



SCHOOL OF LAW  
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August 4, 2009

*via Federal Express*

Charles R. Fulbruge III, Clerk  
United States Fifth Circuit Court of Appeals  
600 Maestri Place  
New Orleans, Louisiana 70130

***In re: United States v. Mohammad El-Mezain; Ghassan Elashi; Shukri Abu Baker;  
Mufid Abdulqader; Abdulrahman Odeh; Holy Land Foundation for Relief and  
Development, also known as HLF No. 09-10560***

Dear Mr. Fulbruge:

Enclosed for filing are the original and three copies of the Defendant-Appellant HLF's *Opposition To Plaintiff-Appellee's Motion To Remand For Evidentiary Hearing And Factual Findings Necessary To Determine This Court's Jurisdiction* in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Hartley".

Sonja Hartley  
Administrator, National Security Clinic  
University of Texas School of Law

Enclosures

cc:

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United States Attorney

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09-10560

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

v.

MOHAMMAD EL-MEZAIN; GHASSAN ELASHI; SHUKRI ABU BAKER;  
MUFID ABDULQADER; ABDULRAHMAN ODEH; HOLY LAND  
FOUNDATION FOR RELIEF AND DEVELOPMENT, also known as HLF,  
Defendants-Appellants.

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On Appeal from the United States District Court  
For the Northern District of Texas  
Dallas Division  
District Court No. 3:04-CR-240-P

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DEFENDANT-APPELLANT HLF'S OPPOSITION TO PLAINTIFF-  
APPELLEE'S MOTION TO REMAND FOR EVIDENTIARY HEARING AND  
FACTUAL FINDINGS NECESSARY TO DETERMINE THIS COURT'S  
JURISDICTION

## INTRODUCTION

The government sought and obtained a conviction and sentence of a non-profit corporation, Defendant-Appellant Holy Land Foundation for Relief and Development (“HLF”), despite the fact that the corporation was not present or represented at its criminal trial or sentencing. HLF filed a notice of appeal and intends to file its brief demonstrating that the in absentia conviction and sentence should be reversed because they violated, among other things, HLF’s rights under the Confrontation Clause and Due Process Clause. The government seeks to thwart this appeal before it begins by claiming that there exists uncertainty in the district court record relating to HLF’s presence and representation at trial and sentencing, and relating to the ability of HLF to pursue appeal represented by undersigned counsel as pro bono appellate counsel. The government seeks remand in order for the district court to make factual findings on these issues.

Remand is not appropriate or necessary to determine whether HLF was present and represented at trial and at sentencing. As the district court transcripts clearly and amply demonstrate, HLF was not present or represented. The district court judge who presided over the first trial – which ended in a partial mistrial – found on the record that HLF was unrepresented at trial once prior counsel withdrew after the government raised the issue of potential conflicts relating to joint representation with a co-defendant. In the re-trial, no counsel or other natural

person ever purported to appear on behalf of HLF. Undoubtedly, therefore, HLF was not present or represented at trial. The government also concedes that HLF was not represented at the sentencing hearing. Since there are no gaps or inconsistencies in the record on this issue, the government has not shown any need for additional factual findings, and remand is unnecessary and inappropriate.

Remand also is not necessary for the district court to determine whether any natural person authorized to act on behalf of HLF has authorized undersigned counsel to act as pro bono appellate counsel for HLF. The government takes the position that HLF may not retain counsel without a formal authorization by an authorized representative, even though the government itself subjected HLF to trial and sentencing when it had no such representative. Having pursued an unconstitutional conviction and sentence, the government may not now complain if HLF files an appeal without having formally retained counsel. HLF has not operated for years, and it does not have employees or officers, but it has significant financial and reputational interests at stake in overturning the conviction and sentence. Given these facts, the Court should allow HLF's appeal to proceed through pro bono counsel. If this Court has any doubts as to whether undersigned counsel is authorized to represent HLF, it should resolve the issue by appointing undersigned counsel as HLF's appellate counsel, at no cost to the government. Moreover, if a hearing is required for this purpose, this Court, which has

jurisdiction over the appeal, is the proper forum. The district court has no specialized knowledge regarding the authority of undersigned counsel to act on behalf of HLF. As the transcripts show, the district court did not make any findings as to HLF's status or the status and identity of its former principals for the purpose of HLF's representation at trial or sentencing. Therefore, remand is not necessary or appropriate, and the government's motion should be denied.

At the government's prompting and with its acquiescence, counsel for HLF withdrew from representing HLF before trial because of potential conflicts in joint representation, an issue raised by the government. As a result, as the district court found, HLF went to trial and sentencing unrepresented. Now that the government understands that its action in disrupting HLF's representation may make HLF's conviction and sentence unsustainable on appeal, the government wants to revisit and rewrite the record. This Court should not permit it.

### **PROCEDURAL HISTORY**

The government's motion relates to an appeal by six co-defendants (HLF and five former HLF principals) of convictions and sentences based on allegations that HLF funded HAMAS, a foreign terrorist organization.<sup>1</sup> Notices of appeal

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<sup>1</sup> This Court previously has determined issues relating to the status of HLF's assets during the pendency of the criminal trial. See *United States v. Holy Land Foundation for Relief and Development*, 445 F.3d 771 (5th Cir. 2006), vacated in part and reinstated in part, 493 F.3d 469 (5th Cir. 2007) (en banc). Numerous unreported district court decisions from the criminal trial briefly recount the relevant allegations against the HLF and co-defendants. See e.g. *United*

were filed in late May and early June 2009, and the parties are awaiting a briefing schedule from this Court.

The district court transcripts appended to the government's motion clearly show that HLF was not present or represented at trial. The law firm of Freedman Boyd Hollander ("FBH") represented HLF and co-defendant Shukri Abu Baker from arraignment forward. According to the transcripts, FBH withdrew from representation of HLF on July 20, 2007, prior to the commencement of the first trial. *See* Government Motion to Remand for Evidentiary Hearing and Factual Findings Necessary to Determine the Court's Jurisdiction ("Gov. Mot."), Exh. C (1013:13-1015:13) (internal transcript page numbers). As the transcripts show, the withdrawal was based on concerns raised by the government as to whether former HLF principals and co-defendants Ghassan Elashi and Shukri Abu Baker could act on behalf of HLF to waive possible conflicts arising from the law firm's joint representation of HLF and Abu Baker. Out of an abundance of caution, and presumably because it could not answer fully the concerns about effective waiver of potential conflicts arising from joint representation by HLF's co-defendants, the law firm of FBH withdrew from representation of HLF. *Id.* The government did

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States v. Holy Land Foundation for Relief and Development (N.D. Tx.), 2006 WL 3542685 (Dec. 8, 2006); 2007 WL 328833 (Feb. 1, 2007); 2007 WL 628059 (Feb. 27, 2007); 2007 WL 959029 (Mar. 28, 2007); 2007 WL 1285751 (May 2, 2007); 2007 WL 1308383 (May 4, 2007); 2007 WL 1452489 (May 15, 2007); 2007 WL 1498813 (May 23, 2007).

not dispute the withdrawal, and indeed counsel for the government suggested that HLF could remain unrepresented at trial. Gov. Mot., Exh. C (1014:4-11). The district court accepted the withdrawal. *Id.* The transcripts show that thereafter no attorney or natural person appeared on behalf of HLF at the first trial in 2007 or the re-trial in 2008. The transcripts contain no gaps or inconsistencies whatsoever on these points.

On June 5, 2009, undersigned counsel filed a notice of appearance and notice of appeal on behalf of HLF in the district court. On June 12, 2009, the government filed a motion in district court to strike the notice of appearance and notice of appeal, arguing that no natural person with authority to act on behalf of HLF had retained undersigned counsel for the appeal. (Dist. Ct., Dkt. No. 1305). On June 22, 2009, undersigned counsel filed a brief opposing the government's motion, arguing that HLF's appeal should be allowed to proceed, and that this Court, not the district court, is the proper forum to determine whether the appeal may be prosecuted. (Dist. Ct., Dkt. No. 1309). The district court has not decided that motion.

Undersigned counsel is representing HLF pro bono in this appeal. Undersigned counsel has endeavored and continues to endeavor to find persons who have the authority to retain counsel for HLF. It is unclear whether any former HLF directors, officers, or donors would have the authority to retain counsel on

behalf of HLF, as explained below. To the knowledge of undersigned counsel, after its designation in 2001, HLF never had appointed any receiver or similar entity to act on its behalf. At the same time, HLF undoubtedly has significant financial and reputational interests in pursuing this appeal, since the sentence subjected HLF to forfeiture of over twelve million dollars.

## **ARGUMENT**

### **I. REMAND IS NOT NECESSARY TO DETERMINE WHETHER HLF WAS PRESENT OR REPRESENTED AT TRIAL BECAUSE THE TRIAL TRANSCRIPTS ARE COMPLETE AND CLEAR ON THIS ISSUE.**

#### **A. The Record Unequivocally Shows That HLF Was Not Present or Represented At Trial and Sentencing**

The government argues that the case should be remanded for an evidentiary hearing to determine whether HLF was present and represented at trial. Gov. Mot. at 8. The government claims that because the FBH law firm represented HLF on other civil matters, it also may have represented HLF in the criminal trial. *Id.* This argument is squarely contradicted by the transcripts appended to the government's motion, and remand is not required on this issue.

The district court record is complete and clear on this issue, without any gaps or inconsistencies. According to transcripts appended to the government's



motion, the FBH law firm withdrew from representation of HLF during voir dire. The withdrawal was based on concerns raised by the government regarding possible conflicts in the FBH law firm's joint representation of HLF and Shukri Abu Baker, the former President and CEO of HLF, and the question of whether anyone could waive those conflicts effectively on behalf of HLF. *See generally*, Gov. Mot., Exh. A. In response, counsel from the FBH law firm stated that Mr. Abu Baker could not waive the conflicts on behalf of HLF since he was the co-defendant who would be jointly represented. Gov. Mot., Exh. C (1013:15-1014:2). Likewise, counsel for co-defendant Ghassan Elashi, the former Chair of the Board of Directors of HLF, stated that Mr. Elashi could not waive any conflicts on behalf of HLF, in part because he was a co-defendant in the same trial, and in part because Mr. Elashi's status as a former director of HLF and HLF's corporate status were both unclear. Gov. Mot., Exh. B (822:5-13).

The former HLF principals apparently concluded that, to the extent (if any) that they retained authority to act on behalf of HLF, it would be impossible to act both as HLF's co-defendants as well as HLF's representatives, given that representation of HLF might require legal arguments adverse to the co-defendants. Given their status as co-defendants in the same trial on the same charges, they reasonably decided that they could not act as HLF's representatives for purposes of retaining counsel and directing the criminal representation of HLF. As a result of

the FBH law firm's withdrawal from representation, HLF was unrepresented at trial, as the district court found, on the record. Gov. Mot., Exh. C (1015:25 – 1016:1). Notably, government counsel accepted the withdrawal from representation of the FBH law firm without protest. Gov. Mot., Exh. C (1014:9-11). Since the record is clear and complete on this issue, without any gaps or inconsistencies, remand for additional factual findings is wholly unnecessary.

**B. HLF's Absence From Trial and Sentencing Violated Its  
Constitutional And Statutory Rights**

Numerous Constitutional and statutory violations arose from HLF's absence from trial and sentencing. HLF should be allowed to proceed with its appeal in order to vindicate these rights. The Confrontation Clause of the Sixth Amendment provides that in all criminal prosecutions, the accused "shall enjoy the right... to be confronted with the witnesses against him." U.S. Const., Amend. VI. This clause secures the right of cross-examination of evidence and witnesses and promotes reliability in the truth-finding function of a trial. *Kentucky v. Stincer*, 482 U.S. 730, 736-37 (1987). Among other things, the Confrontation Clause requires a criminal defendant to be physically present at trial to ensure that the accused has the opportunity to confront personally the evidence against him. *Maryland v. Craig*, 497 U.S. 836, 846-47 (1990). Although physical presence is not an absolute rule, it may not be dispensed with unless an important public policy

requires denial of the confrontation right and where the reliability of testimony is otherwise assured. *Maryland v. Craig*, 497 U.S. at 850.

The Confrontation Clause applies equally to all criminally “accused,” including corporate defendants. *United States v. Thevis*, 665 F.2d 616, 645 n. 35 (5th Cir. 1982), citing *United States v. Rad-o-Lite*, 612 F.2d 740 (3rd Cir. 1979). It is well-settled that a corporation must make its presence in court through counsel. *Rowland v. Calif. Men’s Colony*, 506 U.S. 194, 201-03 (1993) (“It has been the law for the better part of two centuries... that a corporation may appear in the federal courts only through licensed counsel.”); *Jones v. Niagara Frontier Transportation Auth.*, 722 F.2d 20, 22 (2nd Cir. 1983) (collecting cases); *United States v. Unimex*, 991 F.2d 546 (9<sup>th</sup> Cir. 1993); *Schreibman v. Heller*, 446 F. Supp. 141 (D.P.R. 1978). A corporation is present for purposes of the Confrontation Clause only if it is represented by counsel.

The Due Process Clause of the Fifth Amendment likewise guarantees a criminal defendant the right to be present at any critical stage of the criminal proceeding “if his presence would contribute to the fairness of the proceeding.” *Kentucky v. Stincer*, 482 U.S. at 745; see also *United States v. Gagnon*, 470 U.S. 522, 526-27 (1985). Although due process may not require physical presence at every stage of trial, presence is required where the defendant’s absence “might frustrate the fairness of the proceedings.” *Faretta v. California*, 422 U.S. 806, 819

n. 15 (1975). Likewise, Federal Rule of Criminal Procedure 43 entitles a criminal defendant, including a corporate defendant, to be present at trial. Fed.R. Cr. P. 43(a). Rule 43 also specifically provides that an organizational or corporate defendant such as HLF may be present through counsel. Fed.R. Cr. P. 43(b)(1).

Since HLF did not have counsel or any representative once the FBH law firm withdrew, HLF was not present at trial and at sentencing, and the *in absentia* conviction and sentence violated HLF's rights under the Confrontation Clause, the Due Process Clause, and the Federal Rules of Criminal Procedure. *See United States v. Brown*, 456 F.2d 1112, 1113 (5th Cir. 1972) ("Only in the most extraordinary circumstances, and where it would otherwise work an injustice, should a court sentence a defendant in absentia, and then only under appropriate safeguards, as where the defendant has expressly waived his right to be present either by sworn affidavit or in open court for the record.").

These Constitutional violations were not "harmless errors." *See Chapman v. California*, 368 U.S. 18, 20 (1967). HLF suffered tremendous prejudice as a result of being absent from its trial and sentencing. The trial was fundamentally unfair in HLF's absence, and the adversarial process was severely undermined. Since HLF was not present, it was not able to cross-examine the government's witnesses, contest its voluminous documentary evidence, or present evidence in its own defense. HLF was unable to make legal arguments in its defense that counsel for

the five co-defendants would not have made, including arguments that any arguably illegal activities of the former HLF officers and directors were not engaged in on behalf of or for the benefit of the corporation, and were not within the scope of employment by the corporation. As a result of being absent from trial and sentencing, HLF was subject to a sentence of one year of unsupervised probation and a money judgment for \$12.4 million, including eighteen bank accounts that were forfeited. *See* Judgment In a Criminal Case, entered May 29, 2009 (Dist. Ct. Dkt. No. 1297). The outcome might have been vastly different if HLF had been present at trial and sentencing.

In addition, HLF's Sixth Amendment right to obtain counsel of its choice was violated. *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006) (erroneous denial of right to counsel of choice is not subject to harmless error analysis). It is well-settled that a criminal defendant has the right to retain counsel of its choice under the Sixth Amendment. *Wheat v. United States*, 486 U.S. 153, 159 (1988). This right extends to corporate defendants as well. *Unimex*, 991 F.2d at 549; *see also, Rad-o-Lite*, 612 F.2d at 743-44 (corporate defendant has right to effective assistance of counsel). Also, the Sixth Amendment requires a criminal defendant to have access to counsel at critical stages of trial, with limited exceptions. *United States v. Bohn*, 890 F.2d 1079, 1080 (9<sup>th</sup> Cir. 1989) ("the sixth amendment is

violated whenever ‘the accused is denied counsel at a critical stage of his trial’”) citing *United States v. Cronin*, 466 U.S. 648, 659 (1984); *Unimex*, 991 F.2d at 549.

**C. The Government’s Arguments That HLF Effectively Waived  
Its Right To Be Present or Deliberately Caused Its Absence At  
Trial And Sentencing Lack Merit And Are Untimely**

The government also seeks remand on the ground that HLF was represented in other civil lawsuits during the same period. Gov. Mot. at 7-8. The government implies that since HLF retained counsel in other lawsuits, it could have retained counsel in the criminal case, and its failure to do so was deliberate, effectively waiving its right to be present. This argument lacks merit for several reasons.

First, it was reasonable for former HLF principals to retain counsel and direct the representation of HLF for two civil lawsuits soon after the designation in 2001, but to be unable to do so in HLF’s criminal case because of potential conflicts between HLF and its co-defendants. One of the civil lawsuits which HLF litigated, which began soon after the 2001 designation of the organization as a terrorist organization, ended by March 1, 2004, before the criminal indictments issued. That lawsuit, brought by HLF in the District of Columbia district court to challenge the government’s designation of HLF as a terrorist organization, occurred at a time when no potential conflicts between HLF and its former principals had arisen. This lawsuit was decided by the district court in 2002, *see*

*Holy Land Foundation for Relief and Development v. Ashcroft*, 219 F.Supp.2d 857 (D.D.C. 2002), and the appeal was decided by the D.C. Circuit Court of Appeals in 2003, *see Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d 156 (D.C. Cir. 2003). A petition for certiorari was denied on March 1, 2004, *see Holy Land Foundation for Relief and Development v. Ashcroft*, 540 U.S. 1218 (2004). Because indictments did not issue until after this case was completed, there were no apparent conflicts raised by Mr. Elashi and Mr. Abu Baker acting to retain counsel and direct representation on behalf of HLF in that case.

Another civil lawsuit, in which HLF defended itself from civil liability based on allegations of funding HAMAS, also commenced well before the criminal indictments issued. *Boim v. Quranic Literary Institute et al.*, 127 F.Supp.2d 1002 (N.D. Ill. 2001); *affirmed*, 291 F.3d 1000 (7th Cir. 2002); Gov. Mot. at 8.

Although the Boim case continued after the indictments were issued and continues today, *see Boim v. Quranic Literary Institute et al.*, 549 F.3d 635 (7th Cir. 2008), Petition for Certiorari filed May 1, 2009, apparently no conflicts arose between HLF and its former HLF principals, so that the former principals were able to direct the representation of HLF in the *Boim* case. This conclusion is reasonable, since the *Boim* case (unlike the criminal representation of HLF) involved a defense of HLF that was entirely consistent with the defense of Mr. Abu Baker and Mr. Elashi in criminal proceedings.

Second, the record clearly shows that HLF did not deliberately fail to obtain representation for trial and sentencing. Initially, former HLF principals Mr. Abu Baker and Mr. Elashi retained counsel for HLF in the law firm of FBH. Later, when the government raised concerns about potential conflicts among the co-defendants, and the former HLF principals found that, to the extent they retained any authority to act on behalf of HLF, they could not waive conflicts on behalf of HLF when they were also its co-defendants, counsel withdrew from representation. In addition, even if the former HLF principals had authority to act on behalf of HLF, and had ignored the potential conflicts raised by acting both as co-defendant and as HLF representative, they faced great obstacles in finding paid counsel for HLF. Since HLF's assets had been frozen and seized by the government, it seemed unlikely that counsel could be paid. The government shut down HLF and designated it as a Specially Designated Global Terrorist pursuant to Executive Order 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001), on December 4, 2001, and seized HLF's assets. That required HLF to cease its operations immediately. By 2007, when the FBH law firm withdrew from representation, it was unlikely that the government would permit HLF to use its frozen assets to pay counsel. Neither was it entitled to appointed counsel at public expense. *See* 18 U.S.C. 3006A; *United States v. Hartsell*, 127 F.3d 343, 350 (4<sup>th</sup> Cir. 1997) (no appointed counsel at public expense for corporate defendants); *Unimex*, 991 F.2d at 550 (same). Not



only was HLF absent from trial, but it was unable to remedy its absence.

Therefore, HLF's absence from trial and sentencing was involuntary.

Third, and importantly, the government's argument implying that HLF deliberately caused its own absence from trial and seeking to supplement the record on this issue is untimely. The government claims, without basis, that HLF was "constructively" represented at trial and sentencing and that its absence from trial was deliberate, thereby waiving its right to be present and to be represented. Gov. Mot. at 8. The government seeks to re-open the record to take evidence on this claim. As explained above, these arguments are unpersuasive. In addition, they are now foreclosed because the trials have ended.

To proceed against an unrepresented criminal defendant such as HLF, the government must have made a showing in the district court that HLF had made a knowing and intelligent waiver of its right to counsel, *Estelle v. Smith*, 451 U.S. 454 (1981), and that it had voluntarily waived its right to be present by deliberately causing its own absence from trial and sentencing. Fed.R. Cr. P. 43(c). The government, however, failed even to attempt to make such showings. It could not have made such showings in any case because, as explained above, HLF did not waive its right to be present or its right to be represented by counsel. Regardless, to remedy its failure, the government now seeks a remand. It is far too late, however, for the government to attempt to establish waiver of counsel or waiver of

the right to be present. Since the relevant information was available to the government at trial, and it failed to make the necessary showings, it should not be allowed to supplement the record now. *Kemlon Products and Development Co. v. U.S.*, 646 F.2d 223 (5th Cir. 1981) (court of appeal ordinarily will not enlarge record on appeal to include material not before the district court). The district court record is complete, and remand is not appropriate for supplemental fact-finding on these issues.

**II. REMAND IS NOT NECESSARY TO DETERMINE WHETHER  
HLF SHOULD BE ALLOWED TO APPEAL WITH THE  
ASSISTANCE OF PRO BONO COUNSEL**

The government also seeks remand for the district court to make a factual determination as to whether any natural person authorized to act on behalf of HLF has authorized undersigned counsel to represent HLF on appeal. Gov. Mot. at 8. Remand is not necessary on this issue either, as this Court can resolve the issue itself by appointing undersigned counsel as pro bono appellate counsel.

HLF has ceased to operate since the time of its designation as a terrorist organization. It is undisputed that HLF currently does not have any employees or officers. Nor apparently are former officers or employees authorized to transact business on its behalf because of the federal government's actions in shutting down the organization and freezing its assets. As explained above, the former HLF

principals who are co-defendants, to the extent they retain any authority to act on behalf of HLF, cannot so act here because of potential conflicts of interest. In addition, HLF has not been appointed any receiver or similar entity, and no other former HLF officer or director has been given the authority to act on behalf of HLF. Given these circumstances, requiring an authorized representative of HLF to retain counsel for this appeal might be tantamount to denying HLF the opportunity to appeal this unconstitutional conviction and sentence. HLF undoubtedly has real financial and reputational interests in pursuing this appeal, but it likely lacks the personnel and the operational means by which to retain counsel.<sup>2</sup> As such, HLF cannot appeal its conviction except with the assistance of pro bono counsel.

If this Court has any doubts as to whether undersigned counsel is authorized to represent HLF's interests, it should resolve the issue by appointing undersigned counsel as HLF's pro bono appellate counsel. If the Court determines that a brief hearing is required for this purpose, this Court, which has jurisdiction over the appeal, is the proper forum for such a hearing. The district court has no specialized knowledge regarding the authority of undersigned counsel to act on behalf of HLF.

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<sup>2</sup> Since the time of its designation in December 2001, to the knowledge of undersigned counsel, no receiver or similar person or entity was appointed on behalf of HLF in order to "wind up" its business or dispose of its assets. Undersigned counsel has attempted, without success, to determine whether any former directors of HLF who were not subjected to criminal prosecution could provide a formal authorization for HLF to be represented by undersigned counsel in this appeal. It is not clear whether any person would be willing to risk government sanction, moreover, by purporting to act on behalf of HLF at this time.

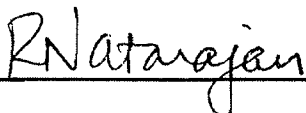
As the transcripts show, the district court did not make any findings as to HLF's status or the status and identity of its former principals, as it related to HLF's representation at trial or sentencing. Therefore, remand on this issue is not necessary or appropriate. Rather, the Court should appoint undersigned counsel as pro bono appellate counsel and allow the appeal to proceed. *See e.g. United States v. Rivera*, 912 F.Supp. 634 (D.P.R. 1996) (magistrate opinion recommending appointment of counsel for corporate defendant based on inherent power of district court to ensure orderly and fair criminal trials).

### CONCLUSION

For the foregoing reasons, undersigned counsel respectfully requests that the Court deny the government motion in its entirety.

Dated: August 4, 2009

Respectfully submitted,

  
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*Admission to U.S. Court of Appeals for the Fifth  
Circuit Pending*

## CERTIFICATE OF SERVICE

I certify that a copy of this motion was mailed via USPS to the following attorneys on August 4, 2009:

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