

**Project SALAM**  
**Support and Legal Advocacy for Muslims**  
**www.projectsalam.org**

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November 16, 2009

President Barack Obama  
The White House  
1600 Pennsylvania Ave. N.W.  
Washington, DC. 20500

Attorney General Eric Holder  
Department of Justice  
950 Pennsylvania Ave. N.W.  
Washington DC. 20530-4371

Dear President Obama and Attorney General Holder:

This is the fifth in a series of letters to you urging that you restore the rule of law in America and release innocent persons, mostly Muslims, who were illegally targeted and convicted under the Bush Administration. We will continue to write to you to raise these cases of conscience until justice is finally done.

On June 4, 2009, you delivered an excellent speech in Cairo, Egypt about the need to restart the relationship between the United States and the Muslim world and to move beyond past misunderstandings and resentments. In that speech, you referred to the teaching that one who kills a single person kills all of humankind, and one who saves a single person saves all of humankind. Thus we are confident that you are sensitive to the enormous impact that even one case of injustice can have on all humankind, and the corresponding redemption of humankind that comes when one person, unjustly accused and imprisoned, is set free. As you restart the relationship with the Muslim world, we hope that you will remember to restart our government's relationship with Muslims living in the United States who were illegally targeted and accused under the Bush Administration, and who continue to bear many injustices done to their members. The injustices done to American Muslims, some of whom are profiled in this series of letters, are injustices on the conscience of all humankind. All we ask you to do is to look in the files of these cases, as your Justice Department did in the case of Senator Stevens. We are confident that the files will show that your own government agents and lawyers never considered most of these defendants to be guilty of crimes; the government brought charges only because of suspicion at best under the FBI's "preemptive prosecution" program, and withheld exculpatory information from the defendants and the courts as to whether the defendants were really guilty.

In this letter, we want to focus on the injustices done to Muslims in the U.S. who were persecuted and prosecuted for engaging in charitable work. Charity is one of the five pillars of Islam. All true Muslims give generously to help those in need (zakat), and an attack on charitable giving is an attack on Islam itself. American Muslims have been particularly generous in giving zakat, in part because many of them came from poverty-stricken areas of the world and know firsthand about the suffering of the poor in their homelands. It would be natural for those Muslims who became well-to-do in the U.S. to want to share their wealth with their home countries by making zakat to Muslim charities. It is astonishing that such generous and laudable impulses could have been criminalized under the Bush Administration, but that is what has happened under the label "funding terrorism."

## 1. The Blacklisting of Muslim Charities

Shortly after 9/11, the Bush Administration designated, with no explanation, various Muslim charitable groups as “terrorist” and ordered their assets frozen. Since the designation almost always relied on classified information, there was no practical way for the charities to defend themselves or to receive a due process hearing as to the basis for this designation. No designated charity has ever succeeded in reversing the designation because it is not permitted see the classified information that caused the designation in the first place. The designation in effect impounds the charity’s money and puts it out of business without any explanation or opportunity for defense.

For example, in 2006, Kind Hearts, a registered charity in Toledo, Ohio, had its offices raided by the U.S. government. Documents and records were seized and its assets were frozen. Kind Hearts was essentially put out of business, but no charges were ever brought. To this day, the government claims Kind Hearts is simply “under investigation,” and that is enough to keep the charity’s assets frozen. No meaningful due process has been provided. A lawsuit by Kind Hearts will soon be heard on the question of how long a charity’s assets can be frozen by the government before it amounts to a taking in violation of the Constitution.

The validity of the classified information is, of course, critical to determine whether there is a proper basis to shut these charities down. In 2004, a charity, Al-Haramain Islamic Foundation, had its assets seized by the U.S. government. This effectively put the charity out of business, based apparently on classified information that Al-Haramain was not permitted to see. In 2006, Al-Haramain sued the U.S. government to determine and challenge the basis on which it had been designated a terrorist organization. During the course of the lawsuit, the charity asked for discovery. The government provided some documentation, but refused to disclose any classified information. However, as a result of a mistake in the Department of Justice, the government turned over to the lawyers for the charity a document showing conclusively that the Department of Justice had illegally eavesdropped electronically on confidential conversations between the lawyers for the charity and their clients.

This revelation was shocking in two senses. It would, of course, be highly illegal to eavesdrop on any conversation without a warrant, which is apparently what occurred here. (The electronic eavesdropping was apparently done by the National Security Administration [NSA] without a warrant, bypassing the only lawful procedure for such eavesdropping, which is to obtain a warrant from a special [FISA] court.) In addition, it would be highly unethical for the government to eavesdrop on a confidential communication between a lawyer and his client. The two practices taken together are a fundamental denial of the rule of law and the right to counsel. It reduces the principles of American justice to those of a police state.

When the U.S. government discovered that a classified document, revealing its illegal and unethical conduct, had accidentally been turned over to the Al-Haramain lawyers, it began a vigorous attempt to recover the document and to suppress any knowledge of it. When lawyers for Al-Haramain tried to raise in court the issue of the U.S. government’s own illegality, they were told that they could not use the classified document itself, and if they wanted to present a written description of their recollection of the document in court, they would have to use government computers in a sealed room to generate the papers. These court papers would have to be given to government attorneys to deliver to the court so that no information about the classified document would be revealed to the public. (Eventually the government insisted on destroying the defense attorney’s computers to avoid any possibility of disclosure of the government’s own illegality.)

At present, the Al-Haramain charity has been told by the court that it cannot use the classified document itself to raise a colorable claim that it was subject to illegal electronic surveillance (which presumably formed the basis on which it was designated a terrorist organization and its assets were

seized). The charity can raise the issue only by evidence that is not classified, which is virtually impossible to do. (This is similar to the holding in the case of *U.S.A v. Yassin Aref*, in which the court held that even though a Bush Administration official told the *New York Times* that the NSA warrantless electronic eavesdropping program was very successful specifically because it resulted in Aref's arrest, Aref could not show a "colorable basis" to believe that he was subject to electronic eavesdropping, and as a result he could not raise the issue of the government's illegal conduct in court.)

In effect, the courts are saying that in a clash between classification and government illegality, classification will win, and the government will be allowed to hide its illegal conduct behind a veil of secrecy. Moreover, the government will be able to close down charities or take other equally drastic action based on information illegally obtained, and then, by classifying the information, the government will be able to avoid having to justify its actions or account for its illegal conduct. There will not be any due process for the charity, nor will the government have to obey the law or account for its violations. If Aref and Al-Haramain cannot show a colorable basis to believe that they were subject to illegal governmental eavesdropping, then it is unlikely that anyone would be able to make such a showing. The courts for the moment are complicit in allowing the government to cover up its illegal activities by refusing to consider the question. But Mr. President, this is not sustainable. The courts cannot forever shield the government from having to account for its illegal activities. Al-Haramain is entitled to know and to challenge the basis for its designation as a terrorist organization. Criminal defendants like Aref are entitled to know how the government's unchallenged illegal eavesdropping formed the basis upon which they were targeted for investigation and their trials were tainted. The time is long overdue for the Justice Department to return to the rule of law and openness so that the public has confidence that justice is being done and the government is acting in a legal manner.

On June 17, 2009, the ACLU released a report stating that since 9/11, the U.S. government has interfered with Muslims' religious freedom and duty to pay zakat by closing most Muslim charities, either by claiming that the charities are terrorist or by simply saying they are under investigation. The ACLU report describes the closings as overly broad, lacking in due process, and often based on secret or classified information that is impossible to challenge. The government enforces illogical rules such as shutting down charities because years ago they assisted an organization that was much later declared to be terrorist. In your Cairo speech, Mr. President, you said that you were committed to working with American Muslims to ensure that they can fulfill their religious duty of zakat. Start by allowing Muslim charities to regain their confiscated assets, and provide relief to the intolerable suffering in the Middle East under clear and fair rules established by the U.S. government and the Muslim communities together.

## **2. Criminalizing Charitable Activity—The Holy Land Foundation Case**

Not content with simply shutting down Muslim charities, the government has pursued criminal charges against various leaders of Muslim charities for what is essentially charitable activity. The Holy Land Foundation case is a good example. The Holy Land Foundation was formed in 1989 to provide relief to the Palestinian people, who were increasingly impoverished as a result of the repression of the Israeli government. A Palestinian group, Hamas, controlled many of the "zakat committees" found in most Palestinian communities that distributed food and aid to impoverished families of Palestinians. (Zakat committees are a common way of distributing aid in Muslim countries, and are similar to food pantries and homeless shelters in the U.S.) The Holy Land Foundation, like many organizations (including UN agencies and USAID through 2004), allowed these local zakat committees to distribute the charitable aid because this was an efficient way to get assistance to suffering local people, as opposed to channeling it through the corrupt Palestinian Authority. Eventually the Holy Land Foundation rose to become one of the largest Muslim charities in the U.S.

In 1995, the Clinton Administration declared Hamas to be a terrorist organization for sponsoring suicide bombing that targeted Israelis. In 2006, free elections were held in Palestine for the first time in many years, and Hamas won a majority of seats in the Palestinian parliament.

In 2001, the Bush Administration designated the Holy Land Foundation as a terrorist organization, froze its assets, and in effect shut the charity down, based apparently on information from Israeli intelligence and on classified information. In 2007, the Bush Administration brought criminal charges against six of the directors of the Holy Land Foundation for essentially sending (between 1995 and 2001) charitable money to Hamas-controlled zakat committees after Hamas was declared to be a terrorist organization. The first trial resulted in one defendant being acquitted, and a hung jury for the remaining defendants. A second trial resulted in the remaining five defendants being convicted of providing material support for Hamas.

During the trial, it was conceded by the government that the defendants had not encouraged or engaged in any violence, and that the money sent by Holy Land had been designated and used only for providing food, shelter, and social services to truly impoverished people. The government argued that the Holy Land money went to zakat committees controlled by Hamas, and that as a result the charity's money helped to spread Hamas' ideology. Holy Land money helped Hamas win the hearts and minds of the Palestinian people by creating the impression that Hamas could fund schools, hospitals, and social welfare programs, which resulted in the Hamas election victory in 2006—some five years after the U.S. shut down the Holy Land Foundation. The government also claimed that Holy Land donations allowed Hamas to divert money from its charitable and social activities into promoting terrorism.

The defendants argued that the zakat committees were the only practical way to get money to people who needed it. Other organizations, including UN agencies and USAID, used the same zakat committees for the same reasons. (Did their donations help Hamas to spread its ideology?) If Hamas controlled some of the zakat committees, it was because Hamas was, in effect, the government of Palestine at that time, as shown by the elections in 2006.

The trial featured graphic evidence concerning the destruction and death caused by Hamas-sponsored suicide bombers, although there was no allegation that any of the defendants or the charity were involved in any violent acts. Also there was critical testimony by an anonymous Israeli intelligence officer as to whether the zakat committees were controlled by or associated with Hamas. (Without this critical testimony, the government could not have proven its case). Because the Israeli officer's identity was hidden, the defense could not adequately question his motives or bias.

The five defendants were given very harsh sentences. Shukri Abu-Baker and Ghassen Elashi each received 65 years in prison; El-Mazain received 15 years. Two brothers, Mufid Abdulqader and Abdulrahman Odeh, received 20 and 15 years respectively. All have families who are devastated by this criminalization of men who devoted their lives to relieving the suffering of the Palestinians.

Mr. President, in your Cairo speech you referred eloquently to the suffering of the Palestinian people that was intolerable. The five defendants in this case tried to relieve that intolerable suffering at great personal cost to themselves. They had to deal with the situation as they found it: the Palestinian Authority—paralyzed and corrupt; the Israeli government—harsh and repressive; Hamas—the de facto government for much of the country; zakat committees—the most efficient means of delivering aid to the people who needed it. Holding the defendants criminally responsible for Hamas allegedly controlling some of the zakat committees is not justice; even USAID and the UN used the zakat committees as late as 2004 simply because there was no other way to efficiently distribute aid to suffering Palestinians. Jewish groups during this time freely raised money in the U.S. in support of Israel. Did this money allow the Israeli government to divert funds to repress the Palestinians? The prosecution of the Holy Land defendants is simply a continuation of the one-sided politics of repression

of the Palestinians and conflicts with the high-minded, even-handed words of your Cairo speech. Concrete actions in support of your Cairo speech should include reversing the convictions of the Holy Land defendants. Fighting terror should not mean prosecuting people whose only actions were to help poor people in distress.

### **3. Dr. Rafil Dhafir Revisited—The Many Ways To Criminalize a Charity**

In our second letter to you, we focused on several cases, including that of Dr. Rafil Dhafir, but his case is so intertwined with the subject of this letter—criminalizing charities—that we want to revisit his case again. Dr. Dhafir was a respected oncologist in Syracuse, NY who was born in Iraq and was deeply moved by the suffering of the Iraqi people under Saddam Hussein and the embargo. Like the situation in Palestine, the suffering of the Iraqis was intolerable, and Dr. Dhafir set up a charity, Help The Needy, to get food and medicine to those who were dying—dying in part because of conditions created by the U.S.-sponsored UN embargo against Iraq.

After 9/11, the U.S. government shut down Help The Needy along with many other charities. The government also decided to prosecute Dr. Dhafir for violating the embargo. But the government had a problem in this respect, because it did not have even a theory as to how Dr. Dhafir's charity benefited terrorists; Dr. Dhafir had done nothing except help the needy in Iraq. Moreover, even if Dr. Dhafir had violated the embargo for humanitarian reasons, so had many other organizations, and they had not been prosecuted. Instead, the government went after Dr. Dhafir for Medicare fraud and for violating charitable contribution tax rules.

The fact that this was a preemptive prosecution is clear. When the government first arrested Dr. Dhafir, the FBI interviewed hundred of contributors to Help The Needy and then announced that a blow had been struck against those who financed terror. Then at the trial, the government announced that this was not a terrorism trial, but only a trial of Medicare fraud and charity and embargo violations, and insisted that the word "terrorism" should not even be mentioned in the trial. Then, after Dr. Dhafir was convicted, the prosecution asked the judge to impose an enhanced sentence based on terrorism considerations, and Dr. Dhafir was eventually sentenced to 22 years at the Communication Management Unit at Terre Haute, Indiana—the prison set aside for Muslims convicted of terrorism-related charges.

In Cairo, Mr. President, you offered an open and even hand to the Palestinians and the Iraqis. You called their suffering intolerable. Why, then, should Dr. Dhafir and the Holy Land defendants be incarcerated for decades, essentially for trying to help poor people in Iraq and Palestine?

### **4. Entrapment Revisited—The June 8, 2009 Statement of Robert Mueller**

Our fourth letter to you focused on the FBI's infiltration of mosques with agents provocateur who try to entrap mosque members in criminal activities with large sums of money, friendship, and manipulation. Entrapping people who have no interest in committing crimes is not legal behavior by the U.S. government, but this is especially so when the entrapment is directed at the houses of worship of a particular religion.

Since we sent you our fourth letter, Robert Mueller, head of the FBI, has publicly defended the use of agents provocateur in mosques in a statement on June 8, 2009, and indicated that this policy will continue unchanged. Mr. Mueller's statement was made in response to complaints from all over the country that Muslim worshippers and clerics were being targeted by the FBI rather than by terrorists. The present policy makes it very difficult for Muslim communities to work together with the FBI to identify real terrorists, at the same time that the FBI is targeting them. A policy of entrapment by agents

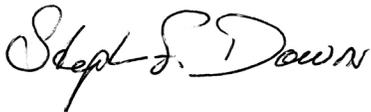
provocateur is illegal, immoral, and self-defeating. We urge you to reverse this very bad policy and to release those prisoners unfairly entrapped in the past.

### **5. The Communication Management Units (Muslim Prisons) Revisited**

Our third letter to you noted the unfairness of the special Muslim prisons (Communication Management Units) that have been established first at Terre Haute, Indiana, and later at Marion, Illinois, to incarcerate a mostly Muslim population of prisoners under harsh and unnecessary restrictions that are not imposed on prisoners in other prisons. Many of these Muslim prisoners in the CMUs are victims of the government's preemptive prosecution program and of entrapment by agents provocateur. These prisoners are not violent or dangerous. But Muslim prisoners in the CMUs are severely restricted in their ability to communicate with the outside world, including their families. They are not permitted contact visits; they cannot even hug and touch their children and spouses. The CMUs were established without following legal procedures and are an embarrassment to American justice. We are thus pleased to note that on June 17, 2009, the ACLU filed suit in federal court on behalf of one of the inmates at the Terre Haute CMU, Sabri Benkahla, to end these illegally created CMU prisons. We hope that instead of fighting this lawsuit, you will see the long-denied request for justice that this lawsuit represents and will close the CMU units permanently.

In your Cairo speech, you spoke positively about the American Muslim community and the contributions that American Muslims have made to the United States and the world. As a show of support for this community, we urge you to appoint a commission to investigate the unfair tactics and unjust prosecutions of Muslims and Muslim charities in this country, and to do justice to those who have been wronged.

Yours very truly,



Stephen Downs Esq., lawyer,  
26 Dinmore Road, Selkirk NY. 12158; (518) 767-0102; swdowns68@aol.com

Plus 144 additional signatures omitted here.