



Office of the Attorney General  
Washington, D. C. 20530

June 19, 2012

The Honorable John A. Boehner  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

Re: *Al Haramain Islamic Foundation, Inc. v. US Dep't of Treasury*, No. 10-35032  
(9th Cir. Feb. 27, 2012).

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I am writing to advise you that the Department of Justice has decided not to petition the Supreme Court for a writ of certiorari in the above-referenced case. A copy of the decision is enclosed.

This case arises out of the decision by the Secretary of the Treasury to designate the Oregon office of the Al Haramain Islamic Foundation, Inc. (AHIF-Oregon) as a Specially Designated Global Terrorist under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 *et seq.*, and Executive Order 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001). That Executive Order declared a national emergency with respect to "grave acts of terrorism and threats of terrorism committed by foreign terrorists," and blocked transactions "to or for the benefit of" 27 specifically-identified individuals and entities listed in the Annex to the Order. *See* E.O. 13,224, Annex. The Order also granted the Secretary of the Treasury the authority to designate any person or entity he determines "to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to this order." *Id.* § 1(c). Acting pursuant to that authority, the Secretary, through the Department's Office of Foreign Assets Control (OFAC), designated AHIF-Oregon as a Specially Designated Global Terrorist in light of its control by, and support for, other designated persons and entities.

AHIF-Oregon filed suit in the U.S. District Court for the District of Oregon to challenge the merits of its designation, as well as the procedures employed by the Secretary in carrying out his responsibilities under IEEPA and the Executive Order. AHIF-Oregon was joined in that suit by the Multicultural Association of Southern Oregon (MCASO), a group that wishes to speak out against AHIF-Oregon's designation and to work with AHIF-Oregon to teach about Islam. MCASO alleged that Section 2(a) of the Executive Order, which prohibits "any contribution of \* \* \* services to or for the benefit of" designated entities, is unconstitutional to the extent that it prohibits MCASO from advocating on AHIF-Oregon's behalf.

The Department defended the constitutionality of Section 2(a) of the Executive Order, arguing that it did not reach MCASO's constitutionally-protected right to conduct independent advocacy on behalf of AHIF-Oregon. The district court agreed, and rejected MCASO's vagueness challenge to Section 2(a) of the Order. See *Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury*, 585 F. Supp. 2d 1233, 1270 (D. Or. 2008). The district court also rejected AHIF-Oregon's challenge to the merits of its designation, as well as the statutory and constitutional objections to the procedures OFAC employed in designating that group. See *id.* at 1250-1264; see also *Al Haramain Islamic Found., Inc. v. U.S. Dep't of Treasury*, 2009 WL 3756363 (D. Or. Nov. 5, 2009). Both AHIF-Oregon and MCASO appealed to the Ninth Circuit.

On appeal, the Ninth Circuit upheld the Secretary's decision to designate AHIF-Oregon under the Executive Order. See *Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury*, 660 F.3d 1019 (9th Cir. 2011), *amended upon denial of rehearing*, 2012 WL 603979 (Feb. 27, 2012). Although the court of appeals held that OFAC had violated AHIF-Oregon's Fourth Amendment rights by failing to obtain a warrant prior to blocking its assets, the court of appeals remanded the case for the district court to determine "what remedy, if any is available." *Id.* at \*25. That portion of the case is therefore not final and it is not clear that AHIF-Oregon will be able to obtain any relief. The court of appeals also held that OFAC had violated AHIF-Oregon's Fifth Amendment rights by failing to provide adequate notice of the basis for its designation or access to (or a substitute for) classified information contained in the administrative record. The court concluded, however, that the due process violation was harmless. It therefore affirmed the district court's dismissal of AHIF-Oregon's due process claims. *Id.* at \*20.

As relevant here, the Ninth Circuit reversed the district court's dismissal of MCASO's First Amendment challenge to Section 2(a) of the Executive Order. It noted that under the Supreme Court's recent decision in *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010), restrictions on advocacy in this context are subject to strict scrutiny. See *Al Haramain Islamic Foundation, Inc.*, 2012 WL 603979, at \*26. The court of appeals noted that although *Humanitarian Law Project* had upheld the ban in 18 U.S.C. 2339B on providing material support to a foreign terrorist organization, the Supreme Court had expressly declined to consider whether Congress could prohibit providing material support to a domestic entity like AHIF-Oregon. See *Al Haramain Islamic Foundation, Inc.*, 2012 WL 603979, at \*27; see also *Humanitarian Law Project*, 130 S. Ct. at 2730 ("We also do not suggest that Congress could extend the same prohibition on material support at issue here to domestic organizations."). The court of appeals also stated that *Humanitarian Law Project* had declined to decide whether Congress could prevent coordinated advocacy with a designated organization, because the plaintiffs in that case had not adequately specified the types of coordinated advocacy in which they wished to engage. See *Al Haramain Islamic Foundation, Inc.*, 2012 WL 603979, at \*27; *Humanitarian Law Project*, 130 S. Ct. at 2729 ("[Plaintiffs] cannot prevail in this preenforcement challenge" because "plaintiffs do not specify their expected level of coordination with [the foreign terrorist organizations at issue] or suggest what exactly their 'advocacy' would consist of.").

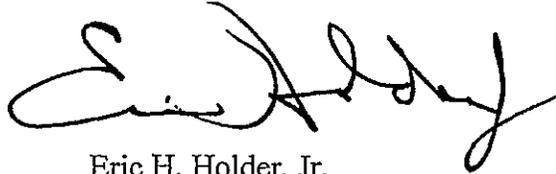
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By contrast, the Ninth Circuit found in this case that MCASO had adequately alleged an intent to engage in advocacy with AHIF-Oregon by holding coordinated press conferences, issuing coordinated press releases, and holding joint public education seminars. See *Al Haramain Islamic Foundation, Inc.*, 2012 WL 603979, at \*28. Assessing “three rationales advanced by the [Supreme] Court” in *Humanitarian Law Project* for the ban on coordinated advocacy, the court of appeals reasoned that those rationales “apply much more weakly” to this case, which involves “a domestic branch of an international organization with little evidence that the pure-speech activities proposed by MCASO on behalf of the domestic branch will aid the larger international organization’s sinister purposes.” *Id.* at \*31. The court of appeals therefore concluded that Section 2(a) of the Executive Order cannot survive strict scrutiny as applied to coordinated advocacy with a domestic organization. See *id.* at \*28-31.

The Department will continue to defend the constitutionality of Section 2(a) of Executive Order 13,224 as it applies to the provision of services to Specially Designated Global Terrorists. The Department has concluded, however, that, based on the particular facts of this case and its interlocutory posture, further review of the Ninth Circuit’s decision is not warranted at this time. A petition for a writ of certiorari would be due on June 28, 2012.

Please let me know if we can be of further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Holder", written in a cursive style.

Eric H. Holder, Jr.  
Attorney General

Enclosure