

Testimony of
Mr. John Boyd

November 20, 2002

Dear Chairman Leahy and Senator Specter:

I write in connection with the current hearing of the Judiciary Committee on "Assessment of Tools Needed to Fight the Financing of Terrorism."

Our firm represents the Holy Land Foundation ("HLF") in litigation that HLF is pursuing against the Department of the Treasury and others in connection with the government's decision to declare HLF a terrorist organization and seize its assets. Holy Land Foundation for Relief and Development v. John Ashcroft, et al., was filed in the United States District Court for the District of Columbia, Cause No. CV 02-422 and is presently on appeal before the District of Columbia Circuit. We also represent HLF in defending the lawsuit brought against HLF and others by the family of Daniel Boim, who was killed some years ago by terrorists presumably connected to the terrorist organization Hamas.

Late last week, Thomas Swanton of Senator Specter's office called me to inform me of the hearing which was held yesterday. Because I was out of town, I did not get the message until Monday. It was when I returned Mr. Swanton's call then that I learned that there would be a hearing on Wednesday on this subject and that I or another representative of HLF was invited to testify. It was not reasonably possible to prepare testimony within the day-and-a-half before the hearing. Having read today Mr. Lewin's prepared testimony, I believe there are some things the members of the Judiciary Committee ought to be aware of. I will summarize them below:

1. Representatives of HLF have filed sworn declarations in the litigation pending in the District of Columbia that there is not now and never has been a connection between HLF and Hamas, and HLF has never provided support to Hamas. I e-mailed copies of those declarations to Mr. Swanton. Other than an unsubstantiated claim that an unidentified "FBI asset" told an unidentified FBI agent that HLF funded Hamas, and the evidence referred to in ¶2, below, there is no evidence of which we are aware that impeaches these statements, other than conclusory opinions that HLF supports Hamas.

2. In declaring HLF to be a terrorist organization and seizing its funds, the Department of Treasury substantially relied on a Government of Israel ("GOI") "summary" of a statement attributed to HLF's former West Bank manager. In the GOI summary, the manager is quoted as "confessing" that some of HLF's money goes to Hamas. By independent means, we obtained copies of the manager's actual statements to GOI interrogators, as well as his sworn testimony in an Israeli court regarding the same subject matter. The original statements and the transcript of his testimony demonstrate that, far from admitting support for Hamas, he categorically denied that HLF provided support to Hamas. In other words, the "summary" of his statements provided to our government by the GOI was false. We do not know whether Treasury or the FBI had

copies of the original statements and were therefore aware that the GOI summary was false. They are certainly now aware that the GOI summary on which Treasury relied was false, but have taken no steps to correct it.

3. The Department of the Treasury also relied on HLF's provision of support for the Al Razi Hospital in Gaza to support its conclusion that HLF supports Hamas. According to the report on which Treasury relied, this hospital is affiliated with Hamas. Accordingly, so the theory in the report goes, HLF's support for the hospital establishes the connection between HLF and Hamas. HLF, however, had no reason to believe that this hospital - which existed and served the public under the Israeli occupation and under the Palestinian Authority - has ever been a Hamas front. Most tellingly, Treasury failed to disclose that the United States Agency for International Development was also providing support to this same hospital, at the very time that our government was "accusing" HLF of supporting it. USAID even touted its assistance to the Al Razi hospital on USAID's website. We would be happy to provide the Committee a copy of the USAID web page in question, which USAID has since changed to delete reference to Al Razi hospital. Treasury has admitted, however, that USAID has supported the Al Razi hospital. In supposed explanation of our government's inconsistent position, Treasury stated in a court filing that the decision to support the hospital had not been made by a government official but, rather, by its subcontractor, PriceWaterhouse. It has not explained why USAID, whose office in Palestine is

undoubtedly aware of which institutions are suspected of association with Hamas and which are not, would not only approve such an expenditure, but would trumpet its expenditure as proof of its friendship with the Palestinian people.

4. The Department of Treasury also relied on the fact that in 1994 HLF paid the airfare and travel expenses of a particular Palestinian cleric to visit the United States to raise funds for HLF. According to Treasury, this man was known to be a notorious "Hamas activist." To HLF, he was known as an advocate for peace in the Middle East. HLF's payment of the man's travel expenses occurred before our government declared Hamas to be a terrorist organization. In addition, we learned independently that after our government declared Hamas to be a terrorist organization, the United States Information Service brought this same man to the United States, at taxpayers' expense, on a good-will tour, during which he met with, among others, Jewish organizations interested in peace in the Middle East.

5. The Department of Treasury made much of the fact that HLF provided funds to the children of people it identified as "martyrs," claiming that HLF's support for such families demonstrated support for terrorism and Hamas. Treasury's "Exhibit A" for this allegation was a list of close to 400 children who live in Gaza and who were receiving support from HLF after the deaths of their fathers. HLF's program was akin to "Save the Children" in that HLF secured sponsors for particular children whose fathers had died. Of the close to 400 children listed, some 76 were identified as having had fathers who were "martyrs." Because some of them are siblings, the total number of fathers in this category was 46, which was slightly less than one-fourth of all of the fathers who were deceased and whose children were seeking assistance. As it turned out, of those 46, four were found to have been in connected with terrorism. Nine were murdered - probably by

Hamas or other terrorist organizations - because they were thought to be collaborators with Israel. All of these children have now lost the \$45/month stipend that they received through HLF.

6. The Department of Treasury alleged that HLF supported the families of Hamas activists in 1992, when the Government of Israel expelled a number of dissidents from Palestine and stranded them in a no-man's land between Israel and Lebanon. HLF did come to the assistance of the exiles and their families, but Treasury fails to mention that so did the United Nations and a number of other international charities whose bona fides have never been questioned. Treasury also fails to mention that international pressure on the GOI forced Israel to allow these persons to return home. It is not reasonable or fair to criticize HLF for its support of the families of these wrongly-exiled persons, nor is it reasonable to affiliate HLF with Hamas on the basis of HLF's help for these refugees, particularly in light of the fact that at the time Hamas was not considered a terrorist organization.

7. The Department of Treasury alleges that HLF's should not have used the services of certain Palestinian "Zakat" ("charity") committees to assist HLF in identifying the needy and in distribution of aid. The evidence will show that HLF has been like many other charities in these regards and that only HLF has been singled out for designation as a terrorist for having a relationship with these committees, which have been integral to the life of Muslim communities for hundreds of years. The government contends that these Zakat committees are in some way connected to Hamas, yet it raised no objection when other, non-Muslim charities cooperated with them. HLF believes that representatives of other charities would testify, if called upon, that the issue of whether to deal with a particular organization, institution or person in Palestine is easily resolved: They consult the lists of terrorists and terrorist organizations that are available through the United States Departments of State and Treasury. If the person, institution or organization appears on the lists, they do not deal with them. If they are not on the lists, they feel free to deal with them. None of the Zakat committees in Palestine that HLF has worked with appears on these lists, and nor does the Al Razi hospital or the other hospitals HLF has supported (The Dar Al Salam Hospital). In short, the allegation that HLF should not have dealt with these organizations is completely unfounded.

8. The Department of Treasury alleges that HLF should not have accepted money in 1992 from a man named Abu Marzook, who is now known to be a high official in Hamas. The Department of Treasury has not explained why HLF should not have accepted money from this man, who was not at that time designated a terrorist. Furthermore, Treasury accuses HLF of providing support to Hamas, not receiving money from persons associated with Hamas, and has never attempted to explain why receipt of a contribution from Marzook demonstrates support for Hamas, other than pure guilt by association.

The remaining evidence of HLF's supposed connection to Hamas is close to a decade old, demonstrably unreliable and, when understood, includes nothing of an inculpatory nature. Although some of the evidence raises questions about alleged connections between HLF and Hamas, HLF is fully prepared to address and refute all of it if it is ever given the opportunity to do so in the context of a fair hearing.

There is much more to be said about the conduct of both our government and the GOI in the destruction of this charity, which can be derived by reviewing the limited evidence that HLF

submitted to the Federal District Court for the District of Columbia in HLF v Ashcroft et al. I respectfully request that the Committee review that evidence, some of which I have supplied to Senator Specter's office by e-mail. I also respectfully request that the committee review the administrative record that supposedly supports the designation and blocking order. What is remarkable is that it consists almost entirely of hearsay, innuendo, unsupported opinion and even hundreds of pages of newspaper articles. More remarkable is that the Treasury Department has gone to lengths to deflect any opportunity for a hearing at which it would be required to defend its decisions. (See below.)

I also wish to address a matter that Mr. Lewin raised in his prepared testimony. In it, he complained that it was unfair that HLF was able to pay its lawyers while he was having to work for the Boim family pro bono. Under Department of Treasury's Terrorism Sanction Regulations (§585.506), the funds of a blocked entity may be used for "[t]he provision to or on behalf of a specially designated terrorist of...legal services" for cases such as these. In order to be paid, we submit our bills and an application for a license to the Office of Foreign Assets Control. Those portions of our bills which OFAC approves are then made the subject of a "license" which we may then use to draw on blocked funds in HLF's blocked bank account.

What Mr. Lewin requests - that HLF be put out of business and be deprived of any ability to defend itself or to contest its designation as a terrorist organization or the blocking order - would render intolerable what is already a breathtakingly unfair process. What Mr. Lewin appears to be asking is that the President and his designees be given the authority to seize the assets of an American organization, based on evidence that may run the gamut from reliable to unreliable to outright fabricated, and deprive that organization of the ability to contest the evidence, the designation or the blocking order. In the case of the Boim litigation, Mr. Lewin wishes to promote a situation in which HLF, deprived of counsel or any ability to defend itself, will suffer a default judgment because of its inability to hire counsel. In that case, Mr. Lewin could then access HLF's blocked funds without ever having to prove that HLF actually had any complicity whatever in the tragic death of his clients' son. If Mr. Lewin believes he has a case against HLF, then he should prove it. If he has enough evidence to get to a jury and is able to persuade the jury that HLF should be held legally responsible, he will likely be able to access HLF's blocked funds, and he can be paid from those funds just as any other lawyer would who worked on a contingent-fee basis.

HLF also respectfully requests that the Committee consider the lack of fundamental due process protections that the law provides for organizations such as HLF. Specifically, HLF requests that the Committee consider that the current regulatory and statutory scheme provides no mechanism for a hearing either before or after assets are seized and an organization is designated a terrorist organization. HLF could probably satisfy an impartial fact-finder that HLF has no connection whatever to Hamas, but it has never had an opportunity to do so. Yet much of the evidence that the government has used to justify its actions turns out to be manufactured and the rest is at best unreliable. In court, the government has taken the following positions with respect to the evidence described above: first, they have rejected it without a hearing; second, they have treated much of it as "irrelevant" because it was not in the "administrative record" when the decision was made to designate HLF a terrorist organization, a process in which HLF had no meaningful opportunity to participate. For example, when confronted with irrefutable evidence that GOI's

"summaries" were false, the government's response has been to reject HLF's evidence and to rely on the principle that it is always appropriate for one government to rely on information supplied by another, notwithstanding proof that the information is false. As to HLF's support for institutions that are supposedly connected to Hamas and that the United States also supports, the government's explanation is that HLF acts with bad motive in supporting such institutions while the United States and the other charities do not. The government has offered no explanation whatever for its apparent confusion regarding HLF's use of the term "martyr." Finally, it is the government's position that HLF should never be permitted a hearing.

Many organizations and persons who have been designated terrorist organizations are foreign, have little or no due process rights under our law, and are unlikely in any event to appear and contest their designations as terrorists. It would be extraordinary, for example, if representatives of Hamas wished to appear and contest that organization's terrorist status. HLF, however, is an American organization operated by Americans. It is fully prepared to address the allegations against it in a neutral forum, but has been unable to obtain any due process whatever. Just as this Committee is rightly concerned with the most effective mechanisms for cutting off funding to terrorist organizations, its efforts should not ignore the injustice to HLF, and any other similarly-situated organizations, that results when American organizations and American citizens are destroyed and stigmatized as terrorists and are provided no opportunity whatever to establish their innocence.

I appreciate having been given the opportunity to provide this information to the Committee. If I can provide any further information, please ask.

Respectfully,

John W. Boyd

JWB/ks

cc: Thomas Swanton

Sen. Orrin G. Hatch

Sen. Edward M. Kennedy

Sen. Strom Thurmond

Sen. Joseph R. Biden, Jr.

Sen. Charles E. Grassley

Sen. Herbert Kohl

Sen. Dianne Feinstein

Sen. John Kyl

cc: Sen. Russell D. Feingold

Sen. Mike DeWine

Sen. Charles E. Schumer

Sen. Jeff Sessions

Sen. Richard J. Durbin

Sen. Sam Brownback

Sen. Maria Cantwell

Sen. Mitch McConnell
Sen. John Edwards