. Navy, 1955 to 1959 and 1961 to 1962. Rank, Petty Officer Third Class, Honorable Discharge.

United States Court of Appeals

SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

SEE NOTICE ON REVERSE. PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: MUHAMMAD ABDUL AZIZ (Norman 3X Butler) and KHALIL ISLAM (Thomas 15X Johnson), Petitioners, -against- SUPERINTENDENTS OF OSSING and CLINTON CORRECTIONAL FACILITIES, Respondents.		DISTRICT Southern JUDGE Grisea, D.J.
DATE FILED IN DISTRICT COURT 1/10/80 APPROX. NUMBER OF PAGES IN TRANSCRIPT none DATE NOTICE OF APPEAL FILED 1/29/81		DISTRICT COURT DOCKET NUMBER 80 Civ. 134 HAS TRANSCRIPT BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IS THIS A CROSS APPEAL? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, STATE: CASE NAME: CITATION: DOCKET NUMBER:

ATTORNEY(S) FOR: APPELLANT: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <input type="checkbox"/> OTHER (SPECIFY): Petitioner	NAME William M. Kunstler	ADDRESS 853 Broadway, New York, N.Y.	TELEPHONE (212) 674-330
APPELLEE: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT <input checked="" type="checkbox"/> OTHER (SPECIFY): Respondents, Robert M. Morgenthau,	155 Leonard Street, N.Y., N.Y. (212) 553-9000		

A. JURISDICTION		B. DISTRICT COURT DISPOSITION	
1. FEDERAL () U.S. A PARTY () FEDERAL QUESTION (X) U.S., NOT A PARTY () DIVERSITY () OTHER (SPECIFY):	2. APPELLEE () FINAL DECISION OF DISTRICT COURT () INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT () INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): () OTHER (SPECIFY):	1. STAGE OF PROCEEDINGS () PRE-TRIAL () DURING TRIAL () AFTER TRIAL	2. TYPE OF JUDGMENT/ORDER APPEALED () DEFAULT JUDGMENT (X) DISMISSAL/JURISDICTION () DISMISSAL/MERITS () SUMMARY JUDGMENT () DECLARATORY JUDGMENT () OTHER (SPECIFY):
		3. RELIEF () DAMAGES: AMOUNT SOUGHT: \$ AMOUNT () GRANTED: () DENIED: \$ () INJUNCTIONS: () PRELIMINARY OR () PERMANENT () GRANTED OR () DENIED	

C. NATURE OF SUIT				
1. FEDERAL STATUTES () ANTITRUST () BANKRUPTCY () BANKS AND BANKING () CIVIL RIGHTS () COMMERCE, ROUTES, AND TARIFFS () COMMODITIES () OTHER (SPECIFY):	2. TORTS () COMMUNICATIONS () CONSUMER PROTECTION () COPYRIGHT () PATENT OR () TRADEMARK () ELECTION () ENERGY () ENVIRONMENTAL () FREEDOM OF INFORMATION () IMMIGRATION- () LABOR () OSHA () SECURITIES () SOC. SECURITY () TAX	3. CONTRACTS () ADMIRALTY/MARITIME () ASSAULT/DEFAMATION () FELONY () PRODUCT LIABILITY/MASSACRE () OTHER	4. PRISONER PETITIONS () ADMIRALTY/MARITIME () ARBITRATION () COMMERCIAL () EMPLOYMENT () INSURANCE () NEGOTIABLE INSTRUMENTS () OTHER	5. OTHER () CIVIL RIGHTS (X) HABEAS CORPUS (2254) () MANUMUS AND OTHER () PAROLE () VACATE SENTENCE (2255)

6. GENERAL: () ARBITRATION () ATTY. DISQUALIFICATION	() CLASS ACTION () COUNSEL FEES	() SHAREHOLDER DERIVATIVE () TRANSFER	7. WILL APPEAL RAISE A CONSTITUTIONAL ISSUE WILL APPEAL RAISE A MATTER OF FIRST IMPRESSION?	(X) YES () NO (X) YES () NO
---	--------------------------------------	--	--	----------------------------------

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:
Petitioners obtained from a co-defendant the names, addresses and descriptions of the persons who, with the co-defendant, murdered Malcolm X in 1965. The respondents refused to investigate petitioners' information and no evidentiary hearing was granted so that petitioners could prove their claim that others, besides themselves, were guilty of the said murders.

ISSUES PROPOSED TO BE RAISED ON APPEAL:
Whether, when a guilty defendant has exonerated his convicted co-defendants and furnished detailed information as to the identities of his accomplices in a murder, there is a constitutional obligation on the part of the prosecutor to investigate said information.

TO YOUR KNOWLEDGE, IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY WHICH:
(A) ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL? ☐ YES ☒ NO
(B) INVOLVES AN ISSUE THAT IS SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL? ☐ YES ☒ NO
IF YES, STATE WHETHER "A" OR "B" OR BOTH, AND PROVIDE:
CASE NAME: CITATION: DOCKET NUMBER: COURT OR AGENCY:
FOR APPELLANT: Muhammad Abdul Aziz
Khalil Islam
NAME OF APPELLANT
2/3/81
NAME OF COUNSEL OF RECORD
William M. Kunstler (212) 674-3303
SIGNATURE OF COUNSEL OF RECORD
DATE

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

TRANSCRIPT INFORMATION

CIVIL APPEAL

To be completed by counsel for appellant in civil appeal from district court within ten days after filing notice of appeal.

DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellee (5) retained by Counsel for Appellant.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE MUHAMMAD ABDUL AZIZ (Norman 3X Butler) and KHALEL ISLAM (Thomas 15X Johnson), -against- SUPERINTENDENTS OF OSSINING and CLINTON CORRECTIONAL FACILITIES	DISTRICT Southern JUDGE Grisea, D.J. COURT REPORTER	DOCKET NUMBER 80 Civ. 1345/1346 APPELLANT COUNSEL FOR APPELLANT William M. Kunstler
---	---	---

TRANSCRIPT ORDER

Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATES)

I am ordering a transcript.

X I am not ordering a transcript.

Reason:

☐ Daily copy is available.

☒ Other. Attach explanation.

none available

METHOD OF PAYMENT ☐ FUNDS ☐ CJA VOUCHER (CJA 21)

- ☐ PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS
☐ PREPARE TRANSCRIPT OF TRIAL
☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
☐ PREPARE (Other: Specify)

DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

Inapplicable

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P., and the local rules.

COUNSEL'S SIGNATURE

DATE

February 2, 1981

COURT REPORTER ACKNOWLEDGEMENT

To be completed by court reporter. Return one copy to clerk, U.S. Court of Appeals.

DATE ORDER RECEIVED

ESTIMATED COMPLETION DATE

ESTIMATED NUMBER OF PAGES

SIGNATURE OF COURT REPORTER

DATE



DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
155 LEONARD STREET
NEW YORK, N. Y. 10013
(212) 553-9000

ROBERT M. MORGENTHAU
DISTRICT ATTORNEY

ADDRESS ANSWER TO THE DISTRICT ATTORNEY,
ATTENTION OF THE SIGNER OF THIS LETTER AND
REFER TO _____

February 10, 1981

Mr. Daniel Fusaro
Clerk, United States
Court of Appeals for the
Second Circuit
United States Courthouse
Foley Square
New York, New York

Re: AZIZ (Butler) and ISLAM (Johnson),
Petitioners, v. SUPERINTENDENTS
OF OSSINING AND CLINTON CORREC-
TIONAL FACILITIES, Respondents.
80 Civ. 1345/1346

Dear Mr. Fusaro:

On December 31, 1980, United States District Judge Thomas P. Griesa denied and dismissed the petitions for writs of habeas corpus brought by the above-referenced petitioners. On February 2, 1981, I received from William M. Kunstler, petitioners' attorney, a copy of his Notice of Appeal from Judge Griesa's determination, and on February 9, 1981, I received from Mr. Kunstler a copy of his Civil Appeal Pre-Argument Statement filed in this Court. It is my understanding, though, that before petitioners can appeal to this Court they must attempt to obtain a Certificate of Probable Cause from Judge Griesa. This, to my knowledge, they have failed to do. It is therefore respectfully requested that this Court reject as premature petitioners' application to appeal to this Court from the denial and dismissal of their habeas corpus petitions by Judge Griesa in the United States District Court.

Respectfully,

Allen Alpert
Assistant District Attorney

cc William M. Kunstler
853 Broadway
New York, New York

Mr. Alpert
apps.

CURTIS, MALLET- PREVOST, COLT & MOSLE

ATTORNEYS AND COUNSELLORS AT LAW

100 WALL STREET
NEW YORK, N.Y. 10005

TELEPHONE: (212) 248-8111
CABLE: MIGNIARD NEWYORK
TELEX: WU 12 8811 MIGNIARD
WU: 66172 MIGNIAR
ITT: 422127 MGND

MIAMI, FLORIDA
WASHINGTON, D. C.
MEXICO CITY, MEXICO
PARIS, FRANCE

COUNSEL
CLIFFORD P. CASE
JOHN FRENCH
ERNEST A. GROSS

DISTRICT ATTORNEY'S OFFICE
NEW YORK COUNTY

1981 MAR 19 AM 11:26

RECEIVED

March 5, 1981

William M. Kunstler, Esq.
Center for Constitutional Rights
835 Broadway
New York, New York 10003

Re: Muhammed abd Al Aziz v. Superintendent,
Ossining Correctional Facility (80 Civ.
1345, 81 Ca. 2035)

Dear Mr. Kunstler:

As we discussed by telephone some time ago, Muhammed abd Al Aziz does not wish to pursue the appeal which you filed on his behalf in the above matter. Since you are listed as the counsel of record, I would appreciate it if you would formally notify the clerk that Mr. Aziz wishes to withdraw his appeal. Please call me if you need additional confirmation of Mr. Aziz's decision prior to the contacting of the clerk.

I have spoken with Mr. Allen Alpert at the office of the District Attorney, and have informed him of Mr. Aziz's decision.

Sincerely,

Mark H. O'Donoghue

cc.: Allen Alpert, Esq.
Muhammed abd Al Aziz

COPY

ENTERED BY
APPEALS CLERK

United States Court of Appeals
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit,
held at the United States Court House, in the City of New York, on the seventh
day of May, one thousand nine hundred and eighty-one.



Muhammad Abdul Aziz (Norman 3X Butler),
Khalil Islam (Thomas 15X Johnson),
Plaintiffs-Appellants,

v.

Supt. of Ossining Facilities,
Defendant-Appellee.

Muhammad Abdul Aziz (Norman 3X Butler)
Khalil Islam (Thomas 15 X Johnson),
Plaintiffs-Appellants,

v.

Supt. of Ossining and Clinton
Correctional Facilities,
Defendants-Appellees

81-2035
C/A Ref. No. 81-2035
(S.D.# 80Civ.1345, 80Civ.1346)
Judge Griesa)

Noting that a notice of appeal was filed on January 29, 1981

and that no application for a certificate of probable cause was
promptly made,

It is hereby ordered that the appeal be and it hereby is
dismissed without prejudice to its reinstatement within 45 days
upon submission to the Clerk of a written request and an application
for a certificate of probable cause.

A. DANIEL FUSARO
Clerk

By:

Sophia Korecki
Sophia Korecki
Deputy Clerk

This memorandum instead is based upon our own conviction that commutation of Mr. Aziz's sentence would be consistent with basic principles of justice. The content of this memorandum is (a) unimpeachable, and (b) presents an objective history of one man's life in prison which, for many reasons, supports commutation. It rests upon a basic premise: - that if Mr. Aziz does not deserve commutation, then no prisoner does. And surely one answer to the crisis in our prison system is a coherent method for the release of prisoners like Mr. Aziz who have repeatedly acted in a manner which justifies reward and, in the process, have demonstrated their fitness to return to society. Indeed, the need for a coherent method of release on this basis has been specifically acknowledged in the preliminary report issued by Governor Carey's recently constituted Executive Advisory Commission on the Administration of Justice.

* * *

We do not represent Mr. Aziz as part of any formal pro bono institutional firm program (none exists as such). Rather, we undertook to represent Mr. Aziz based upon our own judgment, first, that he was not guilty of the crime for which he had been imprisoned and, second,

and as significantly, that the overriding issue raised by Mr. Aziz's positive conduct in prison requires full exploration, both for his sake and for the prison population as a whole. As a consequence, well aware that Mr. Aziz had previously applied for executive clemency without success, we recommended the submission of this application with full documentation of his quite extraordinary record while in jail. Mr. Aziz agreed.

We urge that the important issue addressed in this memorandum be given the most serious consideration. We believe that, after such consideration, you will agree that commutation of Mr. Aziz's sentence is in the public interest, both as a matter of justice for an individual and, at least as significantly, as a signal to all prisoners that positive inmate conduct will be considered by the Executive in determining when a prisoner has served time enough.

II. NATURE AND BASIS OF APPLICATION

Mr. Aziz's application seeks a commutation of his minimum sentence so that he will be released forthwith or, at the least, immediately eligible for parole in the discretion of the Board of Parole. In the absence of such

relief, he will not become eligible for parole until February 25, 1985.

Mr. Aziz made his application by a letter dated June 20, 1981. Since then, numerous letters written on his behalf have been submitted to the Executive Clemency Bureau by correctional officials, educators, religious and community leaders, friends and family. This memorandum summarizes this record in light of the criteria for the granting of executive clemency outlined in the "Guidelines for Review of Executive Clemency Applications."

III. Criteria for Granting of Executive Clemency

The Guidelines specify that commutation of a sentence will be considered if the following conditions are met:

- (1) the inmate's term or minimum period of imprisonment is more than one year;
- (2) he has served at least one-half of his minimum period of imprisonment; and
- (3) he is not eligible for parole in the discretion of the Board of Parole.

Mr. Aziz meets each of these requirements. His minimum period of imprisonment is 20 years. He has served almost 17 years of that minimum term. He will not become eligible for release or parole in the discretion of the Board of Parole until February 25, 1985. In addition,

more than one year has passed since the date of notification denying Mr. Aziz's last application for clemency and there are no pending legal proceedings commenced by Mr. Aziz relating to his conviction.

The Guidelines also state that the applicant has the burden of demonstrating "by clear and convincing evidence" one of three grounds for commutation of his sentence:

- (1) that (a) he has, within his capabilities, made exceptional strides in self-development and improvement;
 - (b) he has made responsible use of those rehabilitative programs available and has addressed identified treatment needs; and
 - (c) commutation of the sentence is in the interests of justice, consistent with public safety and the rehabilitation of the applicant; or
- (2) that he is suffering terminal illness or has a severe and chronic disability which would be substantially mitigated by release from prison and that such release is in the interests of justice and consistent with public safety; or
 - (3) that further incarceration would constitute gross unfairness because of the basic inequities involved.

Mr. Aziz's application relies upon the criteria specified in Paragraph (1), although, as noted below, substantial evidence exists as to his innocence. As the

many letters submitted on his behalf demonstrate, Mr. Aziz has compiled a remarkable record of achievements in his 17 years in prison.

The fact that experienced correctional officials like Commissioner Benjamin Ward and Harold J. Smith have lent their support to this application is itself compelling evidence of Mr. Aziz's unusual qualities. They include, in addition to Commissioner Ward and Mr. Smith, former Commissioner Stephen Chinlund, who also worked with Mr. Aziz at times of crisis, as well as officers and chaplains who have known him in more normal circumstances. The letters from Dr. Kenneth Clark and Mr. Aziz's professors at Mercy College relate his educational achievements. The letters of Peter Goldman and other friends of Mr. Aziz describe his personal qualities. From this record, it is clear that Mr. Aziz will successfully adapt to life outside prison.

This application does not request a pardon or executive clemency on the grounds of Mr. Aziz's innocence. As his letter indicates, he testified at his trial as to his absolute lack of involvement in any conspiracy to assassinate Malcolm X and he has consistently maintained his innocence since conviction. Substantial new evidence supports his claim Mr. Aziz recognizes, however -- and

and as his counsel we have advised him -- that the likelihood of setting aside his conviction at this stage is remote in view of past legal proceedings.

These proceedings were two habeas corpus actions.

The first, reported as Butler v. Smith, 416 F. Supp. 1151 (1976), in the United States District Court for the Southern District of New York, (Hon. Whitman J. Knapp), was brought pro se, and essentially reiterated the points initially raised in the State courts by Mr. Aziz's counsel on appeal from his conviction. The second, which is unreported, was commenced in 1977 in the Supreme Court for the State of New York before Judge Henry Rothwax, and appealed in 1979 to the United States District Court for the Southern District of New York (Hon. Thomas J. Griesa). This second proceeding, which was brought on behalf of Mr. Aziz and his co-defendant Khalil Islam (formerly Thomas Johnson) by the Center for Constitutional Rights, was principally based upon the affidavits of Mr. Aziz's co-defendant, Mujahid Abdul Halim*, who admitted his guilt at trial. In these affidavits, Mr.

*As mentioned, Mr. Halim was previously known as Talmadge Hayer. He was mistakenly referred to in the indictment as "Thomas Hagen".

Halim exonerated Mr. Aziz and Mr. Islam of any responsibility for the crime and identified the individuals who had participated with him in the assassination of Malcolm X (as he had declined to do at trial during his testimony on behalf of Mr. Aziz).

Judge Rothwax held that this information did not meet the standard for newly discovered evidence under applicable law because it simply elaborated upon Mr. Hayer's exculpatory trial testimony. He also noted that other evidence adduced was insufficient to warrant a new trial, and concluded that no miscarriage of justice had occurred.*

These legal proceedings coincided with a re-examination of the case by the press. Peter Goldman, a senior editor of Newsweek, covered the original investigation into the killing of Malcolm X and attended the trial. He has written an extensive account of the events in his book The Death and Life of Malcolm X, in which he concludes that neither Mr. Aziz nor Mr. Islam was guilty. Mr. Goldman has submitted his own letter in support of Mr.

*The legal records of these proceedings are quite voluminous, and therefore we have not submitted them as part of the record. We will be pleased to supplement the record, if deemed appropriate, and supply any information requested.

Aziz's petition. More recently, Mike Wallace of the CBS show "60 Minutes" has reviewed the same evidence and raised additional questions as to the original verdict.

Understandably, neither Mr. Goldman nor "60 Minutes" has been able to produce incontrovertible evidence of the innocence of Mr. Aziz or Mr. Islam. After nearly 17 years, it would be very difficult for any investigation, whether conducted by Mr. Aziz, the District Attorney, or the press, to develop evidence (other than confessions by the actual participants) which could conclusively establish the innocence of Mr. Aziz.

We submit, however, that the evidence of Mr. Aziz's outstanding prison record is sufficient, apart from any issue of guilt or innocence, to warrant the granting of executive clemency.

IV. Record of Achievements

At the time of his arrest in 1965, Mr. Aziz was 26 years old, married, with a family. He had completed five years of service in the United States Navy, receiving honorable discharges at the completion of his two terms, and had satisfied the high school requirements for the General Educational Development from the United States Armed Forces Institute. He had no record of serious

criminal activity. He had held various jobs and was pursuing a training program in office machine repair but he had not fully developed his career goals.

Mr. Aziz's history, prior to conviction, of military service and employment, his family life and his religious beliefs, indicate that he was a responsible, motivated and capable man. Even so, his achievements over the years in prison reflect a growth and development as a human being which sets him apart from other inmates and, indeed, other individuals outside prison. The letters which have been submitted emphasize Mr. Aziz's role as a Muslim Imam, as a leader, as a student, and as an example to other inmates. In each of those roles, he has made remarkable use of available prison programs -- and has been a driving force to expand those programs -- to develop his own talents and to assist other prisoners. Together, these letters portray a man who, in Benjamin Ward's word, is an "exceptional candidate for clemency".

(1) Leadership Roles in Prison

Mr. Aziz's early efforts after his entry into the state prison system in 1966 were directed to organizing the Muslim community. His letter of June 20, 1981 describes this period briefly. As his letter indicates, he spent the first 19 months of his sentence in separate

confinement, segregated from the general prison population. During that period, he developed manuals for training other Muslim inmates so that, upon his release from the Special Housing Unit in 1967, he could carry out his functions as a Muslim leader.

At that time, there was substantial concern about the activities of Muslim inmates, particularly as various advocates of "Black Power" gained greater support. Mr. Aziz assumed his leadership role, first at Clinton and later at Attica, acutely aware of the extreme mistrust with which prison officials regarded the Muslim community but determined to change that attitude. He has described his general approach in a college essay as follows:*

In the mid 1960's, as an imprisoned Muslim Minister in the Nation of Islam -- as the community and its leadership were then referred to -- I saw my role as developing a viable and influential Islamic community in the prisons. It was my view that if this could be achieved everything else would flow naturally from it. Those times were very difficult because of the nature of the philosophy and catechism that were then espoused.

*The essay, entitled "An Outline, Administrative and Counseling Experience," has been submitted to the Executive Clemency Bureau with other supporting materials. It was originally written in connection with a course at Mercy College.

However, the focus of my teaching efforts were and are in the area of self-development. Because of this I have written and designed programs which directed the members of my community into a new and higher psychology. I think that I can say with certainty that the manner in which I have planned and organized the communities for which I have been responsible has set the standard around which other communities have developed. Members of my community are certainly pillars of exemplary conduct in the prison environment. Very few of those who have spent at least a year to eighteen months in the community have gone home and then returned to prison; as the Muslim community stabilized, it became increasingly apparent that something of value was to be gained from what was being taught.

The letters of Superintendent Harold J. Smith and Mr. Robert T. Curtiss confirm Mr. Aziz's view of the positive impact of his Muslim teachings. Superintendent Smith, who knew Mr. Aziz for five years as an inmate at Attica (prior to his change of name from Norman Butler), writes in his letter of August 28, 1981:

The American Muslim Mission was one of the largest groups of organized inmates within this institution. At all times I felt that Norman Butler worked with his group constructively, telling them to obey the institution rules and also communicating to these inmates that they should avail themselves of all the educational and training possibilities that existed here.

NYC.gov/records NYC Mr. Curtiss, who was an official at the Attica NYC.gov/records
facility between 1969 and 1976, has described in his
letter of October 17, 1981 how Mr. Aziz, on one occasion,
dealt with groups of inmates who were attempting to cause
a disturbance:

NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records
By 1971, Norman was the Imam, or
leader of the Muslim inmates who numbered
about 250. One afternoon in the latter
part of August there was a confrontation
between the Muslim inmates and other
groups of inmates such as the Young Lords
the Weathermen and several other groups.
The leaders of these groups were attempt-
ing to persuade Norman Butler and the
Muslim inmates to join them in causing a
disturbance at the Attica facility.
Norman Butler resisted their attempts to
enlist him in this plan. It was reported
by an officer, who heard the discussion,
that Norman told them that he would not
join with them and that if they persisted
in this plan they would only end up
spilling their own blood.

NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records
Several days after this occurrence,
Norman Butler was transferred to another
facility. Another inmate took over
leadership of the Muslim group and within
a short time the Attica riot occurred. I
am convinced that Norman Butler acted as
a stabilizing influence while he was the
Muslim Imam and that his removal from
Attica at this time was a fatal mistake.

NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records NYC.gov/records
Norman Butler returned to Attica
after the riot and again became Imam of
the Muslim inmates. Several times during
periods of inmate tension and unrest, I
found Norman Butler to be a man of good
judgment who used his position to guide
many inmates away from the group that was
responsible for creating the problem.

The transfer to which Mr. Curtiss refers occurred shortly before the Attica uprising in September 1971. Prior to the riot, Mr. Aziz was transferred to the Green Haven Correctional Facility where he again assumed the position of Imam for the Muslim community. He opened up a mosque (which is still open), and arranged for Muslims to have adjoining cells so as to foster their sense of community. He continued to play a constructive, calming role among the prison population. In one instance, his efforts were recognized by then Commissioner Russell G. Oswald in a letter dated May 16, 1972.*

Mr. Aziz returned to Attica in 1973. As the letters of Superintendent Smith and Mr. Curtiss indicate, he continued to play a positive role in the Muslim community and among the general prison population. In 1974, he

*The full text of that letter (a copy of which has been submitted) reads as follows:

We are grateful to you for assuming the responsibility you did to restore and maintain order. Your part in this support is being called to the attention of the Parole Board. I am certain that you understand that no one can promise you favorable action, but you can be certain that the Board members hearing your case will be aware of your contribution.

was elected to the newly created Inmate Grievance Resolution Committee. He served on that committee with another inmate representative, a sergeant, an officer and a civilian coordinator. He was re-elected to his position by a vote which was three times as great as his first vote. Superintendent Smith's letter refers to Mr. Aziz's role as inmate of the committee during that period and notes that Mr. Aziz worked closely with many to keep conditions calm.

Mr. Aziz was present at Attica in 1976 when a major inmate strike occurred. During this crisis, the State sought to avert a second tragedy by engaging in negotiations with the inmates. Mr. Stephen Chinlund, who was then Chairman of the State Commission of Correction, has described Mr. Aziz's role in a letter dated October 24, 1977 submitted in support of an earlier application for executive clemency. In that letter Mr. Chinlund wrote:

I have only had contact with Mr. Butler during the period of his stay in Attica when there was an inmate strike (the late summer and fall of 1976). During that time he was subjected to extraordinary pressures from various factions of the inmate population. The administration also was looking to him for any leadership he could provide to help move safely out of a dangerous situation.

During that entire period, Mr. Butler acted with discretion and courage. He played a major role in keeping peace in an extremely tense situation.

Mr. Aziz's role is also described in Commissioner Benjamin Ward's letter of February 10, 1981. Commissioner Ward, who was then Commissioner of the State Department of Correctional Services, was present at Attica with Mr. Chinlund. He describes his encounter with Mr. Aziz as follows:

Mr. Butler was not a leader of that strike, but his recognized leadership ability lead to his being selected as a housing block representative that I requested be selected to meet with me. I was immediately struck with the obvious intelligence and strength of this man. I am certain that he was aware, from the beginning, that I was carefully but deliberately maneuvering to outposition the leadership that was pressing the strike. After four days of dialogue, Mr. Butler picked the opportune moment to exert his very substantial influence and support the position that I had established. His move was a signal that any other position would not succeed. He then agreed to carry that message to the body of the population. With Mr. Butler's help, the demonstration was brought to a peaceful conclusion without violence, injury or security concessions by the Attica administration.

It is evident from these letters that Mr. Aziz played a critical role in facilitating a peaceful resolution of the 1976 strike at Attica. But perhaps just as

significant is the depth of the personal impact Mr. Aziz made on Commissioners Chinlund and Ward.

Mr. Chinlund's earlier letter in support of Mr. Aziz's petition for executive clemency noted that he had supported a similar application by only one other inmate. Commissioner Ward's letter states that he has not written a similar letter in support of any other prisoner. Mr. Ward's support of an application for executive clemency -- unique in his own experience -- underlines the special nature of this case.

The letters of other officials reflect the same respect for Mr. Aziz for his day-to-day contributions in less dramatic circumstances. The Reverend John L. Cavanaugh, senior chaplain at Ossining, has written several letters (July 11, 1979 and February 13, 1981) describing Mr. Aziz's programs, sales of pastry and musk oils by the Muslim community, individual and group counseling sessions, and religious services. In addition, Mr. Aziz's accomplishments for the Muslim community have been acknowledged in letters from Imam Nuriddin Faiz, a New York State chaplain for the Muslim community, and Imam Ali Rashed, resident Imam of the Masjid Malcolm Shabazz of Harlem. Most

recently, Mr. Aziz has worked closely with the administration in building a mosque for the Muslim inmates at the Ossining facility.

The letters of Father Cavanaugh and Imam Faiz also note that the lives of many men in prison have been positively changed by Mr. Aziz's personal example. Lieutenant Arthur Suggs of the Ossining facility has stated in his letter of April 24, 1981 that the inmates under Mr. Aziz's influence have shown a marked improvement in their institutional adjustment and personal development. Lieutenant Suggs also wrote that his own responsibilities have run more smoothly because of Mr. Aziz's leadership role:

As adjustment committee lieutenant, I can say that members of his religious group are certainly not a problem here. On the other hand, the atmosphere being what it is, if they do come before me in most instances they are found to be morally right.

Mr. Aziz's personal impact on prisoners may also be seen from some of the letters submitted by other prisoners and several representative essays prepared by participants in Mr. Aziz's religious program during the Muslim fasting period of Ramadan. These essays warrant close attention because they are personal expressions of

the values and beliefs which Mr. Aziz attempts to communicate on a daily basis in order to change the behavior of men and to assist their return to society as law-abiding citizens. Mr. Aziz's letter of June 20, 1981 makes this point specifically when he emphasizes that "only a sense of trust, along with internalized moral principles on the part of each individual will change the crime statistics."

Mr. Aziz's Muslim beliefs have been the source of his strength over the last 17 years, but they have not remained rigid or fixed. Much as Malcolm X did in his last years, Mr. Aziz has continued to study, to reflect and to question. Peter Goldman, a student of the Muslim movement since the 1960's as a reporter and, in recent years, a friend of Mr. Aziz, has described this process in his letter of July 11, 1981 supporting Mr. Aziz's petition:

He is serious about his religious beliefs; through study and, I presume, prayer he has grown past the old simplicities of his youth as a "Black Muslim" to the more orthodox Islam of the American Muslim Mission and has brought its teachings of peace, brotherhood and moral rectitude to others in the inmate population.

(2) Educational and Social Initiatives

Wholly apart from his contributions as a Muslim Imam and inmate representative, Mr. Aziz has actively pursued the available programs in prison and has taken the

initiative in stimulating the development of additional programs within the prison.

His June 20, 1981 letter describes his own realization that it was necessary to develop his educational skills in a formal academic setting. He began to take college-level courses without credit at Green Haven in 1972. After his transfer to Clinton in 1972 and then to Attica in 1973, he participated in the Empire College program, and worked with its supervisor, Dr. DeMott. In addition, in 1975, Mr. Aziz worked as a clerk in the prison law library and began to explore legal issues which could bear upon his conviction. (It was at that time that he commenced a pro se action in Federal Court to review his conviction.) He began a systematic academic program at the Genessee Community College, obtaining an Associate's degree. He continued this program after being transferred to Ossining in 1977.

In his letter, Mr. Aziz describes the lack of academic, cultural or other programs for inmates, and the inferior level of sports activities, which were available to inmates at Ossining when he first arrived. Mr. Aziz took the lead in reactivating the Jaycees and Inmate Liaison Committee. He also held various meetings with

Ossining officials in an effort to develop college level academic programs and organized sports activities.

His contributions in this area were acknowledged in a letter of February 23, 1981 which Deputy Commissioner J. Kevin McNiff wrote to Mr. Aziz upon his graduation from Mercy College. Mr. McNiff stated:

Ossining has gone through a period of dramatic change. As a result there have not been sufficient educational and training programs which are available at other facilities. You have personally assumed the responsibility of identifying innate talent and organizing that talent to provide education and training programs at Ossining. This has assisted the facility administration the program staff at Central Office immeasurably. Your efforts have also assisted the citizens of New York State by providing programs at little or no cost.

Mr. James McBride, supervisor of volunteer services in Ossining, has also given Mr. Aziz his commendation in an internal memorandum of March 2, 1981. Mr. McBride's memorandum states:

Mr. Aziz has been a major factor in the success of special events and other programs developed and implemented by the volunteer services office.

Mr. Aziz's participation and all the progressive programs, and professional input for their success has been an on-going part of his humanitarian concern and kind assistance.

Similar memoranda attesting to Mr. Aziz's work on prison projects has been written by Mr. Richard N. Perugini, recreation program leader at Ossining and by Mr. Bart Sellazzo, acting education supervisor-special projects at Ossining.

Finally, Mr. Aziz has been instrumental in setting up a college-level program for inmates, which he himself has pursued with great success, graduating from Mercy College in January 1981 with a B.S. degree with summa cum laude honors.

The letters received from his teachers reflect the level of his educational achievements. Daniel J. Shapiro, Adjunct Professor of Constitutional Law and History at Mercy College, writes in his letter of December 15, 1980:

Mr. Aziz was a student of mine in two different undergraduate law courses for two continuous semesters. During that period of time I came to know and respect Mr. Aziz as a hard working, exceptionally bright, conscientious and analytical individual. In both courses he excelled in many different ways and was always one of the top three students. He is highly intelligent, socially conscious, and open-minded about the validity of different perspectives among different individuals and groups. Indeed, the particular thing that has most impressed me about Mr. Aziz over the past two years has been his open attitude towards learning and absorbing new and

different ideas and that the fact that he was always prepared to absorb new ideas and evaluate new approaches in analyzing problems.

Professor Lynn Teper-Singer, Mr. Aziz's psychology instructor at Mercy, writes:

Mr. Aziz proved himself to be a bright, articulate and aware individual. More importantly, he displayed perseverance and behaved responsibly at all times throughout the semester. His goal was to reveal himself as an outstanding student. He more than accomplished that end.

Mr. Aziz's educational program has not been confined to his own areas of interest. He has strongly urged others to pursue similar programs. As Dr. Warren Herendeen, Coordinator of the College Skills Program at Mercy College, has observed in his letter of June 1, 1981:

Aziz, as a minister of Islam, characteristically takes the view that what he does is important for himself as well as for those who believe as he does and who look to him for guidance. Thus, when he became convinced several years ago that formal education is absolutely necessary, he immediately began to encourage others to complete their high school diploma work and proceed to college-level courses. Aziz showed the way by completing his formal education, but, as usual, he did so in a particularly memorable fashion.

Mr. Dennis Manwaring, Educational Director at Ossining, made the same comment in his letter of May 19, 1981:

Aziz has demonstrated by action the importance of education a correctional facility, as a means for providing inmates the opportunity for growth. He has advocated education at the facility and has been the inmate voice in formulation of inmate programs at the planning stages.

Mr. Aziz's academic record led Dr. James F. Melville, Dean for Academic Affairs at Mercy College, to encourage Mr. Aziz to pursue graduate studies at Mercy. In addition, Dr. Frances Mahoney, Chairperson of the Psychology Department at Mercy, has noted in her letter of June 4, 1981 that she and Dr. Kenneth B. Clark have proposed a position for Mr. Aziz as an adjunct lecturer or graduate assistant in psychology.

In addition to his academic success, Mr. Aziz has shown a special administrative and entrepreneurial talents in organizing a variety of programs in prison. These have ranged from sales by the Muslim community to active participation in the N.A.A.C.P. and rejuvenation of volunteer groups such as the Jaycees. He has also demonstrated considerable business acumen, as both Deputy Superintendent Wilson J. Deane and Mr. Bart Sellazzo note in their letters.

V. Reasons for Early Release

The record which has been summarized is abundantly clear on Mr. Aziz's achievements and personal development. It is difficult to conceive of a more fruitful career by a prisoner sentenced to a life sentence. The evidence is overwhelming that Mr. Aziz has made every possible use of available prison programs to develop as a human being and, perhaps more significantly, to help others to enjoy the same chance to grow. Furthermore, the evidence establishes that Mr. Aziz has impressed both correctional officials, teachers and fellow inmates as a man of integrity, worthy of respect and genuinely admired.

Finally, their letters express a confidence that Mr. Aziz can adjust successfully to life outside prison. Commissioner Ward's letter makes this point unequivocally and includes an offer to hire Mr. Aziz upon his release. Dr. Clark and Dr. Mahoney have encouraged him to pursue his graduate studies and have offered to assist with employment. Dr. Herendeen has taken a special interest in Mr. Aziz as a friend and collaborator and has committed himself to assisting Mr. Aziz with his adjustment to society.

Mr. Aziz also has strong personal ties which will aid his transition. Ms. Eleanor Qadirah, with whom

Mr. Aziz has been married in accordance with Muslim ritual, and his children and grandchildren have maintained close relationships over the years. They visit Mr. Aziz regularly and are an integral part of his life. The Muslim community, as represented by Imam Ali Rashed in New York, has pledged to support Mr. Aziz in his new life. With this network of friends, family and fellow Muslims, as well as his own personal resources, Mr. Aziz will have ample assistance in making the adjustment to society.

Plainly, commutation of Mr. Aziz's sentence is consistent with public safety and his own rehabilitation. Putting aside the question of his guilt, Mr. Aziz's otherwise exemplary prison behavior over 17 years since his conviction are sufficient to demonstrate that the public will not be jeopardized by his release. Nothing in the record gives any hint of violence or criminality which would raise the slightest possibility of future wrongdoing.

Mr. Aziz's release will also complete his rehabilitation by allowing him to fully utilize his talents. As Peter Goldman observes in his letter, Mr. Aziz has achieved everything that could possibly be achieved as a prisoner, and has exhausted the prison system's opportunities for future growth. The educational

program offered by Mercy College at Ossining, as presently constituted, cannot meet Mr. Aziz's needs and it has proven difficult to carry out the plans for graduate education proposed by Dr. Clark and Dr. Mahoney upon Mr.

Aziz's graduation from Mercy College in January 1981. His release, at the age of 43, will give him valuable time to establish his career. It will also allow him to care for his younger children at a critical stage in their growth. That chance to have a direct impact on their lives will be lost in another three years.

Mr. Aziz's release is also plainly "in the interests of justice". We acknowledged at the outset that Mr. Aziz's petition is not based upon issues of guilt or innocence. While the press accounts by Mr. Goldman and Mr. Wallace have raised compelling reasons to believe that Mr. Aziz and Mr. Islam were wrongly convicted, it is, as we have noted, virtually impossible in 1982 to prove conclusively that the jury was mistaken when it rendered its verdicts.

In a fundamental sense, however, Mr. Aziz's case tests basic concepts of our criminal justice system and prison system. Our procedural protections -- the right to counsel, the constitutionally mandated burden of proof, the jury of peers -- all reflect an effort to determine

the truth. But that system is not foolproof. Mistakes are made. In some cases, innocent persons are convicted by juries after a trial which is as fair as our system can provide. The ordinary processes of appellate review often cannot reverse that jury determination. Executive clemency, because it is not confined by these rules, is one method by which the victims of those mistakes can find relief.

Even for those who are guilty, however, executive clemency serves to recognize the truly extraordinary individual whose accomplishments in prison distinguish him from other inmates. Unless there is such a possibility of recognition, inmates have no incentive to change their lives, to excel in the tasks they are given, or to take any risks in improving their environment. The letters which have been submitted repeatedly describe Mr. Aziz as a role model for other prisoners. He has done what he has and become what he is because of his inner values and beliefs, not because he has expected to receive special consideration. But the example of his release, on the basis of his contributions as an inmate, would surely have untold effects in encouraging others to follow the same path.

Favorable action in his case, therefore, can foster significant goals of the criminal justice system.

because it will demonstrate to all inmates that their rehabilitation efforts in prison can yield tangible results.

This last point is important because the consequences of refusing to recognize conduct such as Mr. Aziz's are harmful both to individual inmates and to all of society. More and more criminals -- overwhelmingly poor and of minority backgrounds -- enter New York's prisons. They find that, apart from statutory good time, their best efforts as inmates go unrecognized. Left without any incentives or hopes of release, they have little to encourage them to change their values and to prepare themselves for productive roles in society. Their only "debt" paid to society is the loss of time and freedom. They are not encouraged to develop the internal values which, as Mr. Aziz points out in his letter, are the real keys to altering behavior.

The rest of society pays the price in several ways. In the most immediate sense, the public bears the heavy financial burden of sustaining expensive institutions for individuals who could return to society. The crisis in New York City's institutions, the recent prison bond issue, and the Westchester incident all reflect the

increasingly severe burdens under which this overcrowded system must function. Last year's tenth anniversary of the tragic Attica riot is a reminder of even more calamitous consequences which can result from a systematic breakdown. A first priority of reform must be a reduction of the inmate population. But that obviously cannot be achieved in the short term by construction of new prisons, however necessary they may be. One answer, therefore, must be a coherent method for release of prisoners who have, over time, clearly demonstrated their fitness to return to society. This goal has been acknowledged in the preliminary report issued by the Executive Advisory Commission on the Administration of Justice. Executive clemency is not a perfect tool for that reform and may, in time, be complemented by procedures for early parole and other forms of release. But commutation of sentences for exemplary inmates, like Mr. Aziz, will serve that goal by calling this option to the attention of inmates and the public.

Finally, we must note that Mr. Aziz has served almost 17 years of his sentence. It is virtually certain that the Parole Board would grant his release if he were eligible for parole today. He has achieved everything that would possibly be expected of an inmate. At the age

of 43, he is still young enough to begin a career, re-establish his family ties and contribute to society.

Regardless of guilt or innocence, his release would be a testimony to the example of Malcolm X -- a man who, after all, emerged from years in prison to forge a new life of creative social action.

* * *

For the reasons stated, we respectfully submit that it would be appropriate and just for Mr. Aziz to be granted executive clemency in the form of commutation of his sentence. We understand that the full record may contain other investigative materials and reports to which neither Mr. Aziz nor we may be given access. Mr. Aziz has requested us to reiterate his earlier offer to respond fully to any inquiry by the Executive Clemency Bureau or the Governor's staff concerning matters under review in connection with his application. In addition, we are available to meet with staff members conducting the review of this application, and we ask that any matters of

special concern be brought to our attention so that a complete record can be compiled.

Dated: February 3, 1982

Respectfully submitted,

CURTIS, MALLET-PREVOST,
COLT & MOSLE
Attorneys for Muhammad
Abd al-Aziz
100 Wall Street
New York, New York 10005
(212) 248-8111

CURTIS, MALLET-PREVOST, COLT & MOSLE

ATTORNEYS AND COUNSELLORS AT LAW

101 PARK AVENUE
NEW YORK, N.Y. 10178

TELEPHONE: (212) 696-6000

CABLE: MIGNIARD NEW YORK

TELEX: WU 12 6811 MIGNIARD

WUI: 66172 MIGNIAR

ITT: 422127 MGND

1735 I STREET
WASHINGTON, D.C. 20006

9 HILL STREET
LONDON, W1X 7PP

8 AVENUE VICTOR HUGO
75116 PARIS

HOAGLAND Y JAUREGUI, S.C.
REFORMA NO. 199
06500 MEXICO, D.F.

100 WALL STREET
NEW YORK, N.Y. 10005

COUNSEL
JOHN FRENCH
ERNEST A. GROSS
KENNETH N. LAVINE

WRITER'S DIRECT DIAL NUMBER:
(212) 696-6121

MANUEL R. ANGULO
BENJAMIN H. BALKIND
ALAN BERLIN
WILLIAM L. BRICKER, JR.
PRESTON BROWN
JOHN P. CAMPBELL
CLARENCE U. CARRUTH, JR.
MORGAN A. CASEY, JR.
JOHN T. CONNOR, JR.
MINER D. CUNY, JR.
JOHN F. EGAN
ANTHONY W. FITZGERALD
PETER E. FLEMING, JR.
ALBERT FRANCKE, III
C. THOMAS GOFFREY
KEITH HIGHEE
ALEXANDER C. HOAGLAND, JR.
MIGUEL JAUREGUI R.*

PETER A. KALAT
LAWRENCE V. KELLY
T. BARRY KINGHAM
TOWNSEND J. KNIGHT
DAVID B. LINDROD
ROBERT S. LIPTON
WINSTON M. LOVEJOY, JR.
JOHN N. MARGEN
JOSE T. MOSCOSO
JEREMIAH T. MULLIGAN
RUTH T. PROKOP**
TIMM T. REIDINGER**
JOHN N. ROMANS
WALTER D. SCHIER
HERBERT STOLLER
ROBERT D. WHORISKEY
PETER M. WOLFGANG
LAURENCE P. WRAGG, JR.

*ADMITTED IN MEXICO BUT NOT IN NEW YORK

**ADMITTED IN THE DISTRICT OF COLUMBIA BUT NOT IN NEW YORK

**ADMITTED IN GERMANY BUT NOT IN NEW YORK

December 28, 1982

Alan Alpert, Esq.
New York District Attorney
1 Hogan Place
Room 944
New York, New York 10003

Dear Alan:

Enclosed are copies of materials we submitted
in support of Mr. Butler's clemency petition.

Thank you for taking the time to speak with
me.

Sincerely yours,

Mark H. O'Donoghue