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Justice in Birmingham

By [Scott Horton](#)

A federal judge has ordered the United States to pay legal fees, costs and interest to a Huntsville entrepreneur who was wrongly charged by U.S. Attorney Alice Martin with violations of arms export rules. While the exact amount of the award remains to be fixed, attorneys for the claimant say they will be seeking more than \$500,000.

Alice Martin, the U.S. Attorney in Birmingham, brought the case and was directly involved in managing it. She appears to have withdrawn opposition to the claims for reimbursement in an effort to avoid being forced to give testimony in a case in which she is accused of being motivated by improper, possibly racist, motives. As [previously noted](#), the defense contended that Martin set out consciously to destroy Alex Latifi and the Huntsville-based manufacturing business that he ran. Latifi, an Iranian-American, had beat out some major defense industry interests by putting in a low bid for the manufacture of some helicopter parts. Martin sought pre-emptive relief, freezing Latifi's business assets and effectively putting him out of business a year before she secured an indictment. But as the case came to its first days in court, it turned out that Martin had no basis for her actions and that Latifi was clearly innocent of the charges she had brought against him and fanned aggressively in the press.

Judge Inge Johnson ended Martin's case after concluding that the prosecutors had no evidence for the charges they were bringing. When Martin moved to have it concluded with no further consequence, Judge Johnson concluded the exoneration of Latifi did not end the case. There was a major issue to be confronted: Latifi's claims for damages based on the misconduct of the U.S. Attorney. In a related matter, another federal judge allowed a defendant to withdraw a guilty plea obtained by Martin and dismissed the case, suggesting that the guilty plea arrangement was a "manifest injustice." The [Birmingham News reports](#):

Latifi, an engineer trained at the University of Alabama in Huntsville, will be able to collect about \$500,000 in expenses, said his Birmingham attorney, Henry Frohsin. Latifi contends that he was selected for prosecution under arms-export laws because of his ethnic background. "I can't understand destroying someone's life for no reason," said Latifi, a 1973 immigrant who became a citizen in 1980. "All I can be thankful for is that I am not in jail."

Latifi faced 25 years in prison for his alleged crimes. His Huntsville machine shops are silent after government business disappeared. Axion had been making machined parts for the U.S. military since 1984. The judge's ruling filed late Wednesday said the fees were awarded under the Civil Asset Forfeiture Reform Act, a 2000 law designed "to give owners innocent of any wrongdoing the means to recover their property and make themselves whole after wrongful government seizures."

The ruling came unexpectedly. A hearing in the matter at which testimony was to be taken was set for April 12. Latifi's counsel had promised that it had commanding evidence concerning the misconduct of Martin and her office.

Johnson's ruling also said the government has withdrawn its request for a certification from the court endorsing the asset seizure as having had a reasonable cause. That eliminates any chances for Axion's lawyers to demand a hearing to examine the Justice Department's memos, legal papers and investigative methods, said Frohsin, a lawyer with the Birmingham office of Baker, Donelson, Bearman, Caldwell & Berkowitz. "What was so important that they were trying to hide?" said Jim Barger, another Baker, Donelson lawyer who worked on the case.

It looks to me as if Alice Martin was concerned about the prospect that she would be placed under oath. Martin filed a [motion to quash the subpoena issued](#) against her, which was denied, then a [motion to reconsider](#). These documents reflect a slithering invocation of prosecutorial discretion to cloak misconduct and threaten the court with the involvement of Solicitor General Paul D. Clement—the sole senior Department official to survive the recent scandals over politically abusive conduct—in the matter. The court [record](#) reflects an extraordinary seven days of hearings and argument related to Martin's efforts to avoid being forced to testify under oath. When these efforts failed, Martin withdrew her request for a finding that she had acted with reasonable cause and agreed to an award of damages under the claimant's most aggressive theory. The only upside of this for Martin was that it would bolster her arguments against being forced to testify about her management of the case. However, although the current procedural setting of the case is complex, it appears that Martin and some of her associates may still be required to testify.

In sum: the taxpayers may be out \$500,000 or more on account of prosecutorial misconduct (not taking into account the taxpayer's funds expended on bringing a bogus case, which was probably several million), and Martin's handling of the case now appears to be driven by her fear of being forced to account for her own conduct under oath. This case cries out for an internal Justice Department probe.

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