



U.S. Department of Justice
Civil Division

Washington, D.C. 20530

September 27, 2004

David J. Strachman, Esq.
McIntyre, Tate, Lynch & Holt
321 South Main Street, Suite 400
Providence, RI 02903

Re: Ungar v. The Palestinian Authority, Misc. No. 04-90 (D.D.C).

Dear David:

I have been advised that the United States Attorney's Office for the Northern District of Texas has sought and obtained a restraining order preventing the transfer of any funds belonging to the Holy Land Foundation for Relief and Development pending the resolution of ongoing criminal proceedings instituted in a United States District Court in that district. I have attached, for your information, courtesy copies of the Government's Ex Parte Application for Restraining Order, filed September 24, 2004, as well as the Post-Indictment Restraining Order entered on the same date by the United States District Court for the Northern District of Texas.

Sincerely,

A handwritten signature in cursive script that reads "Rupa Bhattacharyya".

RUPA BHATTACHARYYA
Senior Trial Counsel
Federal Programs Branch

forfeiture.

2. That on July 26, 2004, the HLF, along with seven of its officers and fundraisers, was indicted by a federal grand jury in this district on charges of providing material support to a designated Foreign Terrorist Organization (FTO) (18 U.S.C. § 2339B), providing goods or services to a Specially Designated Terrorist (SDT) (50 U.S.C. § 1701-1706), and money laundering (18 U.S.C. § 1956). See *United States v. Holy Land Foundation for Relief and Development (HLF), et al.*, Case No. 3:04-CR-240-G. As part of the indictment, the United States is seeking the criminal forfeiture under 18 U.S.C. § 982(a)(1) of certain property in which the HLF holds an interest. See Attachment A.
3. That the HLF was designated by the President of the United States as a Specially Designated Terrorist (SDT) and Specially Designated Global Terrorist (SDGT) pursuant to Executive Orders 12947 and 13224, respectively. The property subject to this Order is currently "blocked" by the Department of Treasury pursuant to the designations, and is being held at the various financial institutions identified in Attachment A.
4. That the indictment alleges that the property with respect to which this Order is sought would, in the event of HLF's conviction, be subject to forfeiture under 18 U.S.C. § 982 and 21 U.S.C. § 853.
5. That the indictment against the HLF establishes sufficient probable cause for the

issuance of this Restraining Order.

6. That destruction or the transfer, movement, conveyance, or encumbrance of subject property by the defendant, the Department of Treasury, or any third party could render said property unavailable for forfeiture. The Government is aware of legal action being taken by two civil litigants seeking access to the forfeitable funds. Plaintiffs in *Ungar v. Palestinian Authority*, 304 F. Supp.2d 232 (D.R.I. 2004), obtained a default judgement against HAMAS, the Palestinian-based terrorist organization for whom the HLF allegedly provided support. The HLF was not a named defendant in that case; however, the *Ungar* plaintiffs have obtained a Writ of Execution from the Southern District of New York for the HLF's assets being held in that jurisdiction. That writ was based on the *Ungar* default judgement wherein the district court addressed the assets of the HLF and the fact that the United States had designated the HLF as an agent of HAMAS. The issuing court also noted the U.S. Court of Appeals for the District of Columbia had affirmed the Government's finding. See *Holy Land Foundation for Relief and Development v. Ashcroft*, 333 F.3d 156 (D.C. Cir 2003), *cert. denied* 124 S.Ct. 1506 (2004). The authority for the writ was also based on the Terrorism Risk Insurance Act of 2002, Pub. L. 107-297, 28 U.S.C. 1610, which allows plaintiffs with a successful judgement against a terrorist organization to attach any blocked funds of the organization (or its agents/instrumentalities) for satisfaction of the judgement. Plaintiffs in *Botm, et al. v. Quranic Literacy Institute, et al.*,

Northern District of Illinois, No. 00 C 2905, have brought suit in the District of Columbia seeking to enjoin the Department of Treasury from distributing the HLF's blocked funds to any party prior to the resolution of their Illinois-based case. The *Boim* case is a federal civil lawsuit surrounding the death of a United States citizen allegedly killed as the result of a HAMAS terrorist act. The HLF is a named defendant in the *Boim* case, which is currently set for trial in December 2004.

7. That any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture and service of notice to all interested parties in accordance with the provisions of federal forfeiture law.

LEGAL MEMORANDUM

Pursuant to 18 U.S.C. § 982(a)(1), a person convicted of a violation of 18 U.S.C. §§ 1956, 1957 and 1960, in addition to any other penalty, shall forfeit to the United States:

any property, real or personal, involved in such offense, or any property traceable to such property.

In order to assure the availability of property for forfeiture upon conviction, 21 U.S.C. § 853(e)(1), which is incorporated by reference in 18 U.S.C. § 982(b)(1), provides that the court may enter a restraining order upon the filing of an indictment. 21 U.S.C. § 853(e), in pertinent part, provides:

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property... for forfeiture

under this section-

(A) upon the filing of an indictment or information charging a violation...for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; ...

Pre-trial restraint of assets under 21 U.S.C. § 853(e) has been approved by the United States Supreme Court. In *United States v. Monsanto*, 491 U.S. 600, 109 S.Ct. 2657 (1989), the district court restrained, under 21 U.S.C. § 853, a defendant from disposing of his house, his apartment and \$35,000 in cash prior to trial. The Supreme Court upheld the pre-trial restraint, noting:

[I]t would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that ..., the Government may restrain persons where there is a finding of probable cause to believe that the accused has committed a serious offense.

Id., at 615-16.

In the same year as the *Monsanto* decision, the Eleventh Circuit recognized the right of the United States to seek pre-trial restraint of forfeitable assets:

To preserve forfeitable assets for a possible conviction, the district court may restrain the defendant from using...assets before trial. The restraints may be imposed by way of a restraining order, an injunction, the execution of a performance bond, or a temporary seizure of certain assets which, because of their liquidity, can be readily transferred or hidden.

United States v. Bissell, 866 F.2d 1343, 1349 (11th Cir.), *cert. denied*, 493 U.S. 876 (1980).

In determining whether to issue a restraining order, "[t]he return of the indictment by the

federal grand jury...represents a determination of probable cause sufficient to issue a restraining order under 21 U.S.C. § 853(e)(1)(A)...." *United States v. Sellers*, 848 F.Supp. 73, 75 (E.D. La. 1994); accord, *In re Billman*, 915 F.2d 916, 919 (4th Cir. 1990), cert. denied, 500 U.S. 952 (1991) ("[T]he government may 'seize property based on a finding of probable cause to believe that the property will ultimately be proven forfeitable,' (citation omitted). The probable cause found by the grand jury satisfies the government's burden of proving the allegations of the indictment.").

As noted in the legislative history of the Comprehensive Crime Control Act of 1984:

For the purposes of issuing a restraining order, the probable cause established in the indictment or information is to be determinative of any issue regarding the merits of the government's case on which the forfeiture is to be based.

S.Rep. No. 225, 98th Cong., 2d Sess. 203 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News 3182, 3386.

In the present case, the federal grand jury's indictment of the HLF and other named defendants, which specifically identified property as being subject to forfeiture, establishes sufficient probable cause for the issuance of a restraining order. The United States seeks to preserve the status quo of the subject property to prevent its alienation or dissipation. The purpose of pre-trial restraint of property is to preserve the availability of property that can be forfeited after trial. *In re Billman*, 915 F.2d at 921.

Wherefore, for the foregoing reasons, the Government requests this Court to enter a protective order immediately restraining, prohibiting and enjoining the HLF and its agents, servants, employees, attorneys, family members and those persons in active concert or

participation with the HLF, and those persons, financial institutions, or entities who have any interest or control over the subject property from attempting or completing any action that would affect the availability, marketability or value of said property, including but not limited to selling, transferring, assigning, pledging, distributing, encumbering, wasting, secreting or otherwise disposing of, or removing from the jurisdiction of this Court, said property.

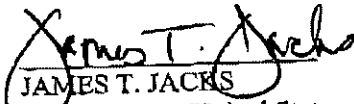
The Government further requests that any financial institutions holding any accounts subject to this Order be prohibited from taking offsets against such accounts, and that they continue to credit any deposits, interest, dividends, or other credits to such accounts in the normal course of business, and such deposits, interest, dividends, and other credits shall be subject to this Order. In addition, upon receiving notice of this Order, that each financial institution be required to promptly inform the Government as to the account balances at the time of notice, and thereafter supplement such information by reporting to the Government any changes to the accounts, and by responding promptly to requests by the Government for information on the accounts' current status.

The Government further requests that the U.S. Marshal, the Secretary of Treasury, or their designee be directed to promptly serve a copy of this Restraining Order upon the HLF, and all other appropriate individuals and/or financial institutions identified in Attachment A, and make a return thereon reflecting the date and time of service.

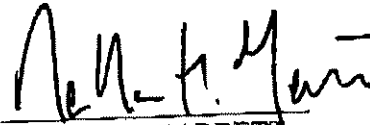
The Government further requests that this Restraining Order remain in full force and effect until further order of this Court.

Respectfully submitted,

RICHARD B. ROPER
United States Attorney



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2. That the federal grand jury's indictment of the HLF establishes sufficient probable cause for the issuance of this Restraining Order.
3. That in the event the HLF is convicted of the charges alleged in the indictment, the subject property would be subject to forfeiture under 18 U.S.C. § 982.
4. That the need to preserve the availability of the subject property through the entry of the order requested herein outweighs the hardship on any party against whom the order is to be entered.
5. That any third party claims to the subject property may be properly brought and resolved in ancillary proceedings conducted by this Court following the execution of a Preliminary Order of Forfeiture in accordance with the provisions of federal forfeiture law.

THEREFORE, IT IS HEREBY ORDERED AND DECREED:

That, effective immediately, the HLF, its agents, servants, employees, attorneys, family members and those persons in active concert or participation with the HLF, and those persons, financial institutions, or other entities who have any interest or control over the subject property are hereby

RESTRAINED, ENJOINED AND PROHIBITED, without prior approval of this Court, and upon notice to the United States and an opportunity for the United States to be heard, from attempting or completing any action that would affect the availability, marketability or value of said property, including but not limited to selling, transferring, assigning, pledging, distributing, encumbering, wasting, secreting, depreciating, damaging, or in any way diminishing the value of, all or any part of the property identified in governments Attachment A to its application.

IT IS FURTHER ORDERED that any financial institutions holding any accounts subject to this Order shall take no offsets against such accounts. They shall continue to credit

any deposits, interest, dividends, or other credits to such accounts in the normal course of business, and such deposits, interest, dividends, and other credits shall be subject to this Order. In addition, upon receiving notice of this Order, each financial institution shall promptly inform the Government as to the account balances at the time of notice, and shall thereafter supplement such information by reporting to the Government any changes to the accounts, and by responding promptly to requests by the Government for information on the accounts' current status.

IT IS FURTHER ORDERED that the United States or any Subject of this Order may seek modifications of this Order if it is deemed necessary by them to preserve their interest in the subject property.

IT IS FURTHER ORDERED that any Subject of this Order shall be permitted to execute a satisfactory performance bond pursuant to 21 U.S.C. § 853(e)(1) as an alternative to the restraint of the subject property. After notice to the United States and an opportunity to be heard, the Court shall determine whether any proposed bond is a satisfactory performance bond.

IT IS FURTHER ORDERED that the U.S. Marshal or the Secretary of Treasury, or their designee, shall promptly serve a copy of this Restraining Order upon the HLF and the institutions identified in the incorporated Attachment A to the Government's application, and shall make a return thereon reflecting the date and time of service.

THIS RESTRAINING ORDER shall remain in full force and effect until further order
of this Court.

DONE this the 24 day of September 2004.

A. Joe Fish
A. Joe Fish
Chief United States District Judge

ATTACHMENT A

Holy Land Foundation Accounts:		ACCOUNT NUMBER
BLOCKING BANK		
Morgan Stanley New York, NY		115020979
Morgan Stanley - Discover Merchant payment		501101755229737
Fidelity Boston, MA		87287881
Hudson United Bank Morristown, NJ	New account consolidating balances	4800555811 0220001581 0220001576 2940001218 4741822543
Bank of America - San Diego		2487902215 2487402205 004793010131 003871558929
Bank of America - Texas Bank of America - Florida all Bank of America accounts handled out of Concord, CA		
Chase Bank of Texas all Chase accounts handled out of New York, NY		36008302487 36008302476
Standard Bank and Trust Hickory Hills, IL	New account consolidating balances	5402399001 5400954003 5400955000
Sabana Capital Bellingham, WA		12707-0011 12707-0010 Retirement accounts
North American Islamic Trust Burr Ridge, IL		78352 78343
MSI Housing Fund Houston, TX		HF-108
ChBank all ChBank accounts handled out of New York, NY	Aldo-Gump Escrow	15118754
Republic National Bank of NY (HBBC) New York, NY		686033509

ATTACHMENT A

Holy Land Foundation Accounts:		ACCOUNT NUMBER
BLOCKING BANK		115020370
Morgan Stanley New York, NY		801101758229787
Morgan Stanley - Discover Merchant payment		07207881
Fidelity Boston, MA		4800886611
Hudson United Bank Mahwah, NJ	New account consolidating balances	0220001581 0220001678 2840001218 4741922543
Bank of America - San Diego		2487202215 2487402205 004783910131
Bank of America - Texas Bank of America - Florida all Bank of America accounts handled out of Concord, CA		003571558829
Chase Bank of Texas all Chase accounts handled out of New York, NY		36008302467 36008302475
Standard Bank and Trust Hickory Hills, IL	New account consolidating balances	5402299001 5400954003 6400955000
Saturna Capital Bellingham, WA		12707-0011 12707-0010 Retirement accounts
North American Islamic Trust Burr Ridge, IL		78352 78348
MSI Housing Fund Houston, TX		HP-109
Citibank all Citibank accounts handled out of New York, NY	Akin-Cump Escrow	15118764
Republic National Bank of NY (HSBC) New York, NY		888033509