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GETTY E. ROBBINS

December 24, 2008

Honorable Michael B. Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Attorney General Mukasey:

We write to express our concern about the role that Israel's Law of Return has played in bail hearings in *United States of America v Rubashkin*, CR 08-1324 (N.D. Iowa), and to urge you to set clear policy for the United States Attorneys regarding this issue. Please note that we do not take any position whatsoever regarding any of the allegations in this case.

At Defendant Rubashkin's bail hearing, on November 19, 2008, the United States reportedly argued that he posed an increased flight risk due, inter alia, to Israel's Law of Return. The government subsequently reiterated that argument, observing in a court filing that "the defendant has de facto dual [sic] citizenship in Israel by virtue of Israel's Right of Return law," and adding that "defendant is incrementally more likely to flee because of his de facto citizenship in a foreign country." (Government's Resistance To Defendant's Motion For Reconsideration of Pretrial Detention And For Expedited Hearing at 3).

Regrettably, the Magistrate accepted the United States' position and concluded, as one basis of his determination to detain Defendant Rubashkin:

Under Israel's "Law of Return," any Jew and members of his family who have expressed their desire to settle in Israel will be granted citizenship. Detention Order at 10.

The most troubling aspect here is that the government does not appear to have alleged, nor does the Detention Order conclude, that Defendant Rubashkin has any particular ties to Israel (he is alleged to have visited Israel in December 2007). Instead, the government and the Detention Order appear to conclude that simply because Defendant Rubashkin is Jewish, and because Jews may have a claim on Israeli citizenship, his religion is relevant to a bail hearing.

The Law of Return is not "de facto" citizenship for Jews in Israel and it should not be used to hold Jewish defendants who do not exhibit some credible threat of flight to Israel. It is unconstitutional to argue in this -- and in future cases -- that Jewish defendants are to be held to a different standard of detention than non-Jewish defendants. Indeed, this has wider implications than just for Jews.

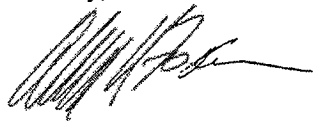


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Persons of any nationality whose native country (i.e. India or Ireland) permits expedited citizenship should be judged on credible evidence of their actions and intentions, and not just their national origin.

We urge you to instruct the United States Attorneys not to invoke Law of Return as a position in bail hearings without also proffering credible evidence that a defendant is planning to flee, or has independent ties, to Israel.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Foxman', with a long horizontal flourish extending to the right.

Abraham H. Foxman
National Director

cc: Jess N. Hordes, Washington Director