09-10560

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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.

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

RESPONSE TO THE OPPOSITION TO MOTION FOR REMAND AND ITS INCORPORATED MOTION TO APPOINT *PRO BONO* COUNSEL AND ALLOW THE APPEAL TO PROCEED

The government opposes Ranjana Natarajan's[1] motion to be appointed by this Court as *pro bono* counsel for HLF, at least at this stage of the proceedings. As the government's motion for a limited remand argued, there are too many

[1]In referring to Ms. Natarajan as the movant, the Government intends only to avoid putting the cart before the horse by assuming that she is counsel for a party, HLF. It is an open question whether Ms. Natarajan represents HLF and can file pleadings on its behalf.

factual gaps in the record that must be filled in before such an appointment would be proper.

Ms. Natarajan treats the Government's request for a remand as an attempt to rewrite the facts instead of an effort to develop them fully. This is inaccurate. Furthermore, the district court can be relied upon to prevent this from happening; in fact, this same district court has already prevented it from happening on one occasion.[2] The district court is the one most familiar with the participants in this case and best able to develop the record further. Contrary to what has been implied, the results of such a remand are not a foregone conclusion for any of the parties. It may very well be that the limited remand will reveal that an appeal for HLF is proper and that Ms. Natarajan is an appropriate choice as its counsel. However, given the paucity of the record, a remand should be ordered so that this Court can make its legal decisions based upon actual facts rather than assumptions or suppositions.

A. Propriety of appointing Ms. Natarajan as attorney for HLF

While Ms. Natarajan opposes a remand and claims that there is no need for fact findings about HLF's corporate status and the authority by which she purports

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[2] Attached as Exhibit A is an Order of the district court (Document 1138) on the topic of requested CJA payments that illustrates the court's ability to cut through misleading and deceptive statements by the defendants and their counsel.

to act for HLF, she admits that she "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 authority to retain counsel on behalf of HLF . . . . To the knowledge of [Ranjana Natarajan], after its designation in 2001, HLF never had appointed any receiver or similar entity to act on its behalf."

This admission, that no one has granted her the authority to represent HLF, raises serious concerns about whether it is appropriate to appoint Ms. Natarajan as *pro bono* counsel in the case.

> [A]n attorney does not have the authority to act on behalf of the purported client if the purported client did not hire the attorney to represent him. (citations omitted) . . . '[I]t is hornbook law that no person has the right to appear as attorney for another without first receiving authority from the purported client.'

Maiz v. Virani, 311 F.3d 334, 341 fn. 5 (5th Cir. 2002). Further,

> 'It would be strange, if a court whose duty is to superintend the conduct of its officers should not have the power to inquire by what authority an attorney of that court undertakes to sue or to defend, in the name of another–whether that other is a real or fictitious person, and whether its process is used for purpose of vexation or fraud, instead of that for which alone it is intended.'

Pueblo of Santa Rosa v. Fall, 273 U.S. 315, 319 (1927) (citations omitted).

Here, Ms. Natarajan admits she has not been retained. She has no client to consult with, no client to approve or disapprove of her actions, and no client to

direct her to act in its best interest as opposed to acting for some other agenda. The fact that Ms. Natarajan is willing to do this legal work for free perhaps means that she is a willing public servant, but it also calls into question the impartiality and independence of her representation. Perhaps she has political beliefs she wishes to exert in this case or perhaps she wishes to use the case as an academic study for her university. Even if Ms. Natarajan's intentions are noble, a lawyer must have been retained by a client; without a client, she has no standing as a lawyer here.

Just as important, the judiciary traditionally selects appointed counsel for an unrepresented defendant in a neutral and random manner. That is arguably not what would happen if Ms. Natarajan's request to be appointed is granted. While the record is now barren as to the circumstances under which Ms. Natarajan became involved in this case, the Government expects to prove on remand that Ms. Natarajan began her quest – not at the request of the corporation – but at the request of the very defendants and attorneys who effected HLF's absence at trial. These would be the same defendants and attorneys who claimed that divided loyalties prevented them from seeking to protect the corporation. It is surely against public policy to allow these same co-defendants and their attorneys to handpick a surrogate attorney for HLF. There should be an inquiry into whether

Ms. Natarajan is acting at the behest of the corporation or is, wittingly or unwittingly, acting as a pawn of its co-defendants.[3]

If this Court were to act based only on the current record, including Ms. Natarajan's admission that she has not been authorized to act for HLF, it might well be justified in striking both her notice of appearance[4] and the notice of appeal she purported to file on behalf of HLF. However, a remand for fact findings in advance of the Court taking any such action seems the better course.

B. HLF's corporate status and the history of its representation

Ms. Natarajan's statements bring to the fore genuine questions as to who may act for HLF, and whether HLF exists as a separate entity capable of choosing or consulting with her as its attorney. Her statements also highlight the gap in the record as to whether HLF is or is not, and was or was not at the time of trial, defunct.

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[3] Ms. Natarajan's motion also continues a disturbing trend in this case where the defendants have selected who would be appointed as their free counsel in contravention of the Criminal Justice Act, 18 U.S.C. § 3006A (CJA). Four of the five codefendants appeared with retained counsel in this case. Within weeks of arraignment, these same attorneys claimed the defendants could not afford their representation and sought to be appointed as CJA attorneys. Contrary to CJA law, the defendants were permitted to pick their CJA attorneys, many of the appointed attorneys were from out of the district (New Mexico and New York), and defendants Shukri Abu Baker and Mohammad El-Mezain were appointed *two* CJA attorneys even though this is not a death penalty case.

[4] The government notes that this court's docket entry for 7/28/09 required Ms. Natarajan to resubmit an appearance form, as she is not a member of the Fifth Circuit Bar, but no form has been resubmitted as of today.

When the district court in the first trial expressed concern on that topic, attorneys from the Freedman, Boyd, Daniels, Hollander, & Goldberg law firm ("Freedman Boyd") did not inform the court that they were still representing HLF in civil proceedings, which they have continued to do. *See* Supreme Court docket sheet, at http://origin.www.supremecourtus.gov/docket/08a712.htm. Mr. Elashi and Mr. Baker (officers or directors of HLF), and its attorneys from Freedman Boyd thus failed to give the district court the full picture on HLF's status and representation.[5] Consequently, the issue was not explored further and the record is under-developed. Furthermore, for whatever purposes, HLF was implicitly said to be defunct in the trial court, but for purposes of appeal, Ms. Natarajan would like the Court to consider HLF as active and ready to litigate.

Freedman Boyd's representation of HLF gave the corporation the appearance of being an active and viable corporation. Despite the restraint of all its assets and indictment of the co-defendant board members, Freedman Boyd filed notices of appearance for HLF, answered at arraignment for HLF, submitted motions and briefs for HLF, and controlled HLF's defense strategy. Freedman

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[5] Ms. Natarajan refers to these men as "former HLF principals," (Opposition/ Incorporated Motion at 5, 8, 15), and states as an "undisputed" fact that HLF does not have employees or officers. (*Id.* at 3, 17.) These are not undisputed assertions, and a limited remand for fact finding would give the Court a solid answer as to their truth. If it is true that there is no person currently authorized to speak for HLF, perhaps this Court or the district court might appoint a receiver to prosecute any appeal, who may then seek counsel for HLF.

Boyd was the voice of HLF and, as HLF's voice, it chose to have HLF cooperate with the other defendants in a joint defense that enabled the defense team to speak in unison.

To all appearances, HLF was an active corporation – at least as a litigant – and there was no basis for either the Court or the prosecutors to suspect that HLF was utterly defunct or without anyone to speak for it (if it was) until the moment Freedman Boyd abandoned its representation of HLF two days into jury selection. This tactic came as a surprise to both the district court and the prosecutors.

Contrary to Ms. Natarajan's argument, the record does not support a conclusion that the Government is somehow responsible for HLF's loss of representation. The history on the matter is important. The possibility of a conflict of interest was first raised early in the case, likely in the Fall of 2004, in off-record discussions between prosecutors and defense lawyers.[6] On September 26, 2006, Freedman Boyd attorney Nancy Hollander filed a waiver of any conflict of interest on behalf of HLF as authorized through its board chairman Ghassan Elashi. That same day, Ms. Hollander also filed a waiver of conflict on behalf of

[6] The Government did not raise the issue in order to have any attorney removed from the case or to deprive any defendant of representation. Instead, and ironically, it was to prevent any defendant from overturning a subsequent conviction based upon a conflict of interest.

defendant Shukri Abu Baker.[7] (Exhibits B and C, attached.) While prosecutors mentioned several times that an oral inquiry still should be conducted, Freedman Boyd never suggested or conceded that the issue would be a problem. Given the written waivers, both the court and the Government had every expectation that the required oral inquiry would be a mere formality. Then, at the eleventh hour, with potential jurors being questioned, Freedman Boyd decided it could no longer represent the corporation and withdrew.

This history reveals the serious factual gaps in the record that are relevant to whether Ms. Natarajan should or should not be appointed as HLF's counsel.

- There is no record as to HLF's corporate status beyond its representation by Freedman Boyd. We do not know which natural person – if any – authorized Freedman Boyd's representation of HLF and approved the manner of its defense. If such a person exists, we do not know his or her status with HLF and whether he or she could authorize Ms. Natarajan's representation.

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[7] Ms. Natarajan suggests that there was a conflict that should not have been permitted to continue when she says that "it was reasonable for former HLF principals to retain counsel and direct the representation of HLF for two civil lawsuits . . . but to be unable to do so in HLF's criminal case because of potential conflicts between HLF and its co-defendants." (Opposition/ Incorporated Motion at 13.) If this is so, then HLF certainly had notice of that problem long in advance of either trial and apparently took no remedial measures. *See infra* at Section C.

- There is no record as to whether Freedman Boyd was paid either for HLF's criminal representation or its ongoing civil representation, or worked *pro bono*. If Freedman Boyd is currently being or has recently been paid for HLF's civil representation, the evidence of the payments could be a lead to a natural person who remains authorized to retain and consult with counsel on behalf of HLF.
- There is no record as to whether Freedman Boyd, HLF, or HLF's corporate officers made any effort to seek alternative counsel for HLF or to have a trustee or receiver appointed to protect HLF's interests.

C. Representation and Public Policy Issues

There is a public policy issue here as to whether HLF voluntarily absented itself from the proceedings. As Ms. Natarajan's pleading concedes, a corporation can appear in court only through an attorney. *See Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993). Yet this is not a case where an attorney never appeared in court for HLF. Not one, but three attorneys from Freedman Boyd appeared as counsel for HLF. John Boyd and/or Nancy Hollander made numerous appearances for HLF in the three years from when the case was filed in July, 2004 to two days into jury selection on July 17, 2007. Theresa Duncan

entered an appearance for HLF the day before Freedman Boyd withdrew its representation of HLF.

Therefore, there is no doubt that HLF actually appeared in court, knew of these proceedings, and knew that it was required to be present. Through Freedman Boyd, HLF knew of the potential conflict of interest issue long before any trial began and had ample opportunity to seek alternative representation. While an investigation might show efforts to get new counsel for HLF before the first or second trials, the current record shows no such efforts. That missing information is vital to determining whether HLF purposely failed to seek out counsel, thus voluntarily absenting itself from the proceedings.

As it stands now, the record supports a conclusion that the convicted co-defendants had complete control over HLF's representation and maintained its appearance as a separate entity to gain strategic legal advantages through a joint defense with the corporation during pretrial proceedings. Then, in the middle of jury selection, the co-defendants suddenly refused to waive a potential conflict of interest, despite their joint defense, thus creating the very issue that HLF now wants to appeal. This raises a public policy issue that needs to be factually explored in the court of first instance.[8]

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[8] A public policy issue is also associated with appointing Ms. Natarajan as HLF's counsel solely "for purposes of appeal," as she requests. Assuming HLF's sentence or conviction

D. Conclusion

In light of all the circumstances, the government reiterates its request that the matter be remanded to the district court for the limited purpose of factfinding with regard to HLF's status and its representation.

Respectfully submitted,

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were overturned, there would need to be a lawyer willing to represent HLF at a retrial or resentencing, and a corporation is not entitled to appointed counsel under the CJA. Care must be taken to prevent abuse of the system, as in the case of a fugitive who attempts to have his conviction overturned from abroad but who will not submit himself to the jurisdiction of the court in case there is a retrial. Such appeals are clearly contrary to public policy. A corporation should not be permitted to manipulate its artificial existence by blinking in and out of existence through the retention and cancellation of counsel.

CERTIFICATE OF SERVICE

I certify that a copy of this motion was mailed to the following attorneys on August 17, 2009:

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Susan Cowger

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Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
v.	§	
	§	
HOLY LAND FOUNDATION FOR	§	CRIM. NO.
RELIEF AND DEVELOPMENT (1),	§	3:04-CR-0240-P
SHUKRI ABU BAKER (2),	§	
MOHAMMAD EL-MEZAIN (3),	§	
GHASSAN ELASHI (4),	§	
MUFID ABDULQADAR (7),	§	
ABDULRAHMAN ODEH (8).	§	

ORDER

Now before the Court are (1) Defendants' Joint Motion for Extension of Time to File Motions Regarding Testimony of Proposed Government Expert Daniel Olson, filed July 14, 2008 [Docket # 1103]; (2) Defendants' Joint Motion for Extension of Time for All Remaining Pre-Trial Deadlines and Trial, filed July 15, 2008 [Docket # 1105]; and (3) Government's Motion to Strike Exhibits Attached to Defendants' Reply in Support of their Motion for Extension of Time for All Remaining Pre-trial Deadlines and Trial, filed July 25, 2008 [Docket # 1124].[1]

In Defendants' Joint Motion for Extension of Time to File Motions Regarding Testimony of Proposed Government Expert Daniel Olson, Defendants move for an extension of time for filing a motion to exclude/*Daubert* motion of the Government's expert, Daniel Olson, until a reasonable time after the Fifth Circuit has approved the budget for this re-trial. In their motion, Defendants explain that the Government's deadline for designating its experts and complying with Fed. R. Crim.

[1] The defendants who filed this motion are Shukri Abu Baker, Mohammad El-Mezain, Ghassan Elashi, Mufid Abdulqader, and Abdulrahman Odeh.

P. 16 was June 23, 2008. Defendants' deadline for filing *Daubert* motions or motions to exclude the Government's experts was July 14, 2008. Defendants claim that the Government disclosed to Defendants on that same day (July 14) that the government intended to call an expert who was not identified on the June 23 disclosure – Daniel Olson, who will testify "about the security document found at Infocom and how that document is similar to other manuals used by terrorist organizations." (Mot. at 3.) In light of this recent disclosure, Defendants seek additional time to file a motion to exclude/*Daubert* motion regarding Daniel Olson. The Government does not object to such an extension as long as it is not open-ended.

For these reasons, Defendants' Joint Motion for Extension of Time to File Motions Regarding Testimony of Proposed Government Expert Daniel Olson is hereby GRANTED and Defendants have until August 15, 2008 to file said motion(s). The Government's response, if any, is due no later than August 22, 2008. Defendants may file a proper reply, if any, no later than August 26, 2008.

Defendants have also filed a Joint Motion for Extension of Time for All Remaining Pre-trial Deadlines and Trial. In their motion they argue that because certain fees and expenses remain unpaid from the first trial and because the budget has not yet been approved for the re-trial, "[D]efendants cannot be prepared for trial on September 8, 2008." (Mot. at 2.) "Too little time remains to do the work that must be done or to find the necessary additional witnesses to present during the defense case." (Mot. at 5.) In their reply brief, Defendants submit multiple sworn declarations from their experts and local criminal defense attorneys testifying that it is impossible to prepare for this trial in the time remaining. The Government moves to strike those exhibits from the reply brief because

Defendants provided no explanation why these declarations could not have been submitted in support of their original motion.

From the outset of their briefing, the tenor of Defendants' argument is misleading. First, Defendants complain that funding in this case "abruptly ceased" after October 2007. (Mot. at 1.) This case ended in a mistrial on October 22, 2007. The case was re-assigned to this Court for re-trial that same day. The Government made clear from that time that it would re-prosecute the case. However, Defendants did not submit a proposed budget for this case until March 28, 2008 – five months after the case ended in a mistrial and a mere four and one-half months before the original re-trial date (a date on which the Parties agreed) of August 18, 2008. Defendants were well-aware the Fifth Circuit would have to approve the budget before funding would become available for the re-trial. Defendants should have been aware that the district court and the Fifth Circuit would spend a significant amount of time scrutinizing the budget for reasonableness in light of the considerable amount of money spent trying this case the first time. Upon review, the Court realized that Defendants' March 28, 2008 proposed budget was in fact a partial budget, providing no budgeting for experts, consultants, travel, or miscellaneous expenses. Those expenses made up one-third of the budget from the first trial. Because the Court was unwilling to approve a budget that did not include these essential expenses, the Court instructed Defendants to submit a completed budget as soon as possible. Defendants submitted a revised budget in May 2008, which again contained deficiencies in that it lacked sufficient explanation for certain fees for experts, investigators and counsel and contained requests for funding the Court considered unreasonable. Again, the Court sent the incomplete budget back to Defendants for revision and specificity regarding the reasons for some of the requests. Additionally, the Court pointed out to defense counsel areas of budgeting the Court

considered unreasonable and requested that counsel revise some of these requests. Finally, on June 13, 2008 – two and a half months after they submitted their partial budget – Defendants submitted a complete and detailed budget request. The Court approved the budget and sent it to the Fifth Circuit for review and approval on June 24, 2008, where it remained pending for one month. Some of counsels' filings suggest the Fifth Circuit has had the proposed budget under consideration since March 28, 2008. This is simply not true. The Circuit received the proposed budget for the first time late in June 2008. The Circuit approved the budget on August 1, 2008. Defendants' allegations that the courts have been dilatory in approving Defendants' "detailed budgets" and their "budget-related motions" are disingenuous. (Mot. at 2.) Their accusation that the courts are "not acting" on their requests for funding is misleading at best. Defendants' statements that "defendants ought not be compelled to suffer the consequences of . . . confusion [in transmission of CJA paperwork from the first trial]" "[t]o deny the defendants funding to mount a defense and then force them to trial anyway is to make a mockery of the Constitution" are hyperbolic and inaccurate. (Resp. to Mot. to Strike at 5.) Any delay in funding for the second trial is not the result of confusion and miscommunication in the transmission of CJA paperwork. Defendants helped create the budget crunch they find themselves in by not submitting a complete budget proposal until June 13, 2008.

Defendants repeatedly mention that one attorney on the defense team has not been compensated for work done in the first trial. The implication is that the courts have simply refused to pay this attorney. What Defendants fail to mention is that the attorney did not submit any voucher for payment of fees until March 2008. Unlike other counsel from this case, who submitted vouchers periodically throughout the first trial, this attorney chose to submit vouchers for payment after the trial ended. When the vouchers were sent from this Court to the Circuit, all of the documentation

needed by the Circuit was not included, which resulted in a short delay. In any event, the vouchers have been before the courts for four months and have now been approved for payment. Any delay in payment for the first trial is due in part to the timing of counsel's submission of the vouchers.

Defendants argue that without this funding, they are unable to prepare their case for trial and therefore, the Court should grant a continuance of the trial date. It is important to remember that this case involves a re-trial of a case that was tried only last year. The same defense attorneys spent three years and considerable resources preparing for the first trial. These are competent attorneys who certainly were prepared to try this case the first time. Thus, any new and additional work that needs to be done to prepare for this trial is not the same as preparation for the first trial. Furthermore, the trial will not begin for another six weeks or so (September 15 – after jury selection and opening statements are complete). Because the Government anticipates that its case will last approximately four to five weeks, Defendants will not be putting on their case for another ten weeks or so. There is adequate time for Defendants to prepare for this re-trial.

Additionally, the Fifth Circuit's decision concerning the budget regarding travel and expenses for certain experts and for counsel should alleviate defense counsels' concerns that such work could not be completed in time for trial and streamline counsels' preparation for the second trial.

In their briefing for the motion for continuance, Defendants attached to their reply declarations of two of their experts and some local criminal defense attorneys who testified that under these circumstances, it would be impossible to be prepared for trial by mid-September. The Government argues the Court should strike the declarations because those exhibits should have been submitted in support of Defendants' original motion. The Court agrees that the exhibits should have been filed with the motion rather than with the reply.

The purpose of a reply brief is to answer arguments raised in the response, not add new supporting materials. *See e.g., Springs Indus., Inc. v. Am. Motorists Ins. Co.,* 137 F.R.D. 238, 240 (N.D. Tex. 1991) (Fitzwater, J.) The thrust of Defendants original motion was that they "cannot be prepared for trial on September 8, 2008." (Mot. at 2.) There is no doubt the materials attached to the reply addressed the very argument that formed the basis for their motion and could have and should have been submitted therewith. Defendants' submission of these documents in conjunction with the reply necessarily delayed resolution of the motion because it forced the Government to seek leave to respond or move to strike, which in turn, precipitated even more briefing from Defendants. As this Court's previous orders have indicated, this is *not* the first time Defendants have used reply briefs to raise arguments/issues that should have been raised in their original motion. It appears Defendants are engaging in improper usage of reply briefs to delay resolution of the issues in this case, perhaps in hopes of continuing the trial.

The Fifth Circuit approved the budget presented by the District Court with certain exceptions on August 1, 2008. Defense counsel and their approved experts, paralegals and investigators can continue working and traveling and may submit their vouchers for District Court approval. These amounts will be paid as long as they are reasonable. As defense counsel is aware, the outstanding vouchers from the first trial are being processed.

The Government's motion to strike Defendants' reply is hereby GRANTED and Defendants' reply is hereby stricken. Defendants' motion to continue the trial is hereby DENIED. Defendants' motion to extend all remaining pretrial deadlines is GRANTED. Defendants' pretrial materials, such as proposed voir dire, the proposed jury charge, witness list, the exhibit list, and motions in limine are due no later than August 22, 2008. Defendants' motion for extension of time to file motions

regarding Daniel Olson is hereby GRANTED and Defendants have until August 15, 2008 to file said motion(s). The Government's response, if any, is due no later than August 22, 2008. Defendants may file a proper reply, if any, no later than August 26, 2008.

It is SO ORDERED, this 5th day of August 2008.

JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	
	§	
HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT (1) also known as the "HLF"	§	3:04-CR- 240- G

DEFENDANT HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT'S WAIVER OF ANY POTENTIAL OR ACTUAL CONFLICT OF INTEREST

TO THE HONORABLE A. JOE FISH, CHIEF JUDGE,
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS:

Defendant Holy Land Foundation For Relief and Development ("HLF"), through its board chairman, Ghassan Elashi, hereby waives any conflict of interest inherent in the representation of both HLF and its former director, Shukri Abu Baker, by the law firm of Freedman Boyd Daniels Hollander & Goldberg, P.A. in this criminal proceeding.

Respectfully submitted:

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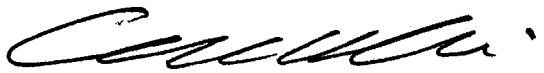
Attorneys for Defendant Holy Land Foundation for Relief and Development

AGREED:



Ghassan Elashi
Board Chairman for Holy Land Foundation for Relief and Development

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Waiver of Any Potential or Actual Conflict of Interest was served electronically upon Mr. James Jacks, on this 29th day of September, 2006.

NANCY HOLLANDER

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	
	§	3:04-CR-240-G
SHUKRI ABU BAKER (2)	§	

DEFENDANT SHUKRI ABU BAKER'S
WAIVER OF ANY POTENTIAL OR ACTUAL CONFLICT OF INTEREST

TO THE HONORABLE A. JOE FISH, CHIEF JUDGE,
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS:

Defendant Shukri Abu Baker, appearing before the Court individually, states as follows: I understand that the law firm that represents me, Freedman Boyd Daniels Hollander & Goldberg, P.A, also represents the corporate co-defendant in this case, The Holy Land Foundation For Relief and Development ("HLF"). I further understand that, as an element of my right to effective assistance of counsel and pursuant to the provisions of Rule 44(b)(2) of the Federal Rules of Criminal Procedure, I am entitled to appointed counsel who does not represent another defendant and/or does not have such a potential conflict of interest, and I understand further that the Court would customarily appoint counsel for me other than counsel for HLF. However, it is my request that the above law firm be permitted to represent both me and HLF in this proceeding. Accordingly, I hereby waive any actual or potential conflict of interest created by such dual representation by Freedman Boyd Daniels Hollander & Goldberg, P.A.

Respectfully submitted:

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Attorneys for Defendant Shukri Abu Baker

AGREED:

Shukri Abu Baker

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Waiver of Any Potential or Actual Conflict of Interest was served electronically upon Mr. James Jacks, on this 29th day of September, 2006.

NANCY HOLLANDER