

August 15, 2007

VIA FACSIMILE AND FIRST CLASS MAIL

The Honorable Alberto Gonzales
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Gonzales:

We are writing to request a meeting with you and senior U.S. Department of Justice officials to discuss our objections to the extensive list of unindicted co-conspirators attached to a trial brief recently filed by the Justice Department in *USA v. Holy Land Foundation for Relief and Development* in the U.S. District Court for the Northern District of Texas.

This remarkably lengthy list consists of over 300 names of individuals and organizations that the government alleges co-conspired to support terrorism – a very serious criminal allegation. This list includes prominent American Muslim individuals and organizations. While we share the U.S. government’s goal of thwarting the financing of terrorist activities, we are equally committed to ensuring that the government uses the tools given to it under federal law to focus on persons or entities that are actually involved in terrorism as defined in the federal code.¹ This list of alleged co-conspirators – publicly filed in apparent violation of the Department of Justice’s own policies² – is so overly broad that it targets people and entities without any allegations of specific intent to engage in terrorism as defined in 18 U.S.C. § 921(22) or 18 U.S.C. §§ 2339A & B, effectively creating a public smear of these individuals and organizations. In fact, this list is already widely available, with major media outlets reporting on the list, including *The Washington Post*.³

We are very concerned about the legal, policy, and civic engagement consequences of the government’s actions. Because individuals or entities on such a list

¹ Terrorism is defined as “activity . . . which (A) is committed by an individual who is not a national or permanent resident alien of the United States; (B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and (C) is intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of government by assassination or kidnapping.” 18 U.S.C. § 921(22) (2007); *see also* 18 §§ USC 2339A, B (2007).

² *See* § 9-27.760, Department of Justice Criminal Resource Manual (providing that “federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third-parties”); § 9-11.130, Department of Justice United States Attorneys Manual (instructing US Attorneys not to disclose the identities of unindicted coconspirators during or in preparation for the trial). *See also United States v. Briggs*, 514 F.2d 794 (5th Cir. 1975) (criticizing the practice of naming individuals as unindicted co-conspirators in an indictment charging a criminal conspiracy).

³ *See* “Case Against Islamic Charity Opens,” *The Washington Post*, July 25, 2007 at A6.

are “unindicted,” they have no notice of what the basis for such a serious allegation is or what predicate activities are allegedly illegal, and thus have little ability to defend their reputations in the court of public opinion. Furthermore, federal criminal procedures and laws appear to provide no avenue for alleged unindicted co-conspirators to challenge such allegations in a court of law. That is why the government’s decision to take the unusual tactic of making this list public should have been made with greater care and avoided altogether.

Given that discrimination against Muslim, Arab, and South Asian Americans has been on the rise since the terrorist attacks of September 11, 2001, individuals or entities mistakenly, carelessly or callously placed on such lists face the insurmountable task of clearing their reputations in a social context that stereotypes Muslims, Arabs, and South Asians as terrorists. Moreover, persons and entities alleged to be unindicted co-conspirators could suffer unfair prejudice in subsequent civil lawsuits by private parties despite the absence of an indictment, criminal charge, or trial.

Of particular concern is the apparent categorization of persons and entities based on activities that are facially protected under the constitution --- freedom of association and freedom to exercise religious belief --- for supporting the charitable activities of a registered 501(c)(3) nonprofit organization that, until the Fall of 2001, was perceived as a mainstream, legitimate charitable institution in the United States by its donors and volunteers. Therefore, it appears that well-intentioned persons and entities could very well be unfairly implicated in the government’s prosecution of the Holy Land Foundation, without notice and an opportunity to challenge the allegations.

Many Muslim Americans already fear that their well-intentioned donations to, or volunteer work for, U.S. Muslim charitable institutions may retroactively become a criminal offense, and thus refrain from supporting, assisting or participating in the activities of U.S. Muslim charities. Now, the Justice Department’s overreaching list of alleged unindicted co-conspirators poses an additional significant risk to supporting a Muslim charity and further cripples charitable giving in the Muslim American community. The government’s actions severely limit the ability of Muslim Americans to engage in civil society and to exercise their religious obligation of *zakat*, or charitable giving, which should be afforded First Amendment protection.

It is particularly disturbing that the Justice Department would name several community religious organizations in whose open, lawful activities tens of thousands of Muslim Americans participate each year. These organizations are principally focused on serving the needs of Muslims in the United States. We can see no legitimate law enforcement interest that is advanced by listing such organizations. Doing so simply reinforces the fear among Muslim Americans that association with any mosque or Muslim institution places them at risk of serious legal and public censure, and reinforces the public perception that all Muslim organizations are to be treated with suspicion. These fears and perceptions severely harm, not help, our country’s efforts to combat

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terrorism.


We, therefore, request a meeting with you and senior Justice Department officials in the Criminal Division and National Security Division to discuss the very serious implications of the inclusion of individuals and organizations on unindicted co-conspirator lists based on apparently legitimate activities.

We thank you for your time and attention and look forward to hearing from you soon.

Respectfully submitted,



Farhana Khera
Executive Director
Muslim Advocates



Norman Reimer
Executive Director
National Association of Criminal
Defense Lawyers

cc: The Honorable Glenn A. Fine
Inspector General, U.S. Department of Justice